UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, ET AL.	:	
Plaintiffs	:	
v.	:	C.A. No: 1:18-CV-00328-WES-LDA
PROSPECT CHARTERCARE, LLC, ET AL.	:	
Defendants.	:	

DECLARATION OF MAX WISTOW IN SUPPORT OF JOINT MOTION FOR CLASS CERTIFICATION, APPOINTMENT OF CLASS COUNSEL, AND PRELIMINARY SETTLEMENT APPROVAL, BY PLAINTIFFS AND DEFENDANTS ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, ROGER WILLIAMS HOSPITAL, AND CHARTERCARE COMMUNITY BOARD AND PLAINTIFFS' COUNSEL'S MOTION FOR ATTORNEYS' FEES

Max Wistow, Esq. hereby declares and states as follows:

1. I am counsel, along with Stephen Sheehan and Benjamin Ledsham, for Plaintiffs in the captioned matter, and submit this declaration in support of the Joint Motion for Class Certification, Appointment of Class Counsel, and Preliminary Settlement Approval, by Plaintiffs and Defendants St. Joseph Health Services of Rhode Island ("SJHSRI"), Roger Williams Hospital ("RWH"), and CharterCARE Community Board ("CCCB") (collectively the "Settling Defendants") (all parties to the Proposed Settlement are referred to collectively as the "Settling Parties"), and Plaintiffs' Counsel's Motion for Attorneys' Fees.

2. On August 16, 2017 Defendant SJHSRI petitioned ("the "Receivership Petition") the Rhode Island Superior Court to appoint a temporary receiver for the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), in the case captioned *St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended*, PC-2017-3856 (the "Receivership Proceedings"). The Receivership Petition is attached hereto as Exhibit 1.[1]

3. The Receivership Petition alleged that the Plan was insolvent and sought an immediate reduction in benefits of 40% for all Plan participants. Specifically, the Receivership Petition sought the following relief:

> (1) the Court appoint a Temporary Receiver forthwith and also appoint a Permanent Receiver to take charge of the assets, affairs, estate, effects and property of the Plan, (2) that the Temporary Receiver and Permanent Receiver be authorized to continue to operate the Plan, (3) that the request for appointment of a permanent receiver and for an immediate 40% uniform reduction in benefits be set for hearing thirty (30) days.

Exhibit 1 at 7.

4. On August 17, 2017 Attorney Stephen Del Sesto was appointed Temporary Receiver of the Plan by the Superior Court. That order is attached hereto as Exhibit 2. It set October 11, 2017 for a hearing on the request for appointment of a permanent receiver and for an immediate reduction in benefits.

5. Immediately thereafter Attorney Del Sesto contacted my firm, Wistow, Sheehan & Loveley, P.C. ("WSL"), and asked us to assist him in his duties as Temporary Receiver. We agreed and began our duties on August 18, 2017.

[1] Without exhibits so as not to unnecessarily burden the record.

6. On October 11, 2017, Attorney Del Sesto filed in the Receivership Proceedings an Emergency Petition to Engage Legal Counsel, to which he attached the retainer agreement ("WSL Retainer Agreement") he negotiated with WSL. The Emergency Petition with the WSL Retainer Agreement is attached hereto as Exhibit 3. That Emergency Petition informed the Court that "following his appointment, the Receiver determined that his fiduciary obligations to the Plan and its beneficiaries include the need to conduct an investigation into the circumstances which resulted in the Plan's significant, and likely irreversible, financial distress," and that "the Receiver believes that assistance of special litigation counsel is warranted and necessary." Exhibit 3 ¶¶ 4 & 5.

7. In the Emergency Petition, Attorney Del Sesto advised the court as follows:

> WSL have indicated a willingness to assist the Receiver and, even without the security of a formal engagement, have already spent substantial time working with the Receiver to sort through and understand the complexities of this matter. Based on the Receiver's knowledge of WSL and the significant value already brought to this matter in a relatively short period of time, the Receiver believes that WSL's experience, skill, knowledge and assistance will bring a valuable benefit to the Estate and the beneficiaries of the Plan. As a result, the Receiver requests that this Court authorize him to retain WSL as special counsel to the Receiver for the purposes outlined herein and in the attached, proposed engagement attached hereto as Exhibit A.

Exhibit 3 ¶ 5.

8. The Emergency Petition was heard preliminarily that same day, on October 11, 2017, at a hearing attended by many Plan participants because the Receiver was also expected to address whether he recommended a 40% cut of benefits. The transcript of the hearing is attached hereto as Exhibit 4. During that hearing, Attorney Del Sesto put on the record the terms of the WSL Retainer

Agreement, consisting of hourly time charges of $375 during the investigation phase, replaced by a contingent fee once claims were asserted, of 10% of the gross recovery if a claim was resolved prior to suit, and 23.5% if the claim was resolved after suit. Exhibit 4 at 12-13. At the request of the Receiver, I put on the record at the hearing a statement concerning the qualifications and experience of WSL. Exhibit 4 at 14-18. At the hearing Judge Stern stated that in light of the short notice for the Emergency Petition, it would be made available on both the Superior Court's public portal and on the Receiver's web site, that opposition, if any, should be filed with the court within the next five (5) days, and then he would issue his decision. Exhibit 4 at 18-19.

9. On October 17, 2017 Judge Stern's order granting the Emergency Petition was entered. The order is attached hereto as Exhibit 5. It states in pertinent part:

> 1. That for the reasons stated in the Receiver's Petition and in accordance with the terms of the Engagement, attached to the Petition as Exhibit A and incorporated herein by reference, the Receiver is hereby authorized to retain the law firm of Wistow Sheehan & Lovely PC ("WSL") to act as the Receivership Estate's special litigation counsel for the purposes more specifically set forth in the Petition and the Engagement;
>
> 2. Until further order of this Court, the Receiver shall be authorized to submit to the Court for approval the time records/invoices of WSL in redacted format along with a reasoned recommendation by the Receiver regarding the approval of the same;
>
> 3. The Receiver's first request for approval of the fees of WSL may include those fees reasonably incurred by WSL in connection with this matter since August 18, 2017;
>
> 4. This Order shall be effective *nunc pro tunc* as of October 11, 2017.

Exhibit 5 at 1.

10. Attached hereto as Exhibit 6 is the Order appointing Attorney Del Sesto permanent receiver of the Plan on October 27, 2017.

11. In our role as Special Counsel to the Receiver, WSL issued *subpoenas duces tecum* to the following entities:

- Adler Pollock & Sheehan, P.C.
- Bank of America, N.A.
- Defendant CharterCARE Community Board
- Defendant CharterCARE Foundation
- Rhode Island Department of Health
- Ferrucci Russo, P.C.
- Office of the Rhode Island Attorney General
- Defendant Prospect CharterCare, LLC
- Defendant Prospect Medical Holdings, Inc.
- Defendant Rhode Island Community Foundation
- Defendant Roman Catholic Bishop of Providence
- Defendant SJHSRI (two subpoenas)

12. By agreement, or in acknowledgment of their legal obligation, several of the subpoenaed entities that are Defendants in this case produced documents in the possession and control of other entities that are also Defendants in this case. For example, Prospect Medical Holdings also produced documents on behalf of Defendant Prospect East Holdings, Inc.; Prospect CharterCare, LLC also produced documents on behalf of Defendant Prospect CharterCare SJHSRI, LLC and Defendant Prospect CharterCare RWH, LLC; and Defendant Roman Catholic Bishop of Providence also produced documents on behalf of Defendants Diocesan Administration Corporation and Defendant Diocesan Service Corporation. Defendant The Angell Pension Group, Inc.

("Angell") produced copies of their files in compliance with the order appointing the Receiver, for which no subpoena was required.

13. Thus, as Special Counsel we obtained documents from all of the parties to this case, two of their former attorneys' firms, two state agencies, and Bank of America.

14. Five of the Defendants, as well as the Rhode Island Office of the Attorney General and the Rhode Island Department of Health, did not produce the requested documents either promptly or completely.

15. As a result, WSL filed numerous discovery motions, all of which were granted by the Superior Court or resulted, without granting the motion, in production of the requested documents.

16. This discovery entailed the production and review of over 1,000,000 pages of documents over an eight-month period.

17. For the Investigative Phase, we submitted invoices to the Receiver. The Receiver, separately with respect to each invoice, requested and obtained authorization from the Superior Court in the Receivership Proceedings to make payment.

18. For that investigative phase, WSL as Special Counsel was paid a total of $552,281.25, based upon the negotiated reduced hourly rate of $375 per hour. That fee covered over 1,472 hours of billable time. However, WSL unilaterally chose *not to invoice the Receiver* for the services of more than one lawyer on the many occasions when more than one lawyer in WSL was involved in a task, such as court appearances, intra-office meetings or phone calls, or meetings and phone calls with the Receiver or third parties. The time during the Investigative Phase which we chose *not to bill* exceeded two hundred hours.

19. The Complaint was filed on June 18, 2018. See Dkt. 1.

20. At the same time we filed a nearly identical complaint (but without the ERISA claims) in the Rhode Island Superior Court. That complaint is attached hereto as Exhibit 7.

21. At the same time we also moved for leave to intervene in a civil action that SJHSRI, RWH, and another entity, Defendant CharterCARE Foundation, had commenced in the Rhode Island Superior Court in 2015 (the "2015 *Cy Pres* Proceeding"), pursuant to which certain assets of SJHSRI and RWH were transferred to CharterCARE Foundation, which Plaintiffs now seek to recover for deposit into the Plan. A copy of our motion and supporting memorandum is attached hereto as Exhibit 8. Defendant CharterCARE Foundation's opposition memorandum is attached hereto as Exhibit 9. Our reply memorandum is attached hereto as Exhibit 10.

22. On June 28, 2018, counsel for CharterCARE Foundation informed the court in the Cy Pres proceedings that the value of CharterCARE Foundation's assets invested with Rhode Island Foundation, as of April 30, 2018, was $8,783,572.83. See Exhibit 11 (Order Preserving Assets Pending Litigation and Setting Schedule for Hearing on Motion to Intervene) at 1 n.2.

23. Over the several weeks preceding formal execution of the Settlement Agreement, the Settling Defendants and Plaintiffs through Plaintiffs' Counsel conducted settlement negotiations, which involved extensive disclosure of the Settling Defendants' assets, including an initial disclosure and several additional or supplementary disclosures based upon the requests of Plaintiffs' Counsel for additional information and clarification.

24. The negotiations also involved negotiations by Plaintiffs' Counsel with the Rhode Island Department of Labor and Training ("DLT") and a meeting with DLT concerning an escrow account (the "DLT Escrow"), which was then in the amount of approximately $2,500,000, that Settling Defendant RWH had funded, securing RWH's self-insured workers' compensation liabilities. As a result of these negotiations, DLT agreed to only $750,000 being retained in the DLT Escrow account, and released the balance, which is included in the Initial Lump Sum being paid by the Settling Defendants in connection with the Proposed Settlement.

25. Thereafter, Plaintiffs and the Settling Defendants agreed on the terms set forth in the Settlement Agreement.

26. Prior to filing the Complaint, Plaintiffs' Counsel entered into retainer agreements with the Named Plaintiffs (the "Retainer Agreements with Named Plaintiffs"), in which the Named Plaintiffs agreed to Plaintiffs' counsel applying to the Court for an award of attorneys' fees, not to exceed the fees to which Plaintiffs' Counsel is entitled under the retainer agreement with the Receiver that was approved by the Superior Court. The Retainer Agreements with Named Plaintiffs are attached hereto as Exhibits 12-18.

27. The Retainer Agreements with the Named Plaintiffs contain several provisions intended to notify the clients of peculiar features of class actions and to avoid having Plaintiffs' Counsel develop any conflicts of interest, including the following:

> In non-class litigation, parties asserting claims are free to pursue only their own interests; they need not take into account the interests of others. Class actions are different, and require both class representatives and the lawyers in their capacity as lawyers for the class to consider and pursue only the common claims and interests of the class as a whole. This means that you must always act in the best interest of the class as a

> whole and consider the interests of the class ahead of your own individual or personal interests. If at any time you fail or refuse to prioritize the interests of the class, you will not be able to serve as a class representative, and WSL will not be able to continue representing you.

Exhibits 12-18 at 3.

28. Another provision prevents conflicting interests from interfering with Plaintiffs' Counsel's representation of the class in connection with a settlement involving aggregated payments, such as the Proposed Settlement *sub judice*:

> An aggregate settlement may be insufficient to completely compensate each claimant individually and disagreements may arise concerning how to allocate, or divide, an aggregate settlement. If there is insufficient proceeds or assets to cover the claims of each of the respective Clients, there can be disputes regarding how to allocate the proceeds or assets as between the joint Clients. If any disputes should arise between the joint Clients, WSL will not advise or represent any of the Clients (including the Receiver) in connection with such disputes. WSL will remain able to advocate an overall settlement but not how such settlement should be divided.

Exhibits 12-18 at 6. This provision recognizes that various groups of Plan participants are represented by separate counsel in the Receivership proceedings for purposes of negotiating with the Receiver and each other concerning the potential for and amount of any cuts in benefits to be made, as requested by SJHSRI when it petitioned the Plan into receivership.[2] These other counsel include attorneys Arlene Violet, Robert Senville, Jeffrey Kasle, and Christopher Callaci.

29. At the time the WSL Retainer Agreement was entered into, the relative merits and likelihood of recovery on claims were unknown.

[2] While all Plan beneficiaries desire that no cuts be made, they disagree as to how any such cuts (if made) should be borne by the various groups of beneficiaries. For example, one group prefers that a uniform cut be made across the board, while another group prefers that certain beneficiaries by spared any cut.

30. The Receiver Retainer Agreement established the upper limit of the fee that WSL would earn from representing the Receiver, regardless of the degree of difficulty or other factors that might otherwise justify a higher percentage. Accordingly, at the time the WSL Retainer Agreement was entered into, WSL accepted the risk that, even if there was a recovery, the agreed-upon contingent fee of 23.33% would not justify the time and effort actually required to obtain it.

31. On September 4, 2018, the Receiver filed his Petition for Settlement Instructions with the Rhode Island Superior Court. The petition is attached hereto as Exhibit 19.

32. On October 5, 2018, the Plaintiffs filed a First Amended Complaint. See Dkt. 60. This pleading provides additional factual detail and adds two additional state-law counts.

33. The Petition for Settlement Instructions was heard on October 10, 2018. The transcript of that hearing is attached hereto as Exhibit 20.

34. On October 29, 2018, the Rhode Island Superior Court, Stern, J., issued a written decision concerning the Receiver's Petition for Settlement Instructions. See St. Joseph Health Services of Rhode Island, Inc. v St. Josephs Health Services of Rhode Island Retirement Plan, No. PC-2017-3856, 2018 WL 5792151 (R.I. Super. Oct. 29, 2018). On November 16, 2018, the Rhode Island Superior Court, Stern, J., granted the Receiver's Petition for Settlement Instructions and authorized and directed the Receiver to proceed with the settlement. That order is attached hereto as Exhibit 21. The Order imposes two conditions: "(1) the Receiver refrains from exercising any rights under the PSA prior to the federal court's determination of whether to approve the PSA; and (2)

prior to implementing, or directing that CCCB implement, any rights, whatsoever, in favor of the Receiver (or the Plan) derivative of CCCB's rights in CCF or PCC, the Receiver must provide all parties, including but not limited to the Objectors, with twenty (20) days written notice."

35. Attached hereto as Exhibit 22 is the Asset Purchase Agreement ("APA") produced by the Office of the Rhode Island Attorney General in response to subpoenas in the Receivership Proceedings in connection with the sale of certain assets of the Settling Defendants to Defendant Prospect Medical Holdings, Inc. ("Prospect Medical") and other entities affiliated with Prospect Medical Holdings, Inc. (the 2014 Asset Sale) that closed on or about June 20, 2014.

36. Attached hereto as Exhibit 23 is the Amended & Restated Limited Liability Company Agreement of Prospect CharterCare, LLC ("LLC Agreement") that was produced by Defendants in response to subpoenas in the Receivership Proceedings. As stated therein, the LLC Agreement was entered into in connection with the 2014 Asset Sale.

37. Attached hereto as Exhibit 24 is a resolution of CCCB's Board of Trustees dated February 27, 2014, which was produced in discovery. It states that of the $45,000,000 paid in the 2014 Asset Sale, $31,000,000 was to be used to redeem the hospitals' bonded-indebtedness, and $14,000,000 was to be deposited into the Plan.

38. Attached hereto as Exhibit 25 is a copy of the Revised By-Laws of CharterCARE Health Partners Foundation (presently known as CharterCARE Foundation) revised as of October 8, 2013. This document was produced by the Office

of the Rhode Island Attorney General in response to subpoena in the Receivership Proceedings.

39. Since this action was commenced on June 18, 2018, attorneys at WSL have devoted a minimum of 1,120 hours of time in prosecuting the claims of the Receiver and the Plaintiffs.

40. Since this action was commenced on June 18, 2018, Plaintiffs have incurred nontaxable costs of $16,122.50.

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

Executed on this 21st of November, 2018 in Rhode Island.

Max Wistow

Exhibit 1

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

St. Joseph Health Services of Rhode Island, Inc. Vs. St. Josephs Health Services of Rhode Island Retirement Plan, as amended	PC 2017-

PETITION FOR THE APPOINTMENT OF A RECEIVER

Petitioner respectfully represents that:

1. Petitioner, a Rhode Island domestic non-profit corporation, formerly provided hospital and related medical services to communities in northern Rhode Island. In connection therewith, Petitioner coordinated compensation and benefits for its employees, including a defined benefit pension plan. [1]

2. In June 2014, Petitioner sold substantially all of its operating assets to a newly-formed entity (the "Hospital Purchaser") owned by Prospect Medical Holdings, Inc. ("Prospect") and CharterCARE Community Board ("CCCB"),[2] and specifically organized for such purpose. As a result of the sale, Petitioner ceased operating as a health care institution and entered into a "wind-down" phase.

3. Respondent, a defined benefit pension plan, was organized by Petitioner

[1] Generally speaking, a "defined benefit pension plan" is a retirement vehicle which pays out to a beneficiary a defined annuity payment based upon the employee's compensation during employment and length of employment. By comparison, a "defined contribution pension plan" is a retirement vehicle which pays out to a beneficiary a variable annuity or lump sum payment based upon the contributions made to the plan during the employee's employment.

[2] CCCB was organized in 2009 to seek operating efficiencies and to stem the on-going losses from the operations of Petitioner and Roger Williams Hospital.

as of July 1, 1965 (and amended from time to time), for the benefit of Petitioner's employees (the Respondent pension plan, as amended, shall be hereinafter referred to as the "Plan"). A copy of the latest Plan document is attached as **Exhibit 1.**

4. Prior to the sale, eligibility for employee participation in the Plan was terminated, thereby closing the Plan to new participants. At the time of the sale, the Plan was estimated to be approximately 90% funded.[3] In connection with the sale, additional benefit accruals for existing plan participants were terminated effectively "freezing" benefits for then-eligible employees. Neither Prospect nor the Hospital Purchaser assumed the Plan or any liability with respect thereto as clearly stated in the asset purchase agreement among the parties.[4]

5. At the time of the transaction with the Hospital Purchaser, Petitioner elected to contribute $14,000,000 to the Plan as a one-time contribution.

6. Throughout its history, Petitioner has been affiliated with the Catholic Church. Petitioner has continued that affiliation during and after the sale to the Hospital Purchaser. As an affiliate of the Catholic Church, the Plan qualified as a "church plan," which is exempt from the provisions of the Employment Retirement Income Security Act of 1974 ("ERISA") governing defined benefit pension plans. As a result of the "church plan" exemption, Petitioner was not required to make annual minimum contributions to the Plan, or make pension insurance payments to the

[3] As will be discussed below, the concept of "funding" of a pension plan has different meanings under different circumstances. Here, the assumptions made about the funding level at the time of the transaction with the Hospital Purchaser did not consider all of the long-term issues affecting the Plan.

[4] Prospect had no role in the evaluation of the Plan or its funding level.

Pension Benefit Guaranty Corporation ("PBGC").[5]

7. Petitioner is advised and believes that the Plan will lose "church plan" status on or before December 31, 2018.

8. If the Plan loses its status as a "church plan," Petitioner would be required to make minimum annual contributions and annual payments to PBGC, and would otherwise be required to comply with ERISA. Petitioner does not have the financial resources to make such payments, or to comply with the other financial and regulatory requirements of ERISA.

9. Angell Pension Group, Inc. ("Angell") performs valuable administrative services for the Plan and serves as the Plan's actuary. Angell prepares an annual actuarial report of the Plan, the most recent of which is attached hereto as **Exhibit 2** (the "Actuarial Report").

10. Pursuant to the Actuarial Report, the Plan is severely underfunded and requires additional capital of over $43,000,000 to reach a 100% funding level. See Actuarial Report, p. 2. One of the underlying assumptions in the actuarial calculation, an annual rate of return of 7.75%, has been consistently attributed to the Plan and, historically, constituted a reasonable estimate of performance. However, going forward there is concern that 7.75% projected annualized return is unlikely to be sustained in the long term. Applying a lower anticipated annual rate of return would result in a higher underfunding projection.

11. In light of the considerable underfunding and the imminent loss of "church plan" status, Petitioner requested that Angell perform analyses of different

[5] PGBC is the quasi-governmental entity that insures defined benefit pension plans.

Plan termination and liquidation scenarios to facilitate an evaluation of options for the Plan and its beneficiaries. Angell provided an analysis dated May 8, 2017, attached hereto as **Exhibit 3** (the "Initial Termination Analysis").

12. The Initial Termination Analysis demonstrated that upon an immediate termination of the Plan, beneficiaries currently receiving benefits would receive a payout of approximately 60% of their accrued benefits and all other beneficiaries would receive no distributions whatsoever. Petitioner believes that such an outcome represents the least favorable result.

13. Following review and evaluation of the Initial Termination Analysis, in an effort to identify better options for Plan beneficiaries, Petitioner requested that Angell perform an analysis of the Plan based upon a uniform reduction of 40% for all current and future beneficiaries' benefits, and assuming more conservative annualized rates of return. In response to such request, Angell provided an analysis dated May 24, 2017, attached hereto as **Exhibit 4** (the "Benefit Adjustment Analysis").

14. The Benefit Adjustment Analysis demonstrates:

a. That at an annualized rate of return of 6.66%, the Plan will pay out 60% of accrued benefits to 100% of Plan beneficiaries;

b. That at an annualized rate of return of 6.5%, the Plan will pay out 60% of accrued benefits to almost all of the Plan beneficiaries, with the last "allocation group" receiving approximately 48.6% of their accrued benefits; and

c. That at an annualized rate of return of 6.0%, the Plan will pay out 60% of accrued benefits to almost all of the Plan beneficiaries, with the last

"allocation group" receiving only 9% of their accrued benefits.[6]

15. Petitioner believes that a uniform reduction of 40% of pension benefits is likely the most reasonable approach to achieving an equitable resolution for all beneficiaries and therefore requests that the receiver be given authority to make such uniform reduction immediately in order to preserve the Pension assets for the benefit of all beneficiaries.

16. Petitioner, and, Petitioner's affiliates, Roger Williams Hospital and CCCB,[7] are winding down their respective affairs. Upon conclusion of such wind-down efforts, the net assets of Petitioner, RWH and CCCB may become available to assist with the Plan.[8] While the availability of additional funds is uncertain at this time, such additional funds could be used to support the Plan for long-term pay-outs to beneficiaries or provide supplemental distributions to beneficiaries whose benefit payments might be reduced as part of the Plan's wind-down process. The potential for additional Plan funds is not contemplated by the Benefit Adjustment Analysis.

17. Petitioner believes that the Plan should not be terminated immediately, but rather, that the Court should oversee a long-term wind-down of the Plan through a judicial receivership in the nature of a liquidating trust.

18. Petitioner anticipates that a long-term judicial wind-down could achieve the following goals:

---

[6] This 15% payout is more than this group would receive under an immediate liquidation.

[7] The wind-down of CCCB could potentially take a long time due to its ownership interest in the Hospital Purchaser.

[8] Petitioner anticipates that the wind-down of RWH and SJHSRI is likely to take several years to complete.

a. Afford all of the Plan beneficiaries the opportunity to receive periodic payments of at least the estimated amount that would result from an immediate termination of the Plan;

b. Afford beneficiaries the opportunity to benefit from the contribution of additional funds to the Plan to increase benefit pay-outs over time;

c. Afford beneficiaries the opportunity to benefit from higher than expected returns should the Plan investments outperform the returns assumed in the Benefit Adjustment Analysis.

19. Petitioner is informed and believes that the Plan is unsustainable absent court intervention and will be unable to pay all accrued benefits as they become due.

20. Absent judicial intervention, Petitioner anticipates that the Plan will be terminated and its funds distributed in a manner that will result in current Plan beneficiaries receiving approximately 60% of their accrued benefits and all others receiving nothing.

21. In the opinion of Petitioner, it is urgent and advisable that a Temporary Receiver be appointed immediately to take charge of the affairs, assets, estate, effects and property of the Plan to preserve the same for the interest of all creditors and the benefit of all interested parties. Petitioner further believes that the current administrators and actuaries of the Plan should remain in place for administrative purposes and to continue to render services to the Plan consistent with past practice, so as to avoid unnecessary additional delay, cost and expense.[9]

[9] Since the commencement of the wind-down process, administrative expenses of the

22. Petitioner, together with RWH and CCCB are authorized, in the sole discretion of their respective officers and directors, to fund the fees and expenses of the Receiver from time to time, in an effort to avoid further impairment of the Plan's assets to the extent possible.[10]

23. This Petition is made in good faith for the protection of the Plan and for the benefit of its beneficiaries, and the appointment of a Temporary Receiver is most desirable pending final hearing on the appointment of a Permanent Receiver.

24. This Petition is filed to seek relief as requested by virtue of and pursuant to this Court's equity powers and pursuant to its powers as authorized by the laws and statutes of the State of Rhode Island.

WHEREFORE, Petitioner respectfully requests that (1) the Court appoint a Temporary Receiver forthwith and also appoint a Permanent Receiver to take charge of the assets, affairs, estate, effects and property of the Plan, (2) that the Temporary Receiver and Permanent Receiver be authorized to continue to operate the Plan, (3) that the request for appointment of a permanent receiver and for an immediate 40% uniform reduction in benefits be set for hearing thirty (30) days

---

Plan, other than investment management and custodian fees, have been paid for with non-Plan assets. Petitioner anticipates that such expenses will continue to be paid for using non-Plan assets so as to avoid further impairment of participant claims. Investment management and custodial fees and expenses would continue to be paid from Plan assets.

[10] This authorization should not be construed as an obligation of, or affirmative undertaking by, Petitioner, RWH or CCCB, who may determine, in their sole discretion, not to fund such expenses at any given time.

from the date this petition is heard, (4) that notice of such hearing and the relief requested be given to all present and future Plan beneficiaries, at their last known addresses, and to the representative(s) of any unions and other organizations collectively representing any groups of beneficiaries, and (5) that Petitioner have such other and further relief as this Court shall deem proper.

PETITIONER,

St. Joseph Hospital Services
Rhode Island

By _____

David Hirsch, President

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Barnstable

In Barnstable on the 16 day of August, 2017, before me personally appeared David Hirsch, who made oath that he subscribed to the foregoing Petition, that he knows the contents thereof and that the same are true, excepting those matters stated on information and belief, and as to those matters he believes them to be true.

_____
Notary Public
My commission expires: Feb. 23, 2018

LAURA A. LACINA
MY COMMISSION EXPIRES FEBRUARY 23, 2018
NOTARY PUBLIC COMMONWEALTH OF MASSACHUSETTS

On this 16 day of August, 2017 before me, the undersigned notary public, personally appeared David M. Hirsch proved to me through satisfactory evidence of identification, which were RI drivers License, to be the person whose name is signed on the preceding or attached document, and acknowledge to me that (he) (she) signed it voluntarily for its stated purpose.

CERTIFICATE OF ATTORNEY

I, the undersigned, Attorney for the Petitioner, certify that this Petition is made in good faith for the protection of the Plan and for the benefit of beneficiaries, and that the appointment of a Temporary Receiver is desirable pending a hearing for the appointment of a Permanent Receiver.

Richard J. Land (5592)
Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
Tel.: 401-453-6400
Email: rland@crfllp.com

Exhibit 2

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

St. Joseph Health Services of Rhode Island, Inc.

Vs.

St. Josephs Health Services of Rhode Island Retirement Plan, as amended

PC 2017- 3856

ORDER APPOINTING TEMPORARY RECEIVER

This cause came on to be heard upon the Plaintiff's Petition for Appointment of a Receiver and, upon consideration thereof, it is hereby

ORDERED, ADJUDGED AND DECREED

1. That Stephen DelSesto, of Providence, Rhode Island be and hereby is appointed Temporary Receiver (the "Receiver") of the St. Joseph Health Services of Rhode Island Retirement Plan ("Plan").

2. That said Receiver shall, no later than five (5) days from the date hereof, file a bond in the sum of $ 1,000,000.00 with any surety company authorized to do business in the State of Rhode Island as surety thereon, conditioned that the Receiver will well and truly perform the duties of said office and duly account for all monies and property which may come into the Receiver's hands and abide by and perform all things which the Receiver will be directed to do by this Court.

3. That said Receiver is authorized to take control of the Plan as described in the Petition.

4. That said Receiver is authorized, until further Order of this Court, in the Receiver's discretion and as said Receiver deems appropriate and advisable, to continue administration of the Plan, to engage employees and assistants, clerical or otherwise, actuaries, and other professionals necessary or appropriate for the efficient administration of the Plan, and to pay all such individuals and entities in the usual course of business, and to do and perform or cause to be done and performed all other acts and things as are appropriate in the premises. The Court specifically authorizes the Receiver to continue to utilize the services of Chace Ruttenberg & Freedman, LLP in connection with the administration of the Plan, provided that payment for such services shall not come from assets of the Plan unless otherwise ordered by this Court.

5. That, pursuant to and in compliance with Rhode Island Supreme Court Executive Order No. 2000-2, this Court finds that the designation of the aforedescribed persons for

Filed BH 8/18/17

appointment as Receiver herein is warranted and required because of the Receiver's specialized expertise and experience in operating businesses in Receivership and in administrating non-routine Receiverships which involve unusual or complex legal, financial, or business issues.

6. That the commencement, prosecution, or continuance of the prosecution, of any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, or any other proceeding, in law, or in equity or under any statute, or otherwise, against said Plan or any of its property, in any Court, agency, tribunal, or elsewhere, or before any arbitrator, or otherwise by any creditor, stockholder, corporation, partnership or any other person, or the levy of any attachment, execution or other process upon or against any property of said Plan, or the taking or attempting to take into possession any property in the possession of the Plan or of which the Plan has the right to possession, or the interference with the Receiver's taking possession of or retaining possession of any such property, or the cancellation at any time during the Receivership proceeding herein of any insurance policy, lease or other contract relating to the Plan, by any of such parties as aforesaid, other than the Receiver designated as aforesaid, or the termination of services relating to the Plan, without obtaining prior approval thereof from this Honorable Court, in which connection said Receiver shall be entitled to prior notice and an opportunity to be heard, are hereby restrained and enjoined until further Order of this Court.

7. That a Citation be issued to the Plan, returnable to the Superior Court sitting at 250 Benefit Street, Providence, Rhode Island on the 11th day of OCTOBER, 2017, at 9:30 a.m. at which time and place this cause is set down for Hearing on the prayer for the Appointment of a Permanent Receiver and for reduction of beneficiary payments as described in the Petition; that the Clerk of this Court shall give Notice of the pendency of the Petition herein by publishing this Order Appointing Temporary Receiver once in The Providence Journal on or before the 24th day of AUGUST, 2017, and the Receiver shall give further notice by mailing, on or before the 31st day of August, 2017, a copy of said Order Appointing Temporary Receiver to each of the participants of the Plan whose address is known or may become known to the Receiver.

ENTER:

Michael A. Silverstein
Associate Justice/Business Calendar
Dated: 8/17/2017

BY ORDER:

1st Bearce Henglatsamy
Clerk, Superior Court
8/18/2017

Exhibit 3

STATE OF RHODE ISLAND **SUPERIOR COURT**
PROVIDENCE, SC.

St. Joseph Health Services of Rhode Island, Inc.	
Vs.	PC 2017-3856
St. Josephs Health Services of Rhode Island Retirement Plan, as amended	

EMERGENCY PETITION TO ENGAGE SPECIAL LEGAL COUNSEL

To the Honorable Providence County Superior Court, now comes Stephen F. Del Sesto, Esquire, Temporary Receiver ("Receiver") of St. Josephs Health Services of Rhode Island Retirement Plan, as amended (hereinafter referred to as the "Plan") and hereby states as follows:

1. Stephen F. Del Sesto was appointed as Temporary Receiver of the Plan on August 18, 2017.

2. The Plan was established as a Rhode Island Trust to hold and distribute funds as a private retirement pension plan established by the Petitioner for the benefit of certain of its employees.

3. For at least the past 10+ years the Plan was substantially underfunded with only two (2) contributions being made between September 2008 and June 2014 ($1.5 million and $14 million, respectively). In addition, following a June 2014 sale of substantially all of Petitioner's operating assets, the Plan was "orphaned" with no source of funds available for regular, annual contributions into the Plan which are necessary for the Plan's long term survival.

4. Immediately following his appointment, the Receiver determined that his fiduciary obligations to the Plan and its beneficiaries include the need to conduct an investigation into the circumstances which resulted in the Plan's significant, and likely irreversible, financial distress. While the Receiver has not yet identified any actionable claims against any parties, the

Receiver believes that this investigation should include an investigation of the parties involved in the administration of the Plan and the transaction(s) that resulted in the "orphan" status of the Plan and its significant underfunding.

5. Based upon the multi-layered aspects of this required investigation and the potential for complex litigation arising out of that investigation, the Receiver believes that assistance of special litigation counsel is warranted and necessary.

6. In this regard, the Receiver has had several substantive discussions with Attorneys Max Wistow, Stephen Sheehan and Benjamin Ledsham from the law firm of Wistow, Sheehan & Lovely PC ("WSL") regarding whether WSL would be interested in assisting the Receiver and the Plan Receivership Estate with this investigation and any resulting litigation. WSL have indicated a willingness to assist the Receiver and, even without the security of a formal engagement, have already spent substantial time working with the Receiver to sort through and understand the complexities of this matter. Based on the Receiver's knowledge of WSL and the significant value already brought to this matter in a relatively short period of time, the Receiver believes that WSL's experience, skill, knowledge and assistance will bring a valuable benefit to the Estate and the beneficiaries of the Plan. As a result, the Receiver requests that this Court authorize him to retain WSL as special counsel to the Receiver for the purposes outlined herein and in the attached, proposed engagement attached hereto as Exhibit A.

7. Due to the nature of the investigation and the potential for litigation, during the investigatory phase of the engagement where WSL will charge the Estate a blended rate of $375 per hour (the same hourly rate as the charged by the Receiver) the Receiver recommends that he be permitted to review and issue a recommendation to this Court regarding the approval WSL's invoices and submit those invoices in a redacted format for the Court's review.

WHEREFORE, for the reasons set forth herein and for the purposes outlined herein and in Exhibit A, your Receiver respectfully requests that an Order be entered allowing your Receiver to retain WSL to act as special legal counsel to the Receiver and Estate in accordance with the proposed engagement attached as Exhibit A. The Receiver also requests that the Order

indicate that WSL's invoices be submitted to the Court for approval in a redacted form and accompanied with a recommendation by the Receiver regarding those invoices.

Respectfully submitted,

/s/ Stephen F. Del Sesto

Stephen F. Del Sesto, Esq. (#6336)
Solely in his capacity as Temporary Receiver for St. Josephs Health Services of Rhode Island Retirement Plan and not individually
72 Pine Street, 5th Floor
Providence, RI 02903
Tel: 401-490-3415
sdelsesto@pierceatwood.com
Dated: October 10, 2017

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of October, 2017, I electronically filed and served the within document via the Electronic Case Filing System of the Superior Court with notice to all parties in the system.

/s/ Stephen F. Del Sesto

ENGAGEMENT AND FEE AGREEMENT

Stephen F. Del Sesto ("the Receiver"), as and only as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), hereby engages Wistow, Sheehan & Loveley, P.C. ("WSL") as special counsel to the Receiver and the Plan Receivership Estate as follows:

I. INVESTIGATION

The Receiver engages WSL to investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan (or to assume responsibility for such plan in the future), making use of discovery, records, research and consultations in its discretion. Under the provision concerning Hourly Fees set forth below, WSL will charge an hourly rate for these services. In addition, WSL will be reimbursed on a current basis (i.e. monthly) for any out-of-pocket expenses (such as costs of records, computer-assisted legal research, expert consultants, etc.) actually incurred and without mark-up by WSL during the investigative phase, whether claims are made or not.

II. MAKING CLAIMS

The Receiver further constitutes and appoints WSL to make claims against persons and/or entities who its investigation indicates may be liable for damages or to assume responsibility for the Plan. Said claim(s) may be made by demand letter or by lawsuit, if necessary. The Receiver agrees to pay as legal fees ten percent (10%) of the gross of any amounts recovered prior to the bringing of suit, by way of compromise or settlement. If suit is brought, the Receiver agrees to pay as legal fees twenty-three and one-third percent (23 1/3 %) of the gross of any amount thereafter recovered by way of suit, compromise, settlement or otherwise. In the event that a final resolution of such

claims by settlement or otherwise results in a third party assuming responsibility for the Plan, the fees to be paid to WSL shall be an obligation of the Receivership, the amount of which shall be determined by the Court using the standards of *quantum meruit* pursuant to the laws of Rhode Island, taking into account the benefit rendered to the Plan. In any event, no compromise of the Plan's claims may be made without the Receiver's express authorization and approval by the Court.

III. REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

The Receiver is obligated to reimburse WSL within thirty (30) days of invoicing and in all events for any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.) in connection with Sections I or II above.

IV. HOURLY FEES

The Receiver shall pay WSL an hourly rate of $375 per hour which is also the hourly rate presently being charged by the Receiver. In the event the Receiver's own hourly rate is increased, WSL will be entitled to charge such higher rate. Invoices for such hourly fees will be submitted to the Receiver every month for the Receiver's review. The Receiver shall seek Court approval of the fees submitted no less frequently than on a quarterly basis (or more frequently as the Receiver may in his discretion deem appropriate). The Receiver shall pay all Court-approved WSL invoices within three (3) business days of Court approval. The Receiver acknowledges that the attorneys performing services on behalf of WSL include Attorney Max Wistow, Attorney Stephen Sheehan, and Attorney Benjamin Ledsham, and that these services will be

performed during the investigation phase described by Section I as well as the phase, if applicable, described by Section II.

V. Miscellaneous

The Receiver hereby approves and acknowledges delivery of a duplicate copy of this Contingent Fee Agreement and acknowledges receipt of "A Client's Statement of Rights & Responsibilities."

Stephen F. Del Sesto, Esq., as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan

Date:

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date:

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• *When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.*

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•*1f you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.*

•*If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.*

• *If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.*

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable questions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•*when and how your telephone calls will be returned.*

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

Exhibit 4

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND)
)
VS.) C.A. NO. PC-2017-3856
)
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN)

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON OCTOBER 11, 2017

APPEARANCES:

STEPHEN DELSESTO, ESQUIRE.....RECEIVER

GINA GIANFRANCESCO GOMES
COURT REPORTER

CERTIFICATION

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 30, inclusive, are a true and accurate transcript of my stenographic notes.

Gina Gomes

GINA GIANFRANCESCO GOMES
COURT REPORTER

WEDNESDAY, OCTOBER 11, 2017

MORNING SESSION

THE COURT: Good morning. Madame clerk, if you'd call the case.

THE CLERK: The matter before the Court is Case Number PC-2017-3856, St. Joseph Health Services of Rhode Island vs. St. Joseph Health Services of Rhode Island Retirement Plan. Counsel, would you each identify yourselves.

MR. DELSESTO: Good morning, your Honor. Stephen DelSesto, temporary receiver for the plan.

THE COURT: Thank you very much. The Court first wants to acknowledge there are a number of attorneys who have entered their appearances at this point or have filed motions including the original petition. And, certainly, if any of those attorneys that have entered wish to be heard on any issues before the Court this morning, just let me know at the appropriate time when we reach the issue. We have an appearance by Steve DelSesto, the temporary receiver. We have an appearance by Christopher Callaci for the United States Nurses and Allied Professionals; Arlene Violet on behalf of certain individual plan members; Rob Senville, also on behalf of certain individual plan members along with Attorney Violet; Richard Land of St. Joseph's Health Services of

Rhode Island, Inc.; Kathryn Enright of the Rhode Island Attorney General's Office; and Jessica Rider also of the Rhode Island Attorney General's Office.

Before the Court today are a number of matters. The first is the status of the appointment of the Receiver. Second, the status of the pending request by Attorney Land on behalf of the petition of St. Joseph's Health Services of Rhode Island, Inc. to reduce retirement benefits. That was continued by this Court at the last hearing. I would like a report of the status of retention of litigation counsel from the Receiver and a status report from the Receiver.

The Court has also received a request to schedule a a motion to stay prior to any reduction of benefits approved by the Court by Attorney Violet and that was put on the calendar solely for the reason of scheduling any motion and if Attorney Violet wishes to be heard. There is also a limited objection of UNAP to the petition for the appointment of the Receiver. The Court has also received this morning from the Receiver two additional petitions, a petition for instructions and an emergency petition to engage special legal counsel. And I'm going to request that the Receiver during his report take us through that as well. That being said, counsel, you may proceed.

MR. DELSESTO: Thank you, your Honor. Good morning, your Honor. As your Honor stated, we are here on several issues. The main issue that this hearing was scheduled for was the petition to appoint me as permanent receiver. Your Honor, for the reasons set forth in my petition for instructions, which I will go over with the Court, I am asking that the Court continue that hearing for approximately two weeks until Thursday, October 27th, if that time is available for the Court.

The reason for my request to postpone my appointment as permanent, your Honor, is over the past two months I, Attorney Wistow, and his office have been doing much reading and research regarding this case. One issue that came up that we noticed was the respondent in this case is the plan. I have some concerns as to whether or not the plan can be the sole respondent. It's well-established that if a trust, which I believe this plan is, is sued, that the trustee must also receive by service of process or appearance, they must also be added as a party to the case.

As a result, your Honor, to cure what may be deficiencies, I'm not saying that they necessarily are, but as a belt and suspenders, I am asking to make these changes. I am asking that the Court authorize me through this petition for instructions to serve via summons both

Bank of America, who is the trustee of the trust, but also the two authorized signatories, who have been indicated to me through Bank of America's documents as being the two parties authorized to direct the trustee at the time of my appointment as temporary receiver.

To give a little background on that, your Honor, Bank of America is, as successor to Fleet National Bank, the trustee of the trust which was established in 1995. While they are the trustee, a reading of the trust document indicates that they have very little discretionary authority with regards to managing the funds in that trust. They actually are directed by several individuals that the trust indicates. I have asked Bank of America to provide me with documentation that they have that provides them with the names and signature specimens as to who can direct them with regard to the assets. As far as investments and benefits are concerned, they provided to me a limited production which indicated at the time that I was appointed, Dan Ryan, who is a former board member -- I think he may have held the position.

THE COURT: Based on these documents, he's a secretary.

MR. DELSESTO: Okay. As well as Richard Land, who is the attorney for the petitioner. Out of an abundance

of caution, I am asking that they also be served via summons just for purposes of notifying them of the petition, the appointment of temporary receiver, and ask them to appear to the extent that they feel it's necessary on the 27th and show cause why a Receiver is not necessary in this case. I believe that to the extent there is a deficiency in the pleading that would cure it. To the extent that your Honor feels it's necessary, it may also be appropriate to serve that summons on the current board members, those who were in place and those were the ones who voted to file the petition with the Court in the first instance, which would include David Hurscht, Polly Daly, and Father Timothy Riley. (Phonetic spellings) Again, this is not because I have determined there is any liability with regard to any of those parties, but under the law they are required or those that direct and have control over the trust and the funds are required to receive notice of the proceedings.

THE COURT: Is there any, correct me if I may be wrong, any issues from the temporary receiver's point of view of holding off for the couple of weeks for the permanency?

MR. DELSESTO: I do not believe so, your Honor. I believe the temporary order gives me, obviously, certain powers. In addition, as your Honor may recall, we did

ask for the Court to expand those powers to include subpoena powers, which the Court granted. With that expanded power in the temporary order, I think a couple of weeks will not serve to hinder or compromise any of my efforts.

In addition, your Honor, my petition for instructions seeks instruction from this Court with regard to whether or not it would be appropriate or necessary to add Bank of America in its capacity as trustee as a respondent in this case or as what I refer to as a nominal respondent. Again, recognizing that there is no allegation of liability or there is no allegation of wrongdoing on their behalf, it's purely to notify that party that is responsible under the trust document for the trust so that the trust is properly before this Court and under the Court's jurisdiction.

That would be something that I would be asking the Court to provide me instruction so we could amend the case caption to include them in addition to providing the summons that I'm requesting for the petition for instructions. I do realize that was filed today and it may be prudent to hold off the entry of an order regarding that while the parties have a chance to read and absorb the request made. I felt it was appropriate to bring it to the Court's attention today especially in

light of my request to postpone the hearing on a permanent for that approximate two-week period.

THE COURT: Okay. So the petition for instruction that was filed today, the Court is going to approve short notice so we don't have to deal with the normal ten-day period. The Court is going to allow any party who wishes to file the papers with respect to the petition until the close of business on Monday. It will be on the court site but also on the Receiver's site as well and the Court will enter the appropriate order.

I have no issue continuing the permanency hearing. I haven't had a chance to look at the substance. I will tell you that certainly we're serving additional parties and there is questions in terms of current members of the board. I don't necessarily see a down side so we don't get back on the same issue again, getting more people served than less at this point. The Court will reserve, however, notice is shortened. Any objections filed by the close of business on Monday.

MR. DELSESTO: Thank you, your Honor. It's important to note and it's mentioned in my papers, your Honor, part of the reason for this measure I'm asking to take is because the order appointing the temporary in paragraph seven indicates that a citation should be issued to the plan. It's my understanding that the clerk

no longer engages in that practice so there is a question as to service at this point.

Unless there are any further questions on that, your Honor, I would like to move to the petitioner's request in the petition to appoint Receiver by which the petitioner request that the Court authorize a reduction of benefits of 40 percent. As your Honor knows from our last hearing, there has been much confusion, and, quite frankly, anxiety among the pension holders around that request. Your Honor mentioned at the last hearing that there was a question as to whether or not with a Receiver now in place whether such a request was even appropriate.

As a result, your Honor, assuming for the moment that it would be appropriate, I am asking that the Court pass that request in light of the fact that the Court has set a timeframe sometime after the first of the year to address reduction of benefits and I am charged with reviewing all available options to determine what may be the most equitable way to address an adjustment of those benefits. So I am asking that the Court pass the petitioner's request and that the next time we are before the Court on the issue of benefits reduction will be on my recommendation, which will occur sometime after, I believe, we had said sometime around the 1st of February.

THE COURT: That issue in terms of passing and

trying to stay away from the legal terms basically means do away with that motion like it doesn't exist. It means the Receiver may bring a motion down the road. That was pending and there was a motion to stay by Attorney Violet and also a limited objection by UNAP which seemed to involve some of these issues. Attorney Violet, would you like to be heard with respect to that?

MS. VIOLET: Yes, your Honor. Your Honor quite correctly noticed that we put this motion for stay in just so we could get a further date to have it heard. As the Court knows from I'm sure reviewing the motion, we have made requests on behalf of the 300 plus people that Attorney Senville and I represent pro bono for certain information. I only made that yesterday afternoon. So I am sure the Receiver has not a chance to look over information and data that we, in fact, are looking for relative to the underpinning of this motion.

In addition, your Honor, I also sent over a couple of cases, one of which is a United States Supreme Court case, Califano vs. Yamasaki and Matern vs. Matthews, the case my co-counsel Robert Senville successfully argued to the United States Court of Appeals Third Circuit that requires, we believe, notice to every retirement plan member as well as the mechanism where there is a proposed reduction of benefits that they have an opportunity to be

heard on undue hardships.

I understand, of course, with the continuation of this matter and that there, in fact, is not going to be any cut, at this point I don't feel I have to argue that point. It's going to happen just by the passage of time, but when the point comes on this issue, I want to just make sure that proper notice was sent to each retirement plan member of the proposed reduction of benefits and the opportunity to be heard because I think that the governing principles of the case, which is against equity in good conscious, is the case law that forms those types of decisions. So given that the continuation anyway is going on, I think until February or so, at this point we don't want to press the motion. So we would ask you to continue it to another date. Thank you, your Honor.

THE COURT: Thank you very much. So, basically, because the Receiver has now withdrawn any motion to reduce benefits subject to him making a further one down the road, the motion to stay that was filed by Attorney Violet dealt with what the process and procedure and the steps would be in terms of how that motion would be heard. So while the Court will continue that motion without assigning a date right now, because we do anticipate that at some point the Receiver may be filing a motion and certainly that would be the appropriate

time. So without prejudice to any of the 300 people that filed the motion, we will have an opportunity to have that formally heard by the Court should the Receiver file a formal motion, and I would ask the Receiver to just keep Attorney Violet in the loop so she is aware of when that motion may be coming and we can schedule that.

MS. VIOLET: Thank you, your Honor.

THE COURT: Attorney Callaci, you have a limited objection for dealing with the same issues. Does counsel wish to be heard on that?

MR. CALLACI: Yes, your Honor, briefly. The Court has decided to pass on the matter, I'm inclined not to speak on the objection unless you would like me to.

THE COURT: No, no. I just wanted to give you the the opportunity. The motion was passed. Certainly,it's without prejudice to you filing any papers you feel are appropriate.

MR. CALACI: Thank you.

THE COURT: If the Receiver would please move on.

MR. DELSESTO: Thank you, your Honor. Your Honor, the next issue I wanted to address involves the engagement of Wistow & Loveley. Attorney Max Wistow, Steve Sheehan, and Benjamin Ledsham from that office to assist the Receiver with regard to identifying potential claims and then assessing the prudence of pursuing those

claims, and then if that is determined to be a prudent step, to actually pursue those claims. I have filed, your Honor, what is captioned as an emergency petition to engage special legal counsel in that regard. I have in that petition asked that the Court authorize me to engage Wistow & Loveley for the purposes I just stated, which are more specifically outlined in that petition as well as in the engagement that is attached as Exhibit A to that petition.

I will break down quickly for the Court the terms of that engagement. It's basically a three-step process or three-stage process, your Honor. The first stage is, as I just stated, identify claims, whether or not there are claims that can be brought on behalf of the Receiver or the plan against any individual or groups. At that stage, your Honor, Wistow Sheehan & Loveley will be paid a blended breakup of $375 an hour, which notably is the same breakup charged by the Receiver in this case.

Beyond that stage, your Honor, stage two, if claims are identified and it is determined that it's prudent to pursue those claims, then it is a stage where I am referring to it as a settlement in lieu of litigation, so Wistow Sheehan & Loveley will endeavor to try to settle those claims without having to file a lawsuit and bring those claims either via demand letter or something of the

like. If they are able it recover any moneys at that stage, they will receive ten percent of the gross recovery at that stage. Obviously, your Honor, if I state anything or do not include something, I ask that Attorney Wistow supplement whatever I'm saying to your Honor.

Finally, your Honor, is what I will call the final stage and that's what I am going to term as the litigation stage. If there are claims identified and if the efforts to settle in lieu of litigation are not successful with any party or all parties that are identified and Wistow Sheehan & Loveley is required to commence formal litigation against those parties, it would be a contingency fee based upon the gross recovery of 23 and a third percent. Those are the terms that Wistow Sheehan & Loveley and I had negotiated. I believe they are fair and reasonable. They do take into account the increasing complexity that happens in litigation in the future and I believe the engagement of Wistow Sheehan & Loveley is in the best interest of the estate as well as the pension holders.

While I know that the Court and I are familiar with that firm and its expertise and skill, many in the courtroom may not be. So with your Honor's permission, I would ask that Attorney Wistow, on behalf of that firm,

provide just a few words explaining his law firm and the qualifications that they have. I have spelled it out, but I think it's important for the people in the courtroom to hear.

THE COURT: Thank you.

MR. WISTOW: Good morning, your Honor.

THE COURT: Good morning.

MR. WISTOW: Let me state that I found out about 20 minutes ago that I would be called upon to make this presentation, for which on advance notice I want to thank the Receiver. Having said that, I don't have an opportunity to present a complete resume so let me try to explain what our firm is like. We do general litigation. We don't do criminal work. We don't do collections. We do mostly complex and difficult civil litigation. Our most recent adventure involved the 38 Studios, where our office represented Rhode Island Commerce Corp. and achieved settlements of about $61 million out of a total potential liability of $89 million.

I myself have been practicing, I blush to confess, 48 years. The two other lawyers in the case, who, by the way, worked extensively on 38 Studios and didn't get anywhere near the credit they deserved, Steve Sheehan and Benjamin Ledsham, and they will be working intensively on this case. Steve has been practicing 38 years and

Benjamin ten years.

My office has been involved over the years in rather complex matters -- 38 Studios, obviously, the Station Fire where we were one of the lead counsel on that case. We have been involved in some very unusual actions involving suits against the Palestinian Liberation Organization and the terrorism claims for which we achieved notable settlements, the terms of which are not disclosable. We were involved in the Depco case during the Sundlun administration. We have done many civil rights' cases invariably on the part of injured people, police brutality cases. We've had the pleasure, and I put that in quotes, of being involved in redistricting and reapportioning cases both statewide and in the City of Providence.

We're no strangers to suing hospitals, mostly in medical malpractice cases. We have sued Roger Williams and St. Joseph's Hospital numerable times in the past. We have nothing pending against them at the moment. And, by the way, I don't mean to indicate by that statement that we are planning necessarily to sue Roger Williams or St. Joseph's.

We've represented over the years and continue to represent at the present time lawyers who are being sued and we're suing lawyers for legal malpractice. We have

represented government officials before the Rhode Island Ethics Commission on ethics issues. And, generally, I think we've done pretty much what can be done. People might say we are jack of all trades and master of none, but we have been through it all.

I want to say one thing about the fee arrangement. The period of the so-called investigation is going to be relatively unusual because, as Mr. DelSesto has pointed out, we are going to be able to do extensive discovery during this investigatory stage to prove not only the acquisition of voluminous records but also the deposition of various people. We are going to be able to do that before we bring suit. We are hopeful that if we do come up with something worthwhile the potential of settling before suit will be relatively realistic, in which case the ten percent attorney's fee we believe will be modest.

We talked both to Ms. Violet and her colleague Mr. Senville and to the union about the fee arrangement because believe it or not, your Honor, some lawyers would like to be seen as doing the right thing and I believe that we have the support of both the union and Ms. Violet and Mr. Senville at this point both to our appointment and to the terms of the compensation. If your Honor has no questions.

THE COURT: No. Thank you very much, and I

appreciate that. I just want to point out for the record that I had contacted the Receiver this morning when I saw the emergency motion and had requested if you would address the Court just because I thought it was important on the record for people to understand. So anything credited to the Receiver comes back to me.

MR. DELSESTO: I was going to take credit, your Honor. I wanted to see how Max did on his feet. Your Honor, with regard to Max Wistow Sheehan & Lovely's engagement, again, that was filed today. I do recognize that it would be prudent to, obviously, not rule on that request today. I have filed it. I did file a proposed order. In that order, your Honor, I do want to note this is listed in the petition but it's also in the order, in addition to engaging Wistow Sheehan & Loveley under the terms of the engagement that is attached, recognizing the sensitive nature of the time records that Wistow Sheehan & Loveley will have relative to litigation and potential strategy and things of that nature, I ask that the Court allow when I come in to seek approval of the fees that they are invoicing to the estate, that those fees be allowed to be submitted to the Court in redacted form so as not to reveal any sensitive strategy information regarding litigation and that it be accompanied with a recent recommendation by the Receiver as to those fees,

your Honor. Again, the reason for that is the sensitive nature of the work they will be doing in the investigation and I think it would be imprudent if those were filed publically.

In addition, your Honor, as your Honor is aware, Wistow Sheehan & Loveley, all three attorneys, Wistow, Sheehan, and Ledsham have been working very closely with me since very early on in the case. Not withstanding the fact that the engagement request is coming before your Honor today, they have spent substantial time and have brought what I would consider to be of significant value already to the case in the last two months. The order also makes a request that any time they have incurred prior to today with regard to this case be permitted to be submitted in the first request that I gave to the Court for approval of their fees.

THE COURT: Counsel, certainly I understand the emergent nature of the request. I think everyone wishes the investigation continue so there can be a determination of whether there are claims of the estate against any third parties or not, so we can have the information. I also recognize that the motion was just filed this morning and I have briefly been able to look at it. The Court thinks it's appropriate to certainly wait the ten days for a formal notice. That should be

made available today on the website and also will be on the court portal. If there are any objections or anyone wishes to be heard in writing to file something by the close of business on Monday. After the Court reviews if anything that is filed, the Court will make a determination whether a further hearing is necessary or whether it will enter an order or modify an order if it deems it appropriate. But I appreciate you, Attorney Wistow, and his firm getting to the point whether we get it from potentially having counsel engaged by the Reciever to investigate and take steps with respect to any claims that we have before us today is something that the Court can consider.

MR. DELSESTO: Thank you, your Honor. Unless there are any questions on the engagement of Wistow Sheehan & Loveley, your Honor, I would like to move to the next issue on my list, which I'm going to call the creation of creditors, committees, or groups. There has been a lot of concern raised by pension holders and rightly so. As your Honor knows, we did have a town hall meeting on October 2nd. We had about 600 participants at that meeting and many expressed concern that they didn't have a voice yet in this proceeding. Obviously, Attorneys Violet and Senville have identified a group that they are representing in addition to the union representatives,

union members.

But there is a group, which I believe is encompassing nonunion members, who may or may not be receiving retirement benefits but who are what I would term as still employable. They are not disabled or of the advanced age that they could not seek employment. I will term them because they have used the term, that middle group, I believe needs some voice even at this early stage in the case. Not necessarily regarding what will or won't happen to the benefits, although that is an issue that we are going to be fast approaching over the next few months, just from a point of receiving information, communicating, getting that information and getting their concerns and the issues that they want addressed into the hands of somebody who can bring it to my attention.

While I am not prepared today to ask the Court to designate or assign a creditor committee, but I would ask that the Court allow me to prepare a petition and recommendation essentially which creates those which would be heard on the same day, if your Honor would allow it, as the permanent hearing on the 27th, but also to give me time to identify potential counsel.

I have spoken with Attorneys Violent and Senville, the attorneys in Mr. Wistow's office, as well as the

union to try to identify attorneys that may be able to and willing to step into that role. Obviously, your Honor, Ms. Violet and Senville have said they are doing their representation on a pro bono basis. The union is obviously doing their representation of the union members who pay dues to the union. That middle group because, quite frankly, I do not believe the estate can afford to retain counsel on their behalf, there is a question as to whether or not if we sought counsel that was not willing to do it pro bono, that those parties would need to understand what the fee would be with that attorney and then work it out.

Hopefully, I can identify one or more attorneys that will be willing to do it on a pro bono basis, but I would just ask for that additional time to prepare a reasonable recommendation to the Court, which hopefully will include a recommendation on a counsel that costs, hopefully, the pension holders no additional funds. But if so, they can make a determination for themselves as to whether or not they want to hop into the that group.

THE COURT: Let me see if I can break this down and understand it a little bit. We have basically two paths that are going on. The first is we have counsel investigating claims and determining where there are claims and looking to bring money and to appropriate it

into the estate. I don't necessarily see an issue with all 2,700 plus aside from what we just got this morning in terms of what the arrangements are of not being on the same page in terms of bringing into the estate. Is that what happened?

MR. DELSESTO: I think it's safe to say, your Honor, that all 2,729 pension holders are interested in bringing as much money into the estate to supplement the current plan.

THE COURT: We're talking about something a little different here and I just want to be clear. Those 2,729 members of the plan are in differing positions. You just went through, we have some that are retirees that are currently collecting that may be in a certain situation, we have members of the bargaining unit that are involved, and then we have another group that you started talking about that are no longer covered by the bargaining unit and may not be collecting at this point and there may be some other things that come into play. Maybe it's those kinds of groups or maybe it's something different that the Receiver wants to look at and come up with a committee structure looking at the interest of those different groups, which the Court has done in the past, most recently with Westerly Hospital, so I am all for that.

But I think it's important for everyone to understand there is another reason for that and the reason for that is, as the Receiver said last time, is that after the first of the year there may come a point in time where the Receiver is going to have to ask this Court to make some adjustments in benefits based on the amount of assets that are in the plan. I foresee an issue where there may be different points of view depending on where people are as plan participants in terms of what the Court should do. I would like sooner rather than later to kind of tee up that issue of whether we are going to have groups to make sure that if down the road the Court has to make a decision is getting informed from a different prospective of the groups.

I understand because of different circumstances of different people, there can probably be 25 or 30 different groups. Unfortunately, to manage this we need to have a limited number of groups, and if we have attorneys that are willing to pro bono represent certain portions of the groups or if there are attorneys already representing certain portions of the group, I'm going to leave that to you to make the appropriate recommendations.

But I think that it's critical when we come back on the 27th that you're prepared to make that recommendation

because I really do view for good or bad, unfortunately, there is two parallel paths right now and the Court is going to be in the position where it may have to address that after the first of the year. What do we do in terms of benefits that are going out because of the amount of money in the plan? It's important that the Court be informed from very different perspectives from the people on the plan. So I appreciate you brought it up. As far as I'm concerned, aside from claims it's appropriate and necessary to move forward.

MR. DELSESTO: Thank you, your Honor. And to your point, your Honor, part of the reason why I want that established sooner rather than later it's because my intention to sit down with Attorney Violet, Senville, Callaci and whoever the attorney for that middle group is as quickly as possible to see if we can collectively come to a resolution on benefits. I think it's important for everyone to understand that the work that Wistow Sheehan & Loveley will be doing will take some time. Even if they are able to identify potential claims that are prudent to pursue, that is much further down the road than the February 1st date that we spoke about at the last hearing. So at the very least there would need to be some type of interim adjustment on benefits to make sure the plan sustains in an appropriate way while Wistow

Sheehan & Loveley does the investigation and eventually pursues whatever claims and litigation that is.

THE COURT: I just want to be clear, there is a clean slate. The other motion about the 40 percent no longer exists. It's going to be that that, you know, recommendation and the parties is going to be something that is yet to be determined. I use the word may, but, you know, being quite frank, there is assets in the pension plan at this point that are far less than would be available to make all the payments to the retirees. So it may very well be an issue that we need to address prior to knowing what claims there may be and hopefully resolving some of those claims.

MR. DELSESTO: Exactly.

THE COURT: Is there anything else?

MR. DELSESTO: Unless your Honor has any questions on that, I know everything I just presented to your Honor provides somewhat of a summary of the status of what has been done but I have some additional information that I can provide your Honor in terms of a general status over and above what we've already discussed today.

THE COURT: Why don't we do that. I just want to point out, now that we talked about an emergency petition to engage counsel, something that came up last time and something that Attorney Callaci brought up in his papers.

As I mentioned before Attorney Enright and Rider from the Rhode Island Attorney General's Office that this engagement in no way both regulatory, state, federal, operates a stay in any way of any investigation or anything else that they deem appropriate. The role of the attorney for the Receiver going forward is later focused on claims the estate may have, resolving the issues that may affect the plan, and it doesn't foreclose in any way any of the other agencies from doing what they may or may not do what they feel is appropriate. Why don't we move forward.

MR. DELSESTO: Thank you, your Honor. Since the last time we were before your Honor on September 8th, in addition to all of the discussions and negotiations that resulted in the petition today, I have met, along with Attorney Wistow, many of the state leaders. We have met with President Ruggiero from the senate. We met with Speaker Mattiello. We met with members from the Governor's office as well as with Treasurer Magaziner. I am happy to report, obviously, the feedback on what we are doing and what we're trying to do is positive. Obviously, all state leaders were very upset with the need to do what we're doing but happy with the Court. I and Wistow, Sheehan, & Loveley are pursuing what we are and trying to clear up what has happened and what can be

done to fix it.

I am also happy to let the Court know that Treasurer Magaziner, who, obviously, his office has expertise in dealing with pensions has offered the services of his staff to provide any information that he can to assist in our efforts. I already had several communications with his office in which they provided information that will be helpful. I appreciate that offer and I will continue to utilize it as long as the offer remains open.

In addition to that, your Honor, we have also met with the actuary of the plan, the plan administration, which is Angell Pension, and their counsel. We had a substantial meeting with them and we're going to be following up in e-mail communication with their counsel this morning to set up a set discussion, not in person, but on the phone with them on that issue.

As I indicated earlier in the presentation, we had a town hall meeting on October 2nd at Rhodes on the Pawtuxet. We had approximately 600 pension holders in attendance and after a brief overview of the process and where we were at that point, I opened up the floor to questions and many of the questions that were raised, the obvious ones were what happened, where did the money go, but they were also related to issues that were brought before the Court today in terms of the creditors,

engaging Mr. Sheehan and Loveley, and things of that nature. I continue to receive many, many, many calls and e-mails from pension holders regarding the status of issues. Most are out of state at this point, who are not able to attend hearings like this. I have indicated to them that I have set up the website which has court pleadings as I indicated at the last hearing. Since then I've also setup a website, a companion piece of the website, which has information that I believe is public or should be publically available related to the pension plan with one caveat, your Honor.

Obviously, there are documents that may come into my possession that generally speaking, I believe, might be appropriate for public consumption. However, for the reasons related to Wistow, Sheehan & Lovely's efforts, I don't think it's prudent at this time to make that information public. Whatever I'm making public on that site, it's based on the determination that it is not only appropriate for public consumption, but that it will not in some way compromise the efforts of Mr. Wistow and his firm on what their charge is in this case.

Other than that, your Honor, that pretty much brings us current to today. We will continue to review documents related to the plan. It's a large volume of documents as your Honor is aware and may know. Each time

we review something, it sometimes raises more questions than answers for us. It's a long arduous process. We're going through it. Possibly in the next two weeks when we are back before your Honor on the permanent that will give us another update as to where we are and I will continue to keep people informed as much as I can.

I have done, as I presented to your Honor, a draft of what I will call frequently asked questions. I'm adjusting that from the first one that I had sent to your Honor. I received input from Wistow Sheehan & Loveley on it and I added other issues that pension holders have, quite frankly, raised to me and I will be posting that on the data portion of the website by the week's end and we will supplement that as additional questions come up and as this case proceeds and other frequently asked questions come up at each stage.

THE COURT: I would just ask counsel that the Receiver communicate back to those general office's that offered their help of where we are status wise, including an application to retain, but also just as importantly, so nobody is caught off guard you may be presenting a petition after the first of the year which deals with cuts and certainly those will be appreciated.

MR. DELSESTO: I will, your Honor. Unless your Honor has anything further, that concludes my report for

today.

THE COURT: Attorney Wistow, is there anything else that you wish to bring up that the Receiver hasn't covered?

MR. WISTOW: Only to point out that if indeed we are appointed, we are ready to the same day issue our initial subpoenas. We have been working on those.

THE COURT: Thank you very much. With that, I want to thank the Receiver for the report. 9:30 on October 22nd will be the next hearing to take up the permanent receiver. The emergency motion and the petition for instructions filed with the Court will be made available both by the Receiver, and the Court requests anyone who wishes to be heard in writing to submit something by the close of business on Monday.

MR. DELSESTO: Thank you, your Honor.

THE COURT: Thank you.

MR. DELSESTO: I will submit a proposal order on the petition for instructions as well as one has already been submitted on which is Wistow Sheehan & Loveley.

THE COURT: Thank you all for your patience. The Court is in recess.

(A D J O U R N E D.)

Exhibit 5

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

St. Joseph Health Services of Rhode Island, Inc.

Vs.

St. Josephs Health Services of Rhode Island Retirement Plan, as amended

PC 2017-3856

ORDER APPROVING RECEIVER'S EMERGENCY PETITION TO ENGAGE SPECIAL LEGAL COUNSEL

This matter having come before this Honorable Court on October 11, 2017, Justice Brian Stern presiding, with respect to the Receiver's Emergency Petition to Engage Special Legal Counsel (the "Petition"), it is hereby

ORDERED, ADJUDGED AND DECREED:

1. That for the reasons stated in the Receiver's Petition and in accordance with the terms of the Engagement, attached to the Petition as Exhibit A and incorporated herein by reference, the Receiver is hereby authorized to retain the law firm of Wistow Sheehan & Lovely PC ("WSL") to act as the Receivership Estate's special litigation counsel for the purposes more specifically set forth in the Petition and the Engagement;

2. Until further order of this Court, the Receiver shall be authorized to submit to the Court for approval the time records/invoices of WSL in redacted format along with a reasoned recommendation by the Receiver regarding the approval of the same;

3. The Receiver's first request for approval of the fees of WSL may include those fees reasonably incurred by WSL in connection with this matter since August 18, 2017;

4. This Order shall be effective *nunc pro tunc* as of October 11, 2017.

ENTERED as an Order of this Court this 17 day of October, 2017.

ENTERED:

Stern, J.
Date: October 17, 2017

BY ORDER:

Clerk, Superior Court
Date: October 17, 2017

Exhibit 6

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

St. Joseph Health Services of Rhode Island, Inc.
Petitioner

vs.

St. Josephs Health Services of Rhode Island Retirement Plan, as amended
Respondent

Bank of America, in its capacity as Trustee of Respondent
Nominal Respondent

PC 2017-3856

ORDER APPOINTING PERMANENT RECEIVER

This cause came to be heard on October 27, 2017, on the Appointment of Permanent Receiver for the Respondent, and it appearing that the notice provided by the Order of this Court previously entered herein has been given, and upon consideration thereof, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. That Stephen F. Del Sesto, Esq., of Providence, Rhode Island, be and hereby is appointed Permanent Receiver (the "Receiver") of the Respondent, and of all the estate, assets, effects, property and business of Respondent of every name, kind, nature and description, with all the powers conferred upon the Receiver by the Rhode Island General Laws, by this order, or otherwise, and with all powers incidental to the Receiver's said Office.

2. That said Receiver shall, no later than five (5) days from the date hereof, file herein a bond in the amount of $1,000,000.00 with any surety thereon authorized to do business in the State of Rhode Island conditioned that the Receiver will well and truly perform the duties of said office.

3. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the Respondent's plan administrator, officers, directors and managers under applicable state and federal law, the Plan, as amended, the Trust Agreement, as may have been amended and/or other agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of RI Rules of Civil Procedure, Rule 66.

4. The directors, officers, managers, investment advisors, accountants, actuaries, attorneys and other agents of the Respondent shall have no authority with respect to the Respondent, its administration or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the administration of the Respondent and shall pursue and preserve all of its claims. The Receiver be and hereby is authorized to take any and all actions or expressly delegate the same which, prior to the entry of this Order, could have been taken by the officers, directors, administrators, managers, and agents of the Respondent.

5. That said Receiver be and hereby is authorized, empowered and directed to take control, possession and charge of said Respondent and its assets, wherever located, and manage and continue the administration and oversee the Respondent and to reasonably preserve the same, and is hereby vested with title to the same; to collect and receive the debts, property and other assets and effects of said Respondent, with full power to prosecute, defend, adjust and compromise all claims and suits of, by, against or on behalf of said Respondent and to appear, intervene or become a party in all suits, actions or proceedings relating to said estate, assets, effects and property as may in the judgment of the Receiver be necessary or desirable for the protection, maintenance and preservation of the assets of said Respondent.

6. The past and/or present officers, directors, agents, managers, trustees, attorneys, actuaries, accountants, investment advisors and investment managers of the Respondent, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Respondent and/or all Respondent's assets or property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

7. That this appointment is made in succession to the appointment of Temporary Receiver heretofore made by order of this Court, and the Receiver shall take and be vested with the title to all assets, property and chooses-in-action which have heretofore accrued to the Temporary Receiver with power to reject or confirm and ratify in writing such agreements as are entered into by such Temporary Receiver and to carry out and perform the same.

8. That the Receiver is authorized, in the Receiver's discretion, to monitor, manage and continue the administration of Respondent until further order of this Court, and to engage and employ such persons, including, without limitation, actuaries, investment advisors, investment managers, benefit administrators and any other professionals as may be desirable, in the Receiver's sole discretion, for the foregoing purposes and, in connection therewith, to use such assets of the Respondent and other monies as shall come into the Receiver's hands and possession, as far as the same shall be necessary, for the above purposes and for continuing the administration of the Respondent until further Order of this Court. The Court recognizes and acknowledges that prior to the entry of this Order the Receiver had sought and obtained this Court's authority to engage the Providence, RI law firm of Wistow Sheehan & Loveley, PC ("WSL") to serve as special litigation counsel to the Receiver for the purpose of investigating and, if necessary and appropriate, settling or litigating possible claims against third parties related to the prior management, administration and oversight of the Respondent. To the extent necessary, the Court here confirms and ratifies the Receiver's authority to engage WSL for that purpose.

9. That the Receiver is authorized to incur expenses for goods and services as in the Receiver's discretion may be desirable or necessary for continued management, investment, assessment and administration of the Respondent and its assets. To the extent that the Receiver incurs, directly or indirectly, any hard costs and expenses in furtherance of his obligations and duties hereunder, until further order of this Court, the Receiver shall be authorized to pay or reimburse the pre-payment of such expenses without the need to first obtain prior approval from this Court. Any and all such expenses paid or reimbursed shall be reported to the Court as part of the Receiver's formal reports filed with the Court. The Receiver's authority as set forth in this paragraph 9 shall be *nunc pro tunc* as of August 18, 2017.

10. That said Receiver be and hereby is authorized and empowered to sell, transfer convert, invest, monetize or convey said Receiver's right, title and interest and the right, title and interest of the Respondent in and to any investment, interest or property, tangible or intangible, for such sum or sums of money as to said Receiver appears reasonable and proper, provided, however, that approval is first given by this Court on *ex parte* application by the Receiver, or after such notice as the Court may require.

11. In fulfillment of the reporting requirements set forth in Rule 66 (e) of the Superior Court Rules of Civil Procedure, the Receiver shall file with the Court the Reports referred to in said Rule, as and when the Receiver deems necessary or advisable under the circumstances, or, in any event, as and when required by Order of this Court. In addition, the Receiver shall file with the Court, on or before May 1st and October 1st of each year, a Receivership Control Calendar Report in accordance with Rhode Island Superior Court Administrative Order No. 98-7.

12. That the Receiver shall continue to discharge said Receiver's duties and trusts hereunder until further order of this Court; that the right is reserved to the Receiver and to the parties hereto to apply to this Court for any other or further instructions to said Receiver and that this Court reserves the right, upon such Notice, if any, as it shall deem proper, to make such further orders herein as may be proper, and to modify this Order from time to time.

13. That, pursuant to and in compliance with Rhode Island Supreme Court Executive Order No. 95-01, this Court finds that the designation of the aforedescribed person for appointment as Receiver is warranted and required because of said Receiver's specialized expertise and experience.

14. Excluding the vested participants of Respondent, all other creditors or other claimants of Respondent, if any, hereby are ordered to file under oath with the Receiver at 72 Pine Street, 5th Floor, Providence, Rhode Island 02903 on or before the **1st day of March, 2018**, a statement setting forth their claims, including, but without limiting the generality of the foregoing, the name and address of the claimant, the nature and amount of such claim, a statement of any security or lien held by the claimant to which such claimant is or claims to be

entitled, and also a statement as to any preference or priority which the claimant claims to be entitled to over the claims of any other or all other claimants or creditors.

15. That the commencement, prosecution, or continuance of the prosecution, of any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, or any other proceeding, in law, or in equity or under any statute, or otherwise, against the Respondent or any of its assets or property, in any Court, agency, tribunal, or elsewhere, or before any arbitrator, or otherwise by any creditor, corporation, partnership or any other entity or person, or the levy of any attachment, execution or other process upon or against any asset or property of the Respondent, or the taking or attempting to take into possession any asset or property in the possession of the Respondent or of which the Respondent has the right to possession, or the cancellation at any time during the Receivership proceeding herein of any insurance policy, lease or other contract with the Respondent, by any of such parties as aforesaid, other than the Receiver designated as aforesaid, without obtaining prior approval thereof from this Honorable Court, in which connection said Receiver shall be entitled to prior notice and an opportunity to be heard, are hereby restrained and enjoined until further Order of this Court.

16. That Notice be given of the entry of this Order by the Clerk of this Court by publication of a copy of this Order in The Providence Journal on or before the 10th day of November, 2017, and by the Receiver mailing on or before the 17th day of November, 2017 a copy of this Order to each of Respondent's vested participants and creditors known as such to the Receiver, or appearing as such on the books or records of the Respondent, addressed to each such vested participant or creditor at his/her/its last known address.

17. This Order is entered by virtue of and pursuant to this Court's equity powers and pursuant to its powers as authorized by the laws and statutes of the State of Rhode Island.

ENTERED as an Order of this Court this 27TH day of October, 2017.

ENTERED: BY ORDER:

Stern, J. BRIAN P. STERN
October 27, 2017 ASSOCIATE JUSTICE

Clerk, Superior Court CARIN MILEY
October 27, 2017 DEPUTY CLERK

Exhibit 7

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN; GAIL J. MAJOR; NANCY ZOMPA; RALPH BRYDEN; DOROTHY WILLNER; CAROLL SHORT; DONNA BOUTELLE; and EUGENIA LEVESQUE,	:	
Plaintiffs	:	
v.	:	C.A. NO.: _____
PROSPECT CHARTERCARE, LLC; CHARTERCARE COMMUNITY BOARD; ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND; PROSPECT CHARTERCARE SJHSRI, LLC; PROSPECT CHARTERCARE RWMC, LLC; PROSPECT EAST HOLDINGS, INC.; PROSPECT MEDICAL HOLDINGS, INC.; ROGER WILLIAMS HOSPITAL; CHARTERCARE FOUNDATION; THE RHODE ISLAND COMMUNITY FOUNDATION; ROMAN CATHOLIC BISHOP OF PROVIDENCE; DIOCESAN ADMINISTRATION CORPORATION; DIOCESAN SERVICE CORPORATION; and THE ANGELL PENSION GROUP, INC.,	:	Jury Trial Demanded Class Action
Defendants.	:	

COMPLAINT

TABLE OF CONTENTS

PLAINTIFFS

1. The St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") is a defined benefit retirement plan based in Rhode Island with over 2,700 participants.

2. Plaintiff Stephen Del Sesto is a resident of East Providence, Rhode Island. He brings this action on behalf of the Plan and all of the Plan participants, in his capacity as Receiver for and Administrator of the Plan. He was appointed by the Rhode Island Superior Court in the case captioned *St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended*, PC-2017-3856 (the "Receivership Proceeding").

3. Plaintiff Gail J. Major resides in Cranston, Rhode Island and is a participant in the Plan. She brings this action in her individual capacity and on behalf of all other Plan participants.

4. Plaintiff Nancy Zompa resides in Cranston, Rhode Island and is a participant in the Plan. She brings this action in her individual capacity and on behalf of all other Plan participants.

5. Plaintiff Ralph Bryden resides in North Scituate, Rhode Island and is a participant in the Plan. He brings this action in his individual capacity and on behalf of all other Plan participants.

6. Plaintiff Dorothy Willner resides in Cranston, Rhode Island and is a participant in the Plan. She brings this action in her individual capacity and on behalf of all other Plan participants.

7. Plaintiff Caroll Short resides in Smithfield, Rhode Island and is a participant in the Plan. She brings this action in her individual capacity and on behalf of all other Plan participants.

8. Plaintiff Donna Boutelle resides in Johnston, Rhode Island and is a participant in the Plan. She brings this action in her individual capacity and on behalf of all other Plan participants.

9. Plaintiff Eugenia Levesque resides in West Greenwich, Rhode Island and is a participant in the Plan. She brings this action in her individual capacity and on behalf of all other Plan participants.

10. The Plaintiffs who bring this action both in their individual capacity and on behalf of all other Plan participants are referred to collectively as the "Proposed Class Representatives."

DEFENDANTS

11. Defendant PROSPECT CHARTERCARE, LLC ("Prospect Chartercare") is a limited liability company organized and existing under the laws of the State of Rhode Island, with its principal office in Los Angeles, California. Directly, and through its 100% owned subsidiaries PROSPECT CHARTERCARE SJHSRI, LLC[1] and PROSPECT CHARTERCARE RWMC, LLC,[2] Prospect Chartercare owns and operates health care

[1] Not to be confused with St. Joseph Health Services of Rhode Island which until the 2014 Asset Sale owned and operated Fatima Hospital. St. Joseph Health Services of Rhode Island is controlled by the nonprofit corporation CharterCARE Community Board, not the for-profit Prospect Chartercare.

[2] Not to be confused with the corporation Roger Williams Hospital that owned and operated Roger Williams Hospital prior to the 2014 Asset Sale, which is owned or controlled by CharterCARE Community Board, not Prospect Chartercare. Flow charts setting forth the relationships of certain Defendants and other entities, before the 2014 Asset Sale and as a result of the 2014 Asset Sale, are attached hereto at Tab 1.

facilities in Rhode Island, including but not limited to two hospitals, Roger Williams Hospital and Our Lady of Fatima Hospital ("Fatima Hospital"), having acquired them in connection with an asset sale that closed on June 20, 2014 (the "2014 Asset Sale"). Prospect Chartercare currently has two members.

12. One member of Prospect Chartercare, holding a 15% ownership interest, is Defendant CharterCARE Community Board ("CCCB"), an entity organized and existing under the laws of the State of Rhode Island as a non-profit corporation, with its principal office in Providence, Rhode Island. Prior to the 2014 Asset Sale, CCCB was known as CharterCARE Health Partners, or CCHP.

13. The other member of Prospect Chartercare, holding the remaining 85% ownership interest, is Defendant Prospect East Holdings, Inc. ("Prospect East"), a for-profit corporation organized and existing under the laws of the State of Delaware with a principal office and place of business in Los Angeles, California. Prospect East is the wholly owned subsidiary of Defendant Prospect Medical Holdings, Inc.

14. Defendant Prospect Medical Holdings, Inc. ("Prospect Medical Holdings") is a corporation organized and existing under the laws of the State of Delaware with a principal office and place of business in Los Angeles, California. Prospect Medical Holdings owns all of the shares of Prospect East.

15. Defendant St. Joseph Health Services of Rhode Island ("SJHSRI") is an entity organized and existing under the laws of the State of Rhode Island as a non-profit corporation, with its principal office in Providence, Rhode Island.

16. Prior to the 2014 Asset Sale, SJHSRI owned Fatima Hospital. Since then, SJHSRI no longer operates a hospital or otherwise provides health care. Instead, SJHSRI's business consists of defending lawsuits and workers' compensation claims,

collecting certain debts and receivables, paying or settling certain liabilities which were excluded from the 2014 Asset Sale, and, until the Receiver was appointed, administering the Plan.

17. Defendant Roger Williams Hospital ("RWH") is an entity organized and existing under the laws of the State of Rhode Island as a non-profit corporation, with its principal office in Providence, Rhode Island. RWH is the survivor of a merger in 2010 with Roger Williams Medical Center, and has sometimes done business under that name.

18. Prior to the 2014 Asset Sale, RWH owned the hospital it operated under the name of Roger Williams Hospital. Upon the sale, RWH ceased operating a hospital or otherwise providing medical care, and existed only to provide funds to SJHSRI and possibly other individuals and entities (but did not provide funds to the Plan), defend lawsuits and workers' compensation claims, collect certain debts and receivables, and pay or settle certain liabilities which were excluded from the 2014 Asset Sale.

19. At all relevant times CCCB was the ostensible parent company of both SJHSRI and RWH, although, as discussed below, the separate corporate statuses of CCCB, SHJSRI, and RWH must be disregarded to prevent fraud.

20. Defendant PROSPECT CHARTERCARE SJHSRI, LLC ("Prospect Chartercare St. Joseph") is a limited liability company organized and existing under the laws of the State of Rhode Island with its principal office in Los Angeles, California. Prospect Chartercare St. Joseph has owned Fatima Hospital since the 2014 Asset Sale. The sole member of Prospect Chartercare St. Joseph is Prospect Chartercare.

21. Defendant PROSPECT CHARTERCARE RWMC, LLC ("Prospect Chartercare Roger Williams") is a limited liability company organized and existing under

the laws of the State of Rhode Island with its principal office in Los Angeles, California. Prospect Chartercare Roger Williams has owned Roger Williams Hospital since the 2014 Asset Sale. The sole member of Prospect Chartercare Roger Williams is Prospect Chartercare.

22. As used herein, "Prospect Entities" refers collectively to Defendants Prospect Chartercare, Prospect Chartercare St. Joseph, Prospect Chartercare Roger Williams, Prospect Medical Holdings, and Prospect East.

23. As used herein, "Old Fatima Hospital" refers to Fatima Hospital when it was owned and operated by SJHSRI, and "New Fatima Hospital" refers to Fatima Hospital since June 20, 2014 when it has been owned and operated by Prospect Chartercare St. Joseph. "Old Roger Williams Hospital" refers to Roger Williams Hospital when it was owned and operated by RWH, and "New Roger Williams Hospital" refers to Roger Williams Hospital since June 20, 2014 when it has been owned and operated by Prospect Chartercare Roger Williams.

24. SJHSRI, CCCB, RWH, the Diocesan Defendants, and the Prospect Entities have contractually, publically, and repeatedly described the ownership and operation of New Fatima Hospital and New Roger Williams Hospital as a joint venture between the Prospect Entities and CCCB and they must be treated as joint venturers.

25. Defendant CharterCARE Foundation ("CC Foundation") is an entity organized and existing under the laws of the State of Rhode Island as a non-profit corporation, with its principal office in North Providence, Rhode Island. It was formerly named CharterCare Health Partners Foundation. Its sole member is CCCB.

26. Defendant Rhode Island Community Foundation, d/b/a Rhode Island Foundation ("RI Foundation"), is an entity organized and existing under the laws of the

State of Rhode Island as a non-profit corporation, with its principal office in Providence, Rhode Island. RI Foundation holds and invests funds on behalf of CC Foundation to which Plaintiffs claim to be entitled, and is named herein solely as a stakeholder of property claimed by Plaintiffs, so that Plaintiffs may be accorded complete relief. When Defendant RI Foundation is intended to be referred to herein it is always specifically identified by name, and statements generally referencing "Defendants," "all of the Defendants," or "all of the other Defendants," do not refer to Defendant RI Foundation unless Defendant RI Foundation is referred to by name.

27. The Roman Catholic Bishop of Providence ("Corporation Sole") is a corporation sole, created by an act of the Rhode Island General Assembly entitled *An Act to Create the Roman Catholic Bishop of Providence, and His Successors, a Corporation Sole*, with its principal office in Providence, Rhode Island. Since May 31, 2005, Bishop Thomas Tobin was the President and Chief Executive Officer of Corporation Sole. He was acting within the scope of his employment by Defendant Corporation Sole with respect to all of his actions and omissions alleged herein.

28. Diocesan Administration Corporation ("Diocesan Administration") is an entity organized and existing under the laws of the State of Rhode Island as a non-profit corporation, with its principal office in Providence, Rhode Island. It aids in administering the affairs of the Roman Catholic Diocese of Providence ("Diocese of Providence") and was instrumental in various matters alleged herein concerning the Diocese of Providence. Since May 31, 2005, Bishop Tobin was the President and Chief Executive Officer of Diocesan Administration. He was acting within the scope of his employment by Defendant Diocesan Administration with respect to all of his actions and omissions alleged herein.

29. Diocesan Service Corporation ("Diocesan Service") is an entity organized and existing under the laws of the State of Rhode Island as a non-profit corporation, with its principal office in Providence, Rhode Island. It aids in administering the affairs of and services provided by the Diocese of Providence and was instrumental in various matters alleged herein concerning the Diocese of Providence. Since May 31, 2005, Bishop Tobin was the President and Chief Executive Officer of Diocesan Service. He was acting within the scope of his employment by Defendant Diocesan Service with respect to all of his actions and omissions alleged herein.

30. Defendants Corporation Sole, Diocesan Administration, and Diocesan Service, are collectively referred to herein as the "Diocesan Defendants."

31. The Angell Pension Group, Inc. ("Angell") is a corporation organized and existing under the laws of Rhode Island with its principal office in East Providence, Rhode Island. Since 2005, Angell provided actuarial services in connection with the Plan, and, at least since 2011, Angell provided administrative services which included dealing directly with and advising Plan participants, initially on behalf of and as agents for SJHSRI and CCCB, and later on behalf of and as agents for SJHSRI, CCCB, and the Prospect Entities.

JURISDICTION AND VENUE

32. The amount in controversy exceeds the jurisdictional minimum of this Court as set forth in R.I. Gen. Laws § 8-2-14. In addition, this Court has jurisdiction over Plaintiff's request for declaratory relief pursuant to R.I. Gen. Laws § 9-30-1. All Defendants have sufficient minimum contacts with Rhode Island and are subject to the personal jurisdiction of this Court.

33. Venue in Providence County is proper under R.I. Gen. Laws § 9-4-3.

CLASS ACTION ALLEGATIONS

34. The Proposed Class Representatives bring this action as a class action pursuant to Super. R. Civ. P. 23 on behalf of themselves and the following class of persons similarly situated: All participants or beneficiaries of the Plan (the "Class"). The Receiver joins in the application of the Proposed Class Representatives that they be appointed class representatives, and that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23.

35. Excluded from the Class are any high-level executives at SJHSRI or at the other Defendants, or any employees who have responsibility or involvement in the administration of the Plan, or who are subsequently determined to be fiduciaries of the Plan, or who knowingly participated in any of the wrongful acts described herein.

A. NUMEROSITY

36. The exact number of Class members is unknown to the Proposed Class Representatives at this time, but may be readily determined from records maintained by Defendants in conjunction with records obtained by the Receiver. The number of Plan beneficiaries is estimated to exceed 2,700. Upon information and belief, many, if not all, of those persons are likely members of the Class, and thus the Class is so numerous that joinder of all members is impracticable.

B. COMMONALITY

37. The issues regarding liability in this case present common issues of law and fact, with answers that are common to all members of the Class, including but not limited to (1) the determination of Defendant SJHSRI's obligations and the Plan participants' rights under the Plan, and whether those obligations were breached and

those rights violated; (2) the determination of whether all of the Defendants committed fraud; (3) the determination of whether all of the Defendants engaged in a civil conspiracy; (4) the determination of whether all of the Defendants aided and abetted fraud; (5) whether the transfers of assets in connection with the 2014 Asset Sale and/or 2015 *Cy Pres* Proceeding constitute fraudulent transfers; (6) whether Defendants violated the Hospital Conversions Act in connection with obtaining regulatory approval of the 2014 Asset Sale; (7) whether Defendants owe or owed fiduciary duties to participants of the Plan under state law; and (9) issues of successor liability.

38. The issues regarding the relief are also common to the members of the Class as the relief will include, but are not limited to (1) equitable relief ordering Defendants to fund the Plan, for the benefit of all Plan beneficiaries; (2) a judgment avoiding the transfers in connection with the 2014 Asset Sale and 2015 *Cy Pres* Proceeding; and (3) awarding to Plaintiffs' counsel attorneys' fees and expenses as provided by the common fund doctrine and/or other applicable doctrine.

C. TYPICALITY

39. The Proposed Class Representatives' claims are typical of the claims of the other members of the Class, because their claims arise from the same events, practices and/or courses of conduct, including, but not limited to, Defendants' treatment of the Plan, Defendants' transfers of assets in connection with the 2014 Asset Sale and/or 2015 *Cy Pres* Proceeding, Defendants' misrepresentations to Plan beneficiaries, Defendants' misrepresentations to regulators in connection with the approval of the 2014 Asset Sale, and Defendants' fraudulent schemes to defraud Plaintiffs. The Proposed Class Representatives' claims are also typical, because all Class members are similarly affected by Defendants' wrongful conduct.

40. The Proposed Class Representatives' claims are also typical of the claims of the other members of the Class because, to the extent the Proposed Class Representatives seek equitable or declaratory relief, it will affect all Class members equally. Specifically, the equitable relief sought includes but is not limited to requiring Defendants to make the Plan whole for all contributions that should have been made, reformation of the Plan to correspond to Defendants' representations and promises in connection therewith, and for interest and investment income on such contributions. The declaratory relief sought will address Defendants' obligations to all Plan participants.

41. Defendants do not have any defenses unique to the Proposed Class Representatives' claims that would make the Proposed Class Representatives' claims atypical of the remainder of the Class.

D. ADEQUACY

42. The Proposed Class Representatives will fairly and adequately represent and protect the interests of all members of the Class.

43. The Proposed Class Representatives do not have any interests antagonistic to or in conflict with the interests of the Class.

44. Defendants have no unique defenses against the Proposed Class Representatives that would interfere with Plaintiffs' representation of the Class.

45. The Proposed Class Representatives have engaged counsel (a) with extensive experience in complex litigation, (b) who have already devoted hundreds of hours and secured and reviewed approximately one million pages of documents in investigating those claims, and (c) with the approval of the Rhode Island Superior Court,

represent the Receiver whose interests are identical to the interests of the Proposed Class Representatives.

E. RULE 23(B)(1) REQUIREMENTS

46. The requirements of Rule 23(b)(1)(A) are satisfied because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants.

47. The requirements of Rule 23(b)(1)(B) are satisfied because adjudications of these claims by individual members of the Class would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede the ability of other members of the Class to protect their interests.

F. RULE 23(B)(2) REQUIREMENTS

48. Class action status is also warranted under Rule 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

G. RULE 23(B)(3) REQUIREMENTS

49. If the Class is not certified under Rule 23(b)(1) or (b)(2), then certification under (b)(3) is appropriate because questions of law or fact common to members of the Class predominate over any questions affecting only individual members. The common issues of law or fact that predominate over any questions affecting only individual members include, but are not limited to: (1) the determination of Defendant SJHSRI's obligations and the Plan participants' rights under the Plan, and whether those

obligations were breached and those rights violated; (2) the determination of whether all of the Defendants committed fraud; (3) the determination of whether all of the Defendants engaged in a civil conspiracy; (4) the determination of whether all of the Defendants aided and abetted fraud; (5) whether the transfers of assets in connection with the 2014 Asset Sale and/or 2015 Cy Pres Proceeding constitute fraudulent transfers; (6) whether Defendants violated the Hospital Conversions Act in connection with obtaining regulatory approval of the 2014 Asset Sale; (7) whether Defendants owe or owed fiduciary duties to participants of the Plan under state law; and (8) issues of successor liability.

50. A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

A. Individual Class members do not have an interest in controlling the prosecution of these claims in individual actions rather than a class action, because the equitable and declaratory relief sought by any Class member will either inure to the benefit of the Plan or affect each class member equally;

B. Individual members also do not have any interest in controlling the prosecution of these claims because the monetary relief that they could seek in any individual action is identical to the relief that is being sought on their behalf herein;

C. This litigation is properly concentrated in this forum, where most or all Defendants are headquartered and/or located, where Plaintiffs are located or live, and where the Receivership Proceeding concerning the Plan is already pending; and

D. There are no difficulties managing this case as a class action.

RELATED PROCEEDINGS

51. Concurrently with the filing of this Complaint, Plaintiffs have filed or are filing a parallel proceeding in the United States District Court for the District of Rhode Island, asserting the state law claims made herein along with additional federal claims for which the United States District Court has exclusive or concurrent jurisdiction (the "Federal Action"). This state court proceeding is brought solely for the purposes of protecting Plaintiffs from the possible expiration of any time limitations during the pendency of the proceedings in the Federal Action, should the Federal Court for any reason decline to exercise supplemental jurisdiction over those state law claims. Plaintiffs intend to ask that this state court proceeding be stayed pending the resolution of the proceeding in the Federal Action.

52. Plaintiffs have also sought or will seek leave to intervene in a case that is currently pending in the Rhode Island Superior Court entitled *In re: CHARTERCARE HEALTH PARTNERS FOUNDATION, ROGER WILLIAMS HOSPITAL and ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND*, C.A. No. KM-2015-0035 (the "2015 *Cy Pres* Proceeding"), in which Plaintiffs ask the Rhode Island Superior Court to order that Defendants CC Foundation and RI Foundation hold the approximately $8,200,000 (and any proceeds thereof) that was transferred from SJHSRI and RWH pursuant to the order of the court in that proceeding, so as to protect Plaintiff's claims against those funds and preserve the *status quo* pending the determination of the merits of those claims in this Court or in the Federal Action.

OVERVIEW

53. This case concerns an insolvent defined benefit retirement plan with over 2,700 participants, consisting of hospital nurses and other hospital workers who, after

many years of dedicated service to their patients and SJHSRI, learned in August of 2017 that the Plan had not been adequately funded. The disclosure occurred when the Plan was placed into receivership by SJHSRI, with the request that the Rhode Island Superior Court approve a virtually immediate 40% across-the-board reduction in benefits.

54. The harm to the Plan participants' pensions is the product of (at least) four separate but related factual scenarios and schemes:

a. For nearly fifty years SJHSRI used the Plan as a marketing tool to hire and retain employees, and promised employees and prospective employees that SJHSRI made 100% of the necessary contributions and that they had no investment risk, leading them to mistakenly but justifiably conclude that SJHSRI was making the necessary contributions and their pensions were safe;

b. For most of at least the past ten years, SJHSRI stopped making necessary contributions with the result that the Plan was grossly underfunded, but SJHSRI and other Defendants conspired to conceal it from Plan participants through fraudulent misrepresentations and material omissions regarding the Plan;

c. For many years SJHSRI and other Defendants secretly sought a means to terminate the Plan without exposing SJHSRI's substantial operating assets and charitable funds to lawsuits by Plan participants for benefits, including in December of 2012 when SJHSRI considered unilaterally terminating the Plan and paying benefits only to employees who were already retired, which would have deprived over 1,800 other Plan participants of any pension whatsoever, but reconsidered because SJHSRI feared that the excluded Plan participants would bring a successful class action that would end up costing SJHSRI more than it would save by terminating the Plan;

d. Beginning in 2011, SJHSRI and other Defendants put into operation a scheme to transfer SJHSRI's operating assets, cash, and most of its expected future charitable income to entities controlled by SJHSRI's parent company, intending that such assets thereby would be out of reach of a suit by

the Plan participants, and then terminate the Plan. This scheme had four key stages:

i. First, in connection with the 2014 Asset Sale, SJHSRI and related entities engaged in the fraudulent transfer of SJHSRI's operating assets to the control of a for-profit limited liability company, leaving SJHSRI with the insolvent pension plan and no operating assets, in return for SJHSRI's parent company getting a 15% stake in the for-profit company that they thought would be safe from the claims of Plan participants, and made fraudulent misstatements and material omissions concerning the Plan to the state regulatory agencies whose approval was required for the transfer to go forward.

ii. Then, to secure cash which should have gone to bolster the Plan, SJHSRI's parent company over the last four years stripped at least $8,200,000 in charitable assets from SJHSRI and its other subsidiary, and either spent or put the money in a foundation it controlled. This was accomplished by misleading the Rhode Island Superior Court in 2015 into approving these wrongful and fraudulent transfers under the doctrine of *cy pres*.

iii. Finally, having accomplished their goal of stripping SJHSRI of virtually all value, SJHSRI and its affiliates sought to wash their hands of the problem they created, and put the Plan into receivership in August of 2017 and asked the state court to reduce SJHSRI's liabilities to Plan participants by 40% on the grounds that SJHSRI had insufficient assets to fund the Plan.

55. SJHSRI, the Prospect Entities, and other Defendants committed fraud, breached their contractual obligations, violated their duty of good faith and fair dealing, and otherwise acted wrongfully. As a result, they must be required to compensate losses to the Plan and remedy such violations, including returning all assets improperly diverted from the Plan, and to otherwise fully fund the Plan.

56. They also ran afoul of Rhode Island laws prohibiting fraudulent conveyances. The remedies for those violations include that the Prospect Entities must turn over to the Plan and its participants the entirety of the assets they acquired in the

2014 Asset Sale, with no credit or offset for what they paid for those assets, or for the improvements that they may have made on the facilities. In other words, the Plaintiffs are entitled to judgment awarding them these assets, including but not limited to New Fatima Hospital and New Roger Williams Hospital, or ordering that these properties and other assets be sold and awarding Plaintiffs the proceeds from the sale up to the amount necessary to fully fund the Plan on a termination basis and ensure the pensions of all Plan participants.

FACTS

A. HISTORY OF THE PLAN

57. From 1965 to 1995, SJHSRI's employees participated in the pension plan that the Diocesan Defendants established for the employees of the Diocese of Providence (the "Diocesan Plan").

58. Prior to January 1, 1973, SJHSRI's employees were required to contribute to the Diocesan Plan 2% of the first $4,800 of their annual earnings, and 4% of their annual earnings in excess of $4,800. As of January 1, 1973, employees were not required (or permitted) to make contributions to the Plan.

59. The Plan documents at all relevant times included both a Trust and a highly-technical and lengthy separate instrument that purported to set forth the terms of the Plan. During the period from 1965 through 1995, the Plan was part of the Diocesan Plan, and was amended or restated at least ten times.

60. In 1995, in connection with the tenth restatement of the Diocesan Plan, SJHSRI and the Diocesan Defendants took certain steps to unilaterally remove SJHSRI employees from the Diocesan Plan, which up to then had covered both the employees of SJHSRI and the lay employees of the Diocese of Providence.

61. At the same time SJHSRI and the Diocesan Defendants established and/or caused SJHSRI to establish a separate plan for SJHSRI, without obtaining the agreement of or even providing notice to the Plan participants or SJHSRI's employees.

62. Up until then, the assets of the Diocesan Plan allocable to the lay employees of the Diocese and to the employees of SJHSRI were co-mingled in the same investment accounts. In 1995, a portion of the assets of the Diocesan Plan was allocated to the employees of SJHSRI and transferred to separate accounts to fund the Plan. Thereafter, the funds were kept segregated. This enabled the Diocesan Defendants to fund the Diocesan Plan as they saw fit, while SJHSRI was not funding the Plan. Another purpose and effect of the split was to insulate the pension benefits of the lay employees of the Diocese from the claims of the employees of SJHSRI.

63. At various times during the period from 1995 to the present, SJHSRI did not fund the Plan in accordance with the recommendations of the Plan's actuaries, with the result that the Plan is grossly underfunded.

64. During the period from 1995 to the present, SJHSRI and the other entities and individuals administering the Plan and communicating with Plan participants never informed Plan participants that the Plan was underfunded, or that the Plan was not being funded in accordance with the recommendations of SJHSRI's actuaries, with the result that all Plan participants who were not aiding and abetting Defendants or otherwise participating in the conspiracy were taken completely by surprise when that was disclosed in connection with the filing of the Receivership Proceeding in August of 2017.

65. Beginning in 2011, the trustees and executive management of SJHSRI, RWH, and CCCB decided to seek substantial outside capital.

66. From the outset of their deciding to seek outside capital, the board of trustees and executive management of SJHSRI, CCCB, and RWH placed a great deal of importance on retaining as much "local control" of the hospitals as possible and keeping existing management in place. For them, "local control" meant control by many of the same individuals who had been controlling SJHSRI, RWH, and CCCB, prior to the 2014 Asset Sale.

67. By the end of 2011, they authorized management to solicit offers from entities that invested in and/or operated hospitals in Rhode Island and across the United States, and to advise those entities that their goals included retaining significant local control of the hospitals, and keeping existing management in place.

68. One entity they solicited was LHP Hospital Group, Inc. ("LHP"), a for-profit corporation that operated five hospitals outside of Rhode Island.

69. In 2012, LHP responded to the solicitation with a letter of intent that set forth terms of a proposed joint venture, under which LHP would pay $33,000,000 to pay off SJHSRI and RWH's bonded indebtedness, pay an additional $72,000,000 to fund the Plan, and commit an additional approximately $50,000,000 for future capital improvements and network expansion.

70. The $72,000,000 figure was based upon Defendant Angell's estimate that the unfunded status of the Plan in 2011 was $72,000,000. In 2012 that estimate changed to approximately $86,000,000, which initially caused concern regarding the sufficiency of the payment proposed by LHP. However, in 2013 that estimate was reduced to approximately $73,000,000 based upon high returns earned on pension assets in 2013.

71. The Trustees and executive management of SJHSRI, CCCB, and RWH did not favor LHP's insistence on applying so much capital to pay off the unfunded pension liability. They wanted to allocate more of the purchase money for other purposes, instead of fulfilling their obligations to the Plan participants by choosing a buyer or joint-venturer who would adequately fund the Plan.

72. Accordingly, the trustees and executive management of SJHSRI, CCCB, and RWH chose not to pursue a transaction with LHP, and to continue their search for outside capital.

73. In 2013, and after some negotiations, Defendant Prospect Medical Holdings proposed a joint venture to operate Fatima Hospital and Roger Williams Hospital with Defendant CCCB, that involved the Prospect Entities paying off SJHSRI's and RWH's bonded indebtedness of approximately $31,000,000, paying $14,000,000 into the Plan, committing $50,000,000 over four years for capital projects and network development, and funding annual asset depreciation in the amount of $10,000,000.

74. However, the $14,000,000 contribution to the Plan would only reduce SJHSRI's unfunded liabilities for the Plan to approximately $59,000,000. The Letter of Intent stipulated that liability for the Plan would remain with SJHSRI, and, therefore, that Fatima Hospital under the operation of its new owners would be relieved of these unfunded liabilities. Accordingly, the parties had to determine if there was a way that SJHSRI could retain that liability and the Prospect Entities could avoid that liability.

75. SJHSRI had other options that would have fully funded the Plan. One option was the outright sale of the hospital, for which SJHSRI would have received a purchase price sufficient to fund the Plan.

76. However, that conflicted with the goals of the board of trustees and executive management of SJHSRI, CCCB, and RWH of retaining as much "local control" of the hospitals as possible and keeping existing management in place.

77. Another option was to affiliate with a company such as LHP that was willing to fully fund the Plan. However, that conflicted with the goals of the board of trustees and executive management of SJHSRI, CCCB, and RWH to allocate more of the purchase money for other purposes.

78. The board of trustees and executive management of SJHSRI, CCCB, and RWH chose to proceed with a transaction that did not necessitate fully funding the Plan.

79. The board of trustees and executive management of SJHSRI, CCCB, and RWH decided to proceed with the proposal from Prospect Medical Holdings.

80. On August 14, 2013, counsel for SJHSRI, CCCB, and RWH, together with CCCB "senior leadership," met at the offices of the Diocesan Defendants to obtain their cooperation. That meeting was attended by Bishop Tobin, Rev. Timothy Reilly (the Chancellor of the Diocese of Providence), and Msgr. Paul Theroux (who was a member of the Diocesan Finance Council) (collectively the "Diocesan Defendants' Attendees").

81. Counsel for SJHSRI, CCCB, and RWH brought the current version of the Asset Purchase Agreement to the meeting. That draft (and the final version actually signed by the parties) provided for the sale of all of the operating assets of SJHSRI, including ownership of Fatima Hospital. It also included the requirement that SJHSRI would retain liability for the Plan, and that the new owners and operators of New Fatima Hospital would have no obligations to the Plan.

82. Counsel for SJHSRI, CCCB, and RWH also brought to the meeting with the Diocesan Defendants' Attendees on August 14, 2013 a document on the joint

letterhead of counsel and CCCB, entitled "Overview of the Strategic Transaction with Prospect Medical Holdings, Inc., Presentation to the Board of Directors," referring to the Board of Trustees for SJHSRI, CCCB, and RWH.

83. The latter document contained the legend "Privileged and Confidential: Attorney-Client Communication." Nevertheless, counsel for SJHSRI, CCCB, and RWH showed it to the Diocesan Defendants' Attendees and went over it with them.

84. That document outlined the salient details of the 2014 Asset Sale, whereby SJHSRI, CCCB, and RWH would sell "substantially all of their assets to Prospect CharterCARE LLC ('Newco')." In return, the Prospect Entities would pay cash of $45,000,000, commit to contribute $50,000,000 over four years for "physician network development and capital projects," and "fund depreciation in the amount of $10,000,000 per year."

85. The document noted that Defendant CCCB would receive "a 15% ownership (membership) interest in Newco."

86. The very first page of the presentation noted that only $14 million of the sales proceeds would be paid into "the Church-sponsored retirement plan."

87. At this time, all of the defendants knew that SJHSRI's unfunded liability for the Plan was approximately $73,000,000. Thus, they knew that the Asset Purchase Agreement contemplated leaving SJHSRI an unfunded liability for the Plan of approximately $59,000,000, and that SJHSRI would have no operating assets.

88. The document then detailed certain promises that would be made to the Diocesan Defendants as part of the transaction, which were described as follows:

Catholic identity covenants of Prospect and Newco

- Our Lady of Fatima Hospital and other legacy SJHSRI facilities will be operated in compliance with the ERDs[3]
- Roger Williams Medical Center and its facilities will not engage in prohibited activities
    - Abortion
    - Euthanasia
    - Physician-assisted suicide
- Any hospital or facility acquired or established after Closing must comply with restrictions on prohibited activities
- The Bishop has a direct right to enforce the Catholicity covenants
- CCHP intends to propose that the Bishop may require a name change of Our Lady of Fatima Hospital and other legacy SJHSRI facilities if he is unsuccessful in enforcing the covenants

89. These "Catholic identity covenants" included essentially all the rights which the Diocesan Defendants and the Diocese of Providence were entitled to exercise over Old Fatima Hospital and Old Roger Williams Hospital, SJHSRI, and RWH, since 2009 when SJHSRI and RWH became part of CCCB. Thus, notwithstanding the 2014 Asset Sale, the Diocesan Defendants were offered the promise that New Fatima Hospital and New Roger Williams Hospital would remain as Catholic as Old Fatima Hospital and Old Roger Williams Hospital had been before the asset sale.

90. In other words, the Diocese and the Diocesan Defendants would transfer to the new hospitals the "Catholicity" and associated controls that they had previously enjoyed over Old Fatima Hospital, Old Roger Williams Hospital, SJHSRI, and RWH.

[3] Ethical and Religious Directives for Catholic Health Care Services.

91. Indeed, shortly after the closing of the 2014 Asset Sale, Bishop Tobin extolled the advantages of the arrangement in precisely those terms:

> For all intents as purposes, Fatima Hospital will retain its Catholicity, and that is guaranteed by contract now. It's not just an aspiration, it's guaranteed by contract that the Catholic identity is still under the supervision of the local bishop and that in all of its ministries and external signs Fatima Hospital will be as Catholic as it has ever been.

92. Later in the day on August 14, 2013, counsel for SJHSRI, CCCB, and RWH attended a meeting of the Executive Committee of CCCB's Board of Trustees, and advised the committee of the results of his meeting with the Diocesan Defendants' Attendees, and assured them that SJHSRI, CCCB, RWH, and the Diocesan Defendants had a "common understanding," and that Bishop Tobin was "comfortable."

93. On September 11, 2013, the Diocesan Chancellor contacted counsel for SJHSRI, CCCB, and RWH and stated that the "our Diocesan Finance Council and College of Consultors also need to consent to the act of alienation," and asked counsel to provide them with the Overview of the Strategic Transaction that counsel had shared with the Diocesan Defendants on August 14, 2013, because "[t]he Bishop thinks it would be a concise and helpful overview for the council members."

94. Counsel for SJHSRI, CCCB, and RWH promised to send it to the Chancellor the next day, after deleting the references to "Attorney-Client Privilege." The next day counsel followed through and sent it to the Chancellor, addressing the document as "[f]or the Bishop of the Roman Catholic Diocese of Providence, Rhode Island."

95. On September 17, 2013 the Diocesan Finance Council and College of Consultors met to decide whether to vote in favor of alienation of the assets of SJHSRI

pursuant to the proposed asset sale. Bishop Tobin, Chancellor Reilly, and Monseigneur Theroux attended as members of both, with Bishop Tobin as Chairman.

96. The Diocesan Finance Council and the College of Consultors approved the transaction.

97. On September 18, 2013, Chancellor Reilly provided counsel for SJHSRI, CCCB, and RWH with a draft of Bishop Tobin's proposed letter to the Secretary of the Congregation for the Clergy in Rome requesting approval for the 2014 Asset Sale, and sought counsel's "comments/suggestions" concerning the letter.

98. Bishop Tobin's draft letter to the Vatican purported to summarize the transaction. It recounted the "merger" of SJHSRI and RWH into CCCB in 2009, and stated that "[s]hortly thereafter, in the wake of the global economic downturn, CharterCARE soon began to experience the need for increased capital and was confronted with a **spiraling and gaping unfunded liability within its employee-pension system**" (emphasis supplied). The draft noted that the proposed sale would apply "approximately $14 million to fund the Church-sponsored employee pension plan."

99. Bishop Tobin then stated that "without [approval of] this transaction, it appears that a consistent Catholic healthcare presence in the Diocese of Providence would be gravely compromised, and the financial future for employees-beneficiaries of the pension plan would be at significant risk. I believe that the APA [Asset Purchase Agreement] between CharterCARE and Prospect will help avoid the catastrophic implications of such a failure, and at the same time, enhance the quality of care at SJHSRI/Our Lady of Fatima."

100. Finally, the draft letter concluded with Bishop Tobin stating that "[i]t is my sincere hope that Your Excellency will understand the important role of this alienation

for the faithful of the Diocese of Providence, and the thousands of patients, employees, and pensioners of SJHSRI."

101. Counsel for SJHSRI, CCCB, and RWH revised the draft by *deleting* the reference to "spiraling and gaping" liability, and substituted "significant" liability, stating that he preferred the revision "**in the event this letter was ever subject to discovery in a civil lawsuit**" (emphasis added).

102. Counsel for SJHSRI, CCCB, and RWH left untouched, however, all of the other statements quoted above, including that $14 million would "fund the Church-sponsored employee pension plan," that without Vatican approval of the asset sale, "the financial future for employees-beneficiaries of the pension plan would be at significant risk," and that such approval "will help avoid the catastrophic implications" of failure of the pension plan.

103. The Diocesan Defendants, SJHSRI, RWH, and CCCB knew that even after the $14 million contribution, the Plan would remain seriously underfunded, and the financial future of the pensioners would be at much more than merely "significant risk." Moreover, approval of the alienation would not avoid the "catastrophic implications" of that failure. To the contrary, such approval would increase the risk of such failure by depriving SJHSRI of operating income it needed to meet its obligations under the Plan, and hindering if not completely frustrating the Plan participants' rights to demand contributions by or recover damages from an asset-holding and income-generating hospital.

104. Bishop Tobin did not disclose in his letter to the Vatican that the proposed asset sale increased the probability of the Plan failing. Instead Bishop Tobin omitted

that information and, in effect, said the opposite, that approval of the asset sale was actually necessary to secure the Plan.

105. On September 27, 2013, Bishop Tobin signed his letter as altered by counsel for SJHSRI, CCCB, and RWH and sent it to the Vatican.

106. These misrepresentations and omissions concerning the Plan in the Bishop's letter to the Vatican were included because Defendants SJHSRI, RWH, CCCB, and the Diocesan Defendants, all understood that Vatican approval was required for the transaction to proceed, and knew or were told that that the Vatican must approve specifically the "pension restructuring."

107. On November 15, 2013, there was a meeting of the CCCB Investment Committee that was administering the Plan. As part of a discussion concerning the Plan, Chief Executive Officer Belcher informed them that "Bishop Thomas Tobin has signed off on the Plan, and the proposal has been sent to the Vatican for approval."

108. Vatican approval was obtained in early 2014, along with other necessary approvals, and the asset sale closed on June 20, 2014, whereupon ownership of Fatima Hospital was transferred from SJHSRI to Prospect Chartercare St. Joseph and ownership of Roger Williams Hospital was transferred from RWH to Prospect Chartercare Roger Williams.

109. In connection with the 2014 Asset Sale, the Inter-Parish Loan Fund received proceeds of $638,838.25 from the proceeds of the sale of SJHSRI's assets, in connection with a loan that should have been forgiven.

110. On August 22, 2014, Bishop Tobin directed that $100,000 of this amount be transferred to the Priests' Retirement Fund instead of the SJHSRI Plan, and that the balance be applied towards a Diocesan Line of Credit.

B. SJHSRI'S OBLIGATIONS UNDER THE PLAN

111. Following its separation from the Diocesan Plan, the Plan was unilaterally revised by SJHSRI on three occasions, in 1999, 2011, and 2016.

112. The various iterations of the Plan contain different provisions (the "Exculpatory Provisions") that were inserted so as to enable arguments regarding the construction of the Plan that would make any funding obligation illusory and which would constitute a fraud on the Plan participants.

113. The Exculpatory Provisions so construed are ineffective, for various reasons, including, but not limited to, that (a) they contradict the reasonable expectations of Plan participants, (b) they are contrary to representations made over many years to Plan participants upon which Plan participants relied to their detriment such that Defendants are estopped from relying on such provisions, (c) they violate the obligation of good faith and fair dealing, and (d) they generally represent an unconscionable fraud on Plan participants.

114. The Exculpatory Provisions so construed also contradict statements that SJHSRI, RWH, CCCB, and the Prospect Entities made to various Rhode Island state agencies to obtain their approval for the 2014 Asset Sale and to the Rhode Island Superior Court in 2015 to obtain the court's approval of the transfer of approximately $8,200,000 from SJHSRI and RWH to CC Foundation.

115. These statements acknowledged both that it was SJHSRI's "liability" and "obligation" to fund the Plan, but also represented that SJHSRI had the intent and means to "satisfy" that obligation. Having succeeded in obtaining those approvals based upon the those representations, SJHSRI, RWH, CCCB, CC Foundation, and the Prospect Entities are judicially estopped from contending otherwise, and from enforcing

the Exculpatory Provisions insofar as they would relieve SJHSRI of any such liability, since to allow them to use those provisions for that purpose would reward a fraud on both the Rhode Island Attorney General and the Rhode Island Superior Court.

116. Moreover, insofar as the Exculpatory Provisions if so construed would have the effect of relieving Defendant SJHSRI from liability to fully fund the Plan or pay the promised retirement benefits, then Defendants SJHSRI, Angell, and the Prospect Entities breached their fiduciary obligations to disclose that material information to the Plan participants, including, but not limited to, the information that Defendant SJHSRI contended that it was not obligated to fund, and, in fact, was not funding the Plan. All of the other Defendants aided and abetted those breaches of fiduciary duties by Defendants SJHSRI, Angell, and the Prospect Entities.

117. All of the various iterations of the Plan have in common the fact that they were never given to Plan participants. In other words, Plan participants were never provided with a copy of the Plan documents, either at any time during the applicability of the Diocesan Plan or, subsequently, when the Plan for SJHSRI employees was separately established.

118. Notwithstanding the Exculpatory Provisions, SJHSRI's obligation to properly fund the Plan was acknowledged in the annual financial statements for SJHSRI prepared by different auditors through the years.

119. For example, since 2006, all of SJHSRI's annual (both audited and unaudited) financial statements have listed the unfunded portion of Plan obligations as a liability on the balance sheet for SJHSRI, and reduced the net assets of SJHSRI by that amount.

120. In addition, the financial statements repeatedly referred to SJHSRI's policy to make annual contributions to fund the Plan, and to determine the amount of the contributions as if the Plan were subject to the funding obligations of ERISA. For example:

a. SJHSRI's financial statements for the fiscal years ending September 30, 1985, September 30, 1986, and September 30, 1987, stated that "[t]he Hospital makes annual contributions to the Plan equal to the amount accrued for pension expense;"

b. SJHSRI's financial statements for the fiscal years ending September 30, 1992, September 30, 1993, September 30, 1994, September 30, 1995, September 30, 1996, and September 30, 1997, stated that "[t]he Hospital's policy is to fund pension costs accrued which are within the guidelines established by ERISA;"

c. SJHSRI's financial statements for the fiscal years ending September 30, 2001, and September 30, 2002, stated that "[t]he Corporation's policy is to fund at least the minimum amount required under ERISA guidelines;" and

d. SJHSRI's financial statements for the fiscal years ending September 30, 2003, September 30, 2004, September 30, 2005, and September 30, 2006, stated that "[a]lthough the plan is not subject to ERISA, the Corporation's policy is to fund at least the minimum amount required under the ERISA guidelines."

121. These financial statements all were expressly approved by the SJHSRI's Board of Trustees, SJHSRI's management, and SJHSRI's auditors.

122. Even in years when SJHSRI's annual financial statements did not expressly acknowledge that it was SJHSRI's policy to fund the Plan under ERISA guidelines, those financial statements never disclosed that SJHSRI had not adhered to its oft-stated policy to fund the Plan under ERISA guidelines.

123. Similarly, the annual reports that Angell and Angell's predecessor actuaries provided to SJHSRI concerning the actuarial status of the Plan repeatedly acknowledged both that SJHSRI was liable to fully fund the Plan and that SJHSRI's

policy was to make contributions to the Plan as if it were subject to ERISA.[4] For example:

a. In the Actuarial Valuations of the Plan as of July 1, 1995, July 1, 1996, July 1, 1997, July 1, 1998, and July 1, 1999, Watson Worldwide[5] stated that "[s]ince this a church plan it is not subject to the minimum funding requirements of ERISA. However, it is the Hospital's funding policy to follow the ERISA guidelines each year in determining the contribution requirement. This funding policy will ensure that sufficient assets are available to plan participants to pay retirement benefits;"

b. In the Actuarial Valuations of the Plan as of July 1, 2000, July 1, 2001, and July 1, 2002, Aon Employee Benefits Consulting[6] stated that "[w]hile the Plan is a church plan, and is not subject to the funding requirements of ERISA, the current funding policy follows the ERISA guidelines. Therefore, the minimum contribution level has been determined as the amount that would be required by ERISA in the absence of church plan status;"

c. In the Actuarial Valuations of the Plan as of July 1, 2006 and July 1, 2007, Angell stated that "[w]hile the Plan is a church plan, and is not subject to the funding requirements of ERISA, the current funding policy follows the ERISA guidelines without regard to the current liability calculations;" and

d. In the Actuarial Valuations of the Plan as of July 1, 2008, and for each year thereafter, Angell stated that "[w]hile the Plan is a church plan, and is not subject to the funding requirements of ERISA, the current funding policy follows the ERISA guidelines without regard to the current liability calculations or Pension Protection Act of 2006 modifications."[7]

124. In December 2009, and after review and consultation with SJHSRI, Moody's Investor Services affirmed its rating of SJHSRI's Series 1999 bonds. In its

[4] Plaintiffs do not assert any claims under ERISA in this case and do not seek to impose ERISA obligations in this case. Plaintiffs merely point out that representations were made that while not subject to ERISA, SJHSRI was as a matter of its expressed policy adhering to the ERISA guidelines.

[5] Watson Worldwide were the actuaries at the time.

[6] Aon Employee Benefits Consulting were the actuaries at the time.

[7] The caveat for "the current liability calculations or Pension Protection Act of 2006 modifications" is irrelevant, since neither the then current liability calculations nor the Pension Protection Act of 2006 modifications eliminated or even affected the ERISA guidelines for funding.

rating statement, Moody's noted the Plan had been frozen and stated: "[w]hile there is no required funding by ERISA, the need to fund adequately the pension is an obligation of the hospital."

125. Other statements that Defendants SJHSRI, RWH, and CCCB made to state regulators in connection with obtaining approval for the 2014 asset sale also represented that they were obligated by the Plan to make necessary contributions.

126. For example, in response to an official query concerning how the Plan would be operated after the asset sale, they stated on April 15, 2014 as follows:

> Response: The pension liability will remain in place post transaction. Subsequent to the $14 Million contribution to the Plan upon transaction, **future contributions to the Plan will be made based on recommended annual contribution amounts as provided by the Plan's actuarial advisors**. Moving forward, the investment portfolio of the plan will be monitored by the Investment Committee of the Board of Trustees.
>
> [Emphasis supplied]

127. Similarly, SJHSRI management and its boards repeatedly acknowledged that SJHSRI's policy was to make contributions to the Plan as if it were subject to ERISA, and that is was a "fiduciary obligation" of board members to see to it that the Plan was properly funded. For example:

a. SJHSRI Chief Financial Officer John Flynn on September 5, 1996 advised Watson Worldwide that the SJHSRI Finance Committee wanted to "[a]dopt an approach [to the Plan] that will allow for a consistent method over time to adequately fund the plan, taking into consideration the Hospital's ability to make the necessary contributions and **ensuring the Finance Committee and the Retirement Board that they will meet their fiduciary responsibility for providing adequate funding**" [emphasis supplied]; and

b. SJHSRI's Human Resources Department disseminated as authoritative a history of the Plan captioned "St. Joseph Health Services of Rhode Island Retirement Plan History," which stated

that "[t]he Corporation's policy is to fund pension costs accrued that are within the guidelines of ERISA."

C. DEFENDANTS KNEW THE PLAN WAS UNDERFUNDED

128. On May 12, 2008, SJHSRI and RWH entered into a "MEMORANDUM OF UNDERSTANDING" that agreed in principle to their merger.

129. Officials from RWH evaluated SJHSRI's pension liability in connection with the merger that ultimately took place in 2009, which also was approved by the R.I. Department of Health and Attorney General under the Hospital Conversions Act. According to the minutes for a meeting of the executive committee of the RWH's Board of Trustees on October 23, 2008, the estimated underfunding for the Plan as of September 20, 2008 was $29 million.

130. As of February 2, 2009, SJHSRI and RWH entered into a Health Care System Affiliation and Development Agreement among Roger Williams Hospital and Roger Williams Medical Center, and St. Joseph Health Services of Rhode Island and Roman Catholic Bishop of Providence (the "SJHSRI-RWH Affiliation Agreement"). The SJHSRI-RWH Affiliation Agreement provided that "CharterCare Health Partners" (later re-named CharterCare Community Board and referred to herein as CCCB) would be formed and would completely control RWH and would control SJHSRI on all matters except certain religious issues.

131. On July 9, 2009, Angell informed SJHSRI, RWH, and CCCB that the estimated unfunded benefit obligation as of July 1, 2009 was approximately $60,000,000 and would increase over the next four years even if SJHSRI contributed an additional $8.7 million over that period.

132. On March 15, 2011, the Finance, Audit and Compliance Committee of the Board of Directors for CCCB met to discuss, *inter alia*, the shortfall in the Plan's funding,

and the following discussion took place amongst members of the committee and Jeffrey Bauer (President and Chief Executive Officer of Defendant Angell):

> Mr. McQueen asked how much the Hospital would need to fund into the Plan to carry it to term. Mr. Bauer indicated approximately $50M would be needed. . . .
>
> Mr. Stiles asked what was happening in the public sector. Were there any modifications available that should be looked at in order to minimize the Hospital's liability? **Mr. Bauer indicated that any modifications to the Plan would be difficult because it is a protected benefit and cannot be changed**.
>
> [Emphasis supplied]

133. Other communications between Angell and SJHSRI also informed SJHSRI management and directors of the extent of the Plan's unfunded status. For example, in 2010, Angell advised SJHSRI that SJHSRI should make a "recommended maximum contribution" of $1,624,311 to the Plan, or at least a "minimum contribution" of $1,444,178, and advised that a contribution of $21,314,085 was needed to reach a 100% funding level.

134. The term "minimum contribution" referred to the minimum contribution amount determined under Internal Revenue Service rules that can be paid by plans subject to ERISA without incurring a penalty. For plans that are underfunded, it typically includes at least two components: (a) a "target normal cost' that is based on plan expenses and the expected benefit payout over the coming year; and (b) a shortfall amortization charge, which is a sum necessary to return the plan to fully-funded status over a period of years.

135. The term "recommended maximum contribution" referred to the maximum contribution that SJHSRI could deduct from federal income taxes if it were a for-profit corporation.

136. The term "100% funding level," or, indeed, any percentage funding level, is a term of art that Angell intended and SJHSRI understood is based on the assumption that the Plan would continue for years, which at many times was a false assumption as discussed below, and also is based upon an assumed future rate of return on pension plan assets. In addition, in accordance with actuarial standards, customs, and practices, a "funding level" percentage applies only at the point in time the estimate is made, must be based solely on the pension plan's existing liabilities, not pension liabilities incurred after that date, and is subject to possibly drastic change if investment returns actually realized were less than the assumed rate of return on which the estimate was based.

137. SJHSRI disregarded the 2010 recommendation and made no contribution.

138. In 2011, Angell advised SJHSRI that SJHSRI should make a "recommended maximum contribution" of $1,626,074 to the Plan, or at least a "minimum contribution" of $1,433,706, and advised that a contribution of $22,426,204 was needed to reach a 100% funding level. SJHSRI disregarded the recommendation and made no contribution.

139. In 2012, Angell advised SJHSRI that SJHSRI should make a "recommended maximum contribution" of $1,793,075 to the Plan, or at least a "minimum contribution" of $1,480.468, and advised that a contribution of $13,690.720 was needed to reach a 100% funding level. SJHSRI disregarded the recommendation and made no contribution.

140. In 2013, Angell advised SJHSRI that SJHSRI should make a "recommended maximum contribution" of $3,056,708 to the Plan, or at least a "minimum contribution" of $2,144,292, and advised that a contribution of $25,081,206

was needed to reach a 100% funding level. SJHSRI disregarded the recommendation and made no contribution.

141. On or about December 2, 2013, the Prospect Entities requested that Angell provide them with an updated estimate of the amount of unfunded benefits if the Plan were terminated.

142. On December 10, 2013, Angell advised that the updated estimate of the amount of unfunded benefits if the Plan were terminated was over $98,000,000. The reason this was so much higher than the sum needed to reach a 100% funding level in 2013 was that the termination liability would be paid by SJHSRI's purchase of annuities from an insurance company to fund those benefits, which would cost much more than if SJHSRI continued to operate the Plan and the Plan earned the assumed rate of return of 7.75%.

143. On December 13, 2013, a principal in Mercer (US) Inc., the company that was managing the Plan's portfolio assets on behalf of SJHSRI, informed CCCB Chief Financial Officer Conklin that "the Plan's funded status on a current market basis [of 4.6%] is around 50%," and that this funding level was more reliable than the finding level of over 90% that Angell had calculated based on an assumed rate of return of 7.75%.

144. The market rate to which the Mercer representative referred was the rate that single employer defined benefit plans (such as the Plan) that are governed by ERISA are required to use. The Mercer representative noted that Angell was using a higher estimated rate of return because the Plan's purported Church Plan status relieved them of the obligation to use the market rate of return, and that using the higher

rate of return in determing the Plan's funding level had the effect of greatly increasing the Plan's funding level over what it would have been under ERISA.

145. Angell prepared revised calculations and met with the Prospect Entities on or about January 8, 2014 and shared with them the facts concerning the unfunded status of the Plan and the cost of terminating the Plan and purchasing annuities.

146. In connection with the sale of their assets to the Prospect Entities discussed below, CCCB submitted to the Prospect Entities consolidated financial statements on behalf of CCCB, SJHSRI, and RWH, stating that the unfunded liability on the pension was $91,036,390 as of April 30, 2013.

147. The Diocesan Defendants were also fully familiar with the extent to which the Plan's liabilities were unfunded. Indeed, as noted above, in September of 2013, Bishop Tobin had described the pension as "a spiraling and gaping unfunded liability."

148. Thus, prior to and at the time of the 2014 Asset Sale, CCCB, SJHSRI, RWH, the Prospect Entities, the Diocesan Defendants, and Angell all had actual knowledge of the full extent of the Plan's unfunded liabilities.

D. MISREPRESENTATIONS TO PLAN PARTICIPANTS

149. SJHSRI used the Plan to hire and retain skilled employees. Indeed, in October 1990, SJHSRI's actuary Watson Worldwide made a presentation to the SJHSRI board noting that "recruiting and retention of employees" was the first purpose of the Plan.

150. It is equally clear that SJHSRI's policy to follow ERISA guidelines was dictated by competitive reasons. For example, in 1977, SJHSRI changed the Plan so that the amount of benefits was based on a percentage of the employees' last salaries prior to retirement, comparable to what was required by ERISA, after conducting a

survey of seven other competitor hospitals that had conformed their Plans to include this requirement. Watson Worldwide in a letter to the President of SJHSRI on February 4, 1983 noted that "[t]he plan for the most part is consistent with the spirit of ERISA, primarily for competitive reasons."

151. SJHSRI management and directors were informed on numerous occasions that SJHSRI's employees did not understand the provisions of the Plan. For example:

a. In a memorandum to SJHSRI Controller Paul Beaudoin on February 3, 1997, Watson Worldwide offered to update the employee booklet on the Plan. Watson Worldwide dealt directly with Plan participants and made presentations to them concerning the Plan. Nevertheless, they stated that "[i]t is our understanding that employees do not understand or know very much about the Plan." Management declined to update the booklet.

b. On February 2, 1990, SJHSRI's Vice President for Human Resources David DeJesus asked for authority to provide Plan participants with an annual statement that would contain the information that ERISA requires for annual plan statements. SJHSRI never provided Plan participants with such information, which would have included disclosing the unfunded status of the Plan.

c. At a meeting of the Investment Committee of the CCCB Board of Trustees on May 4, 2012, after board members were informed that SJHSRI was not required by ERISA to make contributions to the Plan, one board member asked whether Plan participants "truly understood the funding status of the Plan and the impact of the Plan being a Church Plan (non ERISA)." The response by CCCB President and Chief Executive Officer Belcher was that he "believed that staff are aware and that this subject was discussed at employee forums." However, this information was never mentioned in any written presentation to any employees and there is no evidence it was ever even orally conveyed at any employee forums or to any employees or other Plan participants at any other occasion.

152. In contrast to the extremely difficult, obscure, and technical language set forth in Plan documents, SJHSRI, the Diocesan Defendants, Prospect Chartercare, and

Angell made or provided statements to Plan participants, on different occasions, in many different contexts, over many years, and using plain language, that assured Plan participants that the Plan was an earned benefit of their employment, that the contributions necessary to properly fund the Plan were being made, that it was management's policy, practice and duty to do so, and that SJHSRI and not the Plan participants bore the risk of Plan assets not earning expected returns or incurring investment losses.

153. The Plan participants relied upon those statements to their detriment.

154. Moreover, these assurances created a general understanding and commonly held belief amongst employees and retirees that SJHSRI had undertaken to fully fund the Plan and to assume any investment risk associated with Plan investments, and created a culture of trust and reliance that influenced even those employees and retirees who cannot recall specific communications, that cumulatively informed the reasonable expectations of Plan participants, such that detrimental reliance is presumed and proof of individualized reliance on specific representations is not necessary.

155. Third parties such as SJHSRI's employee unions also relied upon these communications.

156. These communications took many forms. They included descriptions of the Plan in detailed booklets, less-detailed handouts and tri-fold pamphlets specific to the Plan, employee handbooks, presentations ("PowerPoints") used in slideshows, and memoranda and letters from SJHSRI management to employees.

157. In addition, SJHSRI and its agents and representatives (including Defendant Angell) communicated with specific employees concerning the Plan and a specific employee's benefits through various letters and statements as described below.

158. A detailed booklet entitled "Retirement Plan for Employees of the Diocese of Providence," issued prior to 1973, described the pension benefits being provided to the employees of SJHSRI as of January 1, 1973 and stated:

> It is the desire of the diocese, its parishes and institutions, to make provision for its employees in retirement. Indeed, we have always had a sympathetic concern for the welfare of our employees and are confident that this implementation of that concern will provide the necessary sense of security and peace of mind that all envision.
>
> * * *
>
> Q. What does the Diocese contribute?
>
> A. The Diocese contributes the entire cost of the benefits you have earned prior to the adoption of the Retirement Plan. The Diocese will also contribute an additional amount which, when added to your contributions, will meet the cost of benefits you will earn during the remaining years of your employment.
>
> * * *
>
> Q. How will my Retirement Benefit be paid?
>
> A. You will receive a check each month beginning on your retirement date and terminating with the payment preceding your death.

159. Another detailed booklet, entitled Saint Joseph's Hospital Retirement Plan (1973 edition) stated:

> This booklet has been prepared to inform you about your Saint Joseph's Hospital Retirement Plan.
>
> * * *
>
> One of the most important sources of your income will be our Retirement Plan . . . .
>
> * * *
>
> HIGHLIGHTS OF THE PLAN

> The Hospital will pay the entire cost of the Plan beginning January 1, 1973.
>
> * * *
>
> COST OF THE PLAN
>
> 5. Do I make any contributions to the Plan?
>
> No. The Hospital will pay the entire cost of the Plan beginning January 1, 1973 – not only your pension but also all actuarial, legal and investment expenses incurred in the administration of the Plan.

160. On or about February 6, 1978, SJHSRI's then President sent a memorandum to employees, urging them not to unionize and describing the benefits SJHSRI already provided through the Diocesan Plan. This memorandum contrasted the Hospital's pension benefits with what SJHSRI characterized as "vague promises" of union organizers and stated:

> Know the facts when someone asks you to sign a union authorization card. The union organizer makes vague promises, but the facts are that your Hospital has, on a regular basis, increased your wages and improved your benefits.
>
> For example, during the past five years, the following improvements have been made by the Hospital:
>
> * * *
>
> Pension Plan – Improved from contributory to non-contributory effective January 1973. Plan improved again effective January 1977; **Hospital pays full cost of the plan**.
>
> [Emphasis supplied]

161. Another detailed booklet, entitled "RETIREMENT PLAN ST JOSEPH HOSPITAL Providence/North Providence, Rhode Island (1982 Edition)" contains the following statement, in question and answer format:

> WHO WILL PAY FOR MY BENEFITS?

> The Hospital pays the entire cost of your benefits earned after 1972 and before 1965. You and the Hospital shared the cost between 1965 and 1972.
>
> **Each year independent actuaries calculate the amount of money which the Hospital will pay to the Plan Trustee. This money is then set aside and invested to provide each eligible employee with a pension at retirement**.
>
> [Emphasis supplied]

The preface to the booklet was a letter to employees signed by then-SJHSRI President Azevedo, which concluded with the "hope that this Plan will be evidence of our personal interest in your welfare, not only while actively in our employ but after you retire to enjoy the rewards of a long and productive life."

162. Similar language was included in the next edition of that booklet, captioned "St. Joseph Hospital Retirement Plan Providence/North Providence, Rhode Island (1986 Edition)", which stated:

> The St. Joseph Hospital Retirement Plan was established to help you make your retirement years economically more secure. Since its inception in 1965, the Hospital has made many improvements to the Plan. The most recent improvements became effective on July 1, 1985.
>
> The Hospital pays the entire cost of the Plan and no contributions are required by you.
>
> Your Retirement Plan will give you a lifetime monthly income when you become eligible to retire. In addition, the Plan may provide benefits to your spouse or beneficiary after your death.
>
> * * *
>
> WHO PAYS FOR MY BENEFITS?
>
> **The Hospital pays the entire cost of your benefits. Each year independent actuaries calculate the amount of money which the Hospital will pay to the Plan Trustee. This money is then set aside**

> **and invested to provide each eligible employee with a pension at retirement.**
>
> [Emphasis Supplied]

163. As already noted, however, although actuaries throughout the life of the Plan annually calculated the amount of money that SJHSRI should pay into the Plan, based upon the contribution requirements of ERISA (adopted by SJHSRI as a matter of policy) and the Plan, SJHSRI routinely disregarded their recommendations and in many years chose to make no annual contributions whatsoever, with the result that the Plan became more and more underfunded over time.

164. The highlighted language was repeated in a subsequent revision of that booklet in 1988 and draft revisions in 1993, 1995, 1996, and 1999. It appears that SJHSRI stopped revising that booklet but continued to use it over time. During the period it was in use, SJHSRI never omitted or in any way contradicted this language.

165. Prior to 1995, the Diocese's Retirement Board sent terminated or retiring employees of SJHSRI documents entitled "STATEMENT OF INFORMATION FOR TERMINATED EMPLOYEES WITH VESTED RIGHTS". For example, one such form dated January 15, 1994 stated:

> According to our records, your service with St. Joseph Hospital prior to your termination of employment on 12/3/92 entitles you to a benefit at age 65 from the Diocese of Providence Retirement Plan – St. Joseph Hospital (the "Plan"). The amount of this benefit is $192.42 per month commencing on 4/1/2020 and **payable to you for as long as you live**.
>
> [Emphasis supplied]

166. From time to time SJHSRI offered seminars or made presentations to Plan participants to explain their benefits, and in the process assured Plan participants that they could rely on their pensions. For example, on November 15 & 16, 1995, and again

on March 4, 1998, SJHSRI, through its actuary and direct representative with Plan participants, Watson Worldwide, showed Plan participants a PowerPoint that stated that "[c]omputations [are] made annually to ensure assets are sufficient to meet current and expected future benefit obligations," without disclosing that in fact SJHSRI disclaimed any obligation to follow the funding recommendations that were the product of those computations.

167. On October 24, 1996, the President and Chief Executive Officer of SJHSRI sent a letter to employees of SJHSRI, which stated that he was "particularly pleased about the Pension Plan improvements," but neglected to disclose the fact that SJHSRI employees were no longer part of the Diocesan Plan.

168. That same letter claimed that the Plan available to SJHSRI employees "is as good or better than those of many other organizations in the region," without disclosing that, unlike the case with the defined benefit plans of most organizations, SJHSRI claimed that the Plan was not governed by ERISA, and thus would not have insurance coverage against insolvency provided by the Pension Benefit Guaranty Corporation.

169. From time to time thereafter, SJHSRI, the then-incumbent Bishop, and the Diocese of Providence communicated with SJHSRI employees concerning the Plan in terms that reassured Plan participants that the Bishop and Diocese of Providence had ongoing involvement in the Plan.

170. For example, a handout was provided to Plan participants, entitled "RETIREMENT PLAN HIGHLIGHTS," that purported to summarize the Plan as of January 1, 1998 (three years after the split off of the Plan from the Diocesan Plan), and referred to the Bishop's and Diocese's ongoing involvement in the Plan:

> Who administers the Plan?
>
> The Roman Catholic Bishop of Providence has appointed a Retirement Board to administer the Plan. The Board will establish rules and regulations for the administration of the Plan, and will be responsible for resolving any disputes concerning Plan operation.
>
> Who administers the Retirement Fund?
>
> The Diocese has established a Trust Fund with Fleet Investment Services. The Trustee of the Fund will hold, invest, and distribute the money in accordance with the terms and provisions of the Plan and Trust Agreement.

The statement that Plan assets were held in a trust established by the Diocese was false, since in connection with the separation of the two plans in 1995, a new trust was established by SJHSRI, but SJHSRI did not inform Plan participants of the separation, much less that only a portion of the Diocesan Plan assets were transferred to the new trust for the Plan alone.

171. That handout also stated in part:

> Retirement is a time in life we all look forward to with great anticipation, a time when we have the opportunity to do the things we most enjoy. Maybe you have your sights set on traveling across the country? Or perhaps spending time with the grandchildren? But whether your retirement plans involve relaxing on the beach—or on the golf course—one thing's for certain: *You'll need money to achieve them.*
>
> That's why St. Joseph Health Services of Rhode Island offers the Retirement Plan to all eligible employees. **The Retirement Plan is designed to help you meet your retirement savings goals by providing you with a monthly annuity during retirement. And the best part of all is you contribute nothing for this benefit—it's paid for completely by the Hospital.** In this way, your Retirement Plan benefit is an important part of your total retirement income. And when combined with your Social Security benefit and your personal savings, this benefit can provide the financial security you need to follow through on your retirement plans.

* * *

Retirement Payment Options

What are the payment options?

You may choose a Life Annuity option, which provides you a fixed monthly payment throughout your lifetime. Or you may choose one of four Joint and Survivor options (100%, 75%, 66 2/3%, or 50%), which pay a reduced monthly payment throughout your lifetime, and continue payments to your beneficiary after you die.

You may also choose a Ten-Year Guarantee option, which provides at least 120 guaranteed monthly payments (for a total of ten years) to you and your beneficiary.

[Italics in the original and bolded emphasis supplied]

172. A pamphlet provided to Plan participants, entitled "Questions And Answers About The St. Joseph Health Services Retirement Plan," and dated "Effective 7/1/2001", stated *inter alia*:

Q: What forms of payment are available to me?

A: The normal form of payment is a life annuity. **Under this form of payment, you will receive your monthly pension payments for as long as you live.** All pension payments stop when you die.

[Emphasis added]

173. From time to time, SJHSRI provided statements to Plan participants discussing and quantifying their Plan benefits. Thousands of these statements stated *inter alia*:

St. Joseph Health Services of Rhode Island is pleased to give you this statement showing your estimated benefits in the Retirement Plan as of [insert date]. **Your pension benefit is an important part of your future retirement income**, along with Social Security, your 403(b) savings, and your other personal savings. You automatically become a participant in the plan once you have completed 12 months of employment and worked at least 1,000 hours. Some key features of this plan are:

• Simplicity—Participation in the plan is automatic. You do not have to enroll or do anything until you retire.

• Security—Benefits are paid from a secure trust fund.

• **Company Paid—The plan is entirely paid for by St. Joseph Health Services of RI. There is no cost to you.**

* * *

SUMMARY OF PLAN PROVISIONS:

St. Joseph Health Services of Rhode Island Retirement Plan provides you with:

a) **A monthly income payable for life when you retire**, in addition to your Social Security benefits.

b) The right to retire as early as age 55 if you have completed at least 5 years of continuous service.

c) The right to future pension benefits if you leave the Hospital after 5 or more years of continuous service.

d) Death benefits payable to your surviving spouse or beneficiary if you die while still employed after completing 5 years of continuous service.

The Hospital pays the entire cost of the plan. In addition, the Hospital pays into the Social Security System an amount equal to what you pay.

[Emphasis added]

174. Similarly, in September of 2003, SJHSRI provided employees with a handout entitled "Understanding Your St. Joseph Health Services of Rhode Island Pension Statement," which set forth the following as "Pension Basics":

<u>Pension Basics</u>

Simple

- Participation is automatic

Secure

- Assets in trust fund
- **No investment risk to you**

Valuable

- Hospital pays the entire cost
- Non-contributory Defined Benefit (DB) Plan
- Rewards long service employees

[Emphasis supplied]

175. However, the insolvency of the Plan is due in large part to SJHSRI's choosing not to fund the Plan when it was necessary to do so because the Plan did not meet investment targets, or, indeed, incurred substantial investment losses. In other words, SJHSRI in fact placed the "investment risk" on Plan participants, contrary to the representation that they bore "no investment risk," and notwithstanding that, unlike participants in a defined contribution plan who exercise at least some control over their retirement investments, Plan participants were completely powerless to control investment risk in that it was solely SJHSRI, CCCB, or the Retirement Board, who determined how the Plan assets would be invested, without consultation with Plan participants or even advising them of the allocation of Plan assets, investment returns obtained on Plan assets, or the unfunded status of the Plan.

176. Other handouts and similar communications containing the same or substantially equivalent language as that of the handouts quoted in paragraphs 158-175 were provided to Plan participants on other occasions, all as part of the process of hiring and retaining employees.

177. From time to time, SJHSRI provided employee handbooks to its employees. One dated "April, 2004," stated *inter alia*:

Pension Plan

Regular full-time and regular part-time employees are eligible to participate in the SJHSRI pension plan. If an Employee is paid for 1,000 hours or more per retirement plan year he/she will enter the Plan on the first of the calendar month following the first anniversary of the employee's employment. **Pension Plan is fully paid by the Hospital.** Vesting is after 5-years of Continuous Service. To help you estimate your potential benefit at retirement, pension statements are distributed annually.

[Emphasis supplied]

178. Beginning in 2009, SJHSRI also administered a defined contribution plan (a "403(b) Savings Plan"), which gave employees the right to make pre-tax contributions and to control their investments. With that plan SJHSRI provided a handout which answered the question "is there ever a time when benefits can be lost or denied" by stating:

> The value of your account depends on the value of Plan investment. This is why your account must be invested carefully.

With respect to the defined benefit plan, which is the Plan involved in this case, however, SJHSRI never told Plan participants that their benefits could be "lost" or diminished if the Plan assets suffered investment losses. To the contrary, as noted above, SJHSRI affirmatively represented that, under the defined benefit plan, there is "[n]o investment risk to you."

179. The explanation of the 403(b) Savings Plan also stated:

> The Company reserves the right, of course, to amend the Plan or to discontinue contributions to it. No amendment can reduce the amount in your account or eliminate any of the benefit form options offered in the Plan. **If the Company permanently discontinues contributions to the Plan, you will be notified** and you will become 100% vested in your account.
>
> [Emphasis supplied]

No such disclosure was made in connection with the Plan.

180. On January 28, 2011 SJHSRI prepared a PowerPoint presentation to one of the employees' unions, the Federation of Nursing and Health Care Professionals ("FNHCP"), seeking union approval for a plan to freeze SJHSRI's defined benefit plan and substitute a defined contribution plan going forward for all employees belonging to FNHCP. This presentation stated that the proposed freeze was necessary to protect the assets of the Plan. However, management represented in the PowerPoint that the defined benefits earned on the years of service already performed "will not be affected."

181. As noted above, Angell agreed to act on behalf of SJHSRI in dealing directly with Plan participants, and Angell also worked with the Prospect Entities in crafting presentations and dealt directly with employees of the Prospect Entities at New Fatima Hospital informing them of their rights under the Plan.

182. As such, Angell owed both the Plan and Plan participants the duty to exercise reasonable care and the duty to make accurate and not misleading disclosures concerning the Plan.

183. However, Angell never informed Plan participants of the Plan's underfunded status or the fact that SJHSRI was not making necessary contributions. To the contrary, Angell's statements to Plan participants implied and in many cases directly represented that their pension benefits were secure.

184. For example, Angell continued to provide individual Plan participants with statements that set forth specific projected lifetime benefits, which Angell and all of the other Defendants knew could not be relied upon.

185. On April 29 & 30, 2014, shortly before the sale of Fatima Hospital was approved, representatives of Angell, SJHSRI, RWH, and CCCB again participated in

PowerPoint Presentations to SJHSRI employees intended to reassure them that the sale of the hospital to Prospect Medical would not affect their pension benefits. In those presentations, the employees were informed that the terms of agreement for SJHSRI's joint venture with CCCB and Prospect Medical "includes a $14 Million contribution to the Pension Plan to stabilize plan assets," and were shown a sample final benefit statement that again acknowledged that "[y]our pension benefit is an important part of your future retirement income," and reassured them that "[t]he Hospital pays the entire cost of the Plan," with payment options that included annuity payments for life.

186. This was grossly misleading and false on multiple levels.

187. At that time, all Defendants already knew that the $14 million contribution was not even remotely sufficient "to stabilize plan assets."

188. The statement that "the Hospital pays the entire cost of the Plan" was also false and deceptive, on at least two levels. "[T]he entire cost of the Plan" includes funding the Plan, and, therefore, the statement was false because no one was funding the Plan. Moreover, given the timing of the presentation (two months before the closing) and the purpose to reassure employees concerning the effect of the 2014 Asset Sale on their pension benefits, the employees reasonably would have concluded that the "Hospital" referred to was New Fatima Hospital under the ownership and operation of the Prospect Entities. That also was false since all of the Defendants knew that neither New Fatima Hospital nor the Prospect Entities accepted any obligations under the Plan, and that instead the obligations would belong to SJHSRI which no longer would have any operating assets and whose restricted assets and expected income would be grossly insufficient to fund the Plan.

189. Moreover, all Defendants already knew that the Plan, which this PowerPoint presentation referred to as an "important part of [the Plan participants'] future retirement income" was insolvent, and the option to choose annuity payments for life was illusory if not an outright lie, because Plan assets would run out long before most of the Plan participants or their designated beneficiaries would have passed away.

190. Many of SJHSRI's employees were members of another union, the United Nurses & Allied Professionals ("UNAP"), under a collective bargaining agreement that entitled them to pension benefits. In connection with the 2014 Asset Sale, SJHSRI, RWH, CCCB, and the Prospect Entities that were purchasing or guaranteeing the purchase of the assets sought UNAP's agreement to a freeze on the accrual of pension benefits upon the closing of the asset sale. These Defendants offered the $14 million contribution to the Plan as an inducement for UNAP and its members to agree to the freeze on the accrual of pension benefits, and UNAP and its members agreed to the freeze in return for that contribution and in return for the assurance that the $14 million contribution would "stabilize" the Plan.

191. At that time, all Defendants already knew that the $14 million contribution was not even remotely sufficient to stabilize plan assets, and that the Plan assets would run out many years before most of the Plan participants' rights to benefits were satisfied.

192. All Defendants made these misrepresentations and omitted this material information because they knew that such disclosure would create so much negative publicity and outcry that the applications to the Department of Health and the Attorney General for approval of the asset sale without fully funding the Plan would be denied or at the very least would be in serious jeopardy.

193. On August 12, 2014, nearly two months after the Prospect Entities took over ownership and operation of New Fatima Hospital, Defendant Angell sought instructions from the Prospect Entities as to how Angell should respond to Plan participants who were seeking information concerning the solvency of the plan. The Prospect Entities had attempted to structure the 2014 Asset Sale to avoid any obligations under the Plan, and the Asset Purchase Agreement expressly stated that responsibility for the Plan after the asset sale closed would remain with SJHSRI. Thus, Angell was seeking instruction from the Prospect Entities concerning the information to provide to Plan participants, even though the Prospect Entities claimed to have no liability for the Plan.

194. The Prospect Entities instructed Angell not to provide Plan participants with the information they were seeking concerning the solvency of the Plan. Moreover, the Prospect Entities instructed Angell to tell Plan participants that "while we [Angell] can't speak to the future solvency of the plan, we can share that the plan administrators review the annual recommended funding as advised by the plan's actuaries each year. There is also an investment committee that reviews and monitors the plan on an ongoing basis."

195. Both Angell and the Prospect Entities knew that this statement was false and intended to mislead. The Prospect Entities and Angell could very well "speak to the future [in]solvency of the plan," and knew that SJHSRI for years had been disregarding Angell's funding recommendations and making no contributions, and that once the asset sale went through, SJHSRI would have insufficient funds to make the actuarial-recommended contributions even if it wanted to.

196. Angell accepted and followed these instructions.

197. On or about April 13, 2016, nearly two years after the asset sale, Angell worked with SJHSRI, CCCB, and Prospect Chartercare to prepare and make another PowerPoint presentation, this time at New Fatima Hospital, to former-employees of SJHSRI who were now employed at New Fatima Hospital, concerning the Plan and the rights of Plan participants, which again acknowledged that "[y]our pension benefit is an important part of your future retirement income," and again reassured them that "[t]he Hospital pays the entire cost of the Plan," with payment options that included annuity payments for life.

198. These Defendants knew that the "Hospital," which for nearly two years had been owned and operated by the Prospect Entities, claimed it had no obligations whatsoever to Plan participants. Moreover, SJHSRI, RWH and CCCB had already decided to put the Plan into receivership and ask for a severe cut in benefit payments to all Plan participants, and were merely allowing time to pass in order to obscure the connection between the 2014 Asset Sale and the receivership, so that the inevitable firestorm of employee shock and anger and negative publicity that would be generated by the receivership would not be linked to the current operations of New Fatima Hospital and New Roger Williams Hospital.

199. An earlier internal draft of the April 13, 2016 PowerPoint presentation stated that the Plan was a "Church Plan" and, therefore, that the Plan participants' benefits were not protected under ERISA. However, as part of a long history of concealment from the Plan participants, this disclosure was deleted and did not appear in the presentation actually given. Indeed, the Plan participants were never informed that the Plan was purported to be a Church Plan, such that the Plan participants' benefits were not protected under ERISA.

E. FRAUDULENT MISREPRESENTATIONS AND OMISSIONS TO STATE REGULATORS

200. In 2014 Defendants SJHSRI, RWH, CCCB and the Prospect Entities sought and obtained approval from the Rhode Island Department of Health and the Rhode Island Attorney General to convert Fatima Hospital and Rogers Williams Hospital into for-profit operations.

201. On February 14, 2014, pursuant to the conspiracy in which the Diocesan Defendants were participating with all of the other Defendants to relieve Fatima Hospital of any liability under the Plan at the expense of the Plan participants, Bishop Tobin personally wrote to the Health Services Council to lobby in favor of regulatory approval of the for-profit hospital conversion:

> I write on behalf of the proposed partnership between CharterCARE Health Partners and Prospect Medical Holdings. . . .
>
> * * *
>
> The Diocese of Providence is grateful to CharterCARE for all it has done to preserve the healing ministry of SJHSRI/Our Lady of Fatima Hospital, all within very difficult financial circumstances. However, without this transaction, it appears that a consistent Catholic health care presence in the Diocese of Providence would be gravely compromised, **and the financial future for employee-beneficiaries of the pension plan would be at a significant risk. I believe that this partnership will help avoid the catastrophic implications of such a failure**, and at the same time, enhance the quality of care at SJHSRI/Our Lady of Fatima.
>
> [Emphasis added]

202. This letter was sent as part of the conspiracy into which the Diocesan Entities had entered with the other Defendants when they agreed to the 2014 Asset Sale.

203. However, as explained above, rather than believing the 2014 Asset Sale would help avoid pension failure, Bishop Tobin personally, and, through him and other

officials, the Diocesan Defendants, knew that "the proposed partnership between CharterCARE Health Partners and Prospect Medical Holdings" made pension failure much more likely, and, indeed, a virtual certainty, absent unanticipated and extremely improbable investment gains, because it would cut the link between the Plan and an operating hospital, and would transfer assets from SJHSRI that otherwise would be available to help fund the Plan.

204. Thus they knew that the Plan was at much more than a "significant risk." Indeed, as noted above, in the draft letter written to papal authorities in September of 2013, only six months earlier, discussed above, Bishop Tobin had described the pension as "a spiraling and gaping unfunded liability." He removed that reference from the final version of that letter because he was warned that the letter may be "subject to discovery in a civil lawsuit," and substituted "significant" for "spiraling and gaping." Thus, the Diocesan Defendants not only were fully aware of the extent of the unfunded liability, they also took steps to understate and conceal it.

205. Angell acted as CCCB's and SJHSRI's consultant in connection with the application for regulatory approval of the conversion of Fatima Hospital, Roger Williams Hospital, and other health care facilities into for-profit entities.

206. On April 9, 2014, CCCB provided Angell with a document prepared by the Rhode Island Attorney General's office, consisting of questions to be answered in connection with that application, and asked for Angell's assistance in answering the following question:

Please provide:

* * *

b. documentation as to the determination that $14 m will stabilize the plan and a description and any written information of the understanding with employee representatives with respect to the freezing and the funding of the plan;

207. Previously, on December 20, 2013, Angell had provided CCCB and SJHSRI with calculations which demonstrated that if $14,000,000 was contributed to the Plan, and assuming a future rate of return of 7.75%, the Plan would run out of funds in 2034, at a time when it would still have over $99 million in unpayable liabilities to Plan participants.

208. On March 27, 2014, Angell updated its calculations based on a slightly higher value of the Plan assets at the beginning of 2014, which projected that even with the $14,000,000 contribution, the Plan would run out of funds in 2036, at a time when it would still have over $98 million in liabilities to Plan participants. To illustrate the consequences if the 7.75% rate of return proved to be too high, Angell also provided an alternative calculation, in which Angell assumed a lower rate of return of 5.75% rather that 7.75%, under which the Plan would run out of assets six years earlier in 2030, with additional unpayable liabilities to Plan participants.

209. Indeed, if the 5.75% rate of return were utilized, the Plan would have been only 66% funded even in 2014 even with the contribution of $14,000,000.

210. As noted above, moreover, the market discount rate in early 2014 that single employer benefit plans were required to use under ERISA was 4.6%, which if utilized would have produced an even lower funding level. As noted, SJHSRI had claimed that it was as a matter of voluntary policy following ERISA guidelines.

211. On April 10, 2014, however, CCCB and SJHSRI asked Angell to modify that calculation for submission to the Attorney General and the Department of Health.

The requested modification was that Angell utilize only the higher projected rate of return of 7.75%, delete all the calculations post-2014, and "simply show only the stabilization effect [in 2014] of the incoming $14M to the plan with no other information shown."

212. An employee of Angell spoke to the CCCB representative who had requested the modification, and was told that CCCB "wants to show the projection of the funded status after the $14M contribution for 2014," in order to "highlight the 'stabilization' of the Plan."

213. Angell was thereby being asked to present the 2014 funding level in isolation, for purposes of demonstrating Plan stabilization to the Attorney General and the Department of Health, knowing that it would be misleading, because the complete calculation demonstrated that the $14,000,000 contribution would *not* "stabilize" the Plan, since the complete calculation showed that, notwithstanding that contribution, the Plan would run out of money in 2036 with over $98,000,000 in liabilities to Plan participants even at the high assumed rate of return of 7.75%, or in 2030 with the rate of return of 5.75%.

214. Angell agreed to disregard both of its prior calculations and provided SJHSRI, RWH, and CCCB with the requested new calculation to give to the Rhode Island Department of Health and the Rhode Island Attorney General in support of the application for approval of the asset sale. That new calculation purported to show that the immediate effect of the $14 million contribution would be to increase the funding percentage of the Plan to 94.9%, and deleted the calculations which demonstrated that the Plan nevertheless would run out of money in either 2030 or 2036 depending on the estimated rate of return.

215. That calculation also did not disclose that the funding percentage of 94.9% was based on assumed investment returns that SJHSRI, RWH, CCCB, and Angell knew were nearly 70% above market rates of return (*i.e.*, Angell's projected rate of return of 7.75% was over 68% greater than the market rate of 4.6%).

216. In addition, the calculation did not disclose the fact that the use of any funding level percentage as a measure of the Plan's funding progress was contrary to and deviated from the standards of actuarial practice, that according to those standards the funding progress of a pension plan should not be reduced to a funding percentage at a single point in time, or that pension plans should have a strategy in place to attain and maintain a funded status of 100% or greater over a reasonable period of time, not merely at a single point in time.

217. These misrepresentations and omissions concerning the Plan's funding level were made to, and part of the information relied upon by, both the Rhode Island Department of Health and the Rhode Island Attorney General in approving the asset sale.

218. On February 21, 2014, the Department of Health sent a list of questions to counsel for SJHSRI, RWH, and CCCB, and to counsel for the various Prospect Entities. On March 7, 2014, counsel for SJHSRI, RWH, and CCCB and counsel for the various Prospect Entities co-signed and sent the Department of Health a letter enclosing their clients' responses to the Department of Health's question, that repeated the question and responded, as follows:

> c. Please identify to what extent, if any, this purchase price will be used by CharterCARE for community benefit versus paying off debts.

> Response: The use of the sale proceeds as described is [sic] Section (b) above will benefit the community in three ways:
>
> * * *
>
> b. **The use of $14M to strengthen the St. Joseph Pension Plan will be of significant benefit to the community as it will assure that the pensions and retirement of many former employees, who reside in the community, are protected**.
>
> [Emphasis supplied]

219. In fact, all of the Defendants knew this statement was false and misleading, and that the contribution of the $14,000,000 to the Plan would not "assure" that the benefits of the Plan participants were protected, even according to the calculations that Angell shared with all of those other Defendants.

220. On April 8, 2014, CCCB President and Chief Executive Officer Belcher testified at a public hearing held before the Project Review Committee of the Rhode Island Department of Health as part of the approval process. He was asked to address three questions raised by a recent report on SJHSRI by Moody's Investor Services. The third question related to Moody's' concern over the funded status of employee retirement accounts, including the Plan. Mr. Belcher testified as follows:

> MR. BELCHER: . . . But the third part was on the pension fund, and the impact on the pension fund with this -- and I think you know we shared information up-front is that at the time of the closing we'll be putting millions of dollars into the pension fund which will bring it to a level of roughly 91 and a half percent funding which is above the safe level that you need for sort of a quote safe level. So all of this really helps stabilize the pension fund as well.

221. SJHSRI, RWH, and CCCB intentionally misled the state regulators by the statement that a funding level of 91.5% "is above the safe level." As discussed above, it is never proper to use a funding level on a single date to measure the health of a

pension plan, but it especially inappropriate when the plan sponsor is selling all of its operating assets, because the plan sponsor will lack the means to make up the underfunding. In that context, even if the projected rate of return of 7.75% were reasonable (which it was not), and were actually achieved over time, a funding level of 91.5% would practially guarantee pension plan failure, since it would denote insufficient funds to meet plan obligations even if all of the future assumptions upon which the funding level is based perform exactly as assumed, including thirty to forty years of investment returns.

222. On April 11, 2014, CCCB reminded Angell that the Attorney General was also asking Supplemental Question S3-48, as follows:

> S3-48 Will the pension liability remain in place – how much, and what is the plan going forward to fund the liability?

223. On April 15, 2014, SJHSRI, RWH, CCCB, and the Prospect Entities responded to the Attorney General and answered that question as follows:

> Response: The pension liability will remain in place post transaction. Subsequent to the $14 Million contribution to the Plan upon transaction, **future contributions to the Plan will be made based on recommended annual contribution amounts as provided by the Plan's actuarial advisors**. Moving forward, the investment portfolio of the plan will be monitored by the Investment Committee of the Board of Trustees.
>
> [Emphasis supplied]

224. When that statement was made, however, SJHSRI, RWH, and CCCB knew that it was their intention not to make any future contributions, and, therefore, that "future contributions to the Plan" would *not* "be made based on recommended annual contribution amounts as provided by the Plan's actuarial advisors."

225. Indeed, in spite of this representation, in the more than four years since that statement was made, not a single penny has been contributed to the Plan other

than the $14,000,000 contribution which they made to secure regulatory approval for the 2014 Asset Sale, contrary to the recommendations of the Plan's actuarial advisors.

226. The Project Review Committee held a public hearing on May 6, 2014. During the testimony of the Department of Health's expert concerning the Plan, CCCB Chief Financial Officer Michael Conklin interrupted, and testified that the "recommended contributions going forward" to fund the Plan were $600,000 per year, which he assured the Committee would be paid out of SJHSRI's expected $800,000 annual income from outside trusts, and profit sharing paid to CCCB in connection with its 15% share in Prospect Chartercare.

227. Mr. Conklin thereby misrepresented that SJHSRI's expected future income was $800,000, when in fact it was less than $200,000, and suggested that CCCB's profit-sharing in Prospect Chartercare would provide additional funds, when no profit sharing was anticipated for the indefinite future. CCCB has yet to receive any profit sharing whatsoever.

228. Mr. Conklin also misrepresented that the projected annual contribution of $600,000 was an actuarial "recommended contribution," when in fact it was a number made up out of whole cloth by SJHSRI, RWH, and CCCB, and was much below the recommendations of the Plan actuary.

229. Mr. Conklin also did not disclose that SJHSRI, RWH, and CCCB had no intention of making any of those contributions.

230. The Project Review Committee accepted these false assurances, but was aware that even those assurances were based upon assumed investment rates of return, and if the investment returns on Plan assets were lower than anticipated, higher annual contributions would be needed to make up the difference. The Committee

referred to this possibility as the "investment risk" of the Plan, and at the hearing on May 6, 2014 asked CCCB President and Chief Executive Officer Belcher "who's bearing the investment risk going forward?" He replied as follows:

> MR. BELCHER: Heritage Hospitals. It stays with the old CharterCare.
>
> MR. SGOUROS: Heritage Hospitals, and so if the investment returns don't match up to the predictions, who's on the hook?
>
> MR. BELCHER: The old hospitals, the old CharterCARE. We have that responsibility.

As discussed above, SJHSRI, RWH, and CCCB fraudulently misrepresented their intentions, as it was never their intention to support the Plan, and they have made no contributions whatsoever to the Plan.

231. Defendants also chose to conceal the unfunded status of the Plan out of concern that such disclosure would be seized upon by a competitor that was asking that the Department of Health to delay the proposed asset sale. Indeed, at the same public hearing on May 6, 2014, a representative of that competitor strongly objected to the terms of the asset sale proposed by Defendants, and repeated his client's request that the Committee delay acting upon the application until his client's counter-proposal could be fully considered.

232. The Attorney General did not immediately accept the assurances that there would be sufficient income following the asset sale to adequately fund the Plan. Instead, representatives of the Attorney General asked for proof of legal authority for RWH's assets to be used for that purpose.

233. On May 8, 2014 counsel for SJHSRI, RWH, and CCCB provided the Attorney General with a resolution purportedly approved by RWH's Board of Trustees stating, *inter alia*:

> WHEREAS As part of its retained assets, RWMC has $6,666,874 in Board Designated Funds ("the RWMC Board Designated Funds") that may be used for any purpose at the discretion and direction of the RWMC Board of Trustees;
>
> * * *
>
> RESOLVED The RWMC Board of Trustees approves and directs use of the RWMC Board Designated Funds to satisfy the SJHSRI liabilities at close and any potential future funding and expenses relating to the SJHSRI pension plan, and any surplus shall be transferred to the CCHP Foundation.

234. They e-mailed a copy of the resolution to the Attorney General's office (with cc to counsel for the Prospect entities) and stated:

> Finally, attached is the Roger Williams Medical Center (RWMC) Board of Trustees Resolution authorizing the use of the RWMC Board Designated Funds to satisfy the St. Joseph Health Services of Rhode Island (SJHSRI) liabilities at close and any potential future funding and expenses related to the SJHSRI pension plan, and any surplus shall be transferred to the CCHP Foundation.

235. However, SJHSRI, RWH, and CCCB never intended that any part of RWH's "Board Designated Funds" would ever be contributed to the Plan, and, indeed, none have been. They also knew that even $6,666,874 would be insufficient to meaningfully reduce the unfunded liability, such that there was not even a remote chance there would be any surplus left over to transfer to CC Foundation after that liability was paid.

236. Instead of meaning what it says, this resolution evidences SJHSRI, RWH, and CCCB's willingness to tell regulators what they wanted to hear, even if it meant misrepresenting their intended funding sources and manipulating the board of trustees of affiliated companies. In fact, in December 2014, soon after the closing of the asset

sale, the board of trustees of RWH was replaced with individuals who were already planning to put the Plan into Receivership.

237. A crucial fact not disclosed to either the Department of Health or the Attorney General was that *for years prior to the asset sale*, management at CCCB, RWH, and SJHSRI had been searching for a way to abandon the grossly underfunded Plan to the detriment of Plan participants, while at the same time protecting the assets of SJHSRI from the claims of Plan participants.

238. For example, on January 2, 2012, the Chairman of the Investment Committee for CCCB's Board of Trustees informed CCCB's head of Personnel, Darlene Souza, and CCCB's Chief Financial Officer Conklin, that the Board of Trustees and management must consider the option of terminating the Plan and distributing the assets with a *pro rata* reduction in benefits.

239. On December 31, 2012, Ms. Souza emailed Mr. Conklin and CCCB's Chief Executive Officer Belcher, wished them a "Happy New Year," and then advised them of what she called the "potentially good news" that, according to her reading of the Plan documents, they could "terminate the plan without a solvency issue," and:

- deprive 1,798 (out of a total of 2,852) Plan participants of any benefit whatsoever,
- pay benefits to an additional 744 Plan participants of only 88% of what they were due;
- pay full benefits only to the remaining 1,054 Plan participants who had already reached normal retirement age; and
- improve SJHSRI's balance sheet by over $29,000,000 by eliminating its liability for the unfunded portion of the Plan.

240. However, Ms. Souza advised Messrs. Conklin and Belcher that there was a downside to the Plan termination, which was that other hospitals with supposed

Church Plans had attempted to terminate their plans just as she was proposing, but those hospitals had been sued in class actions, and one of those cases had a pending settlement that obligated the hospital to pay a significant amount of the unfunded benefits, notwithstanding its alleged Church Plan status.

241. Accordingly, Ms. Souza warned that if SJHSRI terminated the Plan and distributed reduced benefits, "we are exposed to a class action lawsuit" by the Plan participants who received no benefits, which could expose SJHSRI to "$30-$35m" as damages, which "would potentially erode the $29m fiscal savings" resulting from eliminating SJHSRI's funding liability by termination of the Plan.

242. On June 20, 2013, the CCCB Board discussed the possibility of seeking a "Special Master" for the Plan.

243. In December 2013, the CCCB Board discussed putting the Plan into receivership.

244. Thus, notwithstanding the strategic delay in doing so, the scheme to abandon the Plan was already in the works when SJHSRI, RWC, and CCCB assured the Project Review Committee on April 8, 2014 and May 6, 2014 that the "recommended" annual contributions to the Plan would be made and that SJHSRI, RWH, and CCCB were "on the hook" if the projected returns on investment did not materialize.

245. Instead of representing their genuine intention, these statements were part of the conspiracy by all of the Defendants to obtain approval from the Attorney General and the Department of Health through false assurances, and to also thereby assuage the concerns of the unions, and of the general public (including Plan participants) who attended or followed reports of the hearing.

246. In furtherance of that conspiracy, CCCB President and Chief Executive Officer Belcher and Thomas M. Reardon (president of Prospect Medical East) made a statement which the Providence Journal on May 12, 2014 published as an op-ed, which stated:

> The development and pursuit of innovation in health delivery should not come at the cost of one of the most cherished values in Rhode Island health care - that of local control. We are pleased that our proposal will assure preservation of local governance, as our joint venture board will have equal representation from CharterCare and Prospect with a local board chair, with real veto powers.

247. This statement was materially false and intentionally deceptive, because under the Amended & Restated Limited Liability Company Agreement of Prospect Chartercare, LLC, previously agreed to in form by CCCB and the Prospect Entities, deadlocks between CCCB-appointed directors and Prospect-appointed directors for some of the most significant board-level decisions were to be resolved by allowing the decisions of Prospect-appointed board members to prevail.

248. On the same day that Mr. Belcher's statement appeared in the Providence Journal, CCCB emailed it to all of the employees of CCCB, SJHSRI, and RWH, stating, "[w]e want to share the following op-ed that appeared in today's Providence Journal." The same mailing assured all employees that "Prospect and CharterCARE equally share seats on the new company's eight-member governing board," withholding the critical information that although the number of seats were shared equally, the seats filled by the Prospect Entities had the power to make some of the most significant corporate decisions against the wishes of the directors chosen by CCCB, and certainly without disclosing that the 2014 Asset Sale was merely a step in the scheme to shield

Fatima Hospital from liabilitity on the Plan, and to strip assets from SJHSRI that were needed to satisfy its pension obligations to those same employees.

249. In addition to falsly reassuring the public and their own employees on the issue of local control, SJHSRI, RWH, CCCB, and the Prospect Entities also misled state regulators concerning the degree of local control that CCCB would have after the 2014 Asset Sale.

250. On May 2, 2014, CCCB and the various Prospect Entities involved in the asset sale, through their counsel, responded to the following question of the Rhode Island Attorney General:

> Question: Please describe the governance structure of the new hospital after conversion, including a description of how members of any board of directors, trustees or similar type group will be chosen.

251. Defendants responded in pertinent part as follows:

> Response:
>
> An overview of the governance structure for Prospect CharterCARE, LLC is as follows:
>
> Prospect CharterCARE, LLC will have a Board of Directors.
>
> Prospect CharterCARE, LLC's Board of Directors will have half of its members selected by and through PMH's ownership in Prospect CharterCARE, LLC and the other half of the members will be selected by and through CCHP's ownership Prospect CharterCARE, LLC.
>
> The Board of Directors will be responsible for determining the patient Care, strategic, and financial goals policies and objectives of Prospect CharterCARE, LLC.
>
> * * *
>
> Prospect CharterCARE, LLC's Board of Directors will be structured as follows: (i) eight (8) members; (ii) fifty (50%) percent of its members will be appointed by PMH; and (iii) fifty (50%) percent of its members will be appointed by CCHP. The purpose of the structure is to ensure a strong

> local presence and mission. The Board of Directors will include at least one physician representative.
>
> The Board of Directors will be responsible for determining the patient care, strategic, and financial goals, policies and objectives of Prospect CharterCARE, LLC. **The issues that the Board of Directors will address will require a majority vote of those Directors appointed by PMH, and a majority vote of those Directors appointed by CCHP.**
>
> [Emphasis supplied]

252. The statement that "[t]he issues that the Board of Directors will address will require a majority vote of those Directors appointed by PMH, and a majority vote of those Directors appointed by CCHP" was also materially false, for the same reason that some of the most significant decisions were to be resolved by allowing Prospect-appointed board members' decisions to prevail.

F. MISLEADING THE STATE COURT IN CONNECTION WITH *CY PRES* PROCEEDINGS

253. In November of 2009, SJHSRI, CCCB, and RWH filed a petition with the Rhode Island Superior Court, asking the court to approve certain changes affecting charitable donations pursuant to the statutory and common law doctrine of *cy pres*.

254. The doctrine of *cy pres* is intended to be used in appropriate circumstances to allow charitable donations to be applied to a similar purpose when the original recipient of the donations is no longer able to fulfill that purpose.

255. In the 2009 proceedings, the specific purpose of the *cy pres* petition was to inform the court that the original recipients of the charitable gifts had been reconstituted in connection with formation of CCCB and the affiliation of SJHSRI, Roger Williams Medical Center, RWH, and CCCB; that such entities as reconstituted would continue to apply the charitable gifts in accordance with those intentions; and to obtain court approval therefor.

256. Notably, the *cy pres* petition in 2009 did not involve an original recipient of the charitable gift who was insolvent and sought to transfer assets to a related entity in fraud of creditors. To the contrary, in the 2009 petition, essentially the same entities held the assets as had held them originally and creditors were in no way affected or damaged by approval of these transfers.

257. The Superior Court approved this *cy pres* petition on December 14, 2009.

258. On December 2, 2011, another *cy pres* petition was filed with the Superior Court, to obtain approval for the St. Joseph Health Care Foundation's member to be changed from SJHSRI to CCCB, for St. Joseph Health Care Foundation's name to be changed to Charter Care Health Partners Foundation, and to permit the charitable gifts held by St. Joseph Health Care Foundation to be distributed to SJHSRI to be used by SJHSRI in accordance with the donors' original intentions. As was the case with the previous *cy pres* petition, this petition did not involve the transfer of assets from an insolvent corporation to a related entity in fraud of creditors. Once again, creditors were in no way affected or damaged by approval of these transfers.

259. The court approved this *cy pres* petition on December 13, 2011.

260. On January 13, 2015 another *cy pres* petition (the "2015 *Cy Pres* Petition") was filed with the Superior Court, this time by Defendants SJHSRI, RWH, and CC Foundation as petitioners, concerning the disposition of charitable donations held by SJHSRI and RWH. It referred to the prior *cy pres* petitions that had been previously approved by the Superior Court, as if the 2015 *Cy Pres* Petition was merely more of the same.

261. However, unlike those earlier petitions, the 2015 *Cy Pres* Petition was filed in connection with the winding down, liquidation, and dissolution of SJHSRI and RWH,

and the transfer of approximately $8,200,000 of their assets to CC Foundation, when SJHSRI needed all of its and RWH's funds to contribute to the Plan. That raised significantly different issues, since, as discussed below, nonprofit corporations in the process of liquidation or dissolution must use all of their assets, even restricted assets, to pay their creditors before they can transfer charitable assets to another charity.

262. The Attorney General's Decision on May 16, 2014 approving the sale of Fatima Hospital and Roger Williams Hospital was the genesis of the 2015 *Cy Pres* Petition, because that Decision imposed conditions, which included "(1) the transfer of certain of the charitable assets to the CCHP Foundation and (2) the use of certain of the charitable assets during the Heritage Hospitals' wind down to satisfy the Outstanding Pre and Post Closing Liabilities subject to *cy pres* approval from [the Superior Court]."

263. Those conditions were the result of Defendants SJHSRI, RWH, CCCB, and CC Foundation's representations to the Attorney General that SJHSRI and RWH were in a "multi-year wind-down process," which was "typical in the dissolution of a hospital corporation."

264. Similarly, in the 2015 *Cy Pres* Proceeding, Defendants SJHSRI, RWH, and CC Foundation successfully persuaded the Court to grant their Petition based on the representation that both RWH and SJHSRI were in wind-down, stating that they "anticipated that the Outstanding Pre and Post Closing Liabilities will be paid during the Wind-down period of RWH and SJHSRI over the next approximately three years," and that they "proposed that certain RWH and SJHSRI assets remain with the Heritage Hospitals during their wind-down period to satisfy the Outstanding Pre and Post Closing Liabilities."

265. The resolutions of CCCB as sole member of SJHSRI and RWH also prove that SJHSRI and RWH were in wind-down preparatory to liquidation and dissolution. The resolutions dated as of December 15, 2014 expressly authorized the wind-down and dissolution of SJHSRI and RWH.

266. Having prevailed both in their application to the Attorney General and in the 2015 *Cy Pres* Proceeding based upon representations that both RWH and SJHSRI were in an extended wind-down process preparatory to liquidation and dissolution, Defendants SJHSRI, RWH, CCCB, and CC Foundation are judicially estopped from denying that the $8,200,000 transferred to the CC Foundation was in connection with winding down their affairs and dissolution and subject to the requirements of the Rhode Island Nonprofit Corporations Act applicable to dissolution and liquidation.

267. R.I. Gen. Laws §§ 7-6-50, 7-6-51 & 7-6-61 obligate nonprofit corporations in the process of either voluntary dissolution or court liquidation to pay their creditors first, before any funds can be transferred to other charities under the doctrine of *cy pres* or any other rationale.

268. Section 7-6-50 of the Rhode Island General Laws sets forth the procedure whereby a nonprofit corporation may voluntarily wind up its affairs and dissolve, and requires that notice be given to all creditors and that assets must be distributed in accordance with Section 7-6-51.

269. Section 7-6-51 of the Rhode Island General Laws sets forth the specific order of application and distribution of assets applicable to a nonprofit corporation in voluntary dissolution, and provides that all of the nonprofit corporation's assets must be used to pay creditors, even assets subject to charitable restrictions, and even assets

conveyed to the nonprofit corporation under the express condition that they be re-conveyed in the event of dissolution:

> § 7-6-51. Distribution of assets.
>
> The assets of a corporation in the process of dissolution shall be applied and distributed as follows:
>
> (1) **All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made for their payment and discharge**;
>
> (2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with the requirements;
>
> (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter or as otherwise provided in its articles of incorporation or bylaws;
>
> (4) Any other assets shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;
>
> (5) Any remaining assets may be distributed to any persons, societies, organizations, or domestic or foreign corporations, whether for profit or nonprofit, that may be specified in a plan of distribution adopted as provided in this chapter.
>
> [Emphasis supplied]

270. The same order of payment applies to court-approved liquidations of nonprofit corporations. Section 7-6-61 of the Rhode Island General Laws sets forth the

"procedure in liquidation of corporation by court," and sub-section (c) essentially mirrors the above-quoted provisions of R.I. Gen. Laws §7-6-50, as follows:

> (c) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition of the assets shall be applied and distributed as follows:
>
> (1) All costs and expenses of the court proceedings and **all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made for that**;
>
> (2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs because of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with the requirements;
>
> (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court directs. . . .
>
> [Emphasis supplied]

271. Thus, whether pursuant to voluntary dissolution or court approved liquidation, the assets of a non-profit corporation must be applied first to satisfy the corporation's liabilities and obligations, and, until that is accomplished and creditors are paid in full, no assets can be transferred to anyone else, by *cy pres* petition or otherwise.

272. However, Defendants SJHSRI, RWH, and CC Foundation intentionally frustrated enforcement of the statutory payment priorities by repeatedly misrepresenting, first to the Attorney General, and then to the court in the 2015 *Cy Pres*

Proceeding, that all of their liabilities, including their pension liabilities, would be "satisfied" and "paid" from other assets.

273. Notably, nowhere in their application to the Attorney General for approval of the 2014 Asset Sale, or in their 2015 *Cy Pres* Petition, did Defendants SJHSRI, RWH, or CCCB say that these other assets would only "partially satisfy," or "partially pay" the pension obligation, or employ similar language that would imply or even hint to the Attorney General or the court that the funds would be insufficient to fully satisfy those liabilities.

274. In reliance on these misrepresentations and material omissions, the court approved the 2015 *Cy Pres* Petition on April 20, 2015.

275. On the basis of the court's order, SJHSRI, RWH, and CCCB in or about May and June 2015 transferred $8,227,916.77 to CC Foundation.

276. From those funds, CC Foundation subsequently transferred $8,199,266.47 to the RI Foundation as follows:

May 28, 2015:	$5,752,655.00
May 29, 2015:	$1,974,537.44
June 3, 2015:	$272,074.03
Nov. 17, 2015:	$200,000.00

277. Rhode Island Foundation thereafter remitted $864,846.00 to CC Foundation as follows:

Dec. 15, 2017:	$174,515.00
Dec. 15, 2016:	$341,945.00
Dec. 15, 2017:	$348,386.00

278. As of December 31, 2017, CC Foundation's fund balance at Rhode Island Foundation was $8,760,556.01, including investment returns.

279. The April 20, 2015 Order also applied to income and capital distributions from third party trusts that SJHSRI and RWH expected to receive in the future, and required that certain of those payments should go to CC Foundation.

280. The 2015 Cy Pres Proceeding is still pending. As noted above, concurrently with the filing of this Complaint, Plaintiffs have or will file their motion to intervene in that proceeding, and ask the Superior Court to vacate the April 20, 2015 order, and order that the funds transferred pursuant to the Petition be held pending the outcome of the proceeding in this Court or in the Federal Action.

G. FACTS CONCERNING SUCCESSOR LIABILITY

281. The Prospect Entities that purchased the assets of SJHSRI all knew that SJHSRI had a defined benefit pension plan.

282. Prior to the asset sale, these Prospect Entities intended to operate New Fatima Hospital at the same location, under the same name of Fatima Hospital.

283. Prior to the asset sale, these Prospect Entities intended to operate New Roger Williams Hospital at the same location, under the same name of Roger Williams Hospital.

284. These Prospect Entities also intended to identify themselves to employees, patients, and the public under the fictitious name which SJHSRI, RWH, and CCCB had operated Old Fatima Hospital and Old Roger Williams Hospital.

285. At 10:17 a.m. on June 20, 2014, which was the day that the 2014 Asset Sale closed, CharterCARE Health Partners filed articles of amendment with the Rhode

Island Secretary of State, changing its name from CharterCARE Health Partners to Chartercare Community Board.

286. One minute later, at 10:18 a.m. on June 20, 2014, Prospect Chartercare filed a "fictitious business name statement" with the Rhode Island Secretary of State, stating that it would operate under the "fictitious name" of CharterCARE Health Partners, which was the same name under which SJHSRI, RWH, and CCCB had operated Old Fatima Hospital and Old Roger Williams Hospital from 2009 right up to the day of the closing of the 2014 Asset Sale.

287. The Prospect Entities also knew and intended that all of SJHSRI's and RWH's employees would be transferred to the employment of the Prospect Entities as a continuation of their employment, with their starting wages and salaries based on their final wages and salaries while employed by SJHSRI and RWH, and with seniority based on their original date of hire by SJHSRI and RWH.

288. Indeed, the Asset Purchase Agreement that was the basis for the asset sale and the approvals under the Hospital Conversions Act obligated the Prospect Entities to do just that:

> 8.2 Employment Terms Employee Benefits.
>
> The Transferred Employees shall be hired by the Company or a Company Subsidiary (as applicable) at base salaries and wages equal to their base salaries and wages as of the Closing Date. The Transferred Employees shall retain their seniority status for purposes of benefits, and their salaries or wages as of the Closing Date shall provide the base for future salary adjustments, if any, thereof. Each Transferred Employee will be treated by the Company or the Company Subsidiary (as applicable) as employed as of such individual's initial hire date at the Facilities for all purposes regarding seniority, except as otherwise required by Law or collective bargaining agreement assumed by the Company. Subject to the right to terminate any Company employee benefit plan and/or restrictions

> provided under any collective bargaining agreement assumed by the Company, the Company and the Company Subsidiaries as of the
>
> Closing Date will provide benefits to Transferred Employees at benefit levels substantially comparable to those provided under the Seller Plans immediately prior to Closing, including but not limited to qualified retirement plans (except that the Company and the Company Subsidiaries shall not be required to offer a defined benefit plan), vacation, sick leave, holidays, health insurance, life insurance, 401(k) plan (in lieu of similar plans that were offered by Sellers based on their tax exempt status but are not available to the Company) and policies of the Company and the Company Subsidiaries for which each Transferred Employee is eligible.

Asset Purchase Agreement § 8.2(a).

289. As noted above, after the 2014 Asset Sale, the personnel department for the Prospect Entities continued to advise Plan participants concerning the Plan. Indeed, immediately after the 2014 Asset Sale, the same person who was in charge of that department for SJHSRI, RWH, and CCCB prior to the asset sale took over those duties for the Prospect Entities operating under the fictitious name CharterCARE Health Partners.

290. Thus, to employees it appeared that nothing had changed with respect to their benefits, or administration of the Plan.

291. The Asset Purchase Agreement actually defined the Prospect Entities as "successor employer[s]," at least for tax purposes:

> The Parties acknowledge and agree that each of the Company and each Company Subsidiary constitutes a "successor employer" within the meaning of Code Section 3121(a)(1) and Code Section 3306(a)(1)and the regulations thereunder for federal and state income tax and employment tax purposes.

Asset Purchase Agreement § 8.2(c).

292. After the Department of Health and Attorney General approved the asset sale, but without informing these state agencies, the Prospect Entities demanded that employees sign an arbitration agreement prepared by the Prospect Entities.

293. That mandatory "agreement" purported to obligate employees to arbitrate all claims arising out of their employment, arguably including even claims arising out of their previous employment by SJHSRI, and to waive their rights to proceed by class action.

294. The Prospect Entities informed these employees that they would not be hired if they did not sign the arbitration agreement.

295. The Prospect Entities were not permitted to compel employees to sign the arbitration agreement as a condition of their being hired, because those entities already had the contractual (and regulatory) obligation to hire the former employees of SJHSRI, RWH, and CCCB on essentially the same terms as they were previously employed, which did not include an agreement to arbitrate or any waiver of rights.

296. However, the Prospect Entities did not inform these employees that the Prospect Entities could not make their agreement a condition of their employment.

297. The Prospect Entities also did not inform these employees of other facts the employees needed to know in order to evaluate the requirement that they sign the arbitration agreement, including but not limited to that the employees had pre-existing and valid claims arising out of the fact that the Plan was severely underfunded, that the Prospect Entities and the other Defendants were involved in fraudulent schemes to strip assets from SJHSRI that were needed to fund the Plan, that the employees already had the existing right to assert their claims in a class action, and that arbitration of those claims would deprive them of a meaningful remedy.

298. The terms of the arbitration agreement itself were grossly overreaching and the rights it gave the employees were largely illusory. For example, the agreement obligated Plan participants and "the Company" to arbitrate all claims between them, whether asserted by the employee against the company, or *vice versa*. However, "the Company" was defined to include the following entities and individuals:

> Prospect CharterCare LLC and/or any of its related entities, holding companies, parents, subsidiaries, divisions, officers, shareholders, directors, employees, agents, vendors, contractors, doctors, patients, insurers, predecessors, successors, and assigns.

Accordingly, it purported to obligate an employee to arbitrate claims the employee had against any other employees, any doctors, any patients, and any hospital vendors or contractors. It also purported to entitle the employee to demand that all of those entities and individuals arbitrate any claims they may have against the employee, such as malpractice claims asserted by a patient against a nurse or other health care provider. Of course, those entities and individuals would not be bound by the arbitration agreement, so in practice it would be one-sided, and only apply to the employee's claims *against* those individuals and entities.

299. The demand that employees sign the arbitration agreement was itself fraudulent, and part of the fraud and the fraudulent conspiracy between and among all Defendants.

300. The Asset Purchase Agreement attempted to carve-out successor liability for the Plan, but such carve-outs are unenforceable if the requirements for successor liability are satisfied.

301. Thus, the Prospect Entities have successor liability for the Plan under state common law of successor liability.

302. Notwithstanding the formal documentation creating a limited liability company controlled primarily by Prospect East, the Prospect Entities have repeatedly referred to the relationship between CCCB and Prospect Medical Holdings and held themselves out as joint venturers, in statements to employees, to the public, to the regulatory agencies that approved the 2014 Asset Sale, and to the court that approved the 2015 *Cy Pres* Petition. For example:

a. Prospect Medical Holdings's website states: "Through a joint venture agreement, Prospect became the majority owner of CharterCARE but shares governance of the hospitals equally with CharterCARE Community Board."

b. The cy pres petition filed on January 13, 2015 by CC Foundation, RWMC, and SJHSRI states: "On June 20, 2014, a closing on the transaction approved by the Rhode Island Department of Health ('DOH') and Rhode Island Attorney General's Office ('AG') occurred in which certain of the assets of CCCB, RWH and SJHSRI were transferred to the newly formed for-profit joint venture between CCCB and Prospect Medical Holdings, Inc. ('PMH') known as Prospect CharterCARE, LLC, and its affiliates (the 'Joint Venture')."

c. A June 17, 2014 letter from the U.S. Department of Health and Human Services to SJHSRI states: "As described in your letter [of May 15], CharterCARE Health Partners (CCHP), the parent of SJHSRI, will enter into a joint venture arrangement with Prospect Medical Holdings, Inc. (PMH), pursuant to a September 24, 2013 arrangement that has now been approved by the Rhode Island Attorney General and the Rhode Island Department of Health. As part of this arrangement, all operating assets held by members of the CCHP system, including SJHSRI, will be transferred to limited liability companies owned by Prospect CharterCARE, LLC, the joint venture entity. . . ."

d. CCCB's 2013 Form 990 states: "THE BOARD OF DIRECTORS BELIEVES THAT SUFFICIENT SAFEGUARDS EXIST TO ENSURE THAT THEIR EXEMPT STATUS IS PROTECTED BOTH THROUGH THE APPOINTMENT PROVISIONS IN THE PROSPECT CHARTERCARE LLC JOINT VENTURE AGREEMENT AND CONDITIONS IMPOSED BY THE RHODE ISLAND ATTORNEY GENERAL AND THE RHODE ISLAND COMMISSIONER OF HEALTH."

e. The March 18, 2013 Letter of Intent executed by both CCCB and Prospect Medical Holdings states: "The purpose of this letter of intent (the 'Letter') is to set forth certain non-binding understandings and certain binding agreements by and between CharterCARE Health Partners ('Seller') and Prospect

Medical Holdings, Inc. ('Prospect') with respect to the creation of a joint venture ('Newco') whereby Seller will sell certain assets and operations of Seller to Newco, as more particularly described in the attached term sheet (the 'Term Sheet'), incorporated herein by reference."

f. A May 20, 2014 email blast from CCCB's president Kenneth Belcher states: "Today Dr. Michael Fine, Director of the Department of Health, followed Friday's decision by the Attorney General and approved our Hospital Conversion[s] Act and Change in Effective Control applications. This was the final regulatory hurdle toward the successful completion of our joint venture agreement with Prospect Medical Holdings. . . . We are now prepared to plan the final closing which involves executing the financial and legal documents to make the joint venture agreement official."

303. Insofar as Prospect Chartercare was a joint venture, Prospect East, Prospect Medical Holdings, and CCCB share the liabilities of Prospect Chartercare, and have successor liability for the Plan under state common law of successor liability and joint ventures.

H. FURTHER STRIPPING OF SJHSRI'S ASSETS THROUGH THE ASSET PURCHASE ON OR ABOUT JUNE 20, 2014

304. On September 24, 2012, Prospect Medical Holdings sent a Letter of Intent to the executive leadership of CCHP proposing a transaction whereby Prospect Medical Holdings and CCHP would establish a new "joint venture" entity ("Newco") to acquire the assets of SJHSRI, RWMC, and other entities owned by CCCB. That Letter of Intent included the provisos that in return for the asset sale, "[CCCB] shall receive a 15% membership interest in Newco," and that "the pension liability of SJHSRI as reflected on [CCCB]'s financial records will not be assumed by Newco."

305. On March 13, 2013, the executive committee of CCCB's board of trustees convened to discuss letters of intent that had been solicited from potential suitors. Mr. Belcher informed the committee that one of the non-Prospect suitors (LHP Hospital

Group) "wanted to fully fund the pension plan." In other words, the Plan participants would be protected.

306. On March 14, 2013, SJHSRI's board of trustees met. Mr. Belcher informed the board that CCCB's board had "made the recommendation to move forward with Prospect."

307. On March 18, 2013, CCCB and Prospect Medical Holdings executed a new "LETTER OF INTENT" stating, inter alia:

> The purpose of this letter of intent (the "Letter") is to set forth certain non-binding understandings and certain binding agreements by and between CharterCARE Health Partners ("Seller") and Prospect Medical Holdings, Inc. ("Prospect") with respect to the creation of a joint venture ("Newco") whereby Seller will sell certain assets and operations of Seller to Newco, as more particularly described in the attached term sheet (the "Term Sheet"), incorporated herein by reference.
>
> * * *
>
> 1. Form of Transaction
>
> a) CharterCare Health Partners, a Rhode Island 501(c)(3) corporation ("Seller"), operates two acute care hospitals and certain related health care businesses in Providence, Rhode Island and surrounding communities (the "Business").
>
> b) A newly established limited liability company ("Newco"), to be owned 85% by Prospect Medical Holdings, Inc. ("Prospect"), and 15% by Seller, will purchase substantially all of the assets, liabilities and operations of the Business, other than the Excluded Assets and Excluded Liabilities (the "Purchased Assets") from the Seller.
>
> * * *
>
> 3. Purchase Price
>
> a) In exchange for the Purchased Assets, Newco shall
>
> i) Pay to Seller $45 million in cash at closing, $31 million of which will be applied to extinguish Seller's existing long-term debt and other

obligations, and $14 million of which will be earmarked to strengthen the cash position of St. Joseph Health Services of Rhode Island's ("SJHSRI") pension plan;

ii) Issue to Seller 15% of the equity of Newco;

* * *

308. As Exhibit A to the March 18, 2013 Letter of Intent, CCHP and Prospect Medical Holdings attached a "CharterCARE Health Partners Balance Sheet" dated "1/31/13" which stated that "Pension Liability" in the amount of "89,536,553" dollars was "Retained by CharterCARE".

309. At the time of the sale, CCCB was in essence a holding company whose assets consisted primarily of its ownership interests in SJHSRI and RWH, and whose only business was managing the operations of Fatima Hospital and Roger Williams Hospital for its subsidiaries SJHSRI and RWH. In addition, CCCB owned all of the shares of certain other medical providers. However, the closing on or about June 20, 2014 did not transfer ownership in CCCB or any of its subsidiaries, or any cash CCCB had retained, and provided for the transfer of the assets of, rather than the ownership interests in, the companies.

310. As noted above, SJHSRI and RWH, not CCCB, owned the real estate and all of the assets used in operating Old Fatima Hospital and Old Roger Williams Hospital.

311. Thus, virtually all of the personal property and real property transferred on or about June 20, 2014 was owned both historically and immediately prior to the sale by CCCB's various subsidiaries, primarily SJHSRI and RWH, and not by CCCB, such that virtually all of the actual consideration provided by the sellers came from CCCB's subsidiaries, including SJHSRI and RWH, not from CCCB.

312. The consideration that Prospect East provided at the closing on or about June 20, 2014 included 15% of the shares of Prospect Chartercare.

313. The fair market value of that 15% at the time of the asset sale was at least $6,640,000 according to Prospect Chartercare's own audited financials.

314. The Asset Purchase Agreement had provided that CCCB would receive those shares, as follows:

> Sellers have designated CCHP (the "Seller Member") to be the holder of the units representing the Company's limited liability company memberships on behalf of all Sellers to be issued as partial consideration in respect of the sale by Sellers of the Purchased Assets.

315. The consideration that the Prospect Entities provided in return for the assets included the undertaking to provide long term working capital of $50,000,000, which conferred a benefit on CCCB as 15% shareholder in the additional amount of $9,479,000, according to Prospect Chartercare's own audited financials.

316. Thus, notwithstanding that CCCB provided virtually none of the consideration for the transaction, the parties consummated the transaction so that CCCB obtained all of the 15% interest in Prospect Chartercare, totalling a fair market value of at least $15,919,000. SJHSRI and RWH received none of that interest, and, therefore, that valuable asset was not available to satisfy claims of Plan participants, the Plan, or any other creditors of SJHSRI.

317. The due diligence performed by the Prospect Entities in connection with the Asset Purchase Agreement included requiring that CCCB provide consolidated financials reporting on the assets and liabilities of CCCB and its various subsidiaries, and buyers in fact received such financials prior to entering into the Asset Purchase Agreement.

318. Accordingly, based upon those financials, at the time the Asset Purchase Agreement was entered into, all of the defendants knew that the combined estimated liabilities of the sellers, including CCCB, SJHSRI, and RWH, exceeded their combined estimated assets by approximately $30,000,000, and that the estimated liabilities of SJHSRI alone exceeded SJHSRI's assets by over $70,000,000, all as a result of the unfunded liabilities of the Plan, such that CCCB, SJHSRI, and RWH were already insolvent when they entered into the Asset Purchase Agrement and when the 2014 Asset Sale took place.

319. This knowledge was actually adverted to in the Asset Purchase Agreement, in which the Prospect Entities as *Buyers* made the unqualified representations and warranties that they "were not now insolvent and will not be rendered insolvent by any of the Transactions," whereas SJHSRI, RWH, and CCCB as *Sellers* made only the following *qualified* representation and warranty:

> 4.29 Solvency. **After exclusion of Liabilities associated with the retirement plan due to their uncertainty of amount**: (i) Sellers are not now insolvent and will not be rendered insolvent by any of the Transactions; (ii) Sellers have, and immediately after giving effect to the Transactions, will have, assets (both tangible and intangible) with a fair saleable value in excess of the amount required to pay their Liabilities as they come due; and (iii) Sellers have adequate capital for the conduct of their business and discharge of their debts. . . .
>
> [Emphasis supplied]

320. By this express exclusion of pension liabilities from the sellers' warranty of solvency, all of the parties to the transaction signaled their actual knowledge that these liabilities rendered SJHSRI, RWH, and CCCB insolvent, such that the transfer of the assets of SJHSRI, RWH, and CCCB constituted a fraudulent transfer.

321. All of the Defendants sought and intended that the transactions would strip SJHSRI of all of its real estate and operating assets, and transfer value to CCCB in the amount of at least $15,919,000 that (they schemed) would be shielded from SJHSRI's liability to the Plan participants, including the rights of the Plan participants to have all of these assets applied to reduce the deficit in the Plan.

CAUSES OF ACTION

COUNT I (FRAUDULENT TRANSFER, § 6-16-4(A)(1))

322. Plaintiffs repeat and reallege paragraphs 1-321.

323. At all relevant times Plaintiffs had "claims" against and were "creditors" of Defendants SJHSRI, RWH, and CCCB, as defined by R.I. Gen. Laws §§ 6-16-1(3) & (4), based upon said Defendants' obligations imposed by state law.

324. Fraudulent transfers were made in connection with various transactions, including but not limited to the sale of all of the assets of SJHSRI, RWH, CCCB, and related entities to various Prospect Entities in connection with the 2014 Asset Sale, and to CC Foundation and by CC Foundation to RI Foundation in connection with the 2015 *Cy Pres* Proceeding, with the actual intent of SJHSRI, CCCB, and RWH as transferors to hinder, delay, or defraud their creditors, within the meaning of R.I. Gen. Laws § 6-16-4(a)(1).

325. Those transfers are subject to avoidance to the extent necessary to satisfy Plaintiffs' claims, in accordance with R.I. Gen. Laws § 6-16-7(a)(1).

326. Plaintiffs are entitled to attachment against all of the assets of SJHSRI, RWH, CCCB, and related entities that were transferred to various Prospect Entities, and all of the assets transferred to CC Foundation and by CC Foundation to RI Foundation

pursuant to the 2015 *Cy Pres* Proceeding, in accordance with R.I. Gen. Laws § 6-16-7(a)(2).

327. Prospect Medical Holdings, Prospect East, and Prospect Chartercare are persons for whose benefit the transfers were made within the meaning of R.I. Gen. Laws § 6-16-8(b)(1), for reasons including but not limited to the fact that Prospect Medical Holdings had a direct and beneficial interest in the 2014 Asset Sale, Prospect East owned 85% of Prospect Chartercare, and Prospect Chartercare owned 100% of Prospect Chartercare St. Joseph and Prospect Chartercare Roger Williams, and, therefore, they are also liable for the value of the assets transferred.

328. Plaintiffs are entitled to an injunction against further disposition of the property by any of the Prospect Entities, CC Foundation, or the RI Foundation, in accordance with R.I. Gen. Laws § 6-16-7(a)(3)(i).

329. Plaintiffs are entitled to any other relief the circumstances may require, in accordance with R.I. Gen. Laws § 6-16-7(a)(3)(iii).

330. Upon entry of judgment on their claims, Plaintiffs are entitled to levy execution on these assets and the proceeds of these assets, in accordance with R.I. Gen. Laws § 6-16-7(b).

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, demand a judgment avoiding the transfers, together with a judgment of money damages against Defendants SJHSRI, RWH, CCCB, Prospect Medical Holdings, Prospect East, Prospect Chartercare, Prospect Chartercare St. Joseph, Prospect Chartercare Roger Williams, and CC Foundation, jointly and severally, plus interest and costs, and order Defendant

RI Foundation to turn over to Plaintiffs all of the funds it received from CC Foundation, and any proceeds thereof, and such other and further relief as may be just.

COUNT II (FRAUDULENT TRANSFER, §§ 6-16-4(A)(2) AND/OR 6-16-5(A))

331. Plaintiffs repeat and reallege paragraphs 1-321.

332. At times when Plaintiffs had "claims" against and were "creditors" of Defendants SJHSRI, RWH, and CCCB, as defined by R.I. Gen. Laws §§ 6-16-1(3) & (4), fraudulent transfers were made within the meaning of R.I. Gen. Laws §§ 6-16-4(a)(2) and/or 6-16-5(a) in connection with various transactions, including but not limited to the sale of all of the assets of SJHSRI, RWH, CCCB, and related entities to various Prospect Entities in connection with the 2014 Asset Sale, and in connection with the 2015 Cy Pres Proceeding:

a. within the meaning of R.I. Gen. Laws § 6-16-4(a)(2), inasmuch as transfers were made without receiving a reasonably equivalent value in exchange for the transfers, and the debtor(s) were engaged or were about to engage in a business or a transaction for which the remaining assets of the debtor(s) were unreasonably small in relation to the business or transaction, or the debtor(s) intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due; and/or:

b. within the meaning of R.I. Gen. Laws § 6-16-5(a), inasmuch as the debtor(s) made the transfer without receiving a reasonably equivalent value in exchange for the transfer and the debtor(s) was insolvent at that time or the debtor(s) became insolvent as a result of the transfer.

333. Those transfers are subject to avoidance to the extent necessary to satisfy Plaintiffs' claims, in accordance with R.I. Gen. Laws §§ 6-16-7(a)(2) and/or 6-16-5(a).

334. Plaintiffs are entitled to attachment against all of the assets of Defendants SJHSRI, RWH, CCCB, and related entities that were transferred to various Prospect Entities, and all of the assets transferred pursuant to the 2015 *Cy Pres* Proceeding, in accordance with R.I. Gen. Laws § 6-16-7(a)(2).

335. Defendant Prospect Medical Holdings, Prospect East, and Prospect Chartercare are persons for whose benefit the transfers were made within the meaning of R.I. Gen. Laws § 6-16-8(b)(1), for reasons including but not limited to the fact that Prospect Medical Holdings had a direct and beneficial interest in the 2014 Asset Sale, Prospect East owned 85% of Prospect Chartercare, and Prospect Chartercare owned 100% of Prospect Chartercare St. Joseph and Prospect Chartercare Roger Williams, and, therefore, they are also liable for the value of the assets transferred.

336. Plaintiffs are entitled to an injunction against further disposition of the property by any of the Prospect Entities, CC Foundation, or the RI Foundation, in accordance with R.I. Gen. Laws § 6-16-7(a)(3)(i).

337. Plaintiffs are entitled to any other relief the circumstances may require, in accordance with R.I. Gen. Laws § 6-16-7(a)(3)(iii).

338. Upon entry of judgment on their claims, Plaintiffs are entitled to levy execution on these assets and the proceeds of these assets, in accordance with R.I. Gen. Laws § 6-16-7(b).

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, demand a judgment avoiding the transfers, together with a judgment of money damages against Defendants SJHSRI, RWH, CCCB, Prospect Medical Holdings, Prospect East, Prospect Chartercare, Prospect Chartercare St. Joseph, Prospect Chartercare Roger Williams, and CC Foundation, jointly and severally, plus interest, costs, and order Defendant RI Foundation to turn over to Plaintiffs all of the funds it received from CC Foundation, and any proceeds thereof, and such other and further relief as may be just.

COUNT III (FRAUD THROUGH INTENTIONAL MISREPRESENTATIONS AND OMISSIONS)

339. Plaintiffs repeat and reallege paragraphs 1-321.

340. Defendants SJHSRI, RWH, CCCB, Angell, Prospect Chartercare, Diocesan Defendants, Prospect East, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams, and each of them, made intentional misrepresentations to Plaintiffs and intentionally omitted providing material information under circumstances where said Defendants had a duty to speak.

341. Plaintiffs reasonably relied upon said Defendants' misrepresentations and omissions.

342. Plaintiffs suffered damages thereby.

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, demand a judgment of money damages against Defendants SJHSRI, RWH, CCCB, Angell, Prospect Chartercare, Diocesan Defendants, Prospect East, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams, jointly and severally, plus interest, costs, punitive damages, and such other and further relief as may be just.

COUNT IV (FRAUDULENT SCHEME)

343. Plaintiffs repeat and reallege paragraphs 1-321.

344. Defendants SJHSRI, RWH, CCCB, CC Foundation, Angell, Prospect Chartercare, Diocesan Defendants, Prospect East, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams, and each of them, intentionally defrauded Plaintiffs.

345. Plaintiffs relied upon Defendants' acts, practices, and courses of business that operated as a fraud upon Plaintiffs.

346. Plaintiffs were defrauded thereby.

347. Plaintiffs suffered damages thereby.

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, demand a judgment of money damages against Defendants SJHSRI, RWH, CCCB, CC Foundation, Angell, Prospect Chartercare, Diocesan Defendants, Prospect East, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams, jointly and severally, plus interest, costs, punitive damages, and such other and further relief as may be just.

COUNT V (CONSPIRACY)

348. Plaintiffs repeat and reallege paragraphs 1-321.

349. Defendants SJHSRI, RWH, CCCB, CC Foundation, Angell, Prospect Chartercare, Diocesan Defendants, Prospect East, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams participated in a conspiracy to injure the Plaintiffs, which involved the combination of two or more persons to commit an unlawful act or to perform a lawful act for an unlawful purpose.

350. As a result of this conspiracy, Plaintiffs were damaged.

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, demand a judgment of money damages against all Defendants SJHSRI, RWH, CCCB, CC Foundation, Angell, Prospect Chartercare, Diocesan Defendants, Prospect East, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare

Roger Williams, jointly and severally, plus interest, costs, punitive damages, and such other and further relief as may be just.

COUNT VI (ACTUARIAL MALPRACTICE)

351. Plaintiffs repeat and reallege paragraphs 1-321.

352. Defendant Angell undertook, for a good and valuable consideration, to provide actuarial and administrative services to the Plan which included communicating directly with Plan participants concerning the Plan and the interests of Plan participants concerning the Plan.

353. At all times mentioned herein, Defendant Angell had a duty to Plaintiffs to conform to the standard of care exercised by the average actuary and provider of administrative services to pension plan participants holding itself out as a specialist in pension plans.

354. Nevertheless, Defendant Angell breached its duty in that it negligently provided actuarial and administrative services to the Plan and negligently communicated directly with Plan participants concerning the Plan and the interests of Plan participants concerning the Plan.

355. As a direct and proximate result of the negligence of Defendant Angell, Plaintiffs suffered damages.

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, and demand judgment against Defendant Angell for damages, plus interest and costs, and such other and further relief as may be just.

COUNT VII (BREACH OF CONTRACT)

356. Plaintiffs repeat and reallege paragraphs 1-321.

357. Plaintiffs and Defendant SJHSRI entered into one or more express or implied contracts under which Defendant SJHSRI undertook to fully fund and pay all pension benefits to which Plaintiffs were entitled, which Defendant SJHSRI breached, causing damages to Plaintiffs.

358. The contracts between Plaintiffs and Defendant SJHSRI each contained an implied covenant of good faith and fair dealing.

359. Defendant SJHSRI also breached this covenant, causing damages to Plaintiffs.

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, and demand judgment against Defendant SJHSRI for damages, plus interest and costs.

COUNT VIII (ALTER EGO)

360. Plaintiffs repeat and reallege paragraphs 1-321.

361. There is a unity of interest and ownership among Defendants SJHSRI, RWH, CCCB, CC Foundation, Prospect Chartercare, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams (the "Alter Ego Goup"), such that the separate personalities of the entities and their members do not exist.

362. Observance of the corporate form would sanction a fraud, promote injustice, or result in inequity.

363. Each of Defendants in the Alter Ego Group are directly liable to Plaintiffs on one or more claims asserted herein, and the other Defendants in the Alter Ego

Group are also liable therefore as the alter egos for the Defendants directly liable to Plaintiffs.

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, demand a judgment of money damages against Defendants SJHSRI, RWH, CCCB, CC Foundation, Prospect Chartercare, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams, jointly and severally, plus interest, costs, punitive damages, and such other and further relief as may be just.

COUNT IX (DE FACTO MERGER)

364. Plaintiffs repeat and reallege paragraphs 1-321.

365. There is a continuity of ownership among Defendants SJHSRI, RWH, CCCB, Prospect Chartercare, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams (the "De Facto Merger Group").

366. Defendants SJHSRI, RWH, and CCCB have ceased ordinary business and dissolved and/or have become in essence empty shells.

367. Defendants Prospect Chartercare, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams assumed liabilities ordinarily necessary for the uninterrupted continuation of the business of SJHSRI, RWH, and CCCB.

368. There is a continuity of management, personnel, physical location, assets, and general business operation among the De Facto Merger Group.

369. Each of Defendants in the De facto Merger Group are directly liable to Plaintiffs on one or more claims asserted herein, and the other Defendants in the De Facto Merger Group are also liable therefore.

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, demand a judgment of money damages against Defendants SJHSRI, RWH, CCCB, Prospect Chartercare, Prospect East, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams, jointly and severally, plus interest, costs, punitive damages, and such other and further relief as may be just.

COUNT X (JOINT VENTURE)

370. Plaintiffs repeat and reallege paragraphs 1-321.

371. There existed a joint venture between Defendants CCCB, Prospect East, and Prospect Medical Holdings (the "Joint Venturers").

372. Each of Joint Venturers is directly liable to Plaintiffs on one or more claims asserted herein in which the Joint Venturer acted in furtherance of the joint venture, and the other Joint Venturers are also liable therefore.

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, and demand a judgment of money damages against Defendants CCCB, Prospect East and Prospect Medical Holdings, jointly and severally, plus interest, costs, punitive damages, and such other and further relief as may be just.

COUNT XI (SUCCESSOR LIABILITY)

373. Plaintiffs repeat and reallege paragraphs 1-321.

374. Both in connection with the 2014 Asset Sale and the transfer of approximately $8,200,000 to CC Foundation in connection with the 2015 *Cy Pres* Petition, there was a transfer of corporate assets for less than adequate consideration,

the new companies continued the business of the transferors; both the transferors and the transferees had at least one common officer or director who was instrumental in the transfer; and the transfers rendered the transferors incapable of paying their creditors because the transferors dissolved either in fact or by law.

375. Defendants SJHSRI, RWH, and CCCB are liable to Plaintiffs on one or more of the claims asserted herein, for which Defendants CC Foundation, Prospect Chartercare, Prospect East, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams are liable to Plaintiff as successors of Defendants SJHSRI, RWH, and CCCB.

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, demand a judgment of money damages against Defendants CC Foundation, Prospect Chartercare, Prospect East, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams, jointly and severally, plus interest, costs, punitive damages, and such other and further relief as may be just.

COUNT XII (CIVIL LIABILITY UNDER R.I. GEN. LAWS § 9-1-2 FOR VIOLATIONS OF THE RHODE ISLAND HOSPITAL CONVERSIONS ACT)

376. Plaintiffs repeat and reallege paragraphs 1-321.

377. Defendants SJHSRI, RWH, CCCB, CC Foundation, Angell, Prospect Chartercare, Diocesan Defendants, Prospect East, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams, knowingly violated or failed to comply with one or more provision of R.I. Gen. Laws § 23-17.14-1 *et seq.* or willingly or knowingly gave false or incorrect information.

378. Said Defendants' conduct constituted crimes or offenses under R.I. Gen. Laws § 23-17.14-30, causing injuries for which Defendants have civil liability under R.I. Gen. Laws § 9-1-2.

379. Plaintiffs have been damaged as a result.

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, demand a judgment of money damages against Defendants SJHSRI, RWH, CCCB, CC Foundation, Angell, Prospect Chartercare, Diocesan Defendants, Prospect East, Prospect Medical Holdings, Prospect Chartercare St. Joseph, and Prospect Chartercare Roger Williams, jointly and severally, plus interest, costs, punitive damages, and such other and further relief as may be just.

COUNT XIII (LIQUIDATION PURSUANT TO R.I. GEN. LAWS §§ 7-6-60 & -61)

380. Plaintiffs repeat and reallege paragraphs 1-321.

381. Defendants SJHSRI, RWH, and CCCB are Rhode Island nonprofit corporations.

382. Each of them has admitted in writing that the claims of Plaintiffs are due and owing, and these corporations are insolvent.

383. Each of them should be liquidated and their assets shall be applied and distributed to pay Plaintiffs' claims pursuant to R.I. Gen. Laws §§ 7-6-51 & 7-6-61(c)(1).

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, demand a judgment of money damages against Defendants SJHSRI, RWH, and CCCB, jointly and severally, plus interest, costs, punitive damages, and such other and further relief as may be just.

COUNT XIV (BREACH OF FIDUCIARY DUTY)

384. Plaintiffs repeat and reallege paragraphs 1-321.

385. Defendants SJHSRI, CCCB, Angell, and the Diocesan Defendants all owed Plaintiffs fiduciary duties.

386. Defendants SJHSRI, CCCB, Angell, and the Diocesan Defendants all breached their fiduciary duties to Plaintiffs, causing damages.

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, demand a judgment of money damages against Defendants SJHSRI, CCCB, Angell, and the Diocesan Defendants, jointly and severally, plus interest, costs, punitive damages, and such other and further relief as may be just.

COUNT XV (AIDING AND ABETTING BREACHES OF FIDUCIARY DUTY)

387. Plaintiffs repeat and reallege paragraphs 1-321.

388. Defendants RWH, CC Foundation, Prospect Chartercare, Prospect Chartercare St. Joseph, Prospect East, and Prospect Medical Holdings knowingly aided, abetted, and participated in, breaches of fiduciary duty by Defendants SJHSRI, CCCB, Angell, and the Diocesan Defendants, and Defendants SJHSRI, CCCB, Angell, and the Diocesan Defendants knowingly aided, abetted, and participated in, breaches of fiduciary duty by each other, causing damages.

WHEREFORE, Plaintiffs request that the Court certify this action as a class action pursuant to Super. R. Civ. P. 23 and, for themselves and the Class, demand a judgment of money damages against Defendants SJHSRI, RWH, CCCB, CC Foundation, Angell, Diocesan Defendants, Prospect Chartercare, Prospect Chartercare

St. Joseph, Prospect East, and Prospect Medical Holdings, jointly and severally, plus interest, costs, punitive damages, and such other and further relief as may be just.

COUNT XVI (DECLARATORY JUDGMENT, LIABILITY AND TURN OVER OF FUNDS)

389. Plaintiffs repeat and reallege paragraphs 1-321.

390. There exists an actual and legal controversy between Plaintiffs and Defendants SJHSRI, RWH CCCB, CC Foundation, Angell, Diocesan Defendants, RI Foundation, Prospect Chartercare, Prospect Chartercare St. Joseph, Prospect East, and Prospect Medical Holdings, in which Plaintiffs have an interest, concerning the causes of action asserted herein in at paragraphs 322-388.

391. That controversy is ripe for determination, even if there are future contingencies that may determine the amount of Plaintiffs' damages.

WHEREFORE Plaintiffs demand a declaratory judgment declaring that Defendants SJHSRI, RWH, CCCB, CC Foundation, Angell, Diocesan Defendants, Prospect Chartercare, Prospect Chartercare St. Joseph, Prospect East, and Prospect Medical Holdings, jointly and severally, are liable to Plaintiffs on the causes of action set forth against them in paragraphs 322-388 herein, and ordering Defendant RI Foundation to turn over to Plaintiffs all of the funds it received from CC Foundation, even if the exact quantum of Plaintiffs' damages cannot yet be determined due to these future contingencies.

JURY DEMAND

Plaintiffs demand a trial by jury on the aforementioned Counts. Plaintiffs are separately serving and filing a written demand therefor in accordance with Super. R. Civ. P. 38(b).

Plaintiffs
By their Attorneys,

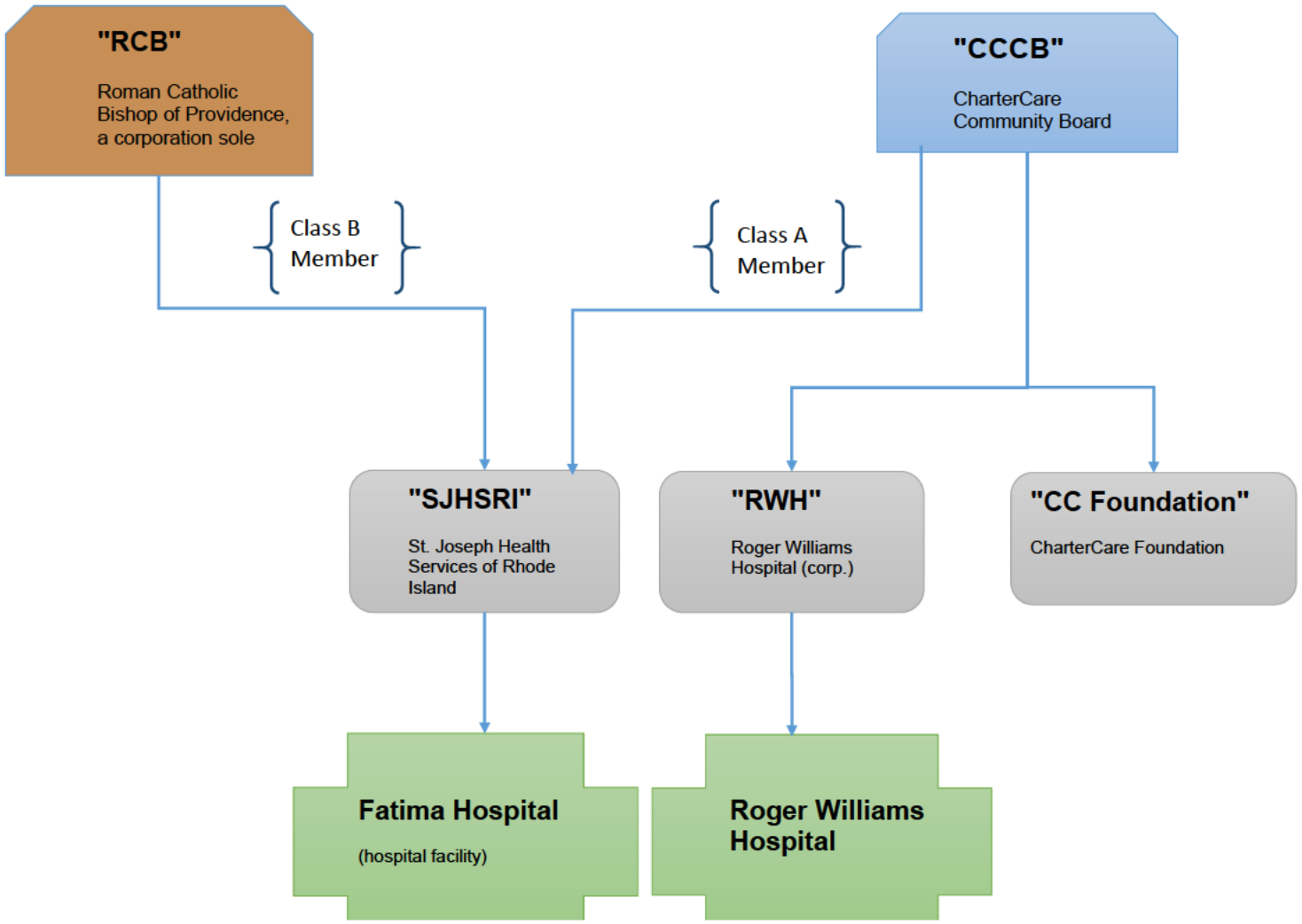
/s/ Max Wistow

Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

Dated: June 18, 2018

Tab 1

Pre- 2014 Asset Sale



Post- 2014 Asset Sale

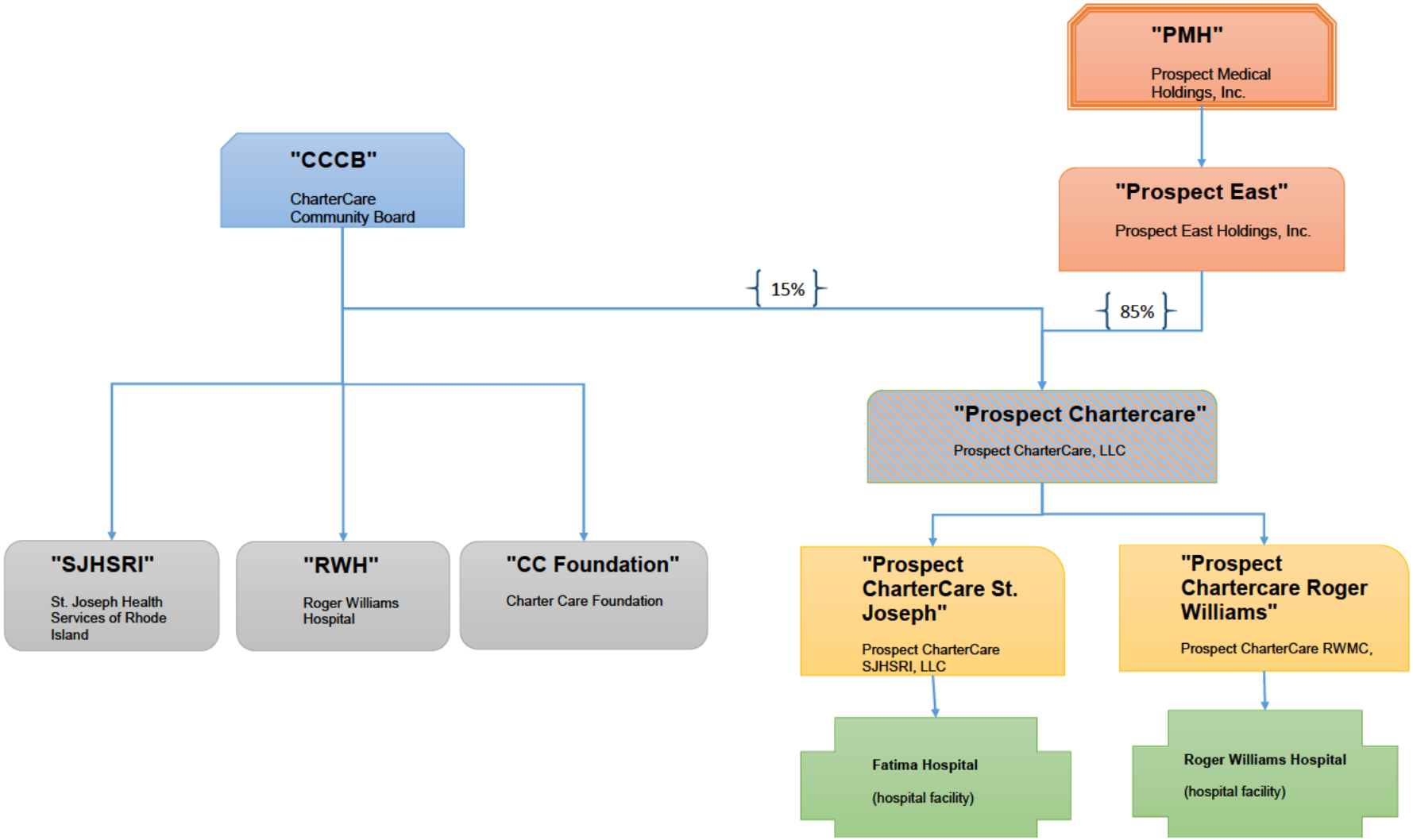


Exhibit 8

STATE OF RHODE ISLAND
KENT, 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

PROPOSED INTERVENORS' MOTION FOR LEAVE TO INTERVENE

The Proposed Intervenors' hereby move for leave to intervene in this proceeding and file the attached proposed pleading, for the reasons presented in their accompanying memorandum of law.

Presented by
Stephen Del Sesto, as Permanent Receiver for the St. Joseph's Health Services of Rhode Island Retirement Plan, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque,

By their Counsel,

/s/ Max Wistow
Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com
sps@wistbar.com
bledsham@wistbar.com

Dated: June 18, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on the 18th day of June, 2018, I filed and served the foregoing document through the electronic filing system on the following users of record:

Genevieve Martin, Esq.
Kathryn D. Enright, Esq.
Office of the Attorney General
150 South Main Street
Providence, RI 02903

Patricia K. Rocha, Esq.
Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345

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

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

/s/ Max Wistow

STATE OF RHODE ISLAND
KENT, 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

MEMORANDUM IN SUPPORT OF PROPOSED INTERVENORS' MOTION FOR LEAVE TO INTERVENE

Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

June 18, 2018

TABLE OF CONTENTS

Stephen Del Sesto, in his capacity as Permanent Receiver ("the Receiver") and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan"), Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque (collectively "Proposed Intervenors"), submit this memorandum in support of their motion for leave to intervene in the captioned case ("this Proceeding"), pursuant to Rule 24 of the Superior Court Rules of Civil Procedure.

Pursuant to Rule 24(c), Proposed Intervenors attached to their motion their proposed Response, Counter Petition, and Third Party Petition.

THE PROPOSED INTERVENORS

Proposed Intervenor Attorney Stephen DelSesto was appointed Permanent Receiver of the Plan by the Court in the case captioned *St. Joseph Health Services of Rhode Island, Inc. (Petitioner), v. St. Joseph Health Services of Rhode Island Retirement Plan (Respondent)*, C.A. No: PC-2017-3856 ("the Receivership Proceeding").

In the Receivership Proceeding, SJHSRI alleged that the Plan was insolvent, and required an immediate benefit reduction of 40% applicable to all Plan participants. With the authorization of the Court, the Receiver retained the firm of Wistow, Sheehan & Loveley ("Special Counsel") "to investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan (or to assume responsibility for such plan in the future)," and, if warranted, to bring suit.

The Receiver files this motion to intervene in this Proceeding to enable Special Counsel to pursue claims that such investigation has revealed. The Receiver claims an interest in the funds that are the subject of this Proceeding.

Proposed Intervenors Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque are participants in the Plan. They seek to intervene because they also claim an interest in the funds that are the subject of this Proceeding.

THE GENESIS AND TRAVEL OF THE CASE

This Proceeding was the product of an asset sale that closed on June 20, 2014 (the "2014 Asset Sale"), concerning primarily the ownership and assets of two hospitals, Our Lady of Fatima Hospital ("Fatima Hospital") and Roger Williams Medical Center ("Roger Williams Hospital") (collectively referred to as the "Heritage Hospitals"). The primary[1] sellers were St. Joseph Health Services of Rhode Island ("SJHSRI") and Roger Williams Hospital ("RWH"), who are Petitioners in this proceeding. CharterCare Community Board ("CCCB") was also a named seller, but CCCB provided virtually no assets since it functioned primarily as a holding company and to manage the operations of SJHSRI and RWH.

The purchasers were a newly formed for-profit limited liability company, Prospect CharterCare, LLC ("Prospect Chartercare"), in which CCCB was given a 15% interest, and a number of entities affiliated with Prospect Chartercare (Prospect Chartercare and

[1] The sellers in the 2014 Asset Sale also included certain subsidiaries of SJHSRI and RWC, but their assets were much less substantial and are not relevant at this time.

its affiliated entities are herein collectively referred to as the "Prospect Entities"). After the sale, Fatima Hospital and Roger Williams Hospital were owned, operated, and managed by the Prospect Entities.

The participants to the 2014 Asset Sale, consisting primarily of SJHSRI, RWH, CCCB, and the Prospect Entities, were required to obtain approvals from the Rhode Island Attorney General (the "AG") and the Rhode Island Department of Health ("DOH") under the Hospital Conversions Act, R.I. Gen. Laws § 23-17.14-1 et seq. See R.I. Gen. Laws § 23-17.14-5(a) ("A conversion[2] shall require review and approval from the department of attorney general and from the department of health in accordance with the provisions of this chapter…"). The parties were required to submit their proposed disposition of the assets and expected future income of SJHSRI and RWH, for approval by the Attorney General.

In his Decision approving the 2014 Asset Sale, the AG characterized the situation as follows:

> 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

[2] See R.I. Gen. Laws § 23-17.14-5(a) ("'Conversion' means any transfer by a person or persons of an ownership or membership interest or authority in a hospital, or the assets of a hospital, whether by purchase, merger, consolidation, lease, gift, joint venture, sale, or other disposition which results in a change of ownership or control or possession of twenty percent (20%) or greater of the members or voting rights or interests of the hospital or of the assets of the hospital or pursuant to which, by virtue of the transfer, a person, together with all persons affiliated with the person, holds or owns, in the aggregate, twenty percent (20%) or greater of the membership or voting rights or interests of the hospital or of the assets of the hospital, or the removal, addition or substitution of a partner which results in a new partner gaining or acquiring a controlling interest in the hospital, or any change in membership which results in a new person gaining or acquiring a controlling vote in the hospital;").

> 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 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 theunrestricted 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 unrestrictedearnings 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.

AG Decision (May 16, 2014) at 24-25 (emphasis supplied), attached hereto at Tab 1.

The 2015 Cy Pres Petition was filed by SJHSRI, RWH, and CharterCare Health Partners Foundation (subsequently renamed CharterCare Foundation but referred to herein as “CCHP Foundation”) on January 13, 2015. CCHP Foundation had previously had its own assets and acted as the charitable foundation for Fatima Hospital, but all of its assets had been expended by the time the 2015 *Cy Pres* Petition was filed. Now, in the 2015 *Cy Pres* Petition, Petitioners sought the Court’s approval for transferring approximately $8,200,000 from SJHSRI and RWH to re-capitalize CCHP Foundation, and for SJHSRI and RWH retaining other assets to pay liabilities.

Although CCCB was not a named petitioner in the 2015 *Cy Pres* Petition, it participated indirectly in that it controlled SJHSRI and RWH, and was the sole member of CCHP Foundation.

The 2015 *Cy Pres* Petition stated that it was brought because the Rhode Island Attorney General's approval of the asset sale had conditions. As characterized by Petitioners in the 2015 *Cy Pres* Petition, the AG's decision:

> approved the concept of (1) the transfer of certain of the charitable assets to the CCHP Foundation and (2) the use of certain of the charitable assets during the Heritage Hospitals' wind down to satisfy the Outstanding Pre and Post Closing Liabilities subject to cy pres approval from this Court. It also required the filing of this Petition to address such disposition of the charitable assets post closing.

Petition ¶ 14.

Cy Pres Petitioners in fact sought "cy pres approval from this Court" as required by the AG, but, as discussed below, neglected to inform the Court that because of its unfunded obligations under the Plan, SJHSRI was insolvent and that all of the remaining assets of SJHSRI, RWH, and CCCB were needed to reduce (but were grossly insufficient to satisfy) those unfunded obligations.

They also failed to disclose that the transfer of assets from an insolvent SJHSRI to a foundation (CCHP Foundation) that was controlled by SJHSRI's parent company, out of reach of SJHSRI's creditors such as the Plan participants, was wrongful for many reasons, including but not limited to that it violated 1) the fraudulent transfer statute, and 2) the statutory priorities for the disposition of the assets of a nonprofit corporation in liquidation or voluntary dissolution that are set forth in the Rhode Island Nonprofit Corporation Act.

On April 20, 2015 (the "April 20, 2015 Order"), the Court granted the Petition, with certain conditions, and approximately $8,200,000 was transferred by SJHSRI and RWH to CCHP Foundation, who in turn deposited most of it with the Rhode Island

Foundation ("RI Foundation") to invest for them, with CCHP Foundation retaining the right to demand that such funds be returned upon request. As of December 31, 2017, CCHP Foundation's fund balance at Rhode Island Foundation was $8,760,556.01. CCHP Foundation continues to receive and transfer to RI Foundation income and capital distributions from third party trusts pursuant to the April 20, 2015 Order.

RELATED PROCEEDINGS

This motion to intervene is being filed at the same time as Proposed Intervenors are filing two complaints (the "Related Proceedings"), which assert many claims against many different parties, including claims against CCHP Foundation for the $8,200,000 transferred pursuant to the April 20, 2015 Order.

One of the complaints is being filed in the United States District Court for the District of Rhode Island ("Federal Action"), and include one or more ERISA claims over which the federal courts may have exclusive jurisdiction and state law claims over which the plaintiffs ask the court to exercise supplemental jurisdiction. The other complaint is being filed in the Rhode Island Superior Court ("State Action"), and asserts merely state law claims. These complaints are attached as Exhibits 1 & 2 to the Proposed Intervenors' proposed Response, Counter Petition, and Third Party Petition, that is served herewith.

The State Action is being filed as a protective measure, to ensure that such claims are asserted on a timely basis, in the event that the court in the Federal Action declines to exercise its supplemental jurisdiction over these state law claims. The plaintiffs in the State Action will ask that those proceedings be stayed, at least until the

Federal Court rules on the issue of whether it will exercise supplemental jurisdiction over the state law claims.

If granted leave to intervene in this proceeding, the Proposed Intervenors intend to request that the April 20, 2015 Order be vacated and Counter Respondent CCHP Foundation and Third Party Respondent RI Foundation be ordered to hold the funds that were transferred pursuant to the April 20, 2015 Order, any proceeds thereof, and any subsequent payments received from third party trusts or anyone else pursuant to the April 20, 2015 Order, pending resolution of the Related Proceedings and further order of the Court.

Proposed Intervenors seek this relief from the Court for three reasons: 1) this Proceeding remains open and pending in the Superior Court ; 2) the Proposed Intervenors seek an order vacating or at least staying the Court's April 20, 2015 Order; and 3) the Proposed Intervenors contend that the Court was misled into granting the Petition. The Proposed Intervenors anticipate that based on principles of comity and deference, the courts in the Related Proceedings may be reluctant to adjudicate the rights to the property that is the subject of this Proceeding without this Court having first had the opportunity to address the issues raised by the Proposed Intervenors in a case still open and pending before the Court. Proposed Intervenors also assume that the defendants in the Related Proceedings may improperly contend that the April 20, 2015 Order or other events in this Proceeding should be given preclusive effect in the Related Proceedings.

PRIOR CY PRES PETITIONS

In November of 2009, SJHSRI, CCCB, and RWH filed a petition with the Rhode Island Superior Court, asking the court to approve certain changes affecting charitable donations pursuant to the statutory and common law doctrine of *cy pres*. The specific purpose of the *cy pres* petition was to inform the court that the original recipients of the charitable gifts had been reconstituted in connection with formation of CCCB and the affiliation of SJHSRI, RWMC, RWH, and CCCB; that such entities as reconstituted would continue to apply the charitable gifts in accordance with those intentions; and to obtain court approval therefor.

Notably, the *cy pres* petition in 2009 did not involve an original recipient of the charitable gift who was insolvent and sought to transfer assets to a related entity to the detriment and in fraud of creditors. To the contrary, in the 2009 petition, essentially the same entities held the assets as had held them originally and creditors were in no way affected or damaged by approval of these transfers.

On December 2, 2011, another *cy pres* petition was filed with the Superior Court, to obtain approval for the St. Joseph Health Care Foundation's member to be changed from SJHSRI to CCCB, for St. Joseph Health Care Foundation's name to be changed to Charter Care Health Partners Foundation, and to permit the charitable gifts held by St. Joseph Health Care Foundation to be distributed to SJHSRI to be used by SJHSRI in accordance with the donors' original intentions. As was the case with the previous *cy pres* petition, this petition did not involve the transfer of assets from an insolvent corporation to a related entity in fraud of creditors. Once again, creditors were in no way affected or damaged by approval of these transfers.

In the 2015 *Cy Pres* Petition, the *Cy Pres* Petitioners referred to these prior proceedings implying that this Proceeding involved the same issues. They failed to note the crucial distinction that those transfers in 2009 and 2011 were not at the expense of creditors.

ARGUMENT

I. Summary of the Argument

The Proposed Intervenors are entitled to intervention as of right, because they claim a direct interest that is "not frivolous on its face" in the funds that are the subject of the 2015 *Cy Pres* Proceeding. The application for intervention is timely, because the Receiver and the Plan participants have acted promptly in investigating and asserting their claim after the unfunded and insolvent status of the Plan was first publically disclosed in August of 2017. Although the interests of the Plan participants and the Plan were known to the *Cy Pres* Petitioners when the 2015 *Cy Pres* Petition was filed, the Cy Pres Petitioners chose not to give notice to the Plan participants, or to secure independent representation for the Plan with full disclosure of all of the relevant facts, including the unfunded status of the Plan.

This Proceeding clearly has impaired and impeded the Proposed Intervenors' ability to protect their interests by enabling SJHSRI and RWH to transfer assets. Just as clearly, the existing parties have not adequately protected the interests of the Proposed Intervenors. Although SJHSRI was the sponsor and administrator of the Plan, and as a result SJHSRI had fiduciary duties to the Plan and the Plan participants, SJHSRI's own interests conflicted with the interests of the Plan and the Plan

participants, such that SJHSRI and the other Petitioners RWH and CCCB who are related entities could not and did not adequately represent the interests of the Plan or the Plan participants.

Proposed Intervenors make the following specific assertions and arguments:

- The 2015 Cy Pres Petition concealed the unfunded status of the Plan and misrepresented that SJHSRI, RWMC, and CCCB had sufficient assets to fund the Plan;
- The Plan Participants and the Plan should have been joined for at least three reasons:
    - they were necessary parties under Super. R. Civ. P. 19;
    - the Rhode Island Nonprofit Corporation Act required that all creditors receive notice before any assets were transferred; and
    - SJHSRI owed the Plan participants the fiduciary duty to give them notice and an accurate account of the unfunded status of the Plan, and to secure independent representation of the Plan, due to SJHSRI's flagrant conflict of interest;
- Proposed Intervenors have stated a claim for the relief they seek;
- the *Cy Pres* Petitioners did not adequately represent the interests of the Plan participants or the Plan;
- the motion to intervene is timely;
- the *Cy Pres* Petitioners will not be unduly prejudiced if the motion to intervene is granted;
- the Plan participants and the Plan will be prejudiced if intervention is not allowed;
- Intervention will not unduly interfere with the orderly processes of the Court; and
- Proposed Intervenors are also entitled to intervene under the standards for permissive intervention.

II. The Standard for Intervention

A. As of Right

Intervention of right is controlled by Super. R. Civ. P. 24(a)(2):

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action:
>
> * * *
>
> (2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The determination of whether intervention is as of right is based upon a "four-factor test" as follows:

> "Under Rule 24(a)(2), an applicant will be granted intervention as of right if [(1)] the applicant files a timely application * * *, [(2)] the applicant claims an interest relating to the property or transaction which is the subject matter of the action, [(3)] the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, *and* [(4)] the applicant's interest is not adequately represented by current parties to the action * * *"

Hines Road, LLC v. Hall, 113 A.3d 924, 928 (R.I. 2013) (quoting *Tonetti Enterprises, LLC v. Mendon Road Leasing Corp.*, 943 A.2d 1063, 1072–73 (R.I.2008) (italicized in *Hines Road, LLC v. Hall*). Because Rhode Island precedent applying this test is sparse, the Court may look to the federal courts for guidance. *Retirement Board of Employees' Retirement System of City of Providence v. Corrente*, 174 A.3d 1221, 1230 (R.I. 2017) ("Because 'Rhode Island precedent on this point is sparse,' this Court 'may

properly look to the federal courts for guidance.' ") (quoting *Tonetti Enterprises*, *supra*, 943 A.2d at 1073) (applying Rule 24(a)(1)).

The rule dealing with intervention as of right is to be liberally construed, and any doubts are to be resolved in favor of the applicant:

> In keeping with the policy of [the rule] to promote judicial economy, the rule dealing with intervention as a matter of right should be liberally construed, and any doubts are to be resolved in favor of the applicant; when evaluating whether the requirements for intervention of right are met, a court normally construes the governing rule broadly in favor of proposed intervenors since a liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.

25 Federal Procedure, Lawyers Edition § 59:298 (June 2018 update) (footnotes omitted).

Moreover, "[t]he applicants' well pleaded allegations must be accepted as true for purposes of considering a motion to intervene, with no determination made as to the merits of the issues in dispute." *Herman v. New York Metro Area Postal Union*, 1998 WL 214787 *1 (S.D.N.Y. 1998) (citation omitted). Thus:

> except for allegations frivolous on their face, an application to intervene cannot be resolved by reference to the ultimate merits of the claims which the intervenor wishes to assert following intervention, but rather turns on whether the applicant has demonstrated that its application is timely, that it has an interest in the subject of the action, that disposition of the action might as a practical matter impair its interest, and that representation by existing parties would not adequately protect that interest.

Brennan v. N.Y.C. Bd. of Educ., 260 F.3d 123, 129 (2d Cir. 2001) (quoting *Oneida Indian Nation v. New York*, 732 F.2d 261, 265 (2d Cir. 1984)).

Timeliness of intervention is to be judged by two criteria: (1) the length of time during which the proposed intervenor has known about his interest in the suit without acting and (2) the harm or prejudice that results to the rights of other parties by delay. *Marteg Corp. v. Zoning Bd. of Review of City of Warwick*, 425 A.2d 1240, 1242 (R.I. 1981). A party's failure to provide the intervenor with a required notice of the suit may justify intervention. *See Toti v. Carpenter*, No. CIV.A. PC99-1373, 2004 WL 877636, at *2 (R.I. Super. Apr. 8, 2004) ("The Plaintiff, therefore, was required to give DHS notice as to any lawsuit or settlement. Accordingly, DHS will not be precluded from intervening in this matter.").

Failure to provide requisite notice may justify intervention even after a settlement has been reached. *Id.* (citing *Atlantic Mutual Ins. Co. v. Northwest Airlines, Inc.*, 24 F.3d 958, 960 (7th Cir. 1994)). As noted by the Seventh Circuit in *Atlantic Mutual*:

> Settlement is not conclusive if a third party possessing an interest in the property or transaction which is the subject of the action has been excluded from the negotiations. Intervention permits such an entity to prevent the original litigants from bargaining away its interests. If they beat the intervenor to the punch, the court may annul the settlement in order to give all interested persons adequate opportunity to participate in the negotiations and proceedings.

Atlantic Mutual Ins. Co. v. Northwest Airlines, Inc ., *supra*, 24 F.3d at 960. Indeed, intervention in a *cy pres* proceeding has been permitted even after judgment[3] has entered, and notwithstanding that the proposed intervenor was fully aware of the proceeding prior thereto, upon proof that the intervenor had a legally protectable interest

[3] Notably this proceeding has not culminated in a judgment. Instead, *Cy Pres* Petitioners merely sought and obtained an order granting their Petition. The order includes numerous future reporting requirements, and the case remains open.

in the property that had not been adequately represented by other parties, and would be prejudiced if intervention was denied. *See In re Lease Oil Antitrust Litigation*, 570 F.3d 244, 252 (5th Cir. 2009) (reversing trial court's refusal to allow State of Texas to intervene and assert claims to funds that had been awarded to a third party under the doctrine of *cy pres*) ("The lack of real prejudice to existing parties from intervention, and the significant prejudice to Texas if intervention is not allowed, overcome the fact of the delay…").

B. Permissive Intervention

Although Proposed Intervenors claim they are entitled to intervention as or right, they request that the Court consider their motion as seeking permissive intervention if the Court concludes otherwise.

Permissive intervention is provided for in Super. R. Civ. P. 24(b)(2), which states in pertinent part:

> (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action:
>
> > (1) When a statute of this state confers a conditional right to intervene; or
> >
> > (2) When an applicant's claim or defense and the main action have a question of law or fact in common.

The rule on permissive intervention does not require a showing of any particular interest, or even that the applicant would have been a proper party with a right to relief if joined in the original proceeding:

> The rule does not specify any particular interest that will suffice for permissive intervention and, as the Supreme Court has said, it "plainly

> dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation." Indeed, it appears that a permissive intervenor does not even have to be a person who would have been a proper party at the beginning of the suit, since of the two tests for permissive joinder of parties, a common question of law or fact and some right to relief arising from the same transaction, only the first is stated as a limitation on intervention.

Wright & Miller, et al., 7C Fed. Prac. & Proc. Civ. § 1911 (3d ed.) (quoting *SEC v. U.S. Realty & Improvement Co.*, 1940, 60 S.Ct. 1044, 1055, 310 U.S. 434, 459, 84 L.Ed. 1293). "The rule requires only that the intervenor's claim or defense share a common question of law or fact with the main action." Wright & Miller, *supra*, 7C Fed. Prac. & Proc. Civ. § 1911.

III. The Proposed Intervenors have Standing

The Receiver has standing because he has been appointed Receiver of the Plan "and of all the estate, assets, effects, property, and business of Respondent of every name, kind, nature and description, with all the powers conferred upon the Receiver by the Rhode Island General Laws, by this order, or otherwise, and with all powers incidental to the Receiver's said Office." Order Appointing Permanent Receiver entered on October 27, 2017 ("Order Appointing Receiver").

Indeed, the Court gave the Receiver express authority to intervene in pending lawsuits to protect the interests of the Plan. He is expressly authorized:

> to collect and receive the debts, property and other assets and effects of said Respondent, with full power to prosecute, defend, adjust and compromise all claims and suits of, by, against or on behalf of said Respondent and to appear, **intervene or become a party in all suits, actions or proceedings relating to said estate, assets, effects and property as may in the judgment of the Receiver be necessary or**

> **desirable for the protection, maintenance and preservation of the assets of said Respondent.**

Order Appointing Receiver ¶ 5 (emphasis added). Thus, the Receiver has standing to intervene in this Proceeding to assert the Plan's direct claim in the funds that were the subject of the 2015 Cy Pres proceeding.

He also has standing to intervene to assert the Plan's claim that SJHSRI breached its fiduciary duty as Plan Administrator to the Plan in filing the 2015 *Cy Pres* Petition, which was contrary to the interests of the Plan, and by failing to secure independent representation of the Plan's interests.

Proposed Intervenors Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque have standing because they are Plan participants, and depend on the Plan assets to fund their retirement benefits, and, therefore, are entitled to be heard on whether SJHSRI's assets should have been applied to reduce (even if not nearly eliminate) the unfunded status of the Plan, or, instead, placed out of their reach with a foundation controlled by SJHSRI's parent company CCCB.

These Plan participants also have standing to intervene to assert the claim that SJHSRI as Plan Administrator breached its fiduciary duty to the Plan participants and the Plan by filing the 2015 *Cy Pres* Petition, contrary to their interests, and by failing to provide the Plan participants and the Plan with proper notice, so that they could protect their interests.

Although the Receiver was not appointed until more than two years after the funds were transferred pursuant to the April 20, 2015 order, the Plan itself was a

juridical entity entitled to notice and independent representation, and the Receiver has standing to assert the Plan's claims. Indeed, SJHSRI named the Plan as Respondent in the Receivership Proceedings, and having secured the appointment of the Receiver thereby, SJHSRI certainly cannot now be heard to say that the Plan is not a juridical entity.

IV. The Proposed Intervenors are Entitled to Intervention of Right

A. The Receiver and the Plan Participants Claim an Interest in the Property that is the Subject of this Proceeding

As noted above, the determination of the Proposed Intervenors' right to intervene does not entail resolution of the merits of their claims. In support of their motion, Proposed Intervenors refer to the merits of those claims only to establish that they are by no means "frivolous on their face," and, therefore, they are entitled to have the *status quo* maintained while they prove their claims in the Related Proceedings.

1. The 2015 Cy Pres Petition concealed the unfunded status of the Plan and misrepresented that SJHSRI, RWMC, and CCCB had sufficient assets to fund the Plan

The threshold reason why the Proposed Intervenors should be permitted to intervene is that the 2015 *Cy Pres* Petition concealed the unfunded status of the Plan and misrepresented that SJHSRI, RWMC, and CCCB had sufficient assets to fund the Plan.

The 2015 *Cy Pres* Petition sought court approval for "(1) the transfer of certain of the charitable assets to the CCHP Foundation and (2) the use of certain of the charitable assets during the Heritage Hospitals' wind down to satisfy the Outstanding

Pre and Post Closing Liabilities…." However, in seeking court approval for these transfers, *Cy Pres* Petitioners did not inform the Court that the charitable assets *Cy Pres* Petitioners wanted transferred to CCHP Foundation were needed to reduce (but by no means satisfy) *Cy Pres* Petitioners' unfunded obligations to Plan participants.

Cy Pres Petitioners not only failed to disclose that all of their remaining assets were needed to reduce their unfunded obligations to Plan participants, in fact they represented the very opposite, stating in the 2015 *Cy Pres* Petition that the assets it would retain after the transfers to CCHP Foundation would be sufficient to "satisfy" SJHSRI's and RWMC's liabilities, including SJHSRI's pension obligations.

The claims that the retained assets would "satisfy" RWH and SJHSRI's remaining liabilities, and that those liabilities would be "paid" with those assets, were made and repeated over and over again in the 2015 *Cy Pres* Petition, in statements that sometimes generally referred to liabilities or obligations, and in other instances expressly referred to pension liabilities and obligations. For example, the 2015 *Cy Pres* Petition contains the following statement:

> Likewise, SJHSRI seeks approval to use such annual distributions to pay the Outstanding Pre and Post Closing Liabilities (**both non-pension and pension**) on its behalf and **when such liabilities have been paid**, to transfer use of such annual distributions to the CCHP Foundation.

Petition ¶ 27 (emphasis supplied). In this statement, Petitioners referenced both pension and non-pension obligations. Then in the same paragraph they referred generally to "Pre and Post Closing Liabilities" and stated as follows:

> RWH and SJHSRI are the beneficiaries of certain perpetual trusts providing annual income or principal distributions as described further herein. RWH seeks approval for the use of such annual distributions to

> pay the Outstanding Pre and Post Closing Liabilities on its behalf and after such payments are made in full, RWH seeks cy pres approval to transfer such annual distributions to SJHSRI to **satisfy** the Outstanding Pre and Post Closing Liabilities on its behalf.[7][4]
>
> [Emphasis supplied]

Petition ¶ 27.

Similarly the Petition stated:

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

Petition ¶ 18 (emphasis supplied). Again, the Petition stated:

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

Petition ¶ 24 (emphasis supplied).

The 2015 *Cy Pres* Petition for a fifth time acknowledged that the charitable assets would be used to "satisfy" SJHSRI's liabilities:

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

[4] Footnote 7 is omitted here, but quoted in full and discussed, *infra*, 22.

> approval to transfer the funds **to SJSHRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf**.

Petition ¶ 29 (emphasis supplied). And a sixth time:

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

Petition ¶ 6 (emphasis supplied).

Notably, nowhere in the 2015 *Cy Pres* Petition did *Cy Pres* Petitioners say that the assets they were retaining and the future expected income they were asking to be allowed to retain would only "partially satisfy," or "partially pay" their pension obligations, or employ similar language that implied or even hinted that the funds would be insufficient to fully satisfy those liabilities.

Another means whereby *Cy Pres* Petitioners indicated to the Court that their retained assets and future income would be sufficient to satisfy SJHSRI's "non-pension and pension" liabilities was by asking the Court to give CCHP Foundation the remainder interest in those assets and future income after all of SJHSRI and RWH's liabilities were satisfied. The statement from paragraph thirty-one (31) of the 2015 *Cy Pres* Petition that is already quoted above expressly included pension obligations in the liabilities that would be satisfied, whereupon the remainder interest would go to CCHP Foundation:

> SJHSRI seeks approval to use such annual distributions to pay the Outstanding Pre and Post Closing Liabilities (both non-pension and **pension**) on its behalf **and when such liabilities have been paid, to transfer use of such annual distributions to the CCHP Foundation.**

Petition ¶ 27 (emphasis supplied). Notably, the request said "**when** such liabilities have been paid" (emphasis supplied), the transfer to CCHP Foundation would be paid.

Given the scope of SJHSRI's unfunded pension liabilities, it may be difficult to understand how *Cy Pres* Petitioners could have been acting in good faith when they even suggested that it was possible there would be any funds remaining after SJHSRI's "non-pension and pension" liabilities had been satisfied. Nevertheless, the Court was entitled to take those statements at face value and conclude that *Cy Pres* Petitioners reasonably believed the representations made to the Court that there either already were more than sufficient assets to satisfy, or that the existing assets in combination with the expected future income would more than satisfy, all of SJHSRI's "[o]utstanding Pre & Post Closing Liabilities (both non-pension and pension)," such that there was a reason to address what should be done with assets and income remaining after those liabilities were satisfied.

Similarly, in paragraph thirty (30), the 2015 *Cy Pres* Petition sought approval to give CCHP Foundation the remainder of SJHSRI's annual income after its pension liabilities were paid:

> After SJHSRI's **non-pension and pension** liabilities have been paid, SJHSRI seeks *cy pres* approval to transfer use of its annual income to CCHP Foundation.

Petition ¶ 30. Here SJHSI again referenced both pension and non-pension liabilities, and flat-out represented to the Court that they both would be "paid" by SJHSRI's retained assets and retained future income.

SJHSRI repeated this claim in paragraph eight (8) of the 2015 *Cy Pres* Petition's "WHEREFORE" clause, substituting "satisfied" for "paid":

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

Petition ¶ 2 (emphasis supplied).

The 2015 *Cy Pres* Petition not only clearly acknowledged that SJHSRI's liabilities included its pension obligation, it went further and represented to the Court that SJHSRI's accrued pension obligations that had existed at the closing of the 2014 Asset Sale had *already been paid*, out of the proceeds of the closing of the asset sale, stating:

> As set forth on Exhibit C, at the Joint Venture closing, certain obligations of RWH and SJHSRI were **paid**, i.e., bond, **pension** and account payable liabilities, using sales proceeds from PMH and unrestricted cash.

Petition ¶ 17 (emphasis added). When the Court reviewed Exhibit C, a copy of which is attached hereto at Tab 2, the Court would have seen a section entitled "Closing Uses and Sources" that listed the obligations that were paid, and included "Pension Liability…….[$]14,000,000." From that statement the Court could only have concluded that the closing proceeds at least paid SJHSRI's then existing pension liability, and that the *Cy Pres* Petitioners were seeking leave to retain funds to pay pension liabilities that would accrue in the future under SJHSRI's continuing obligation to fund the pension. In fact, *Cy Pres* Petitioners expressly acknowledged that "[t]he SJHSRI pension funding obligation will continue after the wind-down period." Petition ¶ 17.

In any event, whether they were referring to pension liabilities that had already accrued or merely to funding obligations that would accrue in the future, the *Cy Pres* Petitioners indisputably included pension liabilities within the "pre and post closing

liabilities" they were seeking court approval to pay with charitable assets and future expected income, and which they claimed would be "satisfied" with those assets and income.

Another way in which the 2015 *Cy Pres* Petition acknowledged that pension obligations were included in its "pre and post closing liabilities" was that the Petition expressly sought the approval of the Court for RWH to transfer unrestricted charitable assets and future income to SJHSRI "to satisfy the Outstanding Pre and Post Closing Liabilities on its [SJHSRI's] behalf.[7]" Petition ¶ 27. Footnote 7 stated as follows:

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

Petition at 12 n.7 (emphasis supplied). Although *Cy Pres* Petitioners did not attach the resolution that approved "the use of RWH funds for the benefit of SJ SHRI to be used towards payment of the Outstanding Pre and Post Closing Liabilities," that resolution in fact expressly directs that those funds should be used to pay SJHSRI's pension liabilities (as well as other obligations):

> WHEREAS As part of its retained assets, RWMC has $6,666,874 in Board Designated Funds ("the RWMC Board Designated Funds") that may be used for any purpose at the discretion and direction of the RWMC Board of Trustees;

* * *

> RESOLVED The RWMC Board of Trustees approves and directs use of the RWMC Board Designated Funds **to satisfy the SJHSRI liabilities at close and any potential future funding and expenses relating to the SJHSRI pension plan**, and any surplus shall be transferred to the CCHP Foundation.[5]
>
> [Emphasis supplied]

Thus, although *Cy Pres* Petitioners did not inform the Court, they knew that the resolution to which they referred in the Petition expressly authorized and required use of RWH's assets to pay SJHSRI's pension obligations.

2. The Plan Participants and the Plan were entitled to notice

Notice of this proceeding was provided by *Cy Pres* Petitioners to the Rhode Island Attorney General "pursuant to his statutory and common law responsibilities with respect to the preservation and protection of charitable assets,"[6] and to Bank of America, N.A. as "trustee of certain trusts."[7] However, no notice was provided to Plan participants, or to any other creditors of SJHSRI, RWH, or CCCB. Moreover, although SJHSRI as Plan Administrator certainly had actual knowledge of what SJHSRI was attempting to accomplish in the 2015 *Cy Pres* Proceeding, that knowledge is not imputed to the Plan because SJHSRI had an overwhelming conflict of interest which obligated it to secure independent counsel for the Plan and provide full disclosure to the Plan and to the Plan participants (and the Court), which SJHSRI failed to do.

---

[5] This resolution is attached hereto at Tab 3. Petitioners had previously submitted a copy of the resolution to the AG in May 2014 connection with the Hospital Conversions Act Proceedings.

[6] Petition ¶ 6.

[7] Petition ¶ 7.

The Plan participants and the Plan were entitled to proper notice for at least three reasons: a) they were necessary parties under Super. Civ. P. Rule 19; b) they were entitled to notice under R.I. General Laws § 7-6-61(c), which requires that nonprofit corporations in dissolution or liquidation must give notice to all creditors; and c) Petitioner SJHSRI as their fiduciary was obligated to give them notice of the proceeding and fully disclose the unfunded status of the Plan so that they could assert their interests as creditors.

a. Plan participants and the Plan were necessary parties

First, *Cy Pres* Petitioners knew or should have known that the Plan and the Plan participants were necessary parties under Super. R. Civ. P. 19(a)(2)(A). Rule 19(a)(2)(A) states in pertinent part as follows:

> Rule 19. Joinder of Persons Needed for Just Adjudication
>
> (a) Persons to Be Joined if Feasible. A person who is subject to service of process shall be joined as a party in the action if:
>
> * * *
>
> (2) The person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:
>
> (A) As a practical matter impair or impede the person's ability to protect that interest;

Transfer of $8,200,000 from SJHSRI to the CCHP Foundation would certainly impair and impede the Plan and the Plan participants' ability to compel SJHSRI to fund the Plan or pay sufficient damages to make up the deficit, since it rendered SJHSRI even more judgment proof, and would require the Plan and the Plan participants to pursue

CCHP Foundation, who in the meantime could be expected to spend some of the money to which the Plan is entitled. Indeed, some of the money already has been disbursed by CCHP Foundation, but Proposed Intervenors are not seeking to recover those funds (although Proposed Intervenors are asking that the Court order that Petitioners provide an accounting).

Not only did *Cy Pres* Petitioners breach their duty under Rule 19(a) to join the Plan and the Plan participants, they also breached their duty under Rule 19(c) to notify the Court of the interests of the Plan and the Plan participants and expressly plead the reason for their non-joinder. Rule 19(c) states as follows:

> (c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1) and (2) hereof who are not joined, and the reasons why they are not joined.

Cy Pres Petitioners did neither.

The *Cy Pres* Petitioners were no more forthcoming after the 2015 *Cy Pres* Petition was filed. The Petition was heard on April 6, 2015. Not surprisingly, there was no opposition. Instead, the matter was presented to the Court as an agreed-upon disposition, and all who spoke at the hearing did so either in support of or to register their lack of objection to the Petition. During the hearing, counsel for the Petitioner SJHSRI made an extensive presentation. Transcript of Hearing on April 6, 2015 at 2-9. However, she made no reference to the pension or pension liabilities. The Court was never informed that the remaining assets in the hands of CCCB, SJHSRI, and RWH and their expected future income were insufficient to fund the pension liabilities.

The Court was informed that the parties had agreed upon a proposed order, which the *Cy Pres* Petitioners drafted to make no reference whatsoever to the pension liability. At the conclusion of the hearing the Court stated that the Petition was granted and that the proposed order would be entered. Transcript of Hearing on April 6, 2015 at 14. On April 20, 2015 the Court entered the in the form proposed.

b. Plan and the Plan participants were entitled to notice under R.I. General Laws § 7-6-50(b)

As discussed below, R.I. General Laws §§ 7-6-51 & 7-6-61 entitle all creditors of a nonprofit corporation in dissolution or court liquidation to be paid in full before charitable assets are transferred to another charitable entity. R.I. General Laws § 7-6-50 provides that all creditors are entitled to notice of dissolution, so that they may enforce their rights under Section 7-6-51. Such notice is also required in a court liquidation. R.I. Gen. Laws §7-6-61(b). Thus, SJHSRI was obligated to give the Plan participants notice before it distributed the $8,200,000 to the CCHP Foundation.

Petitioners may attempt to dispute that they were (and are) in the process of dissolution. However, judicial estoppel bars them from even making that argument, because they previously succeeded in obtaining the approvals they were seeking by persuading both the Attorney General and the Court that they were in the process of dissolution.

The doctrine of judicial estoppel prevents a litigant from espousing a position contrary to the position the litigant argued in another proceeding, especially if the litigant was successful in the earlier proceeding:

> The invocation of judicial estoppel is "driven by the important motive of promoting truthfulness and fair dealing in court proceedings." *D & H Therapy Associates v. Murray*, 821 A.2d 691, 693 (R.I.2003). "Unlike equitable estoppel, which focuses on the relationship between the parties, judicial estoppel focuses on the relationship between the litigant and the judicial system as a whole." *Id*. (citing 28 Am.Jur.2d *Estoppel and Waiver* § 34 (2000)). "The United States Supreme Court has noted that '[b]ecause the rule is intended to prevent improper use of judicial machinery, * * * judicial estoppel is an equitable doctrine invoked by a court at its discretion.' " *Id*. (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2001)). "One of the primary factors courts typically look to in determining whether to invoke the doctrine in a particular case is whether the 'party seeking to assert an inconsistent position would derive an unfair advantage * * * if not estopped.' " *Id*. at 694 (quoting *New Hampshire*, 532 U.S. at 751, 121 S.Ct. 1808). "Courts often inquire whether the party who has taken an inconsistent position had 'succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled.' " *Id*. (quoting *New Hampshire*, 532 U.S. at 750, 121 S.Ct. 1808).
>
> Courts often inquire whether the party who has taken an inconsistent position had "succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create 'the perception that either the first or the second court was misled.' " *New Hampshire*, 532 U.S. at 750, 121 S.Ct. at 1815, 149 L.Ed.2d at 978 (quoting *Edwards v. Aetna Life Insurance Co.*, 690 F.2d 595, 599 (6th Cir.1982)); see also *Wabash Grain, Inc. v. Smith*, 700 N.E.2d 234, 237 (Ind.Ct.App.1998).

State of Rhode Island v. Lead Industries Ass'n, Inc., 69 A.3d 1304, 1310 (R.I. 2013).

Cy Pres Petitioners admitted in the 2015 *Cy Pres* Petition that they had proposed to the Attorney General that SJHSRI and RWH be permitted to retain assets in order to wind-down their affairs. Petition ¶ 18 ("Accordingly, Old CharterCARE, subject to Court approval, proposed [to the Attorney General] that certain RWH and SJ HSRI assets remain with the Heritage Hospitals during their wind-down period to satisfy the

Outstanding Pre and Post Closing Liabilities."). The Attorney General's decision documents that the Attorney General accepted that argument, and agreed to SJHSRI's and RWH's retention of assets as part of "a multi-year wind-down process' that was "typical for the dissolution of a hospital corporation." AG Decision (May 16, 2014) at 24-25 (attached hereto at Tab 1).

Moreover, *Cy Pres* Petitioners then successfully persuaded the Court in this Proceeding to grant the 2015 *Cy Pres* Petition based on the representation that both RWH and SJHSRI were in wind-down.[8] Judicial estoppel normally applies where the litigant asserts contrary positions in separate litigations, but surely the offense is only greater where a litigant obtains a benefit from taking a position and then seeks to take the opposite position in the *same proceeding*.

Accordingly, *Cy Pres* Petitioners are judicially estopped from denying that the $8,200,000 was transferred to CCHP Foundation in connection with SJHSRI and RWH winding down their affairs and dissolution.

In addition to being bound by their prior positions before the Attorney General and this Court, Cy Pres Petitioners are bound by the determinations of the board of trustees for both RWC and SJHSRI that authorized RWC and SJHSRI to proceed with the process of wind-down and dissolution. On December 15, 2014, less than 30 days before the Petition was filed, CCHP as the controlling "member" of both RWH and

[8] See Petition ¶ 17 ("It is anticipated that the Outstanding Pre and Post Closing Liabilities will be paid during the Wind-down period of RWH and SJHSRI over the next approximately three years."); Petition ¶ 18 ("Accordingly, Old CharterCARE, subject to Court approval, proposed that certain RWH and SJ HSRI assets remain with the Heritage Hospitals during their wind-down period to satisfy the Outstanding Pre and Post Closing Liabilities.");

SJHSRI adopted resolutions authorizing dissolution of those entities. The resolution applicable to SJHSRI stated as follows:

> Resolved: That the Corporation authorize the dissolution of the Corporation at such time as Daniel Ryan and Richard J. Land deem necessary and appropriate and in connection therewith, to file such final tax returns and other documents and instruments required thereby.[9]

The resolution applicable to RWH stated as follows:

> Resolved: That the dissolution of the Corporation at such time as Daniel J. Ryan and Richard J. Land deem necessary and appropriate is hereby approved and in connection therewith, Danial J. Ryan and Richard J. Land are authorized to take any and all actions they deem necessary and appropriate, including filing such final tax returns and other documents and instruments.[10]

Finally, it is absolutely clear that neither SJHSRI nor RWC proposed to conduct any new business.

Given that fact, these resolutions, the statements concerning dissolution in the Attorney General's decision, the statements concerning "wind-down" and payment of "pre and post-closing liabilities" in the Petition, and the general tenor of the Petition, any suggestion that SJHSRI and RWH did not present themselves as in the process of dissolution would be incredible.

Petitioners cannot argue that the 2015 *Cy Pres* Proceeding did not involve the liquidation and/or dissolution of SJHSRI because SJHSRI was not formally liquidated or dissolved in connection with the 2015 Cy Pres Proceeding. That argument is foreclosed by the language of the statute concerning voluntary dissolutions, which sets forth the

[9] Attached hereto at Tab 4.

[10] Attached hereto at Tab 5.

distribution priorities for "[t]he assets of a corporation in the **process of dissolution**." R.I. Gen. Laws § 7-6-51(emphasis supplied). The term "process" acknowledges the obvious, that dissolution involves various steps and takes time, not merely the instant when formal dissolution finally takes place, by which point there would be no one with authority to dispose of the nonprofit corporations assets. Further, if accepted, that argument would completely vitiate the statutory scheme for payment priorities of nonprofit corporations, by permitting a non-operating nonprofit corporation to completely avoid its obligations to its creditors and transfer its assets to another (and possibly, as here, a related) charity. If the statutes applied only in the context of formal dissolution or liquidation proceedings, such nonprofit corporations would simply not institute formal proceedings. In other words, for purposes of these payment priorities, it is sufficient that the nonprofit corporation is in a *de facto* process of liquidation or dissolution and is seeking to dispose of its assets without proper notice to its creditors.

c. SJHSRI owed the Plan participants the duty to provide notice and owed the Plan the duty to secure independent representation

The Plan assets were kept in trust.[11] SJHSRI's control over those assets made it a trustee and fiduciary under ERISA, or state law if ERISA is not applicable. Under ERISA any entity that exercises control over a plan is by definition a fiduciary. *Varity Corp. v. Howe*, 516 U.S. 489, 498 (1996) (employers who control the plan are ERISA fiduciaries). Under state law, a relationship of trust and confidence imposes fiduciary duties. *A. Teixeira & Co., Inc. v. Texeira*, 699 A.2d 1383, 1387 (R.I. 1997) ("We are of

[11] The Plan trust is attached hereto at Tab 6.

the opinion that the term 'fiduciary' is a broad concept that might correctly be described as 'anyone in whom another rightfully reposes trust and confidence.'") (quoting Francis X. Conway, *The New York Fiduciary Concept in Incorporated Partnerships and Joint Ventures*, 30 Fordham L. Rev. 297, 312 (1961)). Moreover, even SJHSRI's board members who administered the Plan acknowledged their "fiduciary responsibility for providing adequate funding."[12]

As such SJHSRI had the duty not to act adversely to the interests of the trust beneficiaries, to provide them with notice of any conflict of interest, and to secure independent representation for the Plan given SJHSRI's flagrant conflict of interest. SJHSRI breached all of these duties.

3. Proposed Intervenors have stated a claim that the transfer of $8,200,000 was fraudulent as to the Plan participants and the Plan

Proposed Intervenors intend to prove in the Related Proceedings that the transfers from SJHSRI and RWH to CCHP Foundation violated Rhode Island's statute prohibiting fraudulent transfers. They were fraudulent transfers under R.I. Gen. Laws § 6-16-4(a)(1) because they were made with the intent to hinder, delay, and defraud the Plan and the Plan participants. They also were fraudulent transfers under R.I. Gen. Laws § 6-16-4(a)(2) because SJHSRI did not receive reasonably equivalent value in return (it received nothing) and was insolvent. Finally, they were fraudulent transfers under R.I. Gen. Laws § 6-16-5(a) because SJHSRI did not receive reasonably equivalent value in return and was engaged or was about to engage in a business or a

[12] Federal Complaint ¶ 235 and State Complaint ¶ 127.

transaction for which its remaining assets were unreasonably small, and SJHSRI believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due, all concerning SJHSRI's obligations to fully fund the Plan.

As noted above, the determination of the Proposed Intervenors' right to intervene does not entail resolution of the merits of their claims. Proposed Intervenors refer to the merits of those claims only to establish that they are by no means "frivolous on their face," and, therefore, they are entitled to intervene in this Proceeding and have the *status quo* maintained while they prove their claims in the Related Proceedings.

4. Proposed Intervenors have stated a claim that the transfers violated R.I. Gen. Laws §§ 7-6-50, 7-6-51 & 7-6-61(c)

Section 7-6-50(b) of the Rhode Island General Laws sets forth the procedure whereby a nonprofit corporation may voluntarily wind up its affairs and dissolve, and directs that assets are to be applied and distributed "as provided in" that chapter:

> (b) Upon the adoption of the resolution by the members, or by the board of directors if there are no members or no members entitled to vote on dissolution, the corporation shall cease to conduct its affairs except to the extent necessary for the winding up of its affairs, **shall immediately mail a notice of the proposed dissolution to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter**.
>
> [Emphasis supplied]

Section 7-6-51 of the Rhode Island General Laws sets forth the specific order of application and distribution of assets applicable to voluntary dissolution:

> § 7-6-51. Distribution of assets.
>
> The assets of a corporation in the **process of dissolution** shall be applied and distributed as follows:

> (1) **All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made for their payment and discharge**;
>
> (2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with the requirements;
>
> (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter or as otherwise provided in its articles of incorporation or bylaws;
>
> (4) Any other assets shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;
>
> (5) Any remaining assets may be distributed to any persons, societies, organizations, or domestic or foreign corporations, whether for profit or nonprofit, that may be specified in a plan of distribution adopted as provided in this chapter.
>
> [Emphasis supplied]

As discussed below, the order of subsections (1) through (5) establishes an order of payment, and entitles creditors to payment even out of the nonprofit corporation's restricted assets, including assets received with a charitable use restriction, and even assets that were given to the corporation under the condition that they be re-conveyed in the event of dissolution.

The same order of payment applies under the statute for court-approved liquidations of nonprofit corporations, R.I. Gen. Laws § 7-6-61. That statute sets forth the "procedure in liquidation of corporation by court," and sub-section (c) essentially mirrors the above-quoted payment priorities of R.I. Gen. Laws § 7-6-51.

Thus, whether pursuant to voluntary dissolution or court approved liquidation, the assets of a non-profit corporation must be applied first to satisfy the corporation's liabilities and obligations, and, until that is accomplished and creditors are paid in full, no assets can be transferred to anyone else, by *cy pres* petition or otherwise.

The argument that restricted charitable assets are not available to satisfy the claims of creditors is contrary to the plain meaning of the statute and has been rejected by the courts. R.I. Gen. Laws §§ 7-6-50 & 7-6-61(c) are based upon the Model Non-Profit Corporation Law, has been adopted across the United States, and the priorities they establish have been judicially construed, most notably in *In re Crossroad Health Ministry, Inc.*, 319 B.R. 778 (D.C. Bank. 2005), aff'd, *sub nom. Bierbower v. McCarthy*, 334 B.R. 478 (D. D. C. 2005) (*de novo* review).

In that case the bankruptcy court addressed that precise issue in construing the District of Columbia's statute (D.C. Code § 29–301.56(c)) that was identical to R.I. Gen. Laws § 7-6-61(c). That case involved a dispute between a trust that had made a $60,000 grant to a nonprofit corporation and sought its money back upon the bankruptcy of the nonprofit, on one side of the dispute, and the trustee in bankruptcy who argued that the money must first be used to satisfy any administrative expenses or allowable claims against the bankruptcy estate that remained unpaid, on the other.

First, the bankruptcy court set forth the arguments of the parties:

> According to the Trustee, § 29–301.56 directs that a corporation fully satisfy each enumerated portion of the distribution statute before even considering whether subsequent subsections might apply. Thus, before a liquidating non-profit corporation can even reach the question of whether certain corporate assets must be returned or transferred to a different entity pursuant to D.C.Code §§ 29–301.56(c)(2)–(3), the statute first requires that "[a]ll costs and expenses of the court proceedings
>
> and all liabilities and obligations of the corporation [must] be paid, satisfied, and discharged, or adequate provision [ ] made therefor." D.C.Code § 29–301.56(c)(1). Thus, argues the Trustee, under District of Columbia law, **funds held by a non-profit corporation subject to charitable use limitations are corporate assets available to creditors upon dissolution or liquidation, notwithstanding the restriction placed upon such funds by the donor.**
>
> Stewart Trust interprets the statute differently. According to Stewart Trust, the three enumerated subsections of D.C.Code § 29–301.56(c) can be separately triggered, and subsection (c)(1), calling for the payment of all creditors and expenses, simply does not apply to funds that fall within subsections (c)(2)-(3). **As such, a liquidating nonprofit corporation holding funds subject to a charitable use restriction would be governed solely by subsection (c)(3), and such funds would not be available to satisfy creditors or the payment of expenses under subsection (c) (1), because those funds would be either returned to the donor or distributed to a different charitable organization**.

In re Crossroad Health Ministry, Inc., *supra*, 319 B.R. at 781 (emphasis added).

The bankruptcy court came down on the side of the trustee (and Proposed Intervenors herein), stating as follows:

> Basic principles of statutory construction support the Trustee's reading of the statute. The terminology "as follows" suggests that distributions are to proceed in a sequential fashion, with expenses of dissolution and claims of creditors to be paid first as listed first. Moreover, a dissolution will require paying compensation to professionals who are employed to facilitate the dissolution, otherwise such professionals will not be attracted to handle the dissolution. The legislature would not have envisioned such professionals being put to the risk that distributions would be made under

> paragraphs (2) and (3) before paying such professionals under paragraph (1). It is thus evident that distributions under paragraph (1) were intended to be made first. Accordingly, the court agrees with the Trustee that District of Columbia law **treats donations held by non-profit corporations subject to charitable use limitations as corporate assets, at least to the extent that such funds are needed to pay creditors and administrative expenses associated with liquidation proceedings**.

In re Crossroad Health Ministry, Inc., *supra*, 319 B.R. at 781 (citations omitted).

The District Court on a *de novo* review agreed:

> The Bankruptcy Court's interpretation of the statute is correct. The plain meaning of the language "as follows" suggests that a dissolution or liquidation of a nonprofit corporation under D.C.Code § 29–301.56 should proceed sequentially. **The text of the statute reflects an apparent legislative determination that, upon dissolution of a nonprofit corporation, grant funds in the corporation's possession should be used to satisfy corporate liabilities and obligations, notwithstanding any charitable-use limitations. In other words, the ultimate charitable goals of the grantor are subordinate to the corporation's responsibilities to its creditors**.

Bierbower v. McCarthy, supra, 334 B.R. at 481 (emphasis added).

The District Court did not rely exclusively on basic rules of statutory construction, but also found the result supported by public policy:

> Moreover, this scheme of distribution is supported by several policy rationales. For instance, as appellee asserted during the Bankruptcy Court proceeding, it creates an incentive for bankruptcy specialists to assist in dissolution proceedings because § 29–301.56(c)(1) guarantees them compensation. See *In re Crossroad Health Ministry, Inc.*, 319 B.R. 778, 781 (Bankr.D.D.C.2005) (hereinafter "Opinion"). The Bankruptcy Court suggested an additional justification: that payment of debts is essential to a nonprofit corporation's operation and, therefore, that **the use of grant funds to satisfy debts is not at odds with a grantor's donative intent**. Id. at 782 n. 2. The Court therefore affirms the Bankruptcy Court's interpretation of the statute.

Bierbower v. McCarthy, supra, 334 B.R. at 481-482 (emphasis supplied).

Accordingly, pursuant to the Nonprofit Corporations Act, the charitable use restrictions that *Cy Pres* Petitioners relied upon to justify *cy pres* transfers of those assets to the CCHP Foundation did not protect those funds from the claims of creditors such as the Proposed Intervenors.

There is no conflict between the provisions of the Nonprofit Corporations Act and any other Rhode Island statutes applicable to the disposition of charitable assets. *Cy Pres* Petitioners purported to file their Petition pursuant to three separate statutes; "pursuant to R.I. General Laws § 18-4-1 et seq. entitled 'Application of Cy Pres Doctrine' § 18-9-1 et seq. entitled 'Division of Charitable Assets' and § 18-12.1-1 et seq. entitled 'Uniform Prudent Management of Institutional Funds Act' ('UPMIFA')." Petition ¶ 14. However, these three statutes do not contradict the priorities of payment set forth in the Nonprofit Corporations Act.

R.I. Gen. Laws § 18-4-1 applies solely to "trust property" and "where the purpose of the donor cannot be literally carried into effect," and does not mention either corporate assets or dissolution, whereas Section 7-6-61(c) deals expressly with nonprofit corporations and restricted assets, and expressly sets forth how assets of a non-profit corporation in dissolution are to be applied. Section § 7-6-61(c) is clearly the more specific of the two statutes applicable to this proceeding. Indeed, it expressly concerns dissolution and gives creditors first priority over all "[a]ssets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes," which are exactly the types of restricted funds that were the subject of this proceeding.

"'It is a commonplace of statutory construction that the specific governs the general.' " *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645, 132 S.Ct. 2065, 2071, 182 L.Ed.2d 967 (2012) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992)). See also *South County Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 215 (R.I. 2015) ("'When a specific statute conflicts with a general statute, our law dictates that precedence must be given to the specific statute.' ") (quoting *Warwick Housing Authority v. McLeod*, 913 A.2d 1033, 1036-37 (R.I. 2007)).

Moreover, as noted, R.I. General Laws § 18-4-1 applies solely to "a cy pres application of the **trus**t property." (emphasis supplied). SJHSRI and RWH are nonprofit corporations, not charitable trusts. A nonprofit corporation is governed by corporate law and not trust law. *See Grace v. Grace Institute*, 19 N.Y.2d 307, 226 N.E.2d 531, 279 N.Y.S.2d 721, 724 (N.Y. 1967) (upholding right of charitable corporation to remove trustee based on corporate law, not the law of trusts) ("While the Institute disputes the Appellate Division's interpretation of the law of trusts as it existed at the time the Institute was created, it is clear that a corporation and not a trust was created and, regardless of what the law as to trusts was at the time, corporate law and not trust law should govern."); *City of Paterson v. Paterson General Hospital*, 235 A.2d 487, 489 (N.J. Ch. 1967) ("In my opinion defendant is not, strictly speaking, a charitable trust. It is, rather, a charitable corporation, governed by the law applicable to charitable corporations.") (allowing a hospital to move from Paterson, New Jersey to another location, notwithstanding that many of its charitable assets were intended to benefit residents of Patterson).

B. *Cy Pres* Petitioners Did Not Adequately Represent the Interests of the Plan and the Plan Participants

In the context of all of their statements concerning payment of their liabilities, *Cy Pres* Petitioners' failure to inform the Court that they knew that the Plan was hopelessly underfunded raises serious questions. However, there is no question concerning the fact that *Cy Pres* Petitioners did not adequately represent the interests of the Plan and Plan participants.

SJHSRI participated under a complete conflict of interest between what it sought to accomplish and what was in the best interests of the Plan and Plan participants to whom SJHSRI owed the duties of a fiduciary. *Cy Pres* Petitioners RWC and CCHP Foundation were related entities to SJHSRI and cannot benefit from SJHSRI's breach of its fiduciary duties, and, in any event, they concealed rather than represented the interests of the Plan and the Plan participants by misrepresenting that SJHSRI, RWH, and CCCB had sufficient assets to pay the pension obligations.

The other parties that Petitioners brought into the 2015 *Cy Pres* Proceeding also did not adequately represent the interests of the Proposed Intervenors. Petitioner Bank of America merely participated in its capacity as trustee under certain trusts and did not act or purport to act on behalf of the Plan or the Plan participants.

The Attorney General also did not represent the interests of the Plan or the Plan participants.

C. The Motion to Intervene is Timely

As noted above, the timeliness of the motion is based upon how long the intervenor delayed after learning of his or her interest in the suit. In this case, although

the 2015 *Cy Pres* Petition was granted more than three years ago, the connection between the suit and the rights of the Plan and Plan participants was never disclosed to the Plan or the Plan participants. Even today the Plan participants probably are ignorant of that connection. It is only through the Court's recent appointment of the Receiver (the order appointing the Permanent Receiver was entered on October 27, 2017) and the subsequent investigation conducted on his behalf by Special Counsel that this connection has become known to the Receiver.

D. *Cy Pres* Petitioners Will Not Be Unduly Prejudiced

Allowing intervention will not significantly prejudice the *Cy Pres* Petitioners. The Proposed Intervenors are simply seeking to preserve the *status quo* while they are given the opportunity to be heard in the Related Proceedings. The fact that the relief they are seeking will require CCHP Foundation and RI Foundation to hold funds does not constitute prejudice.

Although the interests of third parties are not part of the calculus, they also will not suffer significant prejudice. The Proposed Intervenors are *not* asking the Court to order that funds previously distributed by CCHP Foundation to various third party charitable entities be returned. Thus, at most those third party charitable entities are hoping to obtain future grants, but those interests pale in comparison to the right of Plan participants to receive the pensions they worked for and on which they heavily depend.

E. The Rights of the Receiver and Plan Participants will be Prejudiced if Intervention is not allowed

The primary prejudice to the Receiver, the Plan, and Plan participants, if intervention is not allowed and the April 20, 2015 Order that granted the 2015 *Cy Pres* Petition is not vacated, is the real possibility that the courts in the Related Proceedings will be disinclined to adjudicate the rights of the parties to the funds transferred pursuant to that petition, out of deference to the Court, and especially since the proceeding in which the April 20, 2015 Order was entered remains pending and the Order therefore remains subject to revision.[13] If that happens, the Proposed Intervenors may never be heard on the merits of their claims to those funds.

F. Intervention Will Not Unduly Interfere with the Orderly Processes of the Court

At most only limited discovery will be required, but it is much more likely that there will be no factual disputes between the Proposed Intervenors and the *Cy Pres* Petitioners in this Proceeding.[14] Moreover, the Court is already administering the Receivership of the Plan. Thus, allowing intervention will not seriously burden the Court.

---

[13] Moreover, Petitioners RWH, SJHSRI, CCHP Foundation, and/or Community Board may argue in the federal court action that the Order granting the Petition has some preclusive effect. The Receiver disagrees, but the United States District Court will not be required to decide that issue if the Order is vacated.

[14] Of course, there will be extensive discovery in the Related Proceedings, but it will occur in any event.

V. Proposed Intervenors are entitled to intervene under the standards for permissive intervention

In the alternative, Proposed Intervenors are entitled to intervene under the standards for permissive intervention, in that their claims in the Related Proceedings have a great many questions of fact in common with this Proceeding. For example, both the Related Proceedings and this Proceeding are based on the misrepresentations that Petitioners made to the Court in connection with this Proceeding.

Moreover, the ultimate disposition of the funds that SJSHRI and RWH transferred to CCHP Foundation pursuant to the April 20, 2015 Order is part of the Related Proceedings. Although the Court in this Proceeding is not adjudicating the merits of Proposed Intervenors claims to those funds, Proposed Intervenors do rely on the Court concluding that their claims are not frivolous on their fact, to justify ordering that these funds be held pending the disposition of those issues in the Related Proceedings. Thus both the Related Proceedings and this Proceeding are based on the contentions that SJHSRI and RWH brought the 2015 *Cy Pres* Proceeding intending thereby to hinder and delay their creditors and that SJHSRI was insolvent at the time. Both involve the claim that SJHSRI was liable to fully fund the Plan under either ERISA or state law, including the law of contracts, promissory estoppel, and judicial estoppel. Both are based on the claim that the separate corporate statuses of SJHSRI, RWH, CCHP Foundation and CCCB should be disregarded to prevent fraud. There are many more commons questions of law and fact that would justify permissive intervention.

CONCLUSION

The Proposed Intervenors' motion for leave to intervene in this proceeding should be granted, to assert and protect the interests of the Receiver, the Plan, and the Plan participants.

Presented by
Stephen Del Sesto, as Permanent Receiver for the St. Joseph's Health Services of Rhode Island Retirement Plan, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque,

By their Counsel,

/s/ Max Wistow
Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com
sps@wistbar.com
bledsham@wistbar.com

Dated: June 18, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on the 18th day of June, 2018, I filed and served the foregoing document through the electronic filing system on the following users of record:

Genevieve Martin, Esq.
Kathryn D. Enright, Esq.
Office of the Attorney General
150 South Main Street
Providence, RI 02903

Patricia K. Rocha, Esq.
Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345

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

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

/s/ Max Wistow

Exhibit 9

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

OPPOSITION OF PETITIONER CHARTERCARE FOUNDATION F/K/A CHARTERCARE HEALTH PARTNERS FOUNDATION TO MOTION TO INTERVENE

CHARTERCARE HEALTH PARTNERS FOUNDATION n/k/a CHARTERCARE FOUNDATION,

By its counsel,

Russell F. Conn, Esq. (admitted *pro hac vice*)
Andrew R. Dennington, Esq. (#7528)
Christopher K. Sweeney, Esq. (#9689)
CONN KAVANAUGH ROSENTHAL PEISCH & FORD, LLP
One Federal Street, 15th Floor
Boston, MA 02110
(617) 482-8200
(617) 482-6444 (fax)
rconn@connkavanaugh.com
adennington@connkavanaugh.com
csweeney@connkavanaugh.com

Dated: July 24, 2018

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY OF ARGUMENT

CharterCare Foundation f/k/a CharterCare Health Partners Foundation ("CCF") hereby opposes the Proposed Intervenors' untimely Motion to Intervene (the "Motion") in this long-concluded *Cy Pres* Proceeding.

Through their Motion, the Proposed Intervenors seek leave to file a Counter-Petition asking this Court to vacate its April 20, 2015 Order (the "*Cy Pres* Order"), and order CCF to hold the funds that it received from St. Joseph's Health Care Services of Rhode Island ("SJHSRI") and Roger Williams Hospital/Roger Williams Medical Center ("RWH/RWMC") pursuant to the terms of that *Cy Pres* Order. Proposed Intervenors ask CCF to hold those funds until their claims in *Del Sesto v. Prospect CharterCare, LLC*, Case No. 1:18-cv-00328 (the "Federal Court Action") and a related new state court action (collectively, the "Related Proceedings") are decided.

Since the Proposed Intervenors filed their Motion on June 18, 2018, circumstances have changed. Last month, CCF and the Proposed Intervenors negotiated an agreement pursuant to which CCF will preserve certain of its assets pending resolution of the Related Proceedings. On June 29, 2018, this Court entered that agreement as an order in this *Cy Pres* Proceeding.[1] That order essentially moots any need for the Proposed Intervenors to intervene. Because CCF's assets are now preserved, and the Proposed Intervenors have every opportunity to fully litigate their claims in the newly filed Related Proceedings, there is no need for duplicative litigation. On that basis alone, this Court should deny the Motion.

[1] That June 29, 2018 Order was entered without prejudice to CCF's denial that the Proposed Intervenors have a right to intervene herein, and without prejudice to CCF's denial that Proposed Intervenors have a right to any funds held by CCF. (June 29, 2018 Order, ¶ 5(c) & (d)).

Should this Court proceed though further analysis, it still should deny the Motion for at least four different reasons.

First and foremost, because this Court's *Cy Pres* Order fully and finally adjudicated all claims in this action, and left nothing further to be decided, it enjoys the force of a final judgment. See McAuslan v. McAuslan, 34 R.I. 462, 83 A. 837, 840 (1912). Therefore, any effort to undo the *Cy Pres* Order is subject to the stringent standards of Rule 60(b), which the Proposed Intervenors cannot satisfy. As a threshold matter, Proposed Intervenors are non-parties with no standing to seek relief under Rule 60(b). However, even if they were entitled to relief under Rule 60(b) on the purported basis that Petitioners obtained the *Cy Pres* Order through "fraud, misrepresentation, or other misconduct" (allegations CCF firmly denies), the Motion still would be barred because it was not filed within one year after entry of the *Cy Pres* Order. Courts strictly enforce the one-year limit in Rule 60(b) on any motion seeking to set aside a judgment based upon "fraud, misrepresentation, or other misconduct," and this Court has no discretion to enlarge that deadline.

Second, the Court should deny the Motion because Proposed Intervenors' incendiary allegation that this Court was duped into entering the *Cy Pres* Order based upon fraud and misrepresentations by Petitioners is absolutely meritless. Proposed Intervenors distort the record by taking selective snippets from the 2015 *Cy Pres* Petition (the "Petition"), re-arranging them out of order in their Motion, and excising their context. CCF respectfully requests that this Court once again review the full text of the Petition, including all of its attachments. The Petition did not state that, after transfer of the charitable assets to CCF, SJHSRI still would have sufficient assets to "pay" or "satisfy" SJHSRI's considerable long-term pension liability during a "wind-down" period. That is simply not true. Paragraph 17 of the Petition expressly stated as follows:

"The SJHSRI pension funding obligation will continue after the wind-down period concludes." Moreover, Petitioners attached as Exhibit E to the Petition a post-closing balance sheet for SJHSRI (Fatima Hospital) listing a $62,410,940 long-term pension liability with only $12,102,083 of assets. Thus, the information presented in the Petition made clear that indeed there was no assurance that SJHSRI's remaining assets would be sufficient to fund its significant long-term pension liability.

Moreover, this Court should not lose sight of the basic fact that this was a *Cy Pres* Proceeding. The issue presented was whether the requested *cy pres* transfers to CCF respected the original intent of the individuals who long ago made charitable donations to SJHSRI and RWH/RWMC. This Court correctly answered that question in the affirmative. This Court was not being called upon to adjudicate rights concerning SJHSRI's pension liability. SJHSRI's pension liability, and whether or not the proposed for-profit conversion complied with the Rhode Island Nonprofit Corporation Act, were issues addressed by the Rhode Island Attorney General ("AG") in its earlier administrative proceeding to determine whether the transaction complied with the Hospital Conversions Act ("HCA").[2] Those issues, however, were not material to this *Cy Pres* Proceeding, notwithstanding Proposed Intervenors' untimely effort to inject them into it now.

Third, even if the *Cy Pres* Order never matured into a final judgment subject to relief only under Rule 60(b)'s stringent requirements, the Motion still fails. Under Rule 24(a) and 24(b), only a timely application for intervention may be granted by the Court. Proposed Intervenors' application, more than three years after a final order was issued, is untimely in the

[2] The HCA expressly states that, in reviewing a non-profit to for-profit conversion, the AG must make a determination whether or not the transaction complies with the Rhode Island Nonprofit Corporation Act. R.I. Gen. Laws § 23-17.14-7(c)(19). The AG determined that the transaction did comply with that statute. Infra at 10.

extreme. Moreover, in light of the harm that CCF would suffer from permitting intervention at such a late juncture – the Proposed Intervenors' Counter-Petition would call into question the legitimacy of CCF's existence and the manner in which it has conducted business over the past several years – this Court should exercise its discretion to deny the Motion. On the other side of the ledger, there is no corresponding prejudice to Proposed Intervenors if the Court denies the Motion. CCF has agreed in this *Cy Pres* Proceeding to preserve its assets pending resolution of the Related Proceedings, and Proposed Intervenors' right to litigate their claims in the Related Proceedings is preserved. This Court should not give a green light to duplicative litigation and the attendant risk of inconsistent results. Judicial economy also supports the denial of the Motion.

Fourth and finally, this Court should deny the Motion because Proposed Intervenors fail to allege a cognizable claim to claw back the restricted charitable assets that CCF received from SJHSRI and RWH/RWMC in this *Cy Pres* Proceeding. Proposed Intervenors base their claim upon a novel, unsupported interpretation of the Rhode Island Nonprofit Corporation Act. Under their interpretation, creditors and potential creditors of a dissolving non-profit corporation have super-priority to restricted charitable assets that originally were donated to that non-profit corporation. For the reasons set forth in detail below, the Rhode Island Nonprofit Corporation Act creates no such requirement.[3]

Based upon the foregoing, this Court should **DENY** the Motion.

[3] In any event, even if a court were to accept Proposed Intervenors' novel interpretation of that statute, the scope of Proposed Intervenors' relief against CCF would be quite limited. That is because CCF received 80% of its founding funds from RWH/RWMC, not SJHSRI. The Proposed Intervenors are, at best, creditors of only SJHSRI; they have no claim to restricted charitable assets donated to RWH/RWMC.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. 2009 Affiliation Agreement Between RWH/RWMC and SJHSRI.

In 2008 and 2009, RWH/RWMC and SJHSRI (collectively, the "Heritage Hospitals") were separate non-profit health systems losing a combined $8 million per year in operations alone. (Petition, ¶ 8). "Both RWH/RWMC and SJHSRI expressed concern for their continued ability to serve the citizens of Rhode Island if they were to remain as stand-alone organizations." (Appendix ("Appx."), Ex. 1 (AG 2009 Approval), p. 21).

Against this backdrop, RWH/RWMC and SJHSRI entered into a "Health Care System Affiliation and Development Agreement" (hereinafter, the "Affiliation Agreement") in 2009. Significantly, this Affiliation Agreement did not involve a merger of RWH/RWMC and SJHSRI. Rather, it reorganized the two Heritage Hospitals into a combined health system called CharterCARE Health Partners (hereinafter, "Old CharterCARE"). RWH/RWMC and SJHSRI remained separate legal entities, as they still are today.

Consistent with their continued separate legal identities, RWH/RWMC and SJHSRI continued to maintain their own separate and distinct charitable assets. To that extent, Section 7.4 of the Affiliation Agreement provided, in relevant part as follows.

> All previous endowments and all future donor restricted gifts made in favor of RWMC or SJHSRI shall be and remain at all times the assets of RWMC and SJHSRI respectively and the disposition of such assets shall be under the direction and control of the governing body of the owner of such assets.

(Appx., Ex. 2 (Affiliation Agreement), § 7.4).

B. 2014 Asset Purchase Agreement And Rhode Island Attorney General's HCA Approval.

The 2009 Affiliation Agreement reduced, but did not eliminate, the losses that imperiled the Heritage Hospitals' continued existence. In fiscal year 2012, the combined CharterCARE health system sustained losses of over $8 million, and these losses were increasing. (Appx., Ex.

3 (AG 2014 Approval Decision), at p. 9). Old CharterCARE remained concerned that it could not continue to sustain these losses. (Id.) Saving the Heritage Hospitals was a priority at the time because the CharterCARE system employed approximately 3,000 people, contributed $524MM per year to Rhode Island's economy, and provided over $25MM in free medical care every year. (Appx., Ex. 4 (2014 HCA Application), p. 8).

It was against this backdrop of continued financial difficulties, and the urgent need for a solution, that the Heritage Hospitals sought out a for-profit acquirer. In December 2011, CharterCARE issued twenty-two (22) Requests for Proposals (the "RFP") seeking a partner. (Appx., Ex. 3, at p. 9). Over the next fifteen months, Old CharterCARE received only six responses. It ultimately selected a bid from Prospect Medical Holdings, Inc. ("PMH"). (Id.) Following an extensive due diligence period, PMH, CharterCARE, RWH/RWMC, and SJHSRI (the "Transacting Parties") executed an Asset Purchase Agreement ("APA") on September 24, 2013. (Id.)[4]

The APA acknowledged that, notwithstanding their earlier 2009 Affiliation Agreement, RWH/RWMC and SJHSRI remained separate legal entities. RWH/RWMC and SJHSRI made representations and warranties that each was still a duly incorporated and validly existing non-profit corporation. (Appx., Ex. 5 (APA), § 4.1). To effectuate the transaction, RWH/RWMC and SJHSRI each separately executed documents to transfer "Purchased Assets" to Prospect CharterCARE. (Id. § 2.1).

[4] The APA is posted on the website of the Office of the Rhode Island Attorney General at http://www.riag.ri.gov/CivilDivision/OfficeoftheHealthCareAdvocate.php. Specifically, the APA is posted under "Recent HCA Reviews," "CharterCARE/Prospect," "Public Exhibits," and included thereunder as Exhibit 18. Pursuant to that APA, PMH formed a new company called Prospect CharterCARE, LLC ("Prospect CharterCARE") for the purpose of acquiring the primary assets of the sellers, CharterCARE, RWH/RWMC, and SJHSRI. (Appx., Ex. 5, p. 1). A PMH affiliate would hold an 85% equity stake in the newly created Prospect CharterCARE, with the remaining 15% held by the "old" CharterCARE. (Id., p. 2).

Significantly, SJHSRI's pension fund was one of the "Excluded Assets of Sellers" to be retained by SJHSRI post-closing. (Id. § 2.2(d)).[5] Due to the magnitude of its unfunded pension liability, SJHSRI was unable to make a representation or warranty in the APA concerning its continued post-closing solvency. In particular, Section 4.29 ("Solvency") of the APA provided as follows.

> **After exclusion of Liabilities associated with the Retirement Plan due to their uncertainty of amount**: (i) Sellers are not now insolvent and will not be rendered insolvent by any of the Transactions; (ii) Sellers have, and immediately after giving effect to the Transactions, will have, assets (both tangible and intangible) with a fair saleable value in excess of the amount required to pay their Liabilities as they come due; and (iii) Sellers have adequate capital for the conduct of their business and discharge of their debts.

(Id. § 4.29) (emphasis added). Thus, the APA contained no warranty that SJHSRI's long-term pension liability would be fully funded or satisfied. Indeed, the APA did the opposite. SJHSRI warranted that it would have assets sufficient to pay all of its Liabilities except for its pension liability.[6]

The proposed transaction had several benefits that made it particularly attractive at the time to stakeholders and policymakers. PMH agreed that the Heritage Hospitals would remain under local control. It further agreed that, in the four-year period immediately following the closing, it would invest $50MM for long-term capital projects at the Heritage Hospitals. (Id. § 2.5(b)). Additionally, PMH agreed to pay $45MM at closing for the combined assets of the Heritage Hospitals. From that amount, PMH agreed to disburse approximately $27MM to fully

---

[5] Relatedly, SJHSRI's pension fund liability was not listed as one of the enumerated "Assumed Liabilities of Sellers." (Appx., Ex. 5,, § 2.3). Rather, it was an "Excluded Liability" that SJHSRI would retain post-closing. (Id. § 2.4).

[6] The APA defined "Liability" as "any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due), and including all fines, penalties, costs and expenses relating. (Appx., Ex. 5, Annex A, at A-8).

redeem outstanding revenue bonds that the Rhode Island Health and Educational Building Corporation had issued to the Heritage Hospitals in the late 1990s. And significantly, PMH also agreed to allocate $14MM of the closing proceeds as a one-time contribution towards SJHSRI's long-term pension liability. (Appx., Ex. 3, at p. 21).

PMH's proposed acquisition of the Heritage Hospitals required approval by the Office of the Rhode Island Attorney General ("AG" or "AG's Office") and the Rhode Island Department of Health ("DOH") under the Hospital Conversion Act ("HCA"). That statute specifically enumerated the review criteria applicable to this transaction. Two review criteria are of particular importance here:

> (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:
>
> . . .
>
> (19) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act . . . .

R.I. Gen. Laws § 23-17-14-17(c)(1) & (19). Significantly, the HCA did not require 100% funding of the non-profit hospital's long-term pension liability as one of its enumerated review criteria.

Nonetheless, the proposed transaction's impact on SJHSRI's long-term pension liability was a topic of public discussion and review during the HCA approval process. A DOH Project Review Committee held public meetings to discuss the application on February 11, 2014, March 18, 2014, April 8, 2014, May 6, 2014, and May 13, 2014. Additionally, as required by the HCA, the AG's Office and DOH jointly held a public informational meeting at Rhode Island College on April 8, 2014. During this lengthy public review process, the Transacting Parties disclosed that, of the $45MM to be disbursed by PMH at closing, $14MM would be used to reduce

SJHSRI's long-term pension liability. The Transacting Parties did not represent that this $14MM capital infusion would be sufficient to fully satisfy SJHSRI's long-term pension liability. Rather, they estimated at the time that it would bring SJHSRI's pension fund to a 90% funding level. (Appx., Ex. 3, at p. 21-22).

While the Permanent Receiver for SJHSRI's pension fund is now critical of this transaction, back in 2014 and 2015, relevant stakeholders, who would have borne the fullest brunt of a collapse of the Heritage Hospitals, supported the deal. For example, the union representing the Fatima Hospital nurses – many of whom plaintiffs' counsel is now seeking leave to represent on a class action basis – offered its support at the time. Specifically, on March 6, 2014, Christopher Callaci, General Counsel for the Union Nurses & Allied Professionals ("UNAP"), submitted a letter to the DOH offering UNAP's "full support of the above referenced application." (Appx., Ex. 6). One of the reasons why UNAP supported this application was that: "With respect to retirement security, CCHP [CharterCARE Health Partners] has agreed to put $14 million into the defined pension plan which will bring the fund balance up to appropriate levels." (Id.). Likewise, at the April 28, 2014 public informational meeting, Lynn Blais, president of Local 5510 at Fatima Hospital, spoke in support of the proposed transaction. (Appx., Ex. 7 (4/28/14 transcript), at pp. 81-83).

Against this backdrop of public support, the AG's Office issued a final conditional approval decision on May 16, 2014 (hereinafter, the "2014 AG Approval Decision"). The AG highlighted the escalating financial difficulties that compelled the sale in order to preserve the Heritage Hospitals, which continued to deteriorate even during the regulatory review of the HCA application. (Appx., Ex. 3, at p. 24). As the AG's valuation expert, James P. Carris, CPA, plainly stated: "The [CharterCARE] system does not have the ability to survive long-term with a

'go it alone' strategy." (Id. at p. 21). Mr. Carris further noted that it was a priority of CharterCARE's Board (comprised of the representatives of RWH/RWMC and SJHSRI) "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." (Id. at p. 22). The proposed transaction accomplished each of those three priorities. Indeed in assessing whether PMH was paying an "appropriate and reasonable fair market value," Mr. Carris concluded as follows.

> The purchase commitment from Prospect is fair and reasonable for the acquisition of [Old CharterCARE] and its affiliates. This is based on the criteria established by the [Old CharterCARE] Board,[7] a review of available documentation, analysis of [Old CharterCARE]'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.

(Id.).

In its 2014 AG Approval Decision, the AG found that the proposed transaction complied with the Rhode Island Nonprofit Corporation Act. (Id. at p. 47). That finding satisfied one of the specifically enumerated HCA review criteria at R.I. Gen. Laws § 23-17.14-7(c)(19). The AG made that finding notwithstanding that SJHSRI still faced a significant unfunded pension liability.

The 2014 AG Approval Decision further required the Heritage Hospitals and CCF to prepare "a proposed *Cy Pres* petition satisfactory to the Attorney General . . . allowing certain charitable assets to be transferred to [CCF] and requesting that other charitable assets remain with the Heritage Hospitals, in each case for disbursement in accordance with donor intent. . . ."

---

[7] Pursuant to the earlier 2009 Affiliation Agreement, the Old CharterCARE Board consisted of a fifteen (15) member Board of Trustees, consisting of eight (8) trustees designated by the Bishop of Providence and seven (7) trustees designated by the Board of Trustees of RWH/RWMC. (Appx., Ex. 1, at p. 4).

(Appx., Ex. 3, p. 52, ¶ 8(b)).[8] This related to the AG's earlier comment in its 2014 AG Approval Decision 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." (Id. at p. 23). After obtaining the AG's approval for their proposed *Cy Pres* petition, the Heritage Hospitals and CCF then were required to file that petition with this Court. (Id., ¶ 8(c)). The APA transaction closed about a month later on June 20, 2014.

C. This 2015 *Cy Pres* Proceeding.

On January 13, 2015, RWH/RWMC, SJHSRI, and CCF (collectively, the "Petitioners") jointly filed their Petition in this *Cy Pres* Proceeding.

CCF now takes this opportunity to review the basic structure and content of that Petition. It is important to set the record straight, because the Proposed Intervenors press a misleading argument that the Petition misrepresented that SJHSRI's long-term pension liability was one of the "Outstanding and Post Closing Liabilities" that would be "paid off" or "satisfied" during the Heritage Hospitals' subsequent "wind down" period. A careful review of the Petition makes it clear that Petitioners said nothing of the sort.

At the outset, paragraphs 1-4 of the Petition identified the parties. It accurately recited that RWH/RWMC, SJHSRI, and CCF were at that time – as they still remain today – three separate legal entities. The Proposed Intervenors were not named as a party because they had not, at that time, asserted any pending claim to the charitable assets in question. As noted above,

[8] Significantly, the AG's approval decision described how the lion's share of CCF's proposed *cy pres* funding was to come from RWH/RWMC, and not from SJHSRI. (Id. at p. 25). That is significant because the Proposed Intervenors, at best, are creditors of SJHSRI, not RWH/RWMC. Because there was no merger, SJHSRI's pension liability never was transformed into a joint liability of both RWH/RWMC and SJHSRI. Quite simply, Proposed Intervenors have no claim against RWH/RWMC charitable assets.

the nurses' union instead had supported the proposed transaction. None of the relevant stakeholders or policymakers objected to the contemplated transfer of charitable assets to CCF during this follow-on proceeding after the AG's well-publicized HCA approval.

Paragraphs 5-7 of the Petition fell under a heading titled "Jurisdiction." Paragraph 5 accurately recited that: "This Petition is brought pursuant to R.I. General Laws § 18-4-1 et seq. entitled 'Application of Cy Pres Doctrine' 18-9-1 et seq. entitled 'Division of Charitable Assets' and § 18-12.1-1 et seq. entitled 'Uniform Prudent Management of Institutional Funds Act' ('UPMIFA')." (Petition, ¶ 5). Those are the statutes that set the proper legal framework for this Court's consideration of the Petition. It is noteworthy that the Rhode Island Nonprofit Corporation Act was not one of them. The Petition did not address that statute because the AG's Office already had determined in its prior HCA Approval Decision that the transaction (including the contemplated *cy pres* transfer of charitable assets that was part and parcel of that transaction) did comply with the Rhode Island Nonprofit Corporation Act.

Paragraphs 8-19 provided this Court with the relevant background leading up to the Petition. As explained below, paragraphs 11, 16, and 17 are particularly material here.

In the context of summarizing key terms of the 2014 APA, paragraph 12 introduced the defined, capitalized term "Outstanding Pre and Post Closing Liabilities," and provided as follows.

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

(Petition, ¶ 12) (emphasis added). The bolded portion demonstrates that the defined term "Outstanding Pre and Post Closing Liabilities" in the Petition referred back to the more specific, detailed terms of 2014 APA. The 2014 APA had made clear that SJHSRI's long-term pension liability was an "Excluded Liability" that SJHSRI would retain post-closing. (Appx., Ex. 5, § 2.4). Moreover, Section 4.29 of the APA had specifically excluded SJHSRI's long-term pension liability from a warranty that Sellers "will not be rendered insolvent by any of the Transactions" due to the "uncertainty of amount" of that long-term pension liability. (Id. § 4.29). Thus, it simply is not accurate for Proposed Intervenors to suggest that the capitalized term "Outstanding Pre and Post Closing Liabilities," as used in the Petition, referred to pension liabilities that would be fully satisfied during a wind-down period.

Paragraph 16 of the Petition is also significant for present purposes. It recited how, as part of the AG's earlier HCA approval, Old CharterCARE had submitted to the AG's Office "proposed and final Sources and Uses of Funds Analyses" as of the June 20, 2014 closing. Exhibit C to the Petition presented this Court with a comparison of the proposed and final Sources and Uses of Funds Analyses. Exhibits D and E presented this Court with copies of the "final Summary Balance Sheets" for CCF and the Heritage Hospitals.

In particular, Exhibit E to the 2015 *Cy Pres* Petition, made clear that, post-closing, SJHSRI (Fatima Hospital) still had a $62,410,940 long-term pension liability on its estimated opening balance sheet. That balance sheet differentiated that $62,410,940 *long-term* pension liability from $6,800,029 of SJHSRI (Fatima Hospital)'s *current* liabilities, as follows:

Current Liabilities	
-Accounts Payable/Accrued Expenses	708,820
Intercompany Payable	
- Third Party Payor	1,080,564
- unassumed contracts	-
- workes compensation (TPA)	403,296
- Working Capital Adjustment liability	1,062,704
- Insurance Tails	3,544,645
-other Liabilities	
	6,800,029
Long Term Liabilities	
- pension liability	62,410,940

Against these liabilities, SJHSRI (Fatima Hospital)'s opening balance sheet reflected $12,102,083 of assets. While the Petition did suggest that the Heritage Hospitals would retain certain assets to satisfy or pay off current liabilities – such as accounts payable, insurance premiums, and the like – during a wind-down period, the last sentence of paragraph 17 made clear that: "**The SJHSRI pension funding obligation will continue after the wind-down period concludes**."[9]

In light of the above, it is misleading for the Proposed Intervenors to suggest that the Petition unconditionally included pension liabilities as among the "Outstanding and Post Closing Liabilities" that would be "paid" or "satisfied" during a wind-down period.[10] The Petition, in fact, disclosed to the Court that SJHSRI (Fatima Hospital) had a $62,410,940 long-term pension

[9] That was consistent with Section 4.29 of the APA, wherein the Sellers warranted that, except for "Liabilities associated with the Retirement Plan due to their uncertainty of amount . . . Sellers are not now insolvent and will not be rendered insolvent by any of the Transactions. . . ."

[10] Proposed Intervenors' Motion omits any reference to paragraphs 12 and 16, and mentions the last sentence of paragraph 17 only in passing. (Proposed Intervenors' Memorandum, p. 22). Proposed Intervenors also suggest that Petitioners made some type of representation to the Court that PMH's one-time $14 million contribution at closing towards SJHSRI's significant long-term pension liability completely satisfied that liability. (Id.) In fact, Petitioners made no such statement.

liability, and that the corresponding funding obligation would not be paid or satisfied in full during the wind-down period.

Paragraphs 20-31 of the Petition presented a detailed description of the particular charitable assets for which the petitioners were seeking *cy pres* approval for transfer to CCF. The Petition further addressed the use of and disposition of institutional charitable assets in paragraphs 21-23 and 26, and separately addressed certain perpetual trusts at paragraphs 27-30. Petitioners requested that $8,410,287.74 of the restricted, institutional charitable assets be transferred to CCF. With respect to the perpetual trusts, Petitioners sought approval to transfer annual distributions from certain SJHSRI perpetual trusts to CCF *only after* "Outstanding Pre and Post Closing Liabilities (both non-pension and pension) . . . have been paid." (Petition, ¶ 27). CCF never has received any such annual distributions from any of the perpetual trusts described in paragraphs 27-30 of the Petition because SJHSRI's long-term pension liabilities have not been fully satisfied. Thus, the argument by Proposed Intervenors alleging misrepresentation or fraud with respect to the statements in paragraphs 27-30 of the Petition concerning the perpetual trusts (from which CCF has received no funds) as a basis for seeking to void the *Cy Pres* Order (from which CCF did receive its funds) is entirely without basis.

The Petition also made clear that RWH/RWMC and SJHSRI each owned their own charitable assets. Of the $8,410,287.74 restricted, institutional charitable assets that were transferred to CCF, the sum of $6,736,599.34 came from restricted charitable assets held by RWH/RWMC (about 80%), and a total of $1,656,222.61 came from restricted charitable assets held by SJHSRI (about 20%). (Petition, ¶¶ 20-31). Thus, the lion's share of CCF's founding funds came from RWH/RWMC, which never was a debtor of the Proposed Intervenors (who formerly worked only for SJHSRI).

Contemporaneous with filing, the Petitioners also served the AG's Office with a copy of the Petition. On April 1, 2015, the AG's Office filed a response that fully supported the Petition, subject only to conditions requiring CCF to report to the AG's regarding the expenditure of funds transferred to CCF. (AG Reply, at pp. 3-5).

On April 6, 2015, this Court held a hearing to consider the Petition. Petitioners' counsel, three Assistant Attorneys General, and an attorney for Bank of America attended that hearing.[11] Counsel for the AG's Office noted that, consistent with the AG's statutory and common law duties to protect the state's charitable assets, the AG's Office had met, and extensively discussed the Petition, with the Petitioners. (Appx. Ex. 8 (Transcript of Apr. 6, 2015 Hearing), p. 12). This Court likewise noted that it had held a productive conference among all parties, and had reviewed the Petitioners' submissions.

At the conclusion of the hearing, and in issuing its *Cy Pres* Order, this Court stated as follows.

> To many people, and I'm not talking about hospital conversions in terms of that issue, but in terms of charitable assets, many people ask why do we need to go through the process itself. **And it really is for the original donors and the integrity of people who donate to institutions such as this that the Attorney General by statute has [been] put into position to make sure that certain things occur [and] that the money is being used for the purposes [for which] they were designated . . . .**

(Id. at 13) (emphasis added). CCF respectfully submits that the Court's emphasized, bolded statement accurately reflected the proper focus of this *cy pres* proceeding: honoring the original donors' intent. The Court then approved the Petition subject to the reporting requirements raised by the AG's Office. (Id. at 14). On April 20, 2015, the Court entered the corresponding *Cy Pres* Order.

[11] Bank of America, the trustee for the perpetual trusts identified in paragraphs 27-30 of the Petition, filed a reply indicating that it had no objection to the Petition.

That *Cy Pres* Order effectively concluded this action. It left nothing further to be decided by the Court. While the Court's *Cy Pres* Order did impose certain reporting requirements upon CCF, those reporting requirements flowed to the AG's Office, not to this Court. That there are no docket entries in this proceeding between April 20, 2015 and June 18, 2018 (the date when Proposed Intervenors filed their untimely Motion) demonstrates how the *Cy Pres* Order did indeed conclude this action for all intents and purposes.

After entry of the *Cy Pres* Order, CCF received the $8,410,287.74 of funds in question. CCF thereafter invested those funds with the Rhode Island Foundation. As described in the contemporaneously filed Affidavit of CCF President Donald McQueen, in the three-plus years since April 20, 2015, CCF has used the income on these charitable assets to fund scholarships and grants to promote affordable access to health care throughout Rhode Island. For example, CCF's grants have helped to: educate and prevent diabetes; improve opioid recovery centers' response time to overdose emergencies; provide mental health treatment to homeless veterans; provide housing and education to young girls who have been victimized by physical and sexual abuse; and purchase medical equipment for nursing home senior citizens and children of low-income families. (McQueen Aff., ¶ 6). In extending these grants over the past three-plus years, CCF has done so in reliance upon the legitimacy and legality of the original *Cy Pres* transfers made to CCF in 2015. (Id. ¶ 8).

D. The Receiver's June, 2018 Filings.

The grievance that prompted Proposed Intervenors to file their instant Motion arises from a separate receivership proceeding. On August 18, 2017, SJHSRI filed a Petition for the Appointment of a Receiver of the St. Joseph's Health Services of Rhode Island Retirement Plan (the "Plan"), requesting therein that the Court approve an immediate 40% uniform reduction in benefits available under the Plan. On October 27, 2017, this Court appointed Attorney Stephen

DelSesto as the Plan's Permanent Receiver. Attorney DelSesto thereafter retained Wistow, Sheehan & Loveley to act as Special Counsel to the Permanent Receiver, to investigate potential third-party liability to the Plan, and to bring suit if warranted.

Following its investigation, on June 18, 2018, Special Counsel, acting on behalf of the Permanent Receiver and seven individually named Plan beneficiaries, filed suit in the Federal Court Action.[12] The plaintiffs in that newly-filed Federal Court Action are identical to the Proposed Intervenors in this *Cy Pres* Proceeding. In 136 pages and 527 separately enumerated paragraphs, the federal court complaint alleges twenty-one (21) separate counts against fifteen (15) separate defendants. CCF and its two co-petitioners are among those fifteen (15) named defendants in the Federal Court Action.

Proposed Intervenors' allegations against CCF in the Federal Court Action are identical to – and, in many respects, expand well beyond – the allegations lodged in their pending Motion to Intervene in this *Cy Pres* Proceeding. For example, at paragraph 57(d)(iii) of the "Overview" section of their federal court complaint, the Proposed Intervenors allege that CCF (together with other defendants) engaged in a fraudulent scheme:

> to secure cash which should have gone to bolster the Plan, SJHSRI's parent company over the last four years stripped at least $8,200,000 in charitable assets from SJHSRI and its other subsidiary, and either spent or put the money in a foundation it controlled. This was accomplished by misleading the Rhode Island Superior Court in 2015 into approving these wrongful and fraudulent transfers under the doctrine of *cy pres*.

[12] Also on June 18, 2018, the Proposed Intervenors filed a companion complaint in the Rhode Island Superior Court. Proposed Intervenors filed that state court complaint to preserve their rights in the event that the federal court declines to exercise supplemental jurisdiction over their state law claims. The parties thereafter filed a request to stay that state court action, and give priority to the Federal Court Action, and the Rhode Island Superior Court granted that request. The Federal Court Action is now the operative proceeding.

(Federal Court Complaint, ¶ 57(d)(iii)). That language will sound familiar to the Court since it echoes the allegations in the pending Motion to Intervene. In a later section titled "Misleading The State Court In Connection With Cy Pres Proceedings," paragraphs 367-381 of the federal court complaint set forth the factual basis for the Proposed Intervenors' claim that this Court approved the *cy pres* transfer of funds to CCF based upon alleged misrepresentations and material omissions in the 2015 Cy Pres Petition.[13] Again, those allegations are identical to the allegations in Proposed Intervenors' pending Motion to Intervene. There, as here, Proposed Intervenors make the argument that the Rhode Island Nonprofit Corporation Act required SJHSRI to use all its assets, even restricted charitable assets, to first pay creditors before any such assets could be transferred to another charitable entity. (Federal Court Complaint, ¶ 368).

The relief sought in the Federal Court Action is broader than the relief that Proposed Intervenors seek in their proposed Counter-Petition in this *Cy Pres* Proceeding. Here, Proposed Intervenors are asking this Court to vacate its *Cy Pres* Order, and order CCF to "hold" all funds received from SJHSRI and RWH/RWMC. As set forth above, CCF already has agreed to "hold" certain of its assets pending resolution of the Related Proceedings. In contrast, Proposed Intervenors' federal court complaint more broadly seeks an "attachment of all of the assets transferred to [CCF] . . . pursuant to the 2015 *Cy Pres* Proceeding" and an order that all such assets be turned over to themselves – i.e., an actual "claw-back". (Id., ¶ 458, p. 119, ¶ 466, p. 121). The federal court complaint also seeks a judgment holding CCF jointly and severally

[13] Based upon those factual allegations, Proposed Intervenors' federal court complaint seeks to hold CCF liable, together with other defendants, on the following claims: Fraudulent Transfer, R.I. Gen. Laws § 6-16-4(a)(1) (Count V); Fraudulent Transfer, R.I. Gen. Laws § 6-16-4(a)(2) and/or § 6-16-5(a) (Count VI); Fraudulent Scheme (Count VIII); Conspiracy (Count IX); Alter Ego (Count XII); Successor Liability (Count XV); Civil Liability Under R.I. Gen. Laws § 9-1-2 for Violations of the Rhode Island Hospital Conversions Act (Count XVI); and Aiding and Abetting Breaches of Fiduciary Duty (Count XX).

liable together with other defendants for money damages allegedly sustained as a fraud of misrepresentations in the 2015 *Cy Pres* Petition. (Id., pp. 123-24, 126, 128-29, 132).

CCF respectfully submits that, with this Court's June 28, 2018 Order now in place to preserve CCF's assets pending a resolution of the Related Proceedings, the Federal Court Action is now the proper forum for the parties to comprehensively litigate all Proposed Intervenors' claims, including its contested claims that this Court's *Cy Pres* Order approving the Petition was secured through misrepresentations regarding the SJHSRI's pension liability. There is no basis or need to proceed herein, and the Motion to Intervene therefore should be **DENIED** for the reasons set forth below.

III. LEGAL ARGUMENT

A. THE COURT'S *CY PRES* ORDER IS A FINAL JUDGMENT NOT SUBJECT TO REVIEW.

i. The Order Is A Final Judgment Because It Terminated This Litigation On The Merits, And Left Nothing Further For This Court To Decide.

An order or decree qualifies as a final judgment when it "terminate[s] the litigation of the parties on the merits of the case, so that . . . the court below would have nothing to do but to execute the decree it had already rendered." McAuslan v. McAuslan, 34 R.I. 462, 83 A. 837, 840 (1912) (quoting Grant v. Phoenix Ins. Co., 106 U. S. 429, 429 (1882)). The touchstone for determining whether a decree or order qualifies as a final judgment is whether the court's order "gives all the relief that is contemplated," and "leaves no necessity for any further order of the court to give all the parties the entire benefit of the decisions." Id. Rhode Island courts repeatedly have cited McAuslan's definition of what types of orders and decrees qualify as a final judgment. See Fayle v. Traudt, 813 A.2d 58, 61, n.3 (R.I. 2003); In re Oliveira, 765 A.2d 840, 842 (R.I. 2001); Ross v. Mencoff, 82 R.I. 461, 465 (1955); see also Murphy v. Bocchio, 338

A.2d 519, 523 (R.I. 1975) ("The finality contemplated by Rule 60(b) envisions an order that definitely terminates the litigation and leaves nothing more for the court to decide.").

Here, this Court's *Cy Pres* Order bears all the indicia of a final judgment, as articulated in McAuslan and its progeny. It fairly, finally, and unequivocally adjudicated all of the rights of the parties, and granted all relief requested in the Petition. Importantly, the Court's *Cy Pres* Order left no additional steps and imposed no additional conditions on Petitioners' receipt or retention of the funds specified in the Petition. That explains why there was not a single entry on the docket in this proceeding between the entry of this Court's Order on April 20, 2015 and the untimely filing of Proposed Intervenors' Motion on June 18, 2018. If this Court's comprehensive *Cy Pres* Order does not qualify as a final judgment under the McAuslan standard, then it is difficult to conceive of what type of final order or decree in an equitable action possibly could.

The following hypothetical illustrates how basic common sense demands that the Court's *Cy Pres* Order of April 20, 2015 must be afforded the status of a final judgment. If Petitioners (or the AG's Office or Bank of America) had been dissatisfied with that *Cy Pres* Order, then such party would have been required to file a notice of appeal by May 11, 2015 – i.e. within twenty days of entry of that order. Sup. Ct., art. I, R. 4(a). It would be absurd to suggest that today, three-plus years later, Petitioners still could file a timely appeal simply because the Court's *Cy Pres* Order lacked the magic words "final judgment" so as to trigger an appellate deadline under Supreme Court Rule 4(a).[14] Such a reading would leave open indefinitely all

[14] Rhode Island courts do not always require the magic words "final judgment" in order to treat what clearly was intended as a final order or decree as a "final judgment." For example, in Brenner Associates, Inc. v. Rousseau, the Rhode Island Supreme Court entertained an appeal from a post-trial order granting a directed verdict motion, notwithstanding that it had not thereafter been followed by separate entry of a "final judgment" pursuant to Rule 58(a). 537

orders that adjudicated all rights in an action. That absurd conclusion is, however, the logical extension of Proposed Intervenors' argument that the Court's *Cy Pres* Order does not qualify as a final judgment.

Proposed Intervenors argue that this Court left this litigation "open" simply because its *Cy Pres* Order imposed certain reporting requirements. (Proposed Intervenors' Memorandum, p. 13 n.3). Those reporting requirements, however, required only that CCF make periodic reports to the AG's Office (not this Court) so that the AG's Office may verify that CCF is using its funds consistently with donor intent. These are *post-judgment* conditions that have nothing to do with the Court's approval of the Petition, and they require no additional judicial oversight. Indeed, if CCF failed in its reporting obligations, the AG Office's remedy would be to return to this Court to seek enforcement of the judgment, not to revisit the fundamental rights and obligations earlier adjudicated by the Court. McAuslan recognizes that, even where an order "requires one or more orders or supplemental decrees for its enforcement," the order still remains a final judgment so long as it fully adjudicates the claims of the parties. 83 A. at 841. Because Petitioners received all of the relief that they requested, the subsequent imposition of post-judgment reporting obligations has no impact on the finality of the Court's *Cy Pres* Order. For all of these reasons, the *Cy Pres* Order is a final judgment.

ii. Proposed Intervenors Are Not Entitled To Relief From This Court's Judgment Under Rule 60(b).

Because the *Cy Pres* Order enjoys the force of a final judgment, an attempt to vacate it would have to pass muster under the stringent standards of Super. Ct. R. Civ. P. 60(b). Cf. Murphy, 338 A.2d at 523. Rule 60(b) provides:

A.2d 120, 122 (R.I. 1988). The Court held that: "Since the failure to enter judgment was apparently a clerical oversight, however, we shall not dismiss this appeal, which dismissal would seriously delay a final disposition of this case." Id.

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) Mistake, inadvertence, surprise, or excusable neglect;
>
> (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) Fraud, misrepresentation, or other misconduct of an adverse party;
>
> (4) The judgment is void;
>
> (5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which the judgment is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
>
> (6) Any other reason justifying relief from the operation of the judgment.
>
> **The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one (1) year after the judgment, order, or proceeding was entered or taken**.

Super. Ct. R. Civ. P. 60(b) (emphasis added). Relief under any subsection of Rule 60(b) is considered extraordinary and should be granted sparingly. Fisher v. Kadant, Inc., 589 F.3d 505, 512 (1st Cir. 2009); see also In re Georgette, 768 N.E.2d 549, 557 (Mass. App. Ct. 2002) ("Rule 60 is to litigation what mouth-to-mouth resuscitation is to first aid: a life-saving treatment, applicable in desperate cases."). Generally, the moving party must demonstrate that the motion is timely, exceptional circumstances exist to justify extraordinary relief, that the moving party has a potentially meritorious claim or defense, and that the opposing parties will not suffer undue prejudice. Fisher, 589 F.3d at 512.

As a threshold matter, Proposed Intervenors lack standing to challenge the Court's final order and judgment under Rule 60(b) because they never were parties to this action. The text of Rule 60(b) is clear. "The court may relieve a party or a party's legal representative from a final judgment, order, or proceeding . . . .." (emphasis added). As such, only *parties* to an action have standing to seek relief under Rule 60(b) in that action. See N. Atl. Distrib., Inc. v. Teamsters Local Union No. 430, 497 F. Supp. 2d 315, 327 (D.R.I. 2007) (plaintiffs could not use Rule 60(b) to challenge entry of default judgment because they were not parties to underlying action).

Setting that obvious hurdle aside for the time being, even if the Proposed Intervenors had standing to file a Rule 60(b) motion, which they do not, Rule 60(b) still would require denial of the motion. Rule 60(b)(3) or 60(b)(6) are the only two subsections that even arguably apply here, and they are inapplicable here for the reasons set forth below.

1. A Rule 60(b)(3) Motion To Set Aside The Judgment On Grounds of Misrepresentation Or Fraud Would Be Time-Barred And Is Unsupported By The Evidence On The Record.

By its terms, Rule 60(b) requires that any motion seeking to set aside a final judgment or order on grounds of "fraud, misrepresentation, or other misconduct of an adverse party" must be filed "not more than one (1) year after the judgment, order, or proceeding was entered or taken." That condition obviously is not satisfied here, where Proposed Intervenors filed their instant Motion more than three years after this Court entered the *Cy Pres* Order. Courts adhere strictly to this one-year deadline and lack discretion to extend it. See Waldeck v. Domenic Lombardi Realty, Inc., 425 A.2d. 81, 83 (R.I. 1981) ("[T]his time limitation of one year in which to make a motion under this rule is absolute and cannot be extended."). Therefore, the Court must summarily deny Proposed Intervenors' Motion as untimely.

Even if Proposed Intervenors' Motion was timely filed, which it was not, the Motion still would fail because Proposed Intervenors cannot satisfy the applicable standard to undo an order or judgment on the basis of "[f]raud, misrepresentation, or other misconduct of an adverse party." A party who brings a motion for relief from a judgment on the basis of fraud bears the burden of demonstrating such fraud by clear and convincing evidence. Friendly Home, Inc. v. S'holders and Creditors of Royal Homestead Land Co., 477 A.2d 934, 937 (R.I. 1984). That is, the moving party must show that the allegations of fraud are "highly probably" true. Id.

At its best, and crediting all reasonable inferences, Proposed Intervenors' Motion fails to allege fraud or misrepresentation sufficient to justify relief under subsection (3). As this Court is aware, the gravamen of Proposed Intervenors' Motion is that the Petitioners misled the Court into believing that, after transfer of the charitable assets to CCF, SJHSRI still would have sufficient assets to "pay" or "satisfy" SJHSRI's considerable long-term pension liability during a "wind-down" period. **This simply is not true**. The last sentence of paragraph 17 of the Petition expressly stated that: "**The SJHSRI pension funding obligation will continue after the wind-down period concludes**." Furthermore, the Petitioners attached, at Exhibit E to the Petition, an estimated opening balance for SJHSRI (Fatima Hospital) listing a $62,410,940 long-term pension liability and only $12,102,083 of assets. Thus, the information presented in the Petition made clear that, after the transfer of certain institutional charitable assets to CCF, there was no assurance that SJHSRI's remaining assets would be sufficient to fund its significant long-term pension liability.

The proposed Counter-Petition of the Proposed Intervenors otherwise falls woefully short of alleging that Petitioners acted fraudulently or misleadingly in presenting the *Cy Pres* Petition to this Court. To the contrary, where the Petitioners did intend to condition CCF's receipt of

funds upon payment of SJHSRI's long-term pension liability, Petitioners stated that expressly. At paragraph 27 of the Petition, Petitioners sought approval to transfer annual distributions from certain SJHSRI perpetual trusts to CCF **only after** "Outstanding Pre and Post Closing Liabilities (**both non-pension and pension**) . . . have been paid." (Petition, ¶ 27) (emphasis added). As set forth above, CCF never has not received any such annual distributions because SJHSRI's pension liability has not been paid.

Notwithstanding Proposed Intervenors' focus on this issue, the question of whether or not SJHSRI had sufficient asserts to fully "pay" or "satisfy" its long-term pension liability simply was not material to this *Cy Pres* Proceeding. Petitioners brought this *Cy Pres* Proceeding pursuant to the *cy pres* statute at R.I. General Laws § 18-4-1 et seq. and the Uniform Prudent Management of Institutional Funds Act at R.I. General Laws § 18-12.1-1 et seq. The question presented to the Court was whether the contemplated *cy pres* transfers honored the original donors' intent, not whether they would negatively impact pensioners of SJHSRI.

For all these reasons, Proposed Intervenors fall well short of alleging that Petitioners "highly probably" committed fraud, so as to support vacating the *Cy Pres* Order under the stringent Rule 60(b)(3) standard.

2. Relief Is Also Unavailable Under Rule 60(b)(6).

Proposed Intervenors fare no better under Rule 60(b)(6), the only other subsection that, arguably, applies here. Subsection (6) permits the court to vacate a judgment for "[a]ny other reason justifying relief from the operation of the judgment." Although Rule 60(b)(6) ostensibly appears to be a "catch-all" provision, the case law says otherwise. A party is entitled to relief under Rule 60(b)(6) only in "unique circumstances in order to prevent a manifest injustice." Bailey v. Algonquin Gas Transmission Co., 788 A.2d 478, 482 (R.I. 2001). Relief under

subsection (6) is "mutually-exclusive" with relief granted under subsections (1)-(5). Id. at 481 n. 2. That is, one seeking to set aside a judgment pursuant to Rule 60(b)(6) must show grounds that are "separate and distinct" from those available under the remaining subsections of Rule 60(b). Id. All motions brought pursuant to Rule 60(b)(6) must be asserted within a "reasonable time" following the judgment or order at issue. Sup. Ct. R. Civ. P. 60(b).

Here, as discussed above, Proposed Intervenors articulated their claims regarding this C*y Pres* action more than three years after all relief had been accorded, and this matter had been finally concluded. CCF is aware of no case in which a party (or, in this case, a non-party) was granted relief after the passage of so much time.

Moreover, Proposed Intervenors are precluded from seeking relief under Rule 60(b)(6) where their claims so clearly are of the "misrepresentation" type that fall within Rule 60(b)(3). As Proposed Intervenors have not articulated grounds for relief "separate and distinct" from their allegations of fraud, Rule 60(b)(6) simply is inapplicable here.

B. EVEN IF THE *CY PRES* ORDER IS NOT A FINAL JUDGMENT, THIS COURT STILL SHOULD DENY THE INTERVENTION MOTION AS UNTIMELY AND UNNECESSARY IN LIGHT OF THE PENDING FEDERAL COURT ACTION.

i. Proposed Intervenors' Motion Is Untimely In The Extreme.

Even if the *Cy Pres* Order never matured into a final judgment, and it does enjoy the force of a final judgment for the reasons set forth above, this Court still should deny the Motion to Intervene, whether as of right under Rule 24(a) or by permission under Rule 24(b). Under either Rule 24(a) or Rule 24(b), an application for intervention must be "timely." See Tonetti Enterprises, LLC v. Mendon Road Leasing Corp., 943 A.2d 1063, 1072-73 (R.I. 2009) ("Under Rule 24(a)(2), an applicant will be granted intervention as of right if [(1)] the applicant files a

timely application . . . ."); Sup. Ct. R. Civ. P. 24(b) (conditioning permissive intervention "[u]pon timely application").

"Since the rule itself is silent regarding what constitutes a timely application, it is well settled that the determination of timeliness is a matter committed to the sound discretion of the trial justice." Marteg Corp. v. Zoning Bd. of Review of City of Warwick, 425 A.2d 1240, 1242 (R.I. 1981). "Timeliness of intervention is to be judged by two criteria: (1) the length of time during which the proposed intervenor has known about his interest in the suit without acting and (2) the harm or prejudice that results to the rights of other parties by delay." Id. at 1243.

Significantly, movants bear a particularly higher burden in demonstrating an entitlement to intervene after all matters in the underlying litigation have been resolved. Id.; see also Direct Action for Rights and Equal. v. Gannon, 713 A.2d 218, 222 (R.I. 1998) ("Intervention after final judgment is unusual; consequently the party seeking to intervene must satisfy an especially heavy burden"). The reasoning for the higher burden "is the assumption that allowing intervention after judgment will either (1) prejudice the rights of the existing parties to the litigation or (2) substantially interfere with the orderly processes of the court." Id.

Here, Proposed Intervenors are seeking to re-open this settled proceeding more than three years after this Court issued its *Cy Pres* Order. In a passing one-paragraph argument at pages 40-41 of their brief, Proposed Intervenors state that "although the 2015 *Cy Pres* Petition was granted more than three years ago, the connection between the suit and the right of the Plan and Plan participants was never disclosed to the Plan or the Plan participants." This falls well short of a unequivocal statement that Proposed Intervenors lacked actual knowledge in 2015 that this *Cy Pres* action had been filed.

In assessing intervention motions, courts consider not only the proposed intervenor's actual knowledge, but also whether the proposed intervenor reasonably should have known of the litigation and its potential impact of his rights. See Richmond Ready Mix, Inc. v. Atlantic Concrete Forms, Inc., 2004 WL 2820903, *6 (R.I. Super. Ct. 2004) (Darigan, J.) (denying intervention where moving party "knew *or should have known* of her interest in the outcome of that particular litigation approximately four years ago") (emphasis added); see also United States v. Metropolitan Dist. Comm'n, 865 F.2d 2, 5 (1st Cir. 1989) (listing as a factor bearing on the determination of timeliness, "the length of time the prospective intervenors knew *or reasonably should have known* of their interest before they petitioned to intervene"); Floyd v. City of New York, 770 F.3d 1051, 1054 (2nd Cir. 2014) (district court properly denied police unions' motions to intervene in actions challenging constitutionality of stop-and-frisk procedures where the litigation was well publicized, and the unions reasonably should have known that the actions may impact their asserted interests).[15]

Here, the Proposed Intervenors reasonably should have known that they had an opportunity to seek intervention in this 2015 *Cy Pres* Proceeding to address their asserted interests. This action was a follow-on proceeding from the much more expansive, and well-publicized HCA administrative approval process. As set forth above, the impact of the proposed for-profit conversion on the SJHSRI pension plan was one of many subjects discussed during public meetings and hearings. On March 6, 2014, Christopher Callaci, the General Counsel for

[15] As the Proposed Intervenors acknowledge at page 24 of their brief, there is no question that the Plan had actual knowledge of this *Cy Pres* Proceeding. Per the clear language of the Plan (a copy of which was attached to SJHSRI's original petition to place the Plan into receivership), SJHSRI (a Petitioner in this *Cy Pres* Proceeding) was the administrator of the Plan. (Appx., Ex. 9, § 8.1(a)). If SJHSRI violated a fiduciary duty in filing the *Cy Pres* Petition, a proposition CCF in no way supports, the Proposed Intervenors have a remedy against SJHSRI in the Federal Court Action.

the union representing SJHSRI's nurses and allied professionals, submitted a letter of "full support" for the proposed transactions. (Appx., Ex. 6). That letter mentioned the impact of the transaction on the SJHSRI pension plan. At the April 28, 2014 public informational meeting required by the HCA, Lynn Blais, president of Local 5510 at SJHSRI (Fatima Hospital), spoke in support of the proposed transaction. (Appx., Ex. 7, at pp. 81-83). Thereafter, the AG's Office issued its 2014 AG Approval Decision on May 16, 2014. That decision is a public record available on the AG's website.[16] Condition no. 8 of that decision informed the public that the Petitioners would be filing this Cy Pres Petition seeking to transfer certain restricted charitable assets to CCF. If the Proposed Intervenors claimed an interest in either RWH/RWMC's or SJHSRI's charitable assets, they had an opportunity to assert that interest in 2015.[17]

Additionally, in judging the timeliness of the intervention motion, this Court must consider "the harm or prejudice that results to the rights of other parties by delay." Marteg Corp., 425 A.2d at 1243. This factor weighs heavily against permitting intervention. During the past three-plus years, and continuing, CCF has been awarding grants and scholarships to various charitable causes consistent with the original donors' intent. In so doing, CCF and its Board, as well as the multiple grant recipients, have relied upon the *Cy Pres* Order as the constitutional bedrock of their actions. (See McQueen Aff., ¶ 8). CCF faces real and tangible harm from the Proposed Intervenors' intervention motion, which threatens to invalidate the very basis upon which CCF has conducted its charitable endeavors.

---

16 Available at http://www.riag.ri.gov/documents/5-16-14AGFinalDecision.pdf.

17 As a practical matter, representatives of the Plan beneficiaries – such as union representatives – could have contacted the Petitioners or the AG's Office, and requested as a courtesy that they be kept abreast of any future filings with respect to the forthcoming *cy pres* petitions that the 2014 AG Approval Decision announced would be filed soon. Those representatives apparently chose not to do so.

In sum, this Court should deny the Motion because Proposed Intervenors cannot satisfy their heavy burden of demonstrating a timely motion that does not result in undue harm or prejudice to CCF. Concerns over the timing of Proposed Intervenors' Motion implicate interests far beyond this lawsuit. Public policy demands that there be a finality to *Cy Pres* orders. Both the parties and the ultimate recipients of charitable funding must be entitled to rely on the results of litigation without fear that a disgruntled creditor, years down the road, may attempt to upset the judgment. This is particularly true where, as here, the facts underlying the judgment received multiple layers of public review.

ii. Proposed Intervenors May Pursue All Relief Requested Herein In The Related Proceedings.

To demonstrate an entitlement to intervene, the moving party must show that the disposition of the action in the movant's absence would impair or impede the movant's interests. Rule 24(a). Courts should consider the movant's ability to protect his or her interests in a separate action. See Hines Road, LLC v. Hall, 113 A.3d 924, 927, 931 (R.I. 2015) (concluding that availability of "other legal avenues" could be considered in denying motion to intervene); Fed. Trade Comm'n v. Am. Telnet, Inc., 188 F.R.D. 688, 689 (S.D. Fla. 1999) (motion to intervene in federal court action denied when movant already had related claims sufficient to protect interests pending in state court); see also 7C Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1908.2 (3d ed. 2018) (collecting cases illustrating a court's reluctance to allow intervention when a party has the ability to pursue a separate action).

Here, CCF already has agreed to preserve its assets pending resolution of Proposed Intervenors' claims. There is no longer any compelling need to permit Proposed Intervenors to assert their claims against CCF in this forum. As detailed above, Proposed Intervenors assert the

exact same claims against CCF, as well as numerous additional claims, in their newly-filed 136 page federal court complaint. The Federal Court Action is the proper forum for a complete adjudication of all Proposed Intervenors' claims concerning their rights to the SJHSRI pension fund.

The Proposed Intervenors essentially concede that all the relief they would be seeking through their Proposed Counter-Petition in this action also is available in their newly-filed Federal Court Action. It then logically follows that the Proposed Intervenors will suffer no prejudice if intervention is denied herein. In attempting to counter this obvious point, the best the Proposed Intervenors can muster is the slender reed of an argument that they face "the **real possibility** that the courts in the Related Proceedings will be disinclined to adjudicate the rights of the parties to the funds transferred pursuant to that petition. . . ." (Proposed Intervenors' Memorandum, p. 42) (emphasis added). That is sheer speculation, and no substitute for a demonstration of real and tangible prejudice in the absence of intervention.

Put simply, Rule 24 is meant to foster judicial economy and efficiency by consolidating related claims into a single action. Proposed Intervenors seek the opposite result. Rather than pursuing their global claims, all of which arise out of the same set of facts, in a single, already-pending action, Proposed Intervenors look to burden this Court and Petitioners with duplicative litigation. This is particularly senseless where the Federal Court Action will adjudicate the issues raised here. Likewise, litigating Proposed Intervenors' claims on parallel tracks creates a very real risk of multiple or inconsistent results and needlessly consuming this Court's resources.

In summary, Proposed Intervenors' Motion should be denied where judicial economy, the convenience of the parties, and cost efficiencies all support litigating Proposed Intervenors' claims in the already-pending Federal Court Action.

iii. Proposed Intervenors Were Not "Necessary Parties" Under Rule 19.

As a corollary to their request to intervene as of right pursuant to Rule 24(a), Proposed Intervenors argue that Rule 19 required Petitioners to join them as "necessary parties" at the outset of this action in January, 2015. Persons are "necessary" under Rule 19 only when they truly are "indispensable" to the resolution of the action. Anderson v. Anderson, 109 R.I. 204, 215 (1971).

> [T]rue indispensable parties are only those whose interests could not be excluded from the terms or consequences of the judgment and leave anything, or appreciably anything, for the judgment effectively to operate upon, as where the interests of the absent party are inextricably tied in to the cause . . . or where the relief really is sought against the absent party alone . . . .

Id. Judicial economy also is of paramount importance in deciding whether a non-party must be joined pursuant to Rule 19.

> The decision has to be made in terms of the general policies of avoiding multiple litigation, providing the parties with complete and effective relief in a single action, and protecting the absent persons from the possible prejudicial effect of deciding the case without them. Account also must be taken of whether other alternatives are available to the litigants. By its very nature Rule 19(a) calls for determinations that are heavily influenced by the facts and circumstances of individual cases, although certain general patterns are apparent in the decisions.

7 Wright & Miller, supra, at § 1604 (analyzing federal cognate to Rule 19).

Here, Proposed Intervenors are seeking to "turn back the clock" to 2015, and argue that Petitioners had some type of duty at the outset of this *Cy Pres* Proceeding to join them as required parties. Rule 19 did not require mandatory joinder of the Plan participants when Petitioners filed this this *Cy Pres* Proceeding in 2015, because the absence of the Plan participants would not prevent complete relief among named parties, the Petitioners themselves. As the Eighth Circuit held in LLC Corp. v. Pension Benefit Guar. Corp., "[t]he focus is on relief

between the parties and not on the speculative possibility of further litigation between a party and an absent person." 703 F.2d 301, 305 (8th Cir. 1983).

In LLC Corp., an ERISA plan administrator litigated a declaratory judgment action against the Pension Benefit Guaranty Corporation (PBGC) in order to determine what percentage of the residue of its terminated pension plan should be distributed to individual employees who participated in the plan. 703 F.2d at 305. On appeal, PBCG argued that the plan administrator had a duty under Rule 19 to join those employees as indispensable parties. Id. The Eighth Circuit affirmed that Rule 19 imposed no such duty, and further noted that: "The resolution of this case will not impair the employees' ability to sue [employer] if they believe they are entitled to more money." Id. Likewise here, Rule 19 did not require Petitioners to join the Plan participants as indispensable parties.

In the end, Proposed Intervenors essentially read Rule 19 to require that every petitioner in every *cy pres* proceeding must join as a party every potential creditor of the transferor, even if that potential creditor has not yet asserted any claim to the charitable funds in question, and even if the transferor is still current on his obligations to the potential creditor.[18] This reading of Rule 19 would lead to absurd results. Charitable institutions would be required to join every creditor and potential creditor to any proceeding concerning the disposition of the entity's charitable funds – just in case those assets one day could be used to satisfy a debt. A museum, for instance, seeking approval of the transfer of a Picasso to another museum would need to notify and join its roofing contractor, lest that contractor one day claim that the Picasso could have contributed to

[18] Neither the Permanent Receiver, nor any of the potential individual pensioners/ intervenors allege that the SJHSRI pension fund, either in 2015 or to date, has defaulted in any payment due to any of the 2,700 pensioners in question. Indeed, the Permanent Receiver and the proposed individual intervenors do not even allege in their Proposed Counter-Petition that they are creditors of SJHSRI. The rights of individual pensioners is even more attenuated than the rights of the Permanent Receiver.

the payment of an unpaid debt. Rule 19 simply cannot be read to require the mandatory joinder of such a limitless and impossibly speculative class of parties.[19]

C. THIS COURT SHOULD DENY THE MOTION BECAUSE PROPOSED INTERVENORS FAIL TO ALLEGE A COGNIZABLE CLAIM TO CHARITABLE FUNDS RESTRICTED FOR USE FOR PARTICULAR PURPOSES.

"Whether of right or permissive, intervention under Rule 24 is conditioned by the Rule 24(c) requirement that the intervenor state a well-pleaded claim or defense to the action." R.I. Fed'n of Teachers, AFL-CIO v. Norberg, 630 F.2d 850, 854 (1st Cir. 1980). Here, this Court should further deny the Motion to Intervene because the proposed Counter-Petition fails to state a legally cognizable claim to CCF's funds.

In short, the Proposed Intervenors' Motion is an exercise in futility because all of the funds at issue are restricted to use for donor-specified purposes and therefore are unavailable to pay SJHSRI's creditors. Assuming (without conceding) that RWH and SJHSRI were in the process of dissolution at the time of the *Cy Pres* Order,[20] the Proposed Intervenors maintain that

---

[19] By way of further example, should SJHSRI or RWH/RWMC have named as Rule 19 parties every medical malpractice plaintiff or other claimant in the event that the Heritage Hospitals some day lacked sufficient funds to pay a judgment?

[20] To CCF's knowledge, neither SJHSRI nor RWH/RWMC have filed a dissolution notice with the Rhode Island Secretary of State's Office. They both remain separate legal entities, and have maintained current registrations with the Secretary of State's Office, having most recently filed annual reports on May 18, 2018. (Appx., Ex. 10). The Proposed Intervenors attached, as Exhibit D to their Motion to Intervene, a Written Consent of the Class A Member of SJHSRI dated December 15, 2014 which, *inter alia*, authorizes the dissolution of SJHSRI at such time as Daniel Ryan and Richard J. Land "deem necessary and appropriate." Mr. Ryan was the President of SJHSRI and one of its three directors per 2015 and 2016 annual reports filed with the Rhode Island Secretary of State on July 2, 2015 and June 21, 2016 respectively. Mr. Land is listed as the registered agent for SJHSRI in annual reports for 2015-18. To CCF's knowledge, Mr. Ryan and Mr. Land have not voted or directed the dissolution of SJHSRI. The fact that the Proposed Intervenors' federal court complaint pleads a count for dissolution of SJHSRI speaks to the fact that dissolution has not yet happened. (See Federal Court Complaint, Count XVIII for "Liquidation Pursuant to R.I. Gen. Laws §§ 7-6-60 & 61, 516-19).

the distribution of the Heritage Hospitals' assets was controlled by the Rhode Island Nonprofit Corporation Act, which, in pertinent part, provides as follows.

> The assets of a corporation in the process of dissolution shall be applied and distributed as follows:
>
> (1) All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made for their payment and discharge;
>
> (2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with the requirements;
>
> (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter or as otherwise provided in its articles of incorporation or bylaws;
>
> (4) Any other assets shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;
>
> (5) Any remaining assets may be distributed to any persons, societies, organizations, or domestic or foreign corporations, whether for profit or nonprofit, that may be specified in a plan of distribution adopted as provided in this chapter.

R.I. Gen. Laws § 7-6-51.[21]

[21] As set forth above, the AG already concluded in the HCA approval decision that the proposed transaction (which included the contemplated transfer of assets to CCF) complied with the Rhode Island Nonprofit Corporation Act. (Appx., Ex. 3, p. 47).

The funds that CCF received meet the definition of charitable assets subject to § 7-6-51(3) in the above-quoted statutory language. As the Court may recall, the $8.4 million that CCF received through the *Cy Pres* Petition either was subject to outright charitable restrictions ($6.1 million) or was income on said restricted funds ($2.2 million). By the terms of § 7-6-51(3), these funds plainly were "subject to limitations permitting their use only for charitable … purposes," and therefore were required to be "transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation . . . .." Petitioners satisfied their obligations under § 7-6-51(3) by transferring the funds in question to CCF, following entry of the *Cy Pres* Order, for administration according the intent of the original donors. Accordingly, the funds at issue were and are unavailable to pay the claims of SJHSRI's creditors.

Proposed Intervenors argue otherwise. They read § 7-6-51 as creating an order of priority that a charitable entity must follow in distributing its assets upon dissolution. The terms of the statute, however, omit any ordinal language that one would expect to see if the legislature intended to endorse such a hierarchy. Compare R.I. Gen. Laws § 34-44-12(c) (requiring receiver to disburse proceeds from a sale of abandoned property "in the following order of priority"); R.I. Gen. Laws § 46-25-18(a) (requiring Narragansett Bay Commission to apply certain federal funds "in the following order of priority"). For example, Minnesota's analog to R.I. Gen. Laws § 7-6-51 includes the prefatory language as follows:

> In performing their duties under section 317A.725, the board, or the officers acting under the direction of the board, shall distribute the assets of the corporation *in the following order of priority … .*

Minn. Stat. § 317A.735 (emphasis added); see also N.J. Stat. Ann. 15A:12-8 (upon dissolution, corporation shall develop plan to distribute asset "in the priority set forth below"). This language

conveys a clear and unequivocal legislative intent that the following subsections are to be followed in order.

In contrast, R.I. Gen. Laws § 7-6-51 omits any similar language that would direct non-profit entities to distribute assets according to an established priority. Instead, subsections (1)-(3) of the statute may be triggered separately and require that certain categories of funds be distributed in the manners specified. While subsection (1) expresses a general rule that dissolving corporations must pay their creditors, subsections (2)-(3) carve out exceptions for charitable assets that either must be returned to their donors, or are required to be used for a specified charitable purpose (rather than for the entity's general operations). Subsections (4) and (5) then are catch-all provisions ("Any other assets …"; "Any remaining assets …") that apply after all funds categorized as belonging in subsections (1)-(3) have been allocated.

Although this appears to be an issue of first impression in Rhode Island, other jurisdictions have grappled with the issue of resolving the tension between creditors' rights and preserving donative intent in the context of non-profit dissolution. The majority of these courts have held that charitable assets restricted to use for specific purposes must be transferred to a similar entity upon dissolution, rather than being use to pay down general debt. See In re Friends of Long Island's Heritage, 911 N.Y.S.2d 412, 419-20 (N.Y. App. Div. 2010) (donor's wishes concerning museum's use of ceramics collection trumped creditors' claims to assets held by dissolving museum); In re Parkview Hosp., 211 B.R. 619, 638 (N.D. Ohio 1997) (funds donated to hospital for specific charitable purposes not available to pay unsecured creditors); Hobbs v. Bd. of Educ. Of N. Baptist Convention, 253 N.W. 627, 631 (Neb. 1934) ("It seems perfectly clear to us that the intention of the [donor] was to create a fund which should not be subject to the exigencies or peril of mismanagement of the institution to which it was given."). Other

jurisdictions have, by statute, clearly expressed a preference for resolving issues in favor of donor intent rather than creditors' rights. See Minn. Stat. § 317A.735.

The New York Appellate Division's decision in Friends for Long Island's Heritage is instructive here. There, the Levine family donated a ceramics collection to a non-profit museum for certain specified purposes including the establishment of a center to study English ceramics. 911 N.Y.S. at 226. Several years later, the museum adopted a resolution to dissolve itself. Id. Unsecured creditors made claims as to the ceramic collection to satisfy the museum's debts. Id. at 227. On appeal of the trial court's decision authorizing the transfer for the payment of creditors, the Appellate Division held that a "long-standing policy honoring donors' restrictions on the use of the property they donate has greater wait than the claims of creditors." Id. at 235. While recognizing the unfortunate "tension" between the legitimate interests of creditors and donors, the court concluded that avoiding any "chilling effect" on charitable giving was paramount over ensuring that creditors are paid upon dissolution. Id. at 234-35.

Proposed Intervenors overstate matters when they assert that R.I. Gen. Laws § 7-6-51 is "based upon the Model Non-Profit Corporation Law [which] has been adopted across the United States. . . ." (Proposed Intervenors' Memorandum, p. 35). While it is true that R.I. Gen. Laws § 7-6-51 is derived from Section 46 of the Model Nonprofit Corporation Act (the "Original Act"), which was last promulgated with revisions in 1964, that version was replaced with the Revised Model Nonprofit Corporation Act (the "Revised Act") in 1987. Marilyn E. Phelan, Nonprofit Organizations: Law and Taxation § 1:11 (2d. ed. with June 2018 updates).[22] Significantly, the

[22] "The Model Nonprofit Corporation Acts were not designed as 'Uniform Acts' to be adopted without change by the various states. Rather, the acts were intended to be a basic pattern which could be adjusted for different needs by the states." Phelan, supra, at § 1:11.

Revised Act eliminated Section 46 of the Original Act, upon which R.I. Gen. Laws § 7-6-51 is based. Section 14.05 of that Revised Act, in fact, added a provision stating as follows:

> **Property held in trust or otherwise dedicated to a charitable purpose may not be diverted from its purpose by the dissolution of a nonprofit corporation** unless and until the corporation obtains an order of [*court*] [*the attorney general*] to the extent required by and pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets.

Model Nonprofit Corporation Act § 14.05 (3d. ed. 2008) (emphasis added). As of today, Section 46 of the Original Act is largely a relic, and it remains on the books in no more than fifteen states.[23]

The limited adoption of Section 46 of the Original Act, upon which R.I. Gen. Laws § 7-6-51 is based, helps to explain why Proposed Intervenors have unearthed so little case law to support what they incorrectly suggest is a well-established rule establishing creditors' priority to a dissolving non-profit corporation's charitable assets. Proposed Intervenors cite only one case in support of their reading of R.I. Gen. Laws § 7-6-51. See In re Crossroad Health Ministry, Inc., 319 B.R. 778, 780-81 (D.C. Bank. 2005), aff'd sub nom., Bierbower v. McCarthy, 334 B.R. 478 (D.D.C. 2005). In Crossroad Health Ministry, a Bankruptcy Court decision from the District of Columbia, the debtor was a medical provider that had received a one-time grant of $60,000 to support its pediatric intervention program. Id. at 779. When the debtor declared bankruptcy, the bankruptcy trustee collected the remaining grant funds for distribution to the debtor's creditors. Id. The donor objected, and argued that the funds either should be returned to the donor or

[23] Alaska, Connecticut, Florida, Georgia, Kentucky, Maine, Michigan, Mississippi, Nevada, New Jersey, New Mexico, South Dakota, Virginia, Washington, and West Virginia. Some of those states have adapted their versions of the Original Act to clarify that charitable assets indeed must be protected. For example, Michigan's statute includes a provision stating as follows: "This act shall not be interpreted in a way that permits assets held by a corporation for charitable purposes to be used, conveyed, or distributed for noncharitable purposes." Mich. St. § 450.2301(6).

distributed to another charitable entity. Id. In a single paragraph of analysis, and unsupported by citation to other precedent, the Bankruptcy Court disagreed. It interpreted an analogous provision of the District of Columbia's non-profit corporation act (which since has been repealed) as calling for distributions to be made in a "sequential fashion." Id. at 781. The court reasoned that the language "as follows" in the statute's prefatory clause "suggests" that the statute was meant to be read sequentially. Id. The court went on to express concerns that a non-sequential reading of the statute could result in an entity's funds being dissipated prior to the payment of the professionals who assist in the entity's dissolution process. Id.[24]

Putting aside that a single out-of-state bankruptcy court ruling obviously is not binding on this Court, the limited analysis above should be given no weight. The term "as follows" means exactly what it says: the relevant statutory guidance appears below. See Blue Diamond Poultry Farms, Inc. v. Comm'r of Taxation, 91 N.W.2d 595, 598 (Minn. 1958) ("When the legislature uses the words 'as follows,' it must intend that the provisions which come thereafter are directly connected with the preceding material."). It does not necessarily mean that the following content must be applied sequentially. Had the Rhode Island legislature intended such a result, it easily could have included a few additional words indicating that what follows creates an order of priority. Compare R.I. Gen. Laws § 34-44-12(c); R.I. Gen. Laws § 46-25-18(a). The ease of adding such clarifying language strongly suggests that it was not intended.

Nor should ordinal language be expected in this context. As the foregoing authority cited by CCF makes clear, gifts donated with strict instructions for a particular use should not be

[24] While the United States District Court for the District of Columbia did affirm the Bankruptcy Court's decision in Crossroad Health Ministry, the reviewing court's decision adopted the Bankruptcy Court's limited analysis and also did not cite to any authority. Bierbower, 334 B.R. at 481-82.

reallocated to creditors simply because the entity to which they were given goes out of business. It is not difficult to imagine the chilling effect this would have on local philanthropy. Would-be donors certainly would think twice about donating funds and other valuable property to hospitals, museums, schools, or other charities if they believed that the funds could be seized by creditors in times of financial difficulty.[25] Where unsecured creditors knowingly accept the risk of insolvency (and charge a premium to account for it), charitable donors should be entitled to assurance that their funds will be spent only for the purposes for which they were intended.

In sum, Proposed Intervenors' argument that they had a superior claim to the restricted charitable assets transferred to CCF lacks sufficient merit to justify intervention in this forum. Nonetheless, Proposed Intervenors still will have every opportunity to press that claim in their newly-filed Federal Court Action, which is now the proper forum for a comprehensive resolution of this dispute.[26]

IV. CONCLUSION

CCF is not unsympathetic to the concerns of the Plan participants who are faced with a potential 40% across-the-board reduction in their future benefits. That is what prompted the Proposed Intervenors, as representatives for Plan participants, to seek comprehensive redress of

[25] That concern is even more pressing here, where representatives for SJHSRI retirees are seeking to seize assets of a separate hospital, RWH/RWMC, to fund their pension plan. Proposed Intervenors essentially are arguing that, when the original donors in question made gifts and bequests to RWH/RWMC with very specific conditions about how their property could be used, they did so with the understanding that their property later might be used to fund general obligations of SJHSRI. This obviously undermines the whole concept of *cy pres*, which is to honor donors' intent. Moreover, the fact that SJHSRI is a Catholic hospital, and the fact that some of the RWH/RWMC's original historical donors may not have wanted to donate to a Catholic institution, still further highlights this issue.

[26] CCF saves for another day the argument as to whether or not the Rhode Island Nonprofit Corporation Act, first enacted in 1984, may operate substantively on a retroactive basis to adversely affect the intent of the original donors who made restricted charitable donations to SJHSRI and RWH/RWMC well before the new statute's effective date. The vast majority of the charitable donations described in the Petition pre-date 1984.

their grievances in the Related Proceedings, of which the Federal Court Action is now the operative litigation. In that now pending Federal Court Action, the Proposed Intervenors will have every opportunity to fully and fairly litigate all their claims, including the very same claims that they are seeking leave to assert here. Simply put, there is no need for this Court to re-open this long-concluded proceeding because the Federal Court Action is now the forum in which Proposed Intervenors can obtain more comprehensive relief for their grievances concerning the Plan.[27]

In addition to the very practical considerations of judicial economy that warrant denial of the Motion, Proposed Intervenors also cannot clear the legal hurdles necessary to establish intervention at this late juncture. Because this Court's *Cy Pres* Order of April 20, 2015 terminated this action on the merits, and left nothing further to be decided, it is a final judgment that is not subject to collateral attack by non-parties three years later. Moreover, the Petition simply does not contain any fraudulent statements or misrepresentations concerning the pension plan that supply grounds for vacating it under Rule 60(b)(3).

As to the merits of their substantive claims (which are now under consideration in the Federal Court Action), the Proposed Intervenors offer very little case law support for their argument that the *cy pres* transfers to CCF in 2015 were void *ab initio* because, as a matter of law, when individuals and institutions make charitable donations to non-profit hospitals for restricted charitable purposes, they make their donations subject to potential springing claims of potential future creditors, who, as a matter of law, have super-priority to such assets. Proposed Intervenors base this argument upon a novel interpretation of the Rhode Island Nonprofit

[27] To the extent that Proposed Intervenors filed their Motion to Intervene in this case simply to obtain preliminary injunctive relief to preserve CCF's assets pending an adjudication of the Related Proceedings, that objective already has been achieved through the June 29, 2018 Order entered in this action.

Corporation Act, which is supported solely by a single citation to an unpublished Bankruptcy Court decision from the United States District Court for the District of the Columbia. While CCF respectfully suggests that the Proposed Intervenors' legal argument on this point is incorrect, this Court does not have decide, and it should not decide, those substantive legal issues because the Federal Court Action is the proper forum for their adjudication.

WHEREFORE, for all the foregoing reasons, this Court should **DENY** the Motion to Intervene.

CHARTERCARE HEALTH PARTNERS FOUNDATION n/k/a CHARTERCARE FOUNDATION,

By its counsel,

/s/ Russell F. Conn

Russell F. Conn, Esq. (admitted *pro hac vice*)
Andrew R. Dennington, Esq. (#7528)
Christopher K. Sweeney, Esq. (#9689)
CONN KAVANAUGH ROSENTHAL PEISCH & FORD, LLP
One Federal Street, 15th Floor
Boston, MA 02110
(617) 482-8200
(617) 482-6444 (fax)
rconn@connkavanaugh.com
adennington@connkavanaugh.com
csweeney@connkavanaugh.com

Dated: July 24, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on this 24th day of July, 2018, I filed and served this document through the electronic filing system on the following:

Max Wistow, Esq.
Stephen P. Sheehan, Esq.
Benjamin Ledsham, Esq.
Wistow, Barylick, Sheehan & Lovely, PC
61 Weybosset Street
Providence, RI 02903

David A. Wollin, Esq.
Hinckley Allen & Snyder LLP
100 Westminster Street, Suite 1500
Providence, RI 02903-2319

Robert D. Fine, Esq.
Robert J. Land, Esq.
Chase Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903

Paul A. Silver, Esq.
Andrew S. Tugan, Esq.
Hinckley Allen & Snyder LLP
100 Westminster Street, Suite 1500
Providence, RI 02903-2319

David Marzilli, Esq.
Office of the Attorney General
150 South Main Street
Providence, RI 02903

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

/s/ Andrew R. Dennington

1880159.5 02611.000

Exhibit 10

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

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

C.A. No: KM-2015-0035

REPLY IN SUPPORT OF PROPOSED INTERVENORS' MOTION FOR LEAVE TO INTERVENE

Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

August 14, 2018

TABLE OF CONTENTS

OVERVIEW

Proposed Intervenors seek to intervene in this action for the limited purposes set forth in the instant motion and Proposed Intervenors' proposed pleading, *i.e.* to obtain the following relief:

a. The April 20, 2015 Order pursuant to which funds were transferred by Petitioners SJHSRI and RWH to Petitioner CharterCARE Foundation[1] should be vacated;

b. Petitioner CharterCARE Foundation should be ordered to hold those funds, any proceeds thereof, and any subsequent payments received from third party trusts or otherwise pursuant to the April 20, 2015 Order, pending resolution of the Related Proceedings and further order of the Court;

c. Petitioners[2] should be ordered to provide an accounting of all funds transferred pursuant to the April 20, 2015 Order, any proceeds thereof, and any subsequent payments received from third party trusts or anyone else pursuant to the April 20, 2015 Order; and

d. such other and further relief as may be just.

See Proposed Intervenors' instant Motion, Tab 1, at 4.

The four elements of a motion to intervene as of right under Super. R. Civ. P. 24(a) are:

> (1) the applicant files a timely application, (2) the applicant claims an interest relating to the property or transaction which is the subject matter of the action, (3) the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, and (4) the applicant's interest is not adequately represented by current parties to the action.

---

[1] Formerly known as CharterCARE Health Partners Foundation.

[2] *I.e.* transferred by St. Joseph Health Services of Rhode Island, and Roger Williams Hospital to CharterCARE Foundation.

Ret. Bd. of Employees' Ret. Sys. of City of Providence v. Corrente, 174 A.3d 1221, 1229 (R.I. 2017).

CharterCARE Foundation makes no arguments concerning the fourth element, *i.e.* whether Proposed Intervenors' interests are adequately represented by the existing parties. Instead CharterCARE Foundation focuses on the first three elements, with most of its emphasis on the first (timeliness) and third (whether the disposition of this action impairs or impedes Proposed Intervenors' ability to protect their interest). CharterCARE Foundation presents these arguments alongside an erroneous discussion of the underlying transactions, the related proceedings, the instant proceeding, and various irrelevancies, all offered as an excuse for why CharterCARE Foundation believes a fraudulently obtained interlocutory Order of this Court should be permitted to stand. All of CharterCARE Foundation's arguments should be rejected.

Proposed Intervenors apologize to the Court for the length of this submission, but CharterCARE Foundation has spent an even greater number of pages raising red herrings that, in fairness, must be addressed so that the Court is not again misled.

ARGUMENT

I. CharterCARE Foundation's "facts" are erroneous and largely irrelevant to the instant motion

Because of their irrelevance to the instant motion, it is unnecessary to burden the Court with a refutation of every erroneous statement of fact in CharterCARE Foundation's Opposition.[3] Proposed Intervenors principally confine their discussion

[3] Some of these errors are elementary. For example, CharterCARE Foundation baldly states that "PMH" entered into a "proposed acquisition of the Heritage Hospitals" (see CCF's Oppo. at 8), where CharterCARE Foundation defined the "Heritage Hospitals" as "RWH/RWMC and SJHSRI (collectively, the

herein to CharterCARE Foundation's factual presentation as it bears upon how the Court has been misled by CharterCARE Foundation and the other *Cy Pres* Petitioners, but Proposed Intervenors cannot completely avoid commenting on a few additional assertions.

A. CharterCARE Foundation misled the Court in 2015, and continues to mislead the Court today, about doubts Petitioners had had concerning donors' intent in 2015

Throughout its opposition, CharterCARE Foundation repeatedly asserts that the purpose of the 2015 *Cy Pres* proceeding was to honor the "original intent" of donors who had donated monies to the legacy hospitals:

> Moreover, this Court should not lose sight of the basic fact that this was a Cy Pres Proceeding. The issue presented was whether the requested cy pres transfers to CCF respected the original intent of the individuals who long ago made charitable donations to SJHSRI and RWH/RWMC. This Court correctly answered that question in the affirmative.
>
> * * *
>
> CCF respectfully submits that the Court's emphasized, bolded statement accurately reflected the proper focus of this cy pres proceeding: honoring the original donors' intent.
>
> * * *

'Heritage Hospitals')" (see CCF's Oppo. at 5) and defined "PMH" as "Prospect Medical Holdings, Inc. ('PMH')" (see CCF's Oppo. at 6). Of course, Prospect Medical Holdings, Inc. never acquired those entities. To the extent CCF intended to refer to the former hospital assets of those entities, Prospect Medical Holdings, Inc. never directly acquired those either, instead structuring the Asset Purchase Agreement to acquire the assets indirectly through its subsidiaries.

Likewise Jurisdiction was not pursuant to R.I. Gen. Laws § 18-4-1, which governs the filing of a complaint for cy pres application of trust property, as CharterCARE Foundation asserts at page 12. No complaint was filed, and the assets were not being held in trust. Instead, jurisdiction (if any) was pursuant to the Court's inherent equity powers. See Pell v. Mercer, 14 R.I. 412, 437–38 (1884).

> The question presented to the Court was whether the contemplated cy pres transfers honored the original donors' intent, not whether they would negatively impact pensioners of SJHSRI.

CCF's Oppo. at 3, 16, 26. CharterCARE Foundation contends that the legacy hospitals were required to refrain from paying employees from "restricted" funds[4] that were held by the legacy hospitals, and instead pay those funds over to another entity such as CharterCARE Foundation, if the donors had expressed an intention that the funds be used for purposes other than paying employees. See CCF's Oppo. at 35-37 & *passim*.[5]

What CharterCARE Foundation failed to inform the Court in 2015—and what CharterCARE Foundation fails to inform the Court today—is that there were serious questions about the original intent of some of those donors. Instead of alerting the Court to those questions, CharterCARE Foundation arrogated to itself the discretion to resolve such doubts extra-judicially, through an *ad hoc* process not disclosed to the Court. CharterCARE Foundation fails to inform the Court of this important fact at the same time as it insists the Court adjudicated whether issuing the 2015 Order "respected the original intent" of those donors. See *supra* at 3.

In April 2018, during the investigatory phase of the Receivership proceeding, CharterCARE Foundation informed Special Counsel that:

> In seeking a for-profit buyer, CCHP [*i.e.* CharterCARE Community Board] knew in mid-to-late 2012 that it would need to make arrangements for the transfer of RWH's [*i.e.* Roger Williams Hospital's] and Fatima's [*i.e.* St. Joseph Health Services of Rhode Island's] respective charitable assets. A group of employees from the

[4] CharterCARE Foundation even contends that employees could not be paid from the "income on said restricted funds", regardless of whether such income was similarly "restricted". See CCF's Oppo. at 37.

[5] The legal basis for CharterCARE Foundation's contention is invalid. For the moment, however, Proposed Intervenors address its factual basis.

> respective finance and development departments of each hospital conducted a painstaking review of each and every charitable gift to ascertain the original donor's intent for the use of the funds. **If donor intent was not clear, development staff contacted family members for clarification.**[6] The committee's final recommendation was that "unrestricted" funds would be made available to pay the hospitals' general expenses and "wind-down" costs, while "restricted" funds designated for specific, articulated charitable purposes – and a small portion of the earnings on RWH's restricted funds – were transferred to CCF [*i.e.* CharterCARE Foundation] to be used in line with the donors' intent and CCF's charitable mission.

Affidavit of Max Wistow ("Wistow Aff.")[7] ¶ 5 (emphasis supplied) (letter filed under seal). Upon pressing for any documents relating to that process, Special Counsel was informed that CharterCARE Foundation did not possess any such documents. See Wistow Aff. ¶ 6.

The Court was not informed of these doubts in 2015 by the *Cy Pres* Petitioners (including CharterCARE Foundation). See Wistow Aff. ¶ 7. Nor was the Court informed in CharterCARE Foundation's opposition to the instant motion. Instead, CharterCARE Foundation persists in the pretense that donor intent was never in doubt.

B. The *Cy Pres* Petition contained affirmatively misleading or false misrepresentations or omissions, and the Court should not have been asked to comb through exhibits or request additional un-supplied documents to discover them

One major thrust of CharterCARE Foundation's opposition to the instant motion is CharterCARE Foundation's contention that the Court was not misled when it issued the 2015 Order, because—CharterCARE Foundation contends—the Petitioners never

[6] Thus, we now know that unidentified "staff members" contacted unidentified "family members".

[7] Attached hereto as Exhibit 1.

intended to pay the Pension liability, and a "careful review" of the Petition would have revealed this fact to the Court:

> CCF now takes this opportunity to review the basic structure and content of that Petition. It is important to set the record straight, because the Proposed Intervenors press a misleading argument that the Petition misrepresented that SJHSRI's long-term pension liability was one of the "Outstanding and Post Closing Liabilities" that would be "paid off" or "satisfied" during the Heritage Hospitals' subsequent "wind down" period. A careful review of the Petition makes it clear that Petitioners said nothing of the sort.

CCF's Oppo. at 11.

CharterCARE Foundation's invitation to the Court to comb through the exhibits and schedules appended to the 2015 Petition to discover why it should not have been misled by the affirmative statements in the Petition (see CCF's Oppo. at 12-15) simply illustrates how the Court was misled in 2015 and tends to prove it was intentional, since it can be assumed that Petitioners read the fine print of their own exhibits.

Moreover, many of the documents CharterCARE Foundation now quotes in its response—including, indeed, the Asset Purchase Agreement ("APA")—were never even provided to the Court in 2015. For example, CharterCARE Foundation quotes[8] paragraph 12 of the 2015 *Cy Pres* Petition for the proposition that the Court should have understood that the phrase "Outstanding Pre and Post Closing Liabilities" as used in the *Cy Pres* Petition actually excluded pension liabilities:

> In the context of summarizing key terms of the 2014 APA, paragraph 12 introduced the defined, capitalized term "Outstanding Pre and Post Closing Liabilities," and provided as follows.

[8] Actually misquotes.

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

(Petition, ¶ 12) (emphasis added). The bolded portion demonstrates that the defined term "Outstanding Pre and Post Closing Liabilities" in the Petition referred back to the more specific, detailed terms of 2014 APA. The 2014 APA had made clear that SJHSRI's long-term pension liability was an "Excluded Liability" that SJHSRI would retain post-closing. (Appx., Ex. 5, § 2.4). Moreover, Section 4.29 of the APA had specifically excluded SJHSRI's long-term pension liability from a warranty that Sellers "will not be rendered insolvent by any of the Transactions" due to the "uncertainty of amount" of that long-term pension liability. (Id. § 4.29). Thus, it simply is not accurate for Proposed Intervenors to suggest that the capitalized term "Outstanding Pre and Post Closing Liabilities," as used in the Petition, referred to pension liabilities that would be fully satisfied during a wind-down period.

CCF's Oppo. at 12-13. This is patently ridiculous. How was the Court supposed to make that logical leap based on documents (including the APA itself) that were never provided to the Court? Indeed, the Court was expressly told the very opposite by the *Cy Pres* Petitioners, *i.e.* that "Outstanding Pre and Post Closing Liabilities" included "both non-pension and pension" liabilities:

> Likewise, SJHSRI seeks approval to use such annual distributions to pay **the Outstanding Pre and Post Closing Liabilities (both non-pension and pension)** on its behalf and when such liabilities have been paid, to transfer use of such annual distributions to the CCHP Foundation.

2015 *Cy Pres* Petition ¶ 12 (emphasis supplied). CharterCARE Foundation even quotes a portion of this statement on page 15 of its opposition in service of another argument but ignores how it eviscerates this argument.

Plowing ahead, CharterCARE Foundation insists the Court should not have been misled into believing there would be sufficient assets and future income to meet the legacy hospitals' obligations under the Plan, inasmuch as the *Cy Pres* Petition stated: "The SJHSRI pension funding obligation will continue after the wind-down period concludes." See CCF's Oppo. at 14. CCCF leaves out the immediately preceding sentence, that "Outstanding Pre and Post Closing Liabilities will be paid during the Wind-down period of RWH and SJHSRI over the next approximately three years." Petition ¶ 17. Read in proper order, the entire paragraph stated:

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

Petition ¶ 17. Thus the reference to "wind-down period" in the final sentence, upon which CharterCARE Foundation relies, applies only to the wind-down period of RWH and SJHSRI, not the wind down of their parent entity Chartercare Community Board.

The Court reading the Petition could fairly assume that Chartercare Community Board would remain in existence to fund the Plan, which would explain why the Petition makes numerous references to the use of future income to pay the pension. Not only

would that be a reasonable assumption, in fact that is exactly what the parties to the 2014 Asset Sale informed the Attorney General. The document in which they made that representation to the Attorney General was in the "Confidential Final Responses to the HCA Application," which was designated as "confidential" when it was produced to Special Counsel in the Receivership Proceedings. Accordingly, it is filed herewith under seal, and the Court is referred specifically to page 4, in which the parties to the application for approval under the Hospital Conversion Act, including SJHSRI, CCCB, and RWH, purport to answer "S3-42 Question."

The fact that the pension obligation would continue after SJHSRI was wound down, however, does not derogate from the fact that the Court was misled into believing there was sufficient funds retained and expected in the future by the legacy hospitals to satisfy that obligation going forward. The continuation of that obligation in the future and the insufficiency of the Retirement Fund to make all payments on that obligation are not synonymous.[9]

CharterCARE Foundation repeatedly suggests that the sole purpose of the 2015 *Cy Pres* Proceeding was to determine whether the proposed transfers satisfied the donors' charitable intent:

> Notwithstanding Proposed Intervenors' focus on this issue, the question of whether or not SJHSRI had sufficient asserts to fully "pay" or "satisfy" its long-term pension liability simply was not material to this Cy Pres Proceeding. Petitioners brought this Cy Pres Proceeding pursuant to the cy pres statute at R.I. General Laws § 18-4-1 et seq. and the Uniform Prudent Management of Institutional Funds Act at R.I. General Laws § 18-

[9] Even CharterCARE Foundation recognizes that the *Cy Pres* Petition "did suggest that the Heritage Hospitals would retain certain assets to satisfy or pay off current liabilities" during the wind-down period. See CCF's Oppo. at 14.

> 12.1-1 et seq. The question presented to the Court was whether the contemplated cy pres transfers honored the original donors' intent, not whether they would negatively impact pensioners of SJHSRI.[10]

CCF's Oppo. at 26. That suggestion is demonstrably untrue. The 2015 *Cy Pres* Petition was brought because the Rhode Island Attorney General's approval of the asset sale acknowledged that the old hospitals' obligations had to and would be paid with restricted assets, that otherwise would go to CharterCARE Foundation. In his Decision approving the 2014 Asset Sale, the AG characterized the situation as follows:

> 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 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.

[10] But, obviously, that should have been a part of the inquiry.

AG Decision (May 16, 2014) at 24-25 (emphasis supplied) (attached to Proposed Intervenors' original memorandum at Tab 1).

As characterized by Petitioners in the 2015 *Cy Pres* Petition, the AG's decision:

> approved the concept of (1) the transfer of certain of the charitable assets to the CCHP Foundation and (2) the use of certain of the charitable assets during the Heritage Hospitals' wind down to satisfy the Outstanding Pre and Post Closing Liabilities subject to cy pres approval from this Court. It also required the filing of this Petition to address such disposition of the charitable assets post closing.

Petition ¶ 14. The Petition made it clear that such liabilities included the pension obligations. For example, the 2015 *Cy Pres* Petition contains the following statement:

> Likewise, SJHSRI seeks approval to use such annual distributions to pay the Outstanding Pre and Post Closing Liabilities (**both non-pension and pension**) on its behalf and **when such liabilities have been paid**, to transfer use of such annual distributions to the CCHP Foundation.

Petition ¶ 27 (emphasis supplied). Thus, the suggestion that the *Cy Pres* Petition was solely or even primarily about transferring charitable assets to CharterCARE Foundation is just wrong.

At bottom, CharterCARE Foundation argues that this Court knew that there would be inadequate sources to fund the Retirement Plan and that it, nevertheless, allowed the transfer of millions of dollars to CharterCARE Foundation without any analysis of, or regard for, the rights of the Plan or its participants. Proposed Intervenors know that was not the case. The Court did not disregard the vested rights of the Plan and its participants to benefit the amorphous group of possible future recipients of CharterCARE Foundation's charitable giving.

There is no doubt that the Court was led to believe that the Plan and its participants were being protected or it would not have allowed the transfer of over

$8,000,000 without further inquiry as to the application of even restricted funds so as to satisfy acknowledged liabilities.

C. Proposed Intervenors were and are creditors of all of the legacy hospital entities

CharterCARE Foundation asserts that "Proposed Intervenors, at best, are creditors of SJHSRI, not RWH/RWMC." CCF's Oppo. at 11 n.8. See also id. at 4 n.3 (words to the same effect). That is incorrect. Proposed Intervenors have expressly and repeatedly alleged in the federal and state complaints, which are attached as exhibits to the proposed Counter Petition, that Proposed Intervenors were "creditors" of Roger Williams Hospital when CharterCARE Foundation received fraudulent transfers in connection with the instant cy pres action. See Federal Complaint ¶¶ 455-458 & 464-466; State Complaint ¶¶ 323-326 & 332-334. For example, in Count V of the Federal Complaint, Proposed Intervenors expressly alleged:

> 455. **At all relevant times Plaintiffs had "claims" against and were "creditors" of Defendants** SJHSRI, **RWH**, and CCCB, as defined by R.I. Gen. Laws §§ 6-16-1(3) & (4), based upon said Defendants' violations of ERISA and/or obligations imposed by state law.
>
> 456. **Fraudulent transfers were made in connection with various transactions, including but not limited to** the sale of all of the assets of SJHSRI, RWH, CCCB, and related entities to various Prospect Entities in connection with the 2014 Asset Sale, **and to CC Foundation and by CC Foundation to RI Foundation in connection with the 2015 Cy Pres Proceeding, with the actual intent of** SJHSRI, CCCB, and **RWH as transferors to hinder, delay, or defraud their creditors**, within the meaning of R.I. Gen. Laws § 6-16- 4(a)(1).
>
> [Emphasis supplied]

Federal Complaint ¶¶ 455-456. Indeed, Proposed Intervenors even pled an entire count (Count XII) alleging that the separate corporate identities of (*inter alia*) SJHSRI and

RWH must be disregarded as each other's alter egos. See Federal Complaint ¶¶ 492-495.

These allegations are not Plaintiffs' mere *ipse dixit*. For example, the Federal Complaint quotes a resolution adopted by RWH's Board of Trustees and provided to Attorney General, which *inter alia* informed[11] the Attorney General that RWH (f/k/a "RWMC") would be paying future Pension liabilities:

> WHEREAS As part of its retained assets, RWMC has $6,666,874 in Board Designated Funds ("the RWMC Board Designated Funds") that may be used for any purpose at the discretion and direction of the RWMC Board of Trustees;
>
> * * *
>
> RESOLVED The RWMC Board of Trustees approves and directs use of the RWMC Board Designated Funds to satisfy the SJHSRI liabilities at close and any potential future funding and expenses relating to the SJHSRI pension plan, and any surplus shall be transferred to the CCHP Foundation.

Federal Complaint ¶ 340. By way of additional example, Plaintiffs also quoted testimony from RWH's member's CEO, at a hearing conducted by state regulators, testifying that the "responsibility" to fund any pension shortfalls would be borne by "the old CharterCARE" and the "old hospitals", *i.e.* SJHSRI and RWH. Federal Complaint ¶ 337. The regulators specifically referred to possible pension shortfalls due to poor investment returns, which they referred to as "investment risk," and at the hearing on May 6, 2014 asked CCCB President and Chief Executive Officer Belcher "who's bearing the investment risk going forward?" He replied as follows:

> MR. BELCHER: Heritage Hospitals. It stays with the old CharterCare.

[11] Falsely, as it turns out.

> MR. SGOUROS: Heritage Hospitals, and so if the investment returns don't match up to the predictions, who's on the hook?
>
> MR. BELCHER: The old hospitals, the old CharterCARE. We have that responsibility.

In view of this testimony to state regulators, given to obtain approval of the 2014 Asset Sale, CharterCARE Foundation cannot be heard to argue claim now that only SJHSRI has liability under the Plan, and not also RWH and CCCB.

CharterCARE Foundation's footnote 20 on page 35 of its Opposition also incorrectly contends that the legacy hospitals are not in dissolution, by confusing the terms "dissolution" and "liquidation". See CCF's Oppo. at 35 n.20. CharterCARE Foundation states: "To CCF's knowledge, neither SJHSRI nor RWH/RWMC have filed a dissolution notice with the Rhode Island Secretary of State's Office," but Rhode Island's Nonprofit Corporation Act does not require the filing of any such notice. Instead, it requires the filing of "articles of dissolution," see R.I. Gen. Laws § 7-6-55, which are themselves only executed after all of the corporation's debts have been paid and its remaining property distributed, i.e. after liquidation:

> If voluntary dissolution proceedings have not been revoked, then **when all debts, liabilities, and obligations of the corporation have been paid** and discharged, or adequate provision has been made for them, and all of the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this chapter, **articles of dissolution shall be executed**. . . .
>
> [Emphasis supplied}

R.I. Gen. Laws § 7-6-54. Likewise, Count XVIII of the Federal Complaint, which CharterCARE Foundation contends "pleads a count for dissolution," CCF's Oppo. at 35 n.20, actually pleads a count for "Liquidation". The inclusion of this Count demonstrates

that dissolution and liquidation have not yet been completed, rather than that they have not been initiated.

D. CharterCARE Foundation's Opposition elides how the state regulators and the union were misled

CharterCARE Foundation's failure to recognize that the Attorney General and Department of Health were misled by the various Defendants runs throughout CharterCARE Foundation's opposition. For example, CharterCARE Foundation extensively quotes from the Attorney General's May 16, 2014 Decision approving the Hospital Conversion Application, see CCF's Oppo. at 5-6, without acknowledging that the Attorney General's Decision was obtained through Defendants' fraudulent misrepresentations, as extensively described in the Federal Complaint.[12]

CharterCARE Foundation also repeatedly quotes from a March 6, 2014 letter submitted by Christopher Callaci, General Counsel for United Nurses & Allied Professionals ("UNAP")[13], a union representing many of the hospitals' employees at the time of the 2014 hospital conversions, as offering "full support" for approval of the

---

[12] For example, CharterCARE Foundation cites the Office of Attorney General's "determination in its prior HCA Approval Decision that the transaction (including the contemplated *cy pres* transfer of charitable assets that was part and parcel of that transaction) did comply with the Rhode Island Nonprofit Corporation Act" (CCF's Oppo. at 12). However, the determination that transaction "did comply with the Rhode Island Nonprofit Corporation Act" was based upon the express representations and detailed assurances of the applicants in response to the very question of whether the sale complied with the Rhode Island Nonprofit Corporation Act, which assurances failed even to note, much less address compliance with R.I. Gen. Laws § 7-6-51 which requires that "[a]ll liabilities and obligations of the corporation shall be paid" in connection with dissolution. See Exhibit 3 (Non-Confidential responses to Third Supplemental Questions to the HCA Application) at 6 (asking applications to "provide an explanation of how this proposed conversion ... complies with the requirements of the Rhode Island Non-Profit Corporation Act . . . .").

[13] CharterCARE Foundation misidentifies UNAP as "the Union Nurses & Allied Professionals". CCF's Oppo. at 9.

transaction. CharterCARE Foundation does so, however, without acknowledging that UNAP's support was also obtained through fraudulent misrepresentations. See Affidavit of Christopher Callaci.[14] According to Mr. Callaci's affidavit, for which he has provided documentary evidence, UNAP support was procured by representations that $14 million would be paid into the Plan in connection with the 2014 Asset Sale *and* that in the future the old hospitals would fund the Plan in accordance with the recommendations of their actuaries. Ex. 2 (Callaci Aff.) ¶¶ 4, 9-12, 14. As alleged in the Federal Complaint, those representations were false when made and in fact no payments have been made to the Plan since 2014. Federal Complaint ¶¶ 330-332.

E. Proposed Intervenors' economic straits and their rights to receive the fruits of their labor deserve greater solicitude than the gratuitous and unrealized interests of CharterCARE Foundation's potential future grant recipients

CharterCARE Foundation includes self-serving statements about the charitable works it allegedly performs, including assisting "senior citizens" and "low-income families". CCF's Opposition at 17. Curiously, the affidavit of Donald C. McQueen, appended to CharterCARE Foundation's Opposition, seems to suggest that CharterCARE Foundation has spent approximately half its annual distributions on overhead or other non-charitable matters.[15] In any event, the Court is already amply aware that the beneficiaries of the SJHSRI Retirement Plan themselves are largely

[14] The Affidavit of Christopher Callaci ("Callaci Aff.") is attached hereto as Exhibit 2.

[15] See Affidavit of Donald C. McQueen ¶ 4 (CharterCARE Foundation received $8.4 million in assets); id. ¶ 5 (CharterCARE Foundation receives annual distributions of 4.5% of its endowment); id. ¶ 6 (CCF has awarded "in excess of $600,000" to various recipients). If CharterCARE foundation received 4.5% of $8.4 million per year for three years, then it has received $1.134 million but spent only $600,000 on charity, i.e. less than 53%.

senior citizens living on fixed incomes, *i.e.* low-income families. CharterCARE Foundation's presentation also spurns the admonition: "Be just before you're generous." Richard Brinsley Sheridan, The School for Scandal act 4, sc. 1.

II. Proposed Intervenors' motion to intervene is timely

CharterCARE Foundation contends that Proposed Intervenors' motion to intervene is untimely, principally because CharterCARE Foundation contends (erroneously) that the Court's 2015 Order was a final judgment that can only be vacated pursuant to Super. R. Civ. P. 60(b), and that the time to bring any such motion has elapsed.

This contention fails on numerous levels. By its own terms, Super. R. Civ. P. 60(b) only speaks to the vacatur of final judgments, while the 2015 Order is plainly an interlocutory Order, not a judgment, and even less a final judgment. Even if (*arguendo*) that Order were a final judgment (which it is not), Super. R. Civ. P. 60(b) expressly preserves the Court's authority to vacate it on the grounds presented by Proposed Intervenors, *i.e.* that a fraud was committed on the Court. And even still, if (*arguendo*) Super. R. Civ. P. 60(b) did constrain the Court's discretion to vacate the 2015 Order (which it does not), such relief is still timely under Super. R. Civ. P. 60(b)(4) and (6).

A. No final judgment was entered, and the case remands pending, as recently demonstrated by the Court's latest Order

Perhaps nothing better illustrates the fact that no final judgment has been entered—and that the instant case remains active—than the Court's recent entry of an Order *in this case* enjoining CharterCARE Foundation's conduct pending the outcome

of the related federal and state proceedings or an adjudication of Proposed Intervenors' claims by this Court on the merits:

> 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**[16], **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.
>
> 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 year by CCF from RIF, except as set forth in the second sentence of paragraph 3 below.

---

[16] A footnote of this Order expressly noted:

> 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."

June 28, 2018 Order at 1 n.1.

> 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.
>
> * * *
>
> [Emphasis supplied]

Order Preserving Assets Pending Litigation and Setting Schedule for Hearing on Motion to Intervene, dated June 29, 2018, at 1.

If CharterCARE Foundation were correct that final judgment has already been entered, why is the Court continuing to issue any new orders in this case, much less an order that expressly enjoins conduct until "such time as this Court, or another Court of competent jurisdiction" finally adjudicates the Proposed Intervenors' claims to the funds on the merits? The obvious answer is the case is open now because it has remained open since it was filed.

B. The Court's Order of April 6, 2015 was not a final judgment under Super. R. Civ. P. 58

No separate judgment was entered as required by Super. R. Civ. P. 58. See Furtado v. Laferriere, 839 A.2d 533, 535 (R.I. 2004) (order entering summary judgment is not a final judgment, and time for appeal did not begin to run until separate judgment was entered). Indeed, our Supreme Court in Furtado specifically held, over the dissent of then-Justice Flanders, that unlike under the corresponding provision of Fed. R. Civ. P. 58, the separate judgment requirement of Super. R. Civ. P. 58 could not be waived, and thus a party "may file an appeal within twenty days of the separate entry of final

judgment, regardless of when such judgment is entered." Furtado, 839 A.2d at 536-37. As our Supreme Court stated:

> The summary judgment order in this case is not an appealable interlocutory order under any common law or statutory exceptions. First, there were no overriding public policy considerations or risks of imminent and irreparable harm raised by the summary judgment order such that immediate appeal from the summary judgment order was warranted. Westinghouse Broadcasting Co., 410 A.2d at 989. A summary judgment order further is not one of the four specific types of appealable interlocutory orders listed in § 9–24–7. Finally, the motion justice did not attempt to certify the summary judgment order as final pursuant to Rule 54(b). Accordingly, the proper time to appeal started with the June 2002 entry of final judgment.
>
> The dissent would hold that plaintiff waived her right to have final judgment entered on a separate document because she failed to move for final judgment within a reasonable period. This argument tracks language in Rule 58(b)(2)(B) of the Federal Rules of Civil Procedure, which provides that "[j]udgment is entered for purposes of these rules * * * when 150 days have run from entry in the civil docket * * *." Because similar language is noticeably absent from our Rule 58, we will not imply an analogous waiver provision. Thus, unless and until Rule 58 is amended, a plaintiff may file an appeal within twenty days of the separate entry of final judgment, regardless of when such judgment is entered.

Furtado, 839 A.2d at 536–37 (R.I. 2004). Accordingly, the Court in *Furtado* found that notice of appeal from the grant of summary judgment was timely even though filed more than nine months after the decision, where a separate judgment on the decision was not entered until more than eight months after the decision.

Here, no separate final judgment was entered in accordance with Super. R. Civ. P. 58, and indeed the instant action remains pending today. Accordingly the Court's 2015 Order remains "subject to revision at any time before the entry of judgment." Super. R. Civ. P. 54(b).

CharterCARE Foundation in its Opposition does not refer to or acknowledge Furtado. Indeed, without acknowledging Furtado, CharterCARE Foundation poses a "hypothetical" in its Opposition that tracks the essential facts of Furtado and declares the result that our Supreme Court reached in Furtado to be "absurd":

> The following hypothetical illustrates how basic common sense demands that the Court's Cy Pres Order of April 20, 2015 must be afforded the status of a final judgment. If Petitioners (or the AG's Office or Bank of America) had been dissatisfied with that Cy Pres Order, then such party would have been required to file a notice of appeal by May 11, 2015 – i.e. within twenty days of entry of that order. Sup. Ct., art. I, R. 4(a). It would be **absurd** to suggest that today, three-plus years later, Petitioners still could file a timely appeal simply because the Court's Cy Pres Order lacked the magic words "final judgment" so as to trigger an appellate deadline under Supreme Court Rule 4(a).14 Such a reading would leave open indefinitely all orders that adjudicated all rights in an action. That absurd conclusion is, however, the logical extension of Proposed Intervenors' argument that the Court's Cy Pres Order does not qualify as a final judgment.

CCF's Oppo. at 21-22.

Instead, CharterCARE Foundation places heavy reliance on McAuslan v. McAuslan, 83 A. 837, 839 (R.I. 1912), a case that not only predated the adoption of the Superior Court Rules of Civil Procedure but did not involve any "final judgments". Instead, McAuslan concerned the scope of the phrase "final decree" within the meaning of the Court and Practice Act of 1905, governing which final decrees could be appealed as of right:

> This brings before us the question of what is the final decree in equity causes intended by our statute as the appealable decree in a cause. Previous to the passage of the Court and Practice Act equity appeals were unknown in our practice, since the period from 1867 to 1871, when appeals to the full court were permitted from both the final and

> interlocutory decrees made by a single justice of the Supreme Court. Under our present statute[17] an appeal may be taken from the final decree of the superior court in an equity cause, and from the final decree alone, with these exceptions: An appeal may be taken from an interlocutory decree granting or continuing an injunction, appointing a receiver, or ordering a sale of real or personal property.

McAuslan, 83 A. at 839. The Court noted:

> What constitutes a final decree is a question not easily determined in every case. The decisions of the courts are far from uniform upon the subject.

Id. The Court thereafter mentioned the types of decrees a court sitting in equity might enter, noted the statutory provisions for taking appeals from certain types of interlocutory decrees, and struck a balance in determining which decrees were final enough to be appealed. See id. at 840-43. The Court also noted there might be multiple final decrees, each supporting separate appeals. See id. at 843.

McAuslan does not in any way suggest that the Superior Court lacks jurisdiction to amend its own final decrees, to say nothing of its own interlocutory orders. Indeed, the practice before the adoption of the Superior Court Rules of Civil Procedure permitted the Superior Court to amend even final decrees upon appropriate application:

> We turn then to respondent's contention that the trial justice erred in granting the motion to amend the final decree entered in 1962 so as to set forth the order for support under consideration. There can be no doubt of the authority of the court in appropriate circumstances to amend its decree so as to correct error. The respondent does not contend otherwise. In

---

[17] That statute provided:

> Any party aggrieved by a final decree of the superior court in any cause in equity or proceeding following the course of equity may, within thirty days after the entry thereof, and any party aggrieved by a final judgment in any proceeding in, or in the nature of, a prerogative writ, except habeas corpus, may, within five days after entry of such judgment, appeal to the Supreme Court.

Fiske v. Vaughn, 72 A. 530, 531 (R.I. 1909) (quoting the Court and Practice Act of 1905).

> *MacDonald v. Barr*, 51 R.I. 337, 154 A. 564, this court said that the right to allow amendment of its records is inherent in the court, inasmuch as these records are conclusive evidence of the facts recorded by the judgment, and it is the duty of the court to see to it that its records conform to the actual facts. According to this case, the authority to amend a judgment is within the sound discretion of the court having custody of the records.

Pukas v. Pukas, 247 A.2d 427, 428 (R.I. 1968).

Indeed, under that prior practice our Supreme Court consistently held that the Superior Court could vacate even final *judgments*, years later, where it was subsequently determined they had been procured by fraud:

> That, as a general proposition, courts have power to set aside, vacate, modify, or amend their judgments for good cause, no one will question; such power being inherent in the court, as a part of its necessary machinery for the due administration of justice. And whenever a judgment is obtained by the fraud of the party in whose favor it is rendered, and the other party is not implicated therein, of course this constitutes a good and sufficient cause for vacating the judgment.

State v. Watson, 39 A. 193, 194 (R.I. 1898). Thus in Elmgren v. Elmgren, our Supreme Court vacated a divorce judgment six years after it was entered, when it was shown that the petitioner had obtained it on the basis of a false affidavit:

> The court finds that the affidavit was false, and a fraud upon the court. As held in *State v. Watson*, 20 R.I. 354, 39 Atl. 193, whenever a judgment, in divorce or other proceeding, is obtained by the fraud of the party in whose favor it is rendered, and the other party is not implicated therein, the judgment will be vacated.

Elmgren v. Elmgren, 55 A. 322, 323 (R.I. 1903).

CharterCARE Foundation's reliance on Brenner Assocs., Inc. v. Rousseau, 537 A.2d 120 (R.I. 1988) is also unavailing. See CCF's Oppo. at 21 n.14. There, our Supreme Court, in the interest of judicial economy, declined to dismiss the plaintiff's appeal as premature, instead deciding the dispositive legal issue *against the plaintiff*

and simply remanding for entry of judgment in favor of the defendants. See id. at 122. Our Supreme Court distinguished Brenner Assocs. in Furtado as being in contrast to the more "[r]ecent decision of this Court". See Furtado, 839 A.2d at 535 ("Recent decisions of this Court, however, highlight the distinction between an entry of summary judgment and an entry of final judgment, making it clear that an appeal should be taken from the entry of a separate final judgment.").

CharterCARE Foundation insists that "[p]ublic policy demands that there be a finality to Cy Pres orders." See CCF's Oppo. at 31. Perhaps so, but Super. R. Civ. P. 58 demands that such finality be achieved through entry of a separate judgment. In any event, even final judgments are subject to collateral attack by non-parties. CharterCARE Foundation's finality argument is merely an invitation to the Court to invent a new statute of limitations other than the ones already created by the General Assembly.[18]

CharterCARE Foundation's failure to obtain a final judgment also reflects the simple fact that the Court's 2015 Order required the petitioners to comply with ongoing reporting obligations imposed by that Order. See 2015 Order ¶¶ 10-11. CharterCARE Foundation now argues that "those reporting requirements flowed to the AG's Office, not to this Court." CCF's Objection at 17. That argument is inconsistent with statements made on the record by the Court at the April 6, 2015 hearing, where the Court noted that it anticipated that the matter would return to the Court in subsequent years:

[18] Proposed Intervenors have brought timely claims against CharterCARE Foundation and other defendants pursuant to Rhode Island's Uniform Fraudulent Transfer Act, R.I. Gen. Laws § 6-16-1 *et seq.*

> This Court hereby approves the petition filed in this case incorporating the issues and reporting requirements raised by the Attorney General that are all incorporated in this order before the Court. I wish the new board with respect to the Foundation and other assets the best of luck working their way through this process. The Court certainly was pleased that an organization, such as the Rhode Island Foundation, who has been doing this on many matters that the Court has been involved, is going to be involved in assisting with investment decisions made **because the Court is going to have enough work to do with the distributions of these assets, hopefully pretty large distributions on a yearly basis**.
>
> [Emphasis supplied.]

Wistow Aff., Tab 1 (April 6, 2015 Hearing Tr.) at 14:6-18.

C. Even if (arguendo) the Court's Order of April 6, 2015 were a final judgment (which it was not), Proposed Intervenors' Motion is timely both under Super. R. Civ. P. 60(b) and otherwise

1. The Court has inherent power to vacate a judgment for fraud committed upon the Court, irrespective of Super. R. Civ. P. 60(b)

CharterCARE Foundation incorrectly contends that a final judgment can only be vacated under Super. R. Civ. P. 60(b). See CCF's Oppo. at 22. In fact, the Court possesses the inherent power to vacate fraudulently obtained judgments or orders outside Rule 60(b), as the residual clause of that rule expressly recognizes:

> **This rule does not limit the power of a court** to entertain an independent action to relieve a party from a judgment, order, or proceeding, or **to set aside a judgment for fraud upon the court**.
>
> [Emphasis supplied]

Super. R. Civ. P. 60(b). As the Sixth Circuit has recognized:

> Rule 60(b) by its own terms does not limit the court's power to set aside a judgment induced by fraud. **Furthermore, a claim of fraud on the court may be raised by a non-party.**

[Emphasis supplied]

Southerland v. Irons, 628 F.2d 978, 980 (6th Cir. 1980). See also Lett v. Providence Journal Co., 798 A.2d 355, 365 (R.I. 2002) ("Trial justices must have the authority to protect the integrity of the judicial system from manipulation by unscrupulous, dishonest, or overreaching parties. . . . Therefore, we conclude, trial courts possess the inherent authority to protect their integrity by sanctioning any fraudulent conduct by litigants that is directed toward the court itself or its processes, as informed by the procedures and sanctions available to the court and to the parties under Rules 11 and 37."); Eyak Native Vill. v. Exxon Corp., 25 F.3d 773, 777 (9th Cir. 1994) ("[A] nonparty may seek relief from a judgment procured by fraud if the nonparty's interests are directly affected. Moreover, a court has inherent power to investigate whether a judgment was obtained by fraud, and may bring before it all those who may be affected.") (citations and quotations omitted).

2. Fraud upon the Court is also grounds for vacatur of final judgments under Super. R. Civ. P. 60(b)(6)

CharterCARE Foundation contends that relief from a final judgment for misrepresentations made to the Court is unavailable under Super. R. Civ. P. 60(b)(6). See CCF's Oppo. at 26-27. More specifically, CharterCARE Foundation contends: "Proposed Intervenors are precluded from seeking relief under Rule 60(b)(6) where their claims so clearly are of the 'misrepresentation' type that fall within Rule 60(b)(3)." CCF's Oppo. at 27.

Putting aside (*arguendo*) that the 2015 Order is not a final judgment, and putting aside (*arguendo*) that the residual clause of Super. R. Civ. P. 60(b) states that the rule

"does not limit the power of a court . . . to set aside a judgment for fraud upon the court",[19] CharterCARE Foundation's contention is still incorrect. While fraud committed upon parties generally falls within the ambit of Super. R. Civ. P. 60(b)(3)—and is thereby subject to its one-year limitation for filing a motion to vacate—fraud committed upon the Court is indeed a proper basis for relief under Rule 60(b)(6). See McGee v. Gonyo, 140 A.3d 162, 165 (Vt. 2016) ("'Fraud on the court' as a basis for relief under the catch-all[[20]] provision of Rule 60(b)(6) is widely recognized.") (collecting federal and state-court decisions).

CharterCARE Foundation mis-cites a footnote of Bailey v. Algonquin Gas Transmission Co., 788 A.2d 478 (R.I. 2002) for the proposition that "[r]elief under subsection (6) is 'mutually-exclusive' with relief granted under subsections (1)-(5)." CCF's Oppo. at 26-27. In that footnote, our Supreme Court actually stated:

> The United States Supreme Court has stated that the analogous provisions of Rule 60(b)(1) and (6) of the Federal Rules of Civil Procedure "are mutually exclusive." *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 393, 113 S.Ct. 1489, 1497, 123 L.Ed.2d 74, 88 (1993). Thus, to obtain relief from a judgment, a party must show grounds for relief under Rule 60(b)(6) that are separate and distinct from those available under Fed.R.Civ.P. 60(b)(1)-(5). *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863–64, 108 S.Ct. 2194, 2204, 100 L.Ed.2d 855, 874–75 (1988) (citing *Klapprott v. United States*, 335 U.S. 601, 614–15, 69 S.Ct. 384, 390–91, 93 L.Ed. 266, 277–78 (1949)). **We concur that this reasoning is equally applicable to our own Super. R. Civ. P. 60(b)(6), except that we do not believe that the mere existence of inexcusable neglect by a lawyer, thereby disqualifying the lawyer's client from obtaining relief under Rule**

[19] See *supra* at 20-21.

[20] Although our Supreme Court has cautioned against using the term "catchall" to describe Super. R. Civ. P. 60(b)(6), that caution stands for the admonition that "circumstances must be extraordinary to justify relief." See McLaughlin v. Zoning Bd. of Review of Town of Tiverton, 186 A.3d 597, 609 (R.I. 2018).

> **60(b)(1), also disqualifies the client from obtaining relief under Rule 60(b)(6). Rather, if truly extraordinary and unusual circumstances also exist**—particularly if they are beyond the control of both the innocent client and the lawyer who is guilty of inexcusable neglect—**the relief under Rule 60(b)(6) still might be possible** notwithstanding the lawyer's misconduct.
>
> [Emphasis supplied and citations omitted]

Bailey v. Algonquin Gas Transmission Co., 788 A.2d 478, 482 n.2 (R.I. 2002). In other words, relief is still available under Super. R. Civ. P. 60(b)(6) if the additional showing of unusual circumstances is made, notwithstanding that the grounds for the motion fell under one of the categories of subsections (1) through (5).

3. Voidness under Super. R. Civ. P. 60(b)(4)

Judgments entered without notice to third parties such as Proposed Intervenors can be attacked as void pursuant to Super. R. Civ. P. 60(b)(4) beyond one year. See Flynn v. Al-Amir, 811 A.2d 1146, 1150 (R.I. 2002) ("The other grounds specified in the rule—'(4) the judgment is void; (5) the judgment has been satisfied, released, or discharged * * *; or (6) any other reason justifying relief from the operation of the judgment,'—are not subject to the rule's one-year filing deadline."); In re Lovitt, 757 F.2d 1035, 1040 (9th Cir. 1985) (motion of holders of mining interests to vacate bankruptcy court's order confirming sale of real property for failure to provide them with notice of proceeding would be timely under Fed. R. Civ. P. 60(b)(4)).

As discussed *infra* at 36-38, Proposed Intervenors should have been given notice of this proceeding in 2015, and should have been joined as parties. Although CharterCARE Foundation contends that "absence of the Plan participants would not prevent complete relief among named parties, the Petitioners themselves," CCF's

Oppo. at 33, this contention ignores that the 2015 Order was one issued in equity and which operated not only upon the parties but upon the funds being transferred, and thus required notice be given to any others besides the named parties who may have had an interest in those funds. As our Supreme Court has observed:

> Let us, therefore, before entering upon the more particular considerations applicable to this subject, examine into and consider the general nature of the exceptions which have been admitted to the general rule in equity that all persons legally or beneficially interested in the subject–matter of a suit should be made parties, or, if the expression be deemed more exact and satisfactory, that all persons who are interested in the object of the bill are necessary and proper parties. All these exceptions will be found to be governed by one and the same principle, which is that, as the object of the general rule is to accomplish the purposes of justice between all the parties in interest, and it is a rule founded, in some sort, upon public convenience and policy, rather than upon positive principles of municipal or general jurisprudence, courts of equity will not suffer it to be so applied as to defeat the very purposes of justice, if they can dispose of the merits of the case before them without prejudice to the rights or interests of other persons who are not parties, or if the circumstances of the case render the application of the rule wholly impracticable. **On the other hand, if complete justice between the parties before the court cannot be done without others being made parties whose rights or interests will be prejudiced by a decree, then the court will altogether stay its proceedings, even though those other parties cannot be brought before the court, for in such cases the court will not, by its endeavors to do justice between the parties before it, risk the doing of positive injustice to other parties not before it whose claims are or may be equally meritorious.**
>
> [Emphasis supplied]

Sprague v. Stevens, 91 A. 43, 49 (R.I. 1914) (quoting Story's Eq. P1. § 77). See also P.H. & F.M. Roots Co. v. Decker, 127 N.W. 417, 418 (Minn. 1910) ("The action is for equitable relief, and therefore the court will insist upon the parties before it being

sufficient to enable it to render a judgment just, upon equitable principles, as to each one interested in the event.").

III. Intervention as of right should be granted under Super. R. Civ. P. 24(a)

A. Proposed Intervenors' motion to intervene is not untimely

As CharterCARE Foundation recognizes, see CCF's Oppo. at 28, "it is well settled that the determination of timeliness is a matter committed to the sound discretion of the trial justice." Marteg Corp. v. Zoning Bd. of Review of City of Warwick, 425 A.2d 1240, 1242 (R.I. 1981). There our Supreme Court stated:

> Timeliness of intervention is to be judged by **two criteria: (1)** the length of time during which the proposed intervenor has known about his interest in the suit without acting **and (2)** the harm or prejudice that results to the rights of other parties by delay. **Of these two, the latter is the more important consideration.**[21]
>
> [Emphasis supplied and citations omitted]

Marteg Corp., 425 A.2d at 1243. Thus even if (*arguendo*) the Court's interlocutory 2015 Order were a final judgment (which it is not), the mere fact that three years has elapsed since its entry is insufficient to defeat the instant motion to intervene.

CharterCARE Foundation contends that the Proposed Intervenors have unduly delayed in bringing the instant motion to intervene. CharterCARE Foundation criticizes Proposed Intervenors' assertion in their brief that "the connection between the [instant] suit and the right of the Plan and Plan participants was never disclosed to the Plan or the Plan participants" as "fall[ing] well short of an unequivocal statement that Proposed Intervenors lacked actual knowledge in 2015 that this Cy Pres action had been filed."

[21] CharterCARE Foundation omits the latter sentence from its quote of Marteg Corp. in its memorandum. See CCF's Oppo. at 28.

That is not the standard Proposed Intervenors must meet on a motion to intervene, but in any event, there can be zero doubt that the Receiver lacked such actual knowledge in 2015 since he was not even appointed by the Court as permanent receiver until October 2017.

Likewise there is absolutely no basis for CharterCARE Foundation's assertion that "the Proposed Intervenors reasonably should have known that they had an opportunity to seek intervention in this 2015 Cy Pres Proceeding to address their asserted interests," CCF's Oppo. at 29, inasmuch as the Receiver had no relationship to the Plan prior to August 2017.

As to the individual Proposed Intervenors (*i.e.* the Plan participants), CharterCARE Foundation simply changes the subject and points to publicity about the Hospital Conversions Act proceedings in 2013-2014, as though awareness of those proceedings could stand in substitute for awareness of the instant 2015 *Cy Pres* proceedings. See CCF's Oppo. at 30. CharterCARE Foundation's fallacious syllogism is essentially:

> (1) if Plan participants had been aware of those 2013-2014 Hospital Conversion Act proceedings; and
>
> (2) if Plan participants (who were not parties to those proceedings and were not represented by counsel) had found and carefully read the Attorney General's May 16, 2014 Opinion conditionally approving the sale of hospital assets; then
>
> (3) Plan participants should have known that the legacy hospitals would be eventually bringing *cy pres* proceedings, and
>
> (4) Plan participants should have known that the instant *cy pres* proceedings, instituted more than a half a year later, were the proceedings the Attorney General was referring to in his opinion.

This sequence of contingencies is not only implausible and utterly unreasonable on its face. However, even assuming (*arguendo*) the Plan participants had discovered the

instant *Cy Pres* proceedings back in 2015, they reasonably would have been misled by the same misrepresentations in the *Cy Pres* Petition that CharterCARE Foundation and the other Petitioners deployed to obtain the Court's 2015 Order.

In other words, mere knowledge of proceedings is irrelevant because Proposed Intervenors reasonably would have assumed their interests were not at stake. In Cimino v. Cimino, 107 A.2d 463 (R.I. 1954), the proposed intervenors (the Manocchias), who had a pre-existing contractual entitlement to certain real estate, sought to intervene in an evidently collusive suit that had been brought by against the reluctant seller by her own son to impose a trust on the same real estate for his own benefit. The superior court granted the motion to intervene, and our Supreme Court on appeal rejected the plaintiff's arguments that the intervenors had unduly delayed in seeking to intervene:

> The complainant's third contention is that the Manocchias delayed too long before asserting their right to intervene and therefore their motion should have been denied on the ground of laches. Of course the right ought to be claimed within a reasonable time. 39 Am.Jur., Parties, § 72, p. 944. **In other words, as practically all the cases state, the intervener must be diligent. But mere lapse of time is not enough to support a claim of laches.** *Goff v. United States Fidelity & Guaranty Co.*, 72 R.I. 363, 51 A.2d 558. It must be such delay as works a disadvantage or prejudice to another. *Chase v. Chase*, 20 R.I. 202, 37 A. 804. **However, in our opinion, the interveners here did not delay but were reasonably diligent, if not unusually prompt**, in asserting their rights after it became evident to them that complainant, at least with the acquiescence if not connivance of respondent, had succeeded in reopening his suit against respondent long after he had lost it. **This unusual event following the protracted inaction of respondent in not having a final decree entered** denying and dismissing complainant's bill may well be considered the first notice to the interveners of the adverse effect which renewed litigation of the instant suit could have on their interest in the subject matter thereof.
>
> [Emphasis supplied]

Cimino v. Cimino, 107 A.2d 463, 466 (R.I. 1954). Our Supreme Court specifically rejected the argument that the Manocchias, assuming they had even been aware of the litigation from its outset, should have sought to intervene at that time:

> The complainant contends, if we understand him, that the interveners waited too long after he had commenced his suit on September 28, 1948. If that was the date when they were first put upon notice of need for action on their part, it might well raise a serious question as to why they did not move to intervene before the cause was heard originally. But, in the circumstances, that was not necessarily the date from which we should measure the delay. **At that time the Manocchias could very well have thought that possibly complainant had an equitable title** to the real estate in question which was prior in time to their right to a conveyance thereof by virtue of their contract with respondent.

Cimino, 107 A.2d at 466. Instead, it was not until the Manocchias subsequently discovered that the lawsuit was being conducted as a collusive ruse to transfer the property and avoid their claim that they properly sought to intervene. See id. at 466-47.

B. The June 29, 2018 Order does not render the Motion to Intervene moot, because absent the Court's vacatur of its 2015 Order, Proposed Intervenors may not be able to obtain complete relief in the related proceedings

CharterCARE Foundation contends that the Court's Order entered June 29, 2018 "essentially moots any need for the Proposed Intervenors to intervene." CCF's Oppo. at 1. Not so. While the June 29, 2018 Order orders CharterCARE Foundation and Rhode Island Foundation to preserve much of the moneys CharterCARE Foundation received pursuant to the Court's 2015 Order, that latter order remains in place and remains a potential obstacle to Proposed Intervenors' obtaining complete relief in the related proceedings.

The U.S. District Court may be reluctant permit what might be seen as a collateral attack on this well-respected state Court's Order, whether pursuant to the *Rooker-Feldman* Doctrine,[22] or under general principles of federalism and comity, or otherwise. Certainly the mere possibility that Proposed Intervenors may be able to obtain relief in another forum is no reason to let stand CharterCARE Foundation's (and the other Petitioners') fraud upon this Court.

CharterCARE Foundation's argument also ignores that Super. R. Civ. P. 24(a)(2) requires only "that the disposition of the action **may as a practical matter** impair or impede the applicant's ability to protect" his interest. Super. R. Civ. P. 24(a)(2) (emphasis supplied). Indeed, although Proposed Intervenors will readily demonstrate success on the merits, our Supreme Court has observed that the right to intervene under Super. R. Civ. P. 24(a)(2) does not require the intervenor to first demonstrate any likelihood of success on the merits:

> In the instant case, the hearing justice recognized that "Digital is not simply trying to protect its right to collect; rather, it is trying to protect its specific interest in the property upon which it has a mortgage." She based her decision on the fact that Digital was not entitled to notice under the terms of the lease agreement. The issue whether Digital was entitled to notice under the terms of the lease addresses Digital's likelihood of success after intervention. Digital's right to intervene under Rule 24(a)(2), however, does not turn on whether it is likely to succeed in protecting its claimed interest; rather it turns on whether "the disposition of the action may as a practical matter impair or impede [its] ability to protect [the] interest" that it claims in the property.

Tonetti Enterprises, LLC v. Mendon Rd. Leasing Corp., 943 A.2d 1063, 1073 (R.I. 2008).

---

[22] See *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 290-295, 125 S. Ct. 1517, 161 L.Ed.2d 454 (2005) (discussing *Rooker-Feldman* doctrine).

CharterCARE Foundation contends:

> The Federal Court Action is the proper forum for a complete adjudication of all Proposed Intervenors' claims concerning their rights to the SJHSRI pension fund.

CCF's Oppo. at 32. This assertion both is incoherent and misunderstands the Proposed Intervenors' proposed pleading in this action.

CharterCARE Foundation asserts: "The Federal Court Action is the proper forum for a complete adjudication of all Proposed Intervenors' claims concerning their rights to the SJHSRI pension fund." CCF's Oppo. at 32. CharterCARE Foundation is either confused or has misspoken. The Federal Court Action does not pertain to the Proposed Intervenors' rights to the pension fund already being administered by the Receiver under the auspices of the Superior Court receivership action.

To the extent CharterCARE Foundation actually intended to say that the related proceedings are the proper forum for completely adjudicating Proposed Intervenors' claims against CharterCARE Foundation, Proposed Intervenors would agree. After all, Proposed Intervenors' proposed pleading in this action is narrowly and precisely focused on vacating the 2015 Order and preserving the transferred monies pending a full adjudication of Proposed Intervenors' claims in the related proceedings. There is therefore no risk of "duplicative litigation" here, as CharterCARE Foundation incorrectly contends. See CCF's Oppo. at 32. Aside from everyone's (except apparently CharterCARE Foundation's) interest in not permitting the continuation of a fraud upon the Court, it is precisely because full relief may not be available in the related proceedings unless the 2015 Order is vacated that Proposed Intervenors are seeking to intervene in this action to vacate that Order.

C. CharterCARE Foundation should have joined Proposed Intervenors as necessary parties in the first instance, under Super. R. Civ. P. 19(a)(2)(A)

In their initial Memorandum, Proposed Intervenors have argued they should have been joined as necessary parties to the instant action back in 2015, under Super. R. Civ. P. 19(a)(2)(A).[23] See Proposed Intervenors' Memo. at 25-27. In particular, the transfer of the legacy hospitals' funds would impair Proposed Intervenors' ability to compel those entities to fund the Plan, as they indeed have subsequently failed to do. See id.

CharterCARE Foundation does not address this argument. Instead CharterCARE Foundation contends that Proposed Intervenors were not necessary parties under Super. R. Civ. P. 19(a)(1), i.e. a different provision of Rule 19 concerning whether "[i]n the person's absence complete relief cannot be accorded among those already parties."[24] Accordingly CharterCARE Foundation does not dispute that Proposed Intervenors were necessary parties under Super. R. Civ. P. 19(a)(2)(A).

CharterCARE Foundation also contends that recognizing an obligation to have joined the Proposed Intervenors would lead to "absurd results" such as "join[ing] every

---

[23] Super. R. Civ. P. 19(a)(2)(A) provides:

> (a) Persons to Be Joined if Feasible. A person who is subject to service of process shall be joined as a party in the action if:
>
> * * *
>
> (2) The person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:
>
> (A) As a practical matter impair or impede the person's ability to protect that interest; or

Super. R. Civ. P. 19(a)(2)(B).

[24] Of course, inasmuch as the *Cy Pres* Petition sought the issuance of the 2015 Order in equity, even among those already parties, complete relief could not be accorded without also joining the absent persons having an interest in the subject matter. See *supra* at 25-26.

creditor and potential creditor to any proceeding concerning the disposition of the entity's charitable funds – just in case those assets one day could be used to satisfy a debt." CCF's Oppo. at 34. It is not necessary here on these facts for the Court to embrace such a broad rule, however.

Here, the entities were presently insolvent, and indeed had concealed their insolvency from the Court. In addition, the Plan and its participants were already creditors of the legacy hospitals, not merely potential creditors. It is amply sufficient to recognize that entities that are already insolvent should not be entitled to invoke the Court's equitable powers to transfer substantial assets away from creditors, and render themselves even more insolvent, without joining known creditors[25] so that they can at least be afforded the opportunity to object to such fraudulent transfers.[26] After all, that is the ordinary procedure followed in dissolution and liquidation proceedings, where nonprofit corporations such as the legacy hospitals have—as these entities did—voted to dissolve and/or liquidate themselves. See R.I. General Laws §§ 7-6-50 & -61.

CharterCARE Foundation's reliance on LLC Corp. v. Pension Ben. Guar. Corp., 703 F.2d 301 (8th Cir. 1983) is also misplaced. In that suit, the Court did find it unnecessary to join a terminated pension plan's participants in a declaratory judgment action by the employer against the PBGC concerning how to allocate leftover funds. See id. at 305. That case is wildly distinguishable, however:

---

[25] Here, CharterCARE Foundation and the legacy hospitals did not even provide notice to the Plan's participants.

[26] CharterCARE Foundation's analogy about one museum's transfer of a Picasso to another museum notwithstanding a debt to a roofing contractor actually illustrates Proposed Intervenors' point. If the transferring museum is insolvent, it should not be relinquishing valuable assets, especially without receiving equivalent consideration in return. See R.I. Gen. Laws § 6-16-1 *et seq.*

- In that suit, there was no suggestion that the plan was insolvent. Indeed, the PBGC had already issued a notice of sufficiency finding that the terminated plan had sufficient assets to pay all of the plan participants' benefits. See LLC Corp., 703 F.2d at 302. Here, in contrast, the Plan was woefully underfunded in 2015 and remains woefully underfunded today.

- Not only was the plan not insolvent, but there was no suggestion that the employer itself was insolvent, since otherwise the court's observation that the plan participants could subsequently assert any claims against the employer, see id. at 305, would be meaningless. Here, in contrast, the legacy hospitals were insolvent.

- Not only was there no suggestion that the employer was insolvent, but the proposed transfer of residual assets to the employer would render them available to claims by plan participants against the employer. Here, in contrast, one of the very purposes of the transfers of funds to CharterCARE Foundation was to attempt to place those funds beyond the reach of Plan participants, and indeed, that remains CharterCARE Foundation's objective in connection with the instant motion practice.

- As should be apparent by the participation of the PBGC in that case, there the pension plan's participants' benefits were backstopped by PBGC insurance. Here, in contrast, it is presently unclear whether the PBGC will someday insure the instant Plan's benefits.

- Finally, the court in that case noted that no plan participants had attempted to intervene in the proceedings during the "protracted period of this litigation," *i.e.* the seven years since the employer had terminated the pension plan, no plan participants had attempted to intervene in the litigation. See id. at 305. In contrast, Proposed Intervenors have brought the instant motion to intervene within ten months of the commencement of the Receivership Proceedings, and less than three years since the entry of the April 20, 2015 Order, and it is precisely that motion to intervene that CharterCARE Foundation opposes.

Like so many of the cases CharterCARE Foundation has cited in its opposition, LLC Corp. actually supports granting the instant motion.

D. Any questions about Proposed Intervenors' standing as nonparties to seek vacatur of the 2015 Cy Pres Order should be resolved by granting the motion to intervene

After erecting its Super. R. Civ. P. 60(b) straw man, CharterCARE Foundation knocks it down by noting that Super. R. Civ. P. 60(b) does not apply to non-parties. See

CCF's Oppo. at 24. This observation overstates the principle, inasmuch as courts have recognized non-parties' standing to pursue Rule 60(b) relief, at least where a judgment was obtained by fraud on the Court. See, e.g., Bridgeport Music, Inc. v. Smith, 714 F.3d 932, 941 (6th Cir. 2013) ("This court has allowed a nonparty to raise a claim of fraud on the court under Rule 60(b).").

In any event, if Rule 60(b) relief can only be sought by parties, then that is a reason to grant the instant motion to intervene, not a reason to deny it. See Hopper v. Estate of Goard, 386 P.3d 1245, 1248–49 (Alaska 2017) ("Denial of the co-conservators' motion to intervene was not harmless error. If the co-conservators had been able to intervene, they could have sought relief from judgment under Alaska Civil Rule 60(b), which allows a court to grant such relief 'upon such terms as are just.'"). See also Hale v. Osborn Coal Enterprises, Inc., 729 So. 2d 853, 856 (Ala. Civ. App. 1997) (Superior Court abused discretion in denying motion to intervene to set aside judgment under Rule 60(b) brought three years after final judgment had entered); Liston v. Butler, 466, 421 P.2d 542, 548 (Ariz. App. 1966) ("[W]e believe that the better rule is to allow a person who, though he may not be named a party in the action, to petition to set aside a judgment where the petitioner has been damaged thereby.")

E. CharterCARE Foundation's arguments on the merits need not be decided prior to granting the motion to intervene, but it is worth noting how weak CharterCARE Foundation's arguments are

As noted above, it is not necessary for the Court to weigh the strength of Proposed Intervenors' arguments on the merits in deciding the motion to intervene. See *supra* at 34-34 (quoting Tonetti Enterprises, LLC v. Mendon Rd. Leasing Corp., 943 A.2d 1063, 1073 (R.I. 2008)). If the Court accepts CharterCARE Foundation's invitation

to reach the merits of Proposed Intervenors' claims against CharterCARE Foundation, however, it is readily apparent that Proposed Intervenors have the far stronger position.

In their proposed pleading and discussed in their prior memorandum of law, Proposed Intervenors contend that as creditors of insolvent Rhode Island nonprofit corporations in wind-down, they were entitled to be paid from all funds held by those corporations regardless of whether those funds were characterized as "charitable" or somehow "restricted". Proposed Intervenors have cited to a section of Rhode Island's Nonprofit Corporation Act, R.I. Gen. Laws § 7-6-51,[27] and the decisions of a bankruptcy court and the United States District Court interpreting an identical D.C. statute to reach that result. See Proposed Intervenors' initial Memorandum at 33-39 (discussing Rhode Island's statutes and In re Crossroad Health Ministry, Inc., 319 B.R. 778 (D.C. Bank. 2005), *aff'd, sub nom.* Bierbower v. McCarthy, 334 B.R. 478 (D.D.C. 2005)). Like the statute interpreted in that decision, R.I. Gen. Laws § 7-6-51 provides:

> The assets of a corporation in the process of dissolution shall be applied and distributed as follows:
>
> (1) All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made for their payment and discharge;
>
> (2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with the requirements;
>
> (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall

[27] Proposed Intervenors also contend that there were violations of R.I. Gen. Laws §§ 7-6-50 & -61.

> be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter or as otherwise provided in its articles of incorporation or bylaws;
>
> (4) Any other assets shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;
>
> (5) Any remaining assets may be distributed to any persons, societies, organizations, or domestic or foreign corporations, whether for profit or nonprofit, that may be specified in a plan of distribution adopted as provided in this chapter.

R.I. Gen. Laws Ann. § 7-6-51.

On the same page of its Opposition as CharterCARE Foundation complains that Proposed Intervenors "cite only one case in support of their reading of R.I. Gen. Laws § 7-6-51." CCF's Oppo. at 40. CharterCARE Foundation also contends that R.I. Gen. Laws § 7-6-51 is "largely a relic" of Rhode Island's adherence to the original 1964 promulgation of the Model Nonprofit Corporation Act rather than embracing the Model Act's more recent 1987 promulgation (which Rhode Island has not adopted!), and that this statutory section "remains on the books in no more than fifteen states". CCF's Oppo. at 40. That may explain the relative paucity of precedent construing this statute, but it clearly renders the In re Crossroad Health Ministry, Inc. opinion all the more persuasive. Is it possible that CharterCARE Foundation does not realize that this argument is one that must be addressed to the legislature and not to the judiciary? It is the solemn duty of the latter to enforce the statutes of the state, even where those statutes reflect a minority of "no more than fifteen states".

CharterCARE Foundation contends that the phrase "shall be applied and distributed as follows" does not create any "order of priority that a [nonprofit corporation] must follow in distributing its assets" because the General Assembly omitted the phrase "in the following order of priority" from the statute while providing it in two other unrelated statutes. See CCF's Oppo. at 37. Of course, the In re Crossroad Health Ministry, Inc. court construed the very phrase "shall be applied and distributed as follows" to unequivocally require a priority of payment to creditors, notwithstanding the same absence of any other additional language. See In re Crossroad Health Ministry, Inc., 319 B.R. at 781 ("The terminology 'as follows' suggests that distributions are to proceed in a sequential fashion, with expenses of dissolution and claims of creditors to be paid first as listed first.").[28]

CharterCARE Foundation's interpretation of R.I. Gen. Laws § 7-6-51 also does violence to that statute. R.I. Gen. Laws § 7-6-51(1) expressly provides: "**All** liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made for their payment and discharge." (emphasis supplied). In contrast R.I. Gen. Laws § 7-6-51(3), providing for transfer of assets held subject to charitable-use limitations, omits the word "all" when describing such assets. CharterCARE Foundation's misreading of the statute would amputate the word "all" from subsection (1), where it was placed, and reattach it to subsection (3), where it was omitted.[29]

---

[28] In addition, as just noted, this statute was adopted in conformity with a particular version of the Model Nonprofit Corporation Act and should not be construed by reference to different language from other non-model statutes, especially ones adopted in different contexts.

[29] CharterCARE Foundation's misreading of the statute also requires disregarding the phrases "Any other assets" and "Any remaining assets" from R.I. Gen. Laws § 7-6-51(4) and (5), which also connote a priority of distribution.

CharterCARE Foundation cites certain decisions from what it contends are the "majority" of courts that have "grappled with the issue of resolving the tension between creditors' rights and preserving donative intent in the context of non-profit dissolution" and have apparently allowed charitable assets to be transferred to new charities without first paying creditors. See CCF's Oppo. at 38. CharterCARE Foundation cites this purported "majority" position notwithstanding that, as noted, CharterCARE Foundation observes that Rhode Island is in a minority of states adhering its version of the Model Nonprofit Corporation Act.

Consequently, it is not surprising that all of these cases cited by CharterCARE Foundation were reached under statutes different from Rhode Island's. Indeed, CharterCARE Foundation's principal case In re Friends for Long Island's Heritage, 911 N.Y.S.2d 412 (N.Y. App. Div. 2d Dept. 2010) required the reconciliation of more than half a dozen competing provisions of New York's Education Law and New York's Nonprofit Corporation Law, none of which resembles R.I. Gen. Laws § 7-6-51. For example, the court in that case scoured New York's statutes and determined that they made "clear" that "the sale of assets to pay debts is not a 'distribution.'" See In re Friends for Long Island's Heritage, 911 N.Y.S.2d at 418.[30] In contrast, Rhode Island's

[30] CharterCARE Foundation observes that the court in In re Friends for Long Island's Heritage also based its result in part on public policy grounds. See CCF's Oppo. at 39. So did the U.S. District Court in affirming the bankruptcy court's decision in In re Crossroad Health Ministry, Inc.:

> The text of the statute reflects an apparent legislative determination that, upon dissolution of a nonprofit corporation, grant funds in the corporation's possession should be used to satisfy corporate liabilities and obligations, notwithstanding any charitable-use limitations. In other words, the ultimate charitable goals of the grantor are subordinate to the corporation's responsibilities to its creditors. **Moreover, this scheme of distribution is supported by several policy rationales**. . . . The Bankruptcy Court suggested an additional justification: that payment of debts is essential to a nonprofit corporation's operation and, therefore, that the use of grant funds to satisfy debts is not at odds with a grantor's donative intent. . . .

statute expressly provides: "The assets of a corporation in the process of dissolution shall be **applied and distributed** as follows: (1) All liabilities and obligations of the corporation **shall be paid** . . . ." R.I. Gen. Laws Ann. § 7-6-51 (emphasis supplied).

F. CharterCARE Foundation's existence is not in dispute, and Proposed Intervenors' claims calling the propriety its conduct into question are a reason to grant the motion, not a reason to deny it

CharterCARE Foundation contends that vacating the 2015 Order would "call into question the legitimacy of CCF's existence". CCF's Oppo. at 4. CharterCARE Foundation's existence, however, predated 2015[31] and is not in dispute. The fact that CharterCARE Foundation was subsequently the recipient of millions of dollars in fraudulent transfers is no reason to deny the instant motion.

CharterCARE Foundation hyperbolically asserts that the 2015 Order is the "constitutional bedrock" of everything that it and its Board have done. See CCF's Oppo. at 30. Nonsense. CharterCARE Foundation is a nonprofit corporation governed by its articles of incorporation and bylaws, not by the Order of this Court.

CharterCARE Foundation also contends that its gift-giving in the past three years demonstrates justifiable reliance on the 2015 Order. See CCF's Oppo. at 30-31. CharterCARE Foundation does not, however, point to any prospective reliance by grant recipients on the continuing validity of the 2015 Order, *e.g.* that future charitable grants have already been promised but not yet paid. The mere fact that CharterCARE Foundation has essentially been spending *other people's money* in the past does not

---

Bierbower v. McCarthy, 334 B.R. 478, 481-82 (D.D.C. 2005).

[31] CharterCARE Foundation has existed under various names since its incorporation in 2007.

and should not create a reasonable expectation that it should continue to do so in the future.

IV. In the alternative, permissive intervention should be granted under Super. R. Civ. P. 24(b)

As an alternative basis for intervention, Proposed Intervenors have sought to intervene on a permissive basis under Super. R. Civ. P. 24(b), which provides in relevant part:

> (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action:
>
> (1) When a statute of this state confers a conditional right to intervene; or
>
> (2) When an applicant's claim or defense and the main action have a question of law or fact in common.

Super. R. Civ. P. 24(b). Such permissive intervention is broadly granted in Rhode Island. See Kent, Simpson, Flanders, Wollin, Rhode Island Civil Procedure § 24:2 ("Prior practice in equity recognized permissive intervention on a broad basis, and Rule 23(b) extends that practice to actions at law as well.").

CharterCARE Foundation's sole argument against granting permissive intervention under Super. R. Civ. P. 24(b) is its contention that Proposed Intervenors' motion is untimely.[32] See CCF's Oppo. at 27-28. As discussed *supra*, Proposed Intervenors' is not untimely. Accordingly, in the event the Court concludes Proposed Intervenors are not entitled to intervene as of right under Super. R. Civ. P. 24(a), they should be permitted to intervene under Super. R. Civ. P. 24(b).

[32] Untimeliness would be the only basis for denying permissive intervention, since there clearly are questions of law or fact in common.

CONCLUSION

The Proposed Intervenors' motion for leave to intervene in this proceeding should be granted, to assert and protect the interests of the Receiver, the Plan, and the Plan participants.

Presented by
Stephen Del Sesto, as Permanent Receiver for the St. Joseph's Health Services of Rhode Island Retirement Plan, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque,

By their Counsel,

/s/ Max Wistow
Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com
sps@wistbar.com
bledsham@wistbar.com

Dated: August 14, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on the 14th day of August, 2018, I filed and served the foregoing document through the electronic filing system on the following users of record:

Paul A. Silver, Esq.
David Wollin, Esq.
Andrew Tugan, Esq.
Hinckley, Allen & Snyder LLP
100 Westminster Street, #1500
Providence, RI 02903
psilver@hinckleyallen.com
dwollin@hinckleyallen.com

Robert D. Fine, Esq.
Richard J. Land, Esq.
Chace Ruttenberg & Freedman,LLP
One Park Row, Suite 300
Providence, RI 02903
rland@crfllp.com
rfine@crfllp.com

Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345

Christopher Sweeney, Esq.
Andrew R. Dennington, Esq.
Conn Kavanaugh Rosenthal Peisch and Ford, LLP
One Federal Street, 15th Floor
Boston, MA 02110
csweeney@connkavanaugh.com
adennington@connkavanaugh.com

Scott F. Bielecki, Esq.
Cameron & Mittleman, LLP
301 Promenade Street
Providence, RI 02908
sbielecki@cm-law.com

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

/s/ Max Wistow

EXHIBIT 1

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

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

AFFIDAVIT OF MAX WISTOW

Max Wistow, being duly sworn, hereby deposes and says:

1. I am one of the counsel to the Proposed Intervenors and make this affidavit in support of the Proposed Intervenors' Motion to Intervene, filed on June 18, 2018.

2. I am also one of the Special Counsel to the court-appointed Receiver and the St. Joseph Health Services of Rhode Island Retirement Plan in connection with the receivership proceeding captioned *St. Joseph Health Services of Rhode Island, Inc. (Petitioner), v. St. Joseph Health Services of Rhode Island Retirement Plan (Respondent)*, C.A. No: PC-2017-3856.

3. In connection with my engagement as Special Counsel, together with Stephen Sheehan and Benjamin Ledsham, I investigated potential claims that could be brought by the Receiver or relating to the receivership estate, against various persons or entities, including CharterCARE Foundation.

4. In connection with such investigation, I obtained documents by subpoena from CharterCARE Foundation and communicated with CharterCARE Foundation through its counsel.

5. On April 30, 2018, I was informed in writing of the following facts:

> In seeking a for-profit buyer, CCHP [*i.e.* CharterCARE Community Board] knew in mid-to-late 2012 that it would need to make arrangements for the transfer of RWH's [*i.e.* Roger Williams Hospital's]

> and Fatima's [*i.e.* St. Joseph Health Services of Rhode Island's] respective charitable assets. A group of employees from the respective finance and development departments of each hospital conducted a painstaking review of each and every charitable gift to ascertain the original donor's intent for the use of the funds. **If donor intent was not clear, development staff contacted family members for clarification.** The committee's final recommendation was that "unrestricted" funds would be made available to pay the hospitals' general expenses and "wind-down" costs, while "restricted" funds designated for specific, articulated charitable purposes – and a small portion of the earnings on RWH's restricted funds – were transferred to CCF [*i.e.* CharterCARE Foundation] to be used in line with the donors' intent and CCF's charitable mission.
>
> [Emphasis supplied]

6. This statement was contained in a letter from present counsel for CharterCARE Foundation. The letter was marked "Settlement Communication Confidential." I do not believe that such letter contained any offer of compromise or attempt to compromise a claim and is not within the purview of Rule 408 of the Rhode Island Rules of Civil Procedure. Further, even if it were, I do not believe that my reference to it is for the purpose of "proving liability for a claim or its amount." Rather, I offer it for a purpose not prohibited by Rule 408. Finally, I believe that my obligations as an officer of the court require me to disclose the relevant excerpts that relate to information not disclosed to the court in the Cy Pres proceeding that resulted in the 2015 Order. I attach a copy of the entire letter, under seal. (The relevant paragraph is the second full paragraph on pg. 2.) I am doing so as a courtesy to counsel in an attempt to limit the disclosure to only the portion of the letter I consider to be relevant at this time. I repeat that I believe that no part of the letter is protected in any manner by Rule 408.

7. In response to the letter, I requested that CharterCARE Foundation produce all documents relating to this process, production of such documents being

already required by a subpoena previously issued by Special Counsel to CharterCARE Foundation. I was thereafter informed by their counsel in this matter that CharterCARE Foundation did not possess any such documents. He also informed me that Paula Iacono was one of the persons who had contacted the donor's or family members of donors to clarify intent.

8. Attached hereto at Tab 1 is a transcript of the Court's April 6, 2015 hearing approving the Cy Pres Petition. The process of resolving unclear donor intent discussed in paragraph 5 above was neither mentioned in the Cy Pres Petition nor mentioned during the April 6, 2015 hearing. Instead, the Court was only informed, on page 11 of the transcript, that Bank of America (not the Petitioners themselves and CharterCARE Foundation) had confirmed donors' intent through examination of the various trust instruments.

9. At that hearing, Paula Iacono was introduced to the Court as a representative of the recipient Foundation (which apparently, by this time, she had become). No disclosure was made to the Court that she was involved in helping "ascertain the original donor's intent for use of the funds."

Max Wistow

SUBSCRIBED AND SWORN to before me this 14th day of August, 2018.

NOTARY PUBLIC
My Commission Expires: 9/5/21

Tab 1

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. SUPERIOR COURT

IN RE: CHARTERCARE HEALTH)
PARTNERS FOUNDATION, ROGER)
WILLIAMS HOSPITAL and) KM-2015-0035
ST. JOSEPH HEALTH SERVICES)
OF RHODE ISLAND)

HEARD BEFORE

THE HONORABLE BRIAN P. STERN, ASSOCIATE JUSTICE,

ON APRIL 6, 2015

APPEARANCES:

PATRICIA ROCHA, ESQUIRE.....FOR THE PETITIONERS
JOSEPH AVANZATO, ESQUIRE.....FOR THE PETITIONERS
KATHRYN ENRIGHT, ESQUIRE.....STATE OF R.I.
CHRISANNE WYRZYKOWSKI, ESQUIRE.....STATE OF R.I.
GENEVIEVE MARTIN, ESQUIRE.....STATE OF R.I.
JAMES ENGELBERG, ESQUIRE.....BANK OF AMERICA

GINA GIANFRANCESCO GOMES
COURT REPORTER

CERTIFICATION

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 15, inclusive, are a true and accurate transcript of my stenographic notes.

Gina Gomes

GINA GIANFRANCESCO GOMES
COURT REPORTER

MONDAY, APRIL 6, 2015

AFTERNOON SESSION

THE CLERK: The matter before the Court is KM-2015-0035, In Re: CharterCARE Health Partners Foundation, et al. Would counsel please identify themselves for the record.

MS. ROCHA: Good afternoon, your Honor. Patricia Rocha representing the petitioners.

MR. AVANZATO: Joseph Avanzato representing the petitioners.

MS. ENRIGHT: Good afternoon, your Honor. Katie Enright from the Department of Attorney General.

MS. WYRZYKOWSKI: Good afternoon, your Honor. Chrisanne Wyrzykowski from the Department of Attorney General.

MS. MARTIN: Genevieve Martin, Assistant Attorney General.

MR. ENGLEBERG: James Engleberg on behalf of the Bank of America in its capacity as trustee.

THE COURT: Sometime ago the Court had conferenced this case after the filing was made. The Court also received the filing from the Attorney General's Office and had a chance to review and have some questions answered on some of the very very lengthy filings. Attorney Rocha, whoever from the State, may proceed with

respect to the petition.

MS. ROCHA: Thank you, your Honor. Your Honor, this petition is the result of a joint venture between what was known as CharterCARE Health Partners, a non-profit health care system, including Rogers Williams Medical Center and St. Joseph's Health Services of Rhode Island on one hand and Prospect Medical Holdings, a for-profit health care system with headquarters in California.

As the Court is aware as a result of a closing on June 20th of last year the hospitals are now owned by the for-profit joint venture entity. Prospect CharterCARE, LLC, owned 85 percent by Prospect Medical and 15 percent by CharterCARE. Because the hospitals are now for-prfit entities, the charitable assets previously donated to those hospitals over the years can no longer be used at their operations. Accordingly, we filed this petition seeking approval to, number one, transfer certain of the charitable assets to CharterCARE Health Partners Foundation in the approximate amount of $8.4 million.

And, Judge, for the ease of discussion, I'll refer to CharterCARE Health Partner Foundation as the Foundation. And, Judge, we are also seeking approval to approve the use of certain charitable assets to satisfy outstanding pre and post closing liabilities during the wind-down of what we call the Heritage Hospital, the

remaining nonprofit entities, Rogers Williams Hospital and St. Joseph Health Services of Rhode Island. And, again, for ease, I will refer them to as R.W.H. and S.J.H.S.R.I., which may be more of a mouth full. I'm not sure. The Heritage hospitals, your Honor, have retained Rick Land to assist them in the wind-down process.

As the Court knows from our conference, we had several meetings and conferred with counsel for the Attorney General's Office, as well as Bank of America, the trustee of the trust, and both are in agreement with respect to the proposed use of these funds. What I would like to briefly do is take the Court through the proposed use of the funds starting with the transfer of certain charitable assets to the Foundation.

The Court may recall, prior to the closing the Foundation was the fundraising arm for CharterCARE Health Partners, including the two hospitals, R.W.H. and S.J.H.S.R.I. After the closing, the mission of the Foundation was changed to service of community resource to provide accessible, affordable, and responsive healthcare and healthcare related services to the community previously served by R.W.H. and S.J.H.S.R.I., including, for example, your Honor, disease prevention, education, research grants, scholarships, clinics, activities, and the like.

As set forth in the petition, there are three categories of funds for which we received the in Cy Pres approval. One are the remaining funds in the Foundation account from 2014 from the annual campaign and the golf tournament; two is the funds to be transferred from R.W.H. to the Foundation; and three are the funds to be transferred from S.J.H.S.R.I. to the Foundation.

Let me take them in order. As set forth in paragraph 20 of the petition, we are asking that the Court grant Cy Pres approval for the 17,465.79 remaining to the Foundation. As set forth in paragraphs 21, 22, and 23, we are asking that the Court grant Cy Pres approval for the transfer from R.W.H. for the following funds: The temporarily restricted funds in the amount of $284,710.34. The permanently restricted funds in the amount of $4,209,522, and the temporarily restricted earnings in the amount of $2,242,366 reflected the unrestricted accumulated earnings from the permanently restricted assets over the years.

And, Judge, let me just mention, when I reference these amounts, these are as of July 31, 2014. So the funds that will be transferred are the amounts as of the date of the transfer. For ease of the record, we are using the 7/31/2014 date.

And, finally, Judge, as set forth in paragraph 26 of

the petition, we are asking that the Court grant Cy Pres approval for the transfer from S.J.H.S.R.I. of the following funds: $258,961.61 in restricted cash; a $196,496 in endowment investment earnings; and $1,200,765 in permanently restricted scholarship and endowment funds. That captures all of the charitable assets totaling $8,410,287.66 that we are asking the Court grant Cy Pres approval to be used by the Foundation consistent with its new mission to provide community health care initiatives.

Now, let me address the pre and post closing liabilities, your Honor. As the Court is aware, we are asking for approval to certain charitable assets to remain in the Heritage hospitals to pay for the pre and post closing liabilities; for example, the medical malpractice tail insurance, workers' compensation reserve, third-party care settlements, and the like.

I want to address first the trusts that are referenced in paragraphs 27 through 30 of the petition. The trustees of those trusts is Bank of America. Pursuant to the clear language of the trust documents, your Honor, the trustee makes annual distributions to R.W.H. and S.J.H.S.R.I. for their general uses and purposes. The Heritage hospitals are proposing and the Trust has no objection to use those annual distributions

to satisfy those outstanding pre and post closing liabilities, which is entirely consistent with the trust documents.

Once the R.W.H. obligations have been satisfied, we are asking the Court to grant Cy Pres approval to transfer the annual distribution to S.J.H.S.R.I. to pay its outstanding pre and post closing liabilities. Likewise, your Honor, once the outstanding pre and post closing liabilities of S.J.H.S.R.I. have been satisfied, we are asking the Court to grant Cy Pres approval to transfer the Trust's annual distributions to the Foundation.

Specific to R.W.H. as set forth in paragraph 29 of the petition, with respect to trust funds that it will receive in the future upon the death of Barbara Boyden, we likewise are asking the Court's approval for R.W.H. to use the funds to pay outstanding pre and post closing liabilities. To the extent those obligations have been made prior to receipt of the trust funds or are fully paid thereafter, we are asking the Court to grant Cy Pres approval to transfer the trust funds to S.J.H.S.R.I. to satisfy its outstanding pre and post closing liability. Your Honor, that addresses the use of the trust funds and those are the only funds that will be used to satisfy S.J.H.S.R.I's obligation.

Turning to R.W.H., there are two other categories of funds, the continuing medical education fund and the unrestricted earnings from the R.W.H. permanently restricted assets that have accumulated over the years. With respect to the continuing medical education funds as set forth in paragraphs 24 and 25 of the petition, we are asking the Court to grant Cy Pres approval for $26,310.29 to support continuing medical education to the staff at the existing hospital, Roger Williams Medical Center, and $300,349.75 to enhance surgical oncology, physicians and fellow training and education at the existing hospital over and above the routine budget costs of necessary medical education and necessary academic and research programs to the extent R.W.H. is satisfied that such expenditures provide a community benefit.

And, finally, your Honor, we are asking the Court to approve the use of the unrestricted earnings from RWH's permanently restricted assets that have accumulated over the years in the amount of $12,288,848, and those funds, your Honor, are general unrestricted funds, which will be used to satisfy the outstanding pre and post closing liabilities as and when due.

With respect to unknown future gifts, your Honor, as set forth in paragraphs 31 of the petition, we are also asking the Court to grant Cy Pres approval to transfer

any unknown charitable gifts and future charitable gifts that may become known at a later date on behalf of R.W.H. and S.J.H.S.R.I. to the Foundation to serve the Foundation mission.

Now, turning to the reporting requirements, as the Court is aware, we had several meetings with the Attorney General and counsel for the trustee and they have requested certain reporting requirements that petitioners have agreed to. The reporting requirements, your Honor, are set forth in the Attorney General's response as well as the proposed order that the parties have presented to the Court.

I will briefly highlight the requirements. One, the Foundation agrees to submit an annual report to the Attorney General health care advocate. The report shall include the amount of funds expended, the purpose of the expenditure, the beneficiary of the funds, and the any name and contact information for that beneficiary. The report shall be submitted annually with a copy of the Foundation I.R.S. Form 990 five business days after the 990 is filed with the I.R.S. commencing with the 990 filing to the fiscal year ending September 30, 2015. A report shall also be submitted if an expenditure over $200,000 occurs more than 90 days after the reporting date or more than 90 days prior to the reporting date,

whichever occurs first.

And, finally, your Honor, if the Foundation decides to relinquish custody and control and transfer funds to another institution regardless of the amount, the Foundation will give 30 days of prior notice of such transfer. In addition, the trustee has asked that the Heritage hospitals give 60 days prior written notice of the completion of the wind-down period and the hospitals have agreed to do so. The Foundation has also agreed to give a copy of the yearly required filing to the A.G. healthcare advocate to the trustee once any trust funds have been transferred to the Foundation.

Lastly, your Honor, Don McQueen, who the Court met in conference, who is the chair of the Foundation, he is present here this afternoon. If you can stand up.

THE COURT: Good afternoon.

MS. ROCHA: With Mr. McQueen is Paula Iacono. Ms. Iacono is the development officer for the Foundation. Also present this afternoon is Addy Keene. Addy is currently the chief financial officer for Prospect CharterCARE, the for-profit health care system, and she held a similar position to the non-profit health care.

THE COURT: Very good. Welcome.

MS. ROCHA: I know Mr. McQueen and his fellow board members, all of whom are respected Rhode Island

professionals, look forward to the use of the funds that will be transferred to the Foundation for serving community healthcare initiatives. As we discussed with the Court in conference, the Foundation has reached out to the Rhode Island Foundation and the Rhode Island Foundation will be investing the funds to an expected 4.5 percent annual return.

Your Honor, it's my understanding that counsel for the Attorney General and trustee would like to address the Court. Before I turn it over to them, I do want to comment we had a lot of meetings during the review process to discuss the underlying transactions as well as this decision and we would want to thank counsel for the Attorney General's Office and the trustee for their input. It was most appreciative.

Judge, I sent you on Friday a proposed order and over the weekend we received some additional comments from counsel to the trustee, and I would like to submit to the Court I have a black line version of those comments, which are acceptable to the parties as well as a clean copy of the order.

THE COURT: Thank you. Please hand them forward.

MS. ROCHA: And, Judge, that will conclude the petitioner's presentation. We are happy to answer any questions the Court may have.

THE COURT: Between the filings and that, I think that covered the issues and I appreciate it very much. When we had the conference last time I know first the trustee had raised some issues that were being worked through. That piece may be a little bit shorter. Why don't I turn to the trustee next to see if there are any issues.

MR. ENGELBERG: Your Honor, James Engelberg on behalf of Bank of American as its trustee. I believe the issues have been adequately resolved. Your Honor, we have no objection to the petition and rely on our formal written responses submitted in this matter. Just for the record, the issues are addressed in that response and the issue that the trustee considered was whether the religious and secular nature of the hospital presented any problems with the intent of the donors. We have concluded it does not. Generally all of these trusts have an intent to go and benefit health care services in the State of Rhode Island which we believe is accomplished through the structure presented by this petition.

Secondly, your Honor, we just want to make sure that the appropriate measures were in place, that the distributions would continue to apply the 1(c)3 non-profit and given the measure described by my sister

in the order for a prior written notice of sixty days before the wind-down is completed, we think that is adequately addressed as well. Unless your Honor has any other questions, I rely on the papers we previously submitted.

THE COURT: Thank you very much counsel. I will hear from the State.

MS. ENRIGHT: Good afternoon, your Honor. Just briefly, as your Honor knows, the Attorney General has the statutory and common law duties to protect the charitable assets in the State of Rhode Island. In addition, the hospital conversion acts specifically include provisions dealing with disposition of charitable assets. Generally, we are providing some detail in our H.D.A. decision about the disposition of the assets to ensure that the public interest in the funds is properly safeguarded. As stated by Ms. Rocha, a representative from our office and from the petitioners have discussed the petition extensively. The Attorney General agrees with the petitioners that because of the formation of the joint venture, the charitable assets cannot be used for the benefit of the now for-profit hospitals, and therefore, we agreed to the Cy Pres of the funds. That said, the Attorney General has proposed and the petitioners have assented to certain reporting

requirements as recited by Ms. Rocha. Your Honor, we're just asking today that you grant the Cy Pres petition incorporating those reporting requirements.

THE COURT: Thank you very much. Is there anyone else in the courtroom who wishes to be heard in the matter of CharterCARE Health Partner Foundation Cy Pres Petition? Okay. Hearing none, the Court from the initial conference in this matter some time ago and then the filing of the extensive documents, the Court did have the opportunity to review them in detail. We had a productive conference among all parties, including the Attorney General, the trustee, and others. As counsel for the trustee had indicated, those issues were resolved and the Court has reviewed that filing by the Attorney General's Office, including certain conditions which have been agreed to.

To many people, and I'm not talking about hospital conversions in terms of that issue, but in terms of charitable assets, many people ask why do we need to go through the process itself. And it really is for the original donors and the integrity of people who donate to institutions such as this that the Attorney General by statute has put into position to make sure that certain things occur that the money is being used for the purposes that they were designated to. And I understand

there were many many meetings in this case and all that is appropriate, especially when we have such a large transfer of charitable assets in this case. The Court will review the black copy, but understands that it was agreed to by the parties.

This Court hereby approves the petition filed in this case incorporating the issues and reporting requirements raised by the Attorney General that are all incorporated in this order before the Court. I wish the new board with respect to the Foundation and other assets the best of luck working their way through this process. The Court certainly was pleased that an organization, such as the Rhode Island Foundation, who has been doing this on many matters that the Court has been involved, is going to be involved in assisting with investment decisions made because the Court is going to have enough work to do with the distributions of these assets, hopefully pretty large distributions on a yearly basis.

What I would ask is if -- and it looks like this is set up for electronic filing, if the final order can just be submitted, the black line or the clean copy, to the electronic system and I will sign that order this evening or first thing in the morning. Then it will get distributed to the parties and then counsel can put in place the steps to effectuate this. I want to thank

everyone for their hard work on that issue and that will bring this matter to a close today before the Court. Thank you all very much.

(A D J O U R N E D.)

EXHIBIT 2

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

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

C.A. No: KM-2015-0035

AFFIDAVIT OF CHRISTOPHER CALLACI

Christopher Callaci, being duly sworn, hereby deposes and says:

1. I am general counsel to United Nurses & Allied Professionals ("UNAP"), a union representing approximately 6,500 health care workers across fifteen locals in Rhode Island, Vermont, and Connecticut.

2. I have been informed that in connection with its opposition to the pending Motion to Intervene, CharterCARE Foundation has referred to my letter to the Rhode Island Department of Health on March 6, 2014, which expressed support for the then-proposed sale of the Fatima and Roger Williams Hospitals, was an expression of support for the impact that transaction has had on the St. Joseph Health Services Retirement Plan.

3. Beginning in August 2013 and continuing thereafter, I had discussions with representatives from Prospect Medical Holdings, Inc. ("PMH"), including Thomas Reardon and Von Crockett, regarding potential acquisition by PMH or its subsidiaries of the Fatima and Roger Williams Hospitals (the "PMH Transaction") and the impact of such acquisition on UNAP's members. I also had such discussions with representatives from CharterCARE Health Partners (now known as CharterCARE Community Board) ("CCCB"), including Ken Belcher, Darleen Souza, and Michael Conklin, inasmuch as CCCB's subsidiaries would be selling those hospitals to PMH or its subsidiaries. All of

these individuals and entities were seeking the support of UNAP for the PMH Transaction.

4. In those discussions, I was told that the plan if the PMH Transaction closed, was that responsibility for the St. Joseph Health Services Retirement Plan (the "Pension Plan") would stay with CCCB and its subsidiaries, and that the Pension Plan benefits would be frozen, but I was assured that $14 million would be paid into the Pension Plan in connection with the closing, and thereafter CCCB and its subsidiaries would make the annual actuarially recommended contributions to the Pension Plan.

5. On September 8, 2013, I received a bar graph prepared by or on behalf of CCCB, which was dated "9/6/2013" and titled "St. Joseph Health Services of Rhode Island Retirement Plan Comparison of Funding Percentage of Present Value of Accrued Benefit". This graph depicted the "Funding Percentage (MVA/AAL)" over the coming twenty years for the Pension Plan based on two contribution scenarios: "Recommended Contribution Only" and the scenario I was assured would be followed, "$14M Contribution and then Recommended". A copy of this document is attached hereto as Tab 1.

6. The bar graph attached at Tab 1 indicated that even as of July 1, 2032, the Pension Fund would remain more than 70% funded under the "$14M Contribution and then Recommended" contributions scenario.

7. Special Counsel to the Receiver of the Pension Plan has recently shown me a second graph, dated "9/4/2013", which Special Counsel has informed me was obtained as part of the investigative process performed in the Receivership proceeding captioned *St. Joseph Health Services of Rhode Island, Inc. (Petitioner), v. St. Joseph*

Health Services of Rhode Island Retirement Plan (Respondent), C.A. No: PC-2017-3856. A copy of this second graph is attached hereto at Tab 2. It depicts the same two scenarios as in Tab 1 but adds a third scenario "$14M Contribution and then $0". According to this third scenario, the Pension Fund would be 0% funded by July 1, 2032. This apparently is the scenario that CCCB and its subsidiaries actually intended to follow, since they have made no contributions to the Plan since 2014.

8. I did not see a copy of the graph attached at Tab 2 until it was recently shown to me by Special Counsel. If I had known that no contributions would be made to the Pension Fund after the $14 million contribution in connection with the closing of the PMH Transaction, I would not have supported the PMH Transaction, and I would not have written a letter to the Rhode Island Department of Health on March 6, 2014 expressing support for the PMH Transaction.

9. In April 2014, I reviewed a document entitled Non-Confidential Responses to Third Supplemental Questions to the HCA Application, which had been jointly submitted by PMH, CCCB, and their subsidiaries to the Rhode Island Department of Attorney General and Rhode Island Department of Health in connection with obtaining approval of the PMH Transaction. I noted the following answer by the transacting parties to a question posed by those regulators:

> S3-48 Will the pension liability remain in place – how much, and what is the plan going forward to fund the liability?
>
> Response: The pension liability will remain in place post transaction. Subsequent to the $14 Million contribution to the Plan upon transaction, future contributions to the Plan will be made based on recommended annual contribution amounts as provided by the Plan's actuarial advisors. Moving forward, the investment portfolio of the plan will be monitored by the Investment Committee of the Board of Trustees.

10. This affirmative statement by the transacting parties confirmed my understanding that CCCB and its subsidiaries would continue to make the annual actuarially recommended contributions to the Pension Plan. An excerpt of a copy of this document is attached hereto as Tab 3.

11. I was also present at the hearing conducted by the Project Review Committee at the Rhode Island Department of Health on May 6, 2014, at which CCCB's CEO Michael Conklin testified that the Pension Plan would be receiving "recommended contributions to the plan moving forward, $600,000." In my presence at this same hearing, Kenneth Belcher also testified that "[t]he old hospitals, the old CharterCARE" (i.e. CCCB and its subsidiaries) would be "on the hook" for deficiencies in the Pension Plan if those $600,000 annual recommended contributions proved insufficient:

> MR. BELCHER: Ken Belcher, CEO of CharterCARE. I think a lot of this is hovering around the pension and the pension liability, the questions that are being asked, and the statement that we made earlier, [Dr.] John [Schibler (consultant to the Project Review Committee)] made earlier with the contributions being made to the pension plan, that $14 million, that will bring that pension plan funding up to the level of 91.5 percent funded. On a go-forward basis as this transaction is closed and completed and finalized, that pension plan is a frozen pension plan so that there's no more activity as far as new people being added to that pension plan. The employees move into a 401(k) plan. That plan, the existing pension plan will require an ongoing level of funding to keep it at that 91.5 percent level in order to have it be appropriately spent down so that all those individuals that are in the plan will be taken care of through their life. So that level of funding is what Mike [Conklin] was referring to, which is roughly $600,000 per year.
>
> MR. SGOUROS: No, no, I understand that. I was just asking who's bearing the investment risk going forward'?
>
> MR. BELCHER: Heritage Hospitals. It stays with old CharterCare.

MR. SGOUROS: Heritage Hospitals, and so if the investment returns don't match up to the predictions, who's on the hook?

MR. BELCHER: The old hospitals, the old CharterCARE. We have that responsibility.

12. Excerpts of the transcript of the May 6, 2014 hearing are attached hereto at Tab 4. This testimony was provided subject to the penalties of R.I. Gen. Laws § 23-17.14-30, under which fines and terms of prison are imposed for willingly or knowingly giving false or incorrect information.

13. I did not know, prior to the filing of the Pension Plan's receivership action in 2017, that the actuaries expected that their "recommended contributions" in the coming years would greatly exceed $600,000. Further, no contributions have been made to the Pension Plan since the closing.

14. This testimony by Messrs Belcher and Conklin confirmed my understanding that CCCB and its subsidiaries would continue to make the annual actuarially recommended contributions to the Pension Plan, and I advocated for the PMH Transaction in reliance on these promises.

Christopher Callaci

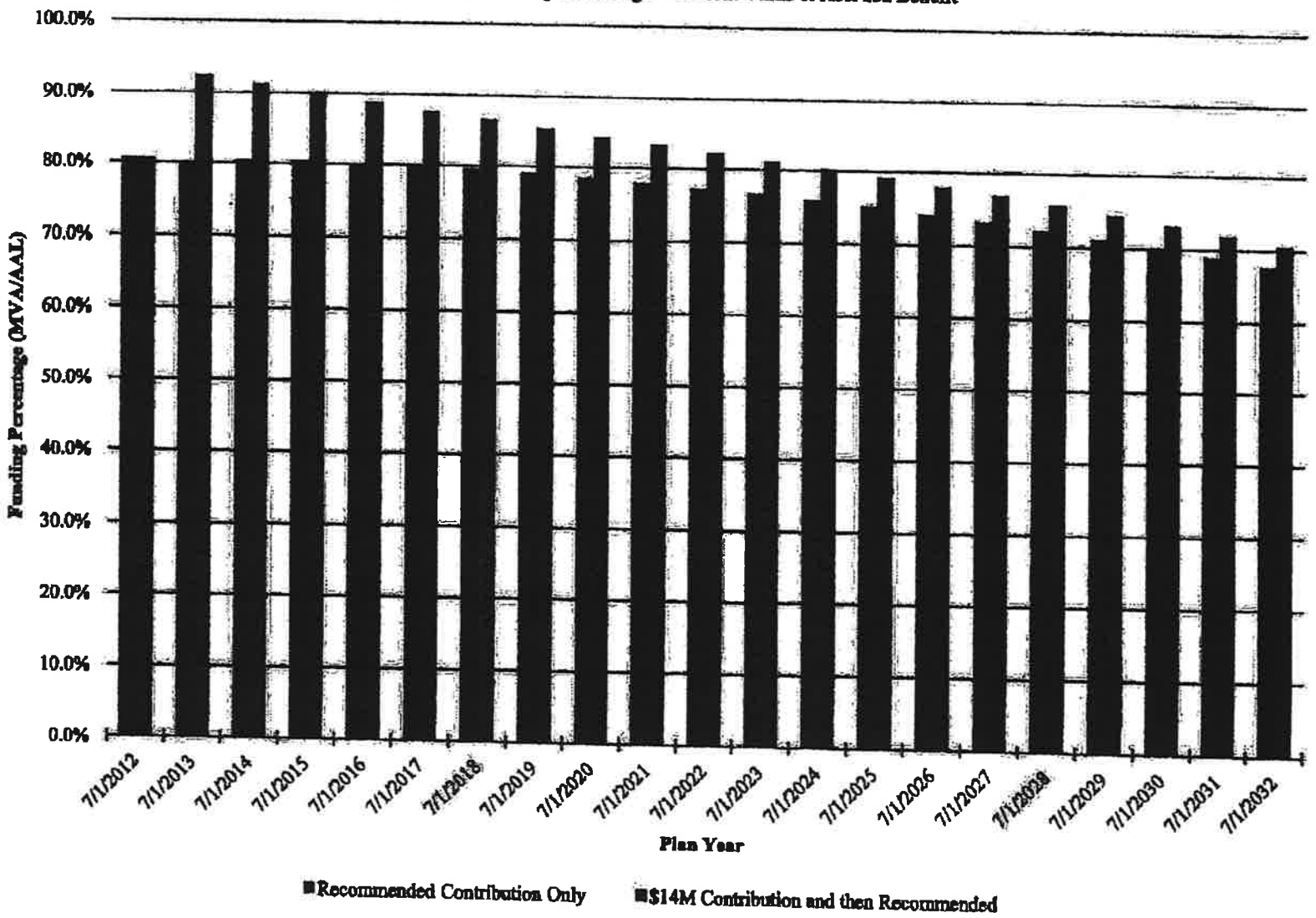
SUBSCRIBED AND SWORN to before me this ___ day of August, 2018.

Elizabeth A. Wheeler 46292
NOTARY PUBLIC
My Commission Expires: 4-4-20

Tab 1

St. Joseph Health Services of Rhode Island Retirement Plan

Comparison of Funding Percentage of Present Value of Accrued Benefit



Prepared by The Angell Pension Group, Inc.

9/6/2013

Tab 2

111123

Tab 3

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND DEPARTMENT OF HEALTH AND
RHODE ISLAND DEPARTMENT OF ATTORNEY GENERAL

In re: Hospital Conversions Act Application of Prospect CharterCARE, LLC; Prospect CharterCARE SJHSRI, LLC; Prospect CharterCARE RWMC, LLC; Prospect CharterCARE Elmhurst, LLC; CharterCARE Health Partners, Prospect East Holdings, Inc. and Prospect Medical Holdings, Inc.

NON-CONFIDENTIAL RESPONSES TO THIRD SUPPLEMENTAL QUESTIONS TO THE HCA APPLICATION

S3-1 Is CCHP contributing any funds to receive its 50% ownership interest?

Response: **The parties are responding to this inquiry with the assumption that the "50% ownership interest" is a typographical error and that the question intends to ask whether CCHP is contributing any funds to receive its 15% ownership interest. The response to this inquiry is no.**

S3-2 Please confirm that CCHP is not contributing any funds to receive its 15% ownership interest in the joint venture?

Response: **See response to S3-1.**

S3-3 How long does CCHP believe it has before it runs out of cash for operations if there was no transaction?

Response: **CCHP responds to this question as follows: if the transaction does not proceed, CCHP will be forced to undertake immediate preventative measures, which will include decisive steps to scale back ongoing initiatives to preserve cash. With that said, CCHP views this transaction as a unique model which sustains a valuable community asset. Therefore, CCHP takes the position that the RFP process that CCHP undertook represents a concerted and successful step in avoiding the need to address this question.**

S3-4 Please detail the savings resulting from the proposed transaction that would not be savings if CCHP continued on its own.

Response: **The expected savings from the transaction are as follows: (1) $4.2 M in savings regarding health benefits from changing the system from a fully-insured system to a self-insured system; (2) $5 M in savings resulting from pension obligations that are not being assumed by Prospect CharterCARE; (3) approximately $127,000.00 in workers compensation insurance program savings; (4) $500,000.00 in savings related to malpractice insurance programs; (5) $1.5 M in**

settlements, malpractice insurance tail and pension obligations, until the winding down of CCHP is complete and the corporation is dissolved.

S3-44 How would CCHP be expected to help to fund capital contributions which Prospect could not fund other than through CCHP selling its interest/having it diluted to the 5% threshold? C-PHCA 0607.

Response: **It is not expected that CCHP will have to respond to a capital call. The so-called "capital waterfall" was designed so that capital contributions could only be requested from the members as a last resort. The parties intend that the venture be successful, and the parties' projections indicate that the venture will be successful. In the unlikely event that the venture is not successful, and all other avenues of funding are exhausted, including the $90M capital infusion over the next four years, a capital call may be made. It is not likely that CCHP could satisfy that call. Again, the transaction was designed so that a capital call to the members is unlikely and possible only as a last resort.**

S3-45 How much in capital lease offsets will there be the capital commitment? e.g. cath lab capital leases.

Response: **The cath lab capital lease and a $67,000.00 capital lease regarding certain GI equipment are the only such capital lease off sets that are contemplated.**

S3-47 Please confirm the existing Pension Plan will remain in the control of the existing St. Joseph Health Services of Rhode Island post transaction.

Response: **The existing Pension Plan will remain in the control of the existing St. Joseph Health Services of Rhode Island post transaction.**

S3-48 Will the pension liability remain in place – how much, and what is the plan going forward to fund the liability?

Response: **The pension liability will remain in place post transaction. Subsequent to the $14 Million contribution to the Plan upon transaction, future contributions to the Plan will be made based on recommended annual contribution amounts as provided by the Plan's actuarial advisors. Moving forward, the investment portfolio of the plan will be monitored by the Investment Committee of the Board of Trustees.**

S3-50 Please provide a business plan for the next five (5) years for the operations of Prospect CharterCARE, LLC, Newco RWMC and Newco Fatima.

Tab 4

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH

PROCEEDINGS IN RE:

PUBLIC HEARING OF PROJECT REVIEW COMMITTEE-I OF THE HEALTH SERVICE COUNCIL

CHANGE IN EFFECTIVE CONTROL APPLICATIONS OF PROSPECT CHARTERCARE SJHSRI, LLC; PROSPECT CHARTERCARE RWMC, LLC; PROSPECT CHARTERCARE ELMHURST, LLC; PROSPECT CHARTERCARE, LLC; CHARTERCARE HEALTH PARTNERS, PROSPECT EAST HOLDINGS, INC., AND PROSPECT MEDICAL HOLDINGS, INC.

DEPARTMENT OF HEALTH
3 CAPITOL HILL
PROVIDENCE, RI 02908
MAY 6, 2014
2:30 P.M.

BEFORE PROJECT REVIEW COMMITTEE-I:

WALLACE GERNT
THERESA JEREMIAH
REVEREND DAVID SHIRE, VICE-CHAIRPERSON
MICHAEL K. DEXTER
THOMAS SGOUROS
AMY LAPIERRE
JOHN DONAHUE
ROBERT RICCI
VICTORIA ALMEIDA, ESQ., CHAIRPERSON

STAFF: SARAH MANCONE, STEPHEN MORRIS, ESQ., JOSEPH G. MILLER, ESQ., MICHAEL K. DEXTER

pension will not transfer to the new -- let's call it the new Prospect organization.

MR. GERNT: Other than the $600,000 contribution each year?

DR. SCHIBLER: The $600,000 contribution each year, what are you referring to?

MR. GERNT: I thought you mentioned something about --

DR. SCHIBLER: I said there was going to be required to be a $600,000 contribution on an ongoing basis to fund the pension requirements, okay, from what I saw.

MR. GERNT: Right. So where is that $600,000 coming from?

DR. SCHIBLER: From what I saw in the documents that I read, part of that will come from the perpetual trust from St. Joe's and then the rest of it will come from any distribution out of -- or any assets that remain or a distribution of the 15 percent. That's as I understand it, but we might want to get clarification from management.

MR. CONKLIN: That's right.

DR. SCHIBLER: Is that correct?

MR. CONKLIN: Yes. Mike Conklin, the

CFO of CharterCARE.

REVEREND SHIRE: Yes, will you comment on that.

MR. CONKLIN: Those are recommended contributions to the plan moving forward, $600,000, and again the funding sources would be from the income that's generated from the perpetual trust at St. Joe's and any income from the 15 percent proceeds.

MR. GERNT: So as a follow-up to that, what is the endowment of both institutions?

DR. SCHIBLER: I don't remember off the top of my head.

MR. CONKLIN: Well, the pure endowment actually is at Roger Williams, and it's about $15 million right now.

REVEREND SHIRE: I'm sorry, I'm not hearing you.

MR. GERNT: Can you speak up louder, please.

REVEREND SHIRE: Repeat that, please.

MR. CONKLIN: Yes. The endowment sits at Roger Williams Medical Center currently and it's about fifteen and a half million dollars currently.

will wind up with a claim on that income in order to fulfill the pension obligation?

MR. CONKLIN: Well, the Board could designate the 15 percent to make further contributions towards the pension plan.

MR. SGOUROS: Will the nonprofit entity have a claim on it or will it require the discretion of the Board of the for-profit?

MR. CONKLIN: I think it will require the discretion of the Board.

MR. SGOUROS: I see. Okay.

MR. BELCHER: May I?

REVEREND SHIRE: Yes.

MR. BELCHER: Ken Belcher, CEO of CharterCARE. I think a lot of this is hovering around the pension and the pension liability, the questions that are being asked, and the statement that we made earlier, John made earlier with the contributions being made to the pension plan, that $14 million, that will bring that pension plan funding up to the level of 91.5 percent funded. On a go-forward basis as this transaction is closed and completed and finalized, that pension plan is a frozen pension plan so that there's no more activity as far as new people being added to

that pension plan. The employees move into a 401(k) plan. That plan, the existing pension plan will require an ongoing level of funding to keep it at that 91.5 percent level in order to have it be appropriately spent down so that all those individuals that are in the plan will be taken care of through their life. So that level of funding is what Mike was referring to, which is roughly $600,000 per year.

MR. SGOUROS: No, no, I understand that. I was just asking who's bearing the investment risk going forward?

MR. BELCHER: Heritage Hospitals. It stays with old CharterCare.

MR. SGOUROS: Heritage Hospitals, and so if the investment returns don't match up to the predictions, who's on the hook?

MR. BELCHER: The old hospitals, the old CharterCARE. We have that responsibility.

MR. SGOUROS: Who has no assets left except for --

MR. BELCHER: Well, the 15 percent.

MR. SGOUROS: Except for the 15 percent?

MR. CONKLIN: That's correct, and the

Exhibit 11

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 Corpus[2] 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.

Filed PSC 6/29/18

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 Intervenors 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 Intervenors' claim to a right to intervene herein; (b) without prejudice to Proposed Intervenors' claims herein or in another action (including the Related Actions) to the Fund Corpus; (c) without prejudice to CCF's denial that the Proposed Intervenors have 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 Intervenors are entitled to the Fund Corpus.

ORDERED:

Stern, J.
Dated: 6/29/18

ENTERED:

Dep. Clerk
Dated: 6/29/18

Presented by:

Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com

Russell Conn, Esq. (pro hac vice ~~application pending~~)
Carol Starkey, Esq. (pro hac vice application pending)
Andrew Dennington, Esq. (#7528)
Christopher Sweeney, Esq. (#9689)
Conn Kavanaugh Rosenthal Peisch & Ford, LLP
One Federal Street, 15th Floor
Boston, MA 02110
(617) 482-8200
(617) 482-6444 (fax)
rconn@connkavanaugh.com
cstarkey@connkavanaugh.com
adennington@connkavanaugh.com
csweeney@connkavanaugh.com

1860204.1 02611.000

Exhibit A

RHODE ISLAND FOUNDATION

Lead, Transform, Inspire

RHODE ISLAND FOUNDATION
INSTRUMENT OF TRANSFER
CharterCARE Foundation Fund

I. 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:

CharterCARE Health Partners Foundation

Board Chair — Date: 4/14/15

Board Treasurer — Date: 4/14/15

Executive Director — Date: 4/14/15

Accepted:
Rhode Island Foundation

Neil D. Steinberg
President and CEO — Date: 4/17/15

Exhibit A

RHODE ISLAND FOUNDATION

INSTRUMENT OF TRANSFER

CharterCARE Foundation Fund

Cash Transfer - $5,752,655.00 – May 28, 2015
Cash Transfer - $1,974,537.44 – May 29, 2015

Exhibit 12

440 Niantic Ave
Cranston RI 02910
952-1803
mgail4536@gmail.com

ENGAGEMENT AGREEMENT

I SCOPE OF SERVICES

GAIL J. MAJOR. ("Client"), hereby appoints Wistow, Sheehan & Loveley, P.C. ("WSL") as attorneys to represent Client in making claims in one or more class actions against persons and/or entities ("Defendants") who WSL's investigation indicates may be liable to participants and participants' beneficiaries of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") in relation to the underfunding or insolvency of the Plan or who otherwise may be liable to participants and participants' beneficiaries in connection with or relating in any way to providing retirement and/or survivor benefits.

Client was referred to WSL by attorney Christopher Callaci.

WSL's representation will include factual and legal research, negotiations with interested parties, preparation of pleadings, and all court appearances through trial, any post-trial motions, and entry of judgment in this case. WSL will provide these legal services to Client on the terms set forth herein.

II WSL'S CONCURRENT ENGAGEMENT BY THE RECEIVER

On August 18, 2017, St. Joseph Health Services of Rhode Island filed a petition with the Superior Court of Rhode Island to appoint a temporary receiver of the Plan. In this petition, St. Joseph Health Services of Rhode Island alleged that the plan was "severely underfunded" and requested that the Superior Court "immediately" impose a "uniform reduction of 40% of pension benefits" on all beneficiaries. By order entered on August 18, 2017, Stephen F. Del Sesto, Esq. ("the Receiver") was appointed temporary receiver of the Plan. By order entered on October 27, 2017, the Receiver was

appointed permanent receiver.

WSL was engaged by the Receiver on October 18, 2017, with the Superior Court's approval. Pursuant to that engagement, and based on WSL's investigation of potential claims, WSL plans to bring one or more suits against one or more persons or entities. A copy of WSL's Engagement and Fee Agreement of October 18, 2017 with the Receiver is attached hereto as Exhibit 1.

WSL believes that the Receiver has standing to bring all necessary claims to protect participants and participants' beneficiaries. However, it is expected that there may be issues raised as to whether or not participants and participants' beneficiaries have the standing as to certain claims. To mitigate that potential issue, WSL is proposing to join class action claims along with the claims of the Receiver. You will be one of several persons represented by WSL named with regard to the class action claims.

III CLIENT'S DUTIES AND OBLIGATIONS AS A CLASS REPRESENTATIVE

In class actions, class representatives seek relief for themselves and other similarly situated persons as to their common damages and injuries. A class representative has factual and legal claims that are typical of those of the class, and thus involve common issues of law and fact.

Because class actions involve common issues that affect many people or entities, there are often multiple class actions filed by multiple class representatives regarding the same or similar subject matter. They are sometimes, but not always, consolidated into one larger class action. The court overseeing that consolidated class action may appoint lead class counsel that may be different from the original attorneys

bringing a class representative's case.

In non-class litigation, parties asserting claims are free to pursue only their own interests; they need not take into account the interests of others. Class actions are different, and require both class representatives and the lawyers in their capacity as lawyers for the class to consider and pursue only the common claims and interests of the class as a whole. This means that you must always act in the best interest of the class as a whole and consider the interests of the class ahead of your own individual or personal interests. If at any time you fail or refuse to prioritize the interests of the class, you will not be able to serve as a class representative, and WSL will not be able to continue representing you.

A class representative participates in the lawsuit, such as, for example, by testifying at deposition and trial, by producing evidence, by answering written questions from the defendants, and by keeping generally aware of the status and progress of the lawsuit. WSL will work with you in connection with such participation.

A class representative is not required to be particularly sophisticated or knowledgeable about the lawsuit or to know every aspect of the litigation. However, class representatives must maintain reliable communication with their attorneys throughout the lawsuit, which could take years.

A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be designed in the best interests of the class as a whole.

If at any time you believe that your interests conflict with those of other class members in regard to the subject matter of the class litigation, you agree to immediately inform WSL of this concern.

IV MAKING CLAIMS IN A CLASS ACTION

Client will be a plaintiff alongside other individual potential class representatives in one or more class actions, brought in one or more lawsuits against the Defendants. In such lawsuit(s), Client will be seeking to obtain relief on behalf of himself/herself and others and the Plan. Sometime after the lawsuit(s) have been filed, the court may determine the status of Client's representation of such other persons. As indicated, the proposed class action plaintiffs will be named alongside the Receiver as representative of the Plan.

Because it is possible that certification of the class may not be granted or WSL may not be appointed by the court as class counsel, WSL may agree to individually represent Client and/or other plaintiffs in this litigation. If WSL agrees to individually represent Client in this litigation, WSL will confirm its intentions in a separate document. If the lawsuit is not certified as a class action or if the court rejects Client or others as a class representative or WSL as class counsel, WSL may end WSL's representation of Client after making reasonable efforts to assist Client in finding different counsel to represent Client on an individual basis.

V CONFLICTS AMONG CLASS MEMBERS

Client understands that WSL will seek to bring one or more class actions on behalf of Client and other similarly situated persons. If an action is certified to proceed as a class action, Client is advised that WSL may be designated as counsel to

represent all class members as a whole. WSL will not be permitted to represent individual claimants for any matter that may create a conflict of interest with the class as a whole. Conflicts might develop between Client and the interests of the class as whole. For instance, it is possible that Client might want to accept a settlement but WSL believes the settlement is not in the interests of the class as a whole, or vice versa. Client agrees that in such events WSL shall be entitled to continue to represent the class or potential class or Receiver but not Client.

WSL shall seek appointment by the court as class counsel, and agrees to undertake the representation of all members of the plaintiff class if the court approves. Because of the nature of class action practice, WSL reserves the right to determine litigation tactics that are in the best interests of all clients and the class. If a difference of opinion arises between Client and WSL, on a significant issue, WSL shall have the right to proceed with their representation of the class and may also elect to withdraw as Client's counsel of record. WSL cannot and will not act as Client's lawyer in resolving any disagreements or conflicting instructions between Client, other jointly-represented plaintiffs, and/or other potential and/or certified class representatives.

During the course of litigation, there may be settlement discussions with some or all of the Defendants. The Defendants may make an aggregate settlement offer, meaning that they may offer a lump sum of money in settlement of all of the claims at issue, including Client's claims, any other jointly represented plaintiffs' claims, any potential and/or actual class representatives' claims, and the potential and/or actual class members' claims. Another aggregate settlement possibility is that the Defendants may offer separate sums to each individual claimant. If any aspect of Client's case(s) is

certified and proceeds as a class action and an aggregate settlement is reached, WSL will be required to disclose and seek the court's approval of such an aggregate settlement, including the methodology for distributing any such settlement.

An aggregate settlement may be insufficient to completely compensate each claimant individually and disagreements may arise concerning how to allocate, or divide, an aggregate settlement. If there is insufficient proceeds or assets to cover the claims of each of the respective Clients, there can be disputes regarding how to allocate the proceeds or assets as between the joint Clients. If any disputes should arise between the joint Clients, WSL will not advise or represent any of the Clients (including the Receiver) in connection with such disputes. WSL will remain able to advocate an overall settlement but not how such settlement should be divided.

Client acknowledges and understands the potential conflicts of interest discussed above and herein. Client agrees to waive the potential conflicts of interests which arise from WSL's representation as discussed above and herein.

VI ATTORNEY'S FEES

If a monetary recovery is obtained for a plaintiff class, either by settlement or judgment, WSL will apply to the court for the entirety of WSL's compensation on a reasonable percentage of such recovery, and/or from Defendants if allowed by statute and case law. The amount of any fees and costs that WSL may receive will be determined by the court based on WSL's application for fees and costs. Regardless of the stage at which the litigation is resolved, WSL will not seek attorneys' fees from the court based on a percentage of the recovery higher than twenty three and one-third percent (23 1/3 %) of the gross recovery, the same percentage previously agreed to

with the Receiver as set forth in WSL's fee agreement with the Receiver (Exhibit 1). As used here, the term "gross recovery" includes the recovery of the litigation costs and expenses advanced by WSL (if any) or the Receiver. In the event that the final resolution of the plaintiff classes' claims by settlement or otherwise results in a third party assuming responsibility for the Plan, WSL will apply to the court for fees to be determined under applicable law.

VII REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

WSL will look to the Receiver or the Defendants, and not to Client, for reimbursement of any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.).

VIII CONFIDENTIALITY

Information communicated or furnished between WSL, Client, other members or potential members of the class, and the Receiver will often be confidential (although the information of one Client is not confidential from any other Client in the case). Also, papers and other things relating to the matters in paragraph I will often be confidential. Such information, papers, and things are or may be subject to protective orders and/or attorney-client, work-product, joint-prosecution, and other applicable doctrines or procedures. WSL and Client shall maintain the confidentiality of all confidential information, papers and things, except that, to the extent permitted by law, WSL shall be entitled to divulge confidential information, papers, and things if necessary or helpful in representing Client or the class or potential class. Despite the confidentiality of Attorney-Client fee agreements, Client agrees that WSL shall be entitled to disclose this

Engagement Agreement for purposes of pursuing the matters described in paragraph I above, or for WSL or the Receiver to obtain fees, expenses, and costs. Client also acknowledges that WSL has already disclosed the form of this Engagement Agreement to the Receiver.

Client understands the effect of joint representation on attorney-client confidentiality. Attorney-client communications are privileged and protected against disclosure to a third party. Under this Engagement Agreement, Client may be one among multiple plaintiffs being jointly represented by WSL. By entering into this Engagement Agreement, Client waives any right Client may have to require that WSL disclose to Client any confidences WSL may have obtained from any other plaintiff in connection with the subject matter of this Engagement Agreement.

IX MODIFICATION BY SUBSEQUENT AGREEMENT

This Engagement Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by all parties.

X CLIENT FILE

Client has a right to request Client's client file upon discharge or withdrawal of WSL or the conclusion of Client's case. Client understands and agrees that WSL will satisfy WSL's obligation to release Client's client file to Client by providing Client with a photocopy or electronic copy of the portions of Client's files that pertain only to WSL's representation (if any) of Client on Client's individual claims. However, WSL will not be obligated to provide Client with a photocopy or electronic copy of files that pertain to WSL's representation of other clients in the matter and/or the potential and/or certified class to the extent those files are protected by the work product doctrine and/or

attorney-client privilege that WSL owes to the other clients and/or the potential and/or certified class. Client agrees to cooperate with WSL in the event Client requests a copy of Client's client file, to ensure that the rights of any other clients represented by WSL and/or the Receiver and/or the potential and/or certified class are not prejudiced.

XI CLIENT'S INFORMED CONSENT

Client acknowledges that Client has discussed this Engagement Agreement with the lawyer who referred him or her to WSL, and that Client has read and understands this Engagement Agreement.

XII CONDITIONS

This Engagement Agreement will not take effect, and WSL's representation of Client will not commence, until (1) Client returns a signed copy of this Engagement Agreement to WSL; and (2) WSL acknowledges acceptance of representation by counter-signing this Engagement Agreement.

XIII MISCELLANEOUS

This Engagement Agreement, when signed below by Client, replaces any prior understandings or oral agreement between Client and WSL.

This Engagement Agreement and all aspects of the attorney-client relationship shall be construed under the laws of Rhode Island, without regard to choice of law principles. If any dispute should arise with respect to this engagement, jurisdiction shall lie exclusively in Rhode Island.

The Client hereby approves and acknowledges delivery of a duplicate copy of this Engagement Agreement and acknowledges receipt of "A Client's Statement of

Rights & Responsibilities."

Gail J Major

Client

Date: June 1, 2018

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date:

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•1f you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:
'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

EXHIBIT 1

ENGAGEMENT AND FEE AGREEMENT

Stephen F. Del Sesto ("the Receiver"), as and only as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), hereby engages Wistow, Sheehan & Loveley, P.C. ("WSL") as special counsel to the Receiver and the Plan Receivership Estate as follows:

I. INVESTIGATION

The Receiver engages WSL to investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan (or to assume responsibility for such plan in the future), making use of discovery, records, research and consultations in its discretion. Under the provision concerning Hourly Fees set forth below, WSL will charge an hourly rate for these services. In addition, WSL will be reimbursed on a current basis (i.e. monthly) for any out-of-pocket expenses (such as costs of records, computer-assisted legal research, expert consultants, etc.) actually incurred and without mark-up by WSL during the investigative phase, whether claims are made or not.

II. MAKING CLAIMS

The Receiver further constitutes and appoints WSL to make claims against persons and/or entities who its investigation indicates may be liable for damages or to assume responsibility for the Plan. Said claim(s) may be made by demand letter or by lawsuit, if necessary. The Receiver agrees to pay as legal fees ten percent (10%) of the gross of any amounts recovered prior to the bringing of suit, by way of compromise or settlement. If suit is brought, the Receiver agrees to pay as legal fees twenty-three and one-third percent (23 1/3 %) of the gross of any amount thereafter recovered by way of suit, compromise, settlement or otherwise. In the event that a final resolution of such

claims by settlement or otherwise results in a third party assuming responsibility for the Plan, the fees to be paid to WSL shall be an obligation of the Receivership, the amount of which shall be determined by the Court using the standards of *quantum meruit* pursuant to the laws of Rhode Island, taking into account the benefit rendered to the Plan. In any event, no compromise of the Plan's claims may be made without the Receiver's express authorization and approval by the Court.

III. REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

The Receiver is obligated to reimburse WSL within thirty (30) days of invoicing and in all events for any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.) in connection with Sections I or II above.

IV. HOURLY FEES

The Receiver shall pay WSL an hourly rate of $375 per hour which is also the hourly rate presently being charged by the Receiver. In the event the Receiver's own hourly rate is increased, WSL will be entitled to charge such higher rate. Invoices for such hourly fees will be submitted to the Receiver every month for the Receiver's review. The Receiver shall seek Court approval of the fees submitted no less frequently than on a quarterly basis (or more frequently as the Receiver may in his discretion deem appropriate). The Receiver shall pay all Court-approved WSL invoices within three (3) business days of Court approval. The Receiver acknowledges that the attorneys performing services on behalf of WSL include Attorney Max Wistow, Attorney Stephen Sheehan, and Attorney Benjamin Ledsham, and that these services will be

performed during the investigation phase described by Section I as well as the phase, if applicable, described by Section II.

V. Miscellaneous

The Receiver hereby approves and acknowledges delivery of a duplicate copy of this Contingent Fee Agreement and acknowledges receipt of "A Client's Statement of Rights & Responsibilities."

Stephen F. Del Sesto, Esq., as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan

Date: 10/18/17

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date: 10/18/17

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•1f you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

Exhibit 13

105 Echo Lane
Cranston, RI
02921

ENGAGEMENT AGREEMENT

I SCOPE OF SERVICES

Nancy Zompa ("Client"), hereby appoints Wistow, Sheehan & Loveley, P.C. ("WSL") as attorneys to represent Client in making claims in one or more class actions against persons and/or entities ("Defendants") who WSL's investigation indicates may be liable to participants and participants' beneficiaries of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") in relation to the underfunding or insolvency of the Plan or who otherwise may be liable to participants and participants' beneficiaries in connection with or relating in any way to providing retirement and/or survivor benefits.

Client was referred to WSL by attorney Chris Callaci.

WSL's representation will include factual and legal research, negotiations with interested parties, preparation of pleadings, and all court appearances through trial, any post-trial motions, and entry of judgment in this case. WSL will provide these legal services to Client on the terms set forth herein.

II WSL'S CONCURRENT ENGAGEMENT BY THE RECEIVER

On August 18, 2017, St. Joseph Health Services of Rhode Island filed a petition with the Superior Court of Rhode Island to appoint a temporary receiver of the Plan. In this petition, St. Joseph Health Services of Rhode Island alleged that the plan was "severely underfunded" and requested that the Superior Court "immediately" impose a "uniform reduction of 40% of pension benefits" on all beneficiaries. By order entered on August 18, 2017, Stephen F. Del Sesto, Esq. ("the Receiver") was appointed temporary receiver of the Plan. By order entered on October 27, 2017, the Receiver was

appointed permanent receiver.

WSL was engaged by the Receiver on October 18, 2017, with the Superior Court's approval. Pursuant to that engagement, and based on WSL's investigation of potential claims, WSL plans to bring one or more suits against one or more persons or entities. A copy of WSL's Engagement and Fee Agreement of October 18, 2017 with the Receiver is attached hereto as Exhibit 1.

WSL believes that the Receiver has standing to bring all necessary claims to protect participants and participants' beneficiaries. However, it is expected that there may be issues raised as to whether or not participants and participants' beneficiaries have the standing as to certain claims. To mitigate that potential issue, WSL is proposing to join class action claims along with the claims of the Receiver. You will be one of several persons represented by WSL named with regard to the class action claims.

III CLIENT'S DUTIES AND OBLIGATIONS AS A CLASS REPRESENTATIVE

In class actions, class representatives seek relief for themselves and other similarly situated persons as to their common damages and injuries. A class representative has factual and legal claims that are typical of those of the class, and thus involve common issues of law and fact.

Because class actions involve common issues that affect many people or entities, there are often multiple class actions filed by multiple class representatives regarding the same or similar subject matter. They are sometimes, but not always, consolidated into one larger class action. The court overseeing that consolidated class action may appoint lead class counsel that may be different from the original attorneys

bringing a class representative's case.

In non-class litigation, parties asserting claims are free to pursue only their own interests; they need not take into account the interests of others. Class actions are different, and require both class representatives and the lawyers in their capacity as lawyers for the class to consider and pursue only the common claims and interests of the class as a whole. This means that you must always act in the best interest of the class as a whole and consider the interests of the class ahead of your own individual or personal interests. If at any time you fail or refuse to prioritize the interests of the class, you will not be able to serve as a class representative, and WSL will not be able to continue representing you.

A class representative participates in the lawsuit, such as, for example, by testifying at deposition and trial, by producing evidence, by answering written questions from the defendants, and by keeping generally aware of the status and progress of the lawsuit. WSL will work with you in connection with such participation.

A class representative is not required to be particularly sophisticated or knowledgeable about the lawsuit or to know every aspect of the litigation. However, class representatives must maintain reliable communication with their attorneys throughout the lawsuit, which could take years.

A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be designed in the best interests of the class as a whole.

If at any time you believe that your interests conflict with those of other class members in regard to the subject matter of the class litigation, you agree to immediately inform WSL of this concern.

IV MAKING CLAIMS IN A CLASS ACTION

Client will be a plaintiff alongside other individual potential class representatives in one or more class actions, brought in one or more lawsuits against the Defendants. In such lawsuit(s), Client will be seeking to obtain relief on behalf of himself/herself and others and the Plan. Sometime after the lawsuit(s) have been filed, the court may determine the status of Client's representation of such other persons. As indicated, the proposed class action plaintiffs will be named alongside the Receiver as representative of the Plan.

Because it is possible that certification of the class may not be granted or WSL may not be appointed by the court as class counsel, WSL may agree to individually represent Client and/or other plaintiffs in this litigation. If WSL agrees to individually represent Client in this litigation, WSL will confirm its intentions in a separate document. If the lawsuit is not certified as a class action or if the court rejects Client or others as a class representative or WSL as class counsel, WSL may end WSL's representation of Client after making reasonable efforts to assist Client in finding different counsel to represent Client on an individual basis.

V CONFLICTS AMONG CLASS MEMBERS

Client understands that WSL will seek to bring one or more class actions on behalf of Client and other similarly situated persons. If an action is certified to proceed as a class action, Client is advised that WSL may be designated as counsel to

represent all class members as a whole. WSL will not be permitted to represent individual claimants for any matter that may create a conflict of interest with the class as a whole. Conflicts might develop between Client and the interests of the class as whole. For instance, it is possible that Client might want to accept a settlement but WSL believes the settlement is not in the interests of the class as a whole, or vice versa. Client agrees that in such events WSL shall be entitled to continue to represent the class or potential class or Receiver but not Client.

WSL shall seek appointment by the court as class counsel, and agrees to undertake the representation of all members of the plaintiff class if the court approves. Because of the nature of class action practice, WSL reserves the right to determine litigation tactics that are in the best interests of all clients and the class. If a difference of opinion arises between Client and WSL, on a significant issue, WSL shall have the right to proceed with their representation of the class and may also elect to withdraw as Client's counsel of record. WSL cannot and will not act as Client's lawyer in resolving any disagreements or conflicting instructions between Client, other jointly-represented plaintiffs, and/or other potential and/or certified class representatives.

During the course of litigation, there may be settlement discussions with some or all of the Defendants. The Defendants may make an aggregate settlement offer, meaning that they may offer a lump sum of money in settlement of all of the claims at issue, including Client's claims, any other jointly represented plaintiffs' claims, any potential and/or actual class representatives' claims, and the potential and/or actual class members' claims. Another aggregate settlement possibility is that the Defendants may offer separate sums to each individual claimant. If any aspect of Client's case(s) is

certified and proceeds as a class action and an aggregate settlement is reached, WSL will be required to disclose and seek the court's approval of such an aggregate settlement, including the methodology for distributing any such settlement.

An aggregate settlement may be insufficient to completely compensate each claimant individually and disagreements may arise concerning how to allocate, or divide, an aggregate settlement. If there is insufficient proceeds or assets to cover the claims of each of the respective Clients, there can be disputes regarding how to allocate the proceeds or assets as between the joint Clients. If any disputes should arise between the joint Clients, WSL will not advise or represent any of the Clients (including the Receiver) in connection with such disputes. WSL will remain able to advocate an overall settlement but not how such settlement should be divided.

Client acknowledges and understands the potential conflicts of interest discussed above and herein. Client agrees to waive the potential conflicts of interests which arise from WSL's representation as discussed above and herein.

VI ATTORNEY'S FEES

If a monetary recovery is obtained for a plaintiff class, either by settlement or judgment, WSL will apply to the court for the entirety of WSL's compensation on a reasonable percentage of such recovery, and/or from Defendants if allowed by statute and case law. The amount of any fees and costs that WSL may receive will be determined by the court based on WSL's application for fees and costs. Regardless of the stage at which the litigation is resolved, WSL will not seek attorneys' fees from the court based on a percentage of the recovery higher than twenty three and one-third percent (23 1/3 %) of the gross recovery, the same percentage previously agreed to

with the Receiver as set forth in WSL's fee agreement with the Receiver (Exhibit 1). As used here, the term "gross recovery" includes the recovery of the litigation costs and expenses advanced by WSL (if any) or the Receiver. In the event that the final resolution of the plaintiff classes' claims by settlement or otherwise results in a third party assuming responsibility for the Plan, WSL will apply to the court for fees to be determined under applicable law.

VII REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

WSL will look to the Receiver or the Defendants, and not to Client, for reimbursement of any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.).

VIII CONFIDENTIALITY

Information communicated or furnished between WSL, Client, other members or potential members of the class, and the Receiver will often be confidential (although the information of one Client is not confidential from any other Client in the case). Also, papers and other things relating to the matters in paragraph I will often be confidential. Such information, papers, and things are or may be subject to protective orders and/or attorney-client, work-product, joint-prosecution, and other applicable doctrines or procedures. WSL and Client shall maintain the confidentiality of all confidential information, papers and things, except that, to the extent permitted by law, WSL shall be entitled to divulge confidential information, papers, and things if necessary or helpful in representing Client or the class or potential class. Despite the confidentiality of Attorney-Client fee agreements, Client agrees that WSL shall be entitled to disclose this

Engagement Agreement for purposes of pursuing the matters described in paragraph I above, or for WSL or the Receiver to obtain fees, expenses, and costs. Client also acknowledges that WSL has already disclosed the form of this Engagement Agreement to the Receiver.

Client understands the effect of joint representation on attorney-client confidentiality. Attorney-client communications are privileged and protected against disclosure to a third party. Under this Engagement Agreement, Client may be one among multiple plaintiffs being jointly represented by WSL. By entering into this Engagement Agreement, Client waives any right Client may have to require that WSL disclose to Client any confidences WSL may have obtained from any other plaintiff in connection with the subject matter of this Engagement Agreement.

IX MODIFICATION BY SUBSEQUENT AGREEMENT

This Engagement Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by all parties.

X CLIENT FILE

Client has a right to request Client's client file upon discharge or withdrawal of WSL or the conclusion of Client's case. Client understands and agrees that WSL will satisfy WSL's obligation to release Client's client file to Client by providing Client with a photocopy or electronic copy of the portions of Client's files that pertain only to WSL's representation (if any) of Client on Client's individual claims. However, WSL will not be obligated to provide Client with a photocopy or electronic copy of files that pertain to WSL's representation of other clients in the matter and/or the potential and/or certified class to the extent those files are protected by the work product doctrine and/or

attorney-client privilege that WSL owes to the other clients and/or the potential and/or certified class. Client agrees to cooperate with WSL in the event Client requests a copy of Client's client file, to ensure that the rights of any other clients represented by WSL and/or the Receiver and/or the potential and/or certified class are not prejudiced.

XI CLIENT'S INFORMED CONSENT

Client acknowledges that Client has discussed this Engagement Agreement with the lawyer who referred him or her to WSL, and that Client has read and understands this Engagement Agreement.

XII CONDITIONS

This Engagement Agreement will not take effect, and WSL's representation of Client will not commence, until (1) Client returns a signed copy of this Engagement Agreement to WSL; and (2) WSL acknowledges acceptance of representation by counter-signing this Engagement Agreement.

XIII MISCELLANEOUS

This Engagement Agreement, when signed below by Client, replaces any prior understandings or oral agreement between Client and WSL.

This Engagement Agreement and all aspects of the attorney-client relationship shall be construed under the laws of Rhode Island, without regard to choice of law principles. If any dispute should arise with respect to this engagement, jurisdiction shall lie exclusively in Rhode Island.

The Client hereby approves and acknowledges delivery of a duplicate copy of this Engagement Agreement and acknowledges receipt of "A Client's Statement of

Rights & Responsibilities."

Nancy Zompa
Client

Date: 5/22/18

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date: 5/22/18

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•If you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

EXHIBIT 1

ENGAGEMENT AND FEE AGREEMENT

Stephen F. Del Sesto ("the Receiver"), as and only as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), hereby engages Wistow, Sheehan & Loveley, P.C. ("WSL") as special counsel to the Receiver and the Plan Receivership Estate as follows:

I. INVESTIGATION

The Receiver engages WSL to investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan (or to assume responsibility for such plan in the future), making use of discovery, records, research and consultations in its discretion. Under the provision concerning Hourly Fees set forth below, WSL will charge an hourly rate for these services. In addition, WSL will be reimbursed on a current basis (i.e. monthly) for any out-of-pocket expenses (such as costs of records, computer-assisted legal research, expert consultants, etc.) actually incurred and without mark-up by WSL during the investigative phase, whether claims are made or not.

II. MAKING CLAIMS

The Receiver further constitutes and appoints WSL to make claims against persons and/or entities who its investigation indicates may be liable for damages or to assume responsibility for the Plan. Said claim(s) may be made by demand letter or by lawsuit, if necessary. The Receiver agrees to pay as legal fees ten percent (10%) of the gross of any amounts recovered prior to the bringing of suit, by way of compromise or settlement. If suit is brought, the Receiver agrees to pay as legal fees twenty-three and one-third percent (23 1/3 %) of the gross of any amount thereafter recovered by way of suit, compromise, settlement or otherwise. In the event that a final resolution of such

claims by settlement or otherwise results in a third party assuming responsibility for the Plan, the fees to be paid to WSL shall be an obligation of the Receivership, the amount of which shall be determined by the Court using the standards of *quantum meruit* pursuant to the laws of Rhode Island, taking into account the benefit rendered to the Plan. In any event, no compromise of the Plan's claims may be made without the Receiver's express authorization and approval by the Court.

III. REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

The Receiver is obligated to reimburse WSL within thirty (30) days of invoicing and in all events for any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.) in connection with Sections I or II above.

IV. HOURLY FEES

The Receiver shall pay WSL an hourly rate of $375 per hour which is also the hourly rate presently being charged by the Receiver. In the event the Receiver's own hourly rate is increased, WSL will be entitled to charge such higher rate. Invoices for such hourly fees will be submitted to the Receiver every month for the Receiver's review. The Receiver shall seek Court approval of the fees submitted no less frequently than on a quarterly basis (or more frequently as the Receiver may in his discretion deem appropriate). The Receiver shall pay all Court-approved WSL invoices within three (3) business days of Court approval. The Receiver acknowledges that the attorneys performing services on behalf of WSL include Attorney Max Wistow, Attorney Stephen Sheehan, and Attorney Benjamin Ledsham, and that these services will be

performed during the investigation phase described by Section I as well as the phase, if applicable, described by Section II.

V. Miscellaneous

The Receiver hereby approves and acknowledges delivery of a duplicate copy of this Contingent Fee Agreement and acknowledges receipt of "A Client's Statement of Rights & Responsibilities."

Stephen F. Del Sesto, Esq., as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan

Date: 10/18/17

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date: 10/18/17

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•If you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

Exhibit 14

(2)

N. SCITUATE
RI 02857
401-934-2084

ENGAGEMENT AGREEMENT

I SCOPE OF SERVICES

RALPH BRYDEN ("Client"), hereby appoints Wistow, Sheehan & Loveley, P.C. ("WSL") as attorneys to represent Client in making claims in one or more class actions against persons and/or entities ("Defendants") who WSL's investigation indicates may be liable to participants and participants' beneficiaries of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") in relation to the underfunding or insolvency of the Plan or who otherwise may be liable to participants and participants' beneficiaries in connection with or relating in any way to providing retirement and/or survivor benefits.

Client was referred to WSL by attorney Andrew Vorzimer.

WSL's representation will include factual and legal research, negotiations with interested parties, preparation of pleadings, and all court appearances through trial, any post-trial motions, and entry of judgment in this case. WSL will provide these legal services to Client on the terms set forth herein.

II WSL'S CONCURRENT ENGAGEMENT BY THE RECEIVER

On August 18, 2017, St. Joseph Health Services of Rhode Island filed a petition with the Superior Court of Rhode Island to appoint a temporary receiver of the Plan. In this petition, St. Joseph Health Services of Rhode Island alleged that the plan was "severely underfunded" and requested that the Superior Court "immediately" impose a "uniform reduction of 40% of pension benefits" on all beneficiaries. By order entered on August 18, 2017, Stephen F. Del Sesto, Esq. ("the Receiver") was appointed temporary receiver of the Plan. By order entered on October 27, 2017, the Receiver was

appointed permanent receiver.

WSL was engaged by the Receiver on October 18, 2017, with the Superior Court's approval. Pursuant to that engagement, and based on WSL's investigation of potential claims, WSL plans to bring one or more suits against one or more persons or entities. A copy of WSL's Engagement and Fee Agreement of October 18, 2017 with the Receiver is attached hereto as Exhibit 1.

WSL believes that the Receiver has standing to bring all necessary claims to protect participants and participants' beneficiaries. However, it is expected that there may be issues raised as to whether or not participants and participants' beneficiaries have the standing as to certain claims. To mitigate that potential issue, WSL is proposing to join class action claims along with the claims of the Receiver. You will be one of several persons represented by WSL named with regard to the class action claims.

III CLIENT'S DUTIES AND OBLIGATIONS AS A CLASS REPRESENTATIVE

In class actions, class representatives seek relief for themselves and other similarly situated persons as to their common damages and injuries. A class representative has factual and legal claims that are typical of those of the class, and thus involve common issues of law and fact.

Because class actions involve common issues that affect many people or entities, there are often multiple class actions filed by multiple class representatives regarding the same or similar subject matter. They are sometimes, but not always, consolidated into one larger class action. The court overseeing that consolidated class action may appoint lead class counsel that may be different from the original attorneys

bringing a class representative's case.

In non-class litigation, parties asserting claims are free to pursue only their own interests; they need not take into account the interests of others. Class actions are different, and require both class representatives and the lawyers in their capacity as lawyers for the class to consider and pursue only the common claims and interests of the class as a whole. This means that you must always act in the best interest of the class as a whole and consider the interests of the class ahead of your own individual or personal interests. If at any time you fail or refuse to prioritize the interests of the class, you will not be able to serve as a class representative, and WSL will not be able to continue representing you.

A class representative participates in the lawsuit, such as, for example, by testifying at deposition and trial, by producing evidence, by answering written questions from the defendants, and by keeping generally aware of the status and progress of the lawsuit. WSL will work with you in connection with such participation.

A class representative is not required to be particularly sophisticated or knowledgeable about the lawsuit or to know every aspect of the litigation. However, class representatives must maintain reliable communication with their attorneys throughout the lawsuit, which could take years.

A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be designed in the best interests of the class as a whole.

If at any time you believe that your interests conflict with those of other class members in regard to the subject matter of the class litigation, you agree to immediately inform WSL of this concern.

IV MAKING CLAIMS IN A CLASS ACTION

Client will be a plaintiff alongside other individual potential class representatives in one or more class actions, brought in one or more lawsuits against the Defendants. In such lawsuit(s), Client will be seeking to obtain relief on behalf of himself/herself and others and the Plan. Sometime after the lawsuit(s) have been filed, the court may determine the status of Client's representation of such other persons. As indicated, the proposed class action plaintiffs will be named alongside the Receiver as representative of the Plan.

Because it is possible that certification of the class may not be granted or WSL may not be appointed by the court as class counsel, WSL may agree to individually represent Client and/or other plaintiffs in this litigation. If WSL agrees to individually represent Client in this litigation, WSL will confirm its intentions in a separate document. If the lawsuit is not certified as a class action or if the court rejects Client or others as a class representative or WSL as class counsel, WSL may end WSL's representation of Client after making reasonable efforts to assist Client in finding different counsel to represent Client on an individual basis.

V CONFLICTS AMONG CLASS MEMBERS

Client understands that WSL will seek to bring one or more class actions on behalf of Client and other similarly situated persons. If an action is certified to proceed as a class action, Client is advised that WSL may be designated as counsel to

represent all class members as a whole. WSL will not be permitted to represent individual claimants for any matter that may create a conflict of interest with the class as a whole. Conflicts might develop between Client and the interests of the class as whole. For instance, it is possible that Client might want to accept a settlement but WSL believes the settlement is not in the interests of the class as a whole, or vice versa. Client agrees that in such events WSL shall be entitled to continue to represent the class or potential class or Receiver but not Client.

WSL shall seek appointment by the court as class counsel, and agrees to undertake the representation of all members of the plaintiff class if the court approves. Because of the nature of class action practice, WSL reserves the right to determine litigation tactics that are in the best interests of all clients and the class. If a difference of opinion arises between Client and WSL, on a significant issue, WSL shall have the right to proceed with their representation of the class and may also elect to withdraw as Client's counsel of record. WSL cannot and will not act as Client's lawyer in resolving any disagreements or conflicting instructions between Client, other jointly-represented plaintiffs, and/or other potential and/or certified class representatives.

During the course of litigation, there may be settlement discussions with some or all of the Defendants. The Defendants may make an aggregate settlement offer, meaning that they may offer a lump sum of money in settlement of all of the claims at issue, including Client's claims, any other jointly represented plaintiffs' claims, any potential and/or actual class representatives' claims, and the potential and/or actual class members' claims. Another aggregate settlement possibility is that the Defendants may offer separate sums to each individual claimant. If any aspect of Client's case(s) is

certified and proceeds as a class action and an aggregate settlement is reached, WSL will be required to disclose and seek the court's approval of such an aggregate settlement, including the methodology for distributing any such settlement.

An aggregate settlement may be insufficient to completely compensate each claimant individually and disagreements may arise concerning how to allocate, or divide, an aggregate settlement. If there is insufficient proceeds or assets to cover the claims of each of the respective Clients, there can be disputes regarding how to allocate the proceeds or assets as between the joint Clients. If any disputes should arise between the joint Clients, WSL will not advise or represent any of the Clients (including the Receiver) in connection with such disputes. WSL will remain able to advocate an overall settlement but not how such settlement should be divided.

Client acknowledges and understands the potential conflicts of interest discussed above and herein. Client agrees to waive the potential conflicts of interests which arise from WSL's representation as discussed above and herein.

VI ATTORNEY'S FEES

If a monetary recovery is obtained for a plaintiff class, either by settlement or judgment, WSL will apply to the court for the entirety of WSL's compensation on a reasonable percentage of such recovery, and/or from Defendants if allowed by statute and case law. The amount of any fees and costs that WSL may receive will be determined by the court based on WSL's application for fees and costs. Regardless of the stage at which the litigation is resolved, WSL will not seek attorneys' fees from the court based on a percentage of the recovery higher than twenty three and one-third percent (23 1/3 %) of the gross recovery, the same percentage previously agreed to

with the Receiver as set forth in WSL's fee agreement with the Receiver (Exhibit 1). As used here, the term "gross recovery" includes the recovery of the litigation costs and expenses advanced by WSL (if any) or the Receiver. In the event that the final resolution of the plaintiff classes' claims by settlement or otherwise results in a third party assuming responsibility for the Plan, WSL will apply to the court for fees to be determined under applicable law.

VII REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

WSL will look to the Receiver or the Defendants, and not to Client, for reimbursement of any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.).

VIII CONFIDENTIALITY

Information communicated or furnished between WSL, Client, other members or potential members of the class, and the Receiver will often be confidential (although the information of one Client is not confidential from any other Client in the case). Also, papers and other things relating to the matters in paragraph I will often be confidential. Such information, papers, and things are or may be subject to protective orders and/or attorney-client, work-product, joint-prosecution, and other applicable doctrines or procedures. WSL and Client shall maintain the confidentiality of all confidential information, papers and things, except that, to the extent permitted by law, WSL shall be entitled to divulge confidential information, papers, and things if necessary or helpful in representing Client or the class or potential class. Despite the confidentiality of Attorney-Client fee agreements, Client agrees that WSL shall be entitled to disclose this

Engagement Agreement for purposes of pursuing the matters described in paragraph I above, or for WSL or the Receiver to obtain fees, expenses, and costs. Client also acknowledges that WSL has already disclosed the form of this Engagement Agreement to the Receiver.

Client understands the effect of joint representation on attorney-client confidentiality. Attorney-client communications are privileged and protected against disclosure to a third party. Under this Engagement Agreement, Client may be one among multiple plaintiffs being jointly represented by WSL. By entering into this Engagement Agreement, Client waives any right Client may have to require that WSL disclose to Client any confidences WSL may have obtained from any other plaintiff in connection with the subject matter of this Engagement Agreement.

IX MODIFICATION BY SUBSEQUENT AGREEMENT

This Engagement Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by all parties.

X CLIENT FILE

Client has a right to request Client's client file upon discharge or withdrawal of WSL or the conclusion of Client's case. Client understands and agrees that WSL will satisfy WSL's obligation to release Client's client file to Client by providing Client with a photocopy or electronic copy of the portions of Client's files that pertain only to WSL's representation (if any) of Client on Client's individual claims. However, WSL will not be obligated to provide Client with a photocopy or electronic copy of files that pertain to WSL's representation of other clients in the matter and/or the potential and/or certified class to the extent those files are protected by the work product doctrine and/or

attorney-client privilege that WSL owes to the other clients and/or the potential and/or certified class. Client agrees to cooperate with WSL in the event Client requests a copy of Client's client file, to ensure that the rights of any other clients represented by WSL and/or the Receiver and/or the potential and/or certified class are not prejudiced.

XI CLIENT'S INFORMED CONSENT

Client acknowledges that Client has discussed this Engagement Agreement with the lawyer who referred him or her to WSL, and that Client has read and understands this Engagement Agreement.

XII CONDITIONS

This Engagement Agreement will not take effect, and WSL's representation of Client will not commence, until (1) Client returns a signed copy of this Engagement Agreement to WSL; and (2) WSL acknowledges acceptance of representation by counter-signing this Engagement Agreement.

XIII MISCELLANEOUS

This Engagement Agreement, when signed below by Client, replaces any prior understandings or oral agreement between Client and WSL.

This Engagement Agreement and all aspects of the attorney-client relationship shall be construed under the laws of Rhode Island, without regard to choice of law principles. If any dispute should arise with respect to this engagement, jurisdiction shall lie exclusively in Rhode Island.

The Client hereby approves and acknowledges delivery of a duplicate copy of this Engagement Agreement and acknowledges receipt of "A Client's Statement of

Rights & Responsibilities."

Ralph H. Bryden Jr

Client

Date: 5/23/18

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date:

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client in a legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•If you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

EXHIBIT 1

ENGAGEMENT AND FEE AGREEMENT

Stephen F. Del Sesto ("the Receiver"), as and only as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), hereby engages Wistow, Sheehan & Loveley, P.C. ("WSL") as special counsel to the Receiver and the Plan Receivership Estate as follows:

I. INVESTIGATION

The Receiver engages WSL to investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan (or to assume responsibility for such plan in the future), making use of discovery, records, research and consultations in its discretion. Under the provision concerning Hourly Fees set forth below, WSL will charge an hourly rate for these services. In addition, WSL will be reimbursed on a current basis (i.e. monthly) for any out-of-pocket expenses (such as costs of records, computer-assisted legal research, expert consultants, etc.) actually incurred and without mark-up by WSL during the investigative phase, whether claims are made or not.

II. MAKING CLAIMS

The Receiver further constitutes and appoints WSL to make claims against persons and/or entities who its investigation indicates may be liable for damages or to assume responsibility for the Plan. Said claim(s) may be made by demand letter or by lawsuit, if necessary. The Receiver agrees to pay as legal fees ten percent (10%) of the gross of any amounts recovered prior to the bringing of suit, by way of compromise or settlement. If suit is brought, the Receiver agrees to pay as legal fees twenty-three and one-third percent (23 1/3 %) of the gross of any amount thereafter recovered by way of suit, compromise, settlement or otherwise. In the event that a final resolution of such

claims by settlement or otherwise results in a third party assuming responsibility for the Plan, the fees to be paid to WSL shall be an obligation of the Receivership, the amount of which shall be determined by the Court using the standards of *quantum meruit* pursuant to the laws of Rhode Island, taking into account the benefit rendered to the Plan. In any event, no compromise of the Plan's claims may be made without the Receiver's express authorization and approval by the Court.

III. REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

The Receiver is obligated to reimburse WSL within thirty (30) days of invoicing and in all events for any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.) in connection with Sections I or II above.

IV. HOURLY FEES

The Receiver shall pay WSL an hourly rate of $375 per hour which is also the hourly rate presently being charged by the Receiver. In the event the Receiver's own hourly rate is increased, WSL will be entitled to charge such higher rate. Invoices for such hourly fees will be submitted to the Receiver every month for the Receiver's review. The Receiver shall seek Court approval of the fees submitted no less frequently than on a quarterly basis (or more frequently as the Receiver may in his discretion deem appropriate). The Receiver shall pay all Court-approved WSL invoices within three (3) business days of Court approval. The Receiver acknowledges that the attorneys performing services on behalf of WSL include Attorney Max Wistow, Attorney Stephen Sheehan, and Attorney Benjamin Ledsham, and that these services will be

performed during the investigation phase described by Section I as well as the phase, if applicable, described by Section II.

V. Miscellaneous

The Receiver hereby approves and acknowledges delivery of a duplicate copy of this Contingent Fee Agreement and acknowledges receipt of "A Client's Statement of Rights & Responsibilities."

Stephen F. Del Sesto, Esq., as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan

Date: 10/18/17

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date: 10/18/17

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•If you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

Exhibit 15

(1)

435 OAKLAWN AVE
APT. 116
CRANSTON, RI 02920
401-270-5434
email PIXIE_WILLNER@YAHOO.COM

ENGAGEMENT AGREEMENT

I SCOPE OF SERVICES

DOROTHY WILLNER ("Client"), hereby appoints Wistow, Sheehan & Loveley, P.C. ("WSL") as attorneys to represent Client in making claims in one or more class actions against persons and/or entities ("Defendants") who WSL's investigation indicates may be liable to participants and participants' beneficiaries of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") in relation to the underfunding or insolvency of the Plan or who otherwise may be liable to participants and participants' beneficiaries in connection with or relating in any way to providing retirement and/or survivor benefits.

Client was referred to WSL by attorney Robert Vinett.

WSL's representation will include factual and legal research, negotiations with interested parties, preparation of pleadings, and all court appearances through trial, any post-trial motions, and entry of judgment in this case. WSL will provide these legal services to Client on the terms set forth herein.

II WSL'S CONCURRENT ENGAGEMENT BY THE RECEIVER

On August 18, 2017, St. Joseph Health Services of Rhode Island filed a petition with the Superior Court of Rhode Island to appoint a temporary receiver of the Plan. In this petition, St. Joseph Health Services of Rhode Island alleged that the plan was "severely underfunded" and requested that the Superior Court "immediately" impose a "uniform reduction of 40% of pension benefits" on all beneficiaries. By order entered on August 18, 2017, Stephen F. Del Sesto, Esq. ("the Receiver") was appointed temporary receiver of the Plan. By order entered on October 27, 2017, the Receiver was

appointed permanent receiver.

WSL was engaged by the Receiver on October 18, 2017, with the Superior Court's approval. Pursuant to that engagement, and based on WSL's investigation of potential claims, WSL plans to bring one or more suits against one or more persons or entities. A copy of WSL's Engagement and Fee Agreement of October 18, 2017 with the Receiver is attached hereto as Exhibit 1.

WSL believes that the Receiver has standing to bring all necessary claims to protect participants and participants' beneficiaries. However, it is expected that there may be issues raised as to whether or not participants and participants' beneficiaries have the standing as to certain claims. To mitigate that potential issue, WSL is proposing to join class action claims along with the claims of the Receiver. You will be one of several persons represented by WSL named with regard to the class action claims.

III CLIENT'S DUTIES AND OBLIGATIONS AS A CLASS REPRESENTATIVE

In class actions, class representatives seek relief for themselves and other similarly situated persons as to their common damages and injuries. A class representative has factual and legal claims that are typical of those of the class, and thus involve common issues of law and fact.

Because class actions involve common issues that affect many people or entities, there are often multiple class actions filed by multiple class representatives regarding the same or similar subject matter. They are sometimes, but not always, consolidated into one larger class action. The court overseeing that consolidated class action may appoint lead class counsel that may be different from the original attorneys

bringing a class representative's case.

In non-class litigation, parties asserting claims are free to pursue only their own interests; they need not take into account the interests of others. Class actions are different, and require both class representatives and the lawyers in their capacity as lawyers for the class to consider and pursue only the common claims and interests of the class as a whole. This means that you must always act in the best interest of the class as a whole and consider the interests of the class ahead of your own individual or personal interests. If at any time you fail or refuse to prioritize the interests of the class, you will not be able to serve as a class representative, and WSL will not be able to continue representing you.

A class representative participates in the lawsuit, such as, for example, by testifying at deposition and trial, by producing evidence, by answering written questions from the defendants, and by keeping generally aware of the status and progress of the lawsuit. WSL will work with you in connection with such participation.

A class representative is not required to be particularly sophisticated or knowledgeable about the lawsuit or to know every aspect of the litigation. However, class representatives must maintain reliable communication with their attorneys throughout the lawsuit, which could take years.

A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be designed in the best interests of the class as a whole.

If at any time you believe that your interests conflict with those of other class members in regard to the subject matter of the class litigation, you agree to immediately inform WSL of this concern.

IV MAKING CLAIMS IN A CLASS ACTION

Client will be a plaintiff alongside other individual potential class representatives in one or more class actions, brought in one or more lawsuits against the Defendants. In such lawsuit(s), Client will be seeking to obtain relief on behalf of himself/herself and others and the Plan. Sometime after the lawsuit(s) have been filed, the court may determine the status of Client's representation of such other persons. As indicated, the proposed class action plaintiffs will be named alongside the Receiver as representative of the Plan.

Because it is possible that certification of the class may not be granted or WSL may not be appointed by the court as class counsel, WSL may agree to individually represent Client and/or other plaintiffs in this litigation. If WSL agrees to individually represent Client in this litigation, WSL will confirm its intentions in a separate document. If the lawsuit is not certified as a class action or if the court rejects Client or others as a class representative or WSL as class counsel, WSL may end WSL's representation of Client after making reasonable efforts to assist Client in finding different counsel to represent Client on an individual basis.

V CONFLICTS AMONG CLASS MEMBERS

Client understands that WSL will seek to bring one or more class actions on behalf of Client and other similarly situated persons. If an action is certified to proceed as a class action, Client is advised that WSL may be designated as counsel to

represent all class members as a whole. WSL will not be permitted to represent individual claimants for any matter that may create a conflict of interest with the class as a whole. Conflicts might develop between Client and the interests of the class as whole. For instance, it is possible that Client might want to accept a settlement but WSL believes the settlement is not in the interests of the class as a whole, or vice versa. Client agrees that in such events WSL shall be entitled to continue to represent the class or potential class or Receiver but not Client.

WSL shall seek appointment by the court as class counsel, and agrees to undertake the representation of all members of the plaintiff class if the court approves. Because of the nature of class action practice, WSL reserves the right to determine litigation tactics that are in the best interests of all clients and the class. If a difference of opinion arises between Client and WSL, on a significant issue, WSL shall have the right to proceed with their representation of the class and may also elect to withdraw as Client's counsel of record. WSL cannot and will not act as Client's lawyer in resolving any disagreements or conflicting instructions between Client, other jointly-represented plaintiffs, and/or other potential and/or certified class representatives.

During the course of litigation, there may be settlement discussions with some or all of the Defendants. The Defendants may make an aggregate settlement offer, meaning that they may offer a lump sum of money in settlement of all of the claims at issue, including Client's claims, any other jointly represented plaintiffs' claims, any potential and/or actual class representatives' claims, and the potential and/or actual class members' claims. Another aggregate settlement possibility is that the Defendants may offer separate sums to each individual claimant. If any aspect of Client's case(s) is

certified and proceeds as a class action and an aggregate settlement is reached, WSL will be required to disclose and seek the court's approval of such an aggregate settlement, including the methodology for distributing any such settlement.

An aggregate settlement may be insufficient to completely compensate each claimant individually and disagreements may arise concerning how to allocate, or divide, an aggregate settlement. If there is insufficient proceeds or assets to cover the claims of each of the respective Clients, there can be disputes regarding how to allocate the proceeds or assets as between the joint Clients. If any disputes should arise between the joint Clients, WSL will not advise or represent any of the Clients (including the Receiver) in connection with such disputes. WSL will remain able to advocate an overall settlement but not how such settlement should be divided.

Client acknowledges and understands the potential conflicts of interest discussed above and herein. Client agrees to waive the potential conflicts of interests which arise from WSL's representation as discussed above and herein.

VI ATTORNEY'S FEES

If a monetary recovery is obtained for a plaintiff class, either by settlement or judgment, WSL will apply to the court for the entirety of WSL's compensation on a reasonable percentage of such recovery, and/or from Defendants if allowed by statute and case law. The amount of any fees and costs that WSL may receive will be determined by the court based on WSL's application for fees and costs. Regardless of the stage at which the litigation is resolved, WSL will not seek attorneys' fees from the court based on a percentage of the recovery higher than twenty three and one-third percent (23 1/3 %) of the gross recovery, the same percentage previously agreed to

with the Receiver as set forth in WSL's fee agreement with the Receiver (Exhibit 1). As used here, the term "gross recovery" includes the recovery of the litigation costs and expenses advanced by WSL (if any) or the Receiver. In the event that the final resolution of the plaintiff classes' claims by settlement or otherwise results in a third party assuming responsibility for the Plan, WSL will apply to the court for fees to be determined under applicable law.

VII REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

WSL will look to the Receiver or the Defendants, and not to Client, for reimbursement of any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.).

VIII CONFIDENTIALITY

Information communicated or furnished between WSL, Client, other members or potential members of the class, and the Receiver will often be confidential (although the information of one Client is not confidential from any other Client in the case). Also, papers and other things relating to the matters in paragraph I will often be confidential. Such information, papers, and things are or may be subject to protective orders and/or attorney-client, work-product, joint-prosecution, and other applicable doctrines or procedures. WSL and Client shall maintain the confidentiality of all confidential information, papers and things, except that, to the extent permitted by law, WSL shall be entitled to divulge confidential information, papers, and things if necessary or helpful in representing Client or the class or potential class. Despite the confidentiality of Attorney-Client fee agreements, Client agrees that WSL shall be entitled to disclose this

Engagement Agreement for purposes of pursuing the matters described in paragraph I above, or for WSL or the Receiver to obtain fees, expenses, and costs. Client also acknowledges that WSL has already disclosed the form of this Engagement Agreement to the Receiver.

Client understands the effect of joint representation on attorney-client confidentiality. Attorney-client communications are privileged and protected against disclosure to a third party. Under this Engagement Agreement, Client may be one among multiple plaintiffs being jointly represented by WSL. By entering into this Engagement Agreement, Client waives any right Client may have to require that WSL disclose to Client any confidences WSL may have obtained from any other plaintiff in connection with the subject matter of this Engagement Agreement.

IX MODIFICATION BY SUBSEQUENT AGREEMENT

This Engagement Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by all parties.

X CLIENT FILE

Client has a right to request Client's client file upon discharge or withdrawal of WSL or the conclusion of Client's case. Client understands and agrees that WSL will satisfy WSL's obligation to release Client's client file to Client by providing Client with a photocopy or electronic copy of the portions of Client's files that pertain only to WSL's representation (if any) of Client on Client's individual claims. However, WSL will not be obligated to provide Client with a photocopy or electronic copy of files that pertain to WSL's representation of other clients in the matter and/or the potential and/or certified class to the extent those files are protected by the work product doctrine and/or

attorney-client privilege that WSL owes to the other clients and/or the potential and/or certified class. Client agrees to cooperate with WSL in the event Client requests a copy of Client's client file, to ensure that the rights of any other clients represented by WSL and/or the Receiver and/or the potential and/or certified class are not prejudiced.

XI CLIENT'S INFORMED CONSENT

Client acknowledges that Client has discussed this Engagement Agreement with the lawyer who referred him or her to WSL, and that Client has read and understands this Engagement Agreement.

XII CONDITIONS

This Engagement Agreement will not take effect, and WSL's representation of Client will not commence, until (1) Client returns a signed copy of this Engagement Agreement to WSL; and (2) WSL acknowledges acceptance of representation by counter-signing this Engagement Agreement.

XIII MISCELLANEOUS

This Engagement Agreement, when signed below by Client, replaces any prior understandings or oral agreement between Client and WSL.

This Engagement Agreement and all aspects of the attorney-client relationship shall be construed under the laws of Rhode Island, without regard to choice of law principles. If any dispute should arise with respect to this engagement, jurisdiction shall lie exclusively in Rhode Island.

The Client hereby approves and acknowledges delivery of a duplicate copy of this Engagement Agreement and acknowledges receipt of "A Client's Statement of

Rights & Responsibilities."

Dorothy Wellner

Client

Date: 5-23-18

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date:

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•If you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

EXHIBIT 1

ENGAGEMENT AND FEE AGREEMENT

Stephen F. Del Sesto ("the Receiver"), as and only as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), hereby engages Wistow, Sheehan & Loveley, P.C. ("WSL") as special counsel to the Receiver and the Plan Receivership Estate as follows:

I. INVESTIGATION

The Receiver engages WSL to investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan (or to assume responsibility for such plan in the future), making use of discovery, records, research and consultations in its discretion. Under the provision concerning Hourly Fees set forth below, WSL will charge an hourly rate for these services. In addition, WSL will be reimbursed on a current basis (i.e. monthly) for any out-of-pocket expenses (such as costs of records, computer-assisted legal research, expert consultants, etc.) actually incurred and without mark-up by WSL during the investigative phase, whether claims are made or not.

II. MAKING CLAIMS

The Receiver further constitutes and appoints WSL to make claims against persons and/or entities who its investigation indicates may be liable for damages or to assume responsibility for the Plan. Said claim(s) may be made by demand letter or by lawsuit, if necessary. The Receiver agrees to pay as legal fees ten percent (10%) of the gross of any amounts recovered prior to the bringing of suit, by way of compromise or settlement. If suit is brought, the Receiver agrees to pay as legal fees twenty-three and one-third percent (23 1/3 %) of the gross of any amount thereafter recovered by way of suit, compromise, settlement or otherwise. In the event that a final resolution of such

claims by settlement or otherwise results in a third party assuming responsibility for the Plan, the fees to be paid to WSL shall be an obligation of the Receivership, the amount of which shall be determined by the Court using the standards of *quantum meruit* pursuant to the laws of Rhode Island, taking into account the benefit rendered to the Plan. In any event, no compromise of the Plan's claims may be made without the Receiver's express authorization and approval by the Court.

III. REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

The Receiver is obligated to reimburse WSL within thirty (30) days of invoicing and in all events for any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.) in connection with Sections I or II above.

IV. HOURLY FEES

The Receiver shall pay WSL an hourly rate of $375 per hour which is also the hourly rate presently being charged by the Receiver. In the event the Receiver's own hourly rate is increased, WSL will be entitled to charge such higher rate. Invoices for such hourly fees will be submitted to the Receiver every month for the Receiver's review. The Receiver shall seek Court approval of the fees submitted no less frequently than on a quarterly basis (or more frequently as the Receiver may in his discretion deem appropriate). The Receiver shall pay all Court-approved WSL invoices within three (3) business days of Court approval. The Receiver acknowledges that the attorneys performing services on behalf of WSL include Attorney Max Wistow, Attorney Stephen Sheehan, and Attorney Benjamin Ledsham, and that these services will be

performed during the investigation phase described by Section I as well as the phase, if applicable, described by Section II.

V. Miscellaneous

The Receiver hereby approves and acknowledges delivery of a duplicate copy of this Contingent Fee Agreement and acknowledges receipt of "A Client's Statement of Rights & Responsibilities."

Stephen F. Del Sesto, Esq., as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan

Date: 10/18/17

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date: 10/18/17

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•1f you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

Exhibit 16

3 Meghan Circle
Smithfield RI
02828
retired 2011
949-8052
carroll.shorl@yahoo.com

ENGAGEMENT AGREEMENT

I SCOPE OF SERVICES

Carroll Shorl ("Client"), hereby appoints Wistow, Sheehan & Loveley, P.C. ("WSL") as attorneys to represent Client in making claims in one or more class actions against persons and/or entities ("Defendants") who WSL's investigation indicates may be liable to participants and participants' beneficiaries of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") in relation to the underfunding or insolvency of the Plan or who otherwise may be liable to participants and participants' beneficiaries in connection with or relating in any way to providing retirement and/or survivor benefits.

Client was referred to WSL by attorney Jeff Kasle.

WSL's representation will include factual and legal research, negotiations with interested parties, preparation of pleadings, and all court appearances through trial, any post-trial motions, and entry of judgment in this case. WSL will provide these legal services to Client on the terms set forth herein.

II WSL'S CONCURRENT ENGAGEMENT BY THE RECEIVER

On August 18, 2017, St. Joseph Health Services of Rhode Island filed a petition with the Superior Court of Rhode Island to appoint a temporary receiver of the Plan. In this petition, St. Joseph Health Services of Rhode Island alleged that the plan was "severely underfunded" and requested that the Superior Court "immediately" impose a "uniform reduction of 40% of pension benefits" on all beneficiaries. By order entered on August 18, 2017, Stephen F. Del Sesto, Esq. ("the Receiver") was appointed temporary receiver of the Plan. By order entered on October 27, 2017, the Receiver was

appointed permanent receiver.

WSL was engaged by the Receiver on October 18, 2017, with the Superior Court's approval. Pursuant to that engagement, and based on WSL's investigation of potential claims, WSL plans to bring one or more suits against one or more persons or entities. A copy of WSL's Engagement and Fee Agreement of October 18, 2017 with the Receiver is attached hereto as Exhibit 1.

WSL believes that the Receiver has standing to bring all necessary claims to protect participants and participants' beneficiaries. However, it is expected that there may be issues raised as to whether or not participants and participants' beneficiaries have the standing as to certain claims. To mitigate that potential issue, WSL is proposing to join class action claims along with the claims of the Receiver. You will be one of several persons represented by WSL named with regard to the class action claims.

III CLIENT'S DUTIES AND OBLIGATIONS AS A CLASS REPRESENTATIVE

In class actions, class representatives seek relief for themselves and other similarly situated persons as to their common damages and injuries. A class representative has factual and legal claims that are typical of those of the class, and thus involve common issues of law and fact.

Because class actions involve common issues that affect many people or entities, there are often multiple class actions filed by multiple class representatives regarding the same or similar subject matter. They are sometimes, but not always, consolidated into one larger class action. The court overseeing that consolidated class action may appoint lead class counsel that may be different from the original attorneys

bringing a class representative's case.

In non-class litigation, parties asserting claims are free to pursue only their own interests; they need not take into account the interests of others. Class actions are different, and require both class representatives and the lawyers in their capacity as lawyers for the class to consider and pursue only the common claims and interests of the class as a whole. This means that you must always act in the best interest of the class as a whole and consider the interests of the class ahead of your own individual or personal interests. If at any time you fail or refuse to prioritize the interests of the class, you will not be able to serve as a class representative, and WSL will not be able to continue representing you.

A class representative participates in the lawsuit, such as, for example, by testifying at deposition and trial, by producing evidence, by answering written questions from the defendants, and by keeping generally aware of the status and progress of the lawsuit. WSL will work with you in connection with such participation.

A class representative is not required to be particularly sophisticated or knowledgeable about the lawsuit or to know every aspect of the litigation. However, class representatives must maintain reliable communication with their attorneys throughout the lawsuit, which could take years.

A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be designed in the best interests of the class as a whole.

If at any time you believe that your interests conflict with those of other class members in regard to the subject matter of the class litigation, you agree to immediately inform WSL of this concern.

IV MAKING CLAIMS IN A CLASS ACTION

Client will be a plaintiff alongside other individual potential class representatives in one or more class actions, brought in one or more lawsuits against the Defendants. In such lawsuit(s), Client will be seeking to obtain relief on behalf of himself/herself and others and the Plan. Sometime after the lawsuit(s) have been filed, the court may determine the status of Client's representation of such other persons. As indicated, the proposed class action plaintiffs will be named alongside the Receiver as representative of the Plan.

Because it is possible that certification of the class may not be granted or WSL may not be appointed by the court as class counsel, WSL may agree to individually represent Client and/or other plaintiffs in this litigation. If WSL agrees to individually represent Client in this litigation, WSL will confirm its intentions in a separate document. If the lawsuit is not certified as a class action or if the court rejects Client or others as a class representative or WSL as class counsel, WSL may end WSL's representation of Client after making reasonable efforts to assist Client in finding different counsel to represent Client on an individual basis.

V CONFLICTS AMONG CLASS MEMBERS

Client understands that WSL will seek to bring one or more class actions on behalf of Client and other similarly situated persons. If an action is certified to proceed as a class action, Client is advised that WSL may be designated as counsel to

represent all class members as a whole. WSL will not be permitted to represent individual claimants for any matter that may create a conflict of interest with the class as a whole. Conflicts might develop between Client and the interests of the class as whole. For instance, it is possible that Client might want to accept a settlement but WSL believes the settlement is not in the interests of the class as a whole, or vice versa. Client agrees that in such events WSL shall be entitled to continue to represent the class or potential class or Receiver but not Client.

WSL shall seek appointment by the court as class counsel, and agrees to undertake the representation of all members of the plaintiff class if the court approves. Because of the nature of class action practice, WSL reserves the right to determine litigation tactics that are in the best interests of all clients and the class. If a difference of opinion arises between Client and WSL, on a significant issue, WSL shall have the right to proceed with their representation of the class and may also elect to withdraw as Client's counsel of record. WSL cannot and will not act as Client's lawyer in resolving any disagreements or conflicting instructions between Client, other jointly-represented plaintiffs, and/or other potential and/or certified class representatives.

During the course of litigation, there may be settlement discussions with some or all of the Defendants. The Defendants may make an aggregate settlement offer, meaning that they may offer a lump sum of money in settlement of all of the claims at issue, including Client's claims, any other jointly represented plaintiffs' claims, any potential and/or actual class representatives' claims, and the potential and/or actual class members' claims. Another aggregate settlement possibility is that the Defendants may offer separate sums to each individual claimant. If any aspect of Client's case(s) is

certified and proceeds as a class action and an aggregate settlement is reached, WSL will be required to disclose and seek the court's approval of such an aggregate settlement, including the methodology for distributing any such settlement.

An aggregate settlement may be insufficient to completely compensate each claimant individually and disagreements may arise concerning how to allocate, or divide, an aggregate settlement. If there is insufficient proceeds or assets to cover the claims of each of the respective Clients, there can be disputes regarding how to allocate the proceeds or assets as between the joint Clients. If any disputes should arise between the joint Clients, WSL will not advise or represent any of the Clients (including the Receiver) in connection with such disputes. WSL will remain able to advocate an overall settlement but not how such settlement should be divided.

Client acknowledges and understands the potential conflicts of interest discussed above and herein. Client agrees to waive the potential conflicts of interests which arise from WSL's representation as discussed above and herein.

VI ATTORNEY'S FEES

If a monetary recovery is obtained for a plaintiff class, either by settlement or judgment, WSL will apply to the court for the entirety of WSL's compensation on a reasonable percentage of such recovery, and/or from Defendants if allowed by statute and case law. The amount of any fees and costs that WSL may receive will be determined by the court based on WSL's application for fees and costs. Regardless of the stage at which the litigation is resolved, WSL will not seek attorneys' fees from the court based on a percentage of the recovery higher than twenty three and one-third percent (23 1/3 %) of the gross recovery, the same percentage previously agreed to

with the Receiver as set forth in WSL's fee agreement with the Receiver (Exhibit 1). As used here, the term "gross recovery" includes the recovery of the litigation costs and expenses advanced by WSL (if any) or the Receiver. In the event that the final resolution of the plaintiff classes' claims by settlement or otherwise results in a third party assuming responsibility for the Plan, WSL will apply to the court for fees to be determined under applicable law.

VII REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

WSL will look to the Receiver or the Defendants, and not to Client, for reimbursement of any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.).

VIII CONFIDENTIALITY

Information communicated or furnished between WSL, Client, other members or potential members of the class, and the Receiver will often be confidential (although the information of one Client is not confidential from any other Client in the case). Also, papers and other things relating to the matters in paragraph I will often be confidential. Such information, papers, and things are or may be subject to protective orders and/or attorney-client, work-product, joint-prosecution, and other applicable doctrines or procedures. WSL and Client shall maintain the confidentiality of all confidential information, papers and things, except that, to the extent permitted by law, WSL shall be entitled to divulge confidential information, papers, and things if necessary or helpful in representing Client or the class or potential class. Despite the confidentiality of Attorney-Client fee agreements, Client agrees that WSL shall be entitled to disclose this

Engagement Agreement for purposes of pursuing the matters described in paragraph I above, or for WSL or the Receiver to obtain fees, expenses, and costs. Client also acknowledges that WSL has already disclosed the form of this Engagement Agreement to the Receiver.

Client understands the effect of joint representation on attorney-client confidentiality. Attorney-client communications are privileged and protected against disclosure to a third party. Under this Engagement Agreement, Client may be one among multiple plaintiffs being jointly represented by WSL. By entering into this Engagement Agreement, Client waives any right Client may have to require that WSL disclose to Client any confidences WSL may have obtained from any other plaintiff in connection with the subject matter of this Engagement Agreement.

IX MODIFICATION BY SUBSEQUENT AGREEMENT

This Engagement Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by all parties.

X CLIENT FILE

Client has a right to request Client's client file upon discharge or withdrawal of WSL or the conclusion of Client's case. Client understands and agrees that WSL will satisfy WSL's obligation to release Client's client file to Client by providing Client with a photocopy or electronic copy of the portions of Client's files that pertain only to WSL's representation (if any) of Client on Client's individual claims. However, WSL will not be obligated to provide Client with a photocopy or electronic copy of files that pertain to WSL's representation of other clients in the matter and/or the potential and/or certified class to the extent those files are protected by the work product doctrine and/or

attorney-client privilege that WSL owes to the other clients and/or the potential and/or certified class. Client agrees to cooperate with WSL in the event Client requests a copy of Client's client file, to ensure that the rights of any other clients represented by WSL and/or the Receiver and/or the potential and/or certified class are not prejudiced.

XI CLIENT'S INFORMED CONSENT

Client acknowledges that Client has discussed this Engagement Agreement with the lawyer who referred him or her to WSL, and that Client has read and understands this Engagement Agreement.

XII CONDITIONS

This Engagement Agreement will not take effect, and WSL's representation of Client will not commence, until (1) Client returns a signed copy of this Engagement Agreement to WSL; and (2) WSL acknowledges acceptance of representation by counter-signing this Engagement Agreement.

XIII MISCELLANEOUS

This Engagement Agreement, when signed below by Client, replaces any prior understandings or oral agreement between Client and WSL.

This Engagement Agreement and all aspects of the attorney-client relationship shall be construed under the laws of Rhode Island, without regard to choice of law principles. If any dispute should arise with respect to this engagement, jurisdiction shall lie exclusively in Rhode Island.

The Client hereby approves and acknowledges delivery of a duplicate copy of this Engagement Agreement and acknowledges receipt of "A Client's Statement of

Rights & Responsibilities."

Carroll M. Short

Client

Date: 5/22/2018

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date:

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•1f you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

EXHIBIT 1

ENGAGEMENT AND FEE AGREEMENT

Stephen F. Del Sesto ("the Receiver"), as and only as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), hereby engages Wistow, Sheehan & Loveley, P.C. ("WSL") as special counsel to the Receiver and the Plan Receivership Estate as follows:

I. INVESTIGATION

The Receiver engages WSL to investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan (or to assume responsibility for such plan in the future), making use of discovery, records, research and consultations in its discretion. Under the provision concerning Hourly Fees set forth below, WSL will charge an hourly rate for these services. In addition, WSL will be reimbursed on a current basis (i.e. monthly) for any out-of-pocket expenses (such as costs of records, computer-assisted legal research, expert consultants, etc.) actually incurred and without mark-up by WSL during the investigative phase, whether claims are made or not.

II. MAKING CLAIMS

The Receiver further constitutes and appoints WSL to make claims against persons and/or entities who its investigation indicates may be liable for damages or to assume responsibility for the Plan. Said claim(s) may be made by demand letter or by lawsuit, if necessary. The Receiver agrees to pay as legal fees ten percent (10%) of the gross of any amounts recovered prior to the bringing of suit, by way of compromise or settlement. If suit is brought, the Receiver agrees to pay as legal fees twenty-three and one-third percent (23 1/3 %) of the gross of any amount thereafter recovered by way of suit, compromise, settlement or otherwise. In the event that a final resolution of such

claims by settlement or otherwise results in a third party assuming responsibility for the Plan, the fees to be paid to WSL shall be an obligation of the Receivership, the amount of which shall be determined by the Court using the standards of *quantum meruit* pursuant to the laws of Rhode Island, taking into account the benefit rendered to the Plan. In any event, no compromise of the Plan's claims may be made without the Receiver's express authorization and approval by the Court.

III. REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

The Receiver is obligated to reimburse WSL within thirty (30) days of invoicing and in all events for any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.) in connection with Sections I or II above.

IV. HOURLY FEES

The Receiver shall pay WSL an hourly rate of $375 per hour which is also the hourly rate presently being charged by the Receiver. In the event the Receiver's own hourly rate is increased, WSL will be entitled to charge such higher rate. Invoices for such hourly fees will be submitted to the Receiver every month for the Receiver's review. The Receiver shall seek Court approval of the fees submitted no less frequently than on a quarterly basis (or more frequently as the Receiver may in his discretion deem appropriate). The Receiver shall pay all Court-approved WSL invoices within three (3) business days of Court approval. The Receiver acknowledges that the attorneys performing services on behalf of WSL include Attorney Max Wistow, Attorney Stephen Sheehan, and Attorney Benjamin Ledsham, and that these services will be

performed during the investigation phase described by Section I as well as the phase, if applicable, described by Section II.

V. Miscellaneous

The Receiver hereby approves and acknowledges delivery of a duplicate copy of this Contingent Fee Agreement and acknowledges receipt of "A Client's Statement of Rights & Responsibilities."

Stephen F. Del Sesto, Esq., as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan

Date: 10/18/17

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date: 10/18/17

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•1f you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable questions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

Exhibit 17

ENGAGEMENT AGREEMENT

I SCOPE OF SERVICES

Donna Boutelle ("Client"), hereby appoints Wistow, Sheehan & Loveley, P.C. ("WSL") as attorneys to represent Client in making claims in one or more class actions against persons and/or entities ("Defendants") who WSL's investigation indicates may be liable to participants and participants' beneficiaries of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") in relation to the underfunding or insolvency of the Plan or who otherwise may be liable to participants and participants' beneficiaries in connection with or relating in any way to providing retirement and/or survivor benefits.

Client was referred to WSL by attorney Chris Callaci.

WSL's representation will include factual and legal research, negotiations with interested parties, preparation of pleadings, and all court appearances through trial, any post-trial motions, and entry of judgment in this case. WSL will provide these legal services to Client on the terms set forth herein.

II WSL'S CONCURRENT ENGAGEMENT BY THE RECEIVER

On August 18, 2017, St. Joseph Health Services of Rhode Island filed a petition with the Superior Court of Rhode Island to appoint a temporary receiver of the Plan. In this petition, St. Joseph Health Services of Rhode Island alleged that the plan was "severely underfunded" and requested that the Superior Court "immediately" impose a "uniform reduction of 40% of pension benefits" on all beneficiaries. By order entered on August 18, 2017, Stephen F. Del Sesto, Esq. ("the Receiver") was appointed temporary receiver of the Plan. By order entered on October 27, 2017, the Receiver was

appointed permanent receiver.

WSL was engaged by the Receiver on October 18, 2017, with the Superior Court's approval. Pursuant to that engagement, and based on WSL's investigation of potential claims, WSL plans to bring one or more suits against one or more persons or entities. A copy of WSL's Engagement and Fee Agreement of October 18, 2017 with the Receiver is attached hereto as Exhibit 1.

WSL believes that the Receiver has standing to bring all necessary claims to protect participants and participants' beneficiaries. However, it is expected that there may be issues raised as to whether or not participants and participants' beneficiaries have the standing as to certain claims. To mitigate that potential issue, WSL is proposing to join class action claims along with the claims of the Receiver. You will be one of several persons represented by WSL named with regard to the class action claims.

III CLIENT'S DUTIES AND OBLIGATIONS AS A CLASS REPRESENTATIVE

In class actions, class representatives seek relief for themselves and other similarly situated persons as to their common damages and injuries. A class representative has factual and legal claims that are typical of those of the class, and thus involve common issues of law and fact.

Because class actions involve common issues that affect many people or entities, there are often multiple class actions filed by multiple class representatives regarding the same or similar subject matter. They are sometimes, but not always, consolidated into one larger class action. The court overseeing that consolidated class action may appoint lead class counsel that may be different from the original attorneys

bringing a class representative's case.

In non-class litigation, parties asserting claims are free to pursue only their own interests; they need not take into account the interests of others. Class actions are different, and require both class representatives and the lawyers in their capacity as lawyers for the class to consider and pursue only the common claims and interests of the class as a whole. This means that you must always act in the best interest of the class as a whole and consider the interests of the class ahead of your own individual or personal interests. If at any time you fail or refuse to prioritize the interests of the class, you will not be able to serve as a class representative, and WSL will not be able to continue representing you.

A class representative participates in the lawsuit, such as, for example, by testifying at deposition and trial, by producing evidence, by answering written questions from the defendants, and by keeping generally aware of the status and progress of the lawsuit. WSL will work with you in connection with such participation.

A class representative is not required to be particularly sophisticated or knowledgeable about the lawsuit or to know every aspect of the litigation. However, class representatives must maintain reliable communication with their attorneys throughout the lawsuit, which could take years.

A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be designed in the best interests of the class as a whole.

If at any time you believe that your interests conflict with those of other class members in regard to the subject matter of the class litigation, you agree to immediately inform WSL of this concern.

IV MAKING CLAIMS IN A CLASS ACTION

Client will be a plaintiff alongside other individual potential class representatives in one or more class actions, brought in one or more lawsuits against the Defendants. In such lawsuit(s), Client will be seeking to obtain relief on behalf of himself/herself and others and the Plan. Sometime after the lawsuit(s) have been filed, the court may determine the status of Client's representation of such other persons. As indicated, the proposed class action plaintiffs will be named alongside the Receiver as representative of the Plan.

Because it is possible that certification of the class may not be granted or WSL may not be appointed by the court as class counsel, WSL may agree to individually represent Client and/or other plaintiffs in this litigation. If WSL agrees to individually represent Client in this litigation, WSL will confirm its intentions in a separate document. If the lawsuit is not certified as a class action or if the court rejects Client or others as a class representative or WSL as class counsel, WSL may end WSL's representation of Client after making reasonable efforts to assist Client in finding different counsel to represent Client on an individual basis.

V CONFLICTS AMONG CLASS MEMBERS

Client understands that WSL will seek to bring one or more class actions on behalf of Client and other similarly situated persons. If an action is certified to proceed as a class action, Client is advised that WSL may be designated as counsel to

represent all class members as a whole. WSL will not be permitted to represent individual claimants for any matter that may create a conflict of interest with the class as a whole. Conflicts might develop between Client and the interests of the class as whole. For instance, it is possible that Client might want to accept a settlement but WSL believes the settlement is not in the interests of the class as a whole, or vice versa. Client agrees that in such events WSL shall be entitled to continue to represent the class or potential class or Receiver but not Client.

WSL shall seek appointment by the court as class counsel, and agrees to undertake the representation of all members of the plaintiff class if the court approves. Because of the nature of class action practice, WSL reserves the right to determine litigation tactics that are in the best interests of all clients and the class. If a difference of opinion arises between Client and WSL, on a significant issue, WSL shall have the right to proceed with their representation of the class and may also elect to withdraw as Client's counsel of record. WSL cannot and will not act as Client's lawyer in resolving any disagreements or conflicting instructions between Client, other jointly-represented plaintiffs, and/or other potential and/or certified class representatives.

During the course of litigation, there may be settlement discussions with some or all of the Defendants. The Defendants may make an aggregate settlement offer, meaning that they may offer a lump sum of money in settlement of all of the claims at issue, including Client's claims, any other jointly represented plaintiffs' claims, any potential and/or actual class representatives' claims, and the potential and/or actual class members' claims. Another aggregate settlement possibility is that the Defendants may offer separate sums to each individual claimant. If any aspect of Client's case(s) is

certified and proceeds as a class action and an aggregate settlement is reached, WSL will be required to disclose and seek the court's approval of such an aggregate settlement, including the methodology for distributing any such settlement.

An aggregate settlement may be insufficient to completely compensate each claimant individually and disagreements may arise concerning how to allocate, or divide, an aggregate settlement. If there is insufficient proceeds or assets to cover the claims of each of the respective Clients, there can be disputes regarding how to allocate the proceeds or assets as between the joint Clients. If any disputes should arise between the joint Clients, WSL will not advise or represent any of the Clients (including the Receiver) in connection with such disputes. WSL will remain able to advocate an overall settlement but not how such settlement should be divided.

Client acknowledges and understands the potential conflicts of interest discussed above and herein. Client agrees to waive the potential conflicts of interests which arise from WSL's representation as discussed above and herein.

VI ATTORNEY'S FEES

If a monetary recovery is obtained for a plaintiff class, either by settlement or judgment, WSL will apply to the court for the entirety of WSL's compensation on a reasonable percentage of such recovery, and/or from Defendants if allowed by statute and case law. The amount of any fees and costs that WSL may receive will be determined by the court based on WSL's application for fees and costs. Regardless of the stage at which the litigation is resolved, WSL will not seek attorneys' fees from the court based on a percentage of the recovery higher than twenty three and one-third percent (23 1/3 %) of the gross recovery, the same percentage previously agreed to

with the Receiver as set forth in WSL's fee agreement with the Receiver (Exhibit 1). As used here, the term "gross recovery" includes the recovery of the litigation costs and expenses advanced by WSL (if any) or the Receiver. In the event that the final resolution of the plaintiff classes' claims by settlement or otherwise results in a third party assuming responsibility for the Plan, WSL will apply to the court for fees to be determined under applicable law.

VII REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

WSL will look to the Receiver or the Defendants, and not to Client, for reimbursement of any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.).

VIII CONFIDENTIALITY

Information communicated or furnished between WSL, Client, other members or potential members of the class, and the Receiver will often be confidential (although the information of one Client is not confidential from any other Client in the case). Also, papers and other things relating to the matters in paragraph I will often be confidential. Such information, papers, and things are or may be subject to protective orders and/or attorney-client, work-product, joint-prosecution, and other applicable doctrines or procedures. WSL and Client shall maintain the confidentiality of all confidential information, papers and things, except that, to the extent permitted by law, WSL shall be entitled to divulge confidential information, papers, and things if necessary or helpful in representing Client or the class or potential class. Despite the confidentiality of Attorney-Client fee agreements, Client agrees that WSL shall be entitled to disclose this

Engagement Agreement for purposes of pursuing the matters described in paragraph I above, or for WSL or the Receiver to obtain fees, expenses, and costs. Client also acknowledges that WSL has already disclosed the form of this Engagement Agreement to the Receiver.

Client understands the effect of joint representation on attorney-client confidentiality. Attorney-client communications are privileged and protected against disclosure to a third party. Under this Engagement Agreement, Client may be one among multiple plaintiffs being jointly represented by WSL. By entering into this Engagement Agreement, Client waives any right Client may have to require that WSL disclose to Client any confidences WSL may have obtained from any other plaintiff in connection with the subject matter of this Engagement Agreement.

IX MODIFICATION BY SUBSEQUENT AGREEMENT

This Engagement Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by all parties.

X CLIENT FILE

Client has a right to request Client's client file upon discharge or withdrawal of WSL or the conclusion of Client's case. Client understands and agrees that WSL will satisfy WSL's obligation to release Client's client file to Client by providing Client with a photocopy or electronic copy of the portions of Client's files that pertain only to WSL's representation (if any) of Client on Client's individual claims. However, WSL will not be obligated to provide Client with a photocopy or electronic copy of files that pertain to WSL's representation of other clients in the matter and/or the potential and/or certified class to the extent those files are protected by the work product doctrine and/or

attorney-client privilege that WSL owes to the other clients and/or the potential and/or certified class. Client agrees to cooperate with WSL in the event Client requests a copy of Client's client file, to ensure that the rights of any other clients represented by WSL and/or the Receiver and/or the potential and/or certified class are not prejudiced.

XI CLIENT'S INFORMED CONSENT

Client acknowledges that Client has discussed this Engagement Agreement with the lawyer who referred him or her to WSL, and that Client has read and understands this Engagement Agreement.

XII CONDITIONS

This Engagement Agreement will not take effect, and WSL's representation of Client will not commence, until (1) Client returns a signed copy of this Engagement Agreement to WSL; and (2) WSL acknowledges acceptance of representation by counter-signing this Engagement Agreement.

XIII MISCELLANEOUS

This Engagement Agreement, when signed below by Client, replaces any prior understandings or oral agreement between Client and WSL.

This Engagement Agreement and all aspects of the attorney-client relationship shall be construed under the laws of Rhode Island, without regard to choice of law principles. If any dispute should arise with respect to this engagement, jurisdiction shall lie exclusively in Rhode Island.

The Client hereby approves and acknowledges delivery of a duplicate copy of this Engagement Agreement and acknowledges receipt of "A Client's Statement of

Rights & Responsibilities."

Donna Bouvier

Client

Date: 6/11/18

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date:

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•1f you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

EXHIBIT 1

ENGAGEMENT AND FEE AGREEMENT

Stephen F. Del Sesto ("the Receiver"), as and only as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), hereby engages Wistow, Sheehan & Loveley, P.C. ("WSL") as special counsel to the Receiver and the Plan Receivership Estate as follows:

I. INVESTIGATION

The Receiver engages WSL to investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan (or to assume responsibility for such plan in the future), making use of discovery, records, research and consultations in its discretion. Under the provision concerning Hourly Fees set forth below, WSL will charge an hourly rate for these services. In addition, WSL will be reimbursed on a current basis (i.e. monthly) for any out-of-pocket expenses (such as costs of records, computer-assisted legal research, expert consultants, etc.) actually incurred and without mark-up by WSL during the investigative phase, whether claims are made or not.

II. MAKING CLAIMS

The Receiver further constitutes and appoints WSL to make claims against persons and/or entities who its investigation indicates may be liable for damages or to assume responsibility for the Plan. Said claim(s) may be made by demand letter or by lawsuit, if necessary. The Receiver agrees to pay as legal fees ten percent (10%) of the gross of any amounts recovered prior to the bringing of suit, by way of compromise or settlement. If suit is brought, the Receiver agrees to pay as legal fees twenty-three and one-third percent (23 1/3 %) of the gross of any amount thereafter recovered by way of suit, compromise, settlement or otherwise. In the event that a final resolution of such

claims by settlement or otherwise results in a third party assuming responsibility for the Plan, the fees to be paid to WSL shall be an obligation of the Receivership, the amount of which shall be determined by the Court using the standards of *quantum meruit* pursuant to the laws of Rhode Island, taking into account the benefit rendered to the Plan. In any event, no compromise of the Plan's claims may be made without the Receiver's express authorization and approval by the Court.

III. REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

The Receiver is obligated to reimburse WSL within thirty (30) days of invoicing and in all events for any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.) in connection with Sections I or II above.

IV. HOURLY FEES

The Receiver shall pay WSL an hourly rate of $375 per hour which is also the hourly rate presently being charged by the Receiver. In the event the Receiver's own hourly rate is increased, WSL will be entitled to charge such higher rate. Invoices for such hourly fees will be submitted to the Receiver every month for the Receiver's review. The Receiver shall seek Court approval of the fees submitted no less frequently than on a quarterly basis (or more frequently as the Receiver may in his discretion deem appropriate). The Receiver shall pay all Court-approved WSL invoices within three (3) business days of Court approval. The Receiver acknowledges that the attorneys performing services on behalf of WSL include Attorney Max Wistow, Attorney Stephen Sheehan, and Attorney Benjamin Ledsham, and that these services will be

performed during the investigation phase described by Section I as well as the phase, if applicable, described by Section II.

V. Miscellaneous

The Receiver hereby approves and acknowledges delivery of a duplicate copy of this Contingent Fee Agreement and acknowledges receipt of "A Client's Statement of Rights & Responsibilities."

Stephen F. Del Sesto, Esq., as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan

Date: 10/18/17

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date: 10/18/17

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

[1]For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•1f you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

Exhibit 18

451 PLAIN RD
WEST GREENWICH RI
02817
401-397-0719
leoslionlair@cox.net

ENGAGEMENT AGREEMENT

I SCOPE OF SERVICES

EDGENIA LEVESQUE ("Client"), hereby appoints Wistow, Sheehan & Loveley, P.C. ("WSL") as attorneys to represent Client in making claims in one or more class actions against persons and/or entities ("Defendants") who WSL's investigation indicates may be liable to participants and participants' beneficiaries of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") in relation to the underfunding or insolvency of the Plan or who otherwise may be liable to participants and participants' beneficiaries in connection with or relating in any way to providing retirement and/or survivor benefits.

Client was referred to WSL by attorney Adam Veidlinger.

WSL's representation will include factual and legal research, negotiations with interested parties, preparation of pleadings, and all court appearances through trial, any post-trial motions, and entry of judgment in this case. WSL will provide these legal services to Client on the terms set forth herein.

II WSL'S CONCURRENT ENGAGEMENT BY THE RECEIVER

On August 18, 2017, St. Joseph Health Services of Rhode Island filed a petition with the Superior Court of Rhode Island to appoint a temporary receiver of the Plan. In this petition, St. Joseph Health Services of Rhode Island alleged that the plan was "severely underfunded" and requested that the Superior Court "immediately" impose a "uniform reduction of 40% of pension benefits" on all beneficiaries. By order entered on August 18, 2017, Stephen F. Del Sesto, Esq. ("the Receiver") was appointed temporary receiver of the Plan. By order entered on October 27, 2017, the Receiver was

appointed permanent receiver.

WSL was engaged by the Receiver on October 18, 2017, with the Superior Court's approval. Pursuant to that engagement, and based on WSL's investigation of potential claims, WSL plans to bring one or more suits against one or more persons or entities. A copy of WSL's Engagement and Fee Agreement of October 18, 2017 with the Receiver is attached hereto as Exhibit 1.

WSL believes that the Receiver has standing to bring all necessary claims to protect participants and participants' beneficiaries. However, it is expected that there may be issues raised as to whether or not participants and participants' beneficiaries have the standing as to certain claims. To mitigate that potential issue, WSL is proposing to join class action claims along with the claims of the Receiver. You will be one of several persons represented by WSL named with regard to the class action claims.

III CLIENT'S DUTIES AND OBLIGATIONS AS A CLASS REPRESENTATIVE

In class actions, class representatives seek relief for themselves and other similarly situated persons as to their common damages and injuries. A class representative has factual and legal claims that are typical of those of the class, and thus involve common issues of law and fact.

Because class actions involve common issues that affect many people or entities, there are often multiple class actions filed by multiple class representatives regarding the same or similar subject matter. They are sometimes, but not always, consolidated into one larger class action. The court overseeing that consolidated class action may appoint lead class counsel that may be different from the original attorneys

bringing a class representative's case.

In non-class litigation, parties asserting claims are free to pursue only their own interests; they need not take into account the interests of others. Class actions are different, and require both class representatives and the lawyers in their capacity as lawyers for the class to consider and pursue only the common claims and interests of the class as a whole. This means that you must always act in the best interest of the class as a whole and consider the interests of the class ahead of your own individual or personal interests. If at any time you fail or refuse to prioritize the interests of the class, you will not be able to serve as a class representative, and WSL will not be able to continue representing you.

A class representative participates in the lawsuit, such as, for example, by testifying at deposition and trial, by producing evidence, by answering written questions from the defendants, and by keeping generally aware of the status and progress of the lawsuit. WSL will work with you in connection with such participation.

A class representative is not required to be particularly sophisticated or knowledgeable about the lawsuit or to know every aspect of the litigation. However, class representatives must maintain reliable communication with their attorneys throughout the lawsuit, which could take years.

A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be designed in the best interests of the class as a whole.

If at any time you believe that your interests conflict with those of other class members in regard to the subject matter of the class litigation, you agree to immediately inform WSL of this concern.

IV MAKING CLAIMS IN A CLASS ACTION

Client will be a plaintiff alongside other individual potential class representatives in one or more class actions, brought in one or more lawsuits against the Defendants. In such lawsuit(s), Client will be seeking to obtain relief on behalf of himself/herself and others and the Plan. Sometime after the lawsuit(s) have been filed, the court may determine the status of Client's representation of such other persons. As indicated, the proposed class action plaintiffs will be named alongside the Receiver as representative of the Plan.

Because it is possible that certification of the class may not be granted or WSL may not be appointed by the court as class counsel, WSL may agree to individually represent Client and/or other plaintiffs in this litigation. If WSL agrees to individually represent Client in this litigation, WSL will confirm its intentions in a separate document. If the lawsuit is not certified as a class action or if the court rejects Client or others as a class representative or WSL as class counsel, WSL may end WSL's representation of Client after making reasonable efforts to assist Client in finding different counsel to represent Client on an individual basis.

V CONFLICTS AMONG CLASS MEMBERS

Client understands that WSL will seek to bring one or more class actions on behalf of Client and other similarly situated persons. If an action is certified to proceed as a class action, Client is advised that WSL may be designated as counsel to

represent all class members as a whole. WSL will not be permitted to represent individual claimants for any matter that may create a conflict of interest with the class as a whole. Conflicts might develop between Client and the interests of the class as whole. For instance, it is possible that Client might want to accept a settlement but WSL believes the settlement is not in the interests of the class as a whole, or vice versa. Client agrees that in such events WSL shall be entitled to continue to represent the class or potential class or Receiver but not Client.

WSL shall seek appointment by the court as class counsel, and agrees to undertake the representation of all members of the plaintiff class if the court approves. Because of the nature of class action practice, WSL reserves the right to determine litigation tactics that are in the best interests of all clients and the class. If a difference of opinion arises between Client and WSL, on a significant issue, WSL shall have the right to proceed with their representation of the class and may also elect to withdraw as Client's counsel of record. WSL cannot and will not act as Client's lawyer in resolving any disagreements or conflicting instructions between Client, other jointly-represented plaintiffs, and/or other potential and/or certified class representatives.

During the course of litigation, there may be settlement discussions with some or all of the Defendants. The Defendants may make an aggregate settlement offer, meaning that they may offer a lump sum of money in settlement of all of the claims at issue, including Client's claims, any other jointly represented plaintiffs' claims, any potential and/or actual class representatives' claims, and the potential and/or actual class members' claims. Another aggregate settlement possibility is that the Defendants may offer separate sums to each individual claimant. If any aspect of Client's case(s) is

certified and proceeds as a class action and an aggregate settlement is reached, WSL will be required to disclose and seek the court's approval of such an aggregate settlement, including the methodology for distributing any such settlement.

An aggregate settlement may be insufficient to completely compensate each claimant individually and disagreements may arise concerning how to allocate, or divide, an aggregate settlement. If there is insufficient proceeds or assets to cover the claims of each of the respective Clients, there can be disputes regarding how to allocate the proceeds or assets as between the joint Clients. If any disputes should arise between the joint Clients, WSL will not advise or represent any of the Clients (including the Receiver) in connection with such disputes. WSL will remain able to advocate an overall settlement but not how such settlement should be divided.

Client acknowledges and understands the potential conflicts of interest discussed above and herein. Client agrees to waive the potential conflicts of interests which arise from WSL's representation as discussed above and herein.

VI ATTORNEY'S FEES

If a monetary recovery is obtained for a plaintiff class, either by settlement or judgment, WSL will apply to the court for the entirety of WSL's compensation on a reasonable percentage of such recovery, and/or from Defendants if allowed by statute and case law. The amount of any fees and costs that WSL may receive will be determined by the court based on WSL's application for fees and costs. Regardless of the stage at which the litigation is resolved, WSL will not seek attorneys' fees from the court based on a percentage of the recovery higher than twenty three and one-third percent (23 1/3 %) of the gross recovery, the same percentage previously agreed to

with the Receiver as set forth in WSL's fee agreement with the Receiver (Exhibit 1). As used here, the term "gross recovery" includes the recovery of the litigation costs and expenses advanced by WSL (if any) or the Receiver. In the event that the final resolution of the plaintiff classes' claims by settlement or otherwise results in a third party assuming responsibility for the Plan, WSL will apply to the court for fees to be determined under applicable law.

VII REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

WSL will look to the Receiver or the Defendants, and not to Client, for reimbursement of any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.).

VIII CONFIDENTIALITY

Information communicated or furnished between WSL, Client, other members or potential members of the class, and the Receiver will often be confidential (although the information of one Client is not confidential from any other Client in the case). Also, papers and other things relating to the matters in paragraph I will often be confidential. Such information, papers, and things are or may be subject to protective orders and/or attorney-client, work-product, joint-prosecution, and other applicable doctrines or procedures. WSL and Client shall maintain the confidentiality of all confidential information, papers and things, except that, to the extent permitted by law, WSL shall be entitled to divulge confidential information, papers, and things if necessary or helpful in representing Client or the class or potential class. Despite the confidentiality of Attorney-Client fee agreements, Client agrees that WSL shall be entitled to disclose this

Engagement Agreement for purposes of pursuing the matters described in paragraph I above, or for WSL or the Receiver to obtain fees, expenses, and costs. Client also acknowledges that WSL has already disclosed the form of this Engagement Agreement to the Receiver.

Client understands the effect of joint representation on attorney-client confidentiality. Attorney-client communications are privileged and protected against disclosure to a third party. Under this Engagement Agreement, Client may be one among multiple plaintiffs being jointly represented by WSL. By entering into this Engagement Agreement, Client waives any right Client may have to require that WSL disclose to Client any confidences WSL may have obtained from any other plaintiff in connection with the subject matter of this Engagement Agreement.

IX MODIFICATION BY SUBSEQUENT AGREEMENT

This Engagement Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by all parties.

X CLIENT FILE

Client has a right to request Client's client file upon discharge or withdrawal of WSL or the conclusion of Client's case. Client understands and agrees that WSL will satisfy WSL's obligation to release Client's client file to Client by providing Client with a photocopy or electronic copy of the portions of Client's files that pertain only to WSL's representation (if any) of Client on Client's individual claims. However, WSL will not be obligated to provide Client with a photocopy or electronic copy of files that pertain to WSL's representation of other clients in the matter and/or the potential and/or certified class to the extent those files are protected by the work product doctrine and/or

attorney-client privilege that WSL owes to the other clients and/or the potential and/or certified class. Client agrees to cooperate with WSL in the event Client requests a copy of Client's client file, to ensure that the rights of any other clients represented by WSL and/or the Receiver and/or the potential and/or certified class are not prejudiced.

XI CLIENT'S INFORMED CONSENT

Client acknowledges that Client has discussed this Engagement Agreement with the lawyer who referred him or her to WSL, and that Client has read and understands this Engagement Agreement.

XII CONDITIONS

This Engagement Agreement will not take effect, and WSL's representation of Client will not commence, until (1) Client returns a signed copy of this Engagement Agreement to WSL; and (2) WSL acknowledges acceptance of representation by counter-signing this Engagement Agreement.

XIII MISCELLANEOUS

This Engagement Agreement, when signed below by Client, replaces any prior understandings or oral agreement between Client and WSL.

This Engagement Agreement and all aspects of the attorney-client relationship shall be construed under the laws of Rhode Island, without regard to choice of law principles. If any dispute should arise with respect to this engagement, jurisdiction shall lie exclusively in Rhode Island.

The Client hereby approves and acknowledges delivery of a duplicate copy of this Engagement Agreement and acknowledges receipt of "A Client's Statement of

Rights & Responsibilities."

Eugenia Levesque
Client

Date: 5/23/2018

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date:

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client **in a** legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•If you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

EXHIBIT 1

ENGAGEMENT AND FEE AGREEMENT

Stephen F. Del Sesto ("the Receiver"), as and only as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), hereby engages Wistow, Sheehan & Loveley, P.C. ("WSL") as special counsel to the Receiver and the Plan Receivership Estate as follows:

I. INVESTIGATION

The Receiver engages WSL to investigate potential liability or obligation of any persons or entities to pay damages or funds to the Plan (or to assume responsibility for such plan in the future), making use of discovery, records, research and consultations in its discretion. Under the provision concerning Hourly Fees set forth below, WSL will charge an hourly rate for these services. In addition, WSL will be reimbursed on a current basis (i.e. monthly) for any out-of-pocket expenses (such as costs of records, computer-assisted legal research, expert consultants, etc.) actually incurred and without mark-up by WSL during the investigative phase, whether claims are made or not.

II. MAKING CLAIMS

The Receiver further constitutes and appoints WSL to make claims against persons and/or entities who its investigation indicates may be liable for damages or to assume responsibility for the Plan. Said claim(s) may be made by demand letter or by lawsuit, if necessary. The Receiver agrees to pay as legal fees ten percent (10%) of the gross of any amounts recovered prior to the bringing of suit, by way of compromise or settlement. If suit is brought, the Receiver agrees to pay as legal fees twenty-three and one-third percent (23 1/3 %) of the gross of any amount thereafter recovered by way of suit, compromise, settlement or otherwise. In the event that a final resolution of such

claims by settlement or otherwise results in a third party assuming responsibility for the Plan, the fees to be paid to WSL shall be an obligation of the Receivership, the amount of which shall be determined by the Court using the standards of *quantum meruit* pursuant to the laws of Rhode Island, taking into account the benefit rendered to the Plan. In any event, no compromise of the Plan's claims may be made without the Receiver's express authorization and approval by the Court.

III. REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

The Receiver is obligated to reimburse WSL within thirty (30) days of invoicing and in all events for any out-of-pocket expenses incurred by WSL (such as filing fees, costs of depositions, obtaining records, charges for computer-assisted legal research, costs of expert consultants and/or witnesses, etc.) in connection with Sections I or II above.

IV. HOURLY FEES

The Receiver shall pay WSL an hourly rate of $375 per hour which is also the hourly rate presently being charged by the Receiver. In the event the Receiver's own hourly rate is increased, WSL will be entitled to charge such higher rate. Invoices for such hourly fees will be submitted to the Receiver every month for the Receiver's review. The Receiver shall seek Court approval of the fees submitted no less frequently than on a quarterly basis (or more frequently as the Receiver may in his discretion deem appropriate). The Receiver shall pay all Court-approved WSL invoices within three (3) business days of Court approval. The Receiver acknowledges that the attorneys performing services on behalf of WSL include Attorney Max Wistow, Attorney Stephen Sheehan, and Attorney Benjamin Ledsham, and that these services will be

performed during the investigation phase described by Section I as well as the phase, if applicable, described by Section II.

V. Miscellaneous

The Receiver hereby approves and acknowledges delivery of a duplicate copy of this Contingent Fee Agreement and acknowledges receipt of "A Client's Statement of Rights & Responsibilities."

Stephen F. Del Sesto, Esq., as Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan

Date: 10/18/17

Wistow, Sheehan & Loveley, P.C., by

Max Wistow, Esq.

Date: 10/18/17

• *Your attorney will discuss the negotiation process with you and will agree to a settlement offer only if you have approved it.*

9. Your attorney will explain to you, in advance, any major expenses anticipated in your legal matter.

10. Your attorney will tell you if other lawyers will be involved in your representation and how the cost to you for their involvement will be calculated.

11. When your fee is not a single, set amount, your attorney will give you periodic billings detailing *your* fees, costs, and expenses.

12. If legal fees will be applied against a settlement, your attorney will provide you with a final statement after the matter is concluded detailing what costs and expenses are being applied against your settlement and the amount you will receive.

As your legal advisor, your **attorney has** the right to expect that:

1. You will make a full and honest disclosure of all of the (acts — good and bad — that relate to your legal matter, and you will inform your attorney about any new facts or circumstances that may affect your case as they arise.

2. *You* will adhere to your fee agreement with your attorney, pay your bills for all work that has been performed, and pay for all costs that were advanced for you. If you have any questions about your bill, you will discuss them with your attorney.

3. You will seek your attorney's advice before discussing any information relating to your legal matter with others.

4. You will tell your attorney if you have any conce ns or reservations about the advice you are being given.

5. You will be on time for all court hearings and appointments with your attorney or let your attorney know in advance if you cannot be on time.

6. If you cannot reach your attorney when you phone the office, you will leave your name and phone number and a brief message.

7. You will complete the tasks requested by your attorney in a timely fashion or let your attorney know when you cannot.

8. You will discuss your expectations about what you want to accomplish in your legal matter with your attorney. When your expectations are not being met, you will talk to your attorney about it.

You have the right to change attorneys if you are dissatisfied with the representation you are receiving. However, in certain circumstances you will need the court's permission. It is also important for you to know that your attorney may decide to stop representing you. This may be due to your not meeting your obligations to your attorney or for some other reason. This too may require court permission.

This Client's Statement of Rights and Responsibilities is based on the Rhode Island Rules of Professional Conduct for attorneys. If you have any questions about this statement of your rights and obligations, you should contact the Rhode Island Bar Association at (401) 421-5740.

Rhode Island Bar Association
115 Cedar Street • Providence, Rhode Island 02903

A Client's Statement of Rights & Responsibilities*

'For purposes of compliance with the Rhode Island Supreme Court Rules of Professional Conduct, Rule 1.4 as amended.

NOTIFICATION TO CLIENTS OF THEIR RIGHTS AND RESPONSIBILITIES

Preamble

Good communication is essential to an effective attorney-client relationship. A lawyer should be assured that a new or prospective client has a full understanding of the nature of the attorney-client relationship, including what the client can reasonably expect from the lawyer and what the lawyer can reasonably expect from the client. If the client does not have such an understanding, the lawyer shall take reasonable steps to educate the client about the relationship.

The Client's Statements of Rights and Responsibilities set out below is designed to provide an outline of the lawyer's expectations of the client and the client's expectations of the lawyer. The lawyer may use the Client's Statement of Rights and Responsibilities to in-form a new or prospective client of those expectations. The Client's Statement of Rights and Responsibilities is not, however, the exclusive method by which a lawyer might so inform the client.

The Client's Statement of Rights and Responsibilities shall not be used as a basis for litigation or for sanctions or penalties. The Client's Statement of Rights and Responsibilities does not supersede or detract from the Rules of Professional Conduct, nor does the Client's Statement of Rights and Responsibilities alter existing standards of conduct against which lawyer negligence may be determined.

Application

When a lawyer has not regularly represented a client, the lawyer shall provide the prospective client with a statement of the client's rights and responsibilities. The lawyer shall give this information to the client prior to the signing of a written retainer agreement and shall obtain a signed acknowledgment of its receipt. The rights set forth in this statement are intended to be consistent with the standards mandated by the Rules of Professional Conduct. This statement does not supersede the obligations imposed by the Rules of Professional Conduct, and is intended as an explanation to the client of their rights under the Rules and their responsibilities in the attorney-client relationship. The text of the rules remains authoritative.

Client's Statement of Rights and Responsibilities

In an attorney/client relationship each party has certain rights. A right that both parties have is to be treated at all times with courtesy and respect. This statement first explains your rights as a client when you hire an attorney, and immediately afterwards what your attorney has the right to expect of you. This statement is intended to promote better communication and prevent misunderstandings between you and *your* attorney.

As the client in a legal matter, you have the right to expect that:

1. Your attorney will handle your legal matter competently.

• When hiring an attorney you have the right to ask questions about the attorney's education, training, and experience and expect that your attorney will remain current with recent developments in the law that relate to your matter.

2. Your attorney will charge you a reasonable fee and explain how it will be computed and when payments are expected from you.

•If you are not a regular client, your attorney will give you a written statement before, or as soon as the work begins indicating the basis or rate of the fee you will be charged.

•If you are asked to pay a retainer, your attorney will explain how it will be spent and, if you ask, will provide you with a periodic written statement detailing how it has been spent.

• If your attorney is working on a contingent-fee basis, your attorney will put in writing, in advance, what the attorney's percentage will be, whether you will be billed for costs and expenses, and whether deductions will be taken from your settlement prior to calculating the fee.

3. *Your* attorney will work diligently for you and pursue the lawful means necessary to present or de-fend your case.

4. Your attorney will strive to resolve your legal mat-ter promptly and will inform you if for any reason it cannot be resolved in a timely fashion. .

5. Your attorney will respond to reasonable ques tions about the progress of your legal matter and will explain office policies to you to ensure satisfactory communication with you, including:

'how to reach your attorney.

•when and how your telephone calls will be returned.

'how to obtain copies of paper/documents from your legal file.

6. Your attorney will exercise independent, professional judgment on your behalf free from any conflict of interest.

7. Most of your communications with your attorney are confidential. Your attorney will explain to you when the statements you make or secrets you reveal about your case cannot be kept confidential.

8. You have the right to make final decisions regarding your legal matter.

Exhibit 19

STATE OF RHODE ISLAND PROVIDENCE, SC.		SUPERIOR COURT
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.	:	
vs.	:	C.A. No: PC-2017-3856
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, as amended	:	

RECEIVER'S PETITION FOR SETTLEMENT INSTRUCTIONS

NOW COMES Stephen F. Del Sesto, Esq., solely in his capacity as the Permanent Receiver (the "Receiver") of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan"), and hereby Petitions this Court to approve the proposed settlement ("Proposed Settlement") of claims the Receiver has asserted against CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island ("SJHSRI"), and the corporation Roger Williams Hospital ("RWH") (collectively the "Settling Defendants"), in a lawsuit filed in the United States District Court for the District of Rhode Island (C.A. No: 1:18-CV-00328-WES-LDA) (the "Federal Court Action"), and in a lawsuit filed in the Rhode Island Superior Court (C.A. NO.: PC-2018-4386) (the "State Court Action"), which lawsuits concern the alleged underfunded status of the St. Joseph Health Services of Rhode Island Retirement Plan ("the Plan"), and in which Plaintiffs seek relief from the Settling Defendants including money damages that greatly exceed the remaining assets of the Settling Defendants.

The Settling Defendants are the three entities that formerly owned and operated Our Lady of Fatima Hospital and Roger Williams Hospital. They no

longer own those hospitals. The Proposed Settlement does not resolve the Plaintiffs' claims against the non-settling Defendants, or the Plaintiffs' efforts to avoid the sale of Our Lady of Fatima Hospital and Roger Williams Hospital to the current owners and to secure those assets for the Plan. Those claims will continue to be asserted.

Attached hereto as Exhibit A is the settlement agreement ("Settlement Agreement") that the Receiver has entered into subject to obtaining the approval of this Court. The Receiver believes that the Proposed Settlement is in the best interests of the Receivership Estate, the Plan, and the Plan participants, and recommends that this Court approve the Proposed Settlement.

If this Court accepts the Receiver's recommendation, the next step will be that the Receiver's Special Counsel will file a motion in the Federal Court Action asking that the Proposed Settlement be approved by that court, both because it is required for settlement of class actions under Rule 23(e) of the Federal Rules of Civil Procedure, and because judicial approval of a good faith settlement is a condition for the applicability of the recently enacted Rhode Island statute specifically addressed to settlements involving the Plan, R.I. Gen. Laws § 23-17.14-35.

As grounds for this Petition, the Receiver hereby states as follows:

1. This case was commenced on August 17, 2017, upon the Petition of Settling Defendant St. Joseph Health Services of Rhode Island. A copy of the Petition for the Appointment of a Receiver (the "Petition") is annexed hereto as Exhibit B.

2. The Petition alleged that the Plan was insolvent and sought an immediate reduction in benefits of 40% for all Plan participants. Specifically, the Petition sought the following relief:

> (1) the Court appoint a Temporary Receiver forthwith and also appoint a Permanent Receiver to take charge of the assets, affairs, estate, effects and property of the Plan, (2) that the Temporary Receiver and Permanent Receiver be authorized to continue to operate the Plan, (3) that the request for appointment of a permanent receiver and for an immediate 40% uniform reduction in benefits be set for hearing thirty (30) days.

Exhibit B at 7.

3. On October 11, 2017, the Receiver filed his Emergency Petition to Engage Legal Counsel, pursuant to which he sought leave to engage the firm of Wistow, Sheehan & Loveley, P.C. ("WSL"), as Special Counsel. The Emergency Petition with the WSL Retainer Agreement is attached hereto as Exhibit C. That Emergency Petition informed the Court that "following his appointment, the Receiver determined that his fiduciary obligations to the Plan and its beneficiaries include the need to conduct an investigation into the circumstances which resulted in the Plan's significant, and likely irreversible, financial distress," and that "the Receiver believes that assistance of special litigation counsel is warranted and necessary." Exhibit C ¶¶ 4 & 5.

4. On October 17, 2017 this Court granted the Emergency Petition. The Order granting the Emergency Petition is attached hereto as Exhibit D. It states in pertinent part:

> That for the reasons stated in the Receiver's Petition and in accordance with the terms of the Engagement, attached to the Petition as Exhibit A and incorporated herein by reference, the Receiver is hereby authorized to retain the law firm of Wistow Sheehan & Lovely PC ("WSL") to act as the Receivership Estate's special litigation counsel for the purposes more specifically set forth in the Petition and the Engagement . . . .

Exhibit D at 1. The executed WSL Retainer Agreement is attached as Exhibit E.

5. In their role as Special Counsel to the Receiver, WSL issued *subpoenas duces tecum* to the following entities:

- Adler Pollock & Sheehan, P.C.

- Bank of America, N.A.
- Defendant CharterCARE Community Board
- Defendant CharterCARE Foundation
- Rhode Island Department of Health
- Ferrucci Russo, P.C.
- Office of the Rhode Island Attorney General
- Defendant Prospect CharterCare, LLC
- Defendant Prospect Medical Holdings, Inc.
- Defendant Rhode Island Community Foundation
- Defendant Roman Catholic Bishop of Providence
- Defendant SJHSRI (two subpoenas)

6. By agreement, or in acknowledgment of their legal obligation, several of the subpoenaed entities produced documents in the possession and control of other entities. For example, Prospect Medical Holdings also produced documents on behalf of Prospect East Holdings, Inc.; Prospect CharterCare, LLC also produced documents on behalf of Prospect CharterCare SJHSRI, LLC and Prospect CharterCare RWMC, LLC; and Roman Catholic Bishop of Providence also produced documents on behalf of Diocesan Administration Corporation and Diocesan Service Corporation. The Angell Pension Group, Inc. ("Angell") produced copies of their files in compliance with the order appointing the Receiver, for which no subpoena was required.

7. This investigation entailed the production and review of over 1,000,000 pages of documents over an eight-month period, and the commitment of at least 1,472 hours of time by Special Counsel.

8. With the approval of the Receiver, Special Counsel were also retained by seven individual Plan participants, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Caroll Short, Donna Boutelle, and Eugenia Levesque ("Named Plaintiffs") to investigate and assert claims on their behalf. The Named Plaintiffs agreed to act on their own behalf and on behalf of the other Plan participants in a class action (the "Class Action").

9. The Complaints in both the Federal Court Action and the State Court Action were filed on June 18, 2018. Copies of those Complaints are attached hereto as Exhibits F and G, respectively. These Complaints were filed by Special Counsel on behalf of the Receiver, the Named Plaintiffs, and the proposed class consisting of the Plan participants.

10. At the same time, the Receiver moved for leave to intervene in a civil action that SJHSRI, RWH, and another entity, CharterCARE Foundation, had commenced in the Rhode Island Superior Court in 2015 (the "2015 *Cy Pres* Proceeding"), pursuant to which certain assets of SJHSRI and RWH were transferred to CharterCARE Foundation, which Plaintiffs seek to recover for deposit into the Plan.

11. Over the last several weeks, Counsel for the Settling Defendants and Special Counsel in consultation with the Receiver have conducted settlement negotiations, which involved extensive disclosure of the Settling Defendants' assets, including an initial disclosure and several additional or supplementary disclosures based upon the requests of Special Counsel for additional information and clarification.

12. The negotiations also involved communications by Counsel for the Settling Defendants and Special Counsel with the Rhode Island Department of Labor and Training ("DLT") and a joint meeting with DLT concerning an escrow account (the "DLT

Escrow"), which was then in the amount of approximately $2,500,000, that Settling Defendant RWH had funded, securing RWH's self-insured workers' compensation liabilities. As a result of these communications, DLT agreed to only $750,000 being retained in the DLT Escrow account, and released the balance, which is included in the Initial Lump Sum being paid by the Settling Defendants in connection with the Proposed Settlement.

13. Thereafter, Plaintiffs and the Settling Defendants agreed on the terms set forth in the Settlement Agreement. The proposed settlement would bind the Receiver, the named Plaintiffs, and the settlement class consisting of "[a]ll participants of the St. Joseph Health Services of Rhode Island Retirement Plan," including:

a) all surviving former employees of St. Joseph Health Services of Rhode Island ("SJHSRI") who are entitled to benefits under the Plan; and

b) all representatives and beneficiaries of deceased former employees of SJHSRI who are entitled to benefits under the Plan.

Exhibit A (Settlement Agreement) Exhibit 1 (Class Notice) at 1 & 10.

14. The Settlement Agreement establishes the terms of the Proposed Settlement. In summary, it provides for the following benefits to Plaintiffs:

a) Immediate payment of the Initial Lump Sum of a minimum of $11,150,000, which is 95% of the Settling Defendants' combined liquid operating assets of $11,525,000, up to a maximum of approximately $11,900,000 if the Rhode Island Department of Labor and Training releases the entire DLT Escrow in the amount of approximately $750,000 prior to the due date for payment of the Initial Lump Sum;

b) Assignment of the Settling Defendants' rights to whatever is left in the DLT Escrow;

c) Transfer to the Receiver of the Settling Defendants' rights in CharterCARE Foundation;

d) The Proposed Settlement also obligates the Settling Defendants not to object to Plaintiffs intervening in the 2015 *Cy Pres* Proceeding, and

Plaintiffs' request for an order directing that Plaintiffs' rights in CharterCARE Foundation be adjudicated in the Federal Court Action;

e) The Proposed Settlement gives the Receiver the beneficial interest in Defendant CCCB's interest in Defendant Prospect CharterCare, LLC;

f) The Settling Defendants admit liability on some of the claims asserted against them in the Complaint, including breach of contract, and that Plaintiffs' damages are at least $125,000,000; and

g) The Settlement Agreement obligates the Settling Defendants upon the Receiver's request to petition the Rhode Island Superior Court for judicial liquidations, pursuant to R.I. Gen. Laws § 7-6-63, whereby all of their remaining assets will be liquidated and distributed to their creditors, including Plaintiffs, in accordance with the orders of the court in the Liquidation Proceedings.

15. Thus, the potential total gross recovery for the Plan from the Settling Defendants, or otherwise as a result of the Settlement Agreement, could be as low as the minimum Initial Lump Sum of $11,150,000, or considerably more than that, but, except for the minimum Initial Lump Sum, the amount of the final recovery cannot be determined at this time. All that can be done at this time, and what Special Counsel in consultation with the Receiver has attempted to do, is to put the Receiver in the position to pursue and hopefully maximize the value of those assets.

16. The Settlement Agreement obligates the Plaintiffs to provide the Settling Defendants with releases in the form attached thereto, which preserve any claims concerning breach of the Settlement Agreement by the Settling Defendants, and the following "Excepted Claims":

i. any claims to the extent that there may be assets of CCCB available to be distributed by the court in the Liquidation Proceedings,

ii. any claims concerning the assets of CCCB that were transferred to CharterCARE Foundation in connection with the 2015 *Cy Pres* Proceeding, and

iii. any claims to the assets of the Settling Defendants that were transferred in connection with the 2014 Asset Sale.

Exhibit A (Settlement Agreement) Exhibits 9-11 (Releases to the Settling Defendants). The releases provide that, with respect to the Excepted Claims, the Plaintiffs agree to limit their recourse to the assets referred to in (i) through (iii).

17. The risks to the Plan if the settlement is not approved concern both the significant risk that the Plaintiffs may not prevail on their claims against the Settling Defendants, and the absolute certainty that, if the Proposed Settlement is not approved, the Settling Defendants' assets will be further dissipated by litigation expenses and claims of other creditors, such that it is indisputable that the sum that the Plaintiffs may collect from the Settling Defendants if they prevail will be substantially less than what is being offered in settlement.

18. The Federal Court Action is very complex, involves many Defendants, and the complications of proceeding as a class action, and, therefore, could take years to litigate, at the level of the U.S. District Court and possibly on appeal, during which time the assets of the Settling Defendants could be significantly diminished if not fully expended, if only by the attorneys' fees and expenses of defending this case, the companion State Court Action, and the 2015 *Cy Pres* Proceeding, to say nothing of the Settling Defendants' various ongoing operating expenses.

18. In connection with the negotiations for the Proposed Settlement, the Settling Defendants provided Special Counsel with certain asset disclosure.

19. The Settling Defendants have listed their estimated assets and liabilities in schedules that are attached to the Settlement Agreement, and which the Settling Defendants have certified constitute their best estimates thereof.[1]

20. After the 2014 Asset Sale, the Settling Defendants were left with essentially three forms of assets: a) retained cash maintained in operating accounts, b) accounts receivable and reserve accounts that may or may not become available for collection and deposit in operating accounts in the future, and c) membership interests in other entities, consisting of Settling Defendant CCCB's membership interest in Prospect CharterCare, LLC and Settling Defendant CCCB's alleged membership interest in CharterCARE Foundation.[2]

21. The precision by which their assets can be valued for purposes of evaluating the Proposed Settlement differs among these three asset classes.

Liquid Operating Assets

22. According to the schedule prepared by the Settling Defendants, the current value of the unrestricted cash and cash equivalents of the Settling Defendants is approximately $11,525,000.[3]

Reserve Accounts and Accounts Receivable

23. According to the same schedule, their restricted cash and cash equivalents, and their accounts receivable, total approximately $2,327,186, but those assets are tied up in various reserve accounts or may not be collectible in full or even in

[1] See Ex. A (Settlement Agreement ¶¶ 20-21, Exhibits 12-17).

[2] See Ex. A (Settlement Agreement ¶ 20, Exhibits 12-14).

[3] See Ex. A (Settlement Agreement) ¶ 22, Exhibits 13-15).

part.[4] Under the terms of the Proposed Settlement, the interests of the settling defendants in the DLT Escrow is assigned to the Receiver, and the value of the remaining assets will be determined and realized in judicial liquidations proceedings in the Rhode Island Superior Court.

Interests in Other Entities

The Settling Defendants' Interests in Prospect CharterCare, LLC

24. In connection with the 2014 Asset Sale, Settling Defendant CCCB received a 15% membership interest in Prospect CharterCare, LLC, which indirectly owns and operates Roger Williams Hospital and Our Lady of Fatima Hospital. The current value of those interests is unknown to Plaintiffs. Moreover, the Prospect CharterCare Limited Liability Agreement ("LLC Agreement") provides that such interest may be diluted under certain circumstances, and purport to restrict and even prohibit CCCB from transferring that interest for five years, i.e. until on or about June 20, 2019. Finally, it cannot be assumed that Prospect East, and the other Prospect entities that are Defendants in the Federal Court Action and the State Court Action,[5] will pay the fair value of this interest without compulsion. Accordingly, it is impossible to value CCCB's interest in Prospect CharterCare, LLC at this time.

Settling Defendants' Rights in CharterCARE Foundation

25. The Proposed Settlement gives the Receiver the beneficial interest in Settling Defendant CCCB's interest in CharterCARE Foundation. However, the nature

[4] See Ex. A (Settlement Agreement) ¶ 20, Exhibits 13-15).

[5] Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, and Prospect CharterCare RWMC, LLC are the "Prospect Entities."

and value of that interest is disputed. Accordingly, the settlement value of that interest cannot be estimated at this time.

Notice to Plan Participants

26. Concurrently with the filing of this Petition, the Receiver is posting the Petition on his website, at https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan, for all Plan participants and the general public to view. The Receiver will also send each Plan participant a notice by first class mail informing them of the date of the hearing on the Receiver's Petition for Settlement Instructions, and directing them to the Receiver's web site to obtain the Petition.

Attorneys' Fees

27. Pursuant to the WSL Retainer Agreement, the attorneys' fees to which Special Counsel is entitled in connection with the proposed settlement is 23 1/3% of the gross settlement amount.[6]

30. Notwithstanding that the WSL Retainer Agreement does not require or provide for any reduction of Special Counsels' contingent fee for hourly fees received in connection with Special Counsel's investigation prior to the assertion of a claim, Special Counsel on their own volition have agreed to such a reduction, to be applied to the first recoveries on the Proposed Settlement. The hourly fees for Special Counsel's investigation total $552,281.25, for 1,472 hours of attorney time. That credit would reduce Plaintiffs' Counsel's fee on the minimum Initial Lump Sum of $11,150,000 from 23 1/3% to approximately 18.38%.[7]

[6] See Exhibit D (WSL Retainer Agreement at 2).

[7] 23.5% of $11,150,000 = $2,601,630, minus $552,281.25 = $2,049,349, which is 18.38% of $11,150,000.

31. Special Counsel in the Federal Court Action intends to ask that court to award fees for Special Counsel's representation of the Settlement Class based upon the fee this Court approved for Special Counsel's representation of the Receiver, less the aforementioned credit.

32. Accordingly, Plaintiffs' Counsel will be seeking an award of attorneys' fees in the Federal Court Action in the amount of 23 1/3% of the Gross Settlement Amount, less $552,281.25.

Conclusion

33. The First Circuit has held that "[a] settlement agreement should be approved as long as it does not 'fall below the lowest point in the range of reasonableness." In re Heathco Int'l, Inc., 136 F.3d 45, 51 (1st Cir. 1998) (quoting In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983)). See also In re Mailman Steam Carpet Cleaning Corp., 212 F.3d 632 (1st Cir. 2000) (stating that the test is whether the trustee's actions fall within the universe of reasonable actions, as opposed to whether pressing forward might yield more funds). According to the First Circuit, in determining whether to approve a settlement, the Court should consider the following factors:

a) The probability of success in the litigation being compromised;

b) The difficulties to be encountered in the matter of collection;

c) The complexity of the litigation involved and the expense, inconvenience and delay in pursing the litigation; and

d) The paramount interest of the creditors and a proper deference to their reasonable views.

Cf. Jeffrey v. Desmond, 70 F.2d 183, 185 (1st Cir. 1995) (bankruptcy context).

34. The federal standards enumerated in Paragraph 21 herein have been applied by the Rhode Island Superior Court in receivership proceedings. See, e.g.,

Brook v. The Education Partnership, Inc., No. PB 08-4185, 2010 WL 1456787, at *3 (R.I. Super. Ct. Apr. 8, 2010) (Silverstein, J.). In Brook v. The Education Partnership, Inc., the Superior Court held:

> As discussed supra, in determining whether to approve the Receiver's proposed settlement the Court must consider certain factors and "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." Among the factors to be considered are: (1) the probability of success in the litigation; (2) the likelihood of difficulties in collection of any judgment; (3) the complexity, expense, inconvenience, and delay of the litigation involved; and (4) the paramount interests of the creditors. The Court will also give deference to the Receiver's business judgment.

Id. at *5 (internal citations omitted).

35. The Receiver believes that the Proposed Settlement advances the interests of the Receivership Estate, the Plan, and the Plan participants, and that the terms of the Proposed Settlement are fair and reasonable given the ordinary risks of litigation and the complexity of the matter, as well as other considerations.

36. Accordingly, the Receiver recommends that the Court approve the Proposed Settlement as in the best interests of the Receivership Estate, the Plan, and the Plan participants, and authorize and direct the Receiver to proceed therewith.

WHEREFORE the Receiver prays for 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.

Dated: September 4, 2018

Respondent,
Stephen F. Del Sesto, Esq., Solely in His Capacity as Permanent Receiver of the Receivership Estate,
By his Attorneys,

/s/ Max Wistow

Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com
spsheehan@wistbar.com
bledsham@wistbar.com

CERTIFICATE OF SERVICE

I hereby certify that, on the 4th day of September, 2018, I filed and served the foregoing document through the electronic filing system on the following users of record:

Stephen F. Del Sesto, Esq.
Pierce Atwood LLP
One Financial Plaza, 26th Floor
Providence, RI 02903
sdelsesto@pierceatwood.com

Rebecca Tedford Partington, Esq.
Jessica D. Rider, Esq.
Sean Lyness, Esq.
Neil F.X. Kelly, Esq.
Office of the Attorney General
150 South Main Street
Providence, RI 02903
rpartington@riag.ri.gov
jrider@riag.ri.gov
slyness@riag.ri.gov
nkelly@riag.ri.gov

Richard J. Land, Esq.
Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
rland@crfllp.com

Christopher Callaci, Esq.
United Nurses & Allied Professionals
375 Branch Avenue
Providence, RI 02903
ccallaci@unap.org

Arlene Violet, Esq.
499 County Road
Barrington, RI 02806
genvio@aol.com

Robert Senville, Esq.
128 Dorrance Street, Suite 400
Providence, RI 02903
robert.senville@gmail.com

Elizabeth Wiens, Esq.
Gursky Wiens Attorneys at Law
1130 Ten Rod Road, Suite C207
North Kingstown, RI 02852
ewiens@rilaborlaw.com

Jeffrey W. Kasle, Esq.
Olenn & Penza
530 Greenwich Avenue
Warwick, RI 02886
jwk@olenn-penza.com

George E. Lieberman, Esq.
Gianfrancesco & Friedmann
214 Broadway
Providence, RI 02903
george@gianfrancescolaw.com

Howard Merten, Esq.
Partridge Snow & Hahn LLP
40 Westminster Street, Suite 1100
Providence, RI 02903
hm@psh.com

Joseph V. Cavanagh, III, Esq.
Blish & Cavanagh, LLP
30 Exchange Terrace
Providence, RI 02903
Jvc3@blishcavlaw.com

William M. Dolan, III, Esq.
Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
wdolan@apslaw.com

David A. Wollin, Esq.
Hinckley Allen & Snyder, LLP
100 Westminster Street, Suite 1500
Providence, RI 02903-2319
dwollin@hinckleyallen.com

Preston W. Halperin, Esq.
James G. Atchison, Esq.
Christopher J. Fragomeni, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860
phalperin@shslawfirm.com
jatchison@shslawfirm.com
jfragomeni@shslawfirm.com

Stephen Morris, Esq.
Rhode Island Department of Health
3 Capitol Hill
Providence, RI 02908
stephen.morris@ohhs.ri.gov

Scott F. Bielecki, Esq.
Cameron & Mittleman, LLP
301 Promenade Street
Providence, RI 02908
sbielecki@cm-law.com

Andrew R. Dennington, Esq.
Conn Kavanaugh Rosenthal Peisch & Ford, LLP
One Federal Street, 15th Floor
Boston, MA 02110
adennington@connkavanaugh.com

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

/s/ Max Wistow

Exhibit 20

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC. SUPERIOR COURT

ST. JOSEPH'S HEALTH SERVICES OF RHODE ISLAND)
VS.) C.A. NO. PC-2017-3856
ST. JOSEPH'S HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN)

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON OCTOBER 10, 2018

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....THE RECEIVER
MAX WISTOW, ESQUIRE.....SPECIAL COUNSEL
STEPHEN SHEEHAN, ESQUIRE.....FOR THE RECEIVER
BENJAMIN LEDSHAM, ESQUIRE.....FOR THE RECEIVER
SCOTT BIELECKI, ESQUIRE.....FOR CHARTERCARE
ANDREW DENNINGTON, ESQUIRE.....FOR CHARTERCARE
RUSSELL CONN, ESQUIRE.....FOR CHARTERCARE
ROBERT FINE, ESQUIRE.....FOR CHARTERCARE
LYNNE DOLAN, ESQUIRE.....FOR CHARTERCARE
PRESTON HALPERIN, ESQUIRE.....FOR PROSPECT MEDICAL
JOSEPH CAVANAGH, ESQUIRE.....FOR PROSPECT MEDICAL
DEAN WAGNER, ESQUIRE.....FOR PROSPECT MEDICAL
EDWAN RHOW, ESQUIRE.....FOR PROSPECT MEDICAL
CHRISTINE DIETER, ESQUIRE.....FOR R.I. FOUNDATION
LAUREN ZURIER....ESQUIRE.....ATTORNEY GENERAL'S OFFICE
MARIA LENZ, ESQUIRE.....ATTORNEY GENERAL'S OFFICE
DAVID MARZILLI, ESQUIRE.....ATTORNEY GENERAL'S OFFICE
ARLENE VIOLET, ESQUIRE.....FOR THE PENSIONERS
ROBERT SENVILLE, ESQUIRE.....FOR THE PENSIONERS
CHRISTOPHER CALLACI, ESQUIRE.....FOR U.N.A.P.
STEVEN BOYAJIAN, ESQUIRE.....FOR ANGELL PENSION

GINA GIANFRANCESCO GOMES
COURT REPORTER

CERTIFICATION

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 108, inclusive, are a true and accurate transcript of my stenographic notes.

GINA GIANFRANCESCO GOMES
COURT REPORTER

WEDNESDAY, OCTOBER 10, 2018

MORNING SESSION

THE COURT: Good morning. Madam Clerk, I would ask that you please call the case.

THE CLERK: Your Honor, the matter before the Court is PC-2017-3856, St. Joseph's Health Services of Rhode Island v. St. Joseph's Health Services of Rhode Island Retirement Plan. This matter is on for the Receiver's Petition for Settlement Instructions. Would counsel please identify themselves for the record.

MR. DEL SESTO: Good morning, your Honor, Stephen Del Sesto, Court-Appointed Receiver.

MR. WISTOW: Max Wistow, counsel to the Receiver.

MR. SHEEHAN: Good morning, your Honor. Stephen Sheehan, also counsel for the Receiver.

MR. BIELECKI: Good morning, your Honor. Scott Bielecki for CharterCare Foundation.

MR. DENNINGTON: Andrew Dennington for CharterCare Foundation.

MR. CONN: Russell Conn, CharterCare Foundation.

MR. HALPERIN: Preston Halperin for Prospect Medical East and Prospect Medical Holdings.

MR. CAVANAGH: Joseph Cavanagh for Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, Prospect CharterCare RWMC.

MR. WAGNER: Dean Wagner on behalf of Prospect Holdings and Prospect East.

MS. DIETER: Christine Dieter on behalf of the interested non-party Rhode Island Foundation.

MS. ZURIER: Lauren Zurier on behalf of the Attorney General.

MS. LENZ: Maria Lenz also on behalf of the Office of Attorney General Interested Parties.

MR. LEDSHAM: Benjamin Ledsham on behalf of the Receiver.

MS. VIOLET: Arlene Violet on behalf of some 357 elderly participants.

MR. CALLACI: Chris Callaci on behalf of 400 participants in the UNAP, your Honor.

MR. FINE: Robert Fine for CharterCare Community Board, St. Joseph's Health Services of Rhode Island, and Roger Williams Hospital.

MR. BOYAJIAN: Steve Boyajian for the Angell Pension Group.

THE COURT: Okay. I would also just ask, although they may not be appearing for the proceeding before me, if there is any attorney that has entered in either the State or federal proceeding that has not identified themselves.

MR. MARZILLI: David Marzilli on behalf of the

Attorney General.

MR. HALPERIN: Your Honor, with me is Ekwan Rhow. We filed a motion for pro hac vice admission and that's probably just coming across your desk.

MR. SHEEHAN: No objection, your Honor.

MR. SENVILLE: Robert Senville, co-counsel to Arlene Violet on behalf of the pensioners.

THE COURT: Thank you.

MS. DOLAN: Lynne Dolan on behalf of CharterCare, LLC.

MR. BREQUET: Your Honor, Mr. Kasle asked me to say he has a conflict today.

THE COURT: Thank you very much. Before we get started, I am going to request if anyone is going to address the Court, address the Court from the lectern. This way we make sure our court reporter can get a clear record, and we will proceed forward in a moment with the petition of the Receiver. The Court has had the opportunity to review the extensive papers, objections, and replies filed by a number of parties in this case, but in order to limit some of this today, I would just like to ask a question that I believe from CharterCare Foundation it was in their brief whether any of the objecting Defendants have an objection to this Court approving the distribution of what was termed the initial

lump sum settlement, which is the $11,150,000 and the DOT escrow is less than $600,000. I just wanted to kind of start with that point so I have an understanding in terms of what is in dispute here.

MR. DENNINGTON: Your Honor, Andrew Dennington for CharterCare Foundation. No, and I think that we would be in a very different posture if that was the only interpreting sum.

THE COURT: The other objecting party was Prospect.

MR. HALPERIN: The Prospect entities do not object to that, your Honor.

THE COURT: And, again, I'm not reaching standing but I just want to know. The other objection was filed by the Attorney General's Office.

MS. ZURIER: We have no objection to the distribution of that asset, your Honor.

THE COURT: Okay. And I would assume the filings on behalf of the planned participants by Attorney Kasle, Attorney Violet, and, I believe, Attorney Callaci, you certainly don't have an objection.

MS. VIOLET: That is correct, your Honor. We have no objection.

MR. CALLACI: No objection, your Honor.

THE COURT: With that, I am going to ask the Receiver to proceed in a moment. I do want to indicate

to the parties after reading the papers there are certain issues the Court is particularly interested in, and the first is the standard that this Court should be applying in this case and if it is the Jeffrey's factors of the First Circuit, which Judge Silverstein had written about or another, what the underlying position is in terms of the factors, if any, that they either met or not met.

The second is, and this is really for the Receiver, what exactly is the Receiver asking the Court to approve? From reading the papers is it an approach that may be potentially litigated in certain steps along the way or to have this Court approve the settlement as a matter of law that the Receiver can proceed with all of those steps? And a subset to that is if it is just an approach, in what form and by what method? If someone contests something that they have standing for, where they envision that that would be heard.

The next issue does deal with standing is who, if any, of the objecting parties have standing to object to the proposed settlement. I saw two very different approaches from the Receiver and then CharterCare and one dealing with some of our Supreme Court case law of the standing inquiry, and then there was also advanced by CharterCare the party of interest under 11-1-9(b) of the bankruptcy code, which should be applied, or whether both

should be applied.

And then the final, and this really goes more towards the Prospect entities, is where the determination should be made in accordance with 23-27.14-35, known as the Court Approved Settlements, whether that determination should be made here or in the Federal Court litigation proceeding.

So that being said, I'm certainly going to allow, this is an important matter, all sides to take the appropriate time to go through whatever they want to reference in their papers. Counsel for the Receiver may proceed.

MR. DEL SESTO: Good morning, your Honor, Steven Del Sesto, the Receiver for the plan. Your Honor, I am going to be deferring time to Special Counsel for argument. Obviously, if your Honor has any questions, I am here to answer those and I reserve some time to respond, if I believe it's appropriate.

At the beginning of this hearing, your Honor, I want to just kind of cut to the conclusion, which is in my opinion the settlement is in the best interest of this plan, in the best interest of the participants. And, quite frankly, your Honor, to somewhat address the question your Honor asked of the parties a few minutes ago, even if the settlement did not include the

assignments that are included as part of that settlement, the infusion of $12 million in and of itself would warrant recommendation of the settlement. We have identified to the Court the difficulties and the problems associated with those assignments. We're well aware of them. We made the Court well aware of them. Even if we either choose not to pursue them or failed in our pursuit, the infusion of $12 million into this plan, I don't believe anybody in this room could argue that that is not in the best interest of the plan.

I just wanted to begin the hearing that way and advise the Court of my opinion as the Receiver after months of negotiations which resulted in the settlement that is before your Honor this morning.

THE COURT: Thank you. Why don't we turn it over to Special Counsel.

MR. WISTOW: Good morning, your Honor.

THE COURT: Good morning.

MR. WISTOW: And good morning to the other your Honor.

THE COURT: I apologize. Chief Judge Smith of the Federal Court is here with us as well today to observe.

MR. WISTOW: I've got to be on my toes to make sure I don't say something here and something else later in the Federal Court. The first thing I do want to clarify

before I get into the proposed procedure I would ask the Court to follow, when the Receiver says that he believes that the settlement, if it ultimately ended up as only $12 million would still be beneficial to the estate, we hardly agree with that. I believe, and it should be made clear, that what he's saying is the assignments of the various plans are valuable and would be a better result. If those are shot down later, we would still end up with a settlement that was okay, but we do want to pursue the assigned plans.

Having said that, your Honor, there is really two aspects to how we can address this. The procedure is not entirely clear in my mind I'm going to propose under, that is, to discuss first the general and overarching issues of standing, injury, what Court should address these various problems. And Mr. Sheehan is prepared to address that at length. I would propose that after that presentation that the Defendants respond on that issue and also set forth with specificity some of the arguments they are making on the merits. For example, Prospect CharterCare is saying that the settlement should not be approved because this would represent an illegal transfer of the 15 percent ownership interest in Prospect CharterCare, LLC. We are prepared to address that on the merits to show the Court that we believe as a matter of

law it is an appropriate assignment for reasons we could get into. However, our principle feeling is that those issues, who is right, who is wrong, really should be put off for another day, either before the Federal Court or perhaps even the Federal Court saying you're going to get these assignments as part of the settlement. Go try to enforce them in an appropriate form. That remains up in the air. But that is my proposal as I proceed this morning, and it would give us a good deal of guidance if you can tell us whether or not that methodology makes sense.

THE COURT: I'll allow you to take the issues that you want. That being said, even if the Court feels it can decide, for example, the standing issue as a matter of law, I am still going to allow them to make a record. But, certainly, I think how we can be best served before we even get to the standing and the objections is take us through the settlement and, as I said, what the settlement does or it doesn't do and why it's in the best interest of the estate.

MR. WISTOW: I'm going to defer to Mr. Sheehan. I was going to begin to speak, but when he jumped up, he sent me the signal.

THE COURT: Attorney Sheehan, please proceed.

MR. SHEEHAN: Good morning, your Honor.

THE COURT: Good morning.

MR. SHEEHAN: Mr. Wistow and I have a division of labor. I am going to address five points. The five points I'm going to address are first the standard applicable to the Court's review. Second, I'm going to explain what the settlement does. Third, I'm going to address why and how it's fair and reasonable to the receivership estate. Fourth, I'm going to address the argument that somehow the Receiver lacks authority, and the argument that the settlement is unlawful or collusive. Fifth, I'm going to address the point that the objecting parties lack standing.

Now, Mr. Wistow is going to go off on the fifth point and essentially proceed on the assumption that they do have standing and is going to address all of the merits. We're not going to overlap to the extent we can avoid it, your Honor. I apologize if any of that does occur.

The legal standard, as we pointed out in our memorandum, your Honor, there is no authority we're aware of that addresses the legal standard in the context of the settlement approvals by one court authorizing a Receiver to go to another court for settlement approval. So, your Honor, it really comes down to basic juris prudence between state court receivership proceedings and

Federal Court. We have cited your Honor to a District Court case, which in turn cites to a U.S. Supreme Court case in Princess -- something, something, something v. Something -- Lida of Thurn and Laxis v. Thompson, I believe it is. In any case, what they say as a matter of general law is that if a state court receivership is in existence and a particular asset has value to the receivership estate and the rights to that asset then are sought to be litigated in Federal Court, that the Federal Court will show deference to the state court that had initial jurisdiction over the property.

In this case, your Honor, obviously the Federal Court cannot completely abstain from addressing the issues because the case in Federal Court is a class action. Only the Federal Court on that class action can issue an approval. So what we have is what they call in conflicts of law, a decoupage. You have to cut it up a little bit. And what we propose, your Honor, the best way to cut it up and the one that causes no prejudice is that your Honor address whether the settlement is fair and reasonable in the interest of the receivership estate and stop there.

And the next step would be the Receiver, if your Honor approves the settlement, would go to Federal Court. In Federal Court the issues will be: First, is the

settlement appropriate as a settlement of a class action under the federal rules? Second, is the settlement a good faith settlement so as to trigger the benefits to both the Receiver and the settling Defendants of the special statute? And what those benefits are, your Honor, is that with respect to the Receiver the benefit is that it limits the non-settling parties to a credit based upon the amount paid by the settling party, which happens to be the majority rule in the United States, but in Rhode Island it's not the common rule. That's why a statute had to be past and the benefit to the settling Defendants is that it precludes contribution claims against them. So we explained a little bit further in our memorandum, your Honor, the perils of your Honor deciding issues and then our having to go to Federal Court and argue whether it encompasses what it encompasses exactly. This seems to be the cleanest way to proceed.

Now, with respect to the first point, is the settlement fair and reasonable for the legal standard, putting aside this issue in different courts, if we are going to proceed on the assumption that at least this Court is going to look at whether it's in the best interest of the receivership estate, the first point I would like to make is the Court is not being asked to

substitute the Court's judgment for the Receiver. And Judge Silverstein's case says that there are a lot of cases that say that. Judge Silverstein states that the court gives deference to the prudent business judgment of the Receiver. Now, the Receiver and Special Counsel have devoted thousands of hours to this case and for courts in receivership proceedings to function, judges can't spend thousands of hours on a particular case. So there is a benefit for the Court giving deference for the Receiver in terms of the administration of the receivership estate.

The next point I would like to make is the issue is whether the settlement as a whole is fair and reasonable. It's not whether each provision in the settlement itself is necessary or is required for the settlement to be fair and reasonable. It's whether the package that is presented as a whole is fair and reasonable. And there is a case I cited, your Honor, from the bankruptcy court in the Eastern District of Pennsylvania, In Re: Edwards, 228 B.R. 552, and there the Court said -- this is in the context of the bankruptcy, your Honor, where a Court has to approve a trustee settlement as your Honor has to approve a receiver settlement. There the Court said, "The Court's role is not to conduct a trial or a mini-trial, or to decide the merits of individual issues.

Rather, it is to determine whether the settlement as a whole is fair and equitable."

The next point, your Honor, is what is the settlement about? What are the elements of it?

THE COURT: Counsel, before you get to that, and I understand what you're saying about the general rule is the best interest. You addressed a little bit some of these prongs. If the Court was to say we're going to at least look for advisement for the Jeffrey's factors, can you just address that probability of success?

MR. SHEEHAN: Yes, your Honor. I intended to pick that up when I got to why this particular settlement is fair and reasonable.

THE COURT: If you're going to -- I just want to make sure you touch on it at some point.

MR. SHEEHAN: I am going to ask the Court to apply the standards that Judge Silverstein adopted from the First Circuit. The settlement involves primarily four asset recoveries. The first is cash, and there is a minimum, a base, in the settlement agreement for the cash that would be due upon the effective date of the settlement, which is, I believe, five days after the Federal Court approves the settlement, assuming the Federal Court approves the settlement. Now, that base is actually higher at this point. We heard from counsel for

the settling Defendants that he has additional cash. That number is close to $12 million at this point and may be in excess of that. And it is also more than 95 percent of the settling Defendants' operating funds.

THE COURT: So that sum does not include DLT?

MR. SHEEHAN: It at this point does not include the remaining 750 on the DLT. Mr. Land obtained a payment from some other source but that has not been released yet, your Honor. That 750 is still out there. But it's over 95 percent of the operating funds and that is important to evaluate the fairness of the settlement showing what is actually given up as a percentage of what could be obtained. We're getting well over 95 percent of their cash.

Now, the second element or aspect of the settlement is the assignment of CharterCare Community Board's right and Prospect CharterCare, and I call that CCCB or Community Board. And in the initial transaction Community Board received a 15 percent interest and Prospect CharterCare, LLC, that's the holding company that owns the two entities that have the licenses to run the hospital. In essence, the Community Board owns 15 percent of the two hospitals at that time in 2014. Now, in 2014 Prospect CharterCare valued that interest in its books at $15.9 million and it was a component and I don't

need to now go into what those components were, your Honor, because it is what it is. We know no reason today that number would have changed. On the other hand, we don't have access to the internal accounting financials that would answer the question what that present value is today. To some extent the value of that interest cannot be determined for purposes of this petition for settlement instructions.

Now, there is also the issue of restrictions on the Community Board's rights to sell that asset and Mr. Wistow is going to discuss that on the merits. But one point that needs to be addressed in this context of explaining what the settlement does is to point out the put option. There is an undertaking in the settlement agreement that Community Board on the effective date, which is June of 2019, five years from June of 2014, so about seven months from now we'll exercise the put option and essentially call upon its co-limited liability company or what we'd like to call joint venturer Prospect East to buy them out.

Now, one very important feature of this asset, your Honor, unlike what I'm about to discuss concerning the CharterCare Foundation is that if this settlement proceeds, the Receiver will be entitled -- the Receiver's right to collect on that asset is not dependent upon the

issues being litigated in the Federal Court. In other words, it doesn't matter whether there were fraudulent conveyances, et cetera, et cetera, et cetera, as alleged in the 23 counts in the current amended complaint in the Federal Court. It's a straight outright tried and transfer of a property, and so that gives a little more potential likelihood of recovery because we don't have to then go into Federal Court to prove our rights. There are problems that Mr. Wistow will address and Prospect CharterCare will address as to whether we get there in the first place, but I don't think anybody is going to say that our right to enforce is dependent on proving fraud. In other words, we could lose the entire Federal Court action and still get that asset.

The third asset in the settlement is the assignment of CharterCare Community Board, that is to say Community Board's interest in CC Foundation. Those also are difficult to value. At of the end of last year they had assets of over $8.7 million. They are charitable assets and the Receiver cannot and does not intend to simply take the charitable assets. What the Receiver does intend to do and has the right to do, and let me say has the present intent to do, reserving the right to essentially change his mind. Just so the Court knows, the direction the Receiver is proceeding, what the

Receiver is contemplating is if he's asserting his rights as the sole member in the Foundation, and Mr. Wistow is going to discuss the merits of that claim, but asserting his rights as the sole member of the Foundation to put the Foundation into judicial liquidation. That is an expressed provision in the bylaws and the judicial liquidation statute has a predicate for that. A member may put an entity into liquidation on a showing that the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent. So here we're tying into the merits of the Federal Court case on that one, and our argument will be they have no authority. And then there's a straight outright to simply have a dissolution continue under the supervision of the Court. So it may be we'll be entitled to proceed with liquidation without having to show fraud.

Now, the procedure in liquidation we have gone to in many contexts, your Honor. We take the position, once again, that there is a list of priorities of payments. First, in the case of judicial liquidation there is administrative expenses and payment to creditors. So that is how we will make that argument to try to recover that $8.7 million.

The fourth asset that is the subject of the settlement agreement is the Receiver hopes to obtain

recovery in liquidation proceedings of the settling Defendants. We want to put the Foundation into liquidation. The settling Defendants have agreed to go into liquidation in the settling agreement. And the reason they're going into liquidation rather than simply giving us everything they have is they have assets that cannot be immediately turned over. They're in reserve accounts and there are matters dealing with those reserve accounts that have to be resolved, such as the DLT reserve account. So the plan is to put these entities into judicial liquidation. Notice will be given to all parties, creditors, similarly in the CC Foundation case notice will be given to the Attorney General with respect to the charitable assets, and here the Receiver has reserved a right to assert his claims against the assets in liquidation.

Now, those assets are very difficult to value at this time. There is about $2 million tied up in reserve accounts. There is a dispute with Medicare, which they may end up getting money or may end up having to pay money, and there is a right to future income from charitable trusts which is in perpetuity, your Honor, which is a very valuable right. In other words, these outside trusts are pouring cash into this entity in perpetuity. That is what the settlement is, your Honor,

those four key asset recoveries. There is a lot more to it, but I think for purposes of understanding the mechanics of the money I think that is a pretty good start.

Now, why is the settlement fair and reasonable? That analysis is based on a comparison of the value of the settlement to the value of the claims being settled and that is the education partnership overarching standard and then the Court sets forth the four factors - probability of success, likelihood of difficulties in collection, complexity, delay of the litigation, and, fourth, the paramount interest of the creditors. Applying those factors to this settlement, the settling Defendants are basically turning over the vast bulk of their assets in going into liquidation where the Receiver can claim what is left.

Given that, because they're turning over their limited assets, this settlement would be fair and reasonable even if the Receiver had a hundred percent probability of success on the merits, had stipulated damages of $125 million. Because as one of the factors points out, the likelihood of difficulties in collection, you can't get blood from a stone. All you can get is what the settling Defendants have. This is the rare case in which it is guaranteed, your Honor, that there would

be less to recover at the end of the day even if the Receiver prevails on all claims against the settling Defendants, then the Receiver is accepting the settlement now. It's just guaranteed, rock-solid guaranteed.

And the reason for that, your Honor, is between here and there is the determination of the merits of the Receiver's claims. They are entitled to full discovery. Summary judgment is unusual. Trial probably will be required. You have to consider the possibility of an appeal, so when the time comes to have an enforceable judgment with many millions of dollars in defense costs later. Thus, it's guaranteed that the Receiver will collect much less then than he gets now under the settlement, even if we have a hundred percent probability of success, but we don't have a hundred percent probability of success. Litigation is not ever a hundred percent and we have a lot to prove.

Now, in weighing whether the settlement is fair and reasonable to the receivership estate, you have to consider what is the impact of not accepting a settlement on the receivership estate. This is the impact: If we go forward and lose against the settling Defendants, we get zero. If we go forward and lose against the other Defendants as well, not only do we get zero, we lost the only chance to get a recovery for the receivership estate

through this settlement. Now, if we win, as I said, your Honor, we get much less.

So, your Honor, I really do think the issue of whether this is fair and reasonable is almost indisputable. And in reading the papers carefully from the objecting parties, I don't hear anyone claiming that the economics of the receivership estate is not sufficiently favorable to the receivership estate to execute a fair and reasonable settlement.

THE COURT: On the expense issue, it's your understanding that the defense costs with respect to the claim would be coming out of this or just a portion of the initial lump sum?

MR. SHEEHAN: We understand, your Honor, and Mr. Conn, if he wishes, can address this. I hope I'm not -- because your Honor asked, we understand they have a D & O policy, but it's a waste in policy and they're already 25 percent into it or more. Your Honor, we have experience in the 38 Studio cases with wasting policies of $10 million --

THE COURT: I'm talking about the settling Defendants.

MR. SHEEHAN: Oh, I'm not aware of their having any.

THE COURT: I guess my question is in terms of expense if those litigations continue --

MR. SHEEHAN: I misspoke.

THE COURT: It would be, as we talk about in insurance, a cannibalization on the part of the policy.

MR. SHEEHAN: I believe that is the case, your Honor. I am not aware that any claim has been filed against any insurer that has the defense obligations by the settling Defendants, and I believe that is the case that it would just be a cannibalizing of the actual estate.

Now, the fourth point, does the settlement exceed the Receiver's authority? And Prospect East makes the argument that what Mr. Del Sesto should have done is come to the Court with notice to all parties and say there is a settlement I'm thinking about doing, here is some of the terms we tentatively talked about, and will you approve this, your Honor, and that will give Prospect the opportunity to come in and argue why some of those individual terms should not be included.

Well, this is litigation, you Honor, and settlement is hard to reach in open court with a big discussion of all different parties with different interests coming in and trying to decide what's fair to everybody. And, your Honor, we would ask in that context to approve a morphs thing. The Court would not even know what settlement it was instructing the Receiver to proceed with because

until you have a binding agreement, you don't know what the agreement is. So instead of following Prospect's suggestion, the Receiver executed a settlement agreement that's binding on the Receiver, that's binding on the settling Defendants subject to Court approval leaving full power in this Court and in the Federal Court with the argument that that somehow exceeds the Receiver's authority as a matter of logic is absurd, and it's also contrary to the order appointing the Receiver, which gives him the express authority to compromise claims.

THE COURT: Can you explain to me, and I understand your logic, what about the filing of the UCC?

MR. SHEEHAN: The filing of the UCC is the ability to preserve the status quo pending this Court's determination. That's all it is. The signing of the settlement agreement is preserving the status quo pending the Court's determination. The settlement agreement preserves the status quo inter se between the parties. The security agreement preserves the status quo as to the world outside who may seek to come and gobble up the assets if they're committed to the settlement. It is in no way a recovery and it goes away automatically if the settlement is not approved.

And, by the way, your Honor, one could argue that security interest is redundant. It's redundant because

the Court issued an order enjoining any proceeding against assets that are part of the receivership estate, and that order might prevent any creditor from seeking to attach the assets of the settling Defendants now that they are tied into the settling agreement.

THE COURT: It sounds like that's an issue we're going to deal with next week.

MR. SHEEHAN: Right. Now, one point to make before I move on, your Honor, with the argument that the Receiver is exceeding his authority, what Prospect really wanted to do is blow up the settlement, and nothing shows that better by their, after the filing of the petition for receivership and the petition for settlement instructions, filing the petition for declaratory order with the Attorney General and we filed our motion to adjudge them in contempt. What they're asking you to do is after the fact invalidate the settlement agreement. One can only imagine what pressure they would have brought to bear had they been given an opportunity to interfere before the settlement agreement became binding as an asset of the receivership estate. That disposes, I believe, of the argument that the Receiver lacked authority.

The next argument is that the Court should not enforce the settlement because it's unlawful, and what

they focus on then is it may not be enforceable in the sense that the assignments may not be enforceable or the rights that the Receiver purports to have the right to exercise upon receiving the assignment are not proper rights. That is not what the courts mean when it says the courts won't approve unlawful settlements. All of the cases we explained to your Honor in detail, which had language generally to that effect, dealt with settlements that were per se unlawful. The cleanest one was where the Court said what we have here is a settlement with a witness to share the recovery with the witness on a claim where the witness' testimony is essential, which the Court said violates federal law in paying something of value for testimony. It's a crime. So the very agreement itself was a crime.

We're not talking about that here at all. Instead, we're talking about the bread and butter, the run of the mill kind of claims that are brought in litigation all of the time. Claims that may be disputed, that may be uncertain, but cannot be characterized as unlawful. And to suggest that the Receiver cannot accept claims when there is an argument as to the validity of the claims, when the argument is the validity of the assignment cripples the Receiver in a way no other contracting party, no other settling party, no other litigant is

crippled. It really is a silly argument and the proof of that is they found not a single case that deals with that kind of analysis.

To the contrary, we cited your Honor to the bankruptcy court case from Connecticut, which really shows in many ways a strong analogy here. There the bankruptcy trustee had assigned the debtor's legal malpractice claim to a creditor and the creditor was going to pursue that claim and share the recovery with the trustees. Now, there was an issue. I believe the law of Arizona actually applies, even though it was in Connecticut, and there was an issue as to whether under the law of Arizona you could assign legal malpractice claims. The Federal Court approved the settlement noting there is an issue as to whether or not this assignment is enforceable. You go find out, I'm going to retain jurisdiction, and if it turns out it's not enforceable we will deal with that later. That's the In Re: SE Techs case, which is cited in our memorandum, T-E-C-H-S.

Now, so the argument that it's unlawful just really, really takes uncertain and doubtful claims and makes them unlawful. In which case we would be suing for abuse of process all over the place, your Honor, every time you lost a case. On the collusion point, the reason that

Prospect East argues that the settlement is collusive is because it disadvantages Prospect East. And when I get to the standing argument, I am going to address why that is insufficient to give standing, why it does not constitute plain legal prejudice, which is the standard. And you can't come in through the back door and make the argument under the guides of collusion that you're prevented from making as an effect on your legal interest, as we will get to, to give standing.

But in any event, the collusion that exists here is all to the benefit of the receivership estate. In other words, I'm using collusion non-judgmentally to mean an agreement between the settling Defendants and the Receiver in which the Receiver demands as part of the settlement that the settling Defendants do certain things to damage or improve the Receiver's tactical position against third parties. That is what settlements often do.

And the best case on that point, your Honor, and just coming right out and saying that is the Quad/Graphics case from the Seventh Circuit in which the Court held that the Receiver has the right to use a settlement to gain tactical advantages over non-settling Defendants and pointed out from any settlement some disadvantage to the remaining Defendants is bound to

occur and may, in fact, be the motivation behind the settlement. There is nothing wrong with me settling with party A to improve my claim against party B.

Now, your Honor, we come to issue of standing and the objectors lack standing for several reasons, and I'm going to get into all of them. But before I do, I would really like to address why it matters, whether these issues are decided now or later, and the answer to that question is it depends. If you're the settling Defendants it matters very little. There is some inconvenience and some delay. If you're the receivership estate, it's the end of the world potentially. And the reason I say that, your Honor, with respect to it matters very little to the objecting parties, is that their objections are going to be the same when the Receiver in an adversary proceeding asserts the claims based on the rights the Receiver purports to have than they have now. They are going to have the same objections. The Court is not giving its imprimatur and we're not asking -- as the Court asked at the outset, we're not asking for the Court to rule as a matter of law that these rights are enforceable, et cetera. To the contrary, we would think that would be inappropriate, your Honor, because this is right now pre-assertion of a dispute on those rights. It's not ripe to make that determination.

THE COURT: So tell me a little about what you envision in terms of an adversary proceeding where, not here, but at some point the parties will have the opportunity if they have standing there to assert certain rights.

MR. SHEEHAN: There are several ways, your Honor. We are contemplating bringing what is called a usurpation action against CC Foundation to essentially throw out a claim usurping individuals, usurping the power of the board. We intend to put CC Foundation into a judicial liquidation, and in that context our claim to be a sole member would be adjudicated.

With respect to the 15 percent interest in Prospect CharterCare, we intend to demand that Prospect CharterCare pay over the value of the 15 percent in connection with the exercise of the foot and if they don't we're going to sue them. All of this is going to go into court and what is more, your Honor, it's going to go into the court proceeding that is already started where these very assets are already tied up. We are already asserting claims in the Federal Court litigation to all of the assets of Prospect CharterCare. We're claiming they received them in a fraudulent transfer. If we get all of those assets, Community Board's 15 percent interest in Prospect CharterCare is a stock certificate

you can tape on the wall. It is worthless because there are no assets.

We are asserting in the Federal Court that the $8.2 million should not have gone to CC Foundation in the first place. That it's a fraudulent transfer and should have gone to the debtors under the dissolution and liquidation statutes. Once we prevail on that theory, if we do, a membership interest in CC Foundation is another certificate one could tape on the wall that has no other value because there is nothing left.

THE COURT: What about before we get there, the settlement agreement talks about immediately assigning certain rights.

MR. SHEEHAN: Absolutely.

THE COURT: So does that just occur and for other parties to contest it if they receive notice of it?

MR. SHEEHAN: They can. I mean we will give notice of the assignment. In fact, the settlement agreement expressly requires notice of assignment to be given. If they feel at that point they want to try to litigate the the validity of the assignment in the context of the mere existence of the assignment before any rights have been asserted, they can try. We will argue again that it's premature until we're asserting any rights based on the assignment but they can take a different position.

THE COURT: When you're saying they, I assume you're referring to CharterCare Foundation and Prospect. According to the A.G.'s objection they may have an issue with respect to that.

MR. SHEEHAN: The A.G. has standing with respect to any charitable assets and certainly would have the right to participate in the liquidation proceeding against the Foundation and the A.G. would contend that these assets cannot be used to pay the claims of the plan because they are charitable assets and that is already in the court proceeding where the issues have been identified, the roles of the parties are clear, in essence, where the question is ripe.

Now, so we believe, your Honor, that postponing that determination has very little impact on the objecting parties, but it has horrible impact on the receivership estate if those issues are decided now or before Judge Smith in the Federal Court. And the reason is that all of the objectors have taken the position that if this Court or if -- well, they haven't addressed Judge Smith's court yet. If this Court concludes that these assignment provisions are improper, that the Court has to reject the entire settlement. And we do not adopt that argument now, but we have to say that there is case law that very strongly supports that position and the reason is that a

settlement agreement is a contract. The Court typically cannot rewrite a party's contract for them.

There is a case from the Western District of Arkansas, In Re: Living Hope Southwest Medical Services, involving the Court's approval of a trustee's recommended settlement where the Court said a compromise or settlement is by definition a negotiated consensual agreement. A bankruptcy court cannot rewrite the agreement and by doing so approve terms that is different from those to which the parties agree. A bankruptcy court must, "accept or reject the settlement as presented." And that is clearly the law in the Federal Court, your Honor, in connection with class actions. There is dozens of cases that say that.

What that means, your Honor, is that the $12 million that my brothers and sisters are now saying they have no objection to being distributed, there is no obligation on the part of the settling Defendants to pay the $12 million. It's very easy for them to say that, but there is no contractual obligation or duty on behalf of the three settling Defendants to do that if the Court rejects the settlement.

And I would like to contrast, your Honor, to the context in which the Receiver asserts rights in an adversary proceeding having already obtained the $12

million if it's determined in the adversary proceeding that my brothers are correct, that these assignments are invalid, the consequence then is not that the settlement is invalid. The consequence then is that this attempt by the Receiver to collect assets fails against those individuals, but the Receiver keeps the benefits of the settlement.

So, in essence, what one is weighing, your Honor, in weighing the decision to address the merits of these objections now or in an adversary proceeding, one is weighing the inconvenience to the objecting party of the delay. Again, the loss is $12 million that no one disputes the receivership estate should obtain. It's not as if there is an argument about whether they should get the $12 million. It's just an unfortunate consequence of the rule that a court in approving or disapproving a settlement has to go up or down. The Court can't rewrite a contract. The way to get around that unfortunate unintended consequence and save the receivership estate from gross, horrible prejudice, assuming my brothers are right in their objections, is to determine it in an adversary proceeding. To determine it now is just a willful injury to the receivership estate for no purpose other than inconvenience of delay.

When one considers inconvenience of delay, my

brothers and sisters in the receivership estate are going to be litigating many issues possibly for many years in the Federal Court regardless of this particular settlement agreement, and we're going to be litigating issues involving the very assets. They're not going to be able to, even if this Court were to accept their arguments now as to the validity of the assignments, they're not going to free the assets up. They are already the subject of claims in the Federal Court. So their inconvenience, I'm not sure if there is any.

THE COURT: Counsel, you wouldn't disagree that if the Court were to hypothetically authorize to enter into the settlement agreement, that the Court separately could impose certain conditions on the Receiver, notice and other things they need to do in connection with going forward?

MR. SHEEHAN: Not only could the Court do that, your Honor, we would welcome that. We have no desire to act here in the dark of the night. Really some of these statements in the opposition memorandum sort of apply to suppliers not Receivers.

THE COURT: One of the primary issues is the objections, and we'll deal with this later, are they premature?

MR. SHEEHAN: I'm going to get to that now, your

Honor. As a prefatory to that, I want to explain what is at stake on the prematurity argument. Now, we can get to the merits of the prematurity argument. They're premature, your Honor, because at this point regardless of what the Court rules in terms of this settlement, it causes no injury to the objectors and that is because all the Receiver is going to do is go to another court. The Receiver is not going to take any actions on the settlement other than go to another court, and, therefore, the objectors are not going to be in any worse position then than they are now.

Now, that's assuming that their objections have merit. Obviously, if they're objections have no merit, then they are not suffering any injury by postponing the determinations of labor. Even if they do have merit, they suffer no injury. Then they actually suffer no injury until an adversary proceeding is done, until rights are exerted and that is key, your Honor. It really is important to get past the settlement stage between these two courts before those rights are adjudicated.

Now, the next point, your Honor, prematurity is certainly an element of standing. There are standing arguments that stand on their own rights, and the first is that their objections are not justiciable. That's an

issue of basic requirement. No court can decide an issue unless it's justiciable.

THE COURT: Your firm spent a lot of time on Watson v. Fox, which our Supreme Court interpreted in detail.

MR. SHEEHAN: Now, justiciability has two elements - a party has to have standing and a party has to have a legal hypothesis that would entitle the plaintiffs to real and articulable relief. We focus on here with respect to justiciability is the lack of standing. For purposes of justiciability, standing is defined. It means that the objectors must have an injury in fact and an injury in fact is defined as an invasion of a legally protected interest which is concrete and particularized and actual or imminent, not conjectural or hypothetical. That is a paraphrase of the Warwick Sewer case from 2012. They have no invasion of a legally protected interest by virtue of the granting of the settlement if your Honor limits its ruling to whether or not it's in the best interest of the receivership estate, or if Judge Smith approves the settlement without ruling on the merits of these objections. So the issue is not justiciable at this time.

The second reason they have no standing, your Honor, is because there is a separate stricter standing requirement that goes beyond justiciability that is

applied in the context of petitions to approve settlements. And that standard, your Honor, is that non-settling parties have no standing to object until the settlement causes them plain legal prejudice, and we have cited a number of cases for that proposition, your Honor, none of which, I believe, have been disputed. And the reason it's a stricter standard than mere justiciability, your Honor, is the rule advances the policy of encouraging the voluntary settlement of lawsuits. There is a case out of the Second Circuit, 2014, that makes that point. It's called Bhatia v. Piedrahita, 756 F.3d 211. The cases establish that plain legal prejudice is a strict standard. It does not include mere injury in fact. It does not include tactical disadvantage from a settlement. It does not include that the settlement makes a second-like lawsuit likely or certain. That is the Quad/Graphics case again, your Honor.

So the fact that this settlement is going to potentially spin into additional lawsuits does not give standing to the objecting party as a matter of law. It does not constitute plain legal prejudice. Your Honor, the overall position for which we are advocating that these issues be decided in the context of the adversarial proceeding -- actually, although there is no specific

authority involving settlements, other than the case to which I referred your Honor from Connecticut that we are aware of, the general rule is that parties are not allowed to litigate a trustee or Receiver's claims against them until those claims are asserted.

And we cited a number of cases, four or five to that effect, but the clearest case is In Re: Hartley, 36 B.R. 594, where punitive debtors of the bankruptcy estate went into court for an injunction to enjoin the trustee from suing them on claims. The trustee was asking for authority to make those claims and they came in and said don't give them the authority and they raised the point that don't give them the authority because the claims lacked merit. Very analogous to what we have here, your Honor. And what the Court said is that the merits of the trustee's claims, if any, against the third party should be determined in whatever form the trustee initiates in his claim and should not be preempted by this Court. The Court should not and will not rule on the merits of the trustee's claim, if any, other than in an appropriate adversary proceeding initiated on the claim, and the benefits of that are clear, your Honor. It ensures a concrete dispute.

For example, your Honor, Mr. Del Sesto pointed out at the outset that this settlement is valid even if after

the settlement is approved, assuming it is approved, the Receiver chooses not to proceed on any of these assigned claims. Well, in that case this whole argument about whether those assigned claims are valid is moot. So the Court really is being asked to rule before the Receiver has committed himself to even asserting those claims. Courts don't do that for a reason, your Honor, because otherwise people would be coming to court every time we have a question. That's not what courts are about. Courts are about adjudicating concrete disputes, and that's why trustees are entitled to bring the claim. One could imagine if in receivership proceedings the merits are being litigated about all the claims the Receiver is going to assert. That is the pre-bite at the apple we mentioned in our memo. He comes in and says the claims are meritless, loses, and then when the Receiver asserts the claim, makes the same argument again.

Finally, your Honor, at the end of the day it's clear the objectors have absolutely no interest in benefitting the receivership estate. They have their own interests but they're not the interests of the Receiver. They are adversaries. They are in litigation with the Receiver. What is much more important, your Honor, to our application for the petition for settlement instructions is the support from the hundreds of plan

participants, your Honor, represented by Attorney Kasle, Violet, Callaci, and the many other individuals who don't have the benefit of an attorney at this time and who will benefit from the settlement.

THE COURT: Counsel, when you talked about standing, again we have a few objections. Do you have a position in terms of whether the Attorney General has standing at this point?

MR. SHEEHAN: I agree that the Attorney General -- well, your Honor, no, the Attorney General does not have standing, absolutely does not. And the reason the Attorney General does not is there is nothing happening to charitable assets now. There is just the adjudication of the right of a member of a charitable corporation. We are a long way from getting near those assets. Every dispute in a nonprofit corporation between the members does not involve the Attorney General coming in and coming up to a decision as to what the bylaws provide or don't provide and who gets the vote and when. It's only when the corporation gets around to doing something with charitable assets. That's the trigger and that trigger is just as we're not doing anything with the 15 percent interest in Prospect CharterCare. We're not doing anything with those charitable assets, so absolutely zero standing to the Attorney General now, just as much, if

not more, than the other objecting parties.

THE COURT: For example, talking about Prospect, if the Receiver down the road was to take the position that they could, either through the put option or through some assignment, and the Attorney General, it's in their papers, Prospect has it in their papers, that somehow this transfer is a violation of the Hospital Conversion Act, are you saying that at some point they have the ability to take that position?

MR. SHEEHAN: Your Honor has just posed a hypothetical to me and --

THE COURT: What I'm trying to do is kind of key off and maybe it will become clearer when Prospect goes through some of the issues.

MR. SHEEHAN: I just want to emphasize they haven't made that argument, as your Honor has pointed out.

THE COURT: The Attorney General has not.

MR. SHEEHAN: And were they to make that argument now, the answer again would be that until the settlement is approved, we don't even have the right to obtain that 15 percent interest, and so it's premature until this court acts and until Judge Smith's court acts. It's premature because, for example, should Judge Smith disapprove the settlement, the Attorney General has nothing to complain about. So one doesn't get to

disputes that may never arise.

THE COURT: Thank you. Attorney Wistow, did you have something to add?

MR. WISTOW: I'm sorry.

THE COURT: When you came up initially, I thought you said Attorney Sheehan would speak and I didn't know if you had something further.

MR. WISTOW: I am hoping the procedure we follow is that now the Defendants speak and then I respond to that.

THE COURT: That's fine. In terms of the objections that the Court received, we are going to move on next to the CharterCare Foundation. Good morning.

MR. DENNINGTON: Good morning, your Honor. Andrew Dennington for CharterCare Foundation. And on behalf of CharterCare Foundation our request is that this Court expressly disapprove of the settlement, even in the limited form of approval that the Receiver is inviting the Court to undertake. I understand that the Receiver has basically put out an invitation that the Court should limit its review simply to whether the settlement is in the best interest of the planned participants. Stated plainly, whether it's a proverbial good deal for the debtors, and, basically, set aside all other issues to be dealt with at the Federal Court stage. And we have a very different opinion because I think you cannot set

aside the legality issue.

First, I would like to address the standing argument and after I address standing, I will address our specific grounds for objecting to the settlement on the grounds that it violates Rhode Island law and public policy and at the end I would like to wrap up my comments. And also in my argument I have a comment about the prejudice that would occur to CharterCare Foundation if we basically kick the can down the road on the legality question one more time.

So I would suggest that in a case like this where there is hundreds of pages of paper and there is a seeming perception that we strongly Court on every single point, that it's useful for the Court to pick out a couple of points where there is actually some conversion between the arguments made by CharterCare Foundation and the Receiver. Those can be used as kind of a focal point to help build to get to a fair and just outcome. I thought it was very significant that both the Receiver and CharterCare Foundation agree that in the absence of any applicable Rhode Island state court law regarding how a judge in your position should handle a petition for approval of a settlement in a receivership action that we turn to the bankruptcy code and federal case law interpreting. That's one thing we agree on.

As we laid out at pages 10 through 12 of our objection, we think it's clear under federal bankruptcy law the standing issue turns on whether one is a party in interest. I think what they are raising here is a separate prudential standing.

THE COURT: I guess, counsel, I think the Court's concern is our Supreme Court in the Reynolds case said, look, we have no state law on the issues, no precedent, and as far as priority creditor claims we're going to look to the bankruptcy code. And over time Judge Silverstein himself said, yes, we're going to look to the bankruptcy law. I guess my question is, and I understand the part of the interest standard, but what about the fact that we do have very specific precedent dealing with the standing issue from the Rhode Island Supreme Court. Does the Court have the ability to say I'm going to disregard that and I'm going to go under the bankruptcy code under 919 or whatever section and look at the party of interest standard. So it's which the Court would be applying and that's what I'm wrestling with.

MR. DENNINGTON: I think you do have to apply both. There is a threshold justiciability prudential standing doctrine and then there is the injury in fact standing to object to settlement. It's also true in the Federal Court. There is an Article 3 prudential standing. I was

looking for a specific case that I was trying to get my hands on that would help me here. It's the Congregation Jeshuat Israel case. It's a trial court decision. There is an excellent quote basically getting at the heart of the standard doctrine is to prevent mere kibitzers from coming up and interest group seekers from going about issues. If, for example, a private interest group, like the Philanthropy Roundtable, which would have members to protect charitable assets, was to be here making an argument, maybe there is an issue there. Here, is there injury in fact to us from this proposed settlement? Basically what they are asking you to do is to give CharterCare Community Board a gun to shoot CharterCare Foundation, and the issue is I don't think --

THE COURT: Counsel, if what you're saying is if I accept party in interest, it's still a two step and there is plenty of case law on that. How does CharterCare Foundation meet that injury fact at this stage of the proceeding if we need to get there before you get to the party in interest?

MR. DENNINGTON: Sure. And in answer to that question I would like to emphasize how CharterCare Foundation has a pretty unique position as opposed to the other three groups of defendants, which are the Diocesan defendants, the Prospect entities, and the old Heritage

Hospitals/CCCB.

Now, it was not really in response to a question but Mr. Sheehan did hint at the fact that CharterCare Foundation has very limited resources, and the ultimate question in this case is: Is what we are doing legal or not legal? We are in the business of administering charitable trust assets in a manner, which is in accordance with the original donor's intent as inconsistent with your Honor's April 20, 2015, order. For many of the same reasons that we had standing to object to the attempt to vacate or we will have the standing to vacate that order, we likewise have standing to object to the proposed settlement.

I mean just to call a spade a spade, this is the settlement agreement. The ultimate object of which is to take the charitable trust documents and to use them for a purpose which is not consistent with the donor's intent. That's the ultimate issue. And I think the Court should be sensitive to the fact that many times standing is an attempt to kind of defer or deflect attention from a substantive issue, which here is that ultimate question - is this legal or is this not? Going back to the analogy about the gun, I don't think we have to wait until the gun is literally in the face of our client to say now we have a injury in fact. We all know where this is going,

and I am going to answer your question but I do want to bring the Court's attention at the appropriate point to the In Re: Telcar case.

THE COURT: Can you point me to a case? I guess what you're saying is we all know it's coming, therefore, we should be allowed to get involved now and not in an adversarial position.

MR. DENNINGTON: Yes, sir.

THE COURT: Not with respect to the party in interest, but with respect to the standing issue, with respect to the the state law standing issue. I read the party in interest case and, yes, it has been interpreted, even though it talks about trustee and creditor, it uses the word excluding. The courts have gone and expanded that. I'm more concerned with what you're saying it's a two-step process.

MR. DENNINGTON: I think they are very related concepts so I'm going to answer your question and then I'm going to go back to the In Re: Telcar case. As I was saying, we are different. I think the prejudice and the injury that CharterCare Foundation suffers from this two-step, three-step process, don't worry, we're not going to litigate the ultimate entitlement to these funds until Judge Smith sees it.

There is also a suggestion in their papers that they

intend to argue that even if you were to limit their review and preserve our objection to make the legality objection in Federal Court, they would still say we still don't have an injury in fact, we still don't have standing. We are unique in that we suffer real harm from the ride itself, from the litigation. Okay.

Mr. Sheehan made reference to, you know, the circumstances that drive the defense of CharterCare Foundation. Remember, we are not a non-profit entity. We're a charitable trust to administer that donor intent, one full-time employee. So you can put us out of business with a decision which says the funds you got in 2015 never should have came to you. You know, it is okay to take charitable trust assets and use them in a way that is not in accordance with your intent or you can also put CharterCare Foundation out of business through a long litigation process. That would be bad because if the Court truly feels that it's the law that charitable trust assets may be not be used in a manner inconsistent with donor intent, then we don't want to have a process that unintentionally puts CharterCare Foundation out of business because every opportunity you'd want to get to the heart of the matter. The Receiver has a litigation strategy of saying we'll do it six months from now, we will do it six months from now.

This is an interesting point. This was my conclusion but I'll cover it now. Why is everyone here? Why are so many people here? It's to get the $12 million. We don't have a problem with that. Okay. We want that to move expeditiously, but the Receiver created the situation that we're in right now, which is bundling up the settlement with all these other more extensive provisions. You can't reasonably expect we're going to stand by seeing a settlement, which is going to deliver a death war and say nothing about it. Okay. We're going to vigorously present our argument here.

Now, in the In Re: Telcar Group case, I have brought copies of it.

THE COURT: I've actually read it.

MR. DENNINGTON: Wonderful. Okay. That is significant, you know, identifying areas where we tend to agree. There is a suggestion that we both recognize that is an important case. It's a federal bankruptcy case in which a punitive debtor of a debtor, that's the majority term to refer to us, successfully convinced the bankruptcy judge to disapprove a settlement because it was against public policy. Mr. Sheehan's description of the fact was not entirely accurate. He said the holding of the case was the judge found the contract was illegal. Actually, the judge said, there was a criminal statute at

issue, "Whether it is actually criminal conduct is not for the Court to now decide. Rather, the Court must consider the effect of the settlement and no matter how the issue is parsed, the reimbursement to Mignone is tied to success in the litigation against the Levey entities."

In other words, call a spade a spade. The ultimate object to this is to have an arrangement where one guy gets the money in exchange for testifying in a case. That's wrong. Our analogy here is we're a punitive debtor of a debtor and the ultimate object of this case is to take all of our charitable trust assets and give them to the Receiver which violates the charitable trust act in Rhode Island common law.

So I think your Honor's question was more about credential standing. Again, the In Re: Telcar Group case doesn't discuss this, but that could be either of two ways. The judge overlooked it, all the parties in the case overlooked it, or that we were so clear that standing was present that the Court elected to let that punitive debtor be heard.

So if you'd like I can move on to the more substantive issues.

THE COURT: Please.

MR. DENNINGTON: This is an admittedly extreme hypothetical, okay, but I just make it to try to

illustrate a point here. What if instead of a settlement term, which says CharterCare Community Board feels it's under threat, wants to get out of the case, the Receiver is demanding all their money, they want something more, instead of throwing in this punitive claim for CharterCare Foundation, they said we will cooperate with you in robbing a bank. We'll cooperate with you. We have this related entity. We think they can pick their pockets. We'll help you do it. That was the settlement that came to the Court. It's an extreme example. But would your Honor say it's in the best interest of the planned participants and it's not this Court's role to get into questions of the legality? We'll just kick the can down the road. I don't think you can do that.

And I think the key quote from the In Re: Telcar Group case that handles both the legality issue and the standing issue is that, "Although it has been urged that the Court need not entertain the objections of the non-creditor parties," comma, and I put parties in bold, "the Court is obliged to consider the public policy implications of the settlement, whether or not the issue is raised at all, much less by a non-party." In other words, it doesn't even really matter if there is someone that actually is following the law and says this is wrong. The Court has its own obligation to do that.

THE COURT: What exactly is the court saying is law? I understand based on what your brother counsel said that there may be a dispute whether or not the Receiver can take the interest, then there may be a dispute if there is an interest whether there was some type of waiver argument, that the language counsel used in a prior proceeding, and, ultimately, if all that happens and there is a board that is appointed, there may be an issue in terms of kind of the $8 million question, which is what happens to charitable assets that may have a specific donor intent with respect to the creditors? Aren't we allowed to step away from -- what if the Court should decide all that now and say this is illegal and shouldn't be allowed to do anything?

MR. DENNINGTON: Yes.

THE COURT: Okay.

MR. DENNINGTON: For example, and I can analogize to the In Re: Telcar case. Similarly here, the approval was to green light another proceeding, an adversary proceeding. I think if special counsel was appearing and was the one responding to the proposed settlement in that case, they would make the argument this is premature. Judge, you should defer this because there is going to be an adversary proceeding. Mignone will be called to testify. At that point you should wait to determine

whether -- that is the proceeding that is referenced in 18 U.S.C. 201. That is when we determine whether or not that is legal and I think it certainly supports our position. That's why I'm stressing it so much. The judge did not go through all those semantics, didn't parse the issues in that way. Again, I keep emphasizing --

THE COURT: So in other words, I should, within the receivership proceeding, create an adversary proceeding or a trial to make a determination because I can't do it without hearing from the sides. I can't just say the settlement agreement as a matter of law. You may say I could. I haven't looked at the settlement. But I should hear that and conduct that process before the Court approves this to go on to the next step.

MR. DENNINGTON: I'm not suggesting that.

THE COURT: Okay.

MR. DENNINGTON: Because I don't think you need -- this is an issue which can be determined, the legality issue -- we have no law. I don't think we need -- we don't have too many real -- there is not a factual dispute that the assets that CharterCare Foundation are restricted charitable trust assets. I point the Court to the case law suggesting why those may not be diverted and used in a manner not consistent with the donor's intent.

I don't think you need to have a whole trial.

THE COURT: Okay. Assume we get to the end and there is a determination that those restricted assets that can't be transferred, would the Receiver have the ability to, if they can, take on the interest to then replace the board, and I know there is an issue in terms of who the board members may be, and they may say, look, we don't need an administrator who is going to take assets out. We want to do it in a different way. Even if we can't do anything with that $8.2 million, there is still things we want to do. Is there a determination that has to be made that the interest is transferable to the Receiver and can the Receiver as the sole owner replace the board? Otherwise, I set you free and say we don't have a shareholder anymore or a member. It's the board and whoever else so just go ahead.

MR. DENNINGTON: Your Honor, under the Rhode Island Contract Corporation Statute, a Rhode Island nonprofit corporation may have one or more members or no members.

THE COURT: I understand that. Right now at least the settling Defendants, I understand they may have a dispute.

MR. DENNINGTON: There is a dispute. We're definitely not going to be getting into today.

THE COURT: You're asking me not today, but before I

go through this to make my way through, you know, all those issues.

MR. DENNINGTON: Well, I mean if your Honor is inclined to -- we feel quite strongly but --

THE COURT: And I read all the alternatives in your papers.

MR. DENNINGTON: Okay. So here is what I would suggest. In one of the questions you posed to Mr. Sheehan, you said the Court can impose certain conditions, just notify them. We know that it's going to happen. That would be about the time we should then jump up and file more papers and object to it. As I said, okay, that path seems to be the path of unintentional giving up of restrictive charitable assets because it leads to the death of CharterCare Foundation through prolonged litigation instead of a carefully considered judicial decision, but I think that is not a meaningful condition.

A better condition would be -- the Rhode Island Attorney General is a necessary party to this question. You can impose a condition that says, you know, that portion of the settlement is only approved upon the express condition that the Rhode Island Attorney General approves it. That was a condition that was in the HCA decision. That was a predicate to any transferred

charitable trust assets and/or that provision of the settlement agreement is conditioned upon some type -- and I haven't articulated this as well, but some type of a successful motion to vacate that order.

And one thing I observed and I don't know whether my antenna are reading this correctly. It's interesting that in a joint conference call between your Honor and Judge Smith there was a great deal of anticipation built up for the intervention motion of the 2015 Cy Pres action. Your Honor issued your bench decision allowing that but making it clear it was not a ruling on the merits. The natural next step, we thought it was going to come one day later, is the much anticipated, much celebrated motion to vacate, which was going to get right to the heart of the matter. I sense they want to dodge this issue because they know it was a weak point. We want to get right to the heart of the matter, which is restrictive charitable assets can't be used for a donor intent. And if you find that they can, then there is a ruling, potentially we appeal it, but we've got an answer to that.

THE COURT: I believe to put it in context, if you're going to talk about statements on the call, there was a comment by counsel representing your client that we are seriously considering going up a writ of cert

certiorari which may delay this issue as well.

MR. DENNINGTON: That's right. That's a fair point, your Honor. It hasn't happened yet.

THE COURT: Right.

MR. DENNINGTON: I will try to wrap up. I think you have the thrust of what I'm saying. One of your questions the way to frame my last argument, this is where I think there is going to be a lot of overlap between what I say and what the Attorney General says. You posed kind of, I think, a different maybe the third path about how the death of CharterCare Foundation which is that all of the board gets fired. There is a letter saying Mr. Conn and Mr. Dennington you're fired, and, you know, there is that change in control. Okay.

As you know, why we think this violates Rhode Island law is because the CharterCare Foundation is no longer an independent foundation and I thought there was a remarkable concession by the Receiver at pages 55 to 56 of their reply brief. They, in making, in our view, inappropriate hyperbolic attacks on the Attorney General listing numerous ways that the Attorney General purportedly violated the Hospital Conversion Act, one of them was allowing CharterCare Foundation to be controlled by one of the transacting parties, i.e. CharterCare Community Board rather than being independent. This is a

remarkable concession because they're saying that the Hospital Conversion Act prohibits CharterCare Foundation from being controlled by CharterCare Community Board. They basically admitted that the means to break into the house violates the Hospital Conversion Act. You have what you need right now to make that determination.

THE COURT: Would you feel more comfortable if I said, fine, under the other statutes -- I know it was raised by your brother in a footnote kind of back way -- if I say, fine, I'm going to ask the presiding justice for a point of view?

MR. DENNINGTON: Well, as I think your Honor said about one of the other arguments, you got a lot on your plate, and this is another fairly complicated issue and the context in which that came up was there was this petition for settlement instruction was originally marked on less than ten days notice. We had to run in court as quickly as we could about the reasons why the Hospital Conversion Act requires CharterCare Foundation being an independent board. Now, remember CharterCare Foundation was not a new entity. It was an existing entity. That statute references a new entity. What happened was, and there is specific discussion of this in the A.G. HCA approval is that the A.G. said, you know, the ultimate, you know, goal here is independent foundation. We have

an existing foundation. What we can do is impose a condition prohibiting board overlap and monitor conditions and that will ensure if it shall be independent. That is what happened here.

Again, it's really kind of a non-issue. We are facing the Federal Court complaint. We're facing the state court complaint, the 2015 Cy Pres proceeding, the new amended complaint filed at 6:15 on Friday evening, and now they're contemplating other -- I don't know what the term was, usurpation action. You should reserve judgment until it's actually presented in papers and we have a real opportunity to present. This doesn't go to the issue of whether the settlement is legal or illegal.

So I think I made my argument. If you have any other questions.

THE COURT: No. Thank you very much. The court reporter has been going for about an hour and 40 minutes. We are going to take about a ten-minute break and when we return if the other defendants as well as I will hear from the plaintiff. The Court is in recess.

(R E C E S S)

THE COURT: We're going to keep this somewhat manageable. I am going to ask Attorney Wistow if he wishes to respond to CharterCare Foundation and then we'll move on to the next issue.

MR. WISTOW: Thank you, your Honor. The first thing that I want to address is the defendant's disappointment that I haven't jumped all over the Cy Pres case and the motions to intervene. My only excuse, and I hope the Court accepts it, is that we're a small firm, to paraphrase Daniel Webster, although there are some who love us, and we been kind of preoccupied in the last several days with this thing. We intend to get to the motion to intervene case promptly.

Now, with regard to the particular statements that my brother made a few moments ago, he really begs the question. He says on the one hand that the settlement violates Rhode Island law, and I'm going to propose, unfortunately, in a tedious way to show you why we believe it's completely in compliance with Rhode Island law. I also want to point out the startling statement that Mr. Dennington made about how we are urging that an independent foundation be set up and now we're talking about CCB being connected with it. As recently as September 28th CharterCare Foundation put in a correction to its objections and I think it sheds some light to the point we're talking about.

Originally, your Honor will recall, that Mr. Conn, on behalf of the CharterCare Foundation, handed up to your Honor a statute which indeed called for an

independent foundation. And then he pointed out that that statute was not adhered to in any way, shape, or form because it required the presiding judge to select the board of directors to agree to the form of the articles of the association, the bylaws, the statute required a meeting, a public hearing, within a 180 days and a public hearing every six months thereafter.

So, astonishingly, after Mr. Dennington stands up and says I made the admission about an independent situation that has to exist, he says in his latest submission, I'll read his footnote on page seven. "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 Rhode Island General Laws," and then cites them.

"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, the CCF's counsel handed this Court a copy of Rhode Island General 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 A.G.'s HCA approval and the

statute itself, it is now clear to CCF's counsel that the Attorney General correctly determined that that statute did not apply." He then goes on to say, however, the Attorney General's decision required independence.

Now, the problem with that is, we address that in detail, where the Attorney General has specifically laid out, and we will get to this in a moment, those things that he objects to regarding our settlement with CCF, and he specifically points to three items, which I think you will see as a matter of law do not apply, that the argument is simply wrong.

A couple of other points, this issue of violating law, the case that my brother relies on is absolutely a correct case. There was no question that the settlement they were asking the Court to approve represented an agreement with the settling parties that he would provide favorable testimony in the trial and would get a release for that. Now, you know, maybe the government can do that in plea bargaining, but private individuals cannot do that and there is a specific federal statute that makes it a crime. So that was very simple to say we're not going to enforce that agreement because it would enforce a criminal act. There is nothing remotely like this. This issue about whether or not we're entitled to do what we're claiming to do is completely either up in

the air or in our favor.

And I would like to point out -- two things I want to mention. Some issue came up about using up the assets of the settling defendants if the case doesn't settle and the answer is that the prudent lawyers that they are, Messore, Land, and Fine, who is here in court, once we sue them, this goes back to June, I sent the complaint to the insurance company who told them, as insurance companies are known to do, good luck, we're not covering. So they have been defending this thing, and I believe, frankly, that the insurance company is correct and that there is no coverage.

Now, it's also important to understand in the context of this case that we're attempting to settle with three entities, the CharterCare Community Board, and its subsidiaries, the old Roger William's Hospital, so-called Heritage Hospital, and the old St. Joseph's Hospital, sometimes called Fatima. Those three entities since the conversion have been under completely new management and have been guided by Mr. Fine and Mr. Land as counsel. They have examined the facts now, after we brought the suit and seen our discovery and they, new folks, have decided it's time to get out of dodge. So that is something to bear in mind here.

I want to address the issue of the relationship

between CCB, that is the CharterCare Community Board, one of the settling Defendants, and the proposed assignment to the Receiver of whatever rights CCB has in CharterCare Foundation. Now, first I want to say CCB is definitively the sole member of the nonprofit corporation CC Foundation, which was formerly known as CharterCare Health Partners Foundation, and that was the case, your Honor, even before the Cy Pres in 2015. That foundation held at that time a measly sum of money compared to what we are talking about today, something like $200,000.

Now, in the federal case corporations are required to make corporate disclosure statements and they did do that in the federal case, and I quote what CC CharterCare Foundation said to Defendants. They said, "On August 25, 2011, CharterCare Foundation filed with the Rhode Island Secretary of State's Office Articles of Amendment to CCF's Articles of Incorporation stating in relevant part that CCB was CCF's sole member. No amendment to that portion of CCF's Articles of Incorporation has been found. CCF contends, however, that it has functioned in benefit of CCB for the last three to four years."

Now, that relates, your Honor, to the claim they are making that even though the law requires the articles of association to show the members, they're saying that CCB has abandoned its rights, has walked away from them, has

not been involved.

But then before this Court, in the submissions made to this Court in their objection on page two of one they say the following about this abandonment issue, "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." So what we have is a matter of record the sole member is CCB and a statement that they have the theory of abandonment, which we addressed previously we think is without merit. They themselves are saying this is not the place to argue this.

Now, on the conversion, the decision of the Attorney General, on March 16, 2014, he said on page 29 and I quote, "Subsequent to and as part of the CCHP affiliation, on August 25, 2011, the organizational documents of St. Joseph's Foundation were revised to change its name to CharterCare Health Partners Foundation and to make CCHP its sole member." CharterCare Health Partners Foundation had a subsequent name change.

So here we are the Attorney General is saying eight months later, your Honor, in January -- by the way, I want to go back. The submission to the Federal Court was on September 20, 2018. It's not exactly an ancient

declaration. In any event, the Cy Pres petition that your Honor heard was filed on January 13th of 2015, and in that petition given to the Court the very first paragraph said CharterCare Health Partners Foundation's sole member is CharterCare Community Board formerly known as CharterCare Health Partners. In the fourth paragraph of the same petition they gave your Honor they said CharterCare Board is a Rhode Island 501(c)3 nonprofit and the sole member of the CCHP Foundation. The Attorney General filed his reply to the petition on April 1, 2015, made no comment, didn't contradict that, et cetera.

Now, we get to the question is the membership assignable? And, by the way, I apologize for this nitty-gritty analysis, which I don't really think is before the Court but I feel compelled to get into.

THE COURT: I understand. If you can just try and --

MR. WISTOW: I'll try to. Is membership assignable? The answer is yes because the only entities that are allowed to amend the bylaws under these circumstances is CCB and the settlement expressly provides that within five days of the effective date, meaning when hopefully the Federal Court approves the settlement, there will be an amendment to the by-laws allowing the assignment. It is our position, Judge, that the bylaws that prohibit the

assignment were done by what we call the usurping directors that were improperly appointed.

Now, the Receiver ultimately will get, if the settlement goes through in both these courts, the plan is just what they're saying. The Receiver we will get CCB's rights. The Receiver will act lawfully or what he thinks is lawfully. He will bring stuff before this Court before we do anything. There will be notice to them. If they read the settlement agreement carefully, it expressly says they are going to get notice.

We still need to prove our claims. We have two different issues here. We have the claims of the Receiver and the planned members, qua Receiver plan members, saying they never got notice of the Cy Pres, there were misrepresentations made, et cetera, et cetera. What we're trying to get here, frankly, is the second theory of recovery where we don't even -- I'm not saying we won't get into the other one. We have two disparate theories of why the money should come to us. And one of those possible resolutions would be to put the foundation into judicial liquidation, which by its very name means that it will be court supervised.

Now, our position, and I want to get into this very deeply, is that these charitable funds are subject to a statute in Rhode Island which specifically says that when

you liquidate a nonprofit, you first pay your creditors any administrative costs and then you go to the charitable aspects of it. I heard somebody say how would it be if somebody made a charitable gift to a museum and then there was a bankruptcy and somebody fixed the roof that protected the paintings, he can't get any of the money. And there is a lot of law on this and I'm not going to ask your Honor to decide it.

Now, on page five of the A.G.'s objection to our request for settlement, and, by the way, the A.G., as your Honor has noticed, really is not involving himself in anything in the objection except the CharterCare Foundation.

THE COURT: And I think that would be better kept in her response.

MR. WISTOW: Fine. But there is something Mr. Dennington said that I can't let go without commenting. He said that all of the people here, all they're interested in is the $12 million going into the fund. My response is very simple. Of course, they're interested in that, but they are not only interested in that. They're interested in the 15 percent ownership interest in Prospect CharterCare which by Prospect CharterCare's own financial statement is worth about $16 million. That number is up in the air, but it's not fair to say that

these people are just looking for the $12 million.

The documents that we believe enable us to do what we are attempting to do were all approved by the Attorney General without exception. Now, what we're having here is in 2015 at that time $8.2 million went to a preexisting foundation. It was controlled by a transacting party, CCB. The A.G. and CCF bypassed the presiding justice to select directors, bypassed the presiding judge to approve modification, and basically allowed people with no authority to amend the bylaws.

Now, what is the substantive problem we are really addressing here? When one looks back at the transaction in 2014, really the parties on the selling end was CCB, which was the member that owned the two old hospitals and some other assets. It was a holding entity essentially. So the transaction ends up where the underlying hospitals, which had creditors, doesn't get the 15 percent. The 15 percent goes to the holding company. To make a very homely example of what they did, it's as if a shareholder, one shareholder, owned a laundromat and the machines in the laundromat were worth $100,000, fair market value but the corporation --

THE COURT: I am trying to keep this as brief possible.

MR. WISTOW: Forgive me, your Honor. I'm trying to

eliminate whatever I can. It's painful, your Honor. I spent so much time doing this but I think you're right. I think I'm getting into too much detail.

On the issue of whether or not the transfer of the 15 percent violates the LLC agreement, that really is an issue of somebody else. So I will subside, your Honor. Thank you.

THE COURT: Thank you very much.

MR. DENNINGTON: Your Honor, I would like to briefly respond. I promise I will be 90 seconds.

THE COURT: You got a minute. Go ahead.

MR. DENNINGTON: Okay. Three points. On the corporate independence issue, I think the quick answer is this is not being litigated here, but from our standpoint, as CharterCare Foundation's counsel, where we have a challenge with the paperwork but we don't have a challenge with the intent. And the Receiver is not going to have any evidence that CharterCare Community Board actually ever engaged in conduct control oversight, which is consistent with the claim to CharterCare Foundation.

Second, another reason why you should not go into the Section 32 HCA standing issue, let's turn that around on them. What standing do they have to complain that the presiding justice of the Superior Court didn't appoint the directors four years earlier? How would that have

led to any different result in this case?

And, third, it doesn't matter who is on CharterCare's Foundation Board -- I'm sorry. Whether it's Attorney Violet or any other attorney in this room, any person. That person cannot assign in a revokable assignment of CharterCare Foundation's charitable assets to the Receiver at least without permission from the Rhode Island Attorney General and that is a condition you want to consider, which is conditioning the approval of that portion of the settlement upon the prior express permission of the Rhode Island Attorney General.

THE COURT: Thank you. I think it makes sense now to hear from the Attorney General. Before we start, I did get your reply. I want to thank you very much for the Attorney General's clarification about the administrative ability.

Ms. ZURIER: You're welcome, your Honor. I think I can still say good morning.

THE COURT: You've still got two more minutes.

MS. ZURIER: My focus this morning is going to be on what the Receiver has indicated is his ultimate goal whether to what extent and if so how the Receiver can add the $8 million of CharterCare Foundation's assets to the estate for the benefit of the pensioner. In terms of standing, the fact that the Receiver recently moved to

vacate the Cy Pres order from 2015, I think makes it abundantly clear that the Attorney General has standing in the context of our charitable trust powers. We appreciate that it would be very useful to the Receiver to rely on the Foundation's assets to help satisfy the pensioners' claims. But, by the same token, we do have the responsibility for ensuring that the intentions of the many donors who entrusted their assets to the hospital predecessors are honored. Donors gave their money in order to finance cancer research and continuing medical education. The public has benefitted from their generosity and their interests should be considered in this proceeding as well.

And, actually, that brings me to the next point I wanted to make which is why decide any of this now? The best interest of the receivership should also include a consideration of legality. There has already been a motion to vacate the Cy Pres order. It is abundantly clear that that is moving forward. It started before this Court had even approved the settlement. Every moment, every month that goes by, where the Foundation cannot act as a charitable foundation and follow the donors' instructions is causing harm to the donors' intent and to the public it benefitted. Therefore, we would like to have a decision about that intent now

rather than waiting until some future proceeding several years down the line when the issue concerning the status of those assets is determined. As I said, the illegality is created in our view because right now what they're doing violates a still existing order of this Court and we assume that the outcome of the motion to vacate is not predetermined.

Now, why is there a need for a Cy Pres proceeding now? We have been cut out of the loop on much of this prior litigation. As a matter of fact, someone told me this morning that there was an amended complaint filed in Federal Court Friday. We did not get a copy. We were not participating in the phone conference that was held several weeks ago. And because of all of this we had to kind of play catchup. In our view it would make a lot more sense to have to resolve the Cy Pres issue first so you know how much money you're actually dealing with than to implement settlement and have all the issues regarding donated intent and whether those assets are, in fact, part of the estate for purposes of any dissolution that might occur, to have all of that resolved perhaps several years down the road.

In 2015 our office and Bank of America trustee took a very careful look at thousands of pages of documentation regarding the donated intent of the $8

million in funds. And it's important to remember that you keep talking about $8 million, but from the point of view of the charitable trust doctrine, it's a series of discrete funds, each of which has a separate restriction. Some of those restrictions are more specific and the Attorney General believes could not ever be transferred to the Receiver for the same reasons that they weren't transferred to the hospitals in the course of the windup four years ago. Other assets may have restrictions that because they're a more general expression of donated intent, arguments can be made in other states, like New York have been made, to allow some of those funds to be used for the benefit of creditor's like the pensioners. But without knowing how much money you're talking about it's all of a very theoretical discussion and impossible to really know how the rest of the litigation and the other claims might play out.

As for the argument about the dissolution of a nonprofit corporation, I recognize that 7-6-51 and 7-6-61 both appear to prioritize creditors' rights above those of the charitable trust donors. However, there is a split in the law. And New York, which has a great many foundations, has a similar statute and actually prioritizes donative intent based upon an analysis of the law that goes beyond merely looking at the nonprofit

corporation statute, which after all is applicable not just to charitable trust organizations like the Foundation, but also to things like the University Club and Agawam Hunt, which wouldn't have the same charitable trust implications from our office's perspectives.

So those decisions are premature to make now because the dissolution action hasn't been brought. They could possibly be explored in a Cy Pres proceeding because this Court would then be in a position to examine which assets are potentially part of the receivership estate dissolution and which are not. But, again, to talk in one lump sum without discerning donor intent is really difficult and abstract and doesn't do the Foundation or any other party to this proceeding any good.

THE COURT: Just a question, I'm trying to understand the prejudice if this issue is dealt with down the road. There is agreement, as you know, between the Receiver and CharterCare Foundation where the four, four and a half percent of money is still being distributed so that is going forward. So I just want to make sure you're not thinking that nothing is happening.

MS. ZURIER: I think there is some money being distributed, but the whole scope of the donors' intent is not being furthered. When you couple that with the possibility that some of those assets are going to be

expended in tortuous litigation for several years, I think on balance it makes sense to decide the scope of the corpus now and then deal with the settlement. Rather than deal with the settlement and then watch what we all know is going to take place. We'll be in here in a Cy Pres proceeding and we'll be in Federal Court in a Cy Pres proceeding. We all know where that is going. It just doesn't make sense and I don't think it's legal given the current 2015 order that is in place for the Court to condone a settlement that seems to be in clear violation of that order.

THE COURT: I'm just trying to understand what is in clear violation of that order if ultimately what the Receiver is saying happened? But aren't there a lot of steps before we get there?

MS. ZURIER: Some of them seem to have occurred despite the fact that the Court hasn't approved the settlement. The settlement required a motion to vacate be filed after the settlement is approved. The motion has already been filed. You can accept the Receiver's contention at face value that this is all theoretical but I think we're all fooling ourselves.

Finally, I want to address the remarks of the Receiver concerning the Hospital Conversion statute and how it was the Attorney General's intention to freeze the

status of the parties as of 2014 with respect to the conditions that were issued as part of this decision approving the conversion. As the Attorney General has made clear in its papers, the statute empowered us to impose conditions on a for-profit hospital conversion in order to preserve the integrity of the transaction after the office approves it and those conditions lasted for three years. It's interesting that we are only here now because some of the three-year conditions that would have absolutely prevented the settlement agreement from occurring have expired.

THE COURT: But that was the Attorney General's choice. You could have limited it to ten years.

MS. ZURIER: Absolutely, and I'm not saying that the conditions should have been different. All I'm trying to point out is we're being accused of a power grab. We're being accused of trying to grab access for private parties. No. What we were doing is implementing the provision of the Hospital Conversion Act that the General Assembly past and gave us the power to do.

And my biggest problem with the Receiver's argument is there is an awful lot of assumptions about the motive and intent on the part of the Attorney General as well as some of the other parties here, but none of that is demonstrated with actual facts. And I would hope that

the Court would keep that in mind in terms of deciding the good faith nature of the settlement and whether other issues need to be addressed first. So if the Court has any questions.

THE COURT: So are you suggesting, because it wasn't in your papers, that the Court should be making a determination under the joint tortfeasor law whether or not this settlement should be approved?

MS. ZURIER: No, the Attorney General is suggesting that it makes more sense to have a Cy Pres proceeding first and figure out what assets are available and what the donors' intent are. How much of the potential money is in the pot and what it can be used for before continuing to implement the remainder of the settlement.

THE COURT: I just want to say there is fact, there is the law, and there is commentary. And the Court with respect to this proceeding understands there is some commentary made about the Attorney General's office and actions and that is very easy to put aside. Just like I assume your comment about the Court predetermining anything is taken in the same way. Certainly, just as you took offense, certainly the Court can take offense to your suggestion.

MS. ZURIER: I apologize, your Honor.

THE COURT: Your apology is accepted.

MS. ZURIER: I did not mean to imply that the Court had predetermined.

THE COURT: Thank you very much.

MR. WISTOW: I want to correct an unintentional misstatement. The settlement agreement did not provide for us to file a motion to intervene. We filed the motion to intervene long before the settlement agreement was in place. If you look at the settlement agreement, you will not find where we are agreeing to file a motion to intervene. What I think my sister is referring to is the fact that the settling parties agree not to object in that intervention which I see nothing wrong with.

Let me say very briefly, the New York statute that my sister is talking about is completely different from the Rhode Island statute. I think your Honor will probably recall that when CharterCare Foundation put its brief in, it went out of its way to say the Rhode Island statute is a relic. That only 15 other statutes adhere to what Rhode Island does and New York has the more modern view. Well, we still are courts, not legislature, and that may be the strongest argument I have heard in my favor. There is only 14 other states that follow Rhode Island. New York is different. My sister says we waited three years before we did this. I would like to remind the Court -- well, I don't have to remind the

Court. The Court knows that after the three years were up, the three years would have been June, 2017. The petition for the receivership came after that so we don't feel guilty that we sat about.

Now, the arguments of the A.G. are given to you at 30,000 feet. Here is what they actually said were our violations and they are on page 60 of our reply. They come from the argument of the Attorney General.

"1. There shall be no board or officer overlap between or among the CCHP Foundation, CCHP, and Heritage Hospitals." There is not and there will be not under our proposal.

The second one, "There should be no board or officer overlap between or among the Prospect entities and the CCHP Foundation, the CCHP and the Heritage Hospitals." There is not and there will be not. Those two conditions that he said were violated, they simply don't if they read the settlement carefully.

Finally, the last objection I don't know how to address. It says, "That the transaction be implemented as outlined in the initial application including all exhibits and supplemental responses." We believe we've done that. Your Honor knows there are hundreds and hundreds and hundreds of pages. We believe we have complied completely. And your Honor also knows and

correctly pointed out, in the interim the Foundation by agreement, which became an order, is able to fund 4.5 percent of its charitable assets. And, by the way, I can tell you is currently being defended by a commercial insurance company. Thank you, your Honor.

THE COURT: Thank you. Next, we are going to move on to Prospect. Counsel.

MR. HALPERIN: Good afternoon, your Honor.

THE COURT: Good afternoon.

MR. HALPERIN: Preston Halperin for the Prospect entities. Your Honor, I know the hour is getting late and I'm sure everyone is getting tired and hungry. I would ask that you permit me to just go through this. I will be as brief as I can.

THE COURT: Absolutely.

MR. HALPERIN: Your Honor, I am going to take a step back. I come at this from a slightly different prospective. I have been practicing before the Superior Court in receivership actions for 20 years and I've participated as counsel for Receivers and I have been at all sides of the various transactions and party's agreements. And in each case that I have been involved in a settlement agreement has been reached when appropriate by a Receiver. It might even be drafted. It's often drafted. It might even be executed, but it's

always been presented to the Court for approval before it becomes implemented. In this case it seems that the Receiver is going in two different directions with the same document. In the case of the Foundation, the Receiver is saying we haven't gone forward yet. We're going to give them notice and they will have an opportunity to be heard.

In the case of the Prospect entities and the effect with the Prospect CharterCare, LLC, agreement, it has gone forward. It has actually taken the assignment. It has actually received the security interest and it has filed a uniform UCC-1 financial statement. That is different than reaching an agreement and seeking court approval. That is an injury right now to the Prospect East entity, which is a party to the LLC agreement as well as to the Prospect CharterCare, LLC entity, which is, obviously, the subject of the LLC agreement.

I know the Court is well aware of this, but it needs to be said, and we said it right at the outset, that the Prospect entities have absolutely no issue with the money that might be in the hands of CCCB going to the pension holders. As everyone is aware, the Prospect entities came on the scene in 2014. At which time it has been acknowledged in the Receiver's complaint that the pension plan was already willfully under funded. I'm not going

to get into the merits of the case at all. Obviously, that is for another day, but the receivership proceeding is something that is involved, as the Court knows, mostly in the last 20 plus years. We don't have a rule book to go to as to exactly how we do things in receivership court.

My experience is the reason why this process is so successful is that interested parties have always been heard and the courts have always been respectful of the rights of third parties and would not authorize, direct, or permit a Receiver to trample those rights without there being a fair opportunity to be heard. This is a fair opportunity to be heard and we very much appreciate that. However, the Receiver went forward without that fair opportunity to be heard on whether or not it was appropriate to take the CCCB assignment and put the security interest in place and that is not particularly the way things have been done over my 20-years experience with this Court.

The Receiver is attempting to act as I would suggest a private litigant might with very aggressive strong-arm tactics to win at any cost to bring money into the estate, and while that sort of approach may become appropriate in private litigation, that is not typically what the Receiver does. And the reason why I don't think

it's appropriate, your Honor, is because the Receiver is acting as an instrument of the Court. The Receiver is not a private litigant. In the end the Receiver takes his direction from the Court. So whatever the Court thinks is appropriate and fair and reasonable is what the direction is going to be to the Receiver.

So here you have a Receiver who is saying to the Court I think it's appropriate to go ahead and essentially breach an agreement that has contractural provisions, the LLC agreement, and disregard those provisions and saying to the Court it's okay because that can be litigated at another day. That may be true but that doesn't mean it's what the Court would like to do knowing that there is an LLC agreement out there, knowing that they're clear anti-transfer provisions.

I know we are not going to get into the merits of it. I'll just give you two sentences. My brother is going to stand up and say that the assignment is perfectly valid.

THE COURT: It's in their papers.

MR. HALPERIN: There is one thing I want to add to that. We did not do a reply. If your Honor looks at Sections 13.1 of the LLC agreement, even that sort of assignment or transfer to the affiliates requires the approval in form and substance of the manager of the LLC

and the opinion of counsel. Clearly we don't have those things. Clearly that agreement has not been complied with.

Now, the question has come up how can this go forward and what should happen. I would suggest to the Court that if the Receiver were to come to the Court with an independent petition to go ahead and take the assignment of the interest of CCCB and to attempt to step into the shoes as a voting member of CharterCare LLC, the Court would look at that independently and would decide whether or not based on the provision of the LLC, based upon the impact of that, that would be an appropriate direction for the Receiver to have the Court's permission. And I think if that were an isolated transaction, I think the Court would say the agreement is what it is. There are provisions for resolving it. Venue in that agreement is Delaware and if, in fact, there is going to be a dispute as to whether or not the CCCB can transfer its interest, that is between CCCB whether it's the Receiver in its shoes or CCCB and Prospect and that is something that can be litigated under the terms of that agreement in Delaware.

The question for the Court is do you, your Honor, want to set in motion all of these lawsuits without regard to whether or not they are likely to succeed,

whether or not on their face they present problems that the Receivership should not be involved in simply giving the Receiver's counsel carte blanche to just launch these proceedings. There is a domino affect here. It's not just about putting money into the pension plan, which we understand and support. It's about what will happen next.

And if this settlement is permitted to go forward, what will happen is that the board of the Prospect CharterCare, LLC is now 50 percent comprised of the CCCB members will be essentially controlled by the Receiver and those directors will create havoc. There would be a deadlock. There will be effective change of control issues that need to go in front of our regulators. This will put in motion problems that will affect the operations of the hospital.

That is a very significant concern and one that I don't think the Court should simply take the approach of we will kick that can down the road. We know that is what their game plan is. They want to create that deadlock or that impasse. They want to use that court authority, that power, which would come solely from the settlement in order to leverage a settlement that is the subject of litigation. That is the reason why the Court should not approve this because these are questions that

need to be litigated before they happen, not after they happen, and it isn't in my view something that the Court should support to give that sort of unfettered authority to a Receiver as opposed to a private litigant who has the right to file papers and then you have an adversary proceeding.

In previous receiverships all the parties had worked in a collaborative way as possible to achieve a result, and I can remember cases from the A.G. and the Department of Health were regularly at the table. There is a way to achieve the result that is being sought here and there is a process to get to that result. But giving the Receiver the authority to implement the settlement that the A.G. says has issues, the Foundation says has issues, that the Prospect entities say has issues that can be read by looking at the LLC agreement, I would suggest is not the appropriate way for this receivership to proceed. There are evidentiary issues that have to be heard. We can't resolve any of those here.

I would ask that the Court take this a step at a time and if the Court is inclined to go ahead and approve the settlement, I have no doubt that the CCB parties will agree to virtually any settlement that the Receiver approves as evidenced by what they have already agreed to. I think the suggestion that the Court deny the

settlement or doesn't approve it, you're going to not have a settlement is really disingenuous at best. The settlement in my view as presently prepared is in excess of the authority of the Receiver.

And I point out the fact that when the Court entered the permanent order appointing the Receiver, it specifically said on October 27, 2017, "Wistow Sheehan & Lovely have the authority to litigate and settle claims against third parties 'related to the prior management administration and oversight of the retirement plan.'" I don't know that the Court envisioned that authority extending to invading charitable assets of the Foundation or taking on provisions of an LLC agreement or any of the assignments that are in place that affects the rights of these third parties. They go well beyond management, oversight, and administration of the plan.

The Receiver says there is a provision in the agreement that if the settlement is not approved, the parties are going to return to the respective provisions. As I said earlier, your Honor, that is essentially like saying we are going to unring this bell. There's already been assignment. There has already been surety interest. We're going to go ahead and we're going to undo that. That is not the way the Receivership should be proceeding. I think it's bad precedent as well as bad

policy.

I am definitely not going to address any of the substantive issues that the Attorney General raised although I understand their point and I agree with it. Your Honor, regarding the question of the applicability of the special statute, I'd like to address that. We don't have the litigation before the Court that is being settled. We don't have the complaints. There is another civil action that's been stayed, but in this Receivership action we don't have those pleadings. So I do feel that the ultimate decision on whether or not that is collusive or whether or not it's in good faith should lie with Judge Smith when he approves or doesn't approve the settlement.

However, I do think it is extremely appropriate for the Court to be aware of and to look at that statute because the Court would not want to knowingly approve or direct his Receiver to enter into an agreement that on its face appears to the Court to include collusive statements, and Mr. Wistow says there is nothing collusive about it. Well, it's certainly unique for a party settling a case to admit that the damages are $125 million and to be part of the group that actually was the employer in this case and had the responsibility for multiple years of dealing with this retirement plan to

make a statement in the settlement agreement that they have a small part of the liability. To me that shouts out for some sort of attempt to gain an advantage for collusion. If the Court agrees with that, the Court should perhaps consider directing the Receiver to remove those provisions because the Court has the ultimate decision making control, not the Receiver and not the Receiver's counsel.

I think this is a settlement that should go through and can go through, but I think it should go through in a way that respects the various rights of all of the parties and at this juncture I think that personally that should be limited to dealing with the financial consideration. Anything else that the Receiver wants to do, the Receiver should come back to court with a petition and allow the parties to be heard and by that time there may already be a lawsuit pending in Delaware to deal with the LLC agreement, and the Court will see that get litigated in Delaware and await the outcome of that where there may be an administrative proceeding.

So it's premature to know exactly how this all unfolds, but I say don't give the Receiver carte blanche to start reeking havoc on the rights of third parties and diminishing the assets of this receivership estate by keeping the Receiver involved in running up expenses that

don't need to be run up at this point in time from the point of view of this receivership. Embroiling the receivership in litigation which you know is going to happen may not be in the best interest of the receivership estate.

The last thing I want to say, your Honor, and this has a place in my view, is that the Court is obviously concerned with the receivership estate, with the interest of the pension holders, and rightfully so, but there is also precedent for the Court taking into consideration the public interest when a hospital is involved. And, here, I'm sure your Honor is familiar when Judge Silverstein wrote in May, 2010, in the Landmark Hospital case you have to balance the interest of the parties. In that case he was dealing with competing bids for the hospital.

Here, you have a hospital that is operating and serving the community and have a Receiver who is attempting to interfere with the voting operation of that hospital in order to gain a tactical advantage. There is no telling what that may do but the public interest will be harmed should that happen. I would ask the Court no matter what happens here to really keep very, very close reigns on something that could impact the control of the operating hospitals here in Rhode Island.

THE COURT: If this does not take place and there was no settlement agreement, wouldn't everything you're talking about be done by the current 15 percent owner?

MR. HALPERIN: The current 15 percent owner could make changes, but there are fiduciary duties that govern directors and the director is to the Prospect CharterCare entity. Should they or even the Receiver's appointees take action that would be inconsistent, such as trying to enforce a deadlock in order to create a dissolution or whatever the case may be, they may be in a position to potentially violate the fiduciary duty in order to benefit the pension plan.

THE COURT: Didn't you just answer your own question?

MR. HALPERIN: That it could happen, but it hasn't happened because they have a fiduciary duty. They are trying to step away and get into it by the Court authorizing the Receiver to essentially go at it and I don't think that's what the Court should do under the circumstances. They haven't done that for good reason because it would be a breach of their duty if they did that, your Honor.

THE COURT: Thank you very much.

MR. HALPERIN: Thank you.

MR. WISTOW: I have known Mr. Halperin for many

years and I know he would never intentionally misstate any facts to the Court. He has unintentionally done so. The transfer we are talking about now do not require the approval of the 900 or the majority of the board. If your Honor reads very simply what we have put forward, generally speaking, he's right. By the way, that is part of the -- we are going to get into this once we have the trial, but this 15 percent ownership is so illusory. In most cases the 15 percent owner, who is supposed to have 15 percent voting, can't do anything he would like in most instances. This particular situation is a permitted transfer. If you read 13.1 and 13.1 says -- it's in all our papers. It says, "Unless otherwise provided you can't make the transfer." But 13.2 allows permitted transfers and it says, "Not withstanding the restrictions in 13.1 the following transfers are permitted and shall not be deemed to violate the restrictions in Section 13.1."

Now, that transfers by a member to one or more of its affiliates, et cetera, and we've made extensive arguments and I'm not going to rehearse why we are technically an affiliate. By the way, your Honor, as to whether or not we're an affiliate, I really want to hand something up to your Honor. This was attached, your Honor, as part of CharterCare's objection to the

settlement and it's the petition for declaratory order that they filed with the Attorney General on September 27th. It is in this case because they filed it as an exhibit. I would like to hand it up to your Honor.

(Document handed to the Court and counsel.)

And I would just like to add this question of are we an affiliate to whom the transfer is permitted. Paragraph 23, what I have done, your Honor, is I haven't given you the entire file.

THE COURT: This is Exhibit B on Prospect's objection.

MR. WISTOW: That's right. Thank you. Paragraph 23. This is what Prospect has said some days ago, "It is beyond dispute that the receivership estate is SJHSRI in its role as plan administrator. Therefore, the plan administrator is by plan definition SJHSRI. Under Rhode Island law, the receivership estate stands in the shoes of SJHSRI." Now, I tell you there is no question that CCB is an affiliate of St. Joseph's Hospital and this just amplifies the argument that we made.

Paragraph 71 of that same petition, these are the statements of Prospect CharterCare. "It is beyond dispute that there is an identity of parties between the conversion and CEC proceedings and the Federal Court litigation in that the Acquiror, which is Prospect

CharterCare, and the receivership estate were both transacting parties in the conversion and CEC proceedings."

If that doesn't clinch you at least to what they think an affiliate is, I don't know what it is. I'm not going to go through the convoluted argument as to why we are affiliates. I will rely on what was said.

Now, a couple of things, your Honor. We had the temerity to sign a binding settlement agreement. I have two justifications for that. The first is the order that your Honor entered paragraph five, "The said Receiver B is hereby authorized, empowered, and directed to take control, possession, and charge of said respondent and his assets wherever located and manage and continue the administration and oversee the respondent and to reasonably preserve the same and is hereby vested with title to the same, to collect and receive the debts, property, and other assets of said respondent" -- here it is -- "with full power to prosecute, defend, adjust, and compromise all claims and suits of, by, against, or on behalf of said respondent and to appear, intervene, and become a party," et cetera.

He had express authority to do what he did. We all said this is not a run-of-the-mill settlement. We owe it to the Court to come in and say, here is what we have

done. If you want to undo it Judge Stern, it's up to you to undo it. It's not unlike -- in fact, it's exactly like the purchaser or seller of real estate entering into a binding contract saying it's subject to the zoning board of review. If the zoning board says no, provided everybody acts in good faith to attempt to get the approval, then you have the continuation of the binding contract. If the zoning board says no, there is no longer any contract. That's what our agreement provides. I feel, and I hope your Honor agrees, we did not overstep our bounds. We could theoretically have done this without coming to you and gone straight to the Federal Court. We didn't think it was prudent in this complex situation to do that.

The whole business about the 15 percent, this is very, very important to us. We have filed a motion to adjudge in contempt. By the way, my brother just signaled his thinking about bringing a lawsuit in Delaware. You know, our motion to adjudge in contempt, I actually wrote him a letter telling him ahead of time if you want to sue us, if you want to do something to impair the contract, which he acknowledges is a binding contract.

THE COURT: I understand that. I also understand that counsel has not had opportunity to respond to that

motion.

MR. WISTOW: I just want to emphasize I really think it would be outrageous to not ask permission of this Court to invalidate a contract in Delaware as he is planning to do.

By the way, he says he has been a Receiver for many years and this is absolutely unique to agree to damages. I don't think I have ever been a Receiver, to be honest with you. So I'm not going to talk about what is common or uncommon in receiverships, but I have been involved in I will say hundreds of settlements of contested cases and it absolutely is common for a Defendant to agree to the damages in a case so that it can be used by the plaintiffs against non-settling Defendants or more particularly against an insurance company. So maybe it's unique in his experience. It's common in mine.

And, by the way, nobody is suggesting that that admission by them is somehow binding on the other Defendants. The fact of the matter is, Judge, I'm not going to get into -- your Honor, has amply shown over the time that I have been before you that you read the papers carefully, and justifiably get a little short if I start going over them in too much detail.

I do want to add this one point. This 13 percent -- 15 percent is a huge deal because I can tell you as part

of the settlement process that we have been trying to get through the 15 percent holder, CCB, an accounting of the promised $50 million that was supposed to have been put in by Prospect CharterCare. That was part of the original consideration. It was flaunted. It was publicized. We had every reason to believe, because we have been so frustrated about getting information about what they put in, that we actually are going to file another motion to adjudge Prospect CharterCare in contempt because they have not responded to the subpoenas which you had authorized us to settle in giving this information. They have actually affirmatively said they would not give the information to Mr. Fine because they were afraid he was going to share it with us. That was the information we were entitled to.

So all I ask is this, your Honor: There is nothing final about any of this. This whole issue of can they transfer this to us, can they not, if your Honor wants to sit down and read through the papers and make an adjudication of whether or not it's legal, then I would suggest that that probably should be res judicata when we get to the Federal Court on that issue.

So I still suggest probably the simplest straightforward thing is -- this is for the benefit of the estate. You know, my brother says and I really thank

him for his consideration that he wants to save the state money. I'm sure that is one of his principle concerns. First of all, there are no legal fees that we're charging. We're on a straight contingency. So far it's starting to look like I'm getting something like the federal minimal wage for the number of hours we're putting in to this thing. Yes, there will be some expenses but those will be minimum. There are no significant attorney fees. Mr. Halperin need not lose sleep over the loss of money to the estate.

THE COURT: Counsel, what about the issue of by filing the UCC and taking the assignment that now Prospect entities can say there has been an injury?

MR. WISTOW: My answer to that is very simple. That is a prohibition on hypothecate. Absolutely. We acknowledge that. Our justification is two fold.

THE COURT: I'm asking a different question. With respect to the standing, the position was that the objecting parties, especially CharterCare Foundation and Prospect, don't have standing. By now the security interest being filed, do you agree or not with counsel?

MR. WISTOW: I guess what we're talking about is -- I don't know the answer. I'm not the legal scholar Mr. Sheehan is. But I will say this: I don't see how Prospect CharterCare is injured in any way, shape or form

by CCB transferring the 15 percent unless it's a breach of contract, and I say it's not a breach of contract and we specifically say -- we laid it out for your Honor why we're entitled as an affiliate to do what we did in spite of what my brother says. It's easy enough for your Honor. Just take a look at paragraphs 13.1 and 13.2 and you decide whether or not we needed anybody's permission to make this transfer. I submit we do not. If your Honor thinks as a matter of law we breached the contracts, I would be utterly surprised.

In any event, whether or not we have standing, still they have no injury of any sort. So I would ask your Honor to please allow this thing to go forward. It's going to be many months until Judge Smith dismisses all of our claims. The motion to dismiss pending would be many months before we have anything really to say about the merits of this thing. And even then, your Honor, it may follow that our attempts to force the $50 million to be paid, which is one of the things we want to do.

THE COURT: Thank you very much.

MR. WISTOW: Thank you, your honor.

THE COURT: There are a few other parties that filed memorandum in support of the Receiver. Attorney Violet.

MS. VIOLET: Your Honor, Mr. Callaci asked me to

read his statement briefly.

THE COURT: Go right ahead.

MS. VIOLET: And if I could take 60 seconds to reiterate our adoption of the argument made by the Receiver's counsel, and while there is somewhat of a mini trial that has occurred here, we still think that this Court should not be adjudicating all the possible objections to the proposed settlement. The issue really should be limited to whether it's in the best interest of the Receivership estate for him to proceed with the proposed settlement and leave all the other possible objections to be dealt with in the first instance by the Federal Court.

Your Honor, on behalf of my clients, I think that is the most expeditious way to handle it. Their ages are 75 to 99. This helps really alleviate the $12 million, the deep concern they have every single month. I also want to say that also by having this proposed settlement it really mitigates the winners versus the losers and we never then have to reach any of subsidiary arguments as to who is more entitled or not at this point.

Now, on behalf of Chris Callaci, UNAP, and the 400 plan participants, and I quote: "I want to speak to the objection that the Prospect entities have filed with respect to the proposed settlement agreement and the

reasons they give as to why the Court should refuse to approve. On page six of their memo they argue, "The Receiver has acted in a manner inconsistent with his role as a fiduciary of the court." We don't think so, and, your Honor, he then cited to the very same paragraph five that Max Wistow alluded to where you gave him full power to adjust and compromise all claims and suits against the respondent, including paragraph A where they could engage Wistow Sheehan & Lovely to serve and confirms and ratifies his authority to do so." Mr. Callaci continues on page 15 of the memo, "The Prospect entities argue that the proposed settlement agreement is not in the best interest of the Receivership estate." According to Mr. Del Sesto just the opposite is true.

On page eight, paragraph 17, of this petition the settlement instruction he writes, "It is absolutely certain that if the proposed settlement is not approved, the settling defendants' assets will be further dissipated by litigation, expense, and claims of other creditors such that it is indisputable that the sum that the plaintiffs may collect from the settling Defendants, if they prevail, will be substantially less than what is being offered in the settlement." The Receiver goes on to say on page 13, paragraph 35, "He believes that the proposed settlement advances the interest of the

receivership estate for the plan and the plan participants." When it comes to what is in the best interest of the estate, the plan, and plan participants, the people I represent find the words of Mr. Del Sesto far more reliable than the words of the Prospect entities, who are defendants and who are alleged to have played a central role in the very collapse of the pension fund.

The proposed settlement agreement before you is the product of good faith negotiations engaged in by a number of very capable and well-respected attorneys. The argument that this is evidence of collusion is certainly a stretch. But their next argument is particular troubling to us at UNAP. The Prospect entities argue that the settling parties violated the HCA by, "Disregarding the prior administrative and regulatory positions of Rhode Island Attorney General and the Rhode Island Department of Health."

How dare the Prospect entities complain about someone disregarding the regulators and the decision of the Attorney General and the Department of Health? One regulator asked Prospect and CharterCare the following question point blank: "What is the plan going forward to fund liability?" Answer: "Future contributions to the plan will be made on recommended annual contribution

amounts as provided by the plan actuary advisors." You will find that exchange on page 60, paragraph 222 to 223 of the complaint that is pending here in Providence Superior Court as well as the complaint in Federal Court.

When our Attorney General approved that conversion he issued a decision with conditions. On page 52 of his decision he wrote, "Upon any change in what was represented by the transacting parties in connection with the approval of this transaction reasonable prior notice shall be provided to the Attorney General." And on page 54 he required them to, "Notify the Attorney General of any actions out of the ordinary course taken in connection with the St. Joseph's pension or any material changes in its operation and/or structure."

Neither Prospect or CC ever notified the Attorney General that no contributions were going to be made to the pension plan post conversion. There was absolute silence in that regard, but the Attorney General and the Department of Health required as a condition of approval the proposed conversion. And I quote, "The transaction be implemented as outlined in the application." See also the Department of Health quote, "The transacting party shall implement the conversion as detailed in the application." Neither Prospect or CharterCare implemented the conversion as detailed in the

application. No contributions have been made to the pension since the conversion in 2014. Therefore, Prospect entities' new found respect for our Attorney General and Department of Health cannot be more than self-serving.

Your Honor, the 400 or so folks that I represent have expressed their full support in the proposed settlement agreement. They see it as a ray of hope that perhaps they will be able to retire with some dignity and respect coming out of this proceeding. This proposed settlement, if approved, will also move along what would otherwise be a very painful and difficult process for all involved in determining what reductions in benefits will need to be made and the extent to which planned participants will suffer in that regard. As such, we respectfully request that the Court approve the proposed settlement agreement."

THE COURT: Attorney Fine.

MR. FINE: Thank you, your Honor. I represent the settling Defendants. We have not filed anything but fully support the Receiver's request and join in the legal argument. We believe it's the most appropriate action for these three defendants to take. The relief is we will obtain half value. We believe it's in the best interest of the pension holders as well as the settling

defendants.

I am happy to try and answer any questions the Court may have to the settling defendants.

THE COURT: Not at this time. Thank you very much.

MR. FINE: Thank you, your Honor.

THE COURT: Very good. That brings this three and a half hour hearing to a close. Yes. I'm sorry.

MR. BREQUET: Your Honor with the Court's permission, I would like to speak on behalf of Mr. Kasle that the 247 persons that he represents are in full support of this particular settlement.

THE COURT: Thank you very much. The Court understands the timeliness of the disagree's decision in this case so the Court is going to reserve. The Court will be issuing a written decision. In order to move that along, the Court is going to direct the Receiver to order a copy of the transcript of the proceeding today so we can move along the Court's consideration.

I want to thank all of the parties for their arguments, and, most importantly, their briefing in this case. I think it really brought out some of the issues that this Court needs to wrestle with in coming to a decision. With that, this Court will be in recess and I believe the next thing on the calendar is a motion we have on this case next week with Attorney Russo. Thank

you all very much. The Court is in recess.

(A D J O U R N E D.)

Exhibit 21

STATE OF RHODE ISLAND PROVIDENCE, SC		SUPERIOR COURT
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.	:	
v.	:	C.A. No.: PC-2017-3856
ST. JOSEPH'S HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, AS AMENDED	:	

ORDER

The Receiver of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") having filed a Petition for Settlement Instructions relating to a Proposed Settlement Agreement ("PSA") among the Receiver, seven individuals, CharterCARE Community Board ("CCCB"), St. Joseph Health Services of Rhode Island, and Roger Williams Hospital, and objections to the Petition having been filed by Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect CharterCare, LLC ("PCC"), Prospect CharterCare SJHSRI, LLC, Prospect CharterCare RWMC, LLC, CharterCARE Foundation ("CCF"), and the Attorney General (all collectively the "Objectors"), and the Receiver having replied to the objections, and the Court having conducted a hearing on October 10, 2018, and for the reasons stated in the Court's Decision filed on October 29, 2018, it is hereby:

ORDERED:

The Petition for Settlement Instructions is granted, and the PSA may be filed with the Federal Court at an appropriate time for approval. The PSA is approved for purposes of this proceeding, subject to the following two conditions: (1) the Receiver refrains from exercising any rights under the PSA prior to the federal court's

determination of whether to approve the PSA; and (2) until such time as the determination in condition 1 is made, then, prior to implementing, or directing that CCCB implement, any rights, whatsoever, in favor of the Receiver (or the Plan) derivative of CCCB's rights in CCF or PCC, the Receiver must provide all parties, including but not limited to the Objectors, with twenty (20) days written notice. These conditions are without prejudice to the Receiver's right directly and through Special Counsel to issue subpoenas and conduct depositions in furtherance of the Receiver's administration of the Receivership Estate and investigation of possible claims. All prior Orders remain in full force and effect.

ORDERED:

Brian P. Stern
Associate Justice
Stern, J.

Dated: November 16, 2018

ENTERED:

/s/ Carin Miley
Dep. Clerk

Dated: November 16, 2018

Presented by:

/s/Max Wistow, Esq.
Max Wistow, Esq. (#0330)
Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
Wistow, Sheehan & Loveley, PC
61 Weybosset Street
Providence, RI 02903
(401) 831-2700
(401) 272-9752 (fax)
mwistow@wistbar.com

Dated: November 2, 2018

CERTIFICATE OF SERVICE

I hereby certify that, on the 2nd day of November, 2018, I filed and served the foregoing document through the electronic filing system on the following users of record:

Stephen F. Del Sesto, Esq.
Pierce Atwood LLP
One Financial Plaza, 26th Floor
Providence, RI 02903
sdelsesto@pierceatwood.com

Rebecca Tedford Partington, Esq.
Jessica D. Rider, Esq.
Sean Lyness, Esq.
Neil F.X. Kelly, Esq.
Maria R. Lenz, Esq.
Lauren S. Zurier, Esq.
Office of the Attorney General
150 South Main Street
Providence, RI 02903
rpartington@riag.ri.gov
jrider@riag.ri.gov
slyness@riag.ri.gov
nkelly@riag.ri.gov
mlenz@riag.ri.gov
lzurier@riag.ri.gov

Richard J. Land, Esq.
Robert D. Fine, Esq.
Chace Ruttenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
rland@crfllp.com
rfine@crfllp.com

Christopher Callaci, Esq.
United Nurses & Allied Professionals
375 Branch Avenue
Providence, RI 02903
ccallaci@unap.org

Arlene Violet, Esq.
499 County Road
Barrington, RI 02806
genvio@aol.com

Robert Senville, Esq.
128 Dorrance Street, Suite 400
Providence, RI 02903
robert.senville@gmail.com

Elizabeth Wiens, Esq.
Gursky Wiens Attorneys at Law
1130 Ten Rod Road, Suite C207
North Kingstown, RI 02852
ewiens@rilaborlaw.com

Jeffrey W. Kasle, Esq.
Olenn & Penza
530 Greenwich Avenue
Warwick, RI 02886
jwk@olenn-penza.com

George E. Lieberman, Esq.
Gianfrancesco & Friedmann
214 Broadway
Providence, RI 02903
george@gianfrancescolaw.com

Howard Merten, Esq.
Partridge Snow & Hahn LLP
40 Westminster Street, Suite 1100
Providence, RI 02903
hm@psh.com

Joseph V. Cavanagh, III, Esq.
Blish & Cavanagh, LLP
30 Exchange Terrace
Providence, RI 02903
jvc3@blishcavlaw.com

William M. Dolan, III, Esq.
Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
wdolan@apslaw.com

David A. Wollin, Esq.
Christine E. Dieter, Esq.
Hinckley Allen & Snyder, LLP
100 Westminster Street, Suite 1500
Providence, RI 02903-2319
dwollin@hinckleyallen.com
cdieter@hinckleyallen.com

Preston W. Halperin, Esq.
Christopher J. Fragomeni, Esq.
Dean J. Wagner, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860
phalperin@shslawfirm.com
jfragomeni@shslawfirm.com
dwagner@shslawfirm.com

Stephen Morris, Esq.
Rhode Island Department of Health
3 Capitol Hill
Providence, RI 02908
stephen.morris@ohhs.ri.gov

Andrew R. Dennington, Esq.
Conn Kavanagh Rosenthal Peisch & Ford
One Federal Street, 15th Floor
Boston, MA 02110
adennington@connkavanagh.com

Scott F. Bielecki, Esq.
Cameron & Mittleman, LLP
301 Promenade Street
Providence, RI 02908
sbielecki@cm-law.com

Steven J. Boyajian, Esq.
Robinson & Cole LLP
One Financial Plaza, Suite 1430
Providence, RI 02903
sboyajian@rc.com

Ekwan Rhow, Esq.
Bird, Marella, Boxer, Wolpert Nessim,
Drooks, Licenberg & Rhow, P.C.
1875 Century Park East, 23rd Floor
Los Angeles, CA 90067-2561
erhow@birdmarella.com

W. Mark Russo, Esq.
Ferrucci Russo P.C.
55 Pine Street, 4th Floor
Providence, RI 02903
mrusso@frlawri.com

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

/s/ Max Wistow

Exhibit 22

EXECUTION COPY

ASSET PURCHASE AGREEMENT

by and among

CHARTERCARE HEALTH PARTNERS,

ROGER WILLIAMS MEDICAL CENTER,

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND,

ROGER WILLIAMS REALTY CORPORATION,

RWGH PHYSICIANS OFFICE BUILDING, INC.,

ELMHURST EXTENDED CARE FACILITIES, 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,

PROSPECT MEDICAL HOLDINGS, INC.,

PROSPECT EAST HOLDINGS, INC.,

PROSPECT CHARTERCARE, LLC,

PROSPECT CHARTERCARE RWMC, LLC,

PROSPECT CHARTERCARE SJHSRI, LLC,

PROSPECT CHARTERCARE ELMHURST, LLC,

and

PROSPECT CHARTERCARE PHYSICIANS, LLC

Dated as of September 24, 2013

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

Page

LIST OF SCHEDULES:

LIST OF EXHIBITS:

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of September 24, 2013 by and among CharterCARE Health Partners, a Rhode Island non-profit corporation ("CCHP"), Roger Williams Medical Center, a Rhode Island non-profit corporation ("RWMC"), St. Joseph Health Services of Rhode Island, a Rhode Island non-profit corporation ("SJHSRI"), Roger Williams Realty Corporation, a Rhode Island non-profit corporation ("RWRC"), RWGH Physicians Office Building, Inc., a Rhode Island non-profit corporation ("RWOB"), Elmhurst Extended Care Facilities, Inc., a Rhode Island non-profit corporation ("Elmhurst ECF"), Roger Williams Medical Associates, Inc., a Rhode Island non-profit corporation ("RWMA"), Roger Williams PHO, Inc., a Rhode Island non-profit corporation ("PHO"), Elmhurst Health Associates, Inc., a Rhode Island corporation ("Elmhurst HA"), Our Lady of Fatima Ancillary Services, Inc., a Rhode Island corporation ("Our Lady"), The Center for Health and Human Services, a Rhode Island non-profit corporation ("TCHHS"), SJH Energy, LLC, a Rhode Island limited liability company ("SJHE"), and Rosebank Corporation, a Rhode Island corporation ("Rosebank" and together with CCHP, RWMC, SJHSRI, RWRC, RWOB, Elmhurst ECF, RWMA, PHO, Elmhurst HA, Our Lady, TCHHS and SJHE, each a "Seller" and, collectively, "Sellers"), Prospect Medical Holdings, Inc., a Delaware corporation ("Prospect"), Prospect East Holdings, Inc., a Delaware corporation ("Prospect Member"), Prospect CharterCare, LLC, a Rhode Island limited liability company (the "Company"), Prospect CharterCare RWMC, LLC, a Rhode Island limited liability company ("RWMC SMLLC"), Prospect CharterCare SJHSRI, LLC, a Rhode Island limited liability company ("SJHSRI SMLLC"), Prospect CharterCare Elmhurst, LLC, a Rhode Island limited liability company ("Elmhurst SMLLC"), and Prospect CharterCare Physicians, LLC, a Rhode Island limited liability company ("Physicians SMLLC" and together with RWMC SMLLC, SJHSRI SMLLC, Elmhurst SMLLC, each a "Company Subsidiary" and collectively, the "Company Subsidiaries"). Sellers, Prospect, the Prospect Member, the Company, and each Company Subsidiary are each a "Party" and collectively, the "Parties".

RECITALS

WHEREAS, Sellers own, lease and operate the Facilities and engage in the Business;

WHEREAS, Prospect is in the business of owning and operating hospitals and related businesses and has formed the Company and owns 100% of the outstanding equity of the Company;

WHEREAS, the Company has formed all of the Company Subsidiaries as single-member limited liability companies and owns 100% of the outstanding equity in each Company Subsidiary as the sole member thereof;

WHEREAS, Sellers desire to sell to the Company, and the Company desires to acquire from Sellers, either directly or through the Company Subsidiaries, substantially all of the assets used in the operation of the Facilities, all as more fully set forth herein;

WHEREAS, Prospect desires to contribute equity capital to the Company in order to fund, in part, the acquisition by the Company or the Company Subsidiaries of the Purchased Assets;

WHEREAS, Sellers have designated CCHP (the "Seller Member") to be the holder of the units representing the Company's limited liability company membership interests on behalf of all Sellers to be issued as partial consideration in respect of the sale by Sellers of the Purchased Assets; and

WHEREAS, upon the Closing of the transactions contemplated by this Agreement, the Company will be owned 85% by the Prospect Member and 15% by the Seller Member, and the Company and the Company Subsidiaries will be subject to various operational covenants relating to maintaining essential healthcare services, Catholic identity, pastoral care programs, charity care policies, medical staff structure, medical education and research at the Facilities, as well as various other terms and provisions, all as more fully set forth herein and in the Company's limited liability company agreement;

NOW, THEREFORE, for and in consideration of the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

1.1 Definitions. The capitalized terms in this Agreement shall have the meanings ascribed to them in the Preamble, the Recitals and Annex A, as applicable.

1.2 Interpretation. In this Agreement, unless the context otherwise requires: (a) references to this Agreement are references to this Agreement and to the Annexes, Exhibits and Schedules hereof, and references to Annexes, Articles, Exhibits, Recitals, Sections or Schedules are references to the Annexes, Articles, Exhibits, Recitals, Sections or Schedules of this Agreement; (b) the terms "including" or "include" shall all be interpreted to read, "including, without limitation"; (c) references to any Person shall include references to such Person and their respective successors and permitted assigns; (d) the terms "hereof," "herein," "hereby" and derivative or similar words will refer to this entire Agreement; (e) references to any document (including this Agreement) are references to that document as amended, modified, supplemented, extended or renewed by the Parties from time to time, in the manner provided therein (or herein); (f) references to any law, rule or regulation include such law, rule or regulation as amended, restated, supplemented, superseded or otherwise modified from time to time, unless otherwise specified; (g) the gender of all words herein include the masculine, feminine and neuter, and the number of all words herein include the singular and plural; and (h) the terms "date hereof" and "date of this Agreement" and similar terms shall mean the date set forth in the opening paragraph of this Agreement.

ARTICLE II
TRANSFER OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Transfer of Sellers' Assets. At the Closing, Sellers shall assign, transfer, convey and deliver to the Company or the Company Subsidiaries (as determined by the Company in its discretion), free and clear of all Encumbrances, all of Sellers' right, title and interest in and to all assets of every kind, character or description, whether real, personal or mixed, tangible or intangible (other than the Excluded Assets), owned, leased or licensed by Sellers on the Closing Date that are held for use or used in the Business, including the following items (collectively, the "Purchased Assets"):

(a) any and all parcels of land and other real property owned by Sellers and used in connection with the operation of, or acquired for the benefit for, the Facilities, including the real property described on Schedule 4.14(a), together with all of Sellers' right, title and interest in and to (i) all buildings, improvements and fixtures located thereupon and all appurtenances (including all construction in progress) (the "Improvements"), (ii) all easements, rights of way, privileges, hereditaments and other rights and appurtenances thereto, including, any right, title and interest of Sellers in and to adjacent streets, alleys or rights of way, (iii) all strips and gores adjacent thereto, (iv) all plans and specifications and engineering and Architectural Plans related to the improvements located on such real property, to the extent in the possession and control of any Seller, and (v) development, air, water and signage rights with respect to such real property, if any and to the extent transferable (the "Owned Real Property");

(b) subject to receipt of any required third party consents, any and all real property that is leased, subleased or licensed to Sellers by another Person (whether an Affiliate or otherwise) related to, associated with or used in connection with the operation of, or acquired for the benefit for, the Facilities, and described on Schedule 4.14(b), together with all buildings, improvements and fixtures located thereupon and all appurtenances (including all construction in progress) and rights thereto that are leased, subleased or licensed to Sellers (the "Leased Real Property");

(c) all equipment, medical equipment, fixtures, machinery, computer hardware and other data processing equipment, vehicles, office furnishings, leasehold improvements and other tangible personal properties owned or held by Sellers or used in the operation of the Facilities (the "Personal Property");

(d) all Inventory;

(e) all documents, records, operating manuals and files with respect to the operation of the Facilities, including all financial, billing, patient, medical, accreditation, public program participation, business, operational, quality assurance, credentialing, peer review, facilities and systems maintenance, real property, educational, marketing and other records, Architectural Plans, structure or system drawings, manuals and materials (in paper, electronic or other form) and on-site regulatory compliance records;

(f) all of the rights and interests of Sellers in all: (1) Contracts for the employment of any individual other than a physician ("Employment Agreements") that are listed on Schedule 2.1(f)(1) (the "Assumed Employment Agreements"), as provided in Section 8.2(f) below; (2) any Contracts with physicians, physician practices or physician-owned entities ("Physician Agreements") that are listed on Schedule 2.1(f)(2) (the "Assumed Physician

Agreements"); (3) Leases to which any Seller is a party and entered into or maintained in connection with the Facilities, the Business or the Purchased Assets (except for leases involving physicians, physician groups or physician-owned entities) (the "Assumed Leases"); (4) Sellers' Medicare and Medicaid provider agreements and associated provider numbers (the "Provider Agreements"); and (5) Contracts (other than Employment Agreements that are not Assumed Employment Agreements, Physician Agreements that are not Assumed Physician Agreements, Leases that are not Assumed Leases, and the Provider Agreements) to which any Seller is a party and pertaining to the Facilities, the Business or the Purchased Assets (items (1) through (5) collectively, the "Assumed Contracts"), and all rights and obligations arising out of such Assumed Contracts; provided, however, that the Company may elect to remove any Assumed Physician Agreements from Schedule 2.1(f)(2) prior to Closing if:

(i) the Company reasonably believes that such agreement poses a significant risk of violating or otherwise being inconsistent with any applicable laws or regulations; or

(ii) the Company reasonably believes that such agreement, if not rejected, would cause the Company to be in breach, or violate the terms, of any contract to which the Company is or will be a party as of the Closing Date;

(each, a "Rejected Physician Agreement" and, collectively, the "Rejected Physician Agreements"). The Company shall provide Sellers with a list of such Rejected Physician Agreements and its reasons for rejecting the same not less than ten (10) days prior to the Closing Date. For ten (10) days after receipt by the Company of such list, the Parties shall consult in good faith as to what action, if any, should be taken with respect to any such Rejected Physician Agreement to address concerns raised by the Company. If the Parties do not mutually agree on the actions to be taken with respect to any such Rejected Physician Agreement within such ten (10) day period, such Rejected Physician Agreement shall thereafter not be deemed to be an "Assumed Contract" and shall be deemed to be an "Excluded Contract" for purposes of this Agreement, and Sellers shall be responsible for the termination or other disposition of such Rejected Physician Agreement, including any costs or expenses associated with such termination or other disposition;

(g) all Accounts Receivables, other than intercompany receivables;

(h) to the extent transferable, all Permits, Environmental Permits and Approvals issued or granted to Sellers by or pending before Governmental Entities and accreditations/certifications issued to Sellers by accrediting bodies, which relate to the ownership or operation of the Facilities;

(i) all Intellectual Property;

(j) all advance payments, prepayments or prepaid expenses made by Sellers relating to the operation of the Facilities;

(k) all rights in all warranties of any vendor or manufacturer in connection the Personal Property and all rights to enforce covenants not to compete with respect to the Purchased Assets or the Business;

(l) all insurance proceeds (after application of Seller deductibles or co-insurance payments) arising in connection with property damage to the Purchased Assets;

(m) general intangible rights of the Business, including goodwill;

(n) all files and records relating to the Transferred Employees, including those regarding work history, benefits and pensions, as well as such of Sellers' policies, manuals and similar materials as are reasonably necessary for the Company to address personnel, benefits or other issues, or resolve disputes, regarding Transferred Employees;

(o) all website domain names, e-mail addresses, and telephone and fax numbers;

(p) subject to receipt of any required third party consents, any rights of Sellers to receive, or any expectancy of Sellers in, any state or federal grants or subsidies, allocation payments or other reimbursement pool;

(q) subject to receipt of any required third party consents, the software, licenses and information systems used in the Business;

(r) any rebates paid or payable in respect to the period prior to Closing under or in respect of any group purchasing organization agreements in which Sellers participate that relate to purchases of goods or services prior to Closing;

(s) any claims, rights, credits, causes of action and rights of set-off of Sellers (whether known or unknown, contingent or otherwise) against third parties related to the Purchased Assets (including the Assumed Contracts), contractual or otherwise, accruing or arising prior to the Closing;

(t) the A/R Bank Accounts;

(u) [intentionally omitted];

(v) all cash security deposits held or previously paid by Sellers under the Assumed Leases (together with accrued interest thereon, if any);

(w) to the extent not included in any of the foregoing, (A) any assets included in the Interim Balance Sheet, except for assets used, consumed or disposed of in the Ordinary Course of Business since the Interim Balance Sheet Date, and (B) any assets purchased or otherwise acquired since the Interim Balance Sheet Date that are not reflected on the Interim Balance Sheet but are held or used in the Business;

(x) all rights to reimbursement for services rendered, and medicine, drugs and supplies provided, by Sellers to individuals who are patients of the Business on or before the Closing Date, but who are not discharged until after the Closing Date (collectively, "Transitional Patient Services");

(y) all of Sellers' equity, membership or other ownership interests (i) in Rhode Island PET Services, LLC and Chemosynergy, LLC and (ii) to the extent applicable, pursuant to Section 7.2(n) below, in UMG and/or such other project or entity contemplated by such Section 7.2(n); and

(z) either: (1) all of Sellers' equity, membership or other ownership interests in Roger Williams Radiation Therapy, LLC; or (2) in the event that Sellers sell all or any part of their interests in Roger Williams Radiation Therapy, LLC prior to Closing and, notwithstanding Sellers' commercially reasonable efforts to reinvest all or a portion of the proceeds of such sale as provided in Section 7.2(n) below, all or a portion of such proceeds are not so reinvested, then any portion of the sale proceeds not so reinvested (hereafter, the "JV Proceed Deficiency") shall be included as a Purchased Asset hereunder and shall be transferred to the Company.

2.2 Excluded Assets of Sellers. Notwithstanding anything herein to the contrary, the following assets are excluded from the Purchased Assets and shall be retained by Sellers (the "Excluded Assets"):

(a) cash, cash equivalents and investments (except for the amount of any JV Proceed Deficiency as per Section 2.1(z) above);

(b) all of the following: (i) any Employment Agreement that is not listed as an Assumed Employment Agreement on Schedule 2.1(f)(1); (ii) any Physician Agreement that is not listed as an Assumed Physician Agreement on Schedule 2.1(f)(2), or that is so listed but is removed prior to Closing as provided in Section 2.1(f); and (iii) any other Contract listed on Schedule 2.2(b) (collectively, the "Excluded Contracts"); and all of Sellers' rights and interests thereunder;

(c) any Permits, Environmental Permits and Approvals that are not transferable;

(d) any Seller Plans (and any and all assets associated therewith or set aside to fund liabilities related thereto), the Retirement Plan and the Retirement Plan Assets;

(e) any unamortized bond issuance costs and all funds held by the bond trustee under the bond indentures for RWMC Rhode Island Health and Educational Building Corporation Tax-Exempt Revenue Bonds - Series 1998 and SJHSRI Rhode Island Health and Educational Building Corporation Tax-Exempt Revenue Bonds - Series 1999;

(f) except to the extent included within the Transferred Restricted Funds, any charitable restricted assets of Sellers, whether held directly by Sellers or by one or more third parties for Sellers' benefit, and any accrued interest thereon;

(g) the assets of CharterCARE Health Partners Foundation (f/k/a St. Joseph Health Services Foundation);

(h) funds held by Sellers' trustee for insurance, board designated investments, restricted interests in perpetual trusts, donor restricted funds and funds restricted by spending policy, and any accrued interest thereon;

(i) the corporate books and records of Sellers;

(j) any shares of capital stock, membership interest, partnership interest or other ownership in any Seller;

(k) all rights in any insurance policies of Sellers covering the Purchased Assets or any Assumed Liabilities, except as otherwise expressly provided herein (including without limitation pursuant to Section 2.1(l) above); and

(l) the rights of Sellers under this Agreement and all related documents.

2.3 Assumed Liabilities of Sellers. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Sellers shall assign, and the Company shall assume or shall cause one or more Company Subsidiaries to assume, effective as of the Effective Time, the following Liabilities of Sellers with respect to the Facilities and the Purchased Assets as and to the extent existing on the Closing Date (collectively, the "Assumed Liabilities"):

(a) the Assumed Contracts, but only to the extent of Liabilities that (x) are described in Section 2.3(b) below, or (y) accrue or arise after the Effective Time and relate to any period after the Closing Date;

(b) all accounts payable of Sellers as of the Closing Date that were accrued in the Ordinary Course of Business to the extent such accounts payable remain unpaid as of the Closing Date and are reflected in the calculation of Final Net Working Capital;

(c) all accrued expenses of Sellers incurred in the Ordinary Course of Business to the extent the same remain unpaid as of the Closing Date, other than (x) intercompany payables, (y) transaction expenses of Sellers, and (z) any expenses associated with any Taxes, the Seller Plans (but only to the extent such expenses are not reflected in the calculation of Final Net Working Capital) or the Retirement Plan;

(d) deferred gain on investments in the Related Ventures;

(e) all ETO balances associated with the Transferred Employees, including all costs, liabilities and expenses associated with or arising from the same and/or the rollover of such balances from Sellers to the Company as of the Effective Time;

(f) asset retirement obligations as reflected on the Interim Balance Sheet;

(g) if, prior to Closing, Sellers invest the proceeds of any sale of all or any part of their interests in Roger Williams Radiation Therapy, LLC in UMG or some other project or entity as may be mutually agreed by the Parties, as provided in Section 7.2(n) below, and Sellers' acquisition of such replacement interest entails the assumption of any liabilities, any such liabilities so assumed; and

(h) any other obligations or Liabilities identified in Schedule 2.3.

In no event shall the Company assume any Liability that is an Excluded Liability.

2.4 Excluded Liabilities of Sellers. Notwithstanding anything herein to the contrary, the Company and/or the Company Subsidiaries are assuming only the Assumed Liabilities and are not assuming and shall not become liable for the payment or performance of any other Liability of Sellers (collectively, the "Excluded Liabilities"). The Excluded Liabilities are and shall remain Liabilities of the Sellers. Without limiting the generality of the foregoing, the term "Excluded Liabilities" includes any Liability: (i) that is not related to the Business; (ii) relating to any Material Indebtedness; (iii) that is described on Schedule 2.4; or (iv) pertaining to any Excluded Asset.

2.5 Prospect Contribution.

(a) At the Closing, Prospect shall make a capital contribution to the Company in the amount of Forty-Five Million Dollars ($45,000,000) payable in cash (the "Prospect Contribution"). The Prospect Contribution shall be subject to adjustment pursuant to Section 2.9 below.

(b) The Prospect Member shall also be obligated to contribute additional capital to the Company during the four (4)-year period immediately following the Closing Date, in an amount of $50,000,000 (which shall be in addition to the Company's routine capital investment, in its own facilities or those of the Company Subsidiaries, of at least $10 million per year), subject to adjustment, offset or satisfaction as expressly provided herein and in the Amended and Restated Agreement, a copy of which is attached hereto as Exhibit A (the "Long-Term Capital Commitment"). Except as otherwise provided in the Amended and Restated Agreement, and subject to the process and requirements therein, the Company shall cause the Long-Term Capital Commitment to be used by the Company or the Company Subsidiaries on (i) the development and implementation of physician engagement strategies, and (ii) projects related to facilities and equipment ("Capital Projects"), in each case based on a return-on-investment calculation or a material needs assessment. Capital Projects currently identified include the following: expansion of the cancer center at Roger Williams Medical Center, expansion of the emergency department at Roger Williams Medical Center, renovation/reconfiguration of the emergency department at Our Lady of Fatima Hospital, renovation of the operating rooms at Roger Williams Medical Center, conversion of all patient rooms to private rooms at both Hospitals, renovation and expansion of the ambulatory care center at Our Lady of Fatima Hospital, new windows at both Hospitals, a new generator at Our Lady of Fatima Hospital, a facelift for the facades at both Hospitals, and access for the handicapped at the front entrances of both Hospitals (with the specific Capital Projects to be funded as determined by the Company's board of directors).

2.6 Consideration.

(a) Subject to the adjustment as provided in Section 2.9, the aggregate cash purchase price (the "Cash Purchase Price") to be paid by the Company to Sellers shall be an amount equal to: (i) (A) the actual dollar amount of the Prospect Contribution, minus (B) the Assumed Capital Lease Excess Amount (if any) (the "Closing Cash Amount"), plus or minus (ii) the Final Adjustment Amount. The Closing Cash Amount shall be paid at Closing, and the Final Adjustment Amount shall be paid following Closing in accordance with Section 2.9(e).

(b) At the Closing, as partial consideration for the Purchased Assets, the Company shall issue to the Seller Member an aggregate of 16,760 limited liability company membership units of the Company (the "Units"), which Units will represent a 15% ownership interest in the Company.

2.7 Expense Contribution. Sellers, on the one hand, and Prospect, on the other hand, shall bear their pro rata share (based on their ownership in the Company immediately following Closing) of any expenses incurred (i) by the Company in connection with the Transaction, or (ii) by Prospect on behalf of the Company (including, for the avoidance of doubt, expenses incurred by Prospect on behalf of the Company prior to the actual formation of the Company as a Rhode Island limited liability company) in connection with Company's review and analysis of the Business and the Purchased Assets, which shall be limited to those inspections, studies, tests and similar analyses specifically described on Schedule 2.7 (collectively, the "Prospect Advance"). At the Closing, Prospect shall be reimbursed by Sellers an amount equal to Sellers' pro rata share of the Prospect Advance.

2.8 Use of Proceeds. Sellers shall adopt a board resolution specifying the manner in which the Cash Purchase Price shall be used.

2.9 Assumed Capital Lease Excess Amount; Net Working Capital Adjustment.

(a) For purposes of determining the Closing Cash Amount, not more than five (5) but in no event less than two (2) Business Days prior to the Closing, Sellers shall deliver to Prospect and the Company a statement setting forth the Assumed Capital Lease Excess Amount as of the Closing Date (setting forth in reasonable detail such amount owed for each capital lease to be assumed by the Company), including supporting documentation of reasonable specificity and other information requested by the Company to verify such amount.

(b) Not more than ninety (90) days after the Closing, the Company shall prepare and deliver, or cause to be prepared and delivered, to the Sellers' Representative (the "Final Working Capital Statement"): (i) its good faith determination of the actual Net Working Capital as of the Effective Time (as finally determined pursuant to this Section 2.9, the "Final Net Working Capital"); and (ii) a calculation showing the difference between its determination of the Final Net Working Capital pursuant to clause (i) above and the Historical Working Capital Position (such difference, which may be positive or negative, the "Final Adjustment Amount"). Each of the Final Net Working Capital and Historical Working Capital Position shall be calculated in accordance with the methodology set forth on Annex B.

(c) Following receipt of the Final Working Capital Statement, the Sellers' Representative will be afforded a period of twenty (20) Business Days (the "20-Day Period") to review the Final Working Capital Statement. During the 20-Day Period, the Sellers' Representative and its Representatives shall have reasonable access during reasonable business hours upon prior written notice to the Company to the books, records and supporting data of the Company and its Representatives relating to the Final Working Capital Statement and the calculations set forth therein. At or before the end of the 20-Day Period, the Sellers' Representative will either (i) accept the amount of Final Net Working Capital and the Final Adjustment Amount (each as set forth in the Final Working Capital Statement) in their entirety

or (ii) deliver to the Company a written notice (the "Objection Notice") containing a reasonably detailed written explanation of those items in the Final Working Capital Statement that the Sellers' Representative disputes, in which case the items specifically identified by the Sellers' Representative shall be deemed to be in dispute. The failure by the Sellers' Representative to deliver the Objection Notice within the 20-Day Period shall constitute the Sellers' Representative's acceptance of the amount of Final Net Working Capital and the Final Adjustment Amount, each as set forth in the Final Working Capital Statement. If the Sellers' Representative delivers the Objection Notice in a timely manner, then, within a further period of twenty (20) Business Days from the end of the 20-Day Period (the "Second 20-Day Period"), the Parties and, if desired, their respective Representatives will attempt to resolve in good faith any disputed items and reach a written agreement (the "Settlement Agreement") with respect thereto. Failing such resolution, as promptly as practicable (and no event later than ten (10) Business Days from the end of the Second 20-Day Period), the unresolved disputed items will be referred for final binding resolution to a nationally recognized independent public accounting firm mutually selected by the Company and the Sellers' Representative (the "Arbitrating Accountants"). In resolving any disputed item, the Arbitrating Accountants may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The fees and expenses of the Arbitrating Accountants shall be allocated between the Sellers' Representative (on behalf of the Sellers), on the one hand, and Prospect, on the other hand, in proportion to the amounts by which their proposals of the Final Adjustment Amount differed from the Arbitrating Accountants final determination of the Final Adjustment Amount. Such determination (the "Accountants' Determination") shall be (i) in writing, (ii) furnished to the Sellers' Representative and the Company as soon as practicable (and in no event later than thirty (30) Business Days) after the items in dispute have been referred to the Arbitrating Accountants, (iii) made in accordance with GAAP, consistently applied, and (iv) non-appealable and incontestable by Sellers, the Sellers' Representative, the Company and each of their respective Affiliates and successors and assigns and not subject to collateral attack for any reason other than manifest error or fraud.

(d) The "Final Determination Date" shall mean the earliest to occur of (i) the twenty-first (21st) Business Day following the receipt by the Sellers' Representative of the Final Working Capital Statement if the Sellers' Representative shall have failed to deliver the Objection Notice to the Company within the 20-Day Period, (ii) the date on which the Sellers' Representative gives the Company written notice to the effect that such party has no objection to the Company's determination of the amount of Final Net Working Capital and the Final Adjustment Amount, each as set forth in the Final Working Capital Statement, (iii) the date on which the Sellers' Representative and the Company execute and deliver a Settlement Agreement, (iv) the date as of which the Sellers' Representative and the Company shall have received the Accountants' Determination, and (v) the Company's failure to deliver the Final Working Capital Statement within the ninety (90) day period described in Section 2.9(a).

(e) The following payment shall be made within two (2) Business Days following the Final Determination Date and shall be by wire transfer of immediately available funds to an account designated by the Party or Parties entitled to receive any such payments:

(i) If the Final Net Working Capital is less than the Historical Working Capital Position, then Sellers shall pay to the Company the amount by which the Final

Net Working Capital is less than the Historical Working Capital Position (and if not paid to the Company within 90 days following the Final Determination Date, Prospect may (in its sole discretion) treat such amount as an offset to the Long-Term Capital Commitment as provided in Section 1.26 of the Amended and Restated Agreement); or

(ii) If the Final Net Working Capital is greater than the Historical Working Capital Position, then the Company shall pay to Sellers the amount by which the Final Net Working Capital is greater than the Historical Working Capital Position.

2.10 Withholding Tax. Notwithstanding anything in this Agreement to the contrary, the Company shall be entitled to deduct and withhold from the Cash Purchase Price such amounts as the Company is required to deduct and withhold with respect to such payment under the Code or any provision of state or local law. To the extent that amounts are so withheld and paid over to the appropriate Governmental Entity by the Company, such withheld amounts shall be treated for all purposes of this Agreement as having been paid by the Company to Sellers.

2.11 Cash Purchase Price Allocation. The Cash Purchase Price (including any applicable Assumed Liabilities) will be allocated for Tax purposes (the "Allocation") among the Purchased Assets. The Company shall prepare the proposed Allocation and deliver a copy thereof to Sellers within one hundred twenty (120) calendar days after the Closing. Sellers shall thereafter have thirty (30) calendar days to approve or disapprove of such proposed allocation, such approval not to be unreasonably withheld, conditioned or delayed. Sellers and the Company shall work in good faith to resolve any disputes relating to the allocation. If Sellers and the Company are unable to resolve any such dispute within thirty (30) days of the Company's delivery of the proposed allocation to Sellers, then such dispute shall be resolved finally and conclusively by the Arbitrating Accountants, the costs of which shall be borne equally by the Company and Sellers. The Company, Sellers and their Affiliates shall report, act and file Tax Returns (including Internal Revenue Service Form 8594) in all respects and for all purposes consistent with the Allocation agreed to by the Parties or as otherwise determined pursuant to this Section. No Party shall take any position (whether on any Tax Return or in connection with any audit or other examination) that is inconsistent with the Allocation unless required to do so by applicable law.

2.12 Bulk Sales. To the extent applicable to any Seller, Sellers shall make such filings and pay such Taxes as are required to be filed and/or paid in accordance with R.I.G.L. Sections 44-19-22 and 44-11-29 as and when required pursuant thereto. Sellers, jointly and severally, agree to indemnify and hold Company/Prospect Indemnified Parties harmless from, for and against any Liability that a Company/Prospect Indemnified Party may suffer or sustain as a result of any failure by Sellers, or any of them, to make such filings or pay such Taxes.

2.13 Prorations. At Closing, Sellers and the Company shall prorate real estate and personal property lease payments, real estate and personal property Taxes (except that no such proration of property Taxes will be necessary in respect of the transfer of property by any Seller that is a non-profit corporation that does not pay any property Taxes) and other assessments, and all other items of income and expense that are normally prorated upon a sale of assets of a going concern, if any. If any payment of Taxes made by Sellers before Closing is credited against real estate Taxes for which the Company or any Company Subsidiary will be liable, the amount of

such credit will be applied as a credit against any prorations owing by Sellers, to the extent available for offset, and any amounts not so applied will be paid to Sellers by the Company upon the Company's receipt of such credit.

ARTICLE III
CLOSING

3.1 Closing. Subject to the satisfaction or waiver by the appropriate Party of all the conditions precedent to Closing specified in ARTICLE IX and ARTICLE X, the consummation of the Transactions (the "Closing") shall take place at the offices of Sills Cummis & Gross P.C., One Riverfront Plaza, Newark, New Jersey 07102 at 10:00 a.m., local time, on the fifth (5^{th}) Business Day following the satisfaction (or due waiver) of the conditions set forth in ARTICLE IX and ARTICLE X or at such other date and/or location as the Parties may mutually designate (the "Closing Date").

3.2 Effective Time. The Transactions shall be effective as of 11:59 p.m. local time (the "Effective Time") on the Closing Date, unless otherwise agreed in writing by Sellers and the Company.

3.3 Deliveries by Sellers at Closing. At or before the Closing and unless otherwise waived in writing by the Company, Sellers shall deliver to the Company the following:

(a) a duly executed Amended and Restated Agreement, in the form of Exhibit A;

(b) a duly executed and acknowledged Quitclaim Deed, in the form of Exhibit B, with respect to each Owned Real Property;

(c) such estoppel certificates as have been obtained pursuant to Section 7.2(l) below from mobile communications providers that lease space for antennas and other mobile communications facilities on the Owned Real Property, in the form of Exhibit C (the "Tenant Estoppels");

(d) [intentionally omitted];

(e) with respect to those Assumed Leases where any Seller is a tenant or subtenant, duly executed and acknowledged Leasehold Assignment and Assumption Agreements, in the form of Exhibit E, with respect to each Leased Real Property; in the case of such Assumed Leases entailing more than 5,000 square feet of space or annual rent greater than $100,000, such Leasehold Assignment and Assumption Agreements shall include an estoppel provision from each landlord as specified in the terms of the applicable Lease or, if not so specified, as indicated on the form of Exhibit E attached hereto (the "Landlord Estoppels");

(f) one or more duly executed general bills of sale, in the form of Exhibit F;

(g) one or more duly executed assignment and assumption agreements, in the form of Exhibit G;

(h) [intentionally omitted];

(i) (x) a certificate in form and substance satisfactory to the Company setting forth the aggregate dollar amounts of all Material Indebtedness outstanding at Closing, signed by the Chief Financial Officer of Sellers, and (y) executed pay-off letters, final invoices and/or releases necessary to terminate or release all Material Indebtedness (and related Encumbrances), which documents shall be in form and substance satisfactory to the Company;

(j) copies of resolutions duly adopted by the governing body of each Seller authorizing and approving the performance of the Transactions and the execution and delivery of this Agreement and the documents described herein and the change of name contemplated by Section 13.11, certified as true and of full force and effect as of Closing, by appropriate officers;

(k) certificates of existence and good standing of each Seller issued by the office of Secretary of State of Rhode Island dated no earlier than fourteen (14) days prior to the Closing Date and letters of good standing issued by the Rhode Island Division of Taxation for each Seller dated no earlier than fourteen (14) days prior to the Closing Date;

(l) such documentation as may be necessary to transfer the A/R Bank Accounts and all other of Sellers' bank accounts to the Company as of the Effective Time;

(m) FIRPTA Certificates, in the form of Exhibit I, duly executed by Sellers;

(n) the Limited Power of Attorney, in the form of Exhibit J, duly executed by Sellers;

(o) the consents of third parties to the assignment of the Assumed Contracts identified with an asterisk in Schedule 4.12(e), including any Assumed Lease as to which any Seller is a tenant or subtenant where such Lease entails more than 5,000 square feet of space or annual rent greater than $100,000 ("Material Consents"), in form and substance reasonably acceptable to the Company, except to the extent waived by the Company pursuant to Section 13.4 below;

(p) Officer's Certificates from each Seller, in the forms reasonably requested by the Company; and

(q) such other instruments, certificates, consents and documents, as the Company reasonably deems necessary to effectuate the Transactions in accordance with the terms hereof.

3.4 Deliveries by the Company and Prospect at Closing. At or before the Closing and unless otherwise waived in writing by Sellers, the Company and Prospect shall deliver to Sellers the following:

(a) The Closing Cash Amount, in immediately available funds;

(b) a duly executed Amended and Restated Agreement, in the form of Exhibit A;

(c) counterparts to one or more assignment and assumption agreements duly executed by the Company or a Company Subsidiary (as applicable), in the form of Exhibit G;

(d) a duly executed Management Services Agreement, in the form of Exhibit H;

(e) copies of resolutions duly adopted by the governing body of each of Prospect, the Prospect Member, and the Company authorizing and approving the performance by Prospect, the Prospect Member, the Company, and each Company Subsidiary of the Transactions and the execution and delivery of this Agreement and the documents described herein, certified as true and in full force as of Closing by an appropriate officer thereof;

(f) as to the Company and each Company Subsidiary, certificates of existence and good standing issued by the office of Secretary of State of Rhode Island dated no earlier than fourteen (14) days prior to the Closing Date; and as to Prospect and the Prospect Member, a certificate of existence and good standing issued by the office of the Secretary of State of Delaware dated no earlier than fourteen (14) days prior to the Closing Date, and a certificate of good standing to conduct business issued by the office of the Secretary of State of Rhode Island dated no earlier than fourteen (14) days prior to the Closing Date;

(g) Officer's Certificates from each of Company, Prospect and the Prospect Member, in the forms reasonably requested by Sellers; and

(h) such other instruments, certificates, consents and documents as Sellers reasonably deem necessary to effectuate the Transactions in accordance with the terms hereof.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLERS

As of the date hereof and as of the Closing Date (except to the extent any of the following speaks as of a specific date), Sellers, jointly and severally, represent and warrant to Prospect, the Prospect Member, the Company and each Company Subsidiary the following:

4.1 Incorporation, Qualification and Capacity. Each of CCHP, RWMC, SJHSRI, RWRC, RWOB, Elmhurst ECF, RWMA, PHO and TCHHS is a non-profit corporation, duly incorporated and validly existing in good standing under the Laws of the State of Rhode Island. Each of Elmhurst HA, Our Lady and Rosebank is a corporation, duly incorporated and validly existing in good standing under the Laws of the State of Rhode Island. SJHE is a limited liability company, duly formed and validly existing in good standing under the Laws of the State of Rhode Island. All of the respective owners or members of Sellers, as applicable, are listed on Schedule 4.1. Each Seller is duly licensed and qualified to do business under all applicable Laws of any Governmental Entity having jurisdiction over the Business, and has the lawful power to own, lease and operate its assets and properties and conduct its business in the place and manner now conducted, including, as appropriate, operating the Business. No Seller is licensed or qualified to do business in any jurisdiction other than the State of Rhode Island and there is no other jurisdiction in which the ownership, use or leasing of its assets or properties, or the conduct or nature of its business, makes such licensing or qualification necessary. The execution and delivery by each Seller of this Agreement and the documents described herein, the performance

by each Seller of its obligations under this Agreement and the documents described herein, and the consummation by each Seller of the Transactions and the documents described herein have been duly and validly authorized and approved by all necessary corporate/limited liability company action, including, to the extent required, any applicable board and member approvals, on the part of such Seller, and none of such actions has been modified or rescinded and all of such actions remain in full force and effect.

4.2 Powers; Consents; Absence of Conflicts With Other Agreements. Each Seller has the requisite power and authority to conduct its business as now being conducted, to enter into this Agreement, and to perform it obligations hereunder. The execution, delivery and performance of this Agreement and the documents described herein by Sellers, and the consummation by Sellers of the Transactions and documents described herein, as applicable:

(a) are not in contravention or violation of the terms of any Seller's certificate of formation/incorporation, bylaws, operating agreement or other organizational document;

(b) do not require any Approval or Permit of, or filing or registration with, or other action by, any Governmental Entity to be made or sought by any Seller, except (i) the Healthcare Regulatory Consents set forth in Schedule 4.2(b) and (ii) as otherwise set forth on Schedule 4.2(b); and

(c) assuming the Approvals and Permits set forth on Schedule 4.2(b) are obtained, will not conflict in any material respect with or result in any violation of or default under (with or without notice or lapse of time or both) or give rise to a right of termination, cancellation or acceleration of any obligation, lien or loss of a benefit under, or permit the acceleration of any obligation or result in the creation of any Encumbrance (other than Pre-Closing Permitted Exceptions or Permitted Exceptions, as applicable) upon any of the Facilities or the Purchased Assets under (i) any Contract or (ii) any Law applicable to any of the Facilities or the Purchased Assets or to the operation of the Facilities and the Business by the Company and the Company Subsidiaries following the Closing as they are operated on the date hereof and as of the Closing Date, or (iii) any Order by which any of the Facilities or Purchased Assets are bound.

4.3 Binding Effect. This Agreement and all other Ancillary Agreements to which each Seller becomes a Party have been duly and validly executed and delivered by Sellers, and, assuming the due authorization, execution and delivery of this Agreement and each respective Ancillary Agreement by Prospect, the Prospect Member, and the Company (as applicable), are and will constitute the valid and legally binding obligations of such Seller and are and will be enforceable against it in accordance with the respective terms hereof or thereof, except as enforceability may be restricted, limited or delayed by applicable bankruptcy, moratorium or other Laws affecting creditors' rights and remedies generally and except as enforceability may be subject to general principles of equity.

4.4 No Outstanding Rights.

(a) Except as set forth on Schedule 4.4(a), (a) no Seller owns, of record or beneficially, directly or indirectly, any shares of capital stock, membership or other comparable

equity interest of any Person other than the other Sellers, the Related Ventures, and publicly-traded securities available on established stock exchanges, (b) no Seller is a party to any agreement relating to the prospective formation of any other Person, and (c) no Seller has any contractual right or obligation to acquire any direct or indirect equity or ownership interest in any other Person.

(b) Except as set forth on Schedule 4.4(b), there are no outstanding rights (including any right of first refusal), options or Contracts made on behalf of any of Sellers or their Affiliates providing for, permitting or requiring any Person any current or future right to require any Seller or any Affiliate of any Seller or, following the Closing Date, the Company or a Company Subsidiary, to sell, lease or transfer to such Person or to any third party any interest in any of the Facilities or Purchased Assets.

4.5 Title; Purchased Assets.

(a) As of the date hereof, Sellers have good and marketable title to the Purchased Assets free and clear of all Encumbrances, except for Permitted Exceptions shown on Schedule 4.5(a) ("Pre-Closing Permitted Exceptions"). As of the Closing, the Sellers shall have good and marketable title to the Purchased Assets free and clear of all Encumbrances, except for Permitted Exceptions shown on Schedule 12.2 ("Permitted Exceptions"). At the Closing, Sellers shall convey all of their right, title and interest in, including good and marketable title to, the Purchased Assets to the Company and the Company Subsidiaries (as applicable) free and clear of all Encumbrances, except for Permitted Exceptions and the Assumed Liabilities.

(b) The Purchased Assets and the Excluded Assets (but only to the extent the Excluded Assets are specifically identified in this Agreement or the schedules hereto) constitute all assets that are held or used by any Seller or any Affiliate or otherwise necessary for the conduct of the Business substantially in the manner conducted as of the date of this Agreement and consistent with past practice.

4.6 Affiliate Agreements. Except as set forth on Schedule 4.6: (a) no Seller owes any amount to, or has any customer, supplier or distributor Contract with (other than amounts reimbursable for expenses and salary arising in the Ordinary Course of Business to such individuals), any Affiliate or any of such Seller's directors, trustees, officers or consultants; and (b) there are no customer, supplier or distributor Contracts presently in effect between any Seller, on the one hand, and any director, trustee, officer or shareholder of any Seller or any Affiliate of the foregoing, on the other hand.

4.7 Financial Information.

(a) Attached hereto as Schedule 4.7(a) are true and correct copies of: (a) the audited consolidated balance sheet of Sellers as of September 30, 2012 (the "Audited Balance Sheet") and the audited consolidated balance sheet of Sellers as of each of September 30, 2011 and September 30, 2010, together with the audited consolidated statements of earnings, changes in shareholders' equity and cash flows for the respective fiscal years then ended, including the notes thereto, in each case examined by and accompanied by the report of independent public accountants; and (b) the unaudited consolidated balance sheet of Sellers as of July 31, 2013 (the

"Interim Balance Sheet") and the unaudited consolidated statements of earnings, changes in shareholders' equity and cash flows for the nine (9) months then ended (such unaudited statements collectively with the Interim Balance Sheet, the "Interim Financial Statements"). All of the foregoing financial statements (including the notes thereto, if any) are hereinafter collectively referred to as the "Financial Statements."

(b) Except as set forth in Schedule 4.7(b), the Financial Statements present fairly, in all material respects, the financial position and results of operations of Sellers, on a consolidated basis, as of the dates and for the periods indicated, in each case in conformity with GAAP applied on a consistent basis throughout the periods covered thereby, and subject, in the case of the Interim Financial Statements, to the absence of footnote disclosures and normal year-end adjustments that will not be material individually or in the aggregate.

(c) Except as set forth in Schedule 4.7(c), Sellers have no Liabilities whether or not required by GAAP to be reflected or reserved against in the Audited Balance Sheet or the Interim Balance Sheet, except for (A) Liabilities reflected or reserved against in the Audited Balance Sheet or the Interim Balance Sheet and (B) current Liabilities incurred in the Ordinary Course of Business since the date of the Audited Balance Sheet.

(d) Schedule 4.7(d) accurately lists as of the date hereof and will set forth as of Closing all of Sellers' outstanding Indebtedness, and shall specifically identify all outstanding Material Indebtedness and all outstanding Capital Lease Obligations.

4.8 Permits and Approvals.

(a) Schedule 4.8(a) lists all Permits, Environmental Permits and Approvals issued or granted by a Governmental Entity and owned or held by or issued to a Seller or an Affiliate of a Seller in connection with the Business, and such Permits, Environmental Permits and Approvals constitute all Permits, Environmental Permits and Approvals necessary for the conduct of the Business as currently conducted. Sellers are, and will be at the Closing, the duly authorized holders of such Permits, Environmental Permits and Approvals, all of which are in full force and effect and unimpaired. Except as set forth in Schedule 4.8(a), no approval by or permission from any Governmental Entity relating to any such Permit, Environmental Permit or Approval will be or is needed as a result of the Transactions contemplated in this Agreement. Each Facility's pharmacies, laboratories and all other ancillary departments located at such Facility and operated by a Seller or an Affiliate of a Seller for the benefit of such Facility, if required to be specially licensed, are duly licensed by each appropriate Governmental Entity, and a list of such licenses is set forth on Schedule 4.8(a). True and complete copies of all such Permits, Environmental Permits and Approvals set forth on Schedule 4.8(a) have been delivered or made available to the Company.

(b) (i) The Business is in compliance in all material respects with all Permits, Environmental Permits and Approvals required by Law; (ii) to Sellers' Knowledge, except as provided in Schedule 4.8(b), no waivers of any Laws have been granted or are required for the operation of the Business as currently conducted by Sellers, nor has grandfathered compliance status with respect to such Laws been granted; (iii) there are no provisions in, or Contracts relating to, any such Permits, Environmental Permits and Approvals that preclude or limit Sellers

from operating the Business as it is currently operated; and (iv) there is not now pending or, to Sellers' Knowledge, threatened any action by or before any Governmental Entity to revoke, cancel, rescind, suspend, restrict, modify or refuse to renew any of the Permits, Environmental Permits and Approvals, and all of the Permits, Environmental Permits and Approvals are and shall be effective, unrestricted and in good standing now and as of the Closing Date.

(c) (i) Sellers hold all accreditations/certifications issued by accrediting bodies that are necessary or customary for the operation of the Business; (ii) there is not now pending nor, to Sellers' Knowledge, threatened any action by any accrediting body to revoke, cancel, rescind, suspend, restrict, modify or non-renew any such accreditation/certifications; and (iii) all such accreditations/certifications are and shall be effective unrestricted and in good standing as of the date hereof and as of the Closing Date.

(d) Except as set forth in Schedule 4.8(d), each of the Facilities is in compliance with all applicable fire code regulations. Sellers have delivered or made available to the Company the most recent state licensing reports and lists of deficiencies, if any, and the most recent fire marshal surveys and lists of deficiencies, if any, for each of the Facilities, and no such deficiencies are material.

4.9 Intellectual Property. Except for Intellectual Property constituting Excluded Assets:

(a) Schedule 4.9(a) sets forth a complete and accurate list of all Intellectual Property licensed from third parties (the "Third Party Intellectual Property") other than Off-the-Shelf Software.

(b) Sellers own and will own at the Closing all Seller Intellectual Property free and clear of all Encumbrances other than Pre-Closing Permitted Exceptions or Permitted Exceptions, as applicable. To Sellers' Knowledge, the Seller Intellectual Property includes all of the Intellectual Property necessary in the conduct of the Business as currently conducted.

(c) To Sellers' Knowledge: (i) Sellers hold and will hold at the Closing valid licenses to use all Third Party Intellectual Property as used in the Business as of the date hereof and as of the Closing Date; and (ii) except as set forth on Schedule 4.9(c) and subject to Pre-Closing Permitted Exceptions or Permitted Exceptions, as applicable, Sellers have and will have at the Closing all rights necessary to assign, transfer and convey to the Company and the Company Subsidiaries (as applicable) pursuant to this Agreement all rights of Sellers in and to all Intellectual Property, other than pursuant to Excluded Contracts, free and clear of any Encumbrances other than Pre-Closing Permitted Exceptions or Permitted Exceptions, as applicable.

(d) To Sellers' Knowledge: (i) the conduct of the Business as conducted currently does not or, and at any time in the past did not, infringe, misappropriate or violate any Intellectual Property rights owned or controlled by any third party; and (ii) as of the date hereof and as of the Closing Date, there is no unauthorized use, disclosure, infringement or misappropriation by a third party of any Seller Intellectual Property.

(e) No Seller or Affiliate of Seller has brought any Legal Proceeding for infringement of Seller Intellectual Property or breach of any license or Contract involving Intellectual Property against any third party. No written claim by any third party contesting the validity, enforceability or ownership of any Seller Intellectual Property has been made, is currently outstanding, or, to Sellers' Knowledge, is threatened. To Sellers' Knowledge, no such claim has been made, is currently outstanding, or is threatened against any licensor to the Sellers of Third Party Intellectual Property.

(f) Except as set forth in the Assumed Contracts, no necessary registration, maintenance and renewal fees that are the responsibility of Sellers or their Affiliates in connection with the Intellectual Property pursuant to Assumed Contracts are due and payable as of the date hereof and none will be due and payable as of the Closing Date, except for standard expirations and renewals in the Ordinary Course of Business.

(g) No Seller has entered into any written agreement granting to any Person the right to control the prosecution or registration of any of the Seller Intellectual Property.

(h) Schedule 4.9(h) lists all Seller Intellectual Property that is registered or is the subject of a pending application for registration in any country, state or territory.

4.10 Government Program Participation/Accreditation.

(a) Except as set forth on Schedule 4.10(a), each Facility that participates in a Government Reimbursement Program is: (i) eligible to receive payment without restriction under the Government Reimbursement Programs for services provided to qualified beneficiaries; and (ii) qualified to participate in and has current provider agreements (with one or more provider numbers) with the Government Reimbursement Programs and/or their MACs (or other fiscal intermediaries). All of the provider numbers used by Sellers in connection with the Business are listed on Schedule 4.10(a).

(b) Except as expressly disclosed in writing by Sellers to the Company, each Facility that participates in a Government Reimbursement Program is in compliance in all material respects with the conditions of participation for such Government Reimbursement Program. Except as expressly disclosed in writing by Sellers to the Company, there is not pending, nor, to Sellers' Knowledge, is there threatened, any proceeding or investigation under the Government Reimbursement Programs involving Sellers or the Business, or any Person who as of the date hereof or as of the Closing Date is an officer, director, trustee, Employee or agent of Sellers in connection with such Facilities.

(c) (i) Cost Reports for each of the Facilities that participates in a Government Reimbursement Program were filed when due; (ii) except as expressly disclosed in writing by Sellers to the Company, the Cost Reports are in all material respects complete and correct; (iii) such Cost Reports do not claim, and none of such Facilities has received payment or reimbursement in excess of, the amount provided by Law, other than as may be determined pursuant to a future RAC audit as provided in Section 13.6(b) below; (iv) all amounts shown as due from any of such Facilities in the Cost Reports either were remitted with such Cost Reports or will be remitted when required by applicable Law, and all amounts shown in the

corresponding Notices of Program Reimbursement as due have been or prior to Closing will be paid when required under applicable Law; and (v) except to the extent that liabilities or contractual adjustments with respect to such Facilities under the Government Reimbursement Programs have been properly reflected and adequately reserved in the Financial Statements, Sellers have not received notice of any dispute or claim by any Governmental Entity, fiscal intermediary or other Person regarding the Government Reimbursement Programs or the participation by any of such Facilities in such programs. Complete and correct copies of all such reports for the three (3) most recently completed fiscal years of Sellers have been delivered or made available to the Company.

(d) Except as set forth on Schedule 4.10(d), there are no claims, actions or appeals pending before any Governmental Entity with respect to any Cost Reports or claims filed on behalf of Sellers with respect to any of the Facilities that participates in a Government Reimbursement Program, on or before the date of this Agreement (nor shall there be as of Closing, except as disclosed in writing to the Company), or any disallowances by any Government Entity in connection with any audit of such Cost Reports. Except as set forth on Schedule 4.10(d), no validation review or program integrity review related to the Business or the consummation of the Transactions has been conducted by any Governmental Entity in connection with any Government Reimbursement Programs, and, to Sellers' Knowledge, no such reviews are scheduled, pending or threatened against Sellers with respect to the Business or the consummation of the Transactions.

(e) All billing practices of Sellers (including any employed physician practices) with respect to Government Reimbursement Programs and Private Health Plans have been in compliance in all material respects with all applicable Laws, regulations and policies of such Government Reimbursement Programs and Private Health Plans and, to Sellers' Knowledge, Sellers (including any employed physician practices) have not billed or received any material payment or reimbursement in excess of amounts allowed by Law or such payors, other than as may be determined pursuant to a future RAC audit as provided in Section 13.6(b) below.

(f) Sellers have provided to the Company true and complete copies of the most recent accreditation survey report and deficiency list with respect to each Facility and plan of correction, if any, issued by a Governmental Entity. Except as set forth on Schedule 4.10(f), each Facility is implementing remediation of any such deficiencies.

(g) Neither any Seller nor, to Sellers' Knowledge, any of their Affiliates or any director, trustee, officer or Employee of Sellers or any of their Affiliates or any agent acting on behalf of or for the benefit of any of the foregoing, has, directly or indirectly, in connection with any of the Facilities or the Business, engaged in any activities that are prohibited or are cause for civil monetary penalties, criminal sanctions or other legal sanctions under any Laws.

(h) Neither any Seller nor, to Sellers' Knowledge, any of their Affiliates or any director, trustee, officer or Employee of Sellers or any of their Affiliates, is a party to any Contract (including any joint venture or consulting agreement) related to or affecting the Business with any physician, health care facility, hospital, nursing facility, home health agency or other Person who is in a position to make or influence referrals to or otherwise generate business for the Business, to provide services, lease space, lease equipment or engage in any

other venture or activity, in a manner or to the extent that any of the foregoing is prohibited by Law.

4.11 Regulatory Compliance; Illegal Payments.

(a) Except as expressly disclosed in writing by Sellers to the Company: (i) Sellers are in compliance in all material respects with all applicable Laws of Governmental Entities having jurisdiction over each Facility, the Purchased Assets and the Business; and (ii) since December 31, 2009, each of Sellers has timely filed all material forms, applications, reports, statements, data and other information required to be filed with Governmental Entities with respect to the Business.

(b) To Sellers' Knowledge, except as expressly disclosed in writing by Sellers to the Company: (i) each of the Related Ventures is in compliance, in all material respects, with all applicable Laws of Governmental Entities having jurisdiction over it and its business; and (ii) since December 31, 2009, each of the Related Ventures has timely filed all material forms, applications, reports, statements, data and other information required to be filed with Governmental Entities with respect to its business.

(c) Neither any Seller nor, to Sellers' Knowledge, any officer, director, trustee, manager, personnel or agent of any Seller or any other Person on behalf of any Seller, has made or authorized, directly or indirectly, any payment of funds of, or relating to, any Seller that is prohibited by any Laws, including laws relating to bribes, gratuities, kickbacks, lobbying expenditures, political contributions and contingent fee payments.

4.12 Contracts.

(a) Schedule 4.12(a) lists all of the following Contracts to which any Seller is a party or by which it is bound and that are primarily related to the Business or by which the Purchased Assets or Facilities may be bound or affected (collectively, the "Material Contracts"):

(i) Third party contracts;

(ii) Managed care matrix;

(iii) Outside consulting/labor agreements;

(iv) Equipment lease agreements;

(v) Capital leases; and

(vi) Loan guarantees and agreements.

Notwithstanding the foregoing, the Parties hereby acknowledge and agree that Schedule 4.12(a) has been prepared based on good faith efforts by Sellers in anticipation of execution of this Agreement and, accordingly, the inadvertent omission of a Material Contract from Schedule 4.12(a) shall not constitute or be construed as a breach for purposes of Sections 9.2, 11.1(iv), or 14.2(a) hereof.

(b) Each Assumed Contract is valid and existing as to the applicable Seller, and each Seller has duly performed, in all material respects, its obligations under each Assumed Contract to which it is a party to the extent that such obligations to perform have accrued or the term thereof has not expired. Except as set forth on Schedule 4.12(b), to Sellers' Knowledge, no breach or default, alleged breach or default, or event or condition that would (with the passage of time, notice or both) constitute a breach or default under any Assumed Contract by Sellers or any other party or obligor with respect thereto, has occurred or exists.

(c) Schedule 4.12(c) lists each Assumed Contract with a change of control provision that would be triggered by the Transactions and, as a result thereof, may require notice to or consent by a third party or may cause a third party to have a right of termination (excluding, for these purposes, any Assumed Contract and Material Contract described in Section 4.12(d) or (e) below).

(d) Schedule 4.12(d) lists each Assumed Contract that, by its terms, requires notice to (but not consent of) a third party in order for Sellers to assign such Assumed Contracts and Material Contracts to the Company or a Company Subsidiary in accordance with the terms of this Agreement (excluding, for these purposes, any Assumed Contract described in Section 4.12(e) below).

(e) Schedule 4.12(e) lists each Assumed Contract that, by its terms, requires a third party's consent to assignment in order for Sellers to assign such Assumed Contracts and Material Contracts to the Company or a Company Subsidiary in accordance with the terms of this Agreement, with Material Consents (for purposes of Section 3.3(o) above and Section 13.4 below) denoted with an asterisk. Company shall have a period of three (3) Business Days following the Delivery Date during which to complete the denotation of Material Consents with an asterisk.

(f) Sellers have delivered or made available to the Company true and correct copies of all of the foregoing Assumed Contracts described in the foregoing Sections 4.12(c)-(e). No Seller is a party to any oral arrangement or understanding relating to the Business that if in writing would be described in any such Section.

4.13 Tax Matters. Except as set forth on Schedule 4.13:

(a) Each Seller is an entity organized under U.S. federal or state law, and all of the Facilities and Purchased Assets are located in the United States;

(b) All of the assets and operations of Sellers are located within the State of Rhode Island;

(c) None of the Facilities or Purchased Assets are treated, for U.S. federal income tax purposes, as either stock of a corporation or interests in a partnership, except for the interests of CCHP in the Related Ventures, which are treated as interests in partnerships for U.S. federal income tax purposes. None of the Facilities or Purchased Assets are equity interests in an entity that is treated as disregarded from its owner for U.S. federal income tax purposes;

(d) Except as provided below, each Seller is: (i) exempt from taxation under Subtitle A of the Code by virtue of being described in Section 501(c)(3) of the Code; and (ii) exempt from state and local income taxation under applicable analogous provisions of state and local Tax laws. Notwithstanding the foregoing: (x) SJHE is an entity that is treated as disregarded from its owner for U.S. federal income tax purposes; and (y) PHO, Elmhurst HA, Our Lady and Rosebank are subject to U.S. federal and state income taxation;

(e) To Sellers' Knowledge, all Tax Returns required to be filed by, or on behalf of, any Seller have been filed within the time (including any valid extensions thereof) and in the manner provided by Law, and all such Tax Returns are true, correct and complete in all material respects (provided, for the avoidance of doubt, that any statements in a Tax Return relevant to the continuing eligibility of any Seller, or any Affiliate of any Seller, for exemption from any Tax shall be deemed to be material for purposes of this Section 4.13), and all amounts shown due on such Tax Returns have been paid on a timely basis;

(f) To Sellers' Knowledge, all Taxes for which any Seller may have any liability (whether disputed or not) that have become or are due with respect to the Facilities or Purchased Assets, and any assessments received by any Seller, either have been paid or have been adequately reserved for in accordance with GAAP on the financial statements of Sellers;

(g) To Sellers' Knowledge, there are no liens for any Tax on any of the Facilities or Purchased Assets, and there is no basis for the assertion of any lien for any Tax;

(h) To Sellers' Knowledge: (i) all amounts required to be withheld or collected by any Seller in compliance with the payroll tax and other withholding provisions of all applicable Laws have been so withheld or collected, and all such amounts withheld or collected have been timely, duly and validly remitted to the proper Governmental Entity; and (ii) all Internal Revenue Service Forms W-2, Forms 1099 and other required information returns, as well as any and all analogous state or local information returns, have been timely filed with the proper Governmental Entity, and all required information statements in respect of such information returns have been properly delivered to the appropriate recipients thereof; and

(i) No audit or other examination of any Tax Return is presently in progress, and, during the prior three (3)-year period, no notice of a claim or pending investigation has been received or, to Sellers' Knowledge has been threatened, alleging that: (i) any Seller may not have been fully exempt from any Tax for any period for which Sellers filed any Tax Return claiming such exemption; or (ii) any Seller otherwise has a duty to file any Tax Return or pay any Tax or is otherwise subject to the taxing authority of any jurisdiction in any manner, nor in connection therewith has any Seller received any notice or questionnaire from any Governmental Entity in any jurisdiction which suggests or asserts that such Seller may have a duty to file such Tax Returns or pay such Taxes, or otherwise is subject to the taxing authority of such jurisdiction, and no Seller has executed a waiver of any statute of limitations or other extension of the period for the assessment or collection of any Tax, which waiver or extension remains outstanding.

4.14 Real Property; Condition of Title.

(a) Real Property. Schedule 4.14(a) lists by street address all Owned Real Property owned by any Seller and used in connection with the Business. Neither any Seller nor any of their Affiliates have created any Encumbrance (other than Pre-Closing Permitted Exceptions or Permitted Exceptions, as applicable) that will interfere with the use of the Facilities and the Purchased Assets by the Company or a Company Subsidiary after Closing in a manner consistent with the current use by Sellers and their Affiliates. Any Seller that owns Owned Real Property at Closing will convey good and marketable fee simple title to such parcel of Owned Real Property and, to the extent transferrable, any Seller with a leasehold interest in Leased Real Property will assign a valid and enforceable leasehold interest in such Leased Real Property to the Company or a Company Subsidiary, in each case, free and clear of any Encumbrance, except for Permitted Exceptions.

(b) Owned Real Property. Except as otherwise disclosed in Schedule 4.14(b), with respect to each parcel of Owned Real Property: (i) there are no pending or, to Sellers' Knowledge, threatened condemnation proceedings, suits or administrative actions relating to the Owned Real Property or other matters adversely affecting the current use, occupancy or value thereof; (ii) Sellers have not received a written notice from any Governmental Entity of any violation of any applicable Law issued with respect to any of the Owned Real Property that has not been corrected prior to the date hereof and, to Sellers' Knowledge, no such violation exists that could have a material adverse effect on the operation or value of any of the Owned Real Properties; (iii) other than rights of third parties arising under any Lease or Assumed Contract, there are no Contracts granting to any party or parties the right of use or occupancy of any portion of the parcels of Owned Real Property; (iv) the Facilities have received all approvals of Governmental Entities (including licenses and permits) required in connection with the ownership or operation thereof and, to Sellers' Knowledge, are in compliance, in all material respects, with applicable Laws, ordinances, rules and regulations; (v) other than rights arising under any Lease or Assumed Contract (true and correct copies of which have been delivered or made available to the Company), there are no outstanding options or rights of first refusal to purchase the parcels of Owned Real Property, or any portion thereof or interest therein; (vi) there are no parties (other than Tenants under Leases) in possession of the parcels of Owned Real Property; (vii) neither any Seller nor any of their Affiliates has received written notice of any special assessment that may affect any parcel of Owned Real Property; and (viii) the Owned Real Property is, and until Closing shall be, insured against casualty on a full replacement cost basis by one or more insurance policies maintained by Sellers.

(c) Leases. Schedule 4.14(c) lists all Leases where any Seller is a lessee, sublessee, licensee or occupant (copies of which have previously been delivered or made available to the Company), or a lessor, sublessor or licensor in each case, setting forth (a) the parties thereto and the date and term of each of the Leases, (b) the street address and, if applicable, the suite or office number of the premises under the applicable Lease, (c) a brief description (including size and function) of the premises under the applicable Lease, (d) any requirement of consent of or notice to the lessor, sublessor or licensor to assignment of any Leased Real Property, and (e) any sublessees or sublicensees of any tenants of Sellers. Except as set forth on Schedule 4.14(c): (i) no Seller nor any Affiliate has entered into any Leases with respect to the Real Property or the Business; (ii) each Lease in respect of the Real Property

constitutes a legal, valid and binding obligation of the Seller or its Affiliate that is a party thereto, is in full force and effect, has not been amended and such Seller is not in default or breach thereunder and, to Sellers' Knowledge, the other party thereto is not in default or breach thereof; (iii) to Sellers' Knowledge, no event has occurred that, with the passage of time or the giving of notice or both, would cause a breach of or default under any of such Leases by the Seller that is a party thereto or by the other party to such Lease; and (iv) with respect to each such parcel of Leased Real Property (A) Sellers or their Affiliate have valid leasehold interests in such leased premises, free and clear of any Encumbrances, except for Permitted Encumbrances, and (B) neither any Seller nor any Affiliate have received written notice of (1) any condemnation proceeding with respect to any portion of the Leased Real Property or any access thereto, or (2) any special assessment which may affect any parcel of Leased Real Property. True and complete copies of all such Leases and all amendments, modifications and supplements existing as of the date hereof have been delivered or made available to the Company. The Rent Roll attached as Schedule 4.14(c) hereto is true and correct as of the date hereof. As of the date hereof, all rents and any additional charges due under each Lease (including, without limitation, all fixed rents, base rents, additional rents, percentage rents, common area maintenance charges, utility charges and tax charges) under which a Seller or its Affiliate is a landlord, lessor, sublessor, licensor or sublicensor are being billed to the Tenants under such Lease in accordance with the schedule set forth on Schedule 4.14(c). As of the date hereof, no such Tenant is in arrears in the payment of any such rent for more than one calendar month, except as set forth on Schedule 4.14(c). As of the date hereof, no Tenant is entitled to "free" rent or tenant improvement allowances, except as set forth on Schedule 4.14(c). As of the date hereof, all work required to be performed by the lessor or sublessor under each of the Leases has been completed and paid for, except as set forth on Schedule 4.14(c).

(d) Buildings and Systems. To Sellers' Knowledge, each of the following systems of the Hospital or other Owned Real Property: plumbing, electrical, mechanical or heating, ventilation and air conditioning, sewage, roofing, foundation and floors (collectively, the "Buildings and Systems"); is now, and shall be at Closing, in working order and, except as set forth on Schedule 4.14(d), none of such systems are currently in need of repairs anticipated to cost more than $200,000. Except as set forth on Schedule 4.14(d), there are no written notices of any outstanding requirements, recommendations or requests from any Governmental Entity or Tenant requiring any repairs or work to be done with respect to the improvements or pertaining to the maintenance of the Buildings and Systems.

(e) Utilities. To Sellers' Knowledge, all public utilities, including water, sewer, gas, electricity and telephone, are installed and operating and provide adequate service to the Facilities and the other Owned Real Property to continue operations in the manner in which they are now operating. Except as set forth on Schedule 4.14(e), no Seller has received written notice from any public utility regarding (i) any arrearages, fines or penalties relating to utility services that remain unpaid or unresolved, or (ii) any change (pending, proposed or actual) in utility service or fees therefor with respect to the Facilities and the other Owned Real Property. Parking spaces for visitors are available in parking lots at each Facility, which parking is sufficient to accommodate and service the present usage of the Facilities. To Seller's Knowledge, each Facility and other Owned Real Property is contiguous to publicly dedicated streets, roads, or highways providing legal access to such Owned Real Property or such legal access is provided through valid, appurtenant easements.

4.15 Personal Property. Sellers have delivered or made available to the Company true and complete, in all material respects, list(s) and/or schedule(s) of fixed assets, equipment, supplies and other tangible personal property owned or leased by, in the possession of, or used by Sellers in connection with the Business. Sellers own and hold, and will own and hold on the Closing Date, good title to all tangible personal property assets and, except as to Intellectual Property, valid title to all intangible assets included in the Facilities and Purchased Assets, free and clear of all Encumbrances except Pre-Closing Permitted Exceptions or Permitted Exceptions (as applicable) and rights of owners under leases or licenses of assets leased or licensed to Sellers in the Ordinary Course of Business under Assumed Contracts. To Sellers' Knowledge, the tangible personal property of Sellers is in working order and, except as set forth on Schedule 4.15, none of such property is currently in need of repairs or replacements anticipated to cost more than $200,000.

4.16 Insurance. Sellers have delivered or made available to the Company true and complete, in all material respects, list(s) and/or schedule(s) of all insurance policies or self-insurance funds maintained by Sellers as of the date of this Agreement covering the ownership and operation of the Purchased Assets or any of the Facilities, indicating the types of insurance, policy numbers, terms, identity of insurers and amounts and coverage (including applicable deductibles). To Sellers' Knowledge, Sellers are not in default under any such policies. Except as described on Schedule 4.16, all of such policies are now and will be until the Closing in full force and effect. Except as described on Schedule 4.16, Sellers have received no notice of default under any such policy or notice of any pending or threatened termination or cancellation, coverage limitation or reduction or material premium increase with respect to any such policy. Sellers have delivered or made available to the Company the claims history under each of the insurance policies of Sellers since December 31, 2010. Except as set forth on Schedule 4.16, all of Sellers' insurance policies and coverages are "occurrence-based" and do not require tail policies in order to cover all matters and liabilities occurring prior to the Effective Time.

4.17 Employee Benefit Plans.

(a) Schedule 4.17(a) lists (i) each employee benefit plan within the meaning of Section 3(3) of ERISA (whether or not ERISA applies to such employee benefit plan) other than the Retirement Plan, which shall not be considered a "Seller Plan" for purposes of this Agreement, and (ii) any other employee benefit or executive compensation plan, fund, agreement, program, policy, or arrangement, including any Employment Agreement, retention agreement and bonus program, whether written or unwritten, formal or informal, (A) which is or has been maintained or contributed to within the last 6 years by any Seller or by any other member of any Sellers' Controlled Group for the benefit of any Employee or former employee of any Sellers or their Affiliates at the Facilities or the Purchased Assets or (B) under which any Seller or any other member of any Sellers' Controlled Group has or may have any outstanding present or future obligations to contribute or other liability, whether voluntary, contingent or otherwise (collectively, the "Seller Plans"). With respect to each Seller Plan and the Retirement Plan, (i) all contributions (including all employer contributions and employee salary reduction contributions), distributions, reimbursements and premium payments for all periods ending prior to or as of the Closing Date shall have been made by Sellers or properly accrued, (ii) with respect to any insurance contract providing funding under any Seller Plan, to Sellers' Knowledge, there is no material liability for any retroactive rate adjustment arising from events occurring prior to

the Closing Date, and (iii) to Sellers' Knowledge, there has been no prohibited transaction (as defined in Section 406 of ERISA and 4975 of the Code, or Section 503 of the Code, as applicable) or breach of fiduciary duty (as determined under ERISA or state law, as applicable).

(b) With respect to each Seller Plan and the Retirement Plan, Sellers have delivered to the Company true and complete copies of such Plans and trust documents and any amendments thereto (or if the Seller Plan is not written, a true and reasonably complete description thereof), summary plan descriptions, all insurance contracts or other funding arrangements and the most recent third party administration contracts, all material communications received or sent to any Governmental Entity, the most recent actuarial reports and accountant's opinions of the plan's financial statements, if applicable, the most recent estimate available to Sellers of any potential multiemployer plan withdrawal liability of Sellers and their Controlled Group members, the most recent determination letter received from the IRS to the extent that any Seller Plan or the Retirement Plan is intended to be tax-qualified under Section 401(a) of the Code, and, in the case of any Seller Plan subject to ERISA, the three most recent Form 5500 annual reports, as filed, and all other material documents pursuant to which the Seller Plan is maintained, funded, and administered. Each Seller Plan and the Retirement Plan complies in all material respects with the Code and all applicable Laws, and such Plan has been operated in material compliance with the terms thereof in all respects. Neither any Seller nor any members of Sellers' Controlled Group have improperly excluded any eligible employee from participation in any Seller Plan or the Retirement Plan. The Retirement Plan and each Seller Plan that is intended to be tax-qualified under Section 401(a) of the Code is so qualified and, to Sellers' Knowledge, there are no currently existing circumstances that could reasonably result in revocation of any such qualification. The trusts maintained under each such tax-qualified plan are exempt from taxation under Section 501(a) of the Code. Each Seller Plan that is intended to meet the requirements of Section 403(b) of the Code complies in all material respects with Section 403(b) of the Code and the regulations issued thereunder, and each Seller Plan that is intended to meet the requirements of Section 457(b) of the Code complies in all material respects with Section 457(b) of the Code and the regulations issued thereunder.

(c) The Purchased Assets are not, and to Sellers' Knowledge there is no existing factual basis for the Purchased Assets to become, subject to a lien imposed under the Code or under Title I or Title IV of ERISA or by operation of state law, including liens arising by virtue of any Seller being considered to be aggregated with another trade or business pursuant to Section 414 of the Code or Section 4001(b)(1) of ERISA ("Controlled Group").

(d) Neither any Seller nor any member of Sellers' Controlled Group has at any time sponsored, contributed to, has or had an "obligation to contribute" (as defined in ERISA Section 4212) or has or had any liability, whether voluntary, contingent or otherwise with respect to a "multiemployer plan" (as defined in ERISA Sections 4001(a)(3) or 3(37)(A) or Section 414(f)) of the Code), either as an employer or a joint employer.

(e) Neither any Seller nor any member of Sellers' Controlled Group has at any time sponsored or contributed to or has or had any liability, whether voluntary, contingent or otherwise with respect to a "single employer plan" (as defined in ERISA Section 4001(a)(15), whether or not ERISA would apply to such plan) to which at least two or more of the

"contributing sponsors" (as defined in ERISA Section 4001(a)(13), whether or not ERISA would apply to such plan) are not part of the same Controlled Group.

(f) Except as set forth on Schedule 4.17(f), (i) no Legal Proceeding has been instituted or, to Sellers' Knowledge, threatened against or involving any Seller Plan or the Retirement Plan (other than routine claims for benefits), any trustee or fiduciaries thereof, or Sellers, (ii) there are no actions, audits or claims pending or, to Sellers' Knowledge, threatened against any Seller or any Seller Plan or the Retirement Plan with respect to such Seller's maintenance of the Seller Plans, other than routine claims for benefits, and (iii) no Seller Plan nor the Retirement Plan is under audit by the IRS or any other Government Entity, or, to Sellers' Knowledge, under investigation by the IRS or any other Governmental Entity.

(g) To the extent applicable, the members of Sellers' Controlled Group have complied with all of the continuation coverage requirements of Section 4980B(f) of the Code and Party 6 of Subtitle B of Title I of ERISA and any comparable state laws requiring Sellers or any member of Sellers' Controlled Group to provide group health continuation coverage to employees, former employees and other eligible individuals ("COBRA").

(h) Except as set forth on Schedule 4.17(h), no Seller Plan provides health, dental, life insurance or other welfare benefits (whether on an insured or self-insured basis) to Employees after their retirement or other termination of employment (other than continuation coverage required under COBRA which may be purchased at the sole expense of the Employee).

(i) None of the Seller Plans is a "church plan" within the meaning of Code Section 414(e) (a "Church Plan"). The Retirement Plan is a Church Plan. The Retirement Plan has been a Church Plan since the date on which the Retirement Plan was established, and has continuously maintained such status since that date. The Retirement Plan has at all times been administered by an organization described in Section 414(e)(3)(A) of the Code and Seller has not made, with respect to the Retirement Plan, an election pursuant to Section 410(d) of the Code.

(j) Except as set forth on Schedule 4.17(j), no Seller has within the last six (6) years sponsored or contributed to or has or had any liability, whether voluntary, contingent or otherwise with respect to a defined benefit plan. With respect to any defined benefit plan listed on Schedule 4.17(j), Seller has fully disclosed the current funding status of the plan and properly accounted for its obligations with respect to such plans on its financial statements. Except as set forth on Schedule 4.17(j), neither any Seller nor any member of Sellers' Controlled Group participates in, contributes to, or otherwise has any current or contingent liability or obligation under or with respect to any plan that is or was subject to Title IV of ERISA or Section 412 of the Code. No Seller nor any member of Sellers' Controlled Group has any current or contingent liability or obligation by reason of at any time being treated as a single employer under Section 414 of the Code with any other Person.

(k) Each agreement, contract or other arrangement to which the a Seller is a party that is a "nonqualified deferred compensation plan" subject to Section 409A of the Code has been maintained in all material respects in documentary and operational compliance with Section 409A of the Code and the regulations thereunder and no amounts under any such agreement, contract, or other arrangement is or has been subject to the interest and additional tax

set forth under Section 409A of the Code. No Seller has any actual or potential obligation to reimburse or otherwise "gross-up" any Person for the interest or additional tax set forth under Section 409A of the Code. Each Seller Plan that is intended to constitute an "eligible deferred compensation plan" within the meaning of Section 457(b) of the Code satisfies the requirements of said Code section.

(l) Except as set forth on Schedule 4.17(l), the consummation of the transactions contemplated by this Agreement will not (i) entitle any Employee to severance pay or termination benefits, (ii) accelerate the time of payment or vesting (except to the extent required by Section 411 of the Code), or increase the amount of compensation due to any such Employee, (iii) obligate the Company or any Company Subsidiary to pay or otherwise be liable to any Employee for periods before the Closing Date to the extent such obligation or liability is not contained in the calculation of Final Net Working Capital, (iv) require assets to be set aside or other forms of security to be provided for any liability under a Seller Plan or the Retirement Plan, or (v) result in any "parachute payment" (within the meaning of Section 280G of the Code or any corresponding provision of state or local law).

4.18 Employees and Employee Relations.

(a) Sellers have delivered or made available to the Company on Sellers' Due Diligence Data Site a true and correct list of all Employees (other than residents or fellows) as of August 24, 2013, including the following information, as applicable: (i) position; (ii) job site; (iii) date of hire; (iv) department or administrative unit assigned; (v) current annual salary or hourly wage; (vi) date of last salary or wage increase; (vii) accrued vacation, holidays and/or sick leave; and (viii) the labor union, if any, by which the individual is represented (the "Employee List").

(b) Sellers have delivered to the Company complete and accurate copies of each employment, consulting, enrollment, appointment, training and similar agreement pertaining to the Business to which any Seller is a party. Except as disclosed on Schedule 4.18(b) or Schedule 4.18(c), no Seller is a party to or bound by any Contract, Order or statutory obligation (other than the WARN Act) pertaining to the Business (i) for the employment or provision of services (including as an independent contractor or consultant) by any individual, that is not terminable by such Seller without penalty upon 30 days' notice or less, or (ii) relating to the payment of any severance or termination payment, bonus or death benefit to any Employee, former employee or their estates or designated beneficiaries, except for proceeds under any standard employee benefit insurance policies that may be in effect.

(c) Schedule 4.18(c) identifies the labor or collective bargaining agreements, if any, including all side agreements, memoranda of understanding, arbitration awards construing or modifying the terms of any such agreements, and any other ancillary agreements applicable to the Employees. Prior to the date hereof, Sellers have delivered to the Company a copy of each agreement and/or other document listed on Schedule 4.18(c), if any. Sellers, without violating their statutory obligation to bargain in good faith, shall not negotiate any changes to, or extensions of, said collective bargaining agreements, or present substantive proposals to the applicable labor unions with respect to any such proposed changes or extensions, without first consulting with the Company and securing its prior written consent to same. Except as described

on Schedule 4.18(c), in connection with Sellers' operation of the Business: (i) no labor union or employee association has been certified as the collective bargaining agent for any group of Employees; (ii) there is no current, or to Sellers' Knowledge threatened, union organizing activities or campaign, or labor union demand for recognition or neutrality, with respect to any Employees or that could otherwise affect Sellers; (iii) to Sellers' Knowledge, no petition has been filed or proceeding instituted by or on behalf of any Employee, group of Employees or labor organization with the National Labor Relations Board or any other Governmental Entity exercising lawful jurisdiction over Sellers seeking recognition of a bargaining representative; and (iv) no Employee is represented by a labor union as it pertains to his or her employment by Sellers.

(d) Except as set forth on Schedule 4.18(d), there are no (i) strikes, work stoppages, work slowdowns or lockouts pending or threatened against or involving Sellers, or (ii) unfair labor practice charges or complaints pending or, to Sellers' Knowledge, threatened by or on behalf of any Employee or group of Employees, and Sellers have not experienced any such pending or threatened strikes, work stoppages, work slowdowns, lockouts, unfair labor practice charges or complaints since December 31, 2008.

(e) Except as described on Schedule 4.18(e), each Seller is in compliance in all material respects with all collective bargaining agreements, if any, arbitration awards or other Contracts relating to employment of represented or non-represented Employees, and there are no grievances or arbitrations pending under any such collective bargaining agreements.

(f) Except as set forth on Schedule 4.18(f): (i) each Seller is in compliance in all material respects with all Laws relating to employment, denial of employment or employment opportunity and termination of employment; (ii) no Seller is a party to, or otherwise bound by, any settlement agreement or consent decree with, or citation by, any Governmental Entity relating to Employees or employment practices; (iii) there is no charge of discrimination in employment or employment practices against Sellers, on any basis, including age, gender, race, religion, national origin, disability, marital status, sexual orientation or other legally protected characteristic, or charge of retaliation, which is now pending or, to Sellers' Knowledge, threatened, before the United States Equal Employment Opportunity Commission, or any other Governmental Entity in any jurisdiction in which Sellers have employed or currently employs any Employee or any probable cause determination with respect to any such charge; (iv) no Seller is liable for any payment to any trust or other fund or to any Governmental Entity with respect to unemployment compensation benefits, workers' compensation benefits, social security or other benefits or obligations for Employees (other than routine payments to be made in the normal course of business and consistent with past practice); (v) there is no claim with respect to payment of wages, salary or overtime pay, or unpaid withholding taxes or other sums as required by any appropriate Governmental Entity that is now pending or, to Sellers' Knowledge, threatened, before any Governmental Entity with respect to any current or former Employees; and (vi) there are no controversies pending or, to Sellers' Knowledge, threatened, by or on behalf of any Employees against Sellers, which controversies have or could reasonably be expected to result in a Legal Proceeding before any Governmental Entity, including those related to payment of wages, hours and the payment of withholding of taxes and other sums as required by any appropriate Governmental Entity.

(g) Except as set forth on Schedule 4.18(g), there is no material controversy pending or, to Sellers' Knowledge, threatened between a Seller and any of its current or former officers, directors, trustees or senior managers, in each case, in connection with the Business.

(h) Schedule 4.18(h) identifies all Employees who are working exclusively or substantially in connection with a research program.

(i) To Sellers' Knowledge: (i) no officer or senior manager has any present intention to terminate or materially alter his or her relationship with any Seller, other than as contemplated by this Agreement and the agreements to be entered into pursuant to this Agreement; and (ii) no Employees are in violation of any material term of any employment contract, patent disclosure agreement, enforceable noncompetition agreement or any enforceable non-solicitation or other restrictive covenant, in each case, to a former employer relating to the right of any such Employee to be employed by Sellers.

4.19 Residents and Fellows. Sellers have delivered or made available to the Company on Sellers' Due Diligence Data Site a true and correct list of all medical residents and fellows as of August 24, 2013, including the following information, as applicable: (i) the position; (ii) the date of appointment and enrollment in a sponsored graduate education program associated with Sellers; (iii) current annual stipend or other compensation; (iv) average number of hours participating in graduate medical education and training per week; (v) date of last stipend increase; and (vi) the union, if any, by which the individual is represented (the "Residents and Fellows List").

4.20 Medical Staff; Physician Relations. Sellers have delivered or made available to the Company on Sellers' Due Diligence Data Site complete and correct copies of the Bylaws, Rules and Regulations of the Medical Staff applicable to the Facilities, as in effect as of August 31, 2013. Consistent with applicable state law confidentiality and disclosure requirements applicable to medical staff members, Sellers have expressly informed the Company regarding any pending or, to Sellers' Knowledge, threatened, proceedings with the medical staff members at the Facilities or applicants or allied health professionals, other than routine medical staff credentialing and privileging functions. Sellers have delivered to the Company a true and correct list of all members of the medical staff and allied health professional staff of the Facilities as of August 31, 2013 (collectively, the "Medical Staff List"), including each person's name, title or position, and department.

4.21 Legal Proceedings. Schedule 4.21 contains an accurate list and summary description of all Legal Proceedings currently pending with respect to or affecting the Facilities and the Purchased Assets to which Sellers or any of their Affiliates is a party (including Governmental Entity and third party payor audits and related proceedings), as well as settlements, Orders or conciliation agreements under which Sellers or any of their Affiliates has current or future obligations with respect to the Facilities or Purchased Assets. Except to the extent set forth on Schedule 4.21, there are no Legal Proceedings, compliance reports, notices of violation or information requests pending, or, to Sellers' Knowledge, threatened against (i) any Seller or its Affiliates with respect to the Business, or (ii) any Employee as relates to his or her employment by Sellers.

4.22 Absence of Changes. Except as set forth in Schedule 4.22, between the date of the Audited Balance Sheet and the date hereof, there has not been any transaction or occurrence in which Sellers or any of their Affiliates, in connection with the Purchased Assets, have:

(a) suffered any damage, destruction or loss with respect to or affecting any of the Facilities or Purchased Assets in an amount in excess of $100,000;

(b) written down or written up the value of any Inventory (including write-downs by reason of shrinkage or markdowns), except in the Ordinary Course of Business;

(c) determined as collectible any account receivable or any portion thereof that was previously considered uncollectible, or written off as uncollectible any account receivable or any portion thereof, except for write-downs, write-ups and write-offs in the Ordinary Course of Business;

(d) disposed of, modified or permitted to lapse, any right to the use of any Intellectual Property, except in the Ordinary Course of Business;

(e) made any capital expenditure or commitment for additions to property, plant, equipment, intangible or capital assets or for any other purpose in an amount in excess of $100,000, other than in the Ordinary Course of Business;

(f) acquired any assets, including acquired any business (whether by merger, consolidation, the purchase of a substantial portion of the assets or equity interests of such business or otherwise), in an amount in excess of $100,000, other than in the Ordinary Course of Business;

(g) sold, leased, transferred or otherwise disposed of any of the Facilities or Purchased Assets having a current book value or fair market value in excess of $100,000, other than in the Ordinary Course of Business;

(h) granted or incurred any obligation for any increase in the compensation of any Employee (including any increase pursuant to any bonus, pension, profit-sharing, retirement, or other plan or commitment) or created any Seller Plan, in each case, other than in the Ordinary Course of Business;

(i) incurred, assumed or guaranteed any indebtedness, or made any loans, advances or capital contributions to, or investments in, any other Person, other than in the Ordinary Course of Business;

(j) cancelled, settled, compromised, waived or released any right or claim (or series of related rights and claims) involving more than $100,000, other than in the Ordinary Course of Business;

(k) made any change in any method of accounting or accounting principle, practice or policy, except as required by GAAP;

(l) suspended operation of, or closed any departments (or material service), clinics or health services or educational programs, or otherwise terminated or took action to terminate such operations;

(m) filed for bankruptcy;

(n) taken any other material action except in the Ordinary Course of Business, or specifically provided for in this Agreement; or

(o) agreed, so as to legally bind the Sellers or affect the Facilities or the Purchased Assets, whether in writing or otherwise, to take any of the actions set forth in this Section 4.22 and not otherwise permitted by this Agreement.

4.23 Environmental Matters.

(a) Except as set forth on Schedule 4.23:

(i) Except in compliance with applicable Environmental Laws, or in concentrations that would not be reasonably likely to result in an obligation to report to a Governmental Entity, investigate, remediate, correct or monitor any environmental condition, to Sellers' Knowledge, there are not and have not been during the past six (6) years any Hazardous Materials located in, on, under, at or from any Facility, Owned Real Property or Leased Real Property. Except in material compliance with applicable Environmental Laws, to Sellers' Knowledge, there are no portions of any Facility or Real Property being used, or within the last six (6) years have been used, by Sellers, or that have previously been used by any other Person, for Hazardous Activity in violation of Environmental Laws.

(ii) To Sellers' Knowledge, the Facilities, the Real Property and the Business and the operations of Sellers are in compliance in all material respects with all applicable Environmental Laws and have at all times during Sellers' operations for the past six (6) years been in compliance in all material respects with all applicable Environmental Laws. To Sellers' Knowledge, all Former Real Property had been in compliance in all material respects with applicable Environmental Laws during the ownership, lease or operation thereof by Sellers. To Sellers' Knowledge, there are no conditions existing at any Facility, Real Property or Former Real Property that have resulted in, or that with the giving of notice or the passage of time or both, could reasonably be expected to result in, liability under Environmental Laws. Sellers have not received any written notice of any potential or actual liability under Environmental Laws relating to any Facility, Real Property, Former Real Property or the conduct of the Business or the operations of Sellers or their predecessors-in-interest.

(iii) Sellers have, or have timely applied for, all material Environmental Permits. To Sellers' Knowledge, the Business, Sellers' operations, the Facilities and the Real Property are, and for the past six (6) years have been, in material compliance with the terms and conditions of all such Environmental Permits. To Sellers' Knowledge, no reason exists why the Company and the Company Subsidiaries (as applicable) should not be able to continue the Business and the operations of Sellers following the consummation of the transactions contemplated by this Agreement, consistent with past practice in material compliance with Environmental Laws and such Environmental Permits.

(b) Neither this Agreement nor the consummation of the transaction that is the subject of this Agreement will result in any obligations for any Remediation, or notification to or consent of Governmental Entities or third parties, pursuant to any of the so-called "transaction-triggered" or "responsible property transfer" Environmental Laws.

(c) Sellers have provided to the Company all material environmental reports, assessments, audits, studies, investigations, data and other written environmental information in their custody or possession concerning Sellers, the Facilities, the Real Property and the Former Real Property.

(d) None of the matters disclosed on Schedule 4.23, individually or in the aggregate, is reasonably likely to result in a Material Adverse Development.

4.24 Immigration Act. To Sellers' Knowledge, Sellers are in compliance, in all material respects, with the terms and provisions of the Immigration Act with respect to the operation of the Facilities and the Purchased Assets. No Seller has received any written notice of any actual or potential violation of any provision of the Immigration Act (it being acknowledged that receipt of Social Security Administration "no match letters" does not constitute notice of any actual or potential violation of any Law) and there are no, and, since December 31, 2007, have not been any, citations, investigations, administrative proceedings or formal complaints of violations of the immigration laws imposed, pending or threatened before the U.S. Department of Homeland Security (including the U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection), U.S. Department of Labor or before any other Governmental Entity against or involving any of Sellers.

4.25 WARN Act. Sellers have delivered or made available to the Company a true and correct list of the full name, job title, job site and unit, date of Employment Loss, and type of Employment Loss (termination, layoff or reduction in work hours) of each Employee of Sellers who furnished services at any of the Facilities or the Purchased Assets who has experienced an Employment Loss in the ninety (90) days preceding the date of this Agreement. Except as expressly disclosed in writing by Sellers to the Company, Sellers do not presently intend to take any action that would result in an Employment Loss by any Employee or Person who furnishes services at any of the Facilities or the Purchased Assets between the date of this Agreement and the Closing Date, other than in the Ordinary Course of Business. For purposes of this Section 4.25, "Employee" shall mean any Employee, including officers, managers and supervisors, but excluding Employees who are employed for an average of fewer than 20 hours per week or who have been employed for fewer than 6 of the preceding 12 months, unless Employees working fewer than 20 hours per week or employed fewer than 6 months are protected by a current or then-existing federal, state or local plant closing law.

4.26 Credit Balance Reports. Sellers have delivered or made available to the Company accurate and complete copies of their Medicare and Medicaid quarterly credit balance reports for the past four quarters.

4.27 Inventory. Substantially all of the Inventory existing on the date hereof will exist on the Closing Date, except for Inventory exhausted, replaced or added in the Ordinary Course of Business between the date of this Agreement and the Closing Date. To Sellers' Knowledge,

substantially all of the Inventory on hand on the date of this Agreement and to be on hand on the Closing Date consists and will consist of items of a quality and quantity useable or saleable in the operation of the Business in the Ordinary Course of Business, except to the extent of reserves reflected in the Financial Statements.

4.28 Accounts Receivable and Accounts Payable.

(a) Except as set forth on Schedule 4.28(a), all Accounts Receivable due or recorded in the books and records of account of Sellers, have arisen from bona fide transactions in the Ordinary Course of Business, are valid and existing and are reasonably believed by Sellers to be collectible in an aggregate amount equal to the amount shown for Accounts Receivable on Schedule 4.28(a), except to the extent of the amount of the reserve for doubtful accounts reflected thereon. Except to the extent of any allowance for bad debt or doubtful receivables as reflected on the Interim Balance Sheet, to Sellers' Knowledge, no Accounts Receivable or other debts are or will, at the Closing Date, be subject to any valid counter-claim or set-off.

(b) All Accounts Receivable are currently deposited, either electronically or manually, into the bank accounts listed on Schedule 4.28(b)-1 (the "A/R Bank Accounts"). All of Sellers' other bank accounts are also listed on Schedule 4.28(b)-2 and identified as the "Non-A/R Bank Accounts."

(c) All of the accounts payable of Sellers have arisen in bona fide arm's-length transactions in the Ordinary Course of Business and, as of the date hereof and the Closing Date, and except as set forth on Schedule 4.28(c), each Seller shall have paid its accounts payable in the Ordinary Course of Business.

4.29 Solvency. After exclusion of Liabilities associated with the Retirement Plan due to their uncertainty of amount: (i) Sellers are not now insolvent and will not be rendered insolvent by any of the Transactions; (ii) Sellers have, and immediately after giving effect to the Transactions, will have, assets (both tangible and intangible) with a fair saleable value in excess of the amount required to pay their Liabilities as they come due; and (iii) Sellers have adequate capital for the conduct of their business and discharge of their debts. No Sellers are involved in any proceeding by or against it as a debtor before any Governmental Entity under Title 11 of the United States Bankruptcy Code or any other insolvency or debtors' relief act, whether state, federal or foreign, or for the appointment of a trustee, receiver, liquidator, assignee, sequestrator or other similar official for any part of any Seller's property.

4.30 Brokers or Finders. Except for Cain Brothers & Company, LLC, no person, firm or corporation is entitled to any commission, broker's or finder's fees, or other similar payments from Sellers or their Representatives in connection with the Transactions. As of the Closing Date, Sellers shall have made full payment of all amounts due and owing to Cain Brothers & Company, LLC in connection with the Transactions.

4.31 Acknowledgement Regarding Representations and Warranties. Notwithstanding anything contained in this Agreement to the contrary, Sellers acknowledge and agree that, except as set forth herein, neither Prospect, the Prospect Member, the Company nor any Company

Subsidiary, nor any Affiliate of any of the foregoing, is making any representation or warranty whatsoever.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF COMPANY

As of the date hereof and as of the Closing Date (except to the extent any of the following speaks as of a specific date, such as the date hereof), the Company represents and warrants to Sellers the following:

5.1 Incorporation, Qualification and Capacity. Each of the Company and each Company Subsidiary is a limited liability company duly formed and validly existing in good standing under the Laws of the State of Rhode Island. As of the date hereof and until immediately prior to the Effective Time, Prospect is and shall remain the sole member of the Company. As of the date hereof and as of the Effective Time, the Company is and shall remain the sole member of each Company Subsidiary. Each of the Company and each Company Subsidiary is duly authorized, qualified to do business and in good standing under all applicable Laws of any Governmental Entity having jurisdiction over the business of the Company or such Company Subsidiary (as applicable) and has the lawful power to own, lease and operate its properties and conduct its business in the place and manner now conducted. The execution and delivery by the Company and the Company Subsidiaries of this Agreement and the documents described herein, the performance by the Company and the Company Subsidiaries of their obligations under this Agreement and the documents described herein, and the consummation by the Company and the Company Subsidiaries of the Transactions and the documents described herein have been duly and validly authorized and approved by all necessary action, including, to the extent required, any applicable board and member approvals, on the part of the Company and none of such actions have been modified or rescinded and all of such actions remain in full force and effect.

5.2 Powers; Consents; Absence of Conflicts With Other Agreements. The execution, delivery and performance of this Agreement and the documents described herein by the Company and the Company Subsidiaries, and the consummation by the Company and the Company Subsidiaries of the Transactions and documents described herein, as applicable:

(a) are not in contravention or violation of any of the material terms of the articles of organization, operating agreement or other organizational documents of the Company or any Company Subsidiary;

(b) do not require any Approval or Permit of or filing or registration with or other action by, any Governmental Entity to be made or sought by the Company or any Company Subsidiary, except (i) the Healthcare Regulatory Consents set forth in Schedule 5.2(b) and (ii) as otherwise set forth on Schedule 5.2(b); and

(c) assuming the Approvals and Permits set forth on Schedule 5.2(b) are obtained, will not conflict in any material respect with or result in any violation of or default under (i) any contract by which the Company or any Company Subsidiary is bound or (ii) any

Law applicable to or (iii) any Order by which the Company or any Company Subsidiary or their respective businesses are bound.

5.3 Binding Effect. Subject to the receipt of the Approvals set forth in Section 5.2 and on Schedule 5.2(b), this Agreement and all other Ancillary Agreements to which the Company and any Company Subsidiaries will become a party hereunder have been duly and validly executed and delivered by the Company and such Company Subsidiaries, and, assuming the due authorization, execution and delivery of this Agreement and each respective Ancillary Agreement by Sellers and Prospect, are and will constitute the valid and legally binding obligations of the Company and such Company Subsidiaries and are and will be enforceable against the Company and such Company Subsidiaries in accordance with the respective terms hereof and thereof, except as enforceability against the Company or such Company Subsidiaries may be restricted, limited or delayed by applicable bankruptcy, moratorium or other Laws affecting creditors' rights and remedies generally and except as enforceability may be subject to general principles of equity.

5.4 Litigation. There is no Legal Proceeding pending or, to the knowledge of the Company, threatened against or affecting the Company or any Company Subsidiary, that has or would reasonably be expected to have a material adverse effect on the ability of the Company or any Company Subsidiary to timely consummate the Transactions. Notwithstanding the foregoing, each of Sellers and Prospect acknowledge and agree that, for all purposes of this Agreement, the Company makes no representation or warranty regarding the ability of the Company or the Company Subsidiaries to consummate the Transactions consistent with the Antitrust Laws.

5.5 Solvency. Each of the Company and each Company Subsidiary is not now insolvent and will not be rendered insolvent by any of the Transactions.

5.6 Brokers or Finders. Neither the Company, any Company Subsidiary, nor any of their respective Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Transactions.

5.7 Acknowledgement Regarding Representations and Warranties. Notwithstanding anything contained in this Agreement to the contrary, the Company and the Company Subsidiaries acknowledge and agree that, except as set forth herein, neither any Seller nor Prospect nor Affiliates of the foregoing are making any representations or warranties whatsoever.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF PROSPECT

As of the date hereof and as of the Closing Date (except to the extent any of the following speaks as of a specific date, such as the date hereof), Prospect represents and warrants to Sellers and the Company the following:

6.1 Incorporation, Qualification and Capacity. Each of Prospect and the Prospect Member is duly incorporated and validly existing in good standing under the Laws of the State of

Delaware. Each of Prospect and the Prospect Member is duly authorized, qualified to do business and in good standing under all applicable Laws of any Governmental Entity having jurisdiction over its business and has the lawful power to own, lease and operate its properties and conduct its business in the place and manner now conducted. The execution and delivery by Prospect and the Prospect Member of this Agreement and the documents described herein, the performance by Prospect and the Prospect Member of their obligations under this Agreement and the documents described herein, and the consummation by Prospect and the Prospect Member of the Transactions and the documents described herein have been duly and validly authorized and approved by all necessary action, including, to the extent required, any applicable board and member approvals, on the part of Prospect and the Prospect Member and none of such actions have been modified or rescinded and all of such actions remain in full force and effect.

6.2 Powers; Consents; Absence of Conflicts With Other Agreements. The execution, delivery and performance of this Agreement and the documents described herein by Prospect and the Prospect Member, and the consummation by Prospect and the Prospect Member of the Transactions and documents described herein, as applicable:

(a) are not in contravention or violation of any of the material terms of the Certificate of Incorporation, bylaws or other organizational documents of Prospect or the Prospect Member;

(b) do not require any Approval or Permit of or filing or registration with or other action by, any Governmental Entity to be made or sought by Prospect or the Prospect Member, except (i) the Healthcare Regulatory Consents set forth in Schedule 6.2(b) and (ii) as otherwise set forth on Schedule 6.2(b); and

(c) assuming the Approvals and Permits set forth on Schedule 6.2(b) are obtained, will not conflict in any material respect with or result in any violation of or default under (i) any contract by which Prospect or the Prospect Member is bound or (ii) any Law applicable to or (iii) any Order by which Prospect or the Prospect Member or their respective businesses are bound.

6.3 Binding Effect. Subject to the receipt of the Approvals set forth in Section 6.2 and on Schedule 6.2(b), this Agreement and all other Ancillary Agreements to which Prospect and/or the Prospect Member will become a party hereunder have been duly and validly executed and delivered by Prospect or the Prospect Member (as applicable), and, assuming the due authorization, execution and delivery of this Agreement and each respective Ancillary Agreement by the Company and Sellers, are and will constitute the valid and legally binding obligations of Prospect and/or the Prospect Member (as applicable) and are and will be enforceable against Prospect and/or the Prospect Member (as applicable) in accordance with the respective terms hereof and thereof, except as enforceability against Prospect or the Prospect Member may be restricted, limited or delayed by applicable bankruptcy, moratorium or other Laws affecting creditors' rights and remedies generally and except as enforceability may be subject to general principles of equity.

6.4 Litigation. There is no Legal Proceeding pending or, to the knowledge of Prospect, threatened against or affecting Prospect or the Prospect Member, that has or would

reasonably be expected to have a material adverse effect on the ability of Prospect and/or the Prospect Member to timely consummate the Transactions. Notwithstanding the foregoing, each of Sellers and the Company acknowledge and agree that, for all purposes of this Agreement, Prospect makes no representation or warranty regarding the ability of Prospect or the Prospect Member to consummate the Transactions consistent with the Antitrust Laws.

6.5 Solvency. Each of Prospect and the Prospect Member is not now insolvent and will not be rendered insolvent by any of the Transactions. Each of Prospect and the Prospect Member has, and immediately after giving effect to the Transactions, will have, assets (both tangible and intangible) with a fair saleable value in excess of the amount required to pay its Liabilities as they come due. Each of Prospect and the Prospect Member has adequate capital for the conduct of its business and discharge of its debts. Neither Prospect, the Prospect Member, nor any Affiliate of either of the foregoing is involved in any proceeding by or against it as a debtor before any Governmental Entity under Title 11 of the United States Bankruptcy Code or any other insolvency or debtors' relief act, whether state, federal or foreign, or for the appointment of a trustee, receiver, liquidator, assignee, sequestrator or other similar official for any part of any its property.

6.6 Brokers or Finders. Neither Prospect, the Prospect Member, nor any of their respective Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Transactions.

6.7 Acknowledgement Regarding Representations and Warranties. Notwithstanding anything contained in this Agreement to the contrary, Prospect and the Prospect Member acknowledge and agree that, except as set forth herein, neither any Seller nor the Company nor any Affiliates of the foregoing are making any representations or warranties whatsoever.

ARTICLE VII
PRE-CLOSING COVENANTS

7.1 Access to Information.

(a) Between the date of this Agreement and the Closing Date, to the extent permitted by Law, Sellers shall afford to Prospect, the Company and their Representatives (i) access, during normal business hours, to and the right to inspect, the plants, properties (including the Real Property), books and records, litigation materials and other documents and information relating to the Facilities, Purchased Assets and Assumed Liabilities, and (ii) access, during normal business hours, to Sellers' employees and medical staff members, and shall furnish Prospect, the Company and their Representatives with such additional financial and operating data and other information of Sellers in Sellers' possession, custody or control relating to the Facilities, Purchased Assets and Assumed Liabilities as Prospect, the Company or their Representatives may from time to time reasonably request.

(b) Sellers shall provide Prospect, the Company and their Representatives access to the Owned Real Property and, subject to consent of the landlord if applicable, the Leased Real Property to conduct any environmental, health or safety inspections or

investigations, which may include sampling or testing of soils, surface water, groundwater, ambient air or improvements at, on or under the Real Property or sampling of the Facilities. The Company agrees that, after performing any inspections or investigations, the Company shall restore the Real Property to its original condition (or as close as reasonably possible to such condition) and repair any damage to same caused by the performance of such inspections or investigations.

(c) The Company agrees that the Company's right of access and investigation under this Section 7.1 will be exercised in such a manner as to not unreasonably interfere with the operation of Sellers' Business.

7.2 Operations. From the date hereof until the Closing Date, except as set forth in Schedule 7.2 or otherwise agreed to in writing by the Parties, each Seller shall, with respect to the Business (unless prior written consent of the Company is received):

(a) carry on the Business in substantially the same manner as it has heretofore and not make any material change in personnel, operations, finance or accounting policies (unless required under GAAP) of the Facilities or the Purchased Assets;

(b) maintain the Facilities and the Purchased Assets and all parts thereof in working order and in condition as at present, ordinary wear and tear excepted, and make all normal, planned and budgeted capital expenditures related to the Purchased Assets and/or the Facilities, provided, that Sellers shall obtain the Company's prior input regarding individual capital expenditures or additions to property, plant and equipment (or a series of related expenditures or additions) that exceed $350,000;

(c) continue to perform its obligations under Assumed Contracts and, as to new Contracts proposed to be entered into prior to the Closing Date:

(i) In connection with any new Contracts (other than Physician Agreements, as described in (ii) below) anticipated to exceed $100,000 per year or $250,000 over the entire term of the arrangement, Sellers shall implement a centralized authorization process requiring senior executive approval and signature for such Contracts, and shall enter into any such Contracts only after seeking the Company's input on the same; and

(ii) In connection with any new Physician Agreements involving future payments, performance of services or delivery of goods in an amount or value in excess of One Million Dollars ($1,000,000) in the aggregate over the entire term of the agreement, Sellers shall enter into any such Physician Agreements only after obtaining the Company's prior written consent to the same; any such new Physician Agreements consented to by the Company, along with any other Physician Agreements in amounts below the foregoing threshold that are entered into by Sellers in the Ordinary Course of Business prior to the Closing Date, shall be deemed to be Assumed Physician Agreements and shall automatically be added to Schedule 2.1(f)(2), unless and except rejected by the Company pursuant to the standards for Rejected Physician Agreements set forth in Section 2.1(f) above;

(d) keep in full force and effect present insurance policies on the Facilities and the Purchased Assets (unless a policy is canceled or terminated in the Ordinary Course of

Business and concurrently replaced with a policy or arrangement with substantially similar coverage, with no gap in coverage);

(e) (i) maintain and preserve the business organization with respect to the Facilities and Purchased Assets intact; (ii) use commercially reasonable efforts to retain present Employees at the Facilities and maintain its relationships with physicians and medical staff, suppliers, customers and others having business relations with the Facilities and Purchased Assets; and (iii) refrain from inducing any Employees (other than Employees who do not receive offers of employment from the Company prior to Closing) to leave employment at the Facilities in order to be employed elsewhere by any Seller or its Affiliates;

(f) permit and allow reasonable access by the Company (which shall include the right to send written materials, all of which shall be subject to Sellers' reasonable approval prior to delivery) to make offers of post-Closing employment to any of Sellers' personnel (including access by the Company for the purpose of conducting open enrollment sessions for the Company's employee benefit plans and programs) and to establish relationships with physicians, medical staff and others having business relations with Sellers;

(g) with respect to deficiencies, if any, cited by any Governmental Entity or accreditation body in the most recent surveys conducted by each, cure or develop and timely implement a plan of correction that is acceptable to any Governmental Entity or such accreditation body;

(h) timely file or cause to be filed all reports, notices and Tax Returns relating to the Facilities and the Purchased Assets required to be filed with any Governmental Entity, pay all required Taxes as they come due, and take any other actions required to maintain tax-exempt status for each Seller that has historically held such status;

(i) comply in all material respects with all Laws (including Environmental Laws) applicable to the conduct of the Business;

(j) maintain all Approvals, Permits and Environmental Permits relating to the Facilities, Purchased Assets and Assumed Liabilities in good standing;

(k) notify the Company within two (2) Business Days immediately following any material or adverse change to the condition of the Facilities or Purchased Assets, or to the business or operations thereof, including any Material Adverse Development or any circumstance or events that are reasonably likely to lead to a Material Adverse Development;

(l) use commercially reasonable efforts to obtain the Tenant Estoppels and Landlord Estoppels in accordance with the terms of Section 3.3(c) and Section 3.3(d);

(m) afford Prospect, the Company and their Affiliates an opportunity to provide input with respect to other significant or material matters pertaining to the Business, including monitoring and implementation of any operations improvement plans and the development and implementation of physician engagement strategies; and

(n) if, prior to Closing, Sellers sell all or any part of their interests in Roger Williams Radiation Therapy, LLC, Sellers shall use commercially reasonable efforts to reinvest all or a portion of the proceeds of such sale in UMG or some other project or entity as may be mutually agreed by the Parties; in that event, all of Sellers' equity, membership or other ownership interests in UMG or such other project or entity shall be included in the Purchased Assets hereunder; provided, however:

(i) if Sellers' acquisition of the replacement interest entails the assumption of any liabilities, any such liabilities shall be assumed by the Company pursuant to Section 2.3(g) above, and such liabilities shall not be included or reflected in the calculation of Final Net Working Capital pursuant to Annex B hereto; and

(ii) any portion of the sale proceeds not so reinvested (*i.e.*, the JV Proceed Deficiency) shall be included as a Purchased Asset hereunder and shall be transferred to the Company as provided in Section 2.1(z) above, and such proceeds shall not be included or reflected in the calculation of Final Net Working Capital pursuant to Annex B hereto.

7.3 Negative Covenants. From the date hereof to the Closing Date, except as set forth in Schedule 7.3, or as required by Law, no Seller will, with respect to the Business (without the prior written consent of the Company):

(a) enter into any Contract, or incur or agree to incur any Liability, outside the Ordinary Course of Business; provided, however, that, notwithstanding the foregoing, the Parties acknowledge and agree that, after the date hereof and prior to the Closing Date, Sellers shall negotiate amended collective bargaining agreements with each union representing any Transferred Employee, with the expectation that each such collective bargaining agreement shall be assumed by the Company as of the Closing Date pursuant to Section 8.4 hereof; any such amended collective bargaining agreement shall be subject to the prior written consent of the Company, with such consent not to be unreasonably withheld;

(b) enter into any capital lease;

(c) notify any payor to send payments to, or cause any Accounts Receivable to be deposited in, any account other than the A/R Bank Accounts, or sell or factor any Accounts Receivable;

(d) increase compensation payable or to become payable or make a bonus payment to or otherwise enter into one or more bonus or severance Contracts with any Employee or agent or under any personal services Contract, except in the Ordinary Course of Business in accordance with existing personnel policies and practices;

(e) sell, assign or otherwise transfer or dispose of any, or waive or settle any material claims regarding, the Facilities or Purchased Assets outside the Ordinary Course of Business;

(f) pay or agree to pay any increased benefits under any Seller Plan, or amend or otherwise modify any Seller Plan, or create any new Seller Plan, except for amendments required to comply with this Agreement or applicable Law;

(g) (i) amend, modify or terminate any Assumed Contract, except in conformity with this Agreement and in a commercially reasonable manner in the Ordinary Course of Business; (ii) by action or inaction, abandon, terminate, cancel, forfeit, waive or release any material rights of any Seller, in whole or in part, with respect to the Facilities or Purchased Assets; (iii) effect any corporate merger, business combination, reorganization or similar transaction or take any other action, corporate or otherwise, that could reasonably be expected to affect adversely Sellers' ability to perform in accordance with this Agreement; (iv) cancel or permit the cancellation or lapse of insurance coverage on the Purchased Assets or the Facilities; or (v) settle any dispute or threatened dispute with any Governmental Entity regarding the Facilities or Purchased Assets other than in the Ordinary Course of Business;

(h) except for the Pre-Closing Permitted Exceptions or Permitted Exceptions, create, assume or permit to exist any new Encumbrance upon any of the Purchased Assets other than in the Ordinary Course of Business;

(i) amend or terminate or otherwise modify any employment Contract or enter into any new employment Contract with any Person, except in the Ordinary Course of Business;

(j) make or change any material Tax election, change any method of accounting (unless required by GAAP), or settle any material claim or dispute with any Governmental Entity in respect of any Tax;

(k) take or omit to take any action that could result in any Seller who was historically exempt from any Tax, ceasing to be exempt from such Tax;

(l) amend or agree to amend the articles or certificate of incorporation, bylaws or other governing documents of any Seller or otherwise take any action relating to any liquidation or dissolution of any Seller, except as expressly contemplated by this Agreement;

(m) remove any material personal property or fixtures located at the Real Property, except as may be required for repair, retirement and/or replacement in the Ordinary Course of Business (provided that any replacements shall be free and clear of any and all Encumbrances (except for Encumbrances to be satisfied by Sellers at Closing), of quality at least equal to the replaced items, and shall be deemed included in this sale, without cost or expense to the Company); or

(n) request or consent to any zoning changes.

7.4 Notification of Certain Matters. At any time from the date of this Agreement to the Closing Date:

(a) Sellers shall give written notice to Prospect and the Company as promptly as reasonably feasible of: (i) the occurrence, or failure to occur, of any event that has caused any representation or warranty of Sellers contained in this Agreement to be untrue; (ii) any matter hereafter arising or discovered that, if existing or known at the date of this Agreement, would have been required to be set forth or described in a schedule to this Agreement; and (iii) any

failure of any Seller to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement.

(b) Sellers shall promptly notify Prospect and the Company of: (i) any written notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transactions (disregarding, for such purposes, communications with parties to those Assumed Contracts described on Schedule 4.12(e) so long as the subject matter of such communications pertains solely to the delivery of such consent and only if there is not any dispute with such party with respect thereto); (ii) any written notice or other communication from any Governmental Entity in connection with the Transactions or that is (or may reasonably be regarded at the time of notice as) material to or materially adverse to the business, condition or operations of Sellers, the Facilities or the Purchased Assets; and (iii) any Legal Proceedings commenced or, to Sellers' Knowledge, threatened, against or relating to or involving or otherwise affecting any Seller or the Facilities or Purchased Assets or that relate to the consummation of the Transactions, and any significant developments relating to any Legal Proceedings hereby disclosed.

(c) Sellers shall notify Prospect and the Company as soon as possible in the event of any substantial unforeseen Employment Losses. Such notices shall provide a reasonably detailed description of the relevant circumstances.

(d) The Company and Prospect shall give notice to Sellers as promptly as reasonably feasible of: (i) the occurrence, or failure to occur, of any event that has caused any representation or warranty of the Company or Prospect contained in this Agreement to be untrue; (ii) any matter hereafter arising or discovered that, if existing or known at the date of this Agreement, would have been required to be set forth or described in a schedule to this Agreement; and (iii) any failure of Prospect, the Prospect Member, the Company or any Company Subsidiary to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement.

(e) The Company and Prospect shall promptly notify Sellers of: (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transactions (disregarding, for such purposes, communications with parties to those Assumed Contracts described on Schedule 4.12(e)); (ii) any notice or other communication from any Governmental Entity in connection with the Transactions or that is (or may reasonably be regarded at the time of notice as) material to or materially adverse to the business, condition or operations of Prospect, the Prospect Member, the Company or any Company Subsidiary; and (iii) any Legal Proceedings commenced or, to the Company's or Prospect's knowledge, threatened against, or relating to the consummation of the Transactions, and any significant developments relating to any Legal Proceedings hereby disclosed.

(f) All notices provided pursuant to this Section 7.4 shall include a reasonably detailed description of the relevant circumstances.

7.5 Approvals.

(a) Responsibility for Approvals Generally. The Company shall be responsible for obtaining, and shall use commercially reasonable efforts to obtain, as promptly as practicable, all Approvals, Permits and Environmental Permits of any Governmental Entities required of the Company and the Company Subsidiaries to consummate the Transactions and to operate the Facilities and Purchased Assets following Closing in substantially the same manner as currently operated by Sellers. Sellers shall be responsible for obtaining, and shall use commercially reasonable efforts to obtain, as promptly as practicable, all Approvals of Governmental Entities and all Church Approvals required of Sellers to consummate the Transactions. The Company, on the one hand, and Sellers, on the other hand, shall (i) cooperate with one another in their respective efforts to obtain all Approvals, Permits and Environmental Permits of any Governmental Entities and all Church Approvals required to consummate the Transactions and to permit the Company and/or the Company Subsidiaries (as applicable) to operate the Facilities and Purchased Assets following Closing in substantially the same manner as currently operated by Sellers, and (ii) provide such other information and communications to any Governmental Entity and Church officials as may be reasonably requested in connection with such Approvals.

(b) Rhode Island Hospital Conversions Act. The Parties shall, within fifteen (15) Business Days after the Delivery Date, submit the HCA Initial Application to the DAG and the DOH. The Parties shall cooperate in the preparation and prosecution thereof. Each of the Parties shall timely submit all information and documents requested in connection therewith by the DAG, the DOH or any other Governmental Entity; provided, however, that each Party shall provide each other Party an opportunity in advance of the submission to review such submission.

(c) Medicare/Medicaid Change of Ownership. The Parties shall cooperate and take all commercially reasonable actions to cause the Provider Agreements to be transferred to the Company or the Company Subsidiaries (as applicable) as of the Closing, including by submitting to each of CMS and the Rhode Island Medicaid program on a timely basis (but in no event prior to the Delivery Date) the applicable enrollment form with respect to the Medicare change of ownership.

(d) Rhode Island Health Care Facility Licensing Act. The Parties shall, within fifteen (15) Business Days after the Delivery Date, submit the HCFLA Change in Effective Control Application to the DOH. The Parties shall cooperate in the preparation and prosecution thereof. Each of the Parties shall timely submit all information and documents requested in connection therewith by the DOH and any other Governmental Entity.

(e) Church Approvals. Sellers shall promptly apply for and use commercially reasonable efforts to obtain those ecclesiastical approvals required from officials within the Roman Catholic Church (the "Church") in order to consummate the Transactions, including the authorization of the Bishop of the Roman Catholic Diocese of Providence, Rhode Island, and the permission of the Holy See through the Vatican Congregation of Bishops (the "Church Approvals"). The Parties shall cooperate in the preparation and prosecution of such application(s). Each of the Parties shall timely submit all information and documents requested in connection therewith by Church officials.

(f) Third Party Consents. Sellers shall promptly apply for and use commercially reasonable efforts to obtain before Closing all consents (and make all notifications) required to assign the Assumed Contracts to the Company or the Company Subsidiaries (as applicable) at Closing, as described on Schedule 4.12(e), including but not limited to the Material Consents. The Company and Prospect shall cooperate in and use commercially reasonable efforts to facilitate the process of obtaining such third party consents.

(g) Notification and Cooperation. Subject to applicable confidentiality restrictions or restrictions required by applicable Law, the Company, Prospect and Sellers shall each notify the other promptly upon receipt of: (i) any comments or questions from any official of any Governmental Entity in connection with any filings made pursuant to this Section 7.5 or otherwise in connection with the Transactions, and (ii) any requests by any officials of any Governmental Entity for amendments or supplements to any filings made pursuant to any applicable Laws, rules and regulations of any Governmental Entity or answers to any questions, or the production of any documents, relating to an investigation of the Transactions by any Governmental Entity. Without limiting the generality of the foregoing, each Party shall promptly provide to the other Party (or its respective advisers) copies of all correspondence between such Party and any Governmental Entity relating to the Transactions. In addition, to the extent reasonably practicable, the Parties shall use commercially reasonable efforts to cause all scheduled discussions, telephone calls and meetings with a Governmental Entity regarding the Transactions to include representatives of the Company, Prospect and Sellers; notwithstanding the foregoing, in the event of discussions, calls and/or meetings that do not involve representatives of the Company, Prospect and Sellers, the participating Party(ies) shall promptly inform the non-participating Party(ies) of the existence and substance of such communications (unless otherwise directed by the pertinent Governmental Entity or required by Law). Subject to applicable Law, the Parties will consult and cooperate with each other in connection with any analyses, appearances, presentations, memoranda, briefs, arguments and proposals made or submitted to any Governmental Entity regarding the Transactions by or on behalf of any Party; provided, that, unless required by applicable Law, the Parties shall not make any such submissions prior to the Delivery Date.

7.6 Additional Financial Information. From the date hereof until the Closing Date, Sellers will deliver to the Company and Prospect:

(a) within fifteen (15) days after the end of each calendar month, copies of the unaudited balance sheets and the related unaudited statements of income and cash flows of Sellers for each month then ended and for the fiscal year-to-date then ended, in each case to be prepared in accordance with GAAP, except that footnotes may be omitted;

(b) within forty-five (45) days after the end of each fiscal quarter, copies of the unaudited balance sheet and the related unaudited statements of income and cash flows of Sellers for the fiscal quarter then ended and for the fiscal year-to-date then ended, in each case to be prepared in accordance with GAAP, except that footnotes may be omitted;

(c) within sixty (60) days after the end of each fiscal year, copies of the unaudited balance sheet and the related unaudited statements of income and cash flows of Sellers for the fiscal year then ended, in each case to be prepared in accordance with GAAP;

(d) within ten (10) days after completion of the independent audit for each fiscal year, copies of the audited balance sheet and the related audited statements of income and cash flows of Sellers for the fiscal year then ended, in each case to be prepared in accordance with GAAP; and

(e) promptly after prepared, copies of routine supporting schedules for the financial statements and other operating statistics or other supporting documentation routinely provided to Sellers' senior management and/or board of directors.

7.7 Certain Litigation. Sellers shall give the Company and Prospect the option (which does not entail the obligation) to participate, at the Company's and Prospect's sole cost and expense, in the defense or settlement of any third party litigation against Sellers relating to the Transactions. Sellers shall not agree to any compromise or settlement of such litigation without the Company's and Prospect's consent, not to be unreasonably withheld, conditioned or delayed.

7.8 Tail Insurance. To the extent that Sellers are currently subject to claims-made rather than occurrence-based insurance coverage, Sellers shall, at their sole cost and expense, obtain "tail" insurance to insure against professional and other liabilities of the Facilities (including, without limitation, malpractice insurance) relating to the period prior to the Effective Time, with such tail insurance coverage to become effective as of the Effective Time. The insurance shall be for an unlimited tail period (unless the insurance carrier specifies a maximum tail period, in which case the insurance shall be for such maximum period), shall have coverage levels equal to the current policies insuring Sellers, and shall name the Company and the Company Subsidiaries (as applicable) as additional named insureds.

7.9 No-Shop. Sellers agree that they shall not, and shall direct and use commercially reasonable efforts to cause their respective Representatives (including any investment banker, attorney or accountant retained by them) not to: (a) offer for sale, lease or other disposition any of the Facilities, all or any significant portion of the Purchased Assets or any ownership interest in any entity owning any of the Facilities or any of the Purchased Assets; (b) solicit offers to buy any of the Facilities, all or any significant portion of the Purchased Assets or any ownership interest in any entity owning any of the Facilities or the Purchased Assets; (c) initiate, encourage or provide any documents or information to any third party in connection with, discuss or negotiate with any Person regarding any inquiries, proposals or offers relating to any disposition of any of the Facilities or all or any significant portion of the Purchased Assets or a merger or consolidation of any entity owning any of the Facilities or any of the Purchased Assets; or (d) enter into any agreement or discussions with any party (other than the Company and Prospect) with respect to the sale, lease, assignment or other disposition of any of the Facilities or all or any significant portion of the Purchased Assets or any ownership interest in any entity owning any of the Facilities or any of the Purchased Assets or with respect to a merger or consolidation of any entity owning any of the Facilities or any of the Purchased Assets. Sellers will promptly communicate to the Company the substance of any inquiry or proposal concerning any such transaction.

7.10 Contract Compliance. Sellers shall, upon notice from the Company that any Contract to which any Seller is a party is not in compliance with Law, take commercially

reasonable efforts to promptly modify such Contract so that it is in compliance with Law prior to the Closing.

7.11 Amendments and Updates to Disclosure Schedules.

(a) Notwithstanding any other provision of this Agreement, during the twenty-one (21) day period immediately following the date of this Agreement, a Party may amend any of the Applicable Disclosure Schedules provided by such Party pursuant to this Agreement for the purpose of ensuring the accuracy and completeness thereof as of the date of this Agreement and, if such amendments are acceptable to the other Parties, the pertinent Applicable Disclosure Schedules as amended shall be deemed final as though attached hereto as of the date of this Agreement. In the event that a proposed amended schedule is not acceptable to the Parties, the Party proposing such amended Applicable Disclosure Schedule shall be entitled to terminate this Agreement pursuant to Section 11.1(ii) below.

(b) From time to time prior to the Closing, the Parties shall update with reasonable frequency (and as promptly as reasonably feasible upon the occurrence of any event or circumstance that would have required a party to notify such other Party under Section 7.4 hereof) the information contained in the disclosure schedules with respect to any material events, circumstances, conditions or matters arising after the date of this Agreement, which, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in any disclosure schedule; provided, however, that no such update shall be deemed to modify the disclosure schedules for the purpose of: (i) certifying to the accuracy of any representation or warranty made by Sellers in this Agreement in the Officer's Certificates delivered pursuant to Sections 9.3 and 10.3 hereof, (ii) determining whether any of the conditions set forth in ARTICLE IX and ARTICLE X have been satisfied, and (iii) indemnification in ARTICLE XIV.

7.12 Communications With Medical Staffs. From the date hereof through the Closing Date, the Parties shall work collaboratively to ensure that the physician members of the medical staffs at both Hospitals maintain an active presence at the Business, are kept informed, are given opportunities for input as to critical needs of the medical staff, and are encouraged to maintain their medical practices within the community.

ARTICLE VIII
EMPLOYEES, RESIDENTS/FELLOWS AND EMPLOYEE BENEFITS

8.1 Offers of Employment. Not later than thirty (30) days prior to the Closing, Sellers shall deliver to the Company an updated Employee List and an updated Residents and Fellows List.

(a) Employees. At least ten (10) days prior to the Closing, the Company shall make a written offer of employment (subject to the Closing) to substantially all of the Employees listed on the updated Employee List who continue to be Employees as of such date and are anticipated to be Employees as of the Closing Date (including any Employee who is on any form of paid or unpaid leave pursuant to Law or Sellers' policies), who are in good standing on the Closing Date, regarding employment by the Company or a Company Subsidiary as of and following the Closing Date. The Company shall likewise make as soon as practicable such an

offer to any individual not included on the updated Employee List that between the date of the delivery of the updated Employee List and the Closing Date is hired by, or transferred to, the Business as an Employee who is in good standing with the Sellers on the Closing Date. Such Employees who accept such offer of employment shall hereinafter be referred to as the "Transferred Employees" and will be hired by the Company or a Company Subsidiary as of the Effective Time. Subject to Section 8.2, in making any offers to Employees, the Company or the Company Subsidiary (as applicable) shall not be obligated to change the nature of the employment of any Employee other than changing the Employee's employer (for example, Employees at will shall continue to be Employees at will). Neither the Company nor any Company Subsidiary shall be responsible for any compensation or benefits obligations of Sellers in respect of the Transferred Employees accruing prior to the Effective Time, except that the Sellers may include the value of such compensation or benefits obligations in the calculation of Final Net Working Capital.

(b) Residents and Fellows. Prior to the Closing, the Company shall make a written offer of appointment and enrollment in a program of graduate medical education of the Company or a Company Subsidiary (subject to the Closing) on such terms and conditions as determined by the Company to substantially all of the residents and fellows listed on the Residents and Fellows List who continue to be enrolled in Sellers' program of graduate medical education as of such date, who are anticipated to be enrolled as of the Closing Date, who have satisfied the Company's customary screening procedures and for whom the Company, on or before the Closing Date, has verified has the requisite certifications, credentials and licenses (if applicable) required by the Accreditation Council for Graduate Medical Education, applicable Law and customary practice for such residents and fellows to participate in graduate medical education. Such new terms and conditions of appointment established by the Company will be consistent with those applied to the Company's residents, interns and fellows and will not be equivalent to those established by Sellers. Such individuals who accept such offers of appointment are hereinafter referred to as "Transferred Residents and Fellows" and will be appointed by the Company or a Company Subsidiary as of the Effective Time. Neither the Company nor the Company Subsidiaries shall be responsible for any compensation or benefits obligations of Sellers in respect of the Transferred Residents and Fellows accruing prior to the Effective Time, except that the Sellers may include the value of such compensation or benefits obligations in the calculation of Final Net Working Capital.

8.2 Employment Terms; Employee Benefits.

(a) The Transferred Employees shall be hired by the Company or a Company Subsidiary (as applicable) at base salaries and wages equal to their base salaries and wages as of the Closing Date. The Transferred Employees shall retain their seniority status for purposes of benefits, and their salaries or wages as of the Closing Date shall provide the base for future salary adjustments, if any, thereof. Each Transferred Employee will be treated by the Company or the Company Subsidiary (as applicable) as employed as of such individual's initial hire date at the Facilities for all purposes regarding seniority, except as otherwise required by Law or collective bargaining agreement assumed by the Company. Subject to the right to terminate any Company employee benefit plan and/or restrictions provided under any collective bargaining agreement assumed by the Company, the Company and the Company Subsidiaries as of the Closing Date will provide benefits to Transferred Employees at benefit levels substantially

comparable to those provided under the Seller Plans immediately prior to Closing, including but not limited to qualified retirement plans (except that the Company and the Company Subsidiaries shall not be required to offer a defined benefit plan), vacation, sick leave, holidays, health insurance, life insurance, 401(k) plan (in lieu of similar plans that were offered by Sellers based on their tax-exempt status but are not available to the Company) and policies of the Company and the Company Subsidiaries for which each Transferred Employee is eligible.

(b) Any Transferred Employees who are terminated without cause within the twelve (12) month period following the Closing Date will be offered a severance package on terms comparable to the severance package as in effect with respect to Sellers' Employees prior to the Closing Date or, if and as applicable, as set forth in any Assumed Employment Agreement to which the Transferred Employee is subject.

(c) The Parties acknowledge and agree that each of the Company and each Company Subsidiary constitutes a "successor employer" within the meaning of Code Section 3121(a)(1) and Code Section 3306(b)(1) and the regulations thereunder for federal and state income tax and employment tax purposes. The Company or the Company Subsidiary (as applicable) shall (i) assume Sellers' obligation to furnish IRS Forms W-2 to the Transferred Employees for the Tax year in which the Closing occurs in accordance with the "alternate filing procedure" as provided in Section 5 of Revenue Procedure 2004-53, 2004 C.B. 320 (the "Revenue Procedure") and (ii) report such amounts on IRS Forms 941 as required under Section 5 of the Revenue Procedure. The Company and each Company Subsidiary will treat all wages paid to the Transferred Employees as paid by a successor employer for all federal and state income tax and employment tax purposes. As of the Effective Time, all of the Transferred Employees will cease participation in any of the Seller Plans that such Transferred Employees participated in immediately prior to the Effective Time.

(d) On and after the Closing Date, the Company and the Company Subsidiaries (as applicable) shall be responsible for providing, subject to payment of applicable premiums by qualified beneficiaries, continuation coverage, as required under COBRA, or otherwise provided by Seller prior to the Closing Date to all Employees and former employees of Seller who are not Transferred Employees (and other "qualified beneficiaries," as defined under Section 607(3) of ERISA, under COBRA with respect to such employees) who have or have had a COBRA or other qualifying event (due to termination of employment with Seller or otherwise) prior to or as a result of the Closing. The Company and the Company Subsidiaries shall also be responsible for any COBRA or other group health plan continuing coverage obligations in respect of Transferred Employees and any qualified beneficiaries in relation to such employees arising with respect to qualifying events that occur under the Company's group health plan after the Closing Date.

(e) Except to the extent otherwise expressly set forth herein, neither the Company nor any Company Subsidiary will assume, before, on or after the Closing Date, any Seller Plan, or any rights, duties, obligations or liabilities thereunder, nor shall it become a successor employer or be responsible in any way for Sellers' or a Controlled Group member's participation in or obligations or responsibilities with respect to any Seller Plan.

(f) The senior executives of Sellers who are subject to Assumed Employment Agreements shall be employed by the Company, and the Company shall assume their Employment Agreements as provided in Section 2.1(f) above. In addition to the benefits provided under the Employment Agreements, the senior executives will be provided with the same benefits made available to the Transferred Employees.

8.3 No Right to Continued Employment or Enrollment in Graduate Medical Education; No Third Party Beneficiary. Nothing contained in this Agreement shall be construed to prevent the termination of employment of any individual Transferred Employee or the termination of the appointment or enrollment in graduate medical education of any residents and fellows, or any change in the benefits available to any such individual. No provision of this Agreement shall create any third party beneficiary or other rights in any current or former employee or residents and fellows (including any beneficiary or dependent thereof) of Sellers in respect, as applicable, of continued employment, appointment as one of the residents and fellows, or enrollment in a graduate medical education program associated with the Company or a Company Subsidiary (or resumed employment, resumed enrollment or renewal of appointment) with either the Business or the Company or any Company Subsidiary, and no provision of this Agreement will create any such rights in any such Persons in respect of any benefits that may be provided, directly or indirectly under any Seller Plan or any plan or arrangement which may be established or maintained by the Company or any Company Subsidiary. No provision of this Agreement will constitute a limitation on rights to amend, modify or terminate any Seller Plan, or on the right of the Company or any Company Subsidiary to amend, modify or terminate any of the employee benefit plans of the Company or any Company Subsidiary.

8.4 Collective Bargaining Agreements. Effective as of the Closing, Prospect shall cause the Company to, and the Company shall, recognize each union representing any Transferred Employee and assume all existing collective bargaining agreements, as amended between the date of this Agreement and the Closing Date; provided, however, that in no event shall the Company be required to assume any collective bargaining agreement that has not been consented to by the Company pursuant to Section 7.3(a) hereof.

ARTICLE IX
CONDITIONS PRECEDENT TO OBLIGATIONS OF PROSPECT AND THE COMPANY

The obligations of Prospect, the Prospect Member, the Company and the Company Subsidiaries hereunder are subject to the satisfaction, on or prior to the Closing Date, of the following conditions unless waived in writing by Prospect and the Company:

9.1 Compliance With Covenants. All of the covenants and obligations that Sellers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all material respects.

9.2 Representations and Warranties. All of Sellers' representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate as of the date of this Agreement (giving

effect to any amended Applicable Disclosure Schedules delivered pursuant to Section 7.11(a)) and as of the time of the Closing as if then made (but without giving effect to any updated schedules delivered pursuant to Section 7.11(b)), except where the failure of such representations and warranties to be accurate does not have or cause, individually or in the aggregate, a Material Adverse Development. Each of the representations and warranties in this Agreement that contains an express Material Adverse Development qualification shall have been accurate in all respects as of the date of this Agreement (giving effect to any amended Applicable Disclosure Schedules delivered pursuant to Section 7.11(a)) and shall be accurate in all respects as of the time of the Closing as if then made (but without giving effect to any updated schedules delivered pursuant to Section 7.11(b)).

9.3 Officers' Certificates. Each of Sellers shall have delivered to the Company and Prospect a certification of an appropriate officer to the effect that each of the conditions set forth in Section 9.1 and Section 9.2 have been satisfied in all material respects.

9.4 Approvals and Permits. All of the following shall have been received:

(a) The Company or the applicable Company Subsidiary shall have received all Approvals that are required to: (i) consummate the Transactions and (ii) operate the Facilities and the Purchased Assets in the same manner as currently operated by Sellers, in each case without any conditions that are unacceptable to Prospect and the Company in their sole discretion;

(b) The Company or the applicable Company Subsidiary shall have received all required Permits and Environmental Permits from all Governmental Entities whose approval is required to consummate the Transactions and for the Company or the Company Subsidiary to operate the Facilities and Purchased Assets in the same manner as currently operated by Sellers, or with respect to any such Permits and/or Environmental Permits that are not possible to obtain prior to Closing, Prospect, the Company and Sellers shall have received assurances, reasonably satisfactory to Prospect and the Company, that such Permits and/or Environmental Permits shall be obtained promptly after Closing and retroactive to the Closing Date, in each case without any conditions that are unacceptable to Prospect and the Company in their sole discretion; and

(c) Sellers shall have received all Church Approvals.

9.5 Clearances. The Parties shall have received approval under HCA and HCFLA, in each case without any conditions that are unacceptable to Prospect and the Company in its their discretion.

9.6 Property Tax. The Company or the Company Subsidiaries shall have received binding commitments from all applicable Governmental Entities, in form and substance satisfactory to Prospect in its sole and absolute discretion, with respect to the resolution of certain property tax abatement treaties.

9.7 Action/Proceeding/Litigation. No Governmental Entity shall have issued an Order restraining or prohibiting the Transactions; no Governmental Entity shall have commenced or threatened in writing to commence any action or suit before any court of competent jurisdiction or other Governmental Entity that seeks to restrain or prohibit the

consummation of the Transactions or impose material damages or penalties in connection therewith. No Legal Proceeding relating to the Transactions shall be pending, unless the Parties agree that such Legal Proceeding does not constitute a material obstacle to the consummation of the Transactions in accordance with the terms hereof.

9.8 Consents of Certain Third-Parties to Assumed Contracts. Sellers and/or the Company shall have obtained all Material Consents, *i.e.*, written consents from all applicable third-parties to the assignment of those Assumed Contracts identified with an asterisk on Schedule 4.12(e).

9.9 Title Insurance Policies. Title Company shall be prepared (subject to payment of the premiums and title, survey, search and related costs and fees required to be paid by the Company) to issue title insurance policies in accordance with this Agreement dated the day of Closing, in the full amount of the Cash Purchase Price (or such other reasonable amount as determined by the Company) allocated among the Owned Real Property or determined by the Company, at regular rates, showing fee simple title to the Owned Real Property, and leasehold title to any ground leases that are included among the Leased Real Property (each, a "Ground Lease"), in the name of the Company or a Company Subsidiary (as applicable), subject only to the Permitted Exceptions.

9.10 Material Indebtedness. All Material Indebtedness and all Encumbrances created by or in connection with such Material Indebtedness shall have been satisfied, discharged and terminated in full.

9.11 Collective Bargaining Agreements. Effective as of the Closing, the Company shall have recognized each union representing any Transferred Employee and shall have assumed all existing collective bargaining agreements, as amended between the date of this Agreement and the Closing Date, that have been consented to by the Company pursuant to Section 7.3(a) hereof.

9.12 Termination of Seller Plans. Sellers shall have taken necessary and appropriate action to terminate every Seller Plan effective before or as of the Closing Date, other than the Retirement Plan and any other Seller Plan listed on Schedule 9.12.

9.13 Freezing of Seller Plans. Sellers shall have taken necessary and appropriate action to freeze any Seller Plan listed on Schedule 9.13(a), and shall have taken best efforts to freeze any Seller Plan listed on Schedule 9.13(b), before or as of the Closing Date so that no benefits are accrued after the Closing Date. Notwithstanding the foregoing, Sellers hereby represent and warrant that, after the Effective Time: (i) there shall be no further benefit accruals under the Retirement Plan with respect to any of the Transferred Employees based on services rendered after the Effective Time; and (ii) the Retirement Plan shall continue to be frozen as to new participants.

9.14 Material Adverse Development. There shall have been no Material Adverse Development as to Sellers.

9.15 Closing Deliveries. Sellers shall have delivered (or be ready, willing and able to deliver at Closing) to the Company all agreements and documents required to be delivered to the Company at the Closing under this Agreement.

ARTICLE X
CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

The obligations of Sellers hereunder are subject to the satisfaction, on or prior to the Closing Date, of the following conditions unless waived in writing by Sellers:

10.1 Compliance With Covenants. All of the covenants and obligations that each of Prospect, the Prospect Member, the Company and the Company Subsidiaries, respectively, is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been performed and complied with in all material respects.

10.2 Representations and Warranties. All of the Company's and Prospect's respective representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate as of the date of this Agreement (giving effect to any amended Applicable Disclosure Schedules delivered pursuant to Section 7.11(a)) and as of the time of the Closing as if then made (but without giving effect to any updated schedules delivered pursuant to Section 7.11(b)), except where the failure of such representations and warranties to be accurate does not have or cause, individually or in the aggregate, a Material Adverse Development. Each of the representations and warranties in this Agreement that contains an express Material Adverse Development qualification shall have been accurate in all respects as of the date of this Agreement (giving effect to any amended Applicable Disclosure Schedules delivered pursuant to Section 7.11(a)) and shall be accurate in all respects as of the time of the Closing as if then made (but without giving effect to any updated schedules delivered pursuant to Section 7.11(b)).

10.3 Officers' Certificates. Each of Prospect, the Prospect Member, and the Company shall have delivered to Sellers a certification of an appropriate officer to the effect that each of the conditions set forth in Sections 10.1 and 10.2 have been satisfied in all material respects.

10.4 Approvals. All of the following shall have been received:

(a) Sellers shall have received all Healthcare Regulatory Consents set forth in Schedule 4.2(b);

(b) Sellers shall have received the Church Approvals; and

(c) the Parties shall have received approval under HCA and HCFLA.

10.5 Action/Proceeding/Litigation. No Governmental Entity shall have issued an Order restraining or prohibiting the Transactions; no Governmental Entity shall have commenced or threatened in writing to commence any action or suit before any court of competent jurisdiction or other Governmental Entity that seeks to restrain or prohibit the consummation of the Transactions or impose material damages or penalties in connection

therewith. No Legal Proceeding relating to the Transactions shall be pending, unless the Parties agree that such Legal Proceeding does not constitute a material obstacle to the consummation of the Transactions in accordance with the terms hereof.

10.6 Collective Bargaining Agreements. Effective as of the Closing, the Company shall have recognized each union representing any Transferred Employee and shall have assumed all existing collective bargaining agreements, as amended between the date of this Agreement and the Closing Date, that have been consented to by the Company pursuant to Section 7.3(a) hereof.

10.7 Assumed Employment Agreements. The Company shall have assumed all of the Assumed Employment Agreements listed on Schedule 2.1(f)(1).

10.8 Material Adverse Development. There shall have been no Material Adverse Development as to Prospect.

10.9 Closing Deliveries. Prospect, the Prospect Member, the Company and the Company Subsidiaries shall have delivered (or be ready, willing and able to deliver at Closing) to Sellers all agreements and documents required to be delivered to Sellers at the Closing under this Agreement.

ARTICLE XI
TERMINATION

11.1 Termination. Notwithstanding anything in this Agreement to the contrary, this Agreement may not be terminated, except prior to the Closing as follows:

(i) by mutual consent in writing of Prospect and the Company, on the one hand, and Sellers, on the other hand;

(ii) by either Prospect or the Company, on the one hand, or Sellers, on the other hand, if during the twenty-one (21) day period immediately following the date of this Agreement, Prospect or the Company, on the one hand, or Sellers, on the other hand, propose to amend any of the disclosure schedules provided thereby pursuant to this Agreement for the purpose of ensuring the accuracy and completeness thereof as of the date of this Agreement, and such proposed amended schedule is not acceptable to Sellers, on the one hand, or to Prospect and the Company, on the other hand;

(iii) by either Prospect or the Company, on the one hand, or Sellers, on the other hand, if any permanent injunction, order, decree or ruling of any court or other Governmental Entity of competent jurisdiction permanently restraining, enjoining or otherwise preventing the consummation of the Transactions shall have been issued and become final and non-appealable;

(iv) by either Prospect or the Company, on the one hand, or Sellers, on the other hand, if the Closing shall not have occurred on or before the Outside Date; provided, however, that the right to terminate this Agreement pursuant to this Section 11.1(iv) shall not be available to any Party whose breach or failure to perform any material covenant or obligation

under this Agreement has been the primary cause or primarily resulted in the failure of the Closing to have occurred on or before the Outside Date;

(v) by Prospect or the Company, if there has been a violation or breach in any material respect of any representation, warranty, covenant or agreement of Sellers set forth in this Agreement, which violation or breach would cause any of the conditions set forth in ARTICLE IX not to be satisfied, and such violation or breach has not been waived by Prospect or the Company or cured by Sellers, as the case may be, within twenty (20) Business Days after notice thereof is given by Prospect or the Company;

(vi) by Prospect or the Company, immediately by written notice to Sellers, if any event occurs or fact or condition exists that makes it impossible for Sellers to satisfy, or causes Sellers to be unable to satisfy, one or more conditions to the obligations of Prospect, the Prospect Member, the Company and the Company Subsidiaries to consummate the Transactions as set forth in ARTICLE IX prior to the Outside Date; provided, however, that such date may be extended by Sellers for up to six (6) months if Sellers are taking diligent steps to resolve any such outstanding conditions and such outstanding conditions relate solely to the receipt of one or more Approvals or the Church Approvals; provided, further, that, notwithstanding the foregoing, the right to terminate this Agreement under this Section 11.1(vi) shall not be available to Prospect or the Company if either of their actions or failure to act under this Agreement shall have been a primary cause of, or resulted in, the failure of the Closing to occur on or before the Outside Date and such action or failure to act constitutes a breach of this Agreement; and

(vii) by Sellers, immediately by written notice to Prospect and the Company, if any event occurs or fact or condition exists that makes it impossible for the Prospect, the Prospect Member, the Company or the Company Subsidiaries to satisfy, or causes Prospect, the Prospect Member, the Company or the Company Subsidiaries to be unable to satisfy, one or more conditions to the obligation of Sellers to consummate the Transactions as set forth in ARTICLE X prior to the Outside Date; provided, however, that such date may be extended by Prospect or the Company for up to six (6) months if Prospect or the Company is taking diligent steps to resolve any such outstanding conditions and such outstanding conditions relate solely to the receipt of one or more Approvals; provided, further, that, notwithstanding the foregoing, the right to terminate this Agreement under this Section 11.1(vii) shall not be available to Sellers if Sellers' actions or failure to act under this Agreement shall have been a primary cause of, or resulted in, the failure of the Closing to occur on or before the Outside Date and such action or failure to act constitutes a breach of this Agreement.

11.2 Effect of Termination. If this Agreement is terminated pursuant to Section 11.1, then all further obligations of the Parties under this Agreement shall terminate without further liability of any Party to another; provided, however, that (i) the obligations of the Parties contained in Section 13.12 (Public Statements) and ARTICLE XV shall survive any such termination, and (ii) a termination under Section 11.1 shall not relieve any Party of any liability for a breach of, or for any misrepresentation under this Agreement, or be deemed to constitute a waiver of any available remedy (including specific performance, if available) for any such breach or misrepresentation.

ARTICLE XII
PERMITTED EXCEPTIONS, TITLE INSURANCE & TAXES

12.1 Title to Property.

(a) The Company has ordered, or within five (5) Business Days after the execution and delivery of this Agreement the Company shall order, from the Title Company a title insurance report and commitment for a title insurance policy with respect to the interests in the Owned Real Property to be conveyed by Sellers to the Company or any Company Subsidiary hereunder, which policy shall be in the form currently used by reputable title insurers in the State of Rhode Island (such report and such commitment and any updates thereto issued by the Title Company in connection with this Agreement being referred to herein as the "Commitment"), and the Company shall promptly furnish to Sellers a copy thereof, together with copies of all Exceptions listed thereon. The Company shall also promptly provide to Sellers a copy of (i) any update to the Commitment issued by the Title Company on or prior to the Closing Date (an "Update") together with copies of all Exceptions listed thereon that the Company has not previously delivered, promptly after the Company's receipt thereof, and (ii) any update of each of the Surveys or new surveys of the Owned Real Property obtained by the Company (each of which the Company shall have the right, but no obligation, to obtain) (each, a "Survey Update"), promptly after the Company's receipt thereof. If the Commitment, any Update or any Survey Update discloses any exception, lien, mortgage, security interest, claim, charge, reservation, lease, tenancy, occupancy, easement, right of way, encroachment, restrictive covenant, condition, limitation or other encumbrance affecting the Owned Real Property (collectively, "Exceptions") that is not a Permitted Exception and to which the Company reasonably objects (the "Non-Permitted Exceptions"), then the Company shall promptly give a notice (a "Title Notice") to Sellers after the Company's receipt of the Commitment, the Update or the Survey Update first containing such Non-Permitted Exceptions, as applicable, which notice shall identify such Non-Permitted Exceptions, provided, however, notwithstanding anything herein to the contrary, (x) any and all monetary liens, including all mortgages and security interests securing any obligations of Sellers (or any predecessor-in-interest to Sellers) not of the type covered by Section 12.2, all judgments against Sellers (or any predecessor-in-interest to Sellers), all mechanics' liens recorded against the Owned Real Property (or any portion thereof), all monetary liens or penalties arising out of violations on the Owned Real Property and all Real Estate Taxes (other than Real Estate Taxes that constitute Permitted Exceptions pursuant to Section 12.2), and (y) any and all tenancies (except those set forth on Schedule 4.14(c)), shall be deemed to be and shall constitute Non-Permitted Exceptions for all purposes and the Company shall not be obligated to deliver a Title Notice with respect thereto in order for same to constitute Non-Permitted Exceptions. Any Exceptions disclosed in the Commitment, any Update or any Survey Update that are (x) not included in a Title Notice timely given in accordance with the preceding sentence and (y) not deemed Non-Permitted Exceptions in accordance with the preceding sentence shall be deemed Permitted Exceptions. Sellers shall, at or prior to Closing, (A) remove the following Exceptions ("Mandatory Removal Exceptions"): (i) any and all monetary liens, including all mortgages and security interests securing any obligations of Sellers (or any predecessor-in-interest to Sellers) not of the type covered by Section 12.2, all judgments against Sellers (or any predecessor-in-interest to Sellers), all mechanics' liens recorded against the Owned Real Property or any Ground Lease Property (or any portion thereof) and all Real Estate Taxes (other than Real Estate Taxes that constitute Permitted Exceptions pursuant to

Section 12.2), (ii) any and all tenancies (except those set forth on Schedule 4.14(c)), and (iii) without limitation of the Mandatory Removal Exceptions described in preceding clauses (i) and (ii), any and all of the Non-Permitted Exceptions that Sellers willfully placed of record or consented to be placed of record after the effective date of Sellers' Commitment, and (B) remove any and all other Non-Permitted Exceptions. The acceptance by the Title Company of an indemnification agreement by Sellers and the Title Company's removal of any Exception from the title policy at Closing in reliance thereon or the Title Company's agreement to issue an endorsement to its policy of title insurance that affirmatively insures against such Non-Permitted Exception in a manner reasonably acceptable to the Company shall be deemed removal of such Exception for purposes of the preceding sentence and of Section 12.1(b) below. Sellers shall have the right to adjourn the Closing Date from time to time, up to sixty (60) days in the aggregate, for the purpose of removing/eliminating Non-Permitted Exceptions.

(b) Sellers shall, at or prior to the Closing, remove any Non-Permitted Exceptions that are not Mandatory Removal Exceptions and that, in the aggregate, may be removed by Sellers expending $500,000 or less. If there exist Non-Permitted Exceptions that are not Mandatory Removal Exceptions and that in the aggregate exceed $500,000 in amount or value, and Sellers elect not to remove Non-Permitted Exceptions that are not Mandatory Removal Exceptions such that the remaining Non-Permitted Exceptions that are not Mandatory Removal Exceptions exceed $500,000 in the aggregate, then Sellers shall notify the Company of such election within 20 Business Days of Sellers' receipt of the Title Notice disclosing such Non-Permitted Exceptions. Failure of Sellers to send notice of such election within such 20 Business Day period shall be deemed an election by Sellers to remove the Non-Permitted Exceptions that are not Mandatory Removal Exceptions. The Company may elect, within 10 Business Days after such notice from Sellers to the Company that Sellers have elected not to remove any Non-Permitted Exceptions which are not Mandatory Removal Exceptions, to either (i) not consummate the Transactions, in which event this Agreement shall be terminated and of no further force and effect, and none of the Parties shall have any rights or obligations to the other hereunder (except for those rights and obligations that are expressly stated herein to the survive the termination of this Agreement), or (ii) consummate the Transactions subject to such Non-Permitted Exceptions which are not Mandatory Removal Exceptions and proceed to Closing with an abatement of the Cash Purchase Price in the amount of the cost to cure the Non-Permitted Exceptions that are not Mandatory Removal Exceptions, but in no event more than $500,000. Failure of the Company to send notice of the election available to it pursuant to the preceding sentence within such 10 Business Day period shall be deemed an election by the Company to close under clause (ii) of the preceding sentence.

(c) Notwithstanding anything herein to the contrary, (i) if the Commitment discloses judgments, bankruptcies or other returns against other persons or entities having names the same as or similar to that of Sellers, then Sellers, on request and to the extent applicable, shall deliver to the Title Company affidavits (in a form reasonably requested by the Title Company) to the effect that such judgments, bankruptcies or other returns are not against Sellers, (ii) if requested by the Title Company to remove any exceptions for rights of parties in possession, Sellers shall deliver to the Title Company an affidavit to the effect that there are no leases in force and effect with respect to the Owned Real Property, and (iii) if reasonably required by the Title Company, Sellers agree to execute, acknowledge and deliver such other standard and customary owner's title affidavits at Closing.

(d) Any Service Contract that is not an Assumed Contract shall be deemed a Non-Permitted Exception and shall be terminated by Sellers on or prior to Closing.

12.2 Permitted Exceptions. "Permitted Exceptions" means: (a) all matters set forth on Schedule 12.2 (which Schedule shall consist of those exceptions set forth on Sellers' existing title policy(ies) and agreed to by Prospect and the Company); (b) building, zoning, subdivision and other governmental laws, codes and regulations, and landmark, historic and wetlands designations; (c) liens for inchoate mechanics' and materialmen's liens for construction in progress and workmen's, repairmen's, warehousemen's and carriers' liens arising in the ordinary course of business; easements, restrictive covenants, rights of way and other similar restrictions of record that do not impair in any material respect the value of the assets or the continued conduct of the business of any Seller or any of its Affiliates or its continued use of its assets in the manner currently used; (d) such other matters with respect to which the Company expressly has agreed to take pursuant to the provisions of this Agreement, including any matters which the Company elects to take subject to pursuant to Section 12.1(b); (e) real property taxes, water rates and charges, sewer taxes and rents, business improvement district charges and similar items with respect to the Property (collectively, "Real Estate Taxes"), not yet due and payable; (f) rights of Tenants under Leases; (g) any Exceptions disclosed in the Commitments, any Update or any Survey Update that are not Non-Permitted Exceptions and deemed Permitted Exceptions pursuant to Section 12.1(a); and (h) rights of licensors under licenses of assets licensed to Sellers set forth in any of the Assumed Contracts and under licenses of Off-the-Shelf Software.

12.3 Transfer Taxes.

(a) Transfer Taxes incurred in connection with this Agreement shall be the responsibility of the Company or a Company Subsidiary (as applicable), provided, however, that the Parties shall endeavor to effect the transfer of the Facilities and the Purchased Assets in a manner that minimizes the total amount of Transfer Taxes incurred in connection with this Agreement, taking into account the effect of any exemption from such Transfer Taxes available to Sellers by virtue of Sellers' general exemption from Tax. The Party that has the primary obligation to file any Tax Return that is required to be filed in respect of any Transfer Taxes shall prepare and file such return after providing the other Party the opportunity to review and approve the return, which approval shall not be unreasonably withheld, conditioned or delayed. The Parties agree to cooperate with each other in connection with the preparation and filing of any such Tax Returns, in obtaining all available exemptions from such Transfer Taxes, and in timely providing each other with resale certificates or other documents necessary to satisfy any such exemptions.

(b) The Company, each Company Subsidiary (as applicable) and Sellers shall deliver to the Title Company the RE Tax Returns. If the procedures required by the state, county, or municipality require that any RE Tax Returns be filed, reviewed or approved prior to the Closing Date, the Company, Company Subsidiaries and Sellers shall complete, sign and swear to the RE Tax Returns and deliver same to the Title Company for delivery to the appropriate authority sufficiently in advance of the Closing Date so as to permit the sale contemplated hereby to be consummated by the Closing Date. The Company, Company Subsidiaries and Sellers shall cooperate in preparing the RE Tax Returns in a manner that

maximizes the benefit of any exemption from or reduction of Tax available as a result of Sellers' tax-exempt status.

12.4 Cooperation on Tax Matters. The Parties shall furnish or cause to be furnished to each other, as promptly as practicable following the request therefor, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other filings relating to Tax matters, for the preparation for and defense of any Tax audit, for the preparation of any Tax protest, or for the prosecution or defense of any suit or other proceeding relating to Tax matters.

ARTICLE XIII
ADDITIONAL COVENANTS

13.1 Noncompetition; Non-Solicitation. For a period of five (5) years after the Closing Date, Sellers shall not, directly or indirectly (disregarding for these purposes the ownership interest to be held by the Seller Member in the Company as of and following the Closing Date), and Seller shall cause its Affiliates not to, in any capacity: (i) own, lease, manage, operate, control, participate in the management or control of, be employed by, or maintain or continue any interest whatsoever in any enterprise engaged in the business of providing healthcare goods or services, including hospitals and outpatient surgery or diagnostic facilities, within a 25 miles radius of any of the Facilities (other than through the Company and the Company Subsidiaries); (ii) employ, recruit or solicit the employment of any Transferred Employee unless (x) such employee resigns voluntarily (without any solicitation from Sellers or any of its Affiliates), (y) the Company consents in writing to such employment or solicitation, or (z) such employee is terminated by the Company, a Company Subsidiary, or an Affiliate thereof after the Closing Date; (iii) induce, cause or attempt to induce or cause any Person (including any physician employee or medical staff member) to replace or terminate any Contract for the provision or arrangement of health care services from a Facility with products or services of any other Person after the Closing Date; or (iv) request, induce or cause any physician employee or medical staff member to terminate any Contract with or change practice patterns at the Facilities.

13.2 Confidentiality. All confidential information provided or made available by the Parties in connection with or under this Agreement shall be subject to the Confidentiality Agreement, and the Confidentiality Agreement shall remain in full force and effect in accordance with its terms and shall survive the Closing.

13.3 Remedies. In the event of a breach of Section 13.1 or Section 13.2 the Parties recognize that monetary damages shall be inadequate to compensate the non-breaching Party, and the non-breaching Party shall be entitled, without the posting of a bond or similar security, to an injunction restraining such breach, with the costs (including reasonable attorneys' fees) of successfully securing such injunction to be borne by the breaching Party. Nothing contained herein shall be construed as prohibiting the non-breaching Party from pursuing any other remedy available to it for such breach or threatened breach. The Parties hereby acknowledge the necessity of protection described in Section 13.1 and Section 13.2 and that the nature and scope of such protection has been carefully considered by them. The period provided and the area covered in Section 13.1 are expressly represented and agreed to be fair, reasonable and

necessary. The consideration and benefits provided for herein are deemed to be sufficient and adequate to compensate Sellers for agreeing to the restrictions contained in Section 13.1. If any court determines that the foregoing restrictions are not reasonable, then such restrictions shall be modified, rewritten or interpreted to include as much of their nature and scope as will render them enforceable.

13.4 Assumed Contracts. To the extent that any Assumed Contract is not capable of being assigned without the consent of a third party or if such assignment or attempted assignment would constitute a breach thereof or a violation of any Law (any such Assumed Contract being referred to herein as a "Nonassignable Contract"), nothing in this Agreement shall constitute an assignment or an attempted assignment thereof prior to the time at which all consents necessary for such assignment shall have been obtained. Sellers shall use commercially reasonable efforts to obtain the consent to the assignment of any Nonassignable Contracts, and the Company and the Company Subsidiaries shall reasonably cooperate with their efforts. To the extent that any of the consents are not obtained, (a) the Company shall not be required to close the Transactions if such consents pertain to any of the Assumed Contracts denoted with an asterisk as Material Consents on Schedule 4.12(e), and (b) if the Company nevertheless elects to close the Transactions, then to the extent requested by the Company, Sellers shall, during the term of the affected Nonassignable Contract, use commercially reasonable efforts to (i) provide to the Company or a Company Subsidiary (as applicable) the benefits under any such Nonassignable Contract, (ii) cooperate in any reasonable and lawful arrangement designed to provide such benefits to the Company or a Company Subsidiary, and (iii) enforce for the account of the Company or a Company Subsidiary, any rights of Sellers under the affected Nonassignable Contract (including the right to elect to terminate such Nonassignable Contract in accordance with the terms thereof upon the direction of the Company) and for the period that the Company or a Company Subsidiary is receiving the benefit that would otherwise inure to Sellers under the Nonassignable Contract, the Company or such Company Subsidiary will be responsible for the obligations under the Nonassignable Contract relating to such period. The Company and the Company Subsidiaries shall cooperate with Sellers to enable Sellers to provide to the Company and the Company Subsidiaries the benefits contemplated by the immediately preceding sentence.

13.5 Additional Acts.

(a) Generally. From time to time after Closing, the Parties shall execute and deliver such other instruments of conveyance and transfer, and take such other actions as any other Party reasonably may request, to convey and transfer full right, title and interest to, vest in and place the Company and the Company Subsidiaries (as applicable) in legal and actual possession and benefit of, any and all of the Purchased Assets.

(b) Accounts Receivable. Sellers shall provide the Company and the Company Subsidiaries with all information in their possession or under their control that is reasonably necessary to bill and collect Accounts Receivable. After the Closing, Sellers shall: (i) permit, and hereby authorize, the Company and the Company Subsidiaries to collect, in the name of Sellers, all Accounts Receivable constituting part of the Purchased Assets and to endorse with the name of the applicable Seller for deposit in the Company's or a Company Subsidiary's account any checks or drafts received in payment thereof and not cause any Accounts Receivable

to be deposited in any account other than the A/R Bank Accounts; (ii) pay over, or cause to be paid over, to the Company or a Company Subsidiary, without right of set-off, within three (3) Business Days of receipt (and until so paid, shall hold in trust for the Company or such Company Subsidiary) all amounts received by Sellers and their Affiliates in respect of the Accounts Receivable; (iii) provide the Company or a Company Subsidiary with all information available to permit the Company and such Company Subsidiary to correctly apply such amounts; and (iv) cooperate with the Company or a Company Subsidiary to cause all future payments and reimbursements to be paid directly to the Company or such Company Subsidiary.

(c) Other Assistance. From time to time after Closing, as reasonably requested by Sellers, the Company shall administratively assist Sellers, at no additional cost, in disposing of the Excluded Assets and/or discharging the Excluded Liabilities retained by Sellers subsequent to the Closing.

13.6 Sellers' Cost Reports and RAC Audits.

(a) Sellers shall timely prepare and submit all Cost Reports relating to Sellers for cost report periods ending on or prior to the Closing Date or that are required as a result of the consummation of the Transactions, including terminating Cost Reports for the Government Reimbursement Programs ("Sellers' Cost Reports"). Such Sellers' Cost Reports shall be prepared in accordance with applicable Law. Upon reasonable advance notice, the Company and the Company Subsidiaries shall provide Sellers during normal business hours with the assistance of their respective personnel and access to such documents and information, as reasonably requested by Sellers to enable Sellers to timely prepare and file Sellers' Cost Reports. Neither the Company nor any Company Subsidiary shall be deemed to be the "preparer" of Sellers' Cost Reports as a result of such assistance. Sellers shall furnish to the Company copies of Sellers' Cost Reports, correspondence, work papers and other documents relating to Sellers' Cost Reports.

(b) From and after the Closing Date, the Company shall be responsible for the conduct of any and all RAC audits that may be conducted with respect to the Business, including with respect to the provision of services or the submission of claims by Sellers relating to periods prior to the Closing Date. The Company, either directly or through the pertinent Company Subsidiary: (i) shall timely respond to any and all requests made in connection with any such RAC audit; (ii) shall be responsible for the payment of any amounts to be paid or offset as a result of any such RAC audit; (iii) shall have the right to dispute and appeal any such offsets or amounts alleged to be owed in connection with any such RAC audit; and (iv) shall be entitled to any refunds resulting from any such RAC audit.

13.7 Post-Closing Access to Information. The Parties acknowledge that, after the Closing, the Company and Sellers may each need access to information, documents or computer data in the control or possession of the other concerning the Purchased Assets, Facilities or Assumed Liabilities for purposes of concluding the Transactions and for audits, investigations, compliance with governmental requirements, regulations and requests, and the prosecution or defense of third party claims. Accordingly, the Company and the Company Subsidiaries agree that, at the sole cost and expense of Sellers, at Sellers' request, they will make available to Sellers and their agents, independent auditors and/or Governmental Entities such documents and

information as may be available relating to the Purchased Assets, Facilities and Assumed Liabilities in respect of periods prior to Closing and will permit Sellers to make copies of such documents and information. Sellers agree that, at the sole cost and expense of the Company, Sellers will make available to the Company and the Company Subsidiaries and their agents, independent auditors and/or Governmental Entities such documents and information as may be in the possession of any Sellers or their Affiliates relating to the Purchased Assets, Facilities and Assumed Liabilities in respect of periods prior to the Closing and will permit the Company and the Company Subsidiaries to make copies of such documents and information. After the Closing Date, the Company and the Company Subsidiaries (as applicable) shall retain for a period consistent with the Company's record-retention policies and practices, those records of Sellers delivered to the Company or any Company Subsidiary.

13.8 Sellers' Remedial Actions. If Sellers have failed to fulfill prior to Closing any of their obligations set forth herein, and the Company has elected to close notwithstanding such deficiency or deficiencies, Sellers shall nevertheless use their commercially reasonable efforts to correct such deficiency or deficiencies as promptly as practicable after Closing, and their non-fulfillment shall not be deemed waived by the Company unless specifically so stated in writing by the Company.

13.9 Seller Intellectual Property. Sellers shall take any and all reasonable actions and shall cause their Employees, contractors and consultants, as applicable, to take any and all reasonable actions (including executing documents) necessary to effectuate the transfer of the Seller Intellectual Property to the Company or a Company Subsidiary and, following the Closing, Sellers shall take any and all reasonable actions to allow the Company or such Company Subsidiary to prosecute, maintain and defend the Seller Intellectual Property, other than with respect to the Intellectual Property described in Schedule 4.9(c).

13.10 Use of Controlled Substances Permits. To the extent permitted by applicable law, the Company and the Company Subsidiaries (as applicable) shall have the right, for a period not to exceed one hundred twenty (120) days following the Closing Date, to operate under the licenses and registrations of Sellers relating to controlled substances and the operations of pharmacies and laboratories, until the Company or such Company Subsidiaries are able to obtain such licenses and registrations for themselves, pursuant to an agreement in the form annexed hereto as Exhibit J (the "Limited Power of Attorney"), which Sellers agree to execute and deliver at the Closing.

13.11 Use of Names. On or before the Closing Date, each Seller other than SJHSRI shall (a) amend its certificate of incorporation, bylaws and any other organizational documents and take all other actions necessary to change its name to one sufficiently dissimilar to such Seller's present name, in the Company's judgment, to avoid confusion, and (b) take all actions requested by the Company to enable the Company and the Company Subsidiaries to change their legal names to the present names of Sellers. After the Closing, (x) the Company and the Company Subsidiaries shall continue to operate the Business using, to the extent practicable, the names of the Seller entities (except for SJHSRI), including the present name of CCHP as immediately prior to Closing, and (y) Sellers will not adopt any trademarks or service marks that are confusingly similar to the trademarks and service marks assigned hereunder. After the Closing Date, neither Sellers nor any of their Affiliates will challenge the use of, or the validity

and enforceability of, any Intellectual Property assigned to the Company or the Company Subsidiaries hereunder.

13.12 Public Statements. Any public announcement, press release or similar publicity with respect to this Agreement or the Transactions will be issued, if at all, at such time and in such manner as the Parties mutually determine. Except with the prior consent of the Company or as permitted by this Agreement, neither Sellers nor any of their Representatives shall disclose to any Person (a) the fact that any confidential information of Sellers has been disclosed to the Company or its Representatives, that the Company or its Representatives have inspected any portion of such confidential information, that any confidential information of the Company has been disclosed to Sellers or their Representatives or that Sellers or their Representatives have inspected any portion of the such confidential information, or (b) any information about the Transactions, including the status (or existence) of such discussions or negotiations, the execution of any documents (including this Agreement) or any of the terms of the Transactions or the related documents (including this Agreement). Sellers and the Company will consult with each other concerning the means by which Sellers' Employees, customers, suppliers and others having dealings with Sellers will be informed of the Transactions, and the Company will have the right to be present for any such communication.

13.13 Strategic Initiatives. Immediately following the Closing Date, the Parties shall cause the Company's governing board to collaboratively examine Sellers' existing strategic initiatives, with consideration given to: (i) growth and development of clinical centers of excellence (cancer, geriatric continuum, behavioral health, digestive disease, bariatrics, and diabetes); (ii) pursuit of opportunities in neurological sciences, dermatology and wound care, and orthopedics; (iii) clinical integration; and (iv) medical staff-system alignment and engagement. Within the first one hundred eighty (180) days immediately following the Closing Date, the Company shall prepare (through its manager) and adopt (through its governing board) a three (3)- to five (5)-year strategic plan addressing the short-term and long-term priorities for the Business, the Facilities, and strategic objectives.

13.14 Operating Commitments. From and after the Closing Date, Prospect and the Prospect Member shall ensure that the Company and the Company Subsidiaries operate the Business and the Facilities consistent with the same commitments to charity care and serving the local community, and the same dedication to quality, safety and patient satisfaction, as historically demonstrated by Sellers. In furtherance of the foregoing, Prospect and the Prospect Member shall cause the Company and the Company Subsidiaries to do or ensure all of the following:

(a) The Company and the Company Subsidiaries shall cause their respective Facilities, including without limitation the Hospitals, to accept and to continue to participate in the Medicare and Medicaid programs, including by maintaining appropriate accreditations necessary to receive reimbursement under such programs;

(b) The Company and the Company Subsidiaries shall endeavor to maintain and enhance the quality and safety of patient care services provided at the Hospitals;

(c) The Company and the Company Subsidiaries shall adopt as their policy concerning charity care/financial assistance policy the same such policy maintained by Sellers as in effect immediately prior to the Closing Date, attached as Exhibit K hereto; the Company and the Company Subsidiaries may from time to time amend, restate or supplement such policy provided that the charity care/financial assistance program of the Company and each Company Subsidiary remains at least as favorable to the indigent and uninsured as the policy attached hereto;

(d) The Company and the Company Subsidiaries shall continue to provide care through sponsorship and support of community-based health programs, including cooperation with local organizations that sponsor healthcare initiatives to address identified community needs and work to improve the health status of the elderly, poor and at-risk populations in the community;

(e) The Company and the Company Subsidiaries shall continue to support nursing and staff education;

(f) The Company and the Company Subsidiaries shall, at a minimum, continue the current medical education and research programs in place at the Business immediately prior to the Closing Date, unless there occur reductions in grants or other governmental funding that offset the cost of such medical education and research, in which case the Company or the Company Subsidiaries (as applicable) may reduce such programs in proportion to the reduction in support;

(g) The Company and the Company Subsidiaries shall at all times conduct their respective activities and operations in material compliance with all applicable Law;

(h) The Company and the Company Subsidiaries shall at all times maintain a compliance officer whose responsibilities shall include regulatory compliance and organizational compliance, and who shall be responsible for establishing and overseeing an ethics committee to include community board members; and

(i) The Company and the Company Subsidiaries shall at all times cause the Transferred Restricted Funds to be used in a manner consistent with their stated purposes; provided, that such stated purposes and restrictions do not cause the Company or the Company Subsidiaries to breach or violate, or be reasonably likely to breach or violate, any provision contained in the Company's Credit Agreement or any other agreements the Company or the Company Subsidiaries may be subject to from time to time; provided, further, that any different or additional conditions or limitations that may be imposed by third parties in connection with their consent to the transfer of such amounts hereunder shall be subject to the consent of the Company, which consent shall not be unreasonably withheld.

13.15 Essential Services.

(a) Except as otherwise provided in Section 13.15(b) below, Prospect and the Prospect Member shall cause the Company and the Company Subsidiaries to maintain both Hospitals and to continue to provide, collectively, the full complement of essential clinical services set forth on Exhibit L ("Essential Services") for a period of at least five (5) years

immediately following the Closing Date. The Parties hereby acknowledge and agree that the foregoing commitment regarding the provision of Essential Services is intended to ensure continued choice and access to hospital and non-acute health care services providers. For a period of at least five (5) years immediately following the Closing Date, in the event that the Company or a Company Subsidiary sells the Business and/or either Hospital, Prospect and the Prospect Member shall cause the Company or the Company Subsidiary (as applicable) to require the purchaser thereof to assume the foregoing obligations in their entirety.

(b) Notwithstanding Section 13.15(a) above, if any of the following contingencies occurs with regard to any particular Essential Service, the Company or the Company Subsidiary (as applicable) may suspend, terminate, discontinue or materially and substantially modify, limit, or reduce (as applicable) the Essential Service:

(i) The Essential Service is Not Financially Viable;

(ii) The medical staff of the facilities then owned or operated by the Company or the Company Subsidiary do not include qualified physicians necessary to support the provision of the Essential Service;

(iii) An Essential Service experiences a significant decrease in patient volumes for any reason not within the reasonable control of the Company or a Company Subsidiary, including technological obsolescence, changes in method, techniques or sites for delivery of the Essential Service, pharmaceutical advancements, failure of the Essential Service to qualify for reimbursement under Medicare (or any successor program) or a material portion of other payors, demographic and other market changes, or other competitive/marketplace factors; or

(iv) The actual or projected volume or clinical staffing for an Essential Service is or will be insufficient to achieve or maintain the level of quality for such Essential Service that is at least equal to, or better than, the level of quality at which the Essential Service is provided at any other general acute care community hospital in the region.

13.16 Catholic Identity and Covenants. At all times following the Closing Date, Prospect and the Prospect Member shall cause the Company and the Company Subsidiaries to maintain the Catholic identity of all legacy SJHSRI locations and to ensure that all services at SJHSRI locations are rendered in full compliance with the Ethical and Religious Directives for Catholic Health Care Services, as promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop of the Roman Catholic Diocese of Providence, Rhode Island, as the same may be amended from time to time (the "ERDs"). In furtherance of and consistent with the foregoing, Prospect and the Prospect Member shall cause the Company and the Company Subsidiaries to do or ensure all of the following:

(a) Each and every legacy SJHSRI location, as identified on Exhibit M, shall at all times be operated by the Company or a Company Subsidiary consistent with the Catholicity standards set forth on Exhibit M;

(b) Each and every facility owned or operated by the Company or a Company Subsidiary (other than the legacy SJHSRI locations identified on Exhibit M), and all programs

and services provided thereat or thereby, shall be operated by the Company or such Company Subsidiary so as to comply with the service restrictions set forth on Exhibit N;

(c) Pastoral care programs shall be maintained at all hospital facilities owned by the Company or a Company Subsidiary;

(d) The Company and the Company Subsidiaries shall provide pastoral care education curriculum sufficient to meet the needs of the hospital facilities owned by the Company or such Company Subsidiaries; and

(e) The Company and the Company Subsidiaries shall maintain chapels in all hospital facilities owned by the Company or such Company Subsidiaries.

13.17 Medical Staff Matters. In recognition of the key role to be played by members of the medical staffs at the Hospitals in ensuring the growth and long-term success of the Business, following the Closing Date, Prospect and the Prospect Member shall cause the Company and the Company Subsidiaries to do or ensure all of the following:

(a) The Company and the Company Subsidiaries shall invest in the medical staff of each Hospital in an effort to retain existing staff and recruit new staff. In addition, the Company and the Company Subsidiaries shall commit to properly position the Business to compete in Rhode Island (and regionally as necessary), consistent with emerging health care regulatory and reimbursement environments.

(b) The Company and the Company Subsidiaries shall involve physicians in the strategic and capital planning process for each of the Hospitals, insuring that the critical needs of the medical staff are met and that strategic initiatives and investment into the Hospital facility can be prioritized to better meet the needs of physicians practicing at the Hospital.

(c) The Company and the Company Subsidiaries shall recognize the medical staffs of both Hospitals in place as of the Closing Date and shall ensure that, for a period of at least two (2) years immediately following the Closing, there shall be no change or modification to the current medical staff privileges for physicians on staff at either Hospital, nor any change or modification to either Hospital's medical staff by-laws, rules and regulations, except for those routine medical staff functions and procedures set forth in the existing by-laws, rules and regulations of each Hospital's medical staff or except as required by Law.

(d) For a period of at least two (2) years immediately following the Closing Date, the Company and the Company Subsidiaries shall recognize and sustain the Hospital medical staff leadership structures in place as of the Closing Date, as set forth in the existing by-laws, rules and regulations of each Hospital's medical staff, including the positions of all medical staff officers, directors and chiefs of service (both sitting and elected) as described therein.

13.18 Restrictions and Rights Upon Sale of Interests in the Company. The Parties hereby agree to all of the following, which commitments shall be further reflected in the Amended and Restated Agreement:

(a) At any time, the Company and/or the Prospect Member may cause the assets of the Company or equity interests in the Company Subsidiaries to be pledged to lenders of Prospect and/or its Affiliates. However, if at any time a lender of Prospect or a Prospect Affiliate attempts to foreclose on any assets of the Company or any equity interest in a Company Subsidiary previously pledged to such lender, the Seller Member shall have a right to put its entire interest in the Company to the Prospect Member, on terms and condition more fully set forth in the Amended and Restated Agreement.

(b) For a period of at least five (5) years immediately following the Closing Date, the Prospect Member shall not sell its interest in the Company to an unaffiliated third party, nor shall Prospect sell its interest in the Prospect Member to an unaffiliated third party; provided, however, that such restriction: (i) shall not limit the Prospect Member's or Prospect's ability to transfer such interest to an Affiliate thereof; (ii) shall not be implicated by a change of control of Prospect or any direct or indirect parent thereof; and (iii) shall not limit the exercise of remedies pursuant to the Indenture or the Credit Agreement (each as defined in the Amended and Restated Agreement) or other indebtedness of Prospect and/or its Affiliates. In the event that, after the expiration of the five (5)-year period described above, the Prospect Member agrees to sell its interest in the Company to an unaffiliated third party, the Seller Member shall have the option to sell its interest in the Company to such buyer under the same terms and conditions, as more fully set forth in the Amended and Restated Agreement. In any event, the buyer of the Prospect Member's interest in the Company shall be required to expressly assume or reaffirm the obligations of Prospect and the Company under this Agreement.

(c) Commencing on the fifth (5th) anniversary of the Closing Date, the Seller Member shall have a right to put its entire interest in the Company to the Prospect Member, on terms and conditions set forth in the Amended and Restated Agreement. Notwithstanding the foregoing, at any time (whether during or after such five (5)-year period), the Seller Member shall have a right to put its entire interest in the Company to the Prospect Member (i) if necessary to protect the tax-exempt status of the Seller Member or any Affiliate thereof, or (ii) in the event of an attempted foreclosure on assets of the Company or a Company Subsidiary as described in Section 13.18(a) above. The terms and conditions for the exercise of the Seller Member's put right in such circumstances shall be as more fully set forth in the Amended and Restated Agreement.

(d) Other rights of the Parties (including rights of first offer, rights of first refusal, and tag-along rights) shall be as set forth in the Amended and Restated Agreement.

ARTICLE XIV
INDEMNIFICATION

14.1 Survival of Representations and Warranties.

(a) Except as otherwise provided in this ARTICLE XIV, all representations and warranties of each of the Sellers, the Company and Prospect contained in this Agreement shall survive until the two (2)-year anniversary of the Closing Date (the "Survival Date"). Notwithstanding the foregoing, any covenants of any Party that by their terms are to be performed or observed on or following the Closing shall survive the Closing until fully

performed or observed in accordance with their terms. Except as expressly provided in the immediately preceding sentence, (i) any claim for indemnification made hereunder before the Survival Date of such claim will not terminate before final determination and satisfaction of such claim, and (ii) no claim for indemnification hereunder may be made after the expiration of the applicable Survival Date.

(b) Notwithstanding anything to the contrary contained herein:

(i) the representations and warranties set forth in Section 4.1 (Incorporation, etc.), Section 4.2 (Powers, etc.), Section 4.3 (Binding Effect), Section 4.5 (Title; Purchased Assets), Section 4.30 (Brokers, etc.), Section 5.1 (Incorporation, etc.), Section 5.2 (Powers, etc.), Section 5.3 (Binding Effect), Section 5.5 (Brokers, etc.), Section 6.1 (Incorporation, etc.), Section 6.2 (Powers, etc.), Section 6.3 (Binding Effect), and Section 6.5 (Brokers, etc.) shall survive indefinitely; and

(ii) the representations and warranties set forth in Section 4.11 (Regulatory Compliance), Section 4.13 (Tax Matters), Section 4.17 (Employee Benefit Plans), Section 4.23 (Environmental Matters) and Section 9.13 (Freezing of Seller Plans) shall survive until ninety (90) days following the expiration of the applicable statute of limitations, but in no event longer than six (6) years immediately following the Closing.

14.2 Indemnification by Sellers. Sellers, jointly and severally, shall indemnify, defend and hold harmless Prospect, the Prospect Member, the Company, the Company Subsidiaries and their respective Affiliates, officers, directors, trustees, employees, stockholders, partners, members, agents, representatives, successors and permitted assigns (collectively, the "Company/Prospect Indemnified Persons"), from and against any loss, Liability, claim, damage or expense (including costs of investigation and defense and reasonable attorneys' fees and expenses), whether or not involving a Third-Party Claim (collectively, "Damages"), arising from or in connection with:

(a) any breach of or any inaccuracy in any of the representations and warranties made herein of by Sellers (giving effect to any amended Applicable Disclosure Schedules provided pursuant to Section 7.11(a) hereto but not giving effect to any updated schedules provided pursuant to Section 7.11(b) hereto) or in any certificate delivered by or on behalf of the Sellers hereunder at or prior to the Closing;

(b) any breach of or failure to perform any of the covenants or agreements made herein by Sellers;

(c) the Excluded Assets and Excluded Liabilities; and

(d) Sellers' operation of the Business prior to the Closing Date to the extent not contained in the calculation of Final Net Working Capital, including (i) Environmental, Health and Safety Liabilities for acts or failures to act occurring prior to the Closing Date, (ii) Liabilities for funding of, or tax or ERISA penalties or any other liabilities with respect to, the Retirement Plan, (iii) Healthcare Program Liabilities and Private Health Plan Liabilities pertaining to any period prior to the Closing Date, (iv) Tax Liabilities, and (v) medical

malpractice, negligence, employment discrimination and employment-related liabilities or general liability claims for acts or failures to act occurring prior to the Closing Date.

14.3 Indemnification by Prospect. Prospect shall indemnify, defend and hold harmless Sellers and their respective Affiliates, officers, directors, trustees, employees, stockholders, partners, members, agents, representatives, successors and permitted assigns (collectively, the "Seller Indemnified Persons"), from and against any Damages arising from or in connection with:

(a) any breach of or any inaccuracy in any of the representations and warranties made herein by Prospect or the Company (giving effect to any amended Applicable Disclosure Schedules provided pursuant to Section 7.11(a) hereto but not giving effect to any updated schedules provided pursuant to Section 7.11(b) hereto) or in any certificate delivered by or on behalf of Prospect, the Prospect Member, the Company or the Company Subsidiaries hereunder at or prior to the Closing; and

(b) any breach of or failure to perform any of the covenants or agreements made herein by Prospect, the Prospect Member, the Company or the Company Subsidiaries.

14.4 Limitation of Liability.

(a) No Company/Prospect Indemnified Persons shall make a claim against Sellers under Section 14.2(a) unless the amount of such claim (or group of related claims) exceeds Twenty-Five Thousand Dollars ($25,000) (the "De Minimis Threshold") and, except as otherwise expressly provided below, until the total amount of all claims for which the Company/Prospect Indemnified Persons seeking indemnification hereunder exceeds Six Hundred Thousand Dollars ($600,000) (the "Basket") (not counting any claims or group of related claims that do not exceed the De Minimis Threshold), in which event Sellers shall be liable for the full amount of all Damages (including the first dollar of such Damages). Further, except as expressly provided below, Sellers shall not have any liability for indemnification under Section 14.2(a) to the extent such liability exceeds an amount equal to the Cash Purchase Price (the "Cap"). Notwithstanding the foregoing:

(i) The Basket and the Cap shall not apply with respect to indemnification claims for any fraudulent acts by Sellers;

(ii) The Basket and the Cap shall not apply with respect to indemnification claims pursuant to Section 14.2(a) based on the breach or inaccuracy of the representations and warranties made by Sellers pursuant to Section 9.13 above; and

(iii) A special basket shall apply with respect to indemnification claims pursuant to Section 14.2(a) based on updated disclosures made by Sellers pursuant to Section 7.11(b) above, such that the Company/Prospect Indemnified Persons may make a claim against Sellers pursuant thereto once the total amount of all such claims exceeds Two Hundred Thousand Dollars ($200,000) (the "Special Basket") (not counting any claims or group of related claims that do not exceed the De Minimis Threshold); any indemnification claims pursuant to this Section 14.4(a)(iii) shall be disregarded up to the amount of the Special Basket for purposes

of the $600,000 Basket applicable to claims for indemnification by the Company/Prospect Indemnified Persons pursuant to Section 14.4(a) above.

(b) No Seller Indemnified Persons shall make a claim against Prospect under Section 14.3(a) unless the amount of such claim or group of related claims exceeds the De Minimis Threshold and until the total amount of all claims for which Seller Indemnified Persons is seeking indemnification hereunder, exceeds the Basket (not counting any claims or group of related claims that do not exceed the De Minimis Threshold), in which event Prospect shall be liable for the full amount of all Damages (including the first dollar of such Damages). Further, Prospect shall not have any liability for indemnification under Section 14.3(a) to the extent such liability exceeds an amount equal to the Cap. Notwithstanding the foregoing:

(i) The Basket and the Cap shall not apply with respect to indemnification claims for any fraudulent acts by Prospect, the Prospect Member, the Company or the Company Subsidiaries; and

(ii) The Special Basket shall apply with respect to indemnification claims pursuant to Section 14.3(a) based on updated disclosures made by the Company or Prospect pursuant to Section 7.11(b) above; any indemnification claims pursuant to this Section 14.4(b)(ii) shall be disregarded for purposes of the $600,000 Basket applicable to other claims for indemnification by the Seller Indemnified Persons pursuant to Section 14.4(b) above.

(c) In determining the amount of any Damages under this ARTICLE XIV, materiality and other similar qualifiers contained in such representation, warranty or covenant will be disregarded.

14.5 Third-Party Claims.

(a) Promptly after receipt by a Person entitled to indemnity under Section 14.2 or Section 14.3 (an "Indemnified Person") of notice of the assertion of a Third-Party Claim against it, such Indemnified Person shall give notice to the Person or Persons obligated to indemnify under such Section (each, an "Indemnifying Person") of the assertion of such Third-Party Claim, provided that the failure to notify an Indemnifying Person will not relieve the Indemnifying Person of any Liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates actual loss and that the defense of such Third-Party Claim is materially prejudiced by the Indemnified Person's failure to give such notice.

(b) If an Indemnified Person gives notice to the Indemnifying Person pursuant to Section 14.5(a) of the assertion of a Third-Party Claim, the Indemnifying Person shall be entitled to participate in the defense of such Third-Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Person is also a Person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third-Party Claim and provide indemnification with respect to such Third-Party Claim), to assume the defense of such Third-Party Claim with counsel reasonably satisfactory to the Indemnified Person. After notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of such

Third-Party Claim, the Indemnifying Person shall not, so long as it diligently conducts such defense, be liable to the Indemnified Person under this ARTICLE XIV for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Person assumes the defense of a Third-Party Claim, (i) such assumption will conclusively establish for purposes of this Agreement that the claims made in that Third-Party Claim are within the scope of and subject to indemnification, and (ii) no compromise or settlement of such Third-Party Claims may be effected by the Indemnifying Person without the Indemnified Person's consent unless (A) there is no finding or admission of any violation of Law or any violation of the rights of any Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the Indemnified Person shall have no Liability with respect to any compromise or settlement of such Third-Party Claims effected without its consent. If notice is given to an Indemnifying Person of the assertion of any Third-Party Claim and the Indemnifying Person does not, within ten (10) days after the Indemnified Person's notice is given, give notice to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person will be bound by any determination made in such Third-Party Claim or any compromise or settlement effected by the Indemnified Person.

(c) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Person will not be bound by any determination of any Third-Party Claim so defended for the purposes of this Agreement or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

(d) Notwithstanding the provisions of Section 15.1: (i) Sellers hereby consent to the nonexclusive jurisdiction of any court in which a Legal Proceeding in respect of a Third-Party Claim is brought against any Company/Prospect Indemnified Person for purposes of any claim that a Company/Prospect Indemnified Person may have under this Agreement with respect to such Legal Proceeding or the matters alleged therein; and (ii) Prospect hereby consents to the nonexclusive jurisdiction of any court in which a Legal Proceeding in respect of a Third-Party Claim is brought against any Seller Indemnified Person for purposes of any claim that a Seller Indemnified Person may have under this Agreement with respect to such Legal Proceeding or the matters alleged therein.

(e) With respect to any Third-Party Claim subject to indemnification under this ARTICLE XIV: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim and any related Legal Proceedings at all stages thereof where such Person is not represented by its own counsel; and (ii) the Parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(f) With respect to any Third-Party Claim subject to indemnification under this ARTICLE XIV, the Parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all confidential information and the attorney-client and work-product privileges. In connection therewith, each Party agrees that: (i) it will use its commercially reasonable best efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of confidential information (consistent with applicable law and rules of procedure); and (ii) all communications between any party hereto and counsel responsible for or participating in the defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

(g) Notwithstanding anything to the contrary in this Section 14.5, the Company, upon reasonable advance written notice to Sellers, may in its sole discretion assume control of any Remediation, Legal Proceeding or Third-Party Claim relating to an Environmental, Health and Safety Liability without releasing or waiving any Indemnifying Person's obligations hereunder to indemnify and hold the Company or a Company Subsidiary harmless and the Company's or such Company Subsidiary's rights to indemnification and being held harmless.

14.6 Other Claims. A claim for indemnification for any matter not involving a Third-Party Claim may be asserted by notice to the Party from whom indemnification is sought and, unless the matter is the subject of a good faith dispute between the Parties (in which case the Dispute resolution provisions of Section 15.1 shall apply), shall be paid promptly after such notice.

14.7 Benefit of Sellers' Indemnity. The Parties agree that any payments required to be made by Sellers pursuant to the provisions of Section 14.2 will be for the benefit of Prospect, the Prospect Member, the Company and the Company Subsidiaries, as applicable.

14.8 Right of Recoupment or Setoff. In the event that Sellers fail to indemnify or reimburse any Company/Prospect Indemnified Persons in accordance with this ARTICLE XIV for any Damages incurred by such Company/Prospect Indemnified Person (the "Unpaid Indemnification Amount"), Prospect may, in its sole and absolute discretion, recoup or offset, as applicable, on a dollar-for-dollar basis, all or a portion of the Unpaid Indemnification Amount in the following order of priority to the extent amounts are available in each such category: (x) by causing the Prospect Member to receive distributions from the Company otherwise due to the Seller Member in respect of the Seller Member's Units; (y) by reducing the Long-Term Capital Commitment; or (z) by treating such amount as an additional capital contribution by the Prospect Member to the Company and adjusting the Prospect Member's and the Seller Members' respective "Sharing Percentages" (as such term is defined in the Amended and Restated Agreement), or any combination of the foregoing, all pursuant to the terms of the Amended and Restated Agreement.

14.9 Tax Treatment of Indemnity Payments. The Parties agree to treat any payment for indemnity made pursuant to this ARTICLE XIV as an adjustment to the Cash Purchase Price for all tax purposes relating to any Tax, unless otherwise required by applicable Law, and any

such adjustments shall be allocated among the Facilities and the Purchased Assets in accordance with the principles of Section 2.11.

ARTICLE XV
GENERAL

15.1 Choice of Law; Dispute Resolution; Venue.

(a) Choice of Law. The Parties agree that this Agreement shall be governed by and construed in accordance with the Laws of the State of Rhode Island, without giving effect to any choice or conflict of law provision or rule thereof that would require the application of any other law.

(b) Dispute Resolution. In the event that any dispute, controversy or claim arises among the Parties, including any dispute, controversy or claim arising out of this Agreement or any other relevant document, or the breach, termination or invalidity thereof (a "Dispute"), the Parties shall attempt in good faith to resolve such Dispute promptly by negotiation (including at least one in-person meeting) over a period of not less than thirty (30) days, commencing upon one Party's delivery of a written notice of Dispute to the other Party.

(c) Venue. In the event that any Dispute is not resolved through good faith negotiations as provided in Section 15.1(b) above, either Party may submit the matter to a court of law or equity through the filing of a claim. The Parties agree that, except as otherwise expressly provided in Section 15.2 below, venue for any and all claims associated with a Dispute between the Parties shall rest with the state courts of the State of Delaware; provided, however, that such court shall construe and apply the Laws of the State of Rhode Island as provided in Section 15.1(a) above.

(d) Waiver of Jury Trial. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

15.2 Specific Performance. Notwithstanding anything to the contrary contained herein, each Party acknowledges and agrees that the non-breaching Parties would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by a Party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which the non-breaching Parties may be entitled, at law or in equity, they shall be entitled to enforce any provision of this Agreement by seeking, from a court of competent jurisdiction in the State of Rhode Island, a decree of specific performance and temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

15.3 Assignment.

(a) No Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Parties, except as follows: (i) each of Prospect, the Prospect Member, the Company and the Company Subsidiaries may assign any of its respective rights and delegate any of its respective obligations under this Agreement to any Affiliate thereof, as applicable; (ii) each of Prospect, the Prospect Member, the Company and the Company Subsidiaries may collaterally assign their rights hereunder to any financial institutions and noteholders (and any agent or trustee acting on their behalf) providing financing to the Company and/or Prospect and its Affiliates; and (iii) any Seller may assign any of its respective rights and delegate any of its respective obligations under this Agreement to any other Seller or to CharterCARE Health Partners Foundation (f/k/a St. Joseph Health Services Foundation). Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties.

(b) Nothing expressed or referred to in this Agreement shall be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section 15.3, or as expressly provided pursuant to Section 15.5 below.

15.4 Cost of Transaction. Whether or not the Transactions shall be consummated and except as otherwise provided herein, the Parties agree as follows:

(a) Except as provided otherwise elsewhere herein, Sellers will pay the fees, expenses and disbursements of Sellers and their Representatives incurred in connection with the subject matter hereof and any amendments hereto.

(b) Except as provided otherwise elsewhere herein, Prospect shall pay the fees, expenses and disbursements of Prospect and its Representatives incurred in connection with the subject matter hereof and any amendments hereto. Prospect also shall pay the fees, expenses and disbursements associated with the organization of the Company and the Company Subsidiaries as Rhode Island limited liability companies.

(c) The Company and/or the Company Subsidiaries shall be responsible for and shall pay any sales, use, stamp, realty transfer and documentary stamp taxes, and any and all other costs or expenses incident to the Closing or the recordation of the Deeds and the Leasehold Assignments. The Company and/or the Company Subsidiaries shall be responsible for and pay (i) the costs of examination of title and any title insurance policy to be issued insuring the Company's or Company Subsidiaries' title to the Real Property, and (ii) title charges and survey fees.

(d) The Company and/or the Company Subsidiaries shall be responsible for and pay any fees, expenses or costs pertaining to any inspections, studies, test, review and analyses of the Purchased Assets.

(e) Notwithstanding the foregoing, and notwithstanding any other provision of this Agreement, Sellers and Prospect shall share equally (on a 50/50 basis) the costs associated with obtaining all Approvals other than Church Approvals. Such costs shall include legal fees

only to the extent associated with (i) the compilation of documents required in connection with the HCA Initial Application and the HCFLA Change in Effective Control Application, and (ii) the assistance provided by legal counsel in connection with the preparation and prosecution of such applications.

15.5 Third-Party Beneficiaries.

(a) Except as provided in Section 15.5(b) below, the terms and provisions of this Agreement are intended solely for the benefit of the Prospect, the Prospect Member, the Company, the Company Subsidiaries, Sellers, Company/Prospect Indemnified Persons, Seller Indemnified Persons and their respective permitted successors or assigns, and it is not the intention of the Parties to confer, and this Agreement shall not confer, third-party beneficiary rights upon any other Person.

(b) Notwithstanding Section 15.5(a) above, the Parties hereby acknowledge and agree that the provisions of Section 13.16 hereof, including the accompanying Exhibits M and N, are for the specific benefit of the Bishop of the Roman Catholic Diocese of Providence, Rhode Island. The Parties further acknowledge and agree that any breach or violation of such provisions shall cause irreparable harm as to which no adequate remedy at law exists and that the Bishop may seek specific performance and injunctive relief in addition to all other remedies in equity or at law. If, in such circumstances, the Bishop is unsuccessful in obtaining specific performance and/or injunctive relief, the Company and the Company Subsidiaries shall, if requested by the Bishop in his sole discretion, cease operating under the names "St. Joseph" or "Our Lady of Fatima" or any other name that implies Catholicity.

15.6 Waiver. Except where a specific period for action or inaction is provided herein, neither the failure nor any delay on the part of any Party hereto in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement shall operate as a waiver thereof, nor shall any waiver on the part of any Party hereto of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The failure of a Party hereto to exercise any right conferred herein within the time required shall cause such right to terminate with respect to the transaction or circumstances giving rise to such right, but not to any such right arising as a result of any other transactions or circumstances.

15.7 Notices. All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a Party (i) when delivered or sent if delivered in person or sent by facsimile transmission (provided confirmation of facsimile transmission is obtained), (ii) on the fifth (5) Business Day after dispatch by registered or certified mail, (iii) on the next Business Day if transmitted by national overnight courier, in each case to the following addresses and marked to the attention of the person (by name or title) designated below (or to such other address as a Party may designate by notice to the other Parties):

If to Sellers: CharterCARE Health Partners
825 Chalkstone Avenue
Providence, RI 02908

with a copy to:	Drinker Biddle & Reath LLP 191 North Wacker Drive, Suite. 3700 Chicago, IL 60606-1699 Attention: Keith R. Anderson, Esq.
If to Company or the Company Subsidiaries:	Prospect CharterCare, LLC 825 Chalkstone Avenue Providence, RI 02908 Attention: Kenneth Belcher, Chief Executive Officer
with a copy to:	Sills Cummis & Gross P.C. One Riverfront Plaza Newark, NJ 07102 Attention: Gary W. Herschman, Esq.
and to:	Prospect Medical Holdings, Inc. 10780 Santa Monica Boulevard, Suite 400 Los Angeles, CA 90025 Attention: Samuel S. Lee, Chief Executive Officer
If to Prospect or the Prospect Member:	Prospect Medical Holdings, Inc. 10780 Santa Monica Boulevard, Suite 400 Los Angeles, CA 90025 Attention: Samuel S. Lee, Chief Executive Officer
with a copy to:	Sills Cummis & Gross P.C. One Riverfront Plaza Newark, NJ 07102 Attention: Gary W. Herschman, Esq.

15.8 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

15.9 Representative of Sellers.

(a) Each Seller hereby irrevocably constitutes and appoints CCHP ("Sellers' Representative") as its agent and such Seller's sole representative and true and lawful attorney in fact, and the Sellers' Representative hereby accepts such appointment, with full powers of

substitution and re-substitution, in such Seller's name, place and stead, in any and all capacities, in connection with the transactions contemplated by this Agreement and/or the other Transaction Documents, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection with the transfer of such Seller's Purchased Assets and Assumed Liabilities as full to all intents and purposes as such Seller might or could do in person. Each Seller hereby appoints the Sellers' Representative as its agent for the purpose of receiving service of process or other legal summons in connection with any proceeding brought by Prospect or the Company in any court in connection with or relating to this Agreement and/or the other Transaction Documents. The power-of attorney granted in this Section 15.9 is coupled with an interest and is irrevocable. Prospect, the Prospect Member, the Company and the Company Subsidiaries shall be entitled to deal exclusively with the Sellers' Representative on behalf of any and all Sellers in connection with all matters relating to this Agreement and/or the other Transaction Documents and shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Seller by the Sellers' Representative, as fully binding upon such Seller. The Sellers' Representative shall notify the Sellers within a reasonable time of all material actions taken by it pursuant to this Section 15.9.

(b) Without limiting the generality of the foregoing Section 15.9(a), the Sellers' Representative, acting alone without the consent of any other Seller, is hereby authorized by each of the Sellers to (i) take any and all actions under this Agreement and/or the other Transaction Documents without any further consent or approval from any other Person, (ii) effect payments to Sellers hereunder or thereunder, (iii) receive or give notices hereunder or thereunder, (iv) receive or make payment hereunder or thereunder, (v) execute waivers or amendments hereof, and/or (vi) execute and deliver documents, releases and/or receipts hereunder or thereunder.

15.10 Divisions and Headings of this Agreement. The divisions of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

15.11 No Inferences. Each Party has participated in the drafting of this Agreement, which each Party acknowledges is the result of extensive negotiations between the Parties. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision.

15.12 Tax and Regulatory Advice and Reliance. Except as expressly provided in this Agreement, none of the Parties (nor any of the Parties' respective counsel, accountants or other representatives) has made or is making any representations to any other Party (or to any other Party's counsel, accountants or other representatives) concerning the consequences of the Transactions under applicable Laws (including applicable tax Laws and any Medical Reimbursement Program Laws), and each Party has relied solely upon the advice of its own employees or of representatives engaged by such Party and not on any such advice provided by any other Party.

15.13 Entire Agreement; Amendment. This Agreement and the Confidentiality Agreement supersede all previous Contracts and constitute the entire agreement of whatsoever kind or nature existing between or among the Parties representing the within subject matter, and no Party shall be entitled to benefits other than those specified herein. As between or among the Parties, no oral statement or prior written material not specifically incorporated herein shall be of any force and effect. This Agreement may not be amended, supplemented or otherwise modified except by a written agreement executed by the Party to be charged with the amendment.

15.14 Execution of this Agreement. This Agreement may be executed in multiple counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument. A signature delivered by facsimile or PDF will be sufficient for all purposes among the Parties.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives, all as of the date and year first above written.

SELLERS;

CHARTERCARE HEALTH PARTNERS

By: _____
Name:
Title:

ROGER WILLIAMS MEDICAL CENTER

By: _____
Name:
Title:

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND

By: _____
Name:
Title:

ROGER WILLIAMS REALTY CORPORATION

By: _____
Name:
Title:

RWGH PHYSICIANS OFFICE BUILDING, INC.

By: _____
Name:
Title:

ELMHURST EXTENDED CARE FACILITIES, INC.

By: _____
Name:
Title:

ROGER WILLIAMS MEDICAL ASSOCIATES, INC.

By: _____
Name:
Title:

ROGER WILLIAMS PHO, INC.

By: _____
Name:
Title:

ELMHURST HEALTH ASSOCIATES, INC.

By: _____
Name:
Title:

OUR LADY OF FATIMA ANCILLARY SERVICES, INC.

By: _____
Name:
Title:

THE CENTER FOR HEALTH AND HUMAN SERVICES

By: _____
Name:
Title:

SJII ENERGY, LLC

By: _____
Name:
Title:

ROSEBANK CORPORATION

By: _____
Name:
Title:

PROSPECT:

PROSPECT MEDICAL HOLDINGS, INC.

By: _____
Name:
Title:

PROSPECT MEMBER:

PROSPECT EAST HOLDINGS, INC.

By: _____
Name:
Title:

THE COMPANY:

PROSPECT CHARTERCARE, LLC

By: PROSPECT EAST HOSPITAL ADVISORY SERVICES, LLC, its Manager

By: PROSPECT MEDICAL HOLDINGS, INC., its Sole Member

By: _____
Name:
Title:

COMPANY SUBSIDIARIES:

PROSPECT CHARTERCARE RWMC, LLC

By: PROSPECT CHARTERCARE, LLC, its Sole Member

By: PROSPECT EAST HOSPITAL ADVISORY SERVICES, LLC, its Manager

By: PROSPECT MEDICAL HOLDINGS, INC., its Sole Member

By: _____
Name:
Title:

PROSPECT CHARTERCARE SJHSRI, LLC

By: PROSPECT CHARTERCARE, LLC, its Sole Member

By: PROSPECT EAST HOSPITAL ADVISORY SERVICES, LLC, its Manager

By: PROSPECT MEDICAL HOLDINGS, INC., its Sole Member

By: _____
Name:
Title:

PROSPECT CHARTERCARE ELMHURST, LLC

By: PROSPECT CHARTERCARE, LLC,
its Sole Member

By: PROSPECT EAST HOSPITAL
ADVISORY SERVICES, LLC,
its Manager

By: PROSPECT MEDICAL HOLDINGS,
INC., its Sole Member

By: _____
Name:
Title:

PROSPECT CHARTERCARE PHYSICIANS, LLC

By: PROSPECT CHARTERCARE, LLC,
its Sole Member

By: PROSPECT EAST HOSPITAL
ADVISORY SERVICES, LLC,
its Manager

By: PROSPECT MEDICAL HOLDINGS,
INC., its Sole Member

By: _____
Name:
Title:

ACCEPTANCE AND AGREEMENT OF
SELLERS' REPRESENTATIVE

The undersigned, being the Sellers' Representative designated in Section 15.9 of the foregoing Asset Purchase Agreement, agrees to serve as the Sellers' Representative and to be bound by the terms of such Asset Purchase Agreement pertaining thereto.

CharterCARE Health Partners ("CCHP")

Signed:_____

Print Name:_____

Print Title:_____

Dated:_____ 2013

Annex A

Definitions

"20-Day Period" has the meaning set forth in Section 2.9(c).

"Accountants' Determination" has the meaning set forth in Section 2.9(c).

"Accounts Receivable" means all accounts and notes receivable, pledges and grants receivable, unbilled invoices, rights to settlement and positive retroactive adjustments, if any, for open cost reporting periods, other rights to receive payment for goods and services provided by Sellers in connection with the Business, whether recorded or unrecorded, including any amounts due from patients, Private Health Plans, Governmental Entities and Government Reimbursement Programs or any other source.

"Affiliate" means, as to the Person in question, any Person that directly or indirectly controls, is controlled by, or is under common control with, the Person in question and any successors or assigns of such Person; and the term "control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person whether through ownership of voting securities, by appointment of trustees, directors, and/or officers, by Contract or otherwise.

"Agreement" has the meaning set forth in the Preamble and shall include all Annexes, Exhibits and Schedules attached or delivered with respect hereto or expressly incorporated herein by reference.

"Allocation" has the meaning set forth in Section 2.11.

"Amended and Restated Agreement" means the Company's Amended and Restated Limited Liability Company Agreement, in the form of Exhibit A, to be entered into between the Prospect Member and the Seller Member at Closing.

"Ancillary Agreements" means, as to any Party hereto, all of the documents and instruments required to be executed pursuant to this Agreement by such Party in connection with this Agreement or the transactions contemplated hereby.

"Antitrust Laws" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, the Sherman Act, the Clayton Act, the Federal Trade Commission Act and any other United States federal or Rhode Island Law, administrative or judicial doctrines or other Laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

"Applicable Disclosure Schedules" means (i) with respect to Sellers, Schedule 1.1(a), Schedule 2.1(f)(2), Schedule 2.2(b) and those disclosure schedules contemplated by ARTICLE IV; (ii) with respect to the Company, those disclosure schedules contemplated by ARTICLE V; and (iii) with respect to Prospect, those disclosure schedules contemplated by ARTICLE IV.

"Approval" means any Healthcare Regulatory Consent or any other approval, authorization, certificate of need, exemption, consent, notice, qualification or registration, or any extension, modification, amendment or waiver of any of the foregoing, of or from, or any notice, statement, filing or other communication to be filed with or delivered to, any Governmental Entity, but excludes Environmental Permits.

"A/R Bank Accounts" has the meaning set forth in Section 4.28(a).

"Arbitrating Accountants" has the meaning set forth in Section 2.9(c).

"Architectural Plans means site plans, architectural renderings, blueprints, plans and specifications, engineering plans, as-built drawings, floor plans and other similar plans or diagrams, if any, held or used by Sellers in connection with the Business.

"Assumed Capital Lease Excess Amount" means the excess, if any, of (i) the aggregate amount, in dollars, of the net book value of all outstanding Capital Lease Obligations of Sellers at Closing pursuant to Assumed Contracts (but not including the current obligations under the Capital Leases included in Net Working Capital and not including the Cath Lab Capital Lease), over (ii) the sum of $635,854 plus the aggregate amount of the net book value of any capital leases entered into by Sellers after the date hereof which are consented to in writing by the Company pursuant to Section 7.3(b) hereof.

"Assumed Contracts" has the meaning set forth in Section 2.1(f).

"Assumed Employment Agreements" has the meaning set forth in Section 2.1(f).

"Assumed Leases" has the meaning set forth in Section 2.1(f).

"Assumed Liabilities" has the meaning set forth in Section 2.3.

"Assumed Physician Agreements" has the meaning set forth in Section 2.1(f).

"Audited Balance Sheet" has the meaning set forth in Section 4.7(a).

"Basket" has the meaning set forth in Section 14.4(a).

"Buildings and Systems" has the meaning set forth in Section 4.14(c).

"Business" means the business, operation or ownership of the Facilities and the Purchased Assets.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in Rhode Island are authorized or required by Law to close.

"Cap" has the meaning set forth in Section 14.4(a).

"Capital Lease Obligations" means those capital lease obligations of Sellers, including those described in Schedule 4.7(d) hereto.

"Capital Projects" has the meaning set forth in Section 2.5(b)

"Cash Purchase Price" has the meaning set forth in Section 2.6(a).

"Cath Lab Capital Lease" means that certain Capital Lease Obligation entered into by and between RWMC and Philips Medical dated December 27, 2012, with respect to Sellers' cardiac catheterization laboratory, the long-term portion of which, as of the date of this Agreement (*i.e.*, $558,288), shall be treated as partial satisfaction of the Long-Term Capital Commitment pursuant to Sections 4.2(b)and 4.2(c) of the Amended and Restated Agreement and Section 2.5(b) hereof.

"CCHP" has the meaning set forth in the introductory paragraph.

"Church" has the meaning set forth in Section 7.5(e).

"Church Approvals" has the meaning set forth in Section 7.5(e).

"Church Plan" has the meaning set forth in Section 4.17(i).

"Closing" has the meaning set forth in Section 3.1.

"Closing Cash Amount" has the meaning set forth in Section 2.6(a).

"Closing Date" has the meaning set forth in Section 3.1.

"CMS" means the Centers for Medicare & Medicaid Services.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended, as further defined in Section 4.17(g).

"Code" means the Internal Revenue Code of 1986 and the rules and regulations promulgated thereunder.

"Commitment" has the meaning set forth in Section 12.1(a).

"Company" has the meaning set forth in the introductory paragraph.

"Company Locations" has the meaning set forth in Exhibit N.

"Company Subsidiaries" has the meaning set forth in the introductory paragraph.

"Company/Prospect Indemnified Persons" has the meaning set forth in Section 14.2.

"Confidentiality Agreement" means that certain Confidentiality Agreement, dated as of August 2, 2012, between CCHP and Prospect.

"Contract" means any written or oral contract, commitment, instrument, license, lease or agreement, currently in effect, including renewals, extensions, assignments and amendments made in accordance therewith.

"Controlled Group" has the meaning set forth in Section 4.17(c).

"Cost Reports" means all cost and other reports related to a health care facility filed pursuant to the requirements of the Government Reimbursement Programs for cost-based payments or reimbursement due to or claimed by Sellers from the Government Reimbursement Programs or their MACs (or other fiscal intermediaries), including all appeals and appeal rights.

"DAG" means the Rhode Island Department of the Attorney General.

"Damages" has the meaning set forth in Section 14.2.

"De Minimis Threshold" has the meaning set forth in Section 14.4(a).

"Deed" means a deed in the form of Exhibit B.

"Delivery Date" means the date upon which all Applicable Disclosure Schedules have been delivered by both Parties and accepted by such other Party (as applicable), but in no event shall the Delivery Date be later than the twenty-first (21st) day after the date of this Agreement.

"Dispute" has the meaning set forth in Section 15.1(a).

"DOH" means the Rhode Island Department of Health.

"DOJ" means the United States Department of Justice.

"Effective Time" has the meaning set forth in Section 3.2.

"Elmhurst ECF" has the meaning set forth in the introductory paragraph.

"Elmhurst HA" has the meaning set forth in the introductory paragraph.

"Elmhurst SMLLC" has the meaning set forth in the introductory paragraph.

"Employee List" has the meaning set forth in Section 4.18(a).

"Employees" means all individuals who are employed by Sellers in the conduct of the Business, including residents and fellows, together with individuals who are hired in respect of the conduct of the Business after the date hereof and prior to the Closing.

"Employment Agreements" has the meaning set forth in Section 2.1(f).

"Employment Loss" means (i) an employment termination, other than a discharge for cause, voluntary departure or retirement, (ii) a layoff exceeding six (6) months or (iii) a reduction in hours of work of more than 50%.

"Encumbrance" means any claim, charge, easement, encumbrance, liability, encroachment, security interest, mortgage, lien, pledge or restriction, whether imposed by Contract, Law, equity or otherwise.

"Environmental, Health and Safety Liabilities" means any claim (including for personal injury), demand, assessment, Encumbrance, investigation, action or cause of action, complaint, citation, directive, information request or notice of potential violation or potential responsibility issued by a Governmental Entity, Legal Proceedings, damages (including punitive and consequential damages, property damage and natural resources damages), obligations (including Remediation obligations, or financial responsibility therefor, pursuant to any Environmental Laws), losses, penalties, fines, liabilities, encumbrances, liens, violations, costs and expenses (including attorneys and consultants fees and Remediation costs): (a) which are incurred as a result of (i) the existence or alleged existence of Hazardous Material in, on, over, under, at or emanating from any Facility, Real Property or Former Real Property, (ii) Hazardous Activity or (iii) the violation or alleged violation of any Environmental Laws or Occupational Safety and Health Laws; or (b) which arise under the Environmental Laws or Occupational Safety and Health Laws.

"Environmental Law" means any applicable Law (including any judgment or administrative interpretations, guidances, directives, policy statements or opinions) of any Governmental Entity relating to injury to, or the pollution or protection of, human health and safety (to the extent relating to exposure to Hazardous Materials) or the environment.

"Environmental Permit" means any permit, registration, license, approval, identification number, exemption or other authorization required under or issued pursuant to any applicable Environmental Law.

"ERDs" has the meaning set forth in Section 13.16.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"Essential Services" has the meaning set forth in Section 13.15(a) and Exhibit L.

"Estimated Final Settlements" means estimates of the dollar amounts of final settlements owed by Sellers to third party payors.

"ETO" shall mean earned time off, as accrued by Employees pursuant to the applicable Seller Plans for periods prior to the Effective Time.

"Exceptions" has the meaning set forth in Section 12.1(a).

"Excluded Assets" has the meaning set forth in Section 2.2.

"Excluded Contracts" has the meaning set forth in Section 2.2(b).

"Excluded Liabilities" has the meaning set forth in Section 2.4.

"Facilities" means the Hospitals and all nursing homes, diagnostic, surgical and/or treatment facilities, medical office buildings, pharmacies, physician practice sites and/or other health care service and educational sites or facilities, and related health care business in Providence, Rhode Island and surrounding communities, each of which listed on Schedule 1.1(a), as well as the businesses conducted therein or thereby.

"Final Adjustment Amount" has the meaning set forth in Section 2.9(a).

"Final Determination Date" has the meaning set forth in Section 2.9(d).

"Final Net Working Capital" has the meaning set forth in Section 2.9(a).

"Final Working Capital Statement" has the meaning set forth in Section 2.9(a).

"Financial Statements" has the meaning set forth in Section 4.7(a).

"FIRPTA Certificate" means a certificate required by United States Treasury Department Regulation Section 1.1445-2, to the effect that Seller is not a foreign person (as defined in the Code), which would subject the Company or a Company Subsidiary to the withholding provisions of Section 1445 of the Code.

"Former Real Property" means any Real Property formerly owned, leased or operated by any of Sellers or any of their predecessors-in-interest.

"FTC" means the Federal Trade Commission.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Governmental Entity" means any government or any administrative agency or authority, bureau, board, directorate, commission, court, department, office, political subdivision, tribunal, recovery audit contractor or other instrumentality of any government, whether federal, state or local, domestic or foreign.

"Government Reimbursement Programs" means the Medicare program, the Rhode Island Medicaid program, the federal TRICARE program, and any other similar or successor federal or state healthcare payment programs with or sponsored by a Governmental Entity.

"Ground Lease" has the meaning set forth in Section 9.9.

"Ground Lease Property" means any real property that is the subject of a Ground Lease.

"Hazardous Activity" means the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, storage, transfer, transportation, disposal, treatment, use or Remediation of Hazardous Material or Release in, on, under, about or from any of the Facilities or any off-site disposal facilities.

"Hazardous Materials" means: (i) any chemical, substance, material, or waste listed, defined, or classified as a "pollutant," "contaminant," "hazardous substance," "toxic substance," "solid waste," "hazardous waste," "hazardous material," or "special waste" under any applicable Environmental Law; (ii) any substance regulated under any applicable Environmental Law; (iii) petroleum or any derivative or by-product thereof; (iv) urea formaldehyde foam insulation, polychlorinated biphenyls, methyl tertiary butyl ethyl, radioactive material, or radon; (v) mold; (vi) any "asbestos-containing materials;" and (vii) greenhouse gases.

"HCA" means the Rhode Island Hospital Conversions Act, R.I. Gen. Laws §§ 23-17.14-1, et seq.

"HCFLA" means the Health Care Facility Licensing Act of Rhode Island, R.I. Gen. Laws §§ 23-17-1, et seq.

"Healthcare Program Liabilities" means all Liabilities under any Laws relating to Government Reimbursement Programs, including any obligations for settlement and retroactive adjustments under the Medicare and Medicaid programs for open cost report periods.

"Healthcare Regulatory Consents" means in respect of Sellers or the Company or a Company Subsidiary, as the case may be, such consents, approvals, authorizations, waivers, Orders, licenses or Permits of any Governmental Entity as shall be required to be obtained and such notifications to any Governmental Entity as shall be required to be given by such Party in order for it to consummate the Transactions in compliance with all applicable Laws relating to health care or healthcare services of any kind and shall include obtaining any such consents, approvals, authorizations, waivers, Orders, licenses or Permits from, or notices to, the DAG, DOH and the public in accordance with the HCA and the HCFLA, and CMS.

"Historical Working Capital Position" means the average Net Working Capital (excluding cash and the current portion of long-term debt and Estimated Final Settlements) of Sellers for each of the 12 monthly periods prior to Closing, as of the month end most recently occurring before the Closing Date for which financial statements are available (but in no event as of a month end more than forty-five (45) days prior to the Closing); provided, however, that if the foregoing calculation results in a negative number, the Historical Working Capital Position shall be deemed to be zero ($0) for purposes of Section 2.9.

"Hospitals" means the hospitals known as (i) Roger Williams Medical Center, located at 825 Chalkstone Avenue, Providence, Rhode Island, and (ii) Our Lady of Fatima Hospital, located at 200 High Service Avenue, North Providence, Rhode Island.

"Immigration Act" means the Immigration and Nationality Act of 1952 and the Immigration Reform and Control Act of 1986.

"Improvements" has the meaning set forth in Section 2.1(a).

"Indebtedness" means all Liabilities of any Seller to any Person for borrowed money, including any loan or credit agreement, notes payable, Capital Lease Obligations, guaranties, letters of credit and similar arrangements, and including all interest, fees, penalties, charges or other amounts thereon.

"Indemnified Person" has the meaning set forth in Section 14.5(a).

"Indemnifying Person" has the meaning set forth in Section 14.5(a).

"Intellectual Property" means any trademarks, trade names, service marks, logos and other source identifiers and all applications, registrations and renewals in connection therewith; computer programs (in object code form and, as to software programs that are Seller Intellectual

Property, the source code therefor); writings, copyrights, and works of authorship (whether or not copyrightable) and all applications, registrations and renewals in connection therewith; data, technology, trade secrets, designs, patents, innovations, discoveries, inventions and improvements (whether or not patentable) and all patent applications and patent disclosures, together with all reissuances, continuations, revisions, extensions and re-examinations thereof; and any other intellectual property.

"Interim Balance Sheet" has the meaning set forth in Section 4.7(a).

"Interim Balance Sheet Date" means July 31, 2013.

"Interim Financial Statements" has the meaning set forth in Section 4.7(a).

"Inventory" means all useable inventories of supplies, pharmaceuticals, food, janitorial and office supplies and other disposables and consumables located at the Facilities or held for use in the Business.

"JV Proceed Deficiency" has the meaning set forth in Section 2.1(z).

"Landlord Estoppels" has the meaning set forth in Section 3.3(e).

"Law" means any federal, state, local, municipal, foreign or other law, common law, statute, ordinance, rule, regulation, requirement, interpretation, judgment, ruling, order or writ of any Governmental Entity, including Medical Reimbursement Program Laws, the Immigration Act and the Antitrust Laws.

"Leased Real Property" has the meaning set forth in Section 2.1(b).

"Leasehold Assignment" means an assignment and assumption of the Leased Real Property, in the form of Exhibit E.

"Leases" means any and all real property leases, subleases, tenancies, concessions, licenses, occupancy agreements or similar agreements (including any and all modifications, amendments, supplements extensions or renewals thereof) to which any Seller is a party with respect to the Facilities, and (subject to the terms of this Agreement) together with refundable deposits and prepaid rent, if any, relating to any of the foregoing.

"Legal Proceeding" means any action, suit, litigation, arbitration, proceeding or claim (whether at law or in equity) before a Governmental Entity or before any arbitrator or mediator or similar party, or any investigation, audit or review by any Governmental Entity.

"Liability" means any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due), and including all fines, penalties, costs and expenses relating thereto.

"Limited Power of Attorney" has the meaning set forth in Section 13.10.

"Long-Term Capital Commitment" has the meaning set forth in Section 2.5(b).

"MACs" means Medicare Administrative Contractors.

"Management Group" means the following Employees of Sellers: Kenneth H. Belcher, Otis Brown, Susan Cerrone-Abely, Michael Conklin, Jr., Joanne Dooley, Richard Gamache, Patricia Nadle, Kimberly A. O'Connell and Darleen Souza.

"Mandatory Removal Exceptions" has the meaning set forth in Section 12.1(a).

"Material Adverse Development" means any event, occurrence, condition, change or circumstance that, individually or together with any other event, occurrence, condition, change or circumstance, would be reasonably expected: (a) to have a material adverse impact on the business, operations, property, results of operations or financial condition of the Facilities or the Purchased Assets, taken as a whole, on the one hand, or Prospect, on the other hand (as applicable), including as a result of weather, flood or other natural disasters, whether or not covered by insurance; (b) materially impair the ability of Sellers, on the one hand, or Prospect, the Prospect Member, the Company and the Company Subsidiaries, on the other hand (as applicable), to consummate the Transactions contemplated by, or to perform their obligations under, this Agreement; or (c) materially impair the ability of the Company and the Company Subsidiaries to operate the Business after the Closing in substantially the same manner as Sellers operate the Business as of the date hereof. Notwithstanding the foregoing, a Material Adverse Development shall not include: (i) changes in the financial or operating performance of the Business due to or caused by the announcement of the Transactions contemplated by this Agreement or seasonal changes; (ii) changes or proposed changes to any Law, reimbursement rates or policies of governmental agencies or bodies that are generally applicable to hospitals or health care facilities; (iii) requirements, reimbursement rates, policies or procedures of third party payors or accreditation commissions or organizations that are generally applicable to hospitals or health care facilities; (iv) general business, industry or economic conditions, including such conditions related to the Parties, that do not disproportionately affect the applicable Parties, taken as a whole; (v) local, regional, national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack, that do not disproportionately affect the applicable Parties, taken as a whole; (vi) changes in financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index) that do not disproportionately affect the applicable Parties, taken as a whole; or (vii) changes in GAAP.

"Material Consents" has the meaning set forth in Section 3.3(o).

"Material Contracts" has the meaning set forth in Section 4.12(a).

"Material Indebtedness" means all Indebtedness other than Capital Lease Obligations.

"Medicaid" means the state health insurance program established under Title XIX of the Social Security Act.

"Medical Reimbursement Program Laws" means the Laws governing the Government Reimbursement Programs, including: 42 U.S.C. §§ 1320a-7, 1320a-7a, 1320a- 7b and 1395nn; the False Claims Act (31 U.S.C. § 3729 et seq.); the False Statements Act (18 U.S.C. § 1001);

the Program Fraud Civil Penalties Act (31 U.S.C. § 3801 et seq.); the anti-fraud and abuse provisions of the Health Insurance Portability and Accountability Act of 1996 (18 U.S.C. § 1347, 18 U.S.C. § 669, 18 U.S.C. § 1035, 18 U.S.C. § 1518; and the corresponding fraud and abuse, false claims and anti self-referral Laws of any other Governmental Body.

"Medical Staff List" has the meaning set forth in Section 4.20.

"Medicare" means the federal health insurance program for the aged and disabled established under Title XVIII of the Social Security Act.

"Net Working Capital" means the value of Sellers' Inventory, Accounts Receivable, Transferred Restricted Funds, useable prepaid expenses and deposits which have continuing value to the operations of the Business, less the value of trade accounts payable, accrued expenses (excluding any deferred revenues related to restricted research) and employee benefit accruals (including sick time and vacation); provided, however, that Net Working Capital: (w) shall include the current portion of capital leases; (x) shall not include any Accounts Receivable with respect to Transitional Patient Services; (y) shall not include Estimated Final Settlements; and (z) shall include such items and other adjustments pursuant to the methodology reflected on Annex B hereto, including without limitation an adjustment for all amounts paid by Sellers in connection with terminating Sellers' outstanding interest rate swaps; provided, further, that, Net Working Capital and its components shall be determined in accordance with GAAP.

"Nonassignable Contract" has the meaning set forth in Section 13.4.

"Non-A/R Bank Accounts" has the meaning set forth in Section 4.28(a).

"Non-Permitted Exceptions" has the meaning set forth in Section 12.1(a).

"Not Financially Viable" means that both of the following are true: (i) over any period of 12 consecutive months, an Essential Service has suffered a cumulative net loss, meaning that the actual aggregate revenue associated with such Essential Service over such 12-month period was less than the actual aggregate expense of providing the Essential Service over such 12-month period (considering direct and indirect facility costs, the costs of obtaining or maintaining the physician support necessary to provide the Essential Service, and capital investments that were required in order for the Essential Service to be provided in accordance with the prevailing standard of care); and (ii) for the subsequent 12-month period immediately thereafter, the Essential Service is projected to suffer a cumulative net loss, meaning that the projected aggregate revenue associated with such Essential Service over such 12-month period (considering anticipated future reimbursement levels and volume, in light of demographics and competitive factors) is anticipated to be less than the projected aggregate expense of providing the Essential Service over such 12-month period (considering direct and indirect facility costs, the costs of obtaining or maintaining the physician support necessary to provide the Essential Service, and the capital investment necessary to continue to provide the Essential Service in accordance with the prevailing standard of care).

"Objection Notice" has the meaning set forth in Section 2.9(c).

"Occupational Safety and Health Law" means any Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, including OSHA, and any program, whether governmental or private (such as those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

"Off-the-Shelf Software" means off-the-shelf operating system, browser and common desktop or server-based office productivity computer software (word processing, spreadsheet, presentation and the like).

"Order" means any order, injunction, judgment, decree, directive, ruling, consent, approval, writ, assessment or arbitration award of a Governmental Entity.

"Ordinary Course of Business" means the ordinary and usual course of normal day-to-day operations of the Business through the date hereof consistent with past practice.

"OSHA" means the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.

"Our Lady" has the meaning set forth in the introductory paragraph.

"Outside Date" means the one (1)-year anniversary of the date of this Agreement; provided, however, that the Company or Prospect on the one hand, or the Sellers, on the other hand, shall have the right, exercisable upon prior written notice to such other Party, to extend the Outside Date by up to an additional ninety (90) days if the approvals under the HCA and HCFLA are pending as of the time of such exercise.

"Owned Real Property" has the meaning set forth in Section 2.1(a)

"Parties" has the meaning set forth in the introductory paragraph.

"Permit" means any application, approval, license, identification number, permit, franchise, accreditation, registration, waiver or certificate of need of any kind, of any Governmental Entity, but excludes Environmental Permits.

"Permitted Exceptions" has the meaning set forth in Section 12.2.

"Person" means an association, a corporation, a limited liability company, an individual, a partnership, a limited liability partnership, a trust or any other entity or organization, including a Governmental Entity.

"Personal Property" has the meaning set forth in Section 2.1(c).

"PHO" has the meaning set forth in the introductory paragraph.

"Physician Agreements" has the meaning set forth in Section 2.1(f).

"Physicians SMLLC" has the meaning set forth in the introductory paragraph.

"Pre-Closing Permitted Exceptions" has the meaning set forth in Section 4.5(a).

"Private Health Plan Liabilities" means all Liabilities relating to Private Health Plans in connection with reimbursement for the provision of health care services to enrolled or covered beneficiaries.

"Private Health Plans" means insurers, third party payors, health maintenance organizations, preferred provider organizations, third party administrators for self-insured employers and similar arrangements, other than Government Reimbursement Programs, but including those situations where, pursuant to a contract with a Government Reimbursement Program, the Private Health Plan provides coverage under a managed care product to persons obtaining their Medicare, Medicaid, or similar benefits from the Private Health Plan rather than directly from Medicare or Medicaid.

"Prospect" has the meaning set forth in the introductory paragraph.

"Prospect Advance" has the meaning set forth in Section 2.7.

"Prospect Benefit Plans" has the meaning set forth in Section 6.6.

"Prospect Contribution" has the meaning set forth in Section 2.5(a).

"Prospect Member" has the meaning set forth in the introductory paragraph.

"Provider Agreements" has the meaning set forth in Section 2.1(f).

"Purchased Assets" has the meaning set forth in Section 2.1.

"RE Tax Returns" means all Tax Returns, questionnaires, certificates, affidavits and other documents required in connection with the payment of any Transfer Taxes in respect of the Owned Real Property.

"Real Estate Taxes" has the meaning set forth in Section 12.2.

"Real Property" means the Owned Real Property and the Leased Real Property.

"Rejected Physician Agreements" has the meaning set forth in Section 2.1(f).

"Related Venture" and "Related Ventures" mean, individually and collectively (i) Rhode Island PET Services, LLC, a Rhode Island limited liability company, (ii) Roger Williams Radiation Therapy, LLC, a Rhode Island limited liability company, and (iii) Chemosynergy, LLC, a Rhode Island limited liability company.

"Release" means any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, migrating, or disposing of Hazardous Materials into the environment, including the ambient air, surface and subsurface soils, surface water and groundwater.

"Remediation" means any investigation, clean-up, removal action, remedial action, restoration, repair, response action, containment, corrective action, monitoring, sampling and

analysis, reclamation, closure, or post-closure activity in connection with the suspected, threatened or actual Release of Hazardous Materials.

"Representatives" means with respect to any Person, any of its Affiliates, directors, trustees, officers, members, shareholders, employees, counsel, accountants, consultants, agents, advisors and other representatives.

"Residents and Fellows List" has the meaning set forth in Section 4.19.

"Retirement Plan" means the St. Joseph Health Services of Rhode Island Retirement Plan.

"Retirement Plan Assets" shall mean the assets, cash and investments of the Retirement Plan.

"Revenue Procedure" has the meaning set forth in Section 8.2(c).

"Rosebank" has the meaning set forth in the introductory paragraph.

"RWMA" has the meaning set forth in the introductory paragraph.

"RWMC" has the meaning set forth in the introductory paragraph.

"RWMC SMLLC" has the meaning set forth in the introductory paragraph.

"RWOB" has the meaning set forth in the introductory paragraph.

"RWRC" has the meaning set forth in the introductory paragraph.

"Second 20-Day Period" has the meaning set forth in Section 2.9(c).

"Seller Indemnified Persons" has the meaning set forth in Section 14.3.

"Seller Intellectual Property" means Intellectual Property that is not Third Party Intellectual Property.

"Seller Member" has the meaning set forth in the Recitals.

"Seller Plans" has the meaning set forth in Section 4.17(a).

"Sellers" has the meaning set forth in the introductory paragraph.

"Sellers' Cost Reports" has the meaning set forth in Section 13.6.

"Sellers' Knowledge" (and similar expressions) means the actual knowledge of any member of the Management Group, after making diligent inquiry of those employees of any of Sellers with principal day-to-day operational responsibility with respect to a particular matter.

"Sellers' Representative" has the meaning set forth in Section 15.9(a).

"Service Contracts" means contractual rights with respect to the operation, maintenance, repair and improvement of the Real Property, including service and maintenance agreements, construction, material and labor contracts, utility agreements and other contractual arrangements, and warranties of any contractor, manufacturer or materialman.

"Settlement Agreement" has the meaning set forth in Section 2.9(c).

"SJHE" has the meaning set forth in the introductory paragraph.

"SJHSRI" has the meaning set forth in the introductory paragraph.

"SJHSRI Locations" has the meaning set forth in Exhibit M.

"SJHSRI SMLLC" has the meaning set forth in the introductory paragraph.

"Special Basket" has the meaning set forth in Section 14.4(a)(iii).

"Survey Update" has the meaning set forth in Section 12.1(a).

"Surveys" means those certain surveys of the Owned Real Property prepared by InSite Engineering Services, LLC, a surveyor registered in the State of Rhode Island, and certified to the Company and to Sellers by such surveyor as having been prepared in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys adopted in 2011, which have been provided by the Company to Sellers.

"Survival Date" has the meaning set forth in Section 14.1(a).

"Tax" means (a) any tax, assessment, duty, fee, levy or similar charge assessed by any Governmental Entity, including any income tax, ad valorem tax, excise tax, escheat or unclaimed property liability, sales tax, use tax, capital tax, franchise tax, real or personal property tax, transfer tax, realty transfer tax, gross receipts tax, withholding tax, social security tax, payroll tax or employment tax, together with and including any and all interest, fines, penalties, assessments and additions to Tax resulting from, relating to or incurred in connection with any of those or any contest or dispute thereof, and (b) any liability of any Person for the payment of the amounts described in clause (a) as a transferee, successor or pursuant to any contractual obligation or pursuant to Treasury Regulations Section 1.1502-6 (or any similar provision of state or local Law).

"Tax Return" means any report, statement, form, return or other document or information supplied or required to be supplied to a Governmental Entity or any other Person in connection with Taxes, including any schedule or attachment thereto and any amendment thereof, and including any return required by an organization exempt from any Tax.

"TCHHS" has the meaning set forth in the introductory paragraph.

"Tenant Estoppels" has the meaning set forth in Section 3.3(c).

"Tenants" means tenants in occupancy of portions of the Real Property as of the Closing under Leases, as listed on the Rent Roll attached as Schedule 4.14(c).

"Third-Party Claim" means a claim by a third-party that is subject to indemnification hereunder.

"Third Party Intellectual Property" has the meaning set forth in Section 4.9(a).

"Title Company" means First American Title Insurance Company.

"Title Notice" has the meaning set forth in Section 12.1(a).

"Transaction" or "Transactions" means the purchase and sale of the Facilities and Purchased Assets, and consummation of the other transactions set forth herein or contemplated hereby.

"Transaction Documents" means this Agreement and the Ancillary Agreements.

"Transfer Taxes" means all transfer, conveyance, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest).

"Transferred Employees" has the meaning set forth in Section 8.1(a).

"Transferred Residents and Fellows" has the meaning set forth in Section 8.1(b).

"Transferred Restricted Funds" means, to the extent transferable, and subject to receipt by Sellers of any required third party consents (including, as applicable, approval of the pertinent federal agency, the original donor or the heirs thereof, or a court exercising jurisdiction in a *cy pres* action) as of the Closing Date, all research grant funds and any deferred liabilities associated with such funds and all endowed or donor-restricted funds (whether current or non-current) that have been specifically designated for use by, at or in connection with the operation of the Business.

"Transitional Patient Services" has the meaning set forth in Section 2.1(x).

"TRICARE" means the Department of Defense's managed healthcare program for active duty military, active duty service families, retirees and their families and other beneficiaries.

"Units" has the meaning set forth in Section 2.6(b).

"UMG" means University Medical Group, Inc., a Rhode Island 501(c)(3) corporation.

"Unpaid Indemnification Amount" has the meaning set forth in Section 14.8.

"Update" has the meaning set forth in Section 12.1(a).

"WARN Act" means the Worker Adjustment and Retraining Notification Act of 1988 and the rules and regulations promulgated thereunder, and any local or state statute, rules or regulations providing for notice in the advance of or benefits of any kind as a result of

employment termination or other employment loss, as defined in the WARN Act or by such local or state statutes.

Annex B

Net Working Capital

Calculation Methodology

See Attached

Working Capital Analysis

Consolidated Charter Care
Trailing 12 months ended August, 2012 and July, 2013

		Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	12 Mo Trailing Avg
Cash & Cash Equivalents		15,146,983	18,128,169	20,230,139	19,739,070	21,360,130	18,536,333	18,413,843	15,016,050	15,190,440	17,115,998	15,642,637	16,103,753	17,551,962
ST Investments		1,498,993	1,499,790	1,499,790	1,499,911	1,499,250	1,499,250	1,499,370	1,499,370	1,499,525	1,499,525	1,499,625	1,499,625	1,499,502
Patient Receivables, Net		33,320,897	33,324,108	34,102,007	32,483,810	31,750,770	35,683,154	34,594,273	31,865,932	33,071,761	32,765,544	34,351,706	33,870,005	33,431,997
AR Other		2,377,210	6,129,728	1,960,755	2,614,814	3,131,818	2,940,780	3,578,679	3,928,613	4,621,039	5,121,624	5,657,187	5,580,511	3,970,230
Pledge Receivable		117,135	82,205	(1,693)	82,205	82,205	82,205	82,205	82,205	82,205	82,205	82,205	82,205	78,124
Inventories		4,677,827	4,774,119	4,794,591	4,824,498	4,777,771	4,711,270	4,620,198	4,987,848	4,905,722	4,805,533	4,624,206	4,486,451	4,749,170
Prepaids		2,701,017	1,942,606	2,622,068	3,235,395	3,817,642	2,826,279	3,128,904	3,293,316	2,754,726	2,536,589	2,341,846	2,294,795	2,791,265
Due To/Fr Related Parties		-	-	-	-	-	-	-	-	-	-	-	-	-
Malprac Rec Current		-	6,561,259	6,561,259	6,593,274	6,590,321	6,550,041	6,561,852	6,541,639	6,562,940	6,561,217	6,572,586	6,648,481	6,025,406
Current Portion Funds Held by Trustee		1,356,907	1,396,265	451,542	598,269	745,003	1,338,523	1,165,983	1,312,730	1,459,457	1,132,231	1,197,090	1,790,622	1,162,052
Total Current Assets		61,196,969	73,838,249	72,220,458	71,671,246	73,754,910	74,167,835	73,645,307	68,527,703	70,147,815	71,620,466	71,969,088	72,356,448	71,259,708
Accounts Payable & Accrued Expenses		(23,578,016)	(25,739,303)	(22,943,179)	(22,394,467)	(22,198,336)	(24,611,497)	(25,715,543)	(23,020,819)	(22,771,613)	(23,135,362)	(24,136,832)	(26,511,874)	(23,896,403)
Accrued Wages & Benefits		(15,899,035)	(17,839,166)	(19,424,835)	(20,722,112)	(21,797,809)	(19,227,161)	(19,828,329)	(19,244,148)	(20,337,605)	(21,709,139)	(22,789,147)	(21,424,615)	(20,020,258)
Malpractice Ins Reserve - Current		-	(8,551,128)	(8,551,128)	(8,551,128)	(8,551,128)	(8,551,128)	(8,551,128)	(8,551,128)	(8,551,128)	(8,551,128)	(8,551,128)	(8,551,128)	(7,838,534)
Deferred Revenues		(1,668,738)	(2,180,843)	(2,124,359)	(2,067,874)	(1,910,762)	(1,834,219)	(1,689,009)	(1,508,358)	(1,762,243)	(1,624,692)	(1,524,867)	(1,757,146)	(1,804,426)
Current Obligations - Capital Leases		(1,613,915)	(762,719)	(762,119)	(761,513)	(760,901)	(760,284)	(683,696)	(609,651)	(609,017)	(609,017)	(597,947)	(597,947)	(760,727)
Current Obligations - Long Term Debt		(1,435,493)	(1,452,334)	(1,451,686)	(1,451,034)	(1,452,499)	(1,451,838)	(1,503,593)	(1,450,502)	(1,449,828)	(1,449,148)	(1,448,465)	(1,447,776)	(1,453,683)
Line of Credit		-	-	-	-	-	-	-	-	-	-	-	-	-
Anticipated Third Party Settlements		(16,069,662)	(14,498,963)	(14,845,375)	(14,810,164)	(15,595,630)	(15,695,699)	(14,905,844)	(13,409,915)	(13,738,246)	(13,983,226)	(12,734,487)	(11,542,695)	(14,319,159)
Total Current Liabilities		(60,264,859)	(71,024,456)	(70,102,681)	(70,758,292)	(72,267,065)	(72,131,826)	(72,877,142)	(67,794,521)	(69,219,680)	(71,061,712)	(71,782,873)	(71,833,181)	(70,093,191)
Reported Net Working Capital		932,110	2,813,793	2,117,777	912,954	1,487,845	2,036,009	768,165	733,182	928,135	558,754	186,215	523,267	1,166,517
Adjustments per Agreement														
Cash & Cash Equivalents	All cash accounts	(15,146,983)	(18,128,169)	(20,230,139)	(19,739,070)	(21,360,130)	(18,536,333)	(18,413,843)	(15,016,050)	(15,190,440)	(17,115,998)	(15,642,637)	(16,103,753)	(17,551,962)
ST Investments		(1,498,993)	(1,499,790)	(1,499,790)	(1,499,911)	(1,499,250)	(1,499,250)	(1,499,370)	(1,499,370)	(1,499,525)	(1,499,525)	(1,499,625)	(1,499,625)	(1,499,502)
Pledge Receivables		(117,135)	(82,205)	1,693	(82,205)	(82,205)	(82,205)	(82,205)	(82,205)	(82,205)	(82,205)	(82,205)	(82,205)	(78,124)
Deferred Revenue Research		1,349,257	1,503,029	1,503,029	1,503,029	1,652,401	1,575,858	1,487,133	1,362,966	1,673,336	1,592,269	1,509,652	1,741,931	1,537,824
Restricted Research (Cash) *	33.1100.1014	3,197,492	3,322,401	3,322,401	3,217,222	3,703,953	3,758,791	3,353,169	3,383,300	3,535,011	3,781,797	3,707,002	3,792,266	3,506,234
Deferred Revenue Research **	33.2340.2365	(1,349,257)	(1,503,029)	(1,503,029)	(1,503,029)	(1,652,401)	(1,575,858)	(1,487,133)	(1,362,966)	(1,673,336)	(1,592,269)	(1,509,652)	(1,741,931)	(1,537,824)
Special Purpose Cash/Investments (Restricted) * (NOTE)	ST Investments , 33.1100.1015, 33.1100.1007	971,159	1,424,283	1,734,506	1,734,506	1,734,506	971,159	971,159	971,159	971,159	971,159	971,159	971,159	1,199,756
Prepaids- Insurance	GL Accts xx.1500.1502	(1,214,365)	(642,093)	(1,174,742)	(1,438,536)	(1,778,045)	(738,928)	(631,370)	(684,861)	(579,355)	(481,722)	(363,166)	(534,391)	(855,131)
AR Endowment/Trust Fund	GL Accts xx.1280.1286	(408,891)	(168,985)	(194,342)	(238,491)	(314,556)	(476,005)	(518,617)	(376,445)	(254,124)	(296,245)	(372,000)	(250,157)	(322,405)
Malprac Rec Current	GL Accts xx.1500.1502	-	(6,561,259)	(6,561,259)	(6,593,274)	(6,590,321)	(6,550,041)	(6,561,852)	(6,541,639)	(6,562,940)	(6,561,217)	(6,572,586)	(6,648,481)	(6,025,406)
Current Portion Funds Held by Trustee	All GL Accts in this category	(1,356,907)	(1,396,265)	(451,542)	(598,269)	(745,003)	(1,338,523)	(1,165,983)	(1,312,730)	(1,459,457)	(1,132,231)	(1,197,090)	(1,790,622)	(1,162,052)
Amts in AP/Accrued Related to Sale	Per CCHP	10,065	10,065	(3,898)	33,602	94,929	147,531	182,547	228,423	90,923	128,423	199,257	300,746	118,551
Bond Related Liabilities	GL Accts xx.2340.2347 & 2607	573,530	699,076	343,219	478,829	261,513	844,541	660,893	796,528	932,164	597,949	414,159	996,581	633,249
Malpractice Ins Reserve - Current	GL Accts xx.2340.2473	-	8,551,128	8,551,128	8,551,128	8,551,128	8,551,128	8,551,128	8,551,128	8,551,128	8,551,128	8,551,128	8,551,128	7,838,534
Current Obligations - Long Term Debt	GL Accts xx.2470.2476 & 2495	1,435,493	1,452,334	1,451,686	1,451,034	1,452,499	1,451,838	1,503,593	1,450,502	1,449,828	1,449,148	1,448,465	1,447,776	1,453,683
Line of Credit	GL Accts 21.2200.2203	-	-	-	-	-	-	-	-	-	-	-	-	-
Anticipated Third Party Settlements	All Anticipated 3rd Party Accounts	16,069,662	14,498,963	14,845,375	14,810,164	15,595,630	15,695,699	14,905,844	13,409,915	13,738,246	13,983,226	12,734,487	11,542,695	14,319,159
Estimated Termination Payment (SWAP)	21.2340.2360	317,228	308,801	300,589	301,577	290,401	272,154	274,166	268,194	272,229	242,978	219,964	217,284	273,797
Total Adjustments per Agreement		2,831,355	1,788,285	434,885	388,306	(684,951)	2,471,556	1,529,259	3,545,849	3,912,642	2,536,665	2,516,312	910,401	1,848,380
Adjusted Net Working Capital		**3,763,465**	**4,602,078**	**2,552,662**	**1,301,260**	**802,894**	**4,507,565**	**2,297,424**	**4,279,031**	**4,840,777**	**3,095,419**	**2,702,527**	**1,433,668**	**3,014,898**

* -100% of the relevant funds are assumed to be transferable to Newco. If a lesser amount is actually transferred at Closing, then such lesser amount shall be use for the purposes of Annex B for each of the trailing 12 months prior to the Closing
For example if only $100 of Restricted Cash were appropriately and actually transferred on Closing, then $100 shall be substituted for Restricted Cash for each month starting August 2012 through July 2013.
As another example, if only $1,000 of Special Purpose Cash/Investments (Restricted) is transferred upon Closing then $1,000 shall be substituted for Special Purpose Cash/Investments (Restricted) for each month starting August 2012 through July 2013.
Less than 100% of the amounts in Restricted Research (Cash) and Special Purpose Cash/Investments (Restricted) maybe transferred upon Closing.

** - To the extent Restricted Research cash (account # 33.1100.1014) is transferred to Newco through the definition of Transferred Restricted Funds, the deferred revenue liability associated with those specific funds shall also be transferred.
At closing less than 100% of the deferred revenues may be transferred and reflected in the Net Working Capital calculation.
The amounts actually transferred at Closing shall be reflected for each of the 12 months prior to the Closing.

NOTE: The amount reflected as restricted is an estimate based upon data available at the current time. The estimate is subject to change.

For Illustratuve Purposes

Historical Net Working Capital Position (Average of 12 months trailing period of Adjusted Net Working Capital)	3,014,898
Final Net Working Capital	1,433,668
Amount Due to Prospect from Sellers	1,581,230

Schedule 2.3

Certain Assumed Liabilities

- All amounts due under capital leases
- All amounts due under Other Liabilities as reflected on the Interim Balance Sheet

Schedule 2.4

Certain Excluded Liabilities

- All amounts due to related parties of the Sellers
- All amounts due to any third party related to the evaluation, negotiation, or consummation of the transaction described in the Agreement and all ancillary documents
- All third party settlements including all Medicare and Medicaid cost reports, DSH or other settlements for all periods prior to the Closing Date, except as provided in Section 13.6(b)
- All Liabilities related to the Retirement Plan
- All amounts related to Sellers' Taxes
- All Liabilities (including all related reserves recorded on Sellers' financial statements) related to Sellers' medical malpractice, negligence, workers compensation, employment discrimination and employment related liabilities, business or other contractual disputes or general liability claims for acts or failures to act prior to the Closing Date
- All other reserves reflected on Sellers' financial statements and the related underlying Liabilities that are not Assumed Liabilities

Schedule 2.7

Expenses Subject to Prospect Advance

DESCRIPTION	AMOUNT
Phase I Environmental Reports – Cardno ATC	$17,700
Asbestos Screening Reports – Cardno ATC	$14,720
Real Estate Survey – InSite Engineering	$130,700

Exhibit A

Amended and Restated Agreement

See Attached

AMENDED & RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

PROSPECT CHARTERCARE, LLC

(a Rhode Island Limited Liability Company)

_____, 2014

THE MEMBERSHIP INTERESTS IN PROSPECT CHARTERCARE, LLC HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SUCH ACTS. EXCEPT AS SPECIFICALLY OTHERWISE PROVIDED IN THIS AGREEMENT, THE INTERESTS MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED WITHOUT REGISTRATION UNDER SUCH ACTS OR AN OPINION OF COUNSEL THAT SUCH TRANSFER MAY BE LEGALLY EFFECTED WITHOUT SUCH REGISTRATION. ADDITIONAL RESTRICTIONS ON TRANSFER AND SALE OF SUCH MEMBERSHIP INTERESTS ARE SET FORTH IN THIS AGREEMENT.

Table of Contents

EXHIBITS:

AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
PROSPECT CHARTERCARE, LLC

This Amended & Restated Limited Liability Company Agreement (this "Agreement") is entered into and effective as of [_____], 2014, by and between CHARTERCARE HEALTH PARTNERS, a Rhode Island not-for-profit corporation ("CCHP"), and PROSPECT EAST HOLDINGS, INC., a Delaware corporation (the "Prospect Member"), and PROSPECT CHARTERCARE, LLC, a Rhode Island limited liability company (the "Company").

WITNESSETH

WHEREAS, the Company was formed on August 21, 2013 through the filing of Articles of Organization with the Office of the Secretary of State of Rhode Island;

WHEREAS, pursuant to the terms, and subject to the conditions, of that certain Asset Purchase Agreement, dated as of September 24, 2013, among CCHP, the CCHP Affiliates, Prospect Medical Holdings, Inc. ("Prospect"), the Prospect Member, the Company, Prospect CharterCare RWMC, LLC ("RWMC SMLLC"), Prospect CharterCare SJHSRI, LLC ("SJHSRI SMLLC"), Prospect CharterCare Elmhurst, LLC ("Elmhurst SMLLC"), and Prospect CharterCare Physicians, LLC ("Physicians SMLLC" and together with RWMC SMLLC, SJHSRI SMLLC, Elmhurst SMLLC, each a "Company Subsidiary" and collectively, "Company Subsidiaries") (the "Purchase Agreement"), CCHP and the CCHP Affiliates agreed to sell certain assets relating to Roger Williams Medical Center, Our Lady of Fatima Hospital, and certain other assets to the Company and/or the Company Subsidiaries, in exchange for both cash consideration of $45 million (subject to adjustments and other terms and conditions as set forth in the Purchase Agreement) and a 15% membership interest in the Company;

WHEREAS, prior to the effective date hereof, the Prospect Member was the sole member (100%) of the Company, and in connection with the consummation of the transactions contemplated by the Purchase Agreement, the Members desire to enter into this Agreement to amend and restate any prior operating agreements with respect to the Company;

WHEREAS, the Members desire to enhance and improve the delivery of cost-effective, quality health care services in the greater Providence, Rhode Island metropolitan service area, to provide health care services to the indigent, and to offer services to an increased population more efficiently and cost-effectively; and

WHEREAS, subject to the terms and conditions hereof (and the Purchase Agreement), the Prospect Member will contribute $50 million of additional capital to the Company over four (4) years.

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings hereinafter contained, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

I. DEFINITIONS. As used herein, including Exhibit A attached hereto, the following terms have the following meanings:

1.1 "Act" means the Rhode Island Limited Liability Company Act, Rhode Island General Laws Chapter 7-16, as amended from time to time.

1.2 "Additional Member" means a Person who is admitted into the Company as a Member pursuant to the terms of Section 13.4 hereof.

1.3 "Adjusted Capital Contribution" means, with respect to a Member, the actual Capital Contributions made by such Member (or its predecessors in interest); provided that with respect to the Prospect Member (and its successors in interest), the Prospect Member's Adjusted Capital Contribution shall be increased by the portion of its Long-Term Capital Commitment that has been funded. The Members' Adjusted Capital Contributions are set forth on Exhibit B hereto.

1.4 "Affiliate" means, as to the Person in question, any Person that directly or indirectly controls, is controlled by, or is under common control with, the Person in question and any successors or assigns of such Person; and the term "control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person whether through ownership of voting securities, by appointment of trustees, directors, and/or officers, by contract or otherwise.

1.5 "Agreement" means this Amended & Restated Limited Liability Company Agreement of Prospect CharterCare, LLC, as from time to time amended pursuant to Section 17.11 hereof.

1.6 "Approval of the Board" or "Approved by the Board" means:

(a) In the event CCHP owns greater than 5% of the Units issued and outstanding, (i) the affirmative vote, consent or approval of at least a majority of those Category A Directors present at a meeting at which a Quorum of the Category A Directors exists, and (ii) the affirmative vote, consent or approval of at least a majority of those Category B Directors present at a meeting at which a Quorum of the Category B Directors exists. For purposes of this Section 1.6(a), a "Quorum" means a majority of the Category A Directors then serving and a majority of the Category B Directors then serving; and

(b) In the event CCHP owns 5% (or less) of the Units issued and outstanding, the affirmative vote, consent or approval of at least a majority of those Directors present at a meeting at which a Quorum exists. For purposes of this Section 1.6(b), a "Quorum" means a majority of all Directors then serving.

For purposes of this Agreement, the phrases "determined by the Board", "deemed by the Board", "consented to by the Board", or the like shall mean the same as "Approved by the Board."

1.7 "Articles" means the Articles of Organization of the Company, as amended from time to time.

1.8 "Bankruptcy" means, as to any Member, the Member's taking or acquiescing to the taking of any action seeking relief under, or advantage of, any applicable debtor relief, liquidation, receivership, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar Law affecting the rights or remedies of creditors generally, as in effect from time to time. For the purpose of this definition, the term "acquiescing" shall include, without limitation, the failure to file within the time specified by Law, an answer or opposition to any proceeding against such Member under any such Law and a failure to file, within thirty (30) days after its entry, a petition, answer or motion to vacate or to discharge any order, judgment or decree providing for any relief under any such Law.

1.9 "Borrowing Limit" means a loan or series of related loans in excess of Ten Million Dollars ($10,000,000). For the avoidance of doubt, indebtedness of Affiliates of the Company (including, without limitation, the Prospect Member and Prospect) that is guaranteed by the Company or the Company Subsidiaries, or secured by a lien on the assets of the Company or the Company Subsidiaries, shall not count against the Borrowing Limit, so long as the Company and the Company Subsidiaries are not the primary obligor thereof.

1.10 "Capital Contribution" means, as to any Member, the amount of cash or the Agreed Value (as defined in Exhibit A attached hereto) of tangible or intangible property contributed or deemed contributed to the Company by the Member, which initial amount is set forth opposite such Member's name on the attached Exhibit B under the heading "Initial Capital Account".

1.11 "Category A Directors" means the members of the Board of Directors elected or appointed from time to time by CCHP.

1.12 "Category B Directors" means the members of the Board of Directors elected or appointed from time to time by the Prospect Member.

1.13 "CCHP Affiliate" means any Affiliate of CCHP (other than a natural person).

1.14 "Code" means the Internal Revenue Code of 1986, as amended, or any successor thereto.

1.15 "Consumer Price Index" means the Consumer Price Index for All Urban Consumers, Medical Care Services (1982-84=100), published by the United States Bureau of Labor Statistics. In the event that such Index is discontinued or is so changed as not to reflect substantially the same information as it does in 2013, then the index to be used for these computations shall be the index then published by the United States Bureau of Labor Statistics that most clearly reflects the increase or decrease in consumer prices for the periods in question.

1.16 "Credit Agreement" means that certain Credit Agreement, dated as of May 3, 2012, by and among Prospect, the lenders party thereto and Morgan Stanley Senior Funding, Inc., as administrative agent, including any notes, mortgages, guarantees, collateral documents and other documents executed in connection therewith, in each case, as amended, restated,

modified, supplemented, renewed, replaced, extended, increased or refinanced in whole or in part from time to time.

1.17 "Days Cash on Hand" means (i) the sum of the Company's cash and investments, divided by (ii) the quotient of (x) the Company's rolling twelve (12) months operating expense minus (1) depreciation and amortization expense and (2) one-time non-cash operating expenses, divided by (y) the number of days in the rolling twelve month period. Days Cash on Hand is measured monthly as of month end. Expressed as a formula: (cash and investments) / ((rolling 12-month operating expense minus depreciation and amortization expense minus one-time non-cash operating expenses) / days in rolling 12-month period)).

1.18 "Distributable Cash" shall be defined as the sum of (a) all cash of the Company on its balance sheet, minus (b) Reserves.

1.19 "Fatima Hospital" means Our Lady of Fatima Hospital located in North Providence, Rhode Island.

1.20 "Hospitals" means the general acute care hospitals Roger Williams Medical Center, located in Providence, Rhode Island, and Our Lady of Fatima Hospital, located in North Providence, Rhode Island.

1.21 "Indenture" means that certain Indenture, dated as of May 3, 2012, by and among Prospect, the Subsidiary Guarantors identified therein and U.S. Bank National Association, as Trustee, including any notes, mortgages, guarantees, collateral documents and other documents executed in connection therewith, in each case, as amended, restated, modified, supplemented, renewed, replaced, extended, increased or refinanced in whole or in part from time to time.

1.22 "Interim Management Advisory Agreement" means that certain Interim Management Advisory Agreement by and between Prospect and CCHP, dated as of September 24, 2013, as it may be amended from time to time.

1.23 "Joint Commission" means the national organization (formerly JCAHO) which issues standards for health care organizations for purposes of Medicare program accreditation.

1.24 "Law" means any federal, state, local, municipal, foreign or other law, common law, statute, ordinance, rule, regulation, requirement, interpretation, judgment, ruling, order or writ of any governmental entity.

1.25 "Liquidator" means the Person who liquidates the Company under Article XVI hereof.

1.26 "Long-Term Capital Commitment" means the Prospect Member's obligation to contribute additional capital to the Company in the aggregate amount of (i) $50,000,000 over a four (4)-year period (which shall be in addition to the routine capital investment by the Company and the Company Subsidiaries of at least $10,000,000 per year), less (ii) any amount or amounts with respect to which the Prospect Member exercises its right, from time to time, to an offset pursuant to the provisions of Section 17.2 below and Sections 2.9(e) and 14.8 of the Purchase Agreement.

1.27 "Management Agreement" means the Management Services Agreement, of even date herewith, between Prospect or an Affiliate thereof and the Company.

1.28 "Manager" means the manager of the Company, which shall be Prospect or an Affiliate thereof, and in all events shall be a Restricted Subsidiary as defined in the Indenture.

1.29 "Member" means the Prospect Member or any Prospect Affiliate that becomes a Member, CCHP, and any Substituted Member or Additional Member, but excluding any Person who ceases to be a member of the Company pursuant to this Agreement. "Members" means all of the Persons who are members of the Company as defined in this Section 1.29.

1.30 "Person" means any individual, partnership, corporation, trust, limited liability company or other entity.

1.31 "Prospect Affiliate" means any Affiliate of Prospect or the Prospect Member (other than a natural person).

1.32 "Prospect Member" means Prospect East Holdings, Inc., a Delaware corporation, and any other Prospect Affiliate or Affiliates that are Members from time to time.

1.33 "Reserves" shall mean the amount of cash established by the Board of Directors from time to time equal to the sum of (i) fifteen (15) Days Cash on Hand, plus (ii) the amount of capital expenditures set forth in the budget for the next quarter, plus (iii) any allocated unspent funded amount provided to the Company as part of the Long-Term Capital Commitment (but excluding any Initial Working Capital Amount and any amounts provided under Section 4.2(d) below); plus (iv) any agreed upon reserves for specific matters.

1.34 "Roger Williams" means Roger Williams Medical Center located in Providence, Rhode Island.

1.35 "Sharing Percentage" means, as to a Member, the percentage obtained by dividing the number of Units owned by such Member by the total number of Units owned by all Members (and Exhibit B sets forth the initial Sharing Percentages of the respective Members). The Members hereby agree that their Sharing Percentages shall constitute their "interests in the Company profits" for purposes of determining their respective shares of the Company's "excess nonrecourse liabilities" (within the meaning of Section 1.752-3(a)(3) of the Regulations).

1.36 "Substituted Member" means any Person admitted to the Company as a Member pursuant to Section 13.3 hereof.

1.37 "Treasury Regulations" or "Regulations" means the regulations promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code. All references herein to sections of the Treasury Regulations or the Regulations shall include any corresponding provision or provisions of succeeding, similar or substitute proposed, temporary or final regulations.

1.38 "Units" shall mean a unit of undivided membership interest in the Company. Such interest includes any and all rights to which such Member may be entitled as provided in this

Agreement, together with all obligations of such Member to comply with the terms and provisions of this Agreement. All of a Member's Units shall constitute such Member's entire interest in the Company. The Units shall constitute ordinary voting common member interests in the Company. The Members' initial Units in the Company are set forth on Exhibit B hereto.

1.39 **Index of Other Defined Terms**.

Term	Section
Additional Capital Contribution	4.2(d)
Alternate Appraisal Process	14.6(c)
Appraised Fair Market Equity Value of the Company	14.6(a)
Appraised Value of the Units	14.6(a)
Appraiser; Appraisers	14.6(c)
Board of Directors	12.1
Capital Account	4.3
Capital Projects	4.2(b)
Call Election Notice	14.4(b)
CCHP	First paragraph
Company	First paragraph
Company Purposes	3.3
Company Subsidiaries	Recitals
Contributing Member	4.2(e)
Deadlock	12.5(b)
Elmhurst SMLLC	Recitals
Health Care Opportunity	10.3
Initial Appraisers	14.6(c)
Initial Working Capital Amount	4.2(c)
Initiation Date	14.6(c)
Interest	14.2
Liability	17.1(b)
Local Board	12.4
Noncontributing Member	4.2(e)
Non-Proposing Party	10.3
Offer	14.2
Offered Units	14.1
Offeror	14.2
Opportunity Decision Notice	10.3
Physicians SMLLC	Recitals
Proposing Party	10.3
Prospect	Recitals
Prospect Member	First paragraph
Purchase Agreement	Recitals
Put Election Notice	14.5(b)
Qualified Appraiser	14.6(c)

Representatives	17.1(a)
Required Investment Amount	10.3
Right of First Offer	14.1
Right of First Refusal	14.2
RWMC SMLLC	Recitals
Selling Member	14.2
SJHSRI SMLLC	Recitals
Tag-Along Right	14.3
Third Appraiser	14.6(c)
Transfer	13.1
Unpaid Indemnification Amount	17.2(a)
Valuation; Valuations	14.6(c)

II. ORGANIZATION.

2.1 Formation. The Company was formed on August 21, 2013 via the filing of Articles of Organization with the Office of the Secretary of State of Rhode Island. The Member's respective Capital Accounts, Units, Sharing Percentages and Adjusted Capital Contributions as of the date hereof are set forth on Exhibit B hereto.

2.2 Name. The name of the Company is "Prospect CharterCare, LLC" and the business of the Company shall be conducted under that name or such other name or names as may be Approved by the Board from time to time; except that with respect to the Hospitals and other facilities and business operated by CCHP prior to the date hereof and that continue to be operated by the Company after the date hereof, the Company shall continue to operate them using their same (or similar) names and shall obtain authority (via filings with the Secretary of State of the State of Rhode Island) to use d/b/a names and/or alternate names with respect thereto.

2.3 Principal Office. The principal office of the Company shall be located at 825 Chalkstone Avenue, Providence, Rhode Island 02908, or at such other place or places in the State of Rhode Island as the Board of Directors may from time to time determine.

2.4 Term. The Company began on the date the Articles were filed with the Secretary of State of the State of Rhode Island as provided in Section 2.1 hereof, and shall continue until the date on which the Company is dissolved pursuant to Article XV hereof and thereafter, to the extent provided for by applicable Law, until wound up and terminated pursuant to Article XVI hereof.

2.5 Registered Agent and Office. The registered agent of the Company shall be Corporation Service Company and the registered office of the Company shall be located at 222 Jefferson Boulevard, Suite 200, Warwick, Rhode Island 02888. The registered office or the registered agent, or both, may be changed by the Manager from time to time upon filing the statement required by the Act. The Company shall maintain at its registered office such records, if any, as may be specified by the Act.

2.6 No State Law Partnership. The Members intend that the Company will not be a partnership or limited partnership, and that no Member will be a partner of any other Member, for any purposes other than federal and state tax purposes, and this Agreement shall not be construed to suggest otherwise.

2.7 Appointment of Manager. The day-to-day operation of the business of the Company shall be managed by the Manager in accordance with the terms of this Agreement and the Management Agreement, subject to the ultimate authority and control of the Board of Directors as provided herein. The Manager shall be Prospect or an Affiliate of Prospect.

2.8 Operation Through Company Subsidiaries. The parties agree and acknowledge that the business of the Company may be conducted both directly by the Company and through the Company Subsidiaries. Any such Company Subsidiary shall be operated in accordance with the terms of this Agreement and no actions may be taken through a Company Subsidiary that could not otherwise be taken by the Company. Unless otherwise determined by the Board, each Company Subsidiary: (i) shall be a limited liability company having the Company as its sole member; and (ii) shall be member-managed such that all governance and management authority resides in the Company as the sole member thereof. All rights and authority reserved hereunder to the Company's Board with respect to the Company's own assets and operations shall extend fully to each Company Subsidiary, as though owned or undertaken directly by the Company. Similarly, the rights and obligations of the Manager set forth herein with respect to the Company's own assets and operations shall apply fully to each Company Subsidiary, as though owned or undertaken directly by the Company.

III. PURPOSES AND POWERS, NATURE OF THE COMPANY'S BUSINESS, OPERATING COMMITMENTS

3.1 Purposes.

The purposes of the Company are: (i) to provide and promote the growth of health care services in the greater Providence, Rhode Island metropolitan service area (including charitable care and community health services); (ii) to provide efficient and cost-effective rendering of health care services for the benefit of health care consumers in the greater Providence, Rhode Island metropolitan service area; (iii) to provide quality medical care at competitive charges; (iv) to provide consumers of health care choice in providers of care; (v) to own, manage, operate, lease or take any other action in connection with operating the Hospitals and other health care related services and businesses; (vi) to acquire (through asset acquisition, stock acquisition, lease or otherwise) and develop other property, both real and personal, in connection with providing health care related services, including, without limitation, general acute care hospitals, specialty care hospitals, diagnostic imaging centers, ambulatory surgery centers, nursing homes, clinics, home health care agencies, psychiatric facilities and other health care providers; (vii) to deploy ambulatory locations of care; (viii) to recruit and integrate physicians; (ix) to institute safety and quality improvement initiatives; and (x) generally to engage in such other business and activities and to do any and all other acts and things that the Board of Directors deems necessary, appropriate or advisable from time to time in furtherance of the purposes of the Company as set forth in this Section 3.1.

Notwithstanding the foregoing, and notwithstanding any other provision of this Agreement, insofar as the purposes set forth above implicate both (i) CCHP's charitable purposes of serving the healthcare needs of the local area, and (ii) the Prospect Member's profit-making objectives, in the event that any aspect of the Company's activities and operations results in a direct conflict between such charitable purposes and such profit-making objectives, charitable purposes shall prevail in determining the Company's handling of such matter. In the event that CCHP invokes the foregoing provision as the basis for its objection to any aspect of the Company's activities and operations, the parties shall attempt in good faith to resolve the matter through meetings between the senior management of CCHP and Prospect over a period of not less than sixty (60) days. If, as of the conclusion of such discussion period, the matter remains unresolved to CCHP's satisfaction, CCHP may in its sole discretion submit the matter to non-binding mediation pursuant to Section 17.4(a)(ii) below. If, as of the conclusion of such mediation, the matter remains unresolved to CCHP's satisfaction, CCHP may in its sole discretion submit the matter to binding arbitration pursuant to Section 17.4(a)(iii) below; provided, however, that in such event, the Prospect Member shall have the option to purchase CCHP's Units in the Company pursuant to the process set forth in Section 14.4 below.

3.2 Nature of the Business.

(a) In furtherance of the purposes of the Company described in Section 3.1, the Board of Directors and the Manager shall conduct the business and operations of the Company and the Company Subsidiaries by, among other things: (i) accepting all Medicare and Medicaid patients; (ii) accepting all patients in an emergency condition in the emergency room without regard to source of payment or the ability of such emergency patients to pay; (iii) maintaining an open medical staff; (iv) providing public health programs of educational benefit to the community; (v) generally promoting the health, wellness and welfare of the community by providing quality health care at a reasonable cost; and (vi) providing indigent care in the manner described in Section 13.14 of the Purchase Agreement (collectively, the "Standards").

(b) The Company shall operate its business and that of the Company Subsidiaries in such a manner so that: (i) the financial results of the Company and the Company Subsidiaries can be consolidated with those of Prospect; (ii) the assets of and equity interests held by the Prospect Member in the Company and the equity interests in the Company Subsidiaries can be pledged as collateral security to (or otherwise serve as collateral for) Prospect's lenders and noteholders; (iii) CCHP can continue its tax-exempt status; and (iv) allocations of the Company's income and loss to CCHP are exempt from federal income taxation (*i.e.*, are treated as other than unrelated business taxable income under Code Sections 511-514).

(c) Notwithstanding Subsection 3.2(b)(iii) above, in the event that CCHP's tax-exempt status is jeopardized due to its ownership interest and/or involvement in the Company (as set forth in a written legal opinion of CCHP's experienced healthcare counsel, a copy of which shall be provided to the Prospect Member), or any of Prospect's lenders attempts to foreclose on the assets of the Company or any Company Subsidiaries, then if the Members cannot mutually agree on an acceptable resolution, CCHP shall have the option to sell its Units in the Company to the Prospect Member pursuant to the process set forth in Section 14.5 below.

3.3 Powers. Subject to the limitations contained in this Agreement and in the Act, the Company purposes and nature of the business as defined in Sections 3.1 and 3.2 (collectively, the "Company Purposes") may be accomplished by the Manager or the Board of Directors taking any action permitted under this Agreement that is customary or reasonably related to accomplishing such Company Purposes.

3.4 Conflicts of Interest Policy. The Board of Directors and the Manager shall cause the Company to adopt and maintain the policy concerning conflicts of interest attached as Exhibit C hereto (or any new and/or amended conflicts policies or practices hereafter adopted by the Board of Directors).

3.5 Conduct of Operations. The Company shall conduct its activities and those of the Company Subsidiaries consistent with the operating commitments set forth in Sections 13.13 through 13.17 of the Purchase Agreement, and in a manner that materially complies with all applicable Law.

IV. CAPITAL CONTRIBUTIONS, LOANS, CAPITAL ACCOUNTS.

4.1 Capital Contributions. The interests of the Members shall be divided into Units. Each of the Members and other Persons who may, from time to time, become Members has contributed to the capital of the Company the amount listed on Exhibit B attached hereto, as the same may be amended from time to time pursuant to Section 17.11 to reflect the admission of new Members, transfers and other appropriate revisions to the information set forth therein. Each of the Members has been issued the number of Units listed on Exhibit B.

4.2 Additional Capital Contributions.

(a) The Company and the Company Subsidiaries shall fund additional capital expenditures related to the Hospitals and their facilities in an annual amount of at least $10,000,000 per year, or such greater amount as Approved by the Board.

(b) The Prospect Member hereby commits to make additional Capital Contributions to the Company in an aggregate amount of the Long-Term Capital Commitment, to be made within four (4) years of the date of this Agreement at such times and in such increments as the Board of Directors causes the Manager to request. With respect to each request for a Capital Contribution from the Prospect Member pursuant to the Long-Term Capital Commitment: (i) such request shall be supported by a return-on-investment calculation or a material needs assessment (in each case, acceptable to both Members); and (ii) the Capital Contributions shall neither reduce CCHP's interest or Units in the Company nor increase the Prospect Member's interest or Units in the Company. Subject to the foregoing, and except as otherwise provided in Sections 4.2(c) and (d) below, the Company shall cause the Long-Term Capital Commitment to be used by the Company or the Company Subsidiaries on (x) the development and implementation of physician engagement strategies, and (y) projects related to facilities and equipment ("Capital Projects"). Capital Projects currently identified include the following: expansion of the cancer center at Roger Williams; expanding the emergency department at Roger Williams; renovating and/or reconfiguring the emergency department at Fatima Hospital; renovating the operating rooms at Roger Williams; converting all patient rooms

to private rooms at the Hospitals; renovating and expanding the ambulatory care center at Fatima Hospital; installing new windows at the Hospitals; installing a new generator at Fatima Hospital; providing a face lift for the facades at the Hospitals; and constructing handicap access at the front entrances of the Hospitals (with the specific Capital Projects to be funded as determined by the Board).

(c) Notwithstanding Section 4.2(b) above:

(i) In the event that, during the period between execution of the Purchase Agreement and the date hereof, Prospect or a Prospect Affiliate has advanced to CCHP any amounts pursuant to that certain Interim Management Advisory Agreement between Prospect and CCHP entered into concurrently with the Purchase Agreement, as of the date hereof, such amounts shall be treated as partial satisfaction of the Long-Term Capital Commitment;

(ii) In the event that, during the period commencing as of the date hereof and continuing for a period of up to three (3) months following the effective date hereof, the Company (including the Company Subsidiaries, for purposes of this Section 4.2(c)) requires cash to fund operations and the Prospect Member determines to provide such cash, then: (x) such amount shall not exceed Ten Million Dollars ($10,000,000); (y) the aggregate amount of cash provided by the Prospect Member (the "Initial Working Capital Amount") shall be treated as partial satisfaction of the Long-Term Capital Commitment; and (z) for a period of up to four (4) years after the effective date hereof, if and as the Company and the Company Subsidiaries accrue excess cash beyond their collective budgeted operating and capital needs, including Reserves, such excess cash, in an amount (to the extent of such excess cash) equal to the amount of the Initial Working Capital Amount, shall be made available to be used for Capital Projects described in Section 4.2(b) above (and subject to the process and requirements therein). The foregoing shall be in addition to the annual commitment of the Company and the Company Subsidiaries to fund Capital Projects set forth in Section 4.2(a) above. The Company shall periodically report to the Board amounts provided by the Prospect Member which are included in the Initial Working Capital Amount, and the subsequent use of excess cash by the Company and the Company Subsidiaries for other Capital Projects as described in subpart (z) above; and

(iii) With respect to that certain capital lease obligation entered into by and between Roger Williams and Philips Medical dated December 27, 2012, with respect to Sellers' cardiac catheterization laboratory, which capital lease obligation is being assumed by the Company as of the effective date hereof pursuant to the Purchase Agreement, the long-term portion of such lease as of the date of the Purchase Agreement (*i.e.*, $558,288), shall be treated as partial satisfaction of the Long-Term Capital Commitment.

(d) Outside of the circumstances contemplated by Section 4.2(c) above, if funds are required for any expenditure of the Company (including the Company Subsidiaries, for purposes of this Section 4.2(d)) necessary for the operation of the Company and/or any expansion of the Company as Approved by the Board, the Company shall seek such funds from sources in the following order of priority: (A) cash generated by the operations of the Company and the Company Subsidiaries; (B) from the Prospect Member pursuant to the Prospect Member's Long-Term Capital Commitment; (C) commercial loans from third parties on

mutually agreeable terms (and in compliance with the Indenture, the Credit Agreement and any other debt agreements of Prospect or an applicable Prospect Affiliate); (D) loans from Prospect or any Prospect Affiliate to the extent available at market rates and on mutually agreeable terms (and in compliance with the Indenture, the Credit Agreement and any other debt agreements of Prospect or such Prospect Affiliate); and (E) if the Company has made commercially reasonable efforts to obtain the needed funds as set forth above and has been unable to obtain such funds and the Prospect Member's Long-Term Capital Commitment has been fully satisfied, the Manager, with Approval of the Board, shall have the right to request that the Members make additional Capital Contributions pro rata in accordance with each Member's Sharing Percentage ("Additional Capital Contributions").

(e) Subject to (d) above, if the Manager, as Approved by the Board, makes a request to the Members for an Additional Capital Contribution, no Member shall be required to make such Additional Capital Contribution, provided that if any Member elects not to make a portion or all of the Additional Capital Contribution (a "Noncontributing Member"), the other Members (the "Contributing Members") shall have the right, but not the obligation, to contribute to the Company the amount of cash that the Noncontributing Member or Members failed to contribute. The Members shall have thirty (30) days after the Manager's request in which to elect to make or not make such Additional Capital Contributions. Effective as the end of such thirty (30)-day period, if some but not all of the Members make such Additional Capital Contributions, then the Members' Sharing Percentages shall be adjusted as follows (and a pro rata adjustment shall also be made to each Member's Units): Each Member's Sharing Percentage thereafter shall be equal to a fraction (converted to a percentage), the numerator of which is the amount of such Member's (including its predecessors in interest) Adjusted Capital Contributions (including the Additional Capital Contributions just made by such Member, if any) and the denominator of which is the aggregate amount of all Members' (including their predecessors in interest) Adjusted Capital Contributions (including the Additional Capital Contributions just made); provided that no change in Sharing Percentages shall occur by reason of the Prospect Member's Long-Term Capital Commitment; and provided further that in no event may the Sharing Percentage of CCHP be diluted to less than five percent (5%), and if CCHP's Sharing Percentage equals 5%, then any additional amounts contributed by the Prospect Member shall be treated as loans from the Prospect Member to the Company. The number of Units held by each Member shall be adjusted automatically to reflect any change in the Members' Sharing Percentages under this Section 4.2(e). No person other than a Member or Manager of the Company may enforce any provision of this Agreement relating to the payment of additional capital.

4.3 Capital Accounts. A capital account ("Capital Account") shall be established and maintained for each Member for the full term of this Agreement in accordance with the capital account maintenance rules of Section 1.704-1(b)(2)(iv) of the Regulations. The initial Capital Accounts of the Members are set forth on Exhibit B attached hereto. Each Member shall have only one Capital Account, regardless of the number or classes of Units or other interests in the Company owned by such Member and regardless of the time or manner in which such Units or other interests were acquired by such Member. Pursuant to the basic capital account maintenance rules of Section 1.704-1(b)(2)(iv) of the Regulations, the balance of each Member's Capital Account shall be:

(a) Increased by the amount of money contributed by such Member (or such Member's predecessor in interest) to the capital of the Company pursuant to this Article IV and decreased by the amount of money distributed to such Member (or such Member's predecessor in interest) pursuant to Articles VI and XVI hereof;

(b) Increased by the fair market value of each property (determined without regard to Section 7701(g) of the Code) contributed by such Member (or such Member's predecessor in interest) to the capital of the Company pursuant to this Article IV (net of all liabilities secured by such property that the Company is considered to assume or take subject to under Section 752 of the Code) and decreased by the fair market value of each property (determined without regard to Section 7701(g) of the Code) distributed to such Member (or such Member's predecessor in interest) by the Company pursuant to Article VI or XVI hereof (net of all liabilities secured by such property that such Member is considered to assume or take subject to under Section 752 of the Code);

(c) Increased by the amount of each item of Company profit allocated to such Member (or such Member's predecessor in interest) pursuant to Section 3.1 of Exhibit A hereto;

(d) Decreased by the amount of each item of Company loss allocated to such Member (or such Member's predecessor in interest) pursuant to Section 3.1 of Exhibit A hereto;

(e) Otherwise adjusted as follows:

(i) Effective immediately prior to any "Revaluation Event" (as defined in Exhibit A hereto), the balances of all Members' Capital Accounts shall be adjusted to reflect the manner in which items of profit or loss, as computed for book purposes, equal to the "Unrealized Book Gain Or Loss" (as defined in Exhibit A hereto) then existing with respect to each Company property (to the extent not previously reflected in the Members' Capital Accounts) would be allocated among the Members pursuant to Section 3.1 of Exhibit A hereto if there were a taxable disposition of such property immediately prior to such Revaluation Event, for its fair market value (as determined by the Manager taking into account Section 7701(g) of the Code);

(ii) With respect to items of Company profit and loss, the balances of all the Members' Capital Accounts shall be adjusted solely for allocations of such items, as computed for book purposes, under Section 3.1 of Exhibit A hereto and shall not be adjusted for allocations of correlative Tax Items under Section 3.2 of Exhibit A hereto;

(iii) Immediately before giving effect under Section 4.3(b) hereof to any adjustment attributable to the distribution of property to a Member, the balances of all the Members' Capital Accounts first shall be adjusted to reflect the manner in which items of profit or loss, as computed for book purposes, equal to the Unrealized Book Gain Or Loss existing with respect to the distributed property (to the extent not previously reflected in the Members' Capital Accounts) would be allocated among the Members pursuant to Section 3.1 of Exhibit A hereto if there were a taxable disposition of such property on the date of such distribution by the Company for its fair market value at the time of such distribution (as agreed to in writing by the Members) taking Section

7701(g) of the Code into account (i.e., such value shall not be agreed to be less than the amount of Nonrecourse Liabilities to which such property is subject); and

(f) Upon the transfer of all or part of any Unit or other interest in the Company, the Capital Account of the transferor Member, to the extent attributable to the transferred interest, shall carry over to the transferee Member; provided, however, if the transfer causes the termination of the Company for federal income tax purposes under Section 708(b)(l)(B) of the Code, the Capital Account that carries over to the transferee Member shall be subject to adjustment in accordance with Section 4.3(e)(i) hereof in connection with the resulting constructive liquidation of the Company for federal income tax purpose.

4.4 Additional Provisions Regarding Capital Amounts.

(a) If, with the prior Approval of the Board, a Member pays any Company indebtedness or forgives any Company indebtedness owing to such Member, such payment or forgiveness shall be treated as a cash contribution by that Member to the capital of the Company, and the Capital Account of such Member shall be increased by the amount so paid or forgiven by such Member. No Member may, without the prior Approval of the Board, increase its Capital Account by paying any Company indebtedness or by forgiving any Company indebtedness owing to such Member.

(b) Except as otherwise provided herein, no Member may contribute capital to, or withdraw capital from, the Company. To the extent any monies that any Member is entitled to receive pursuant to the Agreement would constitute a return of capital, each of the Members consents to the withdrawal of such capital.

(c) A loan by a Member to the Company shall not be considered a contribution of money to the capital of the Company, and the balance of such Member's Capital Account shall not be increased by the amount so loaned. No repayment of principal or interest on any such loan, reimbursement made to a Member with respect to advances or other payments made by such Member on behalf of the Company, or payments of fees to a Member that are made by the Company shall be considered a return of capital or in any manner affect the balance of such Member's Capital Account.

(d) No Member with a deficit balance in its Capital Account shall have any obligation to the Company or any other Member to restore such deficit balance. In addition, no venturer or partner in any Member shall have any liability to the Company or any other Member for any deficit balance in such venturer's or partner's capital account in the Member in which it is a partner or venturer. Furthermore, a deficit Capital Account balance of a Member (or a capital account of a partner or venturer in a Member) shall not be deemed to be a liability of such Member (or of such venturer or partner in such Member) or a Company asset or property. The provisions of this Section 4.4(d) shall not affect any Member's obligation to make Capital Contributions to the Company that are required to be made by such Member pursuant to this Agreement.

(e) Except as otherwise provided herein, no interest shall be paid on any capital contributed to the Company or the balance in any Member's Capital Account.

(f) All of the provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with the Regulations. If the Board of Directors determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or any of the Members) are computed in order to comply with the Regulations, the Board of Directors may make such modifications, provided that such modifications are not likely to have a material effect on the amounts distributable to any Member from the Company. The Board of Directors shall also make appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Section 1.704-1(b) of the Regulations.

4.5 Loans. The Company may borrow money from, among others, any Member on such terms and conditions as shall be Approved by the Board of Directors and such Member; provided, however, such terms and conditions shall be no less favorable to the Company than the terms and conditions that could be obtained by the Company in an arm's length transaction from an independent third-party. If any Member makes any loan or loans to the Company, the amount of any such loan shall not be treated as a contribution to the capital of the Company, but shall be a debt due from the Company. Any Member's loan to the Company shall, as determined by the Board of Directors, be repayable out of the Company's excess cash, prior to any distribution of Distributable Cash. None of the Members nor any of their Affiliates shall be obligated to loan money to the Company.

V. ALLOCATIONS OF INCOME AND LOSSES.

All items of income or loss of the Company shall be allocated to the Members in accordance with the provisions of Exhibit A attached hereto, which is hereby incorporated by reference for all purposes of this Agreement or as otherwise provided in this Agreement.

VI. DISTRIBUTIONS.

6.1 Distribution of Distributable Cash. Except as may be otherwise provided in Section 6.5 hereof, or as may otherwise be prohibited or required by applicable Law, the Board of Directors in its discretion shall cause the Company to distribute Distributable Cash to the extent available to the Members from time to time, pro rata in accordance with their respective Sharing Percentages. The policy of the Company shall be to distribute Distributable Cash to the extent the Board of Directors deems such distributions advisable.

6.2 Compensation or Reimbursement to the Manager. Authorized amounts payable as compensation or reimbursement to the Manager or to any Person other than in its capacity as a Member, such as for services rendered, goods purchased or money borrowed, shall not be treated as a distribution for purposes of Section 6.1 hereof.

6.3 Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any state or local tax Law with respect to any payment of taxes of Members or distribution to the Members shall be treated as amounts distributed to the Members pursuant to this Article VI for all purposes under this Agreement.

6.4 Distributions in Kind. No Member shall have the right to demand or receive distributions of property other than cash. Except as provided in Article XVI hereof, distributions in kind of Company property shall be made only with the Approval of the Board of Directors and only at a value Approved by the Board of Directors. Prior to any such distribution in kind, the difference between such agreed value and the book value of such property shall be credited or charged, as the case may be, to the Members' (or assignees') Capital Accounts in proportion to their Sharing Percentages. Upon the distribution of such Property, such agreed value shall be charged to the Capital Accounts of the Members (or assignees) receiving such distribution.

6.5 No Restrictions on Distributions. The foregoing provisions of this Article VI to the contrary notwithstanding, no distribution of Distributable Cash shall be declared by the Board of Directors or paid by the Company if and for so long as such distribution would violate any contract or agreement to which the Company, the Prospect Member or any Prospect Affiliate is then a party or any Law or directive of any governmental authority then applicable to the Company. Further, notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall encumber or restrict the Company's ability to make distributions, pay indebtedness or other obligations, make loans or advances, grant liens or transfer property or assets in compliance with, or as required by, the Indenture, Credit Agreement or other documents governing indebtedness of Prospect or a Prospect Affiliate.

VII. BOOKS OF ACCOUNT, TAX COMPLIANCE, FISCAL YEAR.

7.1 Books and Records. The Company, whether through the Manager or otherwise, shall keep books of account and records relative to the business of the Company and the Company Subsidiaries. The books shall be prepared in accordance with "generally accepted accounting principles" using the accrual method of accounting. The accrual method of accounting shall also be used by the Company for income tax purposes. The Company shall also maintain books and records as required by Section 4.3 hereof and Exhibit A hereof. The Company's books and records shall at all times be maintained at the principal business office of the Company (and to the extent required by the Act, at the registered office of the Company) and shall be available for inspection by the Members or their duly authorized representatives during regular business hours. The books and records shall be preserved for four (4) years after the term of the Company ends.

7.2 Determination of Profit and Loss; Financial Statements. All items of Company income, expense, gain, loss, deduction and credit shall be determined with respect to, and allocated in accordance with, this Agreement for each Member for each Company fiscal year. Within one hundred eighty (180) days after the end of each Company fiscal year, the Manager shall cause to be prepared, at the Company's expense, audited financial statements of the Company and the Company Subsidiaries for the preceding fiscal year, including without limitation, a balance sheet, profit and loss statement, statement of cash flows and statement of the balances in the Members' Capital Accounts, prepared accordance with the terms of this Agreement and generally accepted accounting principles consistently applied with prior periods. The Manager shall also cause to be prepared, at Company expense, within ninety (90) days after the end of each Company fiscal year, unaudited financial statements meeting the preceding specifications. These financial statements shall be available for inspection and copying during ordinary business hours at the reasonable request of any Member, and will be furnished to any

other Member upon written request therefor. Any Member may obtain, at such Member's expense, such other reports on the operations and condition of the Company and the Company Subsidiaries as such Member may reasonably request.

7.3 Tax Returns and Information. The Members intend for the Company to be treated as a partnership for tax purposes, but not for any other purposes. The Members intend for each Company Subsidiary to be treated as a disregarded entity for tax purposes, but not for any other purposes. The Company shall prepare or cause to be prepared all federal, state and local income and other tax returns that the Company is required to file and shall furnish such returns to the Members, together with a copy of each Member's Form K-1 and any other information that any Member may reasonably request relating to such returns, within the time required by Law (including any applicable extension periods available under the Code).

7.4 Tax Audits. The Prospect Member shall be the "tax matters partner" of the Company under Section 6231(a)(7) of the Code. The Prospect Member shall inform the Members of all matters that come to its attention in its capacity as tax matters partner by giving the Members notice thereof within ten (10) days after becoming so informed. The Prospect Member shall not take any action contemplated by Sections 6222 through 6232 of the Code unless the Prospect Member has first given the Members notice. This provision is not intended to authorize the Prospect Member to take any action that is left to the determination of the individual Members under Sections 6222 through 6232 of the Code.

7.5 Fiscal Year. The fiscal year of the Company and each Company Subsidiary shall be the calendar year.

VIII. DUTIES OF AND LIMITATIONS ON THE MANAGER.

8.1 Duties of the Manager. Except as otherwise set forth in the Act, the Articles or this Agreement, the Board of Directors shall have overall oversight and ultimate authority over the affairs of the Company and the Company Subsidiaries. Subject to this general principle, and subject to the limitations imposed upon the Manager in this Agreement (including, without limitation, Section 8.3 hereof) and in the Management Agreement, and to the fiduciary obligations and limitations imposed upon it at law (to the extent not modified herein or in the Articles) and by general principles of equity, and subject to Article III above, the Manager shall manage the day-to-day operations of the Company and the Company Subsidiaries and act on behalf of the Company and the Company Subsidiaries pursuant to and in accordance with the terms of this Agreement and the Management Agreement, and in material compliance with applicable Law.

8.2 Rights to Rely on the Manager. No Person or governmental body dealing with the Company or any Company Subsidiary shall be required to, inquire into, or to obtain any other documentation as to, the authority of the Manager to take any action permitted under Section 8.1 hereof. Furthermore, any Person or governmental body dealing with the Company or any Company Subsidiary may rely upon a certificate signed by the Manager as to the following:

(a) The identity of the Manager or any Member;

(b) The existence or nonexistence of any fact or facts that constitute a condition precedent to acts by the Manager or which are in any other manner germane to the affairs of the Company or the Company Subsidiary;

(c) The Persons who are authorized to execute and deliver any instrument document of the Company or the Company Subsidiary; or

(d) Any act or failure to act by the Company or a Company Subsidiary on any other matter whatsoever involving the Company, any Member thereof, or a Company Subsidiary.

8.3 Specific Limitations on the Manager. Notwithstanding anything to the contrary in the Management Agreement, this Agreement, the Act or the Articles, each of the following actions shall require Approval of the Board:

(a) Adopting any new and/or modified purposes, mission and values statement for the Company or any Company Subsidiary;

(b) Development and approval of a strategic plan for the Company (including the Company Subsidiaries), including any and all strategic initiatives and objectives;

(c) Approving the annual operating and capital budgets of the Company (including the Company Subsidiaries), which shall be consistent with the Company's strategic plan;

(d) Changing the charity care policy of the Company and the Company Subsidiaries, and overseeing the record of its implementation;

(e) Approving the appointment of the Chief Executive Officer of the Company recommended by the Manager;

(f) Approving the Manager's recommendation to terminate the employment of the Chief Executive Officer of the Company at any time prior to the second (2nd) anniversary of the date of this Agreement;

(g) Appointing individuals to serve on the Local Boards of the Hospitals (as per Section 12.4 below);

(h) Approving Medical Staff credentialing, other Medical Staff related decisions, and quality assurance and accreditation matters, all as per recommendations of the Local Boards of the Hospitals (subject to Section 12.4 below);

(i) Approving the process for managing conflicts among leadership groups at the Hospitals;

(j) Approving any reduction in Essential Services at either Hospital, if and as provided in Section 13.15 of the Purchase Agreement;

(k) Approving any change in the medical staff bylaws and structure of the Hospitals, if and as provided in Section 13.17 of the Purchase Agreement;

(l) Approving any change of a Hospital's name;

(m) Requests for the Prospect Member to make an additional Capital Contribution to the Company in connection with its Long-Term Capital Commitment, as provided in Section 4.2(b) above;

(n) Requests for the Members to make Additional Capital Contributions to the Company, as provided in Section 4.2(e) above;

(o) Decisions to make Certificate of Need Filings or reverse Certificate of Need Filings;

(p) Entering into a contract to incur an obligation to repay borrowed money; provided that Approval of the Board is not required for the Manager to cause the Company to borrow funds up to the Borrowing Limit;

(q) Electing to distribute or not distribute the Distributable Cash;

(r) Entering into or modifying any agreement, arrangement or business dealings between the Company (and/or any Company Subsidiary) and the Prospect Member or any Prospect Affiliate; provided, however, that such action shall require the approval of only the Category A Directors;

(s) Admitting any additional Members or issuing additional Units, except in accordance with the provisions of Article XIII hereof;

(t) Recognizing the transfer of a Member's interest in the Company, unless such transfer is in compliance with the provisions of Article XIII hereof;

(u) Acquiring or disposing of any health care related facility and its related assets in a single transaction or series of related transactions;

(v) Engaging in any merger, consolidation, share exchange or reorganization of the Company or any Company Subsidiary, or sale of all or substantially all of the assets of the Company or any Company Subsidiary;

(w) Amendments to the Articles, this Agreement and other governing documents of the Company (except as otherwise expressly provided in Section 17.11 below or where required by Law); and

(x) Approving a decision to dissolve or liquidate the Company or any Company Subsidiary.

8.4 Management Obligations of the Manager. Subject to the terms and conditions of the Management Agreement, the Manager shall devote such time to the Company and the

Company Subsidiaries as may be necessary to fulfill the Company Purposes, and manage and supervise the business and affairs of the Company and the Company Subsidiaries. Nothing in this Agreement shall preclude the Manager, at the expense of the Company, from contracting with or employing any Affiliate of a Member or a third party to provide management or other services to the Company or a Company Subsidiary, subject to Section 8.3(r) above.

8.5 Compensation of the Manager. As its sole compensation and consideration for the performance of its duties and responsibilities as Manager, the Manager (or an Affiliate thereof) shall be entitled to receive a management fee as set forth in the Management Agreement.

8.6 Independent Activities. The Manager and any of its Affiliates may engage in or possess interests in other business ventures of every nature and description, independently, and with others, whether such activities are competitive with the Company (including any Company Subsidiary, for purposes of this Section 8.6) or otherwise, subject to Section 10.3 below. The Members and any of their Affiliates may engage in or possess interests in other business ventures of every nature and description, independently and with others, whether such activities are competitive with the Company or otherwise, without having or incurring any obligation to offer any interest in such activities to the Company or any Member. The foregoing, however, does not relieve CCHP and its Affiliates from any restrictions set forth in the Purchase Agreement.

8.7 Prospect Debt Documents. Each of the Members acknowledges and agrees that, in connection with the formation of the Company and the consummation of the transactions contemplated by the Purchase Agreement, the Company and each Company Subsidiary shall (a) become a "Restricted Subsidiary" and a "Subsidiary Guarantor" in accordance with the terms of the Indenture and a "Guarantor" in accordance with the terms of the Credit Agreement and (b) grant a security interest in its assets to the Collateral Trustee (as defined in the Indenture and the Credit Agreement) to the extent required under the Indenture, the Credit Agreement or other indebtedness of Prospect or a Prospect Affiliate. From time to time from and after the date of this Agreement, without the further consent of any Member, the Manager shall be authorized to execute and deliver such documents, and take such other actions, in the name and on behalf of the Company and the Company Subsidiaries as may be reasonably necessary to cause the Company and each Company Subsidiary to continue as or become a Restricted Subsidiary, a Subsidiary Guarantor and a Guarantor (or similar terms), including, without limitation, in the event of any amendment, restatement, supplement, renewal, replacement, increase, extension or refinancing of the Indenture or the Credit Agreement or the incurrence of any other indebtedness of Prospect or a Prospect Affiliate. CCHP shall reasonably cooperate with the Manager, and shall execute and deliver such documents and take such other actions as may be reasonably requested by the Manager, to give effect to the foregoing.

IX. RIGHTS AND STATUS OF MEMBERS.

9.1 General. Except to the extent expressly otherwise required by the Act or provided in this Agreement, the Members shall not take part in the management or control of the business of the Company or the Company Subsidiaries, such powers being vested exclusively in the Board of Directors and the Manager as provided herein.

9.2 Limitation of Liability. No Member shall have any personal liability whatever, solely by reason of its status as a Member of the Company, whether to the Company, the Company Subsidiaries, the Manager, another Member or any creditor of the Company, for the debts of the Company or the Company Subsidiaries or any of their collective losses beyond the amount of the Member's obligation to contribute its Capital Contribution to the Company; provided, however, the foregoing shall not limit or affect obligations undertaken and/or liabilities incurred by a Member pursuant to the Purchase Agreement.

X. SPECIAL COVENANTS OF THE MEMBERS.

10.1 Compliance with Debt Covenants. The Company and the Company Subsidiaries shall comply with, and take no action (or inaction) inconsistent with, the covenants, restrictions and requirements of the Indenture, Credit Agreement or other indebtedness of Prospect or a Prospect Affiliate.

10.2 AOB Ratio. At all times the Company will maintain, and will cause the Company Subsidiaries (as applicable) to maintain, a full-time equivalent to adjusted occupied bed ratio consistent with prevailing industry best practice.

10.3 Pursuit of Health Care Opportunities in Rhode Island. If either Member or any Affiliate of a Member desires to purchase, invest in, own (in whole or in part), lend funds to, manage, consult for, or in any other manner participate with, a health care service, facility or related business in Rhode Island (a "Health Care Opportunity"), then such Member or its Affiliate (the "Proposing Party") shall first provide written notice of such Health Care Opportunity to the other Member (the "Non-Proposing Party"), containing all material terms, including the total amount of funds needed to pursue the Health Care Opportunity, purchase price, capital commitment, amount to be loaned and working capital requirements (collectively, the "Required Investment Amount"). The Non-Proposing Party shall have thirty (30) days thereafter to provide written notice (the "Opportunity Decision Notice") to the Proposing Party that either:

(a) The Health Care Opportunity should be pursued by the Company (either directly or through a Company Subsidiary), in which case: (i) the Non-Proposing Party must also agree in writing (in the same notice) to fund, through Additional Capital Contributions to the Company, its pro rata share of the Required Investment Amount; (ii) the Company (as opposed to the Proposing Party) shall proceed to pursue the Health Care Opportunity; and (iii) within twenty (20) days thereafter, the Members shall fund, through Additional Capital Contributions to the Company, their respective pro rata shares of the Required Investment Amount; or

(b) The Health Care Opportunity should not be pursued by the Company (either directly or through a Company Subsidiary), in which case the Proposing Member shall be free to pursue the Health Care Opportunity on its own or through another entity.

In the event the Non-Proposing Party fails to provide the Opportunity Decision Notice on a timely basis, the Proposing Member shall be free to pursue the Health Care Opportunity on its own or through another entity.

XI. MEETINGS OF MEMBERS AND MEANS OF VOTING.

11.1 Actions by the Members. The Members agree that all decisions regarding the Company and the Company Subsidiaries shall be made by the Manager or the Board of Directors, as described in Article VIII. If, notwithstanding the foregoing, the Members are required by the Act to vote on any Company matter (after due consideration of whether the Act's provisions have been effectively superseded by the express provisions set forth in this Agreement), then such vote shall be conducted in accordance with this Article XI.

11.2 Meetings of the Members. Meetings of the Members may be called by the Manager and shall be promptly called upon the written request of any one or more Members that own in the aggregate five percent (5%) or more of the aggregate Units in the Company. The notice of a meeting shall state the nature of the business to be transacted at such meeting, and actions taken at any such meeting shall be limited to those matters specified in the notice of the meeting. Notice of any meeting shall be given to all Members not less than ten (10), and not more than thirty (30), days prior to the date of the meeting. Members may vote in person at such meeting; notwithstanding the provisions of the Act, voting by proxy shall not be permitted.

Except as required by the express provisions of the Act, the requisite vote of the Members shall be the approval of Members holding at least a majority of the Units issued and outstanding at the time of the vote. Each Member's voting rights shall be the same as that Member's number of Units at the time of the vote. The presence of any Member at a meeting shall constitute a waiver of notice of the meeting with respect to such Member unless, such Member attends the meeting for the sole purpose of objecting to the holding of such meeting. The Members may, at their election, participate in any regular or special meeting by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other. A Member's participation in a meeting pursuant to the preceding sentence shall constitute presence in person at such meeting for all purposes of this Agreement.

11.3 [Intentionally omitted]

11.4 Conduct of Meeting. Each meeting of Members shall be conducted by the Chairman of the Board of Directors or by a Person appointed by the Board of Directors. The meeting shall be conducted pursuant to such rules (if any) as may be adopted by the Board of Directors or the Person appointed by the Board of Directors for the conduct of the meeting.

11.5 Action Without a Meeting. Notwithstanding anything to the contrary in this Agreement, any action that may be taken at a meeting of the Members may be taken without a meeting if there is a consent in writing signed by Members holding at least a majority of the Units, setting forth the action so taken. In the event any action is taken pursuant to this Section 11.5, it shall not be necessary to comply with any notice or timing requirements set forth in Section 11.2 hereof. Prompt written notice of the taking of action without a meeting shall be given to the Members who have not consented in writing to such action.

11.6 Closing of Transfer Record; Record Date. For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members, any reconvening thereof, or to act by consent, the Manager may provide that the transfer record shall be closed for at least ten (10) days immediately preceding such meeting (or such shorter time as may be reasonable in

light of the period of the notice) or the first solicitation of consents in writing. If the transfer record is not closed and if no record date is fixed for determining the Members entitled to notice of or to vote at a meeting of Members or by consent, the date on which the notice of the meeting is mailed, or the first written consent is received by the Manager, shall be the record date for such determination.

XII. BOARD OF DIRECTORS.

12.1 Board of Directors. Effective for all purposes on the date of this Agreement, the Members shall form a board of directors of the Company (the "Board of Directors"), comprised of natural Persons (the "Directors" and each a "Director"), to have overall oversight and ultimate authority over the affairs of the Company and the Company Subsidiaries, to consider those matters pertaining to the business of the Company and the Company Subsidiaries for which Approval of the Board is required (see Section 8.3 above) or appropriate, and to oversee the activities of the Manager and the Local Boards (see Section 12.4) including: (i) evaluations of the CEO; (ii) strategic plans and operating and capital budgets; (iii) compliance with Joint Commission criteria; and (iv) fostering community relationships and opportunities.

The Board of Directors shall consist of eight (8) members, with four (4) Category A Directors (including at least one (1) physician) and four (4) Category B Directors; provided, however, that if CCHP's Sharing Percentage is reduced to 5%, then the Board of Directors shall consist of seven (7) members, with three (3) Category A Directors and four (4) Category B Directors, and CCHP shall submit to the Company the name of such Class A Director who shall resign and shall cause such Director to tender his or her resignation effective immediately (and if CCHP fails to do so within 5 days, then the Company by action of the Class B Directors in their sole and absolute discretion shall remove one Class A Director effective immediately upon written notice to CCHP). Each individual selected to serve on the Board of Directors shall serve for a term of one (1) to three (3) years, at the discretion of the Member that elected or appointed such individual, and thereafter until his successor is elected or appointed, unless he sooner resigns or is removed. A member of the Board of Directors may be removed at any time, with or without cause, by the Member that elected or appointed such director. The unexpired term of a removed director shall be filled by an individual appointed by the Member that appointed or elected the removed director. The Board of Directors shall elect annually the Chairman of the Board of Directors. The Chairman of the Board of Directors shall preside over all the meetings of the Board of Directors.

12.2 Manner of Exercise of Board of Directors' Authority. All actions or exercise of authority or responsibility of the Board hereunder shall be Approved by the Board. All responsibilities of the Board of Directors under this Agreement shall be exercised by the Board of Directors as a body and, accordingly: (i) no member of the Board of Directors, acting alone, shall have the authority to act on behalf of the Board of Directors; and (ii) except as otherwise expressly provided herein, neither Category of directors, by itself, shall have the authority to act on behalf of the Board of Directors. In no event shall the Board of Directors be deemed a manager under the Act or have the authority to act on behalf of, or to bind in any way, the Company or any Company Subsidiary. The actions of the Board of Directors shall be carried out by the Manager as provided for in this Agreement and the Management Agreement.

12.3 Meetings of the Board of Directors. The Board of Directors shall hold regular meetings on at least a quarterly basis, with at least one (1) meeting per year held in person (face-to-face). In addition, each member of the Board of Directors shall be available at all reasonable times to consult with other members of the Board of Directors on matters relating to the duties of the Board of Directors. Meetings of the Board of Directors shall be held at the call of the Manager, the Chairman of the Board of Directors, or any three (3) members of the Board of Directors requesting such meeting through such Chairman, upon not less than ten (10) business days' written or telephonic notice to the members of the Board of Directors, such notice specifying all matters to come before the Board of Directors for action at such meeting. The presence of any member of the Board of Directors at a meeting shall constitute a waiver of notice of the meeting with respect to such member unless such member attends the meeting for the sole purpose of objecting to the holding of such meeting. The members of the Board of Directors may, at their election, participate in any regular or special meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. A member's participation in a meeting pursuant to the preceding sentence shall constitute presence in person at, such meeting for all purposes of this Agreement. No action taken shall be valid unless a Quorum, as defined in Section 1.6 above, exists. Members of the Board may vote in person at such meeting; voting by proxy shall not be permitted.

12.4 Local Boards. Effective for all purposes on the date of this Agreement, the Board of Directors shall form a Local Board for each Hospital (each such Board being referred to as a "Local Board"). The Board of Directors shall have the authority to appoint additional or replacement individuals to each of the Local Boards. The Local Boards shall be comprised of at least six (6) individuals, and 50% of each Local Board shall consist of physicians on the Hospital's medical staff, and the other 50% shall consist of the Hospital's local CEO and community representatives. Each individual selected to serve on the Local Board shall serve for a term of three (3) years and thereafter until his successor is elected or appointed, unless he sooner resigns or is removed. No individual may serve on a Local Board for more than three (3) consecutive full three (3)-year terms; such individual may again serve on a Local Board after an absence of at least two (2) years. Each Local Board shall meet on a regular basis and have the following responsibilities: (a) recommendations regarding medical staff credentialing, quality assurance and accreditation; (b) reviewing, and making recommendations with respect to, strategic and capital plans; (c) providing guidance and support on local market and community concerns, considerations, strategies, issues and politics; and (d) performing such other duties, and providing review and recommendations with respect to other matters, as requested by the Company's Board of Directors.

12.5 Board of Directors Deadlock.

(a) It is the intention of the Board of Directors to make a good faith effort to resolve Deadlocks (as defined below) between the Category A Directors and the Category B Directors; provided, however, that this provision shall apply only with respect to Deadlocks regarding decisions set forth in:

(i) Sections 8.3(f) through (m), and Sections (o) through (r);

(ii) Section 8.3(n), but only at such time after which the Long-Term Capital Commitment has been satisfied and only to the extent that the additional capital will be spent on projects that are supported by a return on investment calculation or a material needs assessment (including operational needs) with respect to the Company Subsidiaries in the State of Rhode Island; and

(iii) Section 8.3(u), in the case of transactions having an aggregate value of less than Seven Hundred Fifty Thousand Dollars ($750,000).

(b) For purposes of this Agreement, the term "Deadlock" shall mean the failure or inability to obtain on a timely basis the Approval of the Board with respect to any resolution or proposal that is reasonably necessary for the Company or a Company Subsidiary to continue to carry on its business activities or to comply with applicable Law, where such resolution or proposal has been approved by one Category of directors but not the other (accordingly, Deadlock may not occur if CCHP's interest is reduced to 5% and class voting no longer applies). In the event of any such Deadlock, the parties shall act in accordance with the following procedures:

(i) First, each category of Directors shall negotiate in good faith with the other category of Directors to try to settle any dispute for a period of thirty (30) days (which time period shall be reduced as may be necessary to address urgent and/or imminent circumstances, timeframes or deadlines). The Board of Directors shall meet at least once during such period (in person to the extent practicable) to attempt to resolve the dispute (beyond the meeting at which the deadlock became apparent).

(ii) In the event that by the end of the 30-day (or such lesser) period referred to in (i) above, the dispute is not settled pursuant to the procedures set forth in (i) above, then one designee from each of CCHP and Prospect shall meet (in person to the extent practicable, or via telephone) to attempt to resolve the dispute. If the dispute is still not resolved after such meeting and conferences, then the decision of the Category B Directors shall constitute the decision of the Board of Directors of the Company, notwithstanding any provision of this Agreement that specifically requires a majority vote of the Category A Directors or a majority vote of all Directors (and notwithstanding any other rights of the Category A Directors and CCHP hereunder).

(c) Notwithstanding the foregoing, in the event the Board of Directors should be Deadlocked with respect to the approval of an annual capital budget or an annual operating budget as described in Section 8.3(c) above, the Manager shall have the right, power and authority to make expenditures on behalf of the Company for budgeted items in amounts up to the following:

(i) With respect to each item of operating expense other than taxes and insurance, an amount equal to the amount set forth in the most recent annual operating budget that has received the Approval of the Board, increased by the percentage increase, if any, in the Consumer Price Index for the period beginning on the first day of the fiscal year to which the most recent annual budget approved by the Board

relates and ending on the first day of the fiscal year in which such expenditure is to be made;

(ii) With respect to each item relating to taxes and insurance, an amount equal to the amount of the actual expense incurred by the Company or a Company Subsidiary in respect of such item; and

(iii) With respect to each item of capital improvement or capital expenditure, an amount equal to the amount deemed reasonably necessary by the Manager to preserve the safety of the Hospitals, their patients and other occupants, to avoid the suspension of any services provided by the Hospitals or to preserve the accreditation of the Hospitals and their services.

Notwithstanding the foregoing, if any emergency involving manifest danger to life or property exists with respect to which expenditures are necessary for the preservation or safety of the Hospitals, for the safety of the patients and other occupants of the Hospitals, or to avoid the suspension of any necessary service to the Hospitals, such expenditures may be made by the Manager without the prior Approval of the Board. Any expenditure made by the manager in accordance with the authority granted by this section shall be deemed to have received Board approval for all purposes under this Agreement.

XIII. TRANSFER OF RIGHTS AND ADDITIONAL MEMBERS.

13.1 Transfers by Members. Except as otherwise set forth in this Article XIII, a Member may not sell, assign (by operation of Law or otherwise), transfer, pledge or hypothecate ("Transfer") all or any part of its interest in the Company (either directly or indirectly through the transfer of the power to control, or to direct or cause the direction of the management and policies of, such Member). If a transfer is otherwise permitted by this Article XIII, then a Member may sell its interest in the Company if each of the following conditions is satisfied:

(a) The sale, transfer or assignment is with respect to one or more Units;

(b) The Member and its transferee execute, acknowledge and deliver to the Manager such instruments of Transfer and assignment with respect to such transaction as are in form and substance satisfactory to the Manager;

(c) Unless waived in writing by the Manager, the Member delivers to the Manager an opinion of counsel satisfactory to the Manager covering such federal and state securities, healthcare (e.g., Medicare and DOH) and tax Laws and other aspects of the proposed Transfer as the Manager may reasonably request;

(d) The Member has furnished to the transferee a written statement showing the name and taxpayer identification number of the Company in such form and together with such other information as maybe required under Section 6050K of the Code and the Regulations thereunder; and

(e) The Member pays the Company a transfer fee that is sufficient to pay all reasonable expenses of the Company (which shall include any and all expenses of the Manager) in connection with such transaction.

13.2 Permitted Transfers.

(a) Notwithstanding the restriction in Section 13.1, the following Transfers are permitted and shall not be deemed to violate the restrictions contained in Section 13.1:

(i) Transfers pursuant to Article XIV; provided that the Prospect Member may not sell its Units pursuant to Article XIV for a period of five (5) years from the initial date of this Agreement;

(ii) Transfers by a Member to one or more of its Affiliates, or a Transfer by CCHP to CharterCARE Health Partners Foundation (f/k/a St. Joseph Health Services Foundation), with any such transferee automatically becoming a Substituted Member; and

(iii) pledges or hypothecations by the Prospect Member of its interest in the Company to a financial institution, lender or other party as collateral for loans or other indebtedness of Prospect or any Affiliate thereof, including, without limitation, pursuant to the Indenture, Credit Agreement or other indebtedness, and any Transfer occurring upon the enforcement of such pledges or hypothecations and other indebtedness.

(b) Notwithstanding anything to the contrary in this Agreement, any change in control or change in the ownership of (i) Prospect or the Prospect Member, or any other direct or indirect parent of the Company (including, without limitation, upon the exercise of remedies pursuant to the Indenture, Credit Agreement and other indebtedness) or (ii) the Company upon the exercise of remedies pursuant to the Indenture, Credit Agreement or other indebtedness shall not constitute a Transfer of an interest in the Company for purposes of this Agreement, such changes will not be subject to the provisions of Sections 14.2 and 14.3 and such changes are permitted without the consent of the Manager or any Member or any approval of the Board. Any change in control or change in the ownership of a Company Subsidiary upon the exercise of remedies pursuant to the Indenture, Credit Agreement or other indebtedness are permitted without the consent of the Manager or any Member or any approval of the Board.

Any Member who Transfers all or any portion of its interest in the Company shall promptly notify the Manager of such Transfer and shall furnish to the Manager the name and address of the transferee and such other information as may be required under Section 6050K of the Code and the Regulations thereunder.

13.3 Substituted Member. No Person taking or acquiring, by whatever means, the interest of any Member in the Company, except as provided in Section 13.2 hereof, shall be admitted as a Substituted Member without the Approval of the Board (which consent may be withheld in the Board's sole discretion), and unless such Person:

(a) Elects to become a Substituted Member by delivering notice of such election to the Company;

(b) Executes, acknowledges and delivers to the Company such other instruments as the Manager may deem necessary or advisable to effect the admission of such Person as a Substituted Member, including, without limitation, the written acceptance and adoption by such Person of the provisions of this Agreement;

(c) Pays a transfer fee to the Company in an amount sufficient to cover all reasonable expenses (including legal fees) connected with the admission of such Person as a Substituted Member; and

(d) the requirements of Section 13.1 have been satisfied.

13.4 Additional Member. The Company may not issue Units to any Person who will be a new Member without the Approval of the Board.

13.5 Basis Adjustment. Upon the Transfer of all or part of an interest in the Company, the Manager may, in its reasonable discretion, cause the Company to elect, pursuant to Section 754 of the Code or the corresponding provisions of subsequent Law, to adjust the basis of the Company properties as provided by Sections 734 and 743 of the Code.

13.6 Invalid Transfer. No Transfer of an interest in the Company that is in violation of this Article XIII shall be valid or effective, and the Company shall not recognize any improper transfer for the purposes of making allocations, payments of profits, return of capital contributions or other distributions with respect to such Company interest or part thereof. The Company may enforce the provisions of this Article XIII, either directly or indirectly or through its agents, by entering an appropriate stop transfer order on its books or otherwise refusing to register or transfer or permit the registration or transfer on its books of any proposed transfers not in accordance with this Article XIII.

13.7 Distributions and Allocations in Respect of a Transferred Unit. If any Member Transfers any part of its interest in the Company during any accounting period in compliance with the provisions of this Article XIII, Company income, gain, deductions and losses attributable to such interest for the respective period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the applicable accounting period in accordance with Section 706(d) of the Code. All Company distributions on or before the effective date of such Transfer shall be made to the transferor, and all Company distributions thereafter shall be made to the transferee. Solely for purposes of making Company tax allocations and distributions, the Company shall recognize a Transfer on the day following the day of Transfer. Neither the Company nor the Manager shall incur any liability for making Company allocations and distributions in accordance with the provisions of this Section 13.7, whether or not the Manager or the Company has knowledge of any Transfer of any interest in the Company or part thereof where the transferee is not admitted as a Substituted Member.

13.8 Additional Requirements of Admission to Company. The Manager shall not admit any Person as a Member if such admission would have the effect of causing the Company to be re-classified for federal income tax purposes as an association (taxable as a corporation under the

Code), or would violate any Medicare or other health care Law (assuming applicable notices, filings, etc.), or would violate applicable exemptions from securities registration and securities disclosure provisions under federal and state securities Laws.

13.9 Amendment to Exhibit B. The Manager shall amend Exhibit B attached to this Agreement from time to time to reflect the admission of any Substituted Members or Additional Members, or the termination of any Member's interest in the Company.

XIV. RIGHT TO LIQUIDATE OR PURCHASE COMPANY INTERESTS.

14.1 Right of First Offer. In the event that CCHP at any time wishes to Transfer any Units to any third party, CCHP shall give written notice to the Company and the Prospect Member of CCHP's intention to seek a purchaser for such Units (the "Offered Units"). The Prospect Member shall have until the thirtieth (30^{th}) day following delivery of such notice to determine whether or not to submit an offer to purchase the Offered Units and to determine the terms and conditions of any such offer (the "Right of First Offer"). During such thirty (30)-day period, CCHP shall not Transfer the Offered Units. If an offer to purchase is made by the Prospect Member, CCHP may accept or reject such offer in its sole discretion, and in the latter case, the Transfer of Units by CCHP shall be further subject to compliance with the Right of First Refusal of the Prospect Member as set forth in Section 14.2 below.

14.2 Right of First Refusal. Subject to the restriction in Section 13.2(a)(i), if any Member (the "Selling Member") receives or obtains an offer from a third party (the "Offeror") to acquire in any manner all or any part of its Units in the Company (the "Interest"), which offer the Member intends to accept, the Member shall promptly notify the other Members in writing of the offer received, including the name of the Offeror, the number of whole or partial Units offered to be purchased, the proposed purchase price and the other terms and conditions of the offer. Such notice shall include a copy of the offer, which shall (i) be in writing; (ii) set forth with specificity all of the material terms and conditions of the offer; (iii) be made by a Person that is financially capable of completing such offer (and attaches documents supporting same); and (iv) provide for closing no later than one hundred eighty (180) days after the date on which such offer is received (the "Offer"). The other Member(s) shall have the right (the "Right of First Refusal") for a period of sixty (60) days from the day it receives notice of such Offer to purchase the Interest subject to the Offer on the same terms and conditions contained in the Offer, provided that for the purposes of this Agreement, any provisions in the Offer requiring payment of non-cash or non-promissory note consideration, any security therefore and any ancillary agreements shall be null, void and of no effect. The other Member(s) may exercise such Right of First Refusal by notifying the Selling Member prior to the end of the sixty (60)-day period of its intent to exercise such right. If the other Member(s) fails to exercise the Right of First Refusal or indicates in writing that it will not exercise the Right of First Refusal within the period provided, or if the other Member(s) exercises the Right of First Refusal but fails to effect the purchase within one hundred eighty (180) days thereafter, then the Selling Member may convey or dispose of the Interest, but only at the price, terms and conditions contained in the Offer, and only to the Offeror. If the Selling Member agrees to terms and conditions that are different in any material respects from those offered to the other Member(s), the other Member(s) shall again have the right to purchase the Selling Member's interest in the Company which is subject to the more favorable or different purchase terms in accordance with this Section 14.2 (under the timeframes

described above, as if a new Offer was provided). The other Member(s) may assign its rights under this Section 14.2 to the Company, in which event the Member's interest may be liquidated (rather than purchased) by the Company. The Member(s) and the Company shall not be liable or accountable to any Selling Member that attempts to transfer its interest in the Company for any loss, damage, expense, cost or liability resulting from the Member's exercise or failure to exercise the Right of First Refusal under this Section 14.2, delay in notifying the Selling Member of its intention not to exercise the Right of First Refusal, or its enforcement of the requirements of this Section 14.2 in the event that it elects not to exercise the Right of First Refusal. A Member's failure to exercise the Right of First Refusal or to indicate in writing that it is electing not to exercise the Right of First Refusal shall not be deemed a consent of the Member to allow any third party transferee to become a Substituted Member, such consent being controlled by the provisions of Sections 13.1 and 13.3 hereof.

14.3 Tag-Along Rights. If at any time after the fifth (5^{th}) anniversary of the date of this Agreement, a Selling Member that holds a Sharing Percentage greater than fifty percent (50%) gives the notice required by Section 14.2 hereof in connection with an Offer to acquire in any manner all or any part of such Selling Member's Units in the Company, and the other Member(s) does not exercise its Right of First Refusal (or assign such right to the Company) with respect to such Offer, the other Member shall have (in addition to its Right of First Refusal under Section 14.2 hereof) the right (the "Tag-Along Right") to require, as a condition to any sale or disposition to the Offeror, that the Offeror purchase from the other Member, at the same price and on the same terms and conditions as specified in the notice given pursuant to Section 14.2 hereof, the number of Units owned by the other Member multiplied by a fraction, the numerator of which is the number of Units proposed to be sold by the Selling Member and the denominator of which is the total number of Units owned by the Selling Member. Such other Member shall have the Tag-Along Right for a period of sixty (60) days from the day it receives the notice required by Section 14.2 hereof (which is the same 60-day period for purposes of exercising its Right of First Refusal), and in the event that a Member shall elect to exercise such Tag-Along Right, such Member shall communicate such election in writing to the Selling Member within such time period.

14.4 Prospect Member Call Option.

(a) Within 90 days following a determination by CCHP to submit a matter to binding arbitration pursuant to Section 3.1(b) above, the Prospect Member shall have the option to purchase from CCHP, and CCHP shall have the obligation to sell to the Prospect Member, all of the Units held by CCHP in exchange for a payment in cash of a purchase price equal to the Appraised Value of the Units (as per Section 14.6 below).

(b) Within the 90-day period referenced in Section 14.4(a) above, the Prospect Member shall give written notice to CCHP of its election to exercise the option to purchase all of CCHP's Units (the "Call Election Notice"). If Prospect fails to give a Call Election Notice within the applicable ninety (90)-day time limit, the option to purchase shall lapse. The closing of the purchase and sale of CCHP's Units to the Prospect Member shall be held at a mutually acceptable place on a mutually acceptable date not more than ninety (90) days after the date on which the Call Election Notice is received by CCHP; provided that such time period shall be extended if needed such that the closing occurs within forty-five (45) days following the

determination of the Appraised Fair Market Equity Value of the Company pursuant to Section 14.6 below. The Prospect Member shall make payment to CCHP for the Units being purchased by delivering immediately available funds to an account designated by CCHP in the full amount of the purchase price applicable to the Units. CCHP shall transfer to the Prospect Member all of the Units being sold, free and clear of all claims, liabilities, options, pledges or other encumbrances of any kind (other than those arising under this Agreement and applicable Law).

14.5 CCHP Put Option.

(a) Within 90 days following either -- (i) the fifth (5^{th}) anniversary of the date of this Agreement, or (ii) the occurrence either of the conditions set forth in Section 3.2(c) of this Agreement -- CCHP shall have the option to sell to the Prospect Member, and the Prospect Member shall have the obligation to purchase, all of the Units held by CCHP in exchange for a payment in cash of a purchase price equal to the Appraised Value of the Units (as per Section 14.6 below). The Prospect Member shall give the Company and CCHP written notice of the foreclosure referenced in Section 3.2(c) as soon as practicable, but in no event later than thirty (30) days after such event has occurred. The Prospect Member's failure to give such notice shall not affect CCHP's rights granted herein.

(b) Within the 90-day period referenced in Section 14.5(a) above, CCHP shall give written notice to the Prospect Member and the Company of its election to exercise the option to sell all of its Units to the Prospect Member (the "Put Election Notice"). If CCHP fails to give a Put Election Notice within the applicable ninety (90)-day time limit, the option to sell shall lapse. The closing of the purchase and sale of CCHP's Units to the Prospect Member shall be held at a mutually acceptable place on a mutually acceptable date not more than ninety (90) days after the date on which the Put Election Notice is received by the Prospect Member; provided that such time period shall be extended if needed such that the closing occurs within forty-five (45) days following the determination of the Appraised Fair Market Equity Value of the Company pursuant to Section 14.6 below. The Prospect Member shall make payment to CCHP for the Units being purchased by delivering immediately available funds to an account designated by CCHP in the full amount of the purchase price applicable to the Units. CCHP shall transfer to the Prospect Member all of the Units being sold, free and clear of all claims, liabilities, options, pledges or other encumbrances of any kind (other than those arising under this Agreement and applicable Law).

14.6 Appraised Value.

(a) For purposes of Section 14.4 and 14.5 above, the "Appraised Value of the Units" shall be the product determined by multiplying (i) the Appraised Fair Market Equity Value of the Company (hereinafter defined), times (ii) CCHP's Sharing Percentage. For purposes of this Agreement, the term "Appraised Fair Market Equity Value of the Company" shall mean the fair market value of the equity of the Company, as determined below.

(b) The Prospect Member and CCHP shall negotiate in good faith with one another following the Call/Put Election Notice (pursuant to Section 14.4(b) or 14.5(b) above, as applicable) to determine the Appraised Fair Market Value of the Company. The Prospect Member and CCHP agree to use their best efforts to negotiate and agree upon the Appraised Fair

Market Value of the Company. If the Prospect Member and CCHP reach an agreement as to the Appraised Fair Market Value of the Company, then the Appraised Fair Market Value of the Company shall be the amount determined by the Prospect Member and CCHP.

(c) Either party may notify the other party that it is initiating the Appraisal Process described below, or such other appraisal process upon which the parties may mutually agree in writing within ten (10) days of the date on which either party has initiated the appraisal process (the "Alternate Appraisal Process"). If either the Prospect Member or CCHP shall have initiated the Appraisal Process (and the parties shall not have agreed in writing to an Alternate Appraisal Process within ten (10) days), then the Prospect Member and CCHP shall each engage a "Qualified Appraiser" as defined below (collectively, the "Initial Appraisers", and individually, an "Initial Appraiser") within twenty (20) days after the date upon which the party received notice of the other party's intent to initiate the Appraisal Process (the "Initiation Date"). The Prospect Member and CCHP also shall engage jointly one additional Qualified Appraiser that is mutually acceptable to the parties (the "Third Appraiser", the Initial Appraisers and the Third Appraiser are referred to collectively as the "Appraisers"). If the parties cannot mutually agree upon the identity of the Third Appraiser within fifteen (15) days after the Initiation Date, the parties shall direct the Initial Appraisers to select and engage the Third Appraiser on behalf of the parties. Each of the Prospect Member and CCHP shall pay the fees and expenses of its respective Appraiser, and the fees and expenses of the Third Appraiser shall be shared equally by the Prospect Member and CCHP. For purposes of the Agreement, the term "Qualified Appraiser" shall mean an independent, third party, nationally recognized investment bank or MAI-certified appraiser who (i) has substantial experience in the valuation of health care entities comparable to the Company and (ii) has, within the twenty-four (24) month period preceding the date of the Election Notice, delivered appraisals and/or fairness opinions, on a going concern basis, in connection with at least three (3) other transactions involving the sales of hospitals. The Appraisers so selected shall each then conduct an appraisal to determine the Appraised Fair Market Equity Value of the Company (i) on a going concern basis, (ii) using valuation techniques then customary and accepted in the industry but without consideration of minority interest discounts, (iii) using performance information respecting the Facilities that is acceptable to the Prospect Member and CCHP and that has been supplied to each of the Appraisers, (iv) viewing the enterprise of the Company as a whole, (v) taking into account the future prospects of the Facilities, and (vi) assuming that the Company were to be sold on a stand-alone basis (and not as a part of a portfolio sale). Each Appraiser's determination of the Appraised Fair Market Equity Value of the Company (individually, a "Valuation" and collectively, the "Valuations") shall be expressed as a single value rather than a range of values. Each party shall cause the Initial Appraiser engaged by it to submit such Initial Appraiser's sealed Valuation to the other party within sixty (60) days of the Initiation Date, and both parties shall use their reasonable best efforts to cause the Third Appraiser to submit its sealed Valuation to both parties within such period. Once the Prospect Member and CCHP have received from all three Appraisers their respective Valuations, the Appraised Fair Market Equity Value of the Company shall be determined based upon the Valuations as follows:

(i) if the three Valuations are within ten percent (10%) of one another (i.e., if each of the highest Valuation and the middle Valuation is no greater than 1.10 times the lowest Valuation); the Appraised Fair Market Equity Value of the Company shall be the average of all three Valuations;

(ii) if subsection (i) above is inapplicable and two Valuations are within ten percent (10%) of one another, (i.e., if the higher of such two Valuations is no greater than 1.10 times the lower of such two Valuations), the Appraised Fair Market Equity Value of the Company shall be the average of such two Valuations;

(iii) if subsections (i) and (ii) above are inapplicable and the three Valuations are within twenty percent (20%) of one another (i.e., if each of the highest Valuation and the middle Valuation is no greater than 1.20 times the lowest Valuation), the Appraised Fair Market Equity Value of the Company shall be the average of all three Valuations;

(iv) if subsections (i) through (iii) above are inapplicable and two Valuations are within twenty percent (20%) of one another (i.e., if the higher of such two Valuations is no greater than 1.20 times the lower of such two Valuations), the Appraised Fair Market Equity Value of the Company shall be the average of such two Valuations; and

(v) if subsections (i) through (iv) above are inapplicable, the Appraised Fair Market Equity Value of the Company shall be the average of all three Valuations.

XV. DISSOLUTION.

15.1 Causes. Each Member expressly waives any right that it might otherwise have to dissolve the Company except as set forth in this Article XV. The Company shall be dissolved upon the first to occur of the following:

(a) The Approval of the Board of an instrument dissolving the Company;

(b) The dissolution of the Company by judicial decree; or

(c) The Approval of the Board of the dissolution of the Company after having determined that a rule, ordinance, regulation, statute or government pronouncement has or may be enacted that would make any material aspect of this Agreement or the activities conducted by the Company unlawful or eliminate or substantially reduce, either directly or indirectly, the benefits that would accrue to the Members with respect to continuing the Company's business operations; provided, however, that the Members agree to first use their best efforts to restructure the Company in such a manner that will avoid the unlawful or adverse effect and, to the extent practicable, will preserve the existing financial and business relationships among them; and provided further that the foregoing shall not apply in the event CCHP's tax-exempt status is impacted (but rather in such event CCHP's sole remedy is exercising its rights under Section 14.5).

15.2 Limitation. Nothing contained in Section 15.1 is intended to grant to any Member the right to dissolve the Company at will (by retirement, resignation, withdrawal or otherwise), or to exonerate any Member from liability to the Company and the remaining Members if it dissolves the Company at will. Any dissolution at will of the Company shall be in contravention

of this Agreement for purposes of the Act. Dissolution of the Company under Section 15.1(c) shall not constitute a dissolution at will.

XVI. WINDING UP AND TERMINATION.

16.1 General. If the Company is dissolved and is not reconstituted, the Members who own at least eighty percent (80%) of the aggregate Members' Sharing Percentages shall select an independent third party (meaning, for these purposes, a person or persons other than Prospect, the Prospect Member, the Manager or any other Prospect Affiliate) to serve as liquidator or liquidating committee (herein referred to as the "Liquidator"). The Liquidator shall commence to wind up the affairs of the Company and to liquidate and sell the Company's assets, with an obligation to treat Members equally in proportion to their membership interest. The Liquidator shall have sufficient business expertise and competence to conduct the winding up and termination of the Company and, in the course thereof, to cause the Company to perform any contracts that the Company has or thereafter enters into. The Liquidator shall have full right and unlimited discretion to determine the time, manner and terms of any sale or sales of Company property under such liquidation, having due regard for the activity and condition of the relevant market and general financial and economic conditions. The Liquidator shall be entitled to receive such reasonable compensation for its services as shall be agreed upon by the Liquidator and those Members who own at least eighty percent (80%) of the aggregate Members' Sharing Percentages. The Liquidator may resign at any time by giving fifteen (15) days prior written notice and may be removed at any time, with or without cause, by written notice of Members who own at least eighty percent (80%) of the aggregate Members' Sharing Percentages. Upon the death, dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all the rights, powers and duties of the original Liquidator) will, within thirty (30) days thereafter, be appointed by those Members who own at least eighty percent (80%) of the aggregate Members' Sharing Percentages, evidenced by written appointment and acceptance. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring, and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provisions hereof, and every reference herein to the Liquidator will be deemed to refer also to any such successor or substitute Liquidator appointed in the manner herein provided. The Liquidator shall have and may exercise, without further authorization or consent of any of the parties hereto or their legal representatives or successors in interest, all of the powers conferred upon the Manager under the terms of this Agreement to the extent necessary or desirable in the good faith judgment of the Liquidator to perform its duties and, functions. The Liquidator shall not be liable to the Members except to the extent provided in the Act and shall, while acting in such capacity on behalf of the Company, be entitled to the indemnification rights set forth in Section 17.1 hereof.

16.2 Court Appointment of Liquidator. If, within ninety (90) days following the date of dissolution or other time provided in Section 16.1 hereof, a Liquidator or successor Liquidator has not been appointed in the manner provided therein, any interested party shall have the right to make application to any United States Federal District Judge (in his individual and not judicial capacity) for the District of Rhode Island for appointment of a Liquidator or successor Liquidator, and the Judge, acting as an individual and not in his judicial capacity, shall be fully authorized and empowered to appoint and designate a Liquidator or successor Liquidator who shall have all the powers, duties, rights and authority of the Liquidator herein provided.

16.3 Liquidation. The Liquidator shall give all notices to creditors of the Company and shall make all publications required by the Act. In the course of winding up and terminating the business and affairs of the Company, the assets of the Company (other than cash) shall be sold or distributed in kind to the Members, in the reasonable discretion of the Liquidator, its liabilities and obligations to creditors, including any Members who made loans to the Company as provided in Section 4.5 hereof, and all expenses incurred in its liquidation shall be paid, and all resulting items of Company income, gain, loss or deduction shall be credited or charged to the Capital Accounts of the Members in accordance with Article V hereof. The fair market value of any assets of the Company distributed in kind to the Members shall be determined by an independent appraiser chosen by the Board of Directors. Any distribution in kind need not be made on a pro rata basis so long as the value of the assets and cash (if any) distributed to each Member is in compliance with this Article. All Company assets (except to the extent reserves have been established pursuant to Section 16.4 hereof) shall be distributed among all Members having positive Capital Account balances (as determined after giving effect to all adjustments attributable to allocations of items of profit and loss realized by the Company during the fiscal year in question (including items of profit and loss realized on the liquidation) and all adjustments attributable to contributions and distributions of money and property effected prior to such distribution), pro rata in accordance with such positive Capital Account balances. This distribution shall be made no later than the end of the Fiscal Year during which the Company is liquidated (or, if later, ninety (90) days after the date on which the Company is liquidated). Upon the completion of the liquidation of the Company and the distribution of all the Company assets, the Company shall terminate and the Liquidator shall have the authority to execute and record all documents required to effectuate the dissolution and termination of the Company. In the discretion of the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Members may instead be distributed to a trust established for the benefit of the Members for the purposes of liquidating Company property, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the, Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Liquidator, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Agreement.

16.4 Creation of Reserves. After making payment or provision for payment of all debts and liabilities of the Company and all expenses of liquidation, the Liquidator may set up such cash reserves as the Liquidator may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company.

16.5 Final Statement. Within a reasonable time following the completion of the liquidation, the Liquidator shall supply to each of the Members a statement that sets forth the assets and the liabilities of the Company as of the date of complete liquidation; each Member's pro rata portion of distributions under Section 16.3 hereof, and the amount retained as reserves by the Liquidator under Section 16.4 hereof.

XVII. MISCELLANEOUS.

17.1 Standard of Care; Indemnification.

(a) The members of the Board of Directors, the Members and the Manager (the "Representatives") shall not be liable, responsible or accountable in damages to any Member or the Company for any act or omission on behalf of the Company performed or omitted by them in good faith and in a manner they reasonably believed to be in the best interests of the Company and, in the case of a criminal proceeding, if they had no reasonable cause to believe that the conduct was unlawful.

(b) To the fullest extent permitted by the Act, the Company shall indemnify each Representative against reasonable expenses (including reasonable attorneys' fees), judgments, taxes, penalties, fines (including any excise tax assessed with respect to an employee benefit plan) and amounts paid in settlement (collectively "Liability"), incurred by the Representative in connection with defending any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative, and whether formal or informal) to which the Representative is, or is threatened to be made, a party because they are or were a Representative, provided that (i) the Representative acted in good faith and in a manner reasonably believed by the Representative to be in the best interest of the Company; (ii) in the case of a criminal proceeding, the Representative had no reasonable cause to believe the conduct was unlawful; (iii) in connection with a proceeding brought by or in the right of the Company, the Representative was not adjudged liable to the Company; and (iv) the Representative was not adjudged liable in a proceeding charging improper personal benefit.

(c) To the fullest extent authorized or permitted by the Act, the Company shall pay or reimburse reasonable expenses (including reasonable attorneys' fees) incurred by a Representative who is a party to a proceeding in advance of final disposition of such proceeding if (i) the Representative furnishes the Company a written affirmation of its, his or her good faith belief that it, he or she has met the standard of conduct described in Section 17.1(b) hereof; (ii) the Representative furnishes the Company a written undertaking, executed personally or on the Representatives behalf, to repay the advance if it is ultimately determined that the Representative did not meet the standard of conduct and the Board reasonably believes such Representative would have the ability to repay such advance; and (iii) a determination is made that the facts then known to those making the determination would not preclude indemnification under the provisions of Section 17.1(b) hereof.

(d) The indemnification against Liability and advancement of expenses provided by, or granted pursuant to, this Section 17.1 shall not be deemed exclusive of any other rights to which these seeking indemnification or advancement may be entitled under any agreement, action of Members or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office of the Company, shall continue as to an entity or person who has ceased to be a Representative, and shall inure to the benefit of the successors, assigns, heirs, executors and administrators of such an entity or person.

(e) Any repeal or modification of this Section 17.1 by the Members shall not adversely affect any right or protection of the Representatives under this Section 17.1 with respect to any act or omission occurring prior to the time of such repeal or modification.

17.2 Purchase Agreement Indemnification Obligations.

(a) In the event that CCHP is required to pay the Company or Prospect an amount pursuant to the indemnification provisions of the Purchase Agreement (an "Unpaid Indemnification Amount"), and fails to pay all of such amount within thirty (30) days, then Prospect may, in its sole and absolute discretion, recoup or offset, as applicable, on a dollar-for-dollar basis, all or a portion of the Unpaid Indemnification Amount in the following order of priority to the extent amounts are available in each such category: (x) by receiving distributions from the Company otherwise due to CCHP in respect of its Units (pursuant to the provisions of Section 17.2(b) below), (y) by reducing the Long-Term Capital Commitment, or (z) by treating such amount as an additional capital contribution by Prospect to the Company and adjusting the Prospect Member's and the Seller Members' respective Sharing Percentages (pursuant to the provisions of Section 17.2(c) below), or any combination of the foregoing, all pursuant to the terms of the Amended and Restated Agreement.

(b) If and to the extent Prospect elects to receive distributions in respect of an Unpaid Indemnification Amount as provided for in clause (x) of Section 17.2(a) above, if the Unpaid Indemnification Amount is due to Prospect, the Company shall pay to Prospect all distributions due hereunder to CCHP until the Unpaid Indemnification Amount due to Prospect from CCHP has been fully satisfied; and (ii) if the Unpaid Indemnification Amount is due to the Company, the Company shall offset all distributions due hereunder to CCHP until the Unpaid Indemnification Amount due to the Company has been fully satisfied, and shall make a special distribution to Prospect equal to the Unpaid Indemnification Amount. In such an event, the distributions which would have otherwise been made to CCHP shall be treated as if they were actually made to CCHP and then paid by CCHP to Prospect or to the Company, as applicable.

(c) If and to the extent Prospect elects to receive distributions in respect of an Unpaid Indemnification Amount as provided for in clause (z) of Section 17.2(a) above, the Unpaid Indemnification Amount (including interest thereon) shall be treated as an Additional Capital Contribution by Prospect to the Company pursuant to Section 4.2(e) above, and CCHP's and the Prospect Member's Sharing Percentage (and Units) shall be adjusted as per such provision, as if CCHP were a Non-Contributing Member (provided, however, that this provision shall not cause CCHP's Sharing Percentage to fall below 5%).

17.3 Notices. All notices given pursuant to this Agreement shall be in writing and shall be deemed effective when personally delivered or when placed in the United States mail, registered or certified with return receipt requested, when sent by nationally recognized overnight courier service, or when sent by prepaid telegram or facsimile followed by confirmatory letter. For purposes of notice, the addresses of the Members shall be as stated under their names on the attached Exhibit B; notices to the Company shall be sent to 825 Chalkstone Avenue, Providence, RI 02908, to the attention of the Chief Executive Officer, with a copy to the Prospect Member. Notwithstanding the foregoing, each Member shall have the right to change its address for notice hereunder to any other location by the giving of thirty (30) days' notice to the Manager in the manner set forth above.

17.4 Choice of Law and Dispute Resolution.

(a) Choice of Law. The parties agree that this Agreement shall be governed by and construed in accordance with the Laws of the State of Rhode Island, without giving effect

to any choice or conflict of law provision or rule thereof that would require the application of any other law.

(b) Dispute Resolution. In the event that any dispute, controversy or claim arises among the parties, including any dispute, controversy or claim arising out of this Agreement or any other relevant document, or the breach, termination or invalidity thereof (a "Dispute"), the parties shall attempt in good faith to resolve such Dispute promptly by negotiation (including at least one in-person meeting) over a period of not less than thirty (30) days, commencing upon one party's delivery of a written notice of Dispute to the other parties.

(i) If the Dispute has not been resolved by negotiation as provided above and such Dispute involves claims of One Million Dollars ($1,000,000) or more, a party may submit the matter to a court of law or equity through the filing of a claim. The parties agree that, except as otherwise expressly provided in Section 17.4(b)(ii)(2) and Section 17.5 below, venue for any and all claims associated with a Dispute between the parties shall rest with the state courts of the State of Delaware; provided, however, that such court shall construe and apply the Laws of the State of Rhode Island as provided in Section 17.4(a) above.

(ii) If the Dispute has not been resolved by negotiation as provided above and such Dispute involves claims of less than One Million Dollars ($1,000,000), such Dispute shall be settled solely and finally pursuant to the following procedures:

(1) Either party may submit the Dispute to non-binding mediation. Such mediation shall be conducted by JAMS by a neutral mediator, which shall be selected from a list of 10 potential candidates provided by JAMS' office in New York City (none of whom work or reside in Rhode Island or California, or any State contiguous to either of the foregoing). If complete agreement cannot be reached within 45 calendar days of submission to mediation, any remaining issues will be resolved by binding arbitration as provided below.

(2) If the Dispute has not been resolved by mediation as provided above, then either party may submit the Dispute to binding arbitration. Such arbitration shall be conducted by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, by one neutral arbitrator, which shall be selected from a list of 10 potential candidates provided by JAMS' office in New York City (none of whom work or reside in Rhode Island or California, or any State contiguous to either of the foregoing). Unless otherwise agreed by the parties, the arbitration shall be held in Providence, Rhode Island. In conducting such arbitration, the arbitrator shall be bound to adhere to the Laws of the State of Rhode Island, as well as the precedents established by decisions of the state courts of Rhode Island. The award made by the arbitrator shall be final and binding upon the parties thereto and the subject matter, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The arbitrator shall not have the authority to award punitive or exemplary damages. The costs and fees of the arbitration shall be borne responsible for its own attorneys' fees; provided, however, that the prevailing party in any such arbitration shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs and expenses (including, without limitation arbitration fees) incurred in connection with the arbitration to the extent such recovery is permitted by the Law(s) governing the claim(s) asserted. Notwithstanding anything in this Section 17.4(b)(ii) to the contrary, either party shall be entitled to seek enforcement of the

arbitrator's final rulings, and to pursue injunctive relief, in a court of competent jurisdiction in the State of Rhode Island.

(c) Waiver of Trial by Jury or Judge. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR, IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY OR A JUDGE. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY OR JUDGE ARISING FROM ANY SOURCE INCLUDING, BUT NOT LIMITED TO, THE CONSTITUTION OF THE UNITED STATES OR ANY STATE THEREIN, COMMON LAW OR ANY APPLICABLE STATUTE OR REGULATIONS. EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY OR JUDGE.

17.5 Specific Performance. Notwithstanding anything to the contrary contained herein, each party acknowledges and agrees that the non-breaching parties would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by a party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which the non-breaching parties may be entitled, at law or in equity, they shall be entitled to enforce any provision of this Agreement by seeking, from a court of competent jurisdiction in the State of Rhode Island, a decree of specific performance and temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

17.6 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Members, and their respective heirs, legal representatives, successors and permitted assigns; provided, however, that nothing contained herein shall negate or diminish the restrictions set forth in Articles XIII or XIV hereof.

17.7 Construction. Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member. The failure by any party to specifically enforce any term or provision hereof or any rights of such party hereunder shall not be construed as the waiver by that party of its rights hereunder. The waiver by any party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

17.8 Time. Time is of the essence with respect to this Agreement.

17.9 Waiver of Partition. Notwithstanding any statute or principle of Law to the contrary, each Member hereby agrees that, during the term of the Company, it shall have no right (and hereby waives any right that it might otherwise have had) to cause any Company property to be partitioned and/or distributed in kind.

17.10 Entire Agreement. This Agreement, together with the Purchase Agreement, contain the entire agreement among the Members relating to the subject matter hereof, and all prior agreements relative hereto that are not contained herein are terminated.

17.11 Amendments. Except as otherwise expressly provided in this Section 17.11, amendments or modifications may be made to this Agreement only by setting forth such amendments or modifications in each document receiving Approval of the Board, and any alleged amendment or modification herein that is not so documented and approved shall not be effective as to any Member. The Manager may, without the approvals set forth in this Section 17.11, amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required connection therewith to the extent necessary to reflect:

(a) a change in the location of the principal place of business of the Company not inconsistent with the provisions of Section 2.3, or a change in the registered office or the registered agent of the Company;

(b) admission of a Member into the Company or termination of any Member's interest in the Company in accordance with this Agreement;

(c) qualification of the Company as a limited liability company under the Laws of any state or that is necessary or advisable in the opinion of the Manager to ensure that the Company will not be treated as an association taxable as a corporation for federal income tax purposes, provided, in either case, such action shall not adversely affect any Member; or

(d) a change that is required or contemplated by this Agreement.

17.12 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable Law. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain among the Members as expressed herein, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by Law.

17.13 Gender and Number. Whenever required by the context, as used in this Agreement, the singular number shall include the plural and the neuter shall include the masculine or feminine gender and vice versa.

17.14 Exhibits. Each Exhibit to this Agreement is incorporated herein for all purposes.

17.15 Additional Documents. Each Member, upon the request of the Manager, agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

17.16 Headings. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any section.

17.17 Counterpart. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute but one document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Members have entered into this Agreement as of the date first written above.

CHARTERCARE HEALTH PARTNERS

By:_____
Name:_____
Title:_____

PROSPECT EAST HOLDINGS, INC.

By:_____
Name:_____
Title:_____

PROSPECT CHARTERCARE, LLC

By:_____
Name:_____
Title:_____

EXHIBIT A
TO
AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
PROSPECT CHARTERCARE, LLC

Allocations of Profit and Loss and Other Tax Matters

ARTICLE 1
DEFINITIONS

Section 1.1 Definitions. The following definitions shall be applicable in this Exhibit A and as used in the Agreement:

(a) Adjusted Capital Account Deficit.

"Adjusted Capital Account Deficit" shall mean with respect to any Member, the deficit balance, if any, in such Member's Section 704 Capital Account as of the end of any relevant fiscal year, after giving effect to the following adjustments:

(i) credit to such Section 704 Capital Account any amount that such Member is obligated to restore to the Company under Section 1.704-1(b)(2)(ii)(c) of the Regulations, and any addition thereto pursuant to the next to last sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations;

(ii) debit to such Section 704 Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations:

This definition is intended to comply with the provisions of Sections 1.704-1(b)(2)(ii)(d) and 1.704-2 of the Regulations and shall be interpreted consistently with those provisions.

(b) Adjusted Net Income or Loss.

"Adjusted Net Income Or Loss" for any fiscal year (or portion thereof) shall mean the excess (or deficit) of (x) the Gross Income for such period (not including Gross Income (if any) allocated during such period pursuant to Sections 3.1(a), 3.1(b) and 3.1(c) hereof) over (y) the Deductible Expenses for such period (not including Deductible Expenses (if any) allocated during such period pursuant to Sections 3.1(d) and 3.1(e) hereof) with the following modifications:

(i) Any item of Company profit that is exempt from federal income tax and not otherwise taken into account in computing Adjusted Net Income or Loss pursuant to this Section 1.1(b) shall be treated as additional Gross Income and, if not otherwise allocated pursuant to Section 3.1(a), 3.1(b) or 3.1(c) hereof, added to the amount otherwise calculated as Adjusted Net Income or Loss under Section 1.1(b); and

(ii) Any Company expenditure that is described in Section 705(a)(2)(B) of the Code (relating to Company expenditures that are not deductible for federal income tax purposes in computing taxable income and not properly chargeable to capital), or treated as so described pursuant to Section 1.704-1(b)(2)(iv)(i) of the Regulations, and not otherwise taken into account in computing Adjusted Net Income Or Loss pursuant to this Section 1.1(b) shall be treated as an additional Deductible Expense and, if not otherwise allocated pursuant to Section 3.1(d) or 3.1(e) hereof, subtracted from the amount Otherwise calculated as Adjusted Net Income Or Loss under this Section 1.1(b).

(c) Agreed Value.

"Agreed Value" of any property contributed to the capital of the Company shall mean the fair market value of such property at the time of contribution determined without regard to the amount of liabilities to which such property is subject (as agreed to in writing by the Members without regard to Section 7701(g) of the Code).

(d) Book Basis.

The initial "Book Basis" of any Company property shall be equal to the Company's initial adjusted tax basis in such property; provided, however, that the initial "Book Basis" of any Company property contributed to the capital of the Company shall be equal to the Agreed Value of such property. Effective immediately after giving effect to the allocations of profit and loss, as computed for book purposes, for each fiscal year under Section 3.1 hereof, the Book Basis of each Company property shall be adjusted downward by the amount of Book Depreciation allowable to the Company for such Fiscal Year with respect to such property. In addition, effective immediately prior to any Revaluation Event, the Book Basis of each Company property shall be further adjusted upward or downward, as necessary, so as to equal the fair market value of such property at the time of such Revaluation Event (as agreed to in writing by the Members taking Section 7701(g) of the Code into account (i.e., such value shall not be agreed to be less than the amount of Nonrecourse Liabilities to which such property is subject)).

(e) Book Depreciation.

The amount of "Book Depreciation" allowable to the Company for any fiscal year with respect to any Company property shall be equal to the product of (1) the amount of Tax Depreciation allowable to the Company, for such year with respect to such property, multiplied by (2) a fraction, the numerator of which is the property's Book Basis as of the beginning of such year (or the date of acquisition if the Property is acquired during such year) and the denominator of which is the property's adjusted tax basis as of the beginning of such year (or the date of acquisition if the property is acquired during such year). If the denominator of the fraction described in clause (2) above is equal to zero, the amount of "Book Depreciation" allowable to the Company for any Fiscal Year with respect to the Company property in question shall be determined under any reasonable method selected by the Manager.

(f) Book Gain Or Loss.

"Book Gain Or Loss" realized by the Company in connection with the disposition

of any Company property shall mean the excess (or deficit) of (1) the amount realized by the Company in connection with such disposition (as determined under Section 1001 of the Code) over (2) the Book Basis of such property at the time of the disposition.

(g) Book/Tax Disparity Property.

"Book/Tax Disparity Property" shall mean any Company property that has a Book Basis which is different from its adjusted tax basis to the Company. Thus, any property that is contributed to the capital of the Company by a Member shall be a "Book/Tax Disparity Property" if its Agreed Value is not equal to the Company's initial tax basis in the property. In addition, once the Book Basis of a Company property is adjusted in connection with a Revaluation Event to an amount other than its adjusted tax basis to the Company, the property shall thereafter be a "Book/Tax Disparity Property."

(h) Capital Transaction.

"Capital Transaction" shall mean (1) any transaction pursuant to which the Company borrows funds, all or part; of the Company's properties are sold, condemned, exchanged, abandoned or otherwise disposed of, insurance proceeds or other damages are recovered by the Company or (2) any other transaction which, in accordance with generally accepted accounting principles; is considered capital in nature (including, without limitation, any transaction that is entered into in connection with,, or results in, the Liquidation of the Company).

(i) Company Minimum Gain.

"Company Minimum Gain" shall mean the amount of Company "minimum gain" that is computed strictly in accordance with the principles of Section 1.704-2(d)(1) of the Regulations, A Member's share of such "Company Minimum Gain" shall be calculated in accordance with the provisions of Section 1.704-1(g) of the Regulations.

(j) Deductible Expenses.

"Deductible Expenses" for any fiscal year (or portion thereof) shall mean all items, as calculated for book purposes, which are allowable as deductions to the Company for such period under Federal income tax accounting principles (including Book Depreciation, but excluding any expense or deduction attributable to a Capital Transaction).

(k) Economic Risk Of Loss.

"Economic Risk Of Loss" borne by any Member for any Company liability shall mean the aggregate amount of economic risk of loss that such Member and all Related Persons to such Member are treated as bearing with respect to such liability pursuant to Section 1.752-2 of the Regulations.

(l) Gross Income.

"Gross Income" for any Fiscal Year (or portion thereof) shall mean the gross

income derived by the Company from all sources (other than from capital contributions and loans to the Company and other than from a Capital Transaction) during such period, as calculated for book purposes in accordance with Federal income tax accounting principles.

(m) Liquidation.

"Liquidation" of a Member's Units or other interest in, the Company shall mean and be deemed to occur upon the earlier of (1) the date upon which the Company is terminated under Section 708(b)(1) of the Code, (2) the date upon which the Company ceases to be a going concern (even though it may continue in existence for the limited purpose of winding up its affairs, paying its debts arid distributing any remaining Company properties to the Members) or (3) the date upon which there is a liquidation of the Member's Units or other interest in the Company (but the Company is not terminated) under Section 1.761-1(d) of the Regulations. "Liquidation" of the Company shall mean and be deemed to occur upon the earlier of (a) the date upon which the Company is terminated under Section 708(b)(1) of the Code or (b) the date upon which the Company ceases to be a going concern (even though it may continue in existence for the limited purpose of winding up its affairs, paying its debts and distributing any remaining Company properties to the Members).

(n) Member Nonrecourse Debt Minimum Gain.

"Member Nonrecourse Debt Minimum Gain" shall mean an amount, with, respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result, if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i) of the Regulations.

(o) Member Nonrecourse Debt.

"Member Nonrecourse Debt" shall mean any Company liability that is treated as a "partner nonrecourse debt" under Section 1.704-2(b)(4) of the Regulations.

(p) Member Nonrecourse Deductions.

"Member Nonrecourse Deductions" shall mean any and all items of Book Depreciation and other Deductible Expenses that are treated as "partner nonrecourse deductions" under Section 1.704-2(i)(2) of the Regulations

(q) Nonrecourse Deductions.

"Nonrecourse Deductions" shall mean any and all items of Book Depreciation and other Deductible Expenses that are treated as "nonrecourse deductions" under Section 1.704-2(c) of the Regulations.

(r) Nonrecourse Liability.

"Nonrecourse" Liability" shall mean any Company liability treated as a "nonrecourse liability" under Section 1.704-2(b)(3) of the Regulations. Subject to the foregoing sentence, "Nonrecourse Liability" shall mean any Company liability (or portion thereof) for

which no Member bears the Economic Risk Of Loss.

(s) Recourse Debt.

"Recourse Debt" shall mean any Company liability (or portion thereof) that is neither a Nonrecourse Liability nor a Member Nonrecourse Debt.

(t) Related Person.

"Related Person" shall mean, as to any Member, any person who is related to such Member (within the meaning of Section 1.752-4(b) of the Regulations).

(u) Revaluation Event.

"Revaluation Event" shall mean any of the following occurrences: (1) the contribution of money or other property (other than a de minimis amount) by a new or existing Member to the capital of the Company as consideration for the issuance of additional Units or other interest in the Company; (2) the distribution of money or other property (other than a de minimis amount) by the Company to a retiring or continuing Member as consideration for Units or other interest in the Company; or (3) the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations (other than pursuant to Section 708(b)(1)(B) of the Code); provided, however, under no circumstances shall the issuance of Units pursuant to Section 13.3 of the Agreement constitute a Revaluation Event; and provided further, that the occurrence of an event described in clause (1) or (2) above shall not constitute Revaluation Event if the Board of Directors reasonably determines that it is not necessary to adjust the Book Bases of the Company's assets or the Members' Capital Accounts in connection with the occurrence of any such event.

(v) Section 704 Capital Account.

"Section 704 Capital Account" shall have the meaning assigned to such term in Article 2 of this Exhibit A.

(w) Tax Depreciation.

"Tax Depreciation" for any Fiscal Year shall mean the amount of depreciation, cost recovery or other amortization deductions allowable to the Company for Federal income tax purposes for such year.

(x) Tax Items.

"Tax Items" shall mean, with respect to any property, all items of profit and less (including Tax Depreciation) recognized by or allowable to the Company with respect to such property, as computed for Federal income tax purposes.

(y) Unrealized Book Gain Or Loss.

"Unrealized Book Gain Or Loss" with respect to any Company property shall

mean the excess (or deficit) of (1) the fair market value of such property (as agreed to in writing by the Members taking Section 7701(g) of the Code into account (i.e., such value shall not be agreed to be less than the amount of Nonrecourse Liabilities to which such property is subject)), over (2) the Book Basis of each property.

ARTICLE 2
SECTION 704 CAPITAL ACCOUNTS

A "Section 704 Capital Account" (herein so called) shall be determined and maintained for each Member throughout the full term of the Agreement in accordance with Article IV of the Agreement.

ARTICLE 3
ALLOCATIONS OF PROFIT AND LOSS

Section 3.1 Allocation of Book Items.

Subject to the provisions of Section 3.3 of this Exhibit A, all items of profit and loss realized by the Company during each fiscal year shall be allocated among the Members (after giving effect to all adjustments attributable to all contributions and distributions of money and property effected during such year) in the manner prescribed in this Section 3.1.

- Pursuant to Section 1.704-2(f) of the Regulations (relating to minimum gain chargebacks), if there is a net decrease in Company Minimum Gain for such year (or if there was a net decrease in Company Minimum Gain for a prior fiscal year and the Company did not have sufficient amounts of Gross Income and Book Gain during prior years to allocate among the Members under this Section 3.1(a)), then items of Gross Income and Book Gain shall be allocated, before any other allocation is made pursuant to the succeeding provisions of this Section 3.1 for such year, to each Member in an amount equal to such Member's share of the net decrease in such Company Minimum Gain.

- Pursuant to Section 1.704-2(i)(4) of the Regulations (relating to minimum gain chargebacks), if there is a net decrease in Member Nonrecourse Debt Minimum Gain with respect to a Member Nonrecourse Debt for such year (or if there was a net decrease in such Member Nonrecourse Debt Minimum Gain for a prior fiscal year and the Company did not have sufficient amounts of Gross' Income and Book Gain during prior years to allocate among the Members under this Section 3.1(b)), then items of Gross Income and Book Gain shall be allocated, before any other allocation is made pursuant to the succeeding provisions of this Section 3.1 for such year, to each Member with a share of such Member Nonrecourse Debt Minimum Gain as of the first day of such year in an amount equal to` such Member's share of the net decrease in such Member Nonrecourse Debt Minimum Gain.

- Pursuant to Section 1.704-1(b)(2)(ii)(d) of the Regulations (relating to "qualified income offsets"), if a transaction described in Section 1.704-

1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations occurs unexpectedly, items of Company income and gain shall be allocated, before any other allocation is made pursuant to the succeeding provisions of this Section 3.1 for such year, among each Member with an Adjusted Capital Account Deficit in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 3.1(c) shall be made only if, and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made as if this Section 3.1(c) were not in this Exhibit A.

- All Member Nonrecourse Deductions attributable to a Member Nonrecourse Debt shall be allocated among the Members bearing the Economic Risk Of Loss for such debt; provided, however, that if more than one Member bears the Economic Risk Of Loss for such debt, the Member Nonrecourse Deductions attributable to such debt shall be allocated to and among such Members, pro rata in the same proportion that their Economic Risks Of Loss bear to one another.

- All Nonrecourse Deductions shall be allocated among the Members, pro rata in accordance with their respective Sharing Percentages.

- Any Adjusted Net Income realized by the Company for such year and, except as provided in Section 3.1(h) hereof, any Book Gain derived from a Capital Transaction occurring during such year and not allocated pursuant to Sections 3.1(a), 3.1(b), 3.1(c), 3.1(d), and 3.1(e) hereof, shall be allocated among the Members, as necessary, so as to cause the balances in their respective Section 704 Capital Accounts to be in the same ratio to one another as are their Sharing Percentages, with all remaining amounts of Adjusted Net Income and Book Loss to be allocated to the Members, pro rata in accordance with their respective Sharing Percentages.

- Any Adjusted Net Loss realized by the Company for such year and, except as provided in Section 3.1(h) hereof, any Book Loss derived from a Capital Transaction occurring during such year and not allocated pursuant to Sections 3.1(a), 3.1(b), 3.1(c), 3.1(d), and 3.1(e) hereof shall be allocated among the Members, as necessary, so as to cause the balances in their respective Section 704 Capital Accounts to be in the same ratio to one another as are their Sharing Percentages, with all remaining amounts of Adjusted Net Loss and Book Loss to be allocated to the Members pro rata in accordance with their respective Sharing Percentages.

- Book Gain Or Loss derived from a Capital Transaction that is entered into in connection with, or results in, the Liquidation of the Company shall be allocated among the Members as follows in the following order of priority (after giving effect to all adjustments attributable to allocations of items of Company profit and loss made pursuant to the preceding provisions of this Section 3.1 for such year and after giving effect to all adjustments attributable to contributions and distributions

or money and property effected prior to such determination).

- Book Gain remaining after the allocations provided for in Sections 3.1(a), 3.1(b) and 3.1(c) hereof shall be allocated as follows and in the following order of priority:

(A) First: Book Gain equal to the deficit balance (if any) in each Member's Capital Account shall be allocated to such Member;

(B) Second: An amount of Book Gain shall be allocated next among the Members to the least extent necessary to cause their positive Section 704 Capital Account balances to equal their respective Sharing Percentages; and

(C) Third: All remaining amounts of Book Gain shall be allocated among the Members pro rata in accordance with their respective Sharing Percentages.

- Book Loss (if any) shall he allocated as follows and in the following order of priority:

(A) First: Book Loss shall be allocated to the Members to the least extent necessary to cause the positive balances in their Section 704 Capital Accounts to be in the same proportion to one another as are their respective Sharing Percentages.

(B) Second: All remaining amounts of Book Loss shall be allocated among the Members pro rata in accordance with their respective Sharing Percentages.

- For purposes of determining the nature (as ordinary or capital) of any Company profit allocated among the Members for Federal income tax purposes pursuant to this Section 3.1, the portion of such profit required to be recognized as ordinary income pursuant to Sections 1245 and/or 1250 of the Code shall be deemed to be allocated among the Members in the same proportion that they were allocated and they claimed the Book Depreciation deductions, or basis reductions, directly or indirectly giving rise to such treatment under Sections 1245 and/or 1250 of the Code.

- The parties intend that the foregoing allocation provisions of this Section 3.1 shall produce Section 704 Capital Account balances of the Members that will permit liquidating distributions that are made in accordance with final Capital Account balances under Section 16.3 of the Agreement to be made to the Members pro rata in accordance with their respective Sharing Percentages. To the extent that the allocation provisions of this Section 3.1 would fail to cause the Members' final Capital Account balances to be in such ratio, (i) such provisions shall be amended by the Members if and to the extent necessary to produce such result and (ii) taxable income and taxable loss of the Company for prior open years (or items of Gross income and Deductible Expenses of the Company for such years) shall be reallocated among the Members to the extent it is not possible to achieve such result with allocations of items of income (including Gross Income) and Deductible

Expenses for the current year and future years. This Section 3.1(l) shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority.

Section 3.2 Allocation of Tax Items.

(z) Except as otherwise provided in the succeeding provisions of this Section 3.2, each Tax Item shall be allocated among the Members in the same manner as each correlative item of profit or loss, as calculated for book purposes, is allocated pursuant to the provisions of Section 3.1 hereof.

(aa) The Members hereby acknowledge that all Tax Items in respect of any Book/Tax Disparity Property owned by the Company are required to be allocated among the Members in the same manner as under Section 704(c) of the Code (as specified in Sections 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(2)(iv)(g) of the Regulations) and that the principles of Section 704(c) of the Code require that such Tax Items must be shared among the Members so as to take account of the variation between, the adjusted tax basis and Book Basis of each such Book/Tax Disparity Property. Thus, notwithstanding anything in Sections 3.1 or 3.2(a) to the contrary, the Members' distributive shares of Tax Items in respect of each Book/Tax Disparity Property shall be separately determined and allocated among the Members in accordance with the principles of Section 704(c) of the Code. For purposes of making tax allocations pursuant to Section 704(c) of the Code (including allocations pursuant to Section 1.704-1(b)(2)(iv)(f) if a Revaluation Event occurs) the Manager shall determine the method or methods to be used by the Company.

Section 3.3 Allocations Of Profit And Loss And Distributions In Respect Of Interests Transferred.

(bb) If any Unit or other interest in the Company is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any Fiscal Year, each item of Adjusted Net Income Or Loss, Book Gain Or Loss and other Company profit and loss for such year shall be divided and allocated among the Members in question by taking account of their varying interests in the Company during such year on a daily, monthly or other basis, as determined by the Manager using any permissible method under Section 706 of the Code and the Regulations thereunder,

(cc) Distributions of Company in respect of a Unit or other interest in the Company shall be made only to the persons or entities who, according to the Company's books and records, are the holders of record of the Units or other interests in the Company in respect of which such distributions are made on the actual date of distribution. Neither the Company nor the Manager shall incur any liability for making distributions it accordance with the provisions of the preceding sentence, whether or not the Company or the Manager has knowledge or notice of any transfer or purported transfer of ownership of any Unit or other interest in the Company.

(dd) Notwithstanding any provision above to the contrary, Book Gain Or Loss (and taxable gain or loss to the extent permitted by the Code and Regulations) realized in connection with a sale or other disposition of any Company properties shall be allocated solely

among the parties owning Units or other interests in the Company as of the date such sale or other disposition occurs.

EXHIBIT B
TO
AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
PROSPECT CHARTERCARE, LLC

Capital Accounts, Units and Sharing Percentages

NAME OF MEMBER	INITIAL CAPITAL ACCOUNT	INITIAL UNITS	INITIAL SHARING PERCENTAGE	ADJUSTED CAPITAL CONTRIBUTION*
CharterCARE Health Partners 825 Chalkstone Avenue Providence, Rhode Island 02908	$16.76 M	16,760	15%	$16.76M
Prospect East Holdings, Inc. 10780 Santa Monica Boulevard Suite 400 Los Angeles, California 90025	$45.00 M	95,000	85%	$95.00M*

* Assumes full funding of Long-Term Capital Commitment

EXHIBIT C
TO
AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
PROSPECT CHARTERCARE, LLC

Conflicts of Interest Policy

(as per Section 3.4)

CharterCARE Health Partners *Policy & Procedure*	Title:	Number: 4.1
Coverage: **All Designated Persons as Defined in This Policy**	CharterCARE HEALTH PARTNERS **Conflict of Interest Disclosure Policy**	Source: Board of Trustees Approved: Board of Trustees

Date Issued:	Date Effective:	Supersedes:	Distribution:	
09/08/2011	09/08/2011	01/08/2009	Designated Persons	Page 1 of 9

I. POLICY ADOPTION

CharterCARE Health Partners including its affiliates (the "Corporation"), is committed to pursuing its mission and to conducting its affairs in accordance with high professional and ethical standards which include the avoidance of detrimental conflicts of interest. The Corporation believes that avoiding such conflicts is imperative in preserving the public's trust. Persons who agree to serve the Corporation should not use their position for personal gain, or to expose the Corporation to potential harm as a result of conflict of interest.

This Conflict of Interest Policy (the "Policy") is adopted for the Corporation in order better to assure: (i) compliance with the provisions of the Bylaws of the Corporation (the "Bylaws") that pertain to Conflict of Interest and Competitor Relationships; (ii) a uniform conflict of interest policy for Designated Persons (as defined below) and (iii) effective communication and decision making regarding potential conflicts of interest. This Policy is intended to supplement, but not replace, any applicable federal or state laws governing conflicts of interest applicable to nonprofit and charitable corporations or the fiduciary duties of corporate officers and trustees.

The Policy applies to Designated Persons as defined below and deliberations by the Board of Trustees and its committees or sub-committees, the Medical Executive Committee and its committees or subcommittees, and any other committee or task force that the Board or Finance, Audit, Compliance Committee shall designate from time to time.

II. GENERAL PRINCIPLES

Any Designated Person has an obligation to: (i) protect decisions involving the Corporation against conflicts of interest; (ii) maintain the confidentiality of information obtained through service to the Corporation; (iii) assure that the Corporation 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 Corporation or in which the Corporation 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 Corporation or its property. In their dealings with and on behalf of the Corporation, 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 Corporation 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 Corporation 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 hereinafter defined.

Failure to comply with this 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 Corporation, 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 member, either in an elected or ex officio capacity, of the Board of Trustees of the Corporation (a "Trustee," the "Board"), the Trustee shall be deemed to have resigned.

III. DEFINITIONS

A. **"Designated Persons"** shall include the following:

1. Members of the Board of Trustees of the Corporation;
2. Members of administration, senior management, directors, and managers of the Corporation;
3. Chief and/or President of the Medical Staff, Medical Executive Committee, Medical Staff Departmental Chairmen, Divisional Chiefs, other physicians serving as elected officers or in Medical Staff leadership positions who have the ability to influence the use of Corporation resources;
4. Members of the Medical Staff holding a medical administrative position with the Corporation or engaged by the Corporation for compensation to render professional services;
5. Physicians with the authority to select or influence the purchase of costly implant devices and/or supplies, as recommended by senior management and/or the Board or Board-delegated Committee;
6. Members of the Pharmacy and Therapeutics Committee, Value Analysis Team, and Materials Management Department with the authority to purchase, to select or to influence the purchase of goods or services on behalf of the Corporation, ; and
7. Any other person(s) and/or staff member(s) whom the Board or Board-delegated Committee may from time to time designate.

B. **"Business Entity"** means any publicly or privately held corporation, partnership, sole proprietorship, firm, franchise association, organization, holding company, joint stock company, receivership, business or real estate trust or any other legal entity organized on a for-profit basis or not-for-profit basis, but excluding the Corporation.

C. **"Compensation"** means anything of value whether in the form of salary, honoraria, forgiveness of debt, gifts, interest in real or personal property, rent or any other form of compensation in cash or in kind.

D. **"Entity"** shall mean any corporation, individual, partnership or other business entity.

E. **"Financial Interest"** includes without limitation: (1) an ownership or investment interest; (2) a compensation arrangement; or (3) a potential ownership or investment interest or a compensation arrangement with any entity or individual with which the Corporation is negotiating a transaction or arrangement. Financial Interests may be through an ownership or investment interest, or compensation arrangement, and may be held directly or indirectly, for example through an Immediate Family Member or other intermediate entity.

An "ownership or investment interest" may be through equity, debt or other means, e.g., a right of first refusal, but shall not include (i) a combined direct and indirect interest that, when aggregated for the Designated Person and his/her Immediate Family Members, (a) does not exceed a fair market value of $10,000, and (b) does not exceed five percent (5%) of the outstanding shares of voting stock and/or bonds of a publicly traded company; or (ii) any interest in a mutual fund, pensions or other investments over which the person has no control.

"Compensation" includes direct and indirect remuneration that, when aggregated for the Designated Person and his/her Immediate Family Members, does not exceed a fair market value of $10,000 per year, except with respect to gifts, entertainment or other material benefits in which case the applicable annual limit is $250 in the aggregate. Compensation includes without limitation, consulting or employment; gifts, entertainment or other material benefits; royalties or licensing fees, copyrights (whether actual or by contractual right).

A Financial Interest is not necessarily a conflict of interest. Under this Policy a Designated Person who has a Financial Interest has a conflict of interest only based on the criteria and procedures set forth in this Policy.

F. **"Immediate Family"** of a Designated Person means spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren.

G. **"Medical Staff"** means the Medical Staff of any health care facility owned or operated by the Corporation which, for purposes of this Policy, shall include House Staff.

H. **"Related Party"** means any Business Entity:

1. in which a Designated Person or his/her Immediate Family has an Ownership Interest;
2. from which the Designated Person or his/her Immediate Family derives compensation or a consulting fee;
3. in which a Designated Person or his/her Immediate Family serves as an officer or director; or
4. from which a Designated Person or his/her Immediate Family otherwise has a financial interest or directly or indirectly receives financial benefits.

I. **"Staff Member"** means (1) part-time or full-time members of the Medical Staff; (2) other part-time or full-time employees of the Corporation; (3) consultants to the Corporation and (4) members of any Committee of the Corporation, whether designated by senior management or by the Board, who are in a position to influence patient outcomes or business relationships, including without limitation purchasing/contracting decisions, as determined by the Board or Board-delegated Committee.

J. **"Interested Person"** shall mean any Designated Person or member of a Committee or Sub-Committee with Board delegated powers, who has a direct or indirect financial interest.

K. **"Consultant, Consulting"** shall mean the performing of any service as an independent contractor for which any form of remuneration is received. This includes the rendering of advice, providing technical expertise, serving as a speaker or lecturer or evaluating existing or proposed products, etc.

L. **"Organization Doing or Seeking to Do Business with the Corporation"** shall mean any present or potential supplier of products and/or services and will include manufacturers, distributors, purchasing-related organizations or alliances, consulting or accounting firms, employment or travel agencies or any other entity which may be remunerated by the Corporation as a result of a service which it may perform for any of them.

IV. PERMITTED INTERESTED TRANSACTIONS

A. The Corporation may purchase goods or services from or otherwise contract with an Entity in which a Designated Person has a direct or indirect financial interest (a "Designated Person-affiliated entity") provided that a majority of the non-interested Trustees or committee members have determined that:

1. The terms of the transaction are fair and reasonable and competitive with what the Corporation could receive from a non-Designated Person-affiliated entity using reasonable efforts;

2. The transaction is otherwise in the best interest of the Corporation;

3. The nature of the Designated Person's involvement in the Designated Person-affiliated entity has been fully disclosed in accordance with this Policy; and

4. The interested Designated Person has not voted on the transaction at any meeting held to act on the transaction.

B. A Designated Person may take advantage of a personal business opportunity that may be of interest to, competitive with, or impact the interests of, the Corporation if:

1. The Designated Person has fully disclosed the opportunity in accordance with this Policy;

2. The opportunity has not arisen out of any impermissible use of confidential or proprietary information of the Corporation;

3. A majority of the non-interested Trustees or committee members have determined that the Corporation has no present interest in availing itself of the opportunity and that the Designated Person may take advantage of the opportunity.

V. POTENTIAL CONFLICTS

A conflict of interest exists in any instance in which a Designated Person's personal activities or interests conflict with the activities or interests of the Corporation. Although it is impossible to list every circumstance giving rise to a possible conflict of interest, the following will serve as examples of the types of activities which might give rise to such a conflict and which should be reported in a detailed and timely fashion to the President of the Corporation (the "President") or the President's designee or, with respect to Trustees, the Chairman of the Board (the "Chairman") or the Chairman's designee.

A. **OTHER HEALTHCARE AFFILIATIONS**

To serve as a volunteer or paid trustee, director, officer, partner, employee, consultant, agent, or advisor of or to any hospital, medical clinic or healthcare facility or organization not affiliated with the Corporation.

B. **OUTSIDE INTERESTS AND OPPORTUNITIES**

1. To hold, directly or indirectly, a financial interest in any outside company, organization or concern which the Designated Person has reason to believe makes payments to or receives payments from the Corporation (whether on account of goods, loans or other transactions), or which provides services in competition with the Corporation.

2. To compete, directly or indirectly, with the Corporation in the purchase or sale of property or any property right, interest or service.

3. To accept or take advantage of a business opportunity that the Designated Person knows or has reason to know may be of interest to or competitive with the Corporation.

C. **OUTSIDE ACTIVITIES**

1. To render directorial, managerial, or consultative services to, or to engage in any material financial transaction with, any person or concern which does business with, or competes with the Corporation.

2. To render other services in competition with, or to the disadvantage of, the Corporation.

D. **GIFTS AND ENTERTAINMENT**

To accept a gift, entertainment, or other material benefit from any individual or Organization Doing or Seeking to Do Business with the Corporation or is a competitor of the Corporation, under circumstances from which it might be reasonably inferred that such gift, entertainment, or other material benefit was intended to influence or possibly would influence the Designated Person in the performance of his or her duties for the Corporation, except that, in accordance with Section III.E of this Policy, the acceptance of gifts, entertainment and other material benefits of value less than $250 in the annual aggregate shall not be construed as creating a Financial Interest.

E. **INSIDE INFORMATION**

To disclose or use information relating to the Corporation's business, including but not limited to methods of operation and research and product development, for personal profit or advantage, or to divulge confidential information in advance of official authorization of its release.

VI. PROCEDURES

As soon as any potential conflict of interest described above, or any situation as to which a Designated Person may be in doubt, comes to the attention of a Designated Person, full disclosure must be made to (i) the President or the President's designee, (ii) with respect to Trustees, the Chairman or the Chairman's designee, or (iii) with respect to committees, the committee chairman, so as to permit an impartial and objective determination of whether a real or potential conflict of interest exists. The President, Chairman, or committee chair shall consult with the disclosing Designated Person and with such other individuals as he or she may deem appropriate.

A. The Board or committee shall utilize the following procedures regarding any Board or committee discussion or decision of a transaction that may involve or affect a firm, entity or arrangement in which a Designated Person has a Financial Interest or organizational affiliation:

1. Prior to the Board's or committee's consideration of any matter that may involve or affect a firm, entity or arrangement in which a Designated Person has a Financial Interest or organizational affiliation, the Designated Person shall raise with the Board or committee the issue of a potential conflict of interest, and if such Financial Interest has not yet been disclosed pursuant to this Policy, the Designated Person shall provide the Board or committee with sufficient information about the Financial Interest or affiliation to enable the Board or committee to consider fully whether a conflict exists.

2. The Board or committee, in its reasonable discretion, may request of such Designated Person additional details regarding the nature of the Financial Interest or organizational affiliation if the Board or committee determines that such additional information will assist it in the deliberation of whether a conflict of interest exists.

3. If a Designated Person believes that providing a full disclosure as provided in Sections VI.A.1 and/or VI.A.2 above may breach a confidentiality provision to which the Designated Person is bound, such Financial Interest or organizational affiliation shall be deemed automatically to be a conflict of interest.

4. The Designated Person with the potential conflict shall leave the meeting while the remaining members of the Board or committee discuss and vote upon whether a conflict of interest exists. The interested Designated Person(s) may be counted for purposes of a quorum, however.

5. If a conflict of interest is determined to exist, the interested Designated Person shall continue to absent himself/herself from the meeting during the discussion and any vote on the transaction or arrangement; provided, however, that the Board or committee may, by a 2/3 vote of its members (excluding the interested person), waive this requirement, except with respect to a Financial Interest or organizational affiliation that is deemed a conflict pursuant to Section VI.A.3.

6. Approval of the transaction or arrangement shall require a majority of disinterested members of the Board or committee present to determine that the transaction or arrangement is in the Corporation's best interest and for its own benefit, and that it is fair and reasonable to the Corporation.

7. The minutes of Board or committee meetings in which a conflict of interest transaction or arrangement is addressed shall include:

   a. Names of any persons who disclosed or otherwise were found to have a financial interest, the general nature of such, and whether the Board or committee determined there was, in fact, a conflict of interest; and

   b. Names of those present for discussions and votes relating to the transaction or arrangement, the general nature of the discussions (specifically including whether any alternatives existed to the proposed transaction or arrangement and the general nature of such alternatives) and a record of the vote.

B. In addition to making ongoing disclosures of potential conflicts of interest as described above, Designated Persons must make any and all potential conflicts of interest a matter of record through an initial and annual procedure that are outlined below:

1. Within thirty (30) days from the date of becoming a Designated Person, Designated Persons are affirmatively required to disclose all Financial Interests and organizational affiliations that may give rise to an actual or potential conflict of interest, or indicate that no such conflicts of interest exist, using the Conflict of Interest Disclosure Form (the "Disclosure Form") attached hereto and incorporated by reference. The Board or Audit Committee may from time-to-time designate appropriate individuals to receive such Disclosure Forms.

2. Annually, (i) the President or the Chairman of the Board or their designees shall advise each Designated Person in writing of this Policy, provide to the Designated Person a copy of this Policy, and request that each Designated Person complete and submit the completed Disclosure Form.

3. Each Designated Person shall submit the completed Disclosure Forms *within twenty (20) days of receipt* to:

   Kimberly A. O'Connell, Esq.
   Vice President and General Counsel
   CharterCARE Health Partners
   825 Chalkstone Avenue
   Providence, RI 02908

4. The President or the Chairman, or their respective designee, with consultation from the Corporate Compliance Officer, shall review all Disclosure Forms. The Corporation may seek advice from legal counsel on any issue associated with the administration of this Policy. It is understood that these Disclosure Forms shall be maintained by the Corporate Compliance Officer and any request for release of a Disclosure Form shall be made directly to the Corporate Compliance Officer. Disclosure Forms will be used only to the extent necessary for the administration and verification of this Policy and will be kept confidential to the extent allowed by law.

5. At least annually the Board or a designated committee shall review standard relationships with local banks, insurance firms, and other entities serving the Corporation to assure that the relationship is in the best interests of the Corporation and is otherwise consistent with the terms of this Policy.

6. This Policy shall be reviewed annually by the Audit Committee of the Board and each new Designated Person shall be advised of the policy prior to employment or selection as a Designated Person and, prior to assuming a position as a Designated Person, shall be required to file the Disclosure Form in accordance with Section V.B.1 of this Policy.

VII. DESIGNATED PERSON-AFFILIATED VENDORS — RELATIONSHIPS WITH THE CORPORATION

A Designated Person-affiliated vendor providing goods or services to the Corporation, as a condition for doing business with the Corporation, will be advised in writing of its obligation to conduct all business relating to the contract or arrangement whereby it provides such goods or services through the usual channels for administration of the Corporation's contracts, and the interested Designated Person will scrupulously refrain from utilizing his/her position as a Designated Person to negotiate, conduct or arbitrate contractual matters. Infractions of this policy may subject the Designated Person-affiliated vendor with termination of its relationship with the Corporation.

VIII. NOTIFICATION OF VIOLATIONS/ENFORCEMENT

A. If a Designated Person has reasonable cause to believe that another Designated Person has failed to disclose an actual or potential conflict of interest, he/she shall inform the President (or in the case of a non-disclosure relating to the President, to the Treasurer, or, in the case of a Designated Person who is a member of the Board to the Chairman of the Board (or, in the case of a non-disclosure relating to the Chairman, to the Vice-Chairman) of the basis for the belief.

B. Upon receipt of such an allegation, as described in Section VIII.A, a committee of the Board shall be convened to review the matter, with such committee being either a newly established committee or an existing Board committee, such as the Finance, Audit, Compliance Committee, with the authority given to it to review such matter in accordance with this provision. The Committee shall afford the Designated Person the opportunity to explain the alleged failure to disclose and, if appropriate to update his/her Disclosure Form. If after hearing the response of the Designated Person and making such further investigation as may be warranted in the circumstances, the Committee determines that a Designated Person has, in fact, failed to disclose an actual or potential conflict of interest, it shall make such recommendations to the full Board for appropriate disciplinary and corrective action.

C. Failure to comply with this Policy may disqualify a person from serving as a Designated Person or, if already serving as a Designated Person, the Designated Person shall, if an employee, be subject to disciplinary action up to and including dismissal, subject to and in accordance with the terms of any applicable employment or collective bargaining agreement or, if a Trustee, the Trustee shall be subject to removal pursuant to the Bylaws.

APPROVED BY: Board of Trustees
DATE: September 8, 2011

APPROVED BY:

Kimberly A. O'Connell, Esq.
Senior Vice President & General Counsel

Joel K. Goloskie, Esq.
Deputy General Counsel
Director of Compliance,
Privacy & Ethics

Attachment A:

Conflict of Interest Questionnaire and Disclosure Form

Attachment A

CONFLICT OF INTEREST QUESTIONNAIRE AND DISCLOSURE FORM FISCAL YEAR

Please Return to: Kimberly A. O'Connell, Esq., Vice President and General Counsel

I hereby affirm that a I have received a copy of the Conflict of Interest Policy ("Policy") of CharterCARE Health Partners and its affiliates (the "Corporation") requiring disclosure of certain interests, that I have read and understand the Policy, and that I agree to comply with its terms. In addition I hereby affirm my understanding that the Corporation is a charitable organization and that, in order for it to maintain its federal tax exemption, it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

Consistent with the purposes and intentions of the Policy, I hereby state that I or members of my immediate family (spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren) have the following affiliations or interests and have taken part in or are now taking part in the following transactions that, considered in conjunction with my position with or relation to the Corporation, might possibly constitute a conflict of interest (***state "none" where applicable***):

1. **Business Affiliations.** Please list below any affiliations you, or any member of your immediate family have as a trustee, director, officer, partner, employee, consultant, agent, or advisor of any person, firm or organization which, to the best of your information and belief, is a supplier of goods or services to the Corporation, and briefly describe the type of goods or services so supplied. ***If none, so state:***

_____

_____

_____

2. **Other Healthcare Affiliations.** Please list below the name and address of any healthcare company or facility which you or any member of your immediate family serve as a volunteer or paid director, trustee, officer, partner, employee, consultant, employee or agent or advisor and the capacity in which you so serve. ***If none, so state:***

_____

_____

_____

3. **Outside Interests:**

A. Identify any interest or investment, of yourself or your immediate family, that might be deemed a position of financial interest in any outside concern, as described in Section V.B.1 of the Policy. ***If none, so state:***

B. Identify any purchase or sale of property or property right, interest or service, made or proposed to be made by yourself or your immediate family, that might be deemed to have been made in competition with the Corporation, as described in Section V.B.2 of the Policy. ***If none, so state:***

C. Identify any business opportunity that you or your immediate family know or have reason to know may be of interest to or competitive with the Corporation as described in Section V.B.3 of the Policy. ***If none, so state:***

D. Identify any relationship, through family or business, you have with any officers, directors, trustees, or employees of the Corporation. ***If none, so state:***

E. Identify any relationship, through family or business, you have with any independent contractors who received over $50,000 for the year from the Corporation. ***If none, so state:***

4. **Outside Activities:**

A. Identify any instance in which you or any member of your immediate family has rendered or are rendering directive, managerial, or consultative services to any outside concern that does business with, or competes with, the services of the Corporation as described in Section V.A of the Policy. ***If none, so state***:

B. Identify any instance in which you or any member of your immediate family has rendered or may render services that might be deemed to be in competition with, or to the disadvantage of, the Corporation, as described in Section V.C.2 of the Policy. ***If none, so state***:

5. **Gifts, Gratuities and Entertainment:**

I hereby certify that neither I nor any member of my immediate family has accepted, are accepting or will accept any gift, gratuity, or entertainment from any outside concern that does, or is seeking to do business with or is a competitor of, the Corporation, except as listed below. ***If none, so state***:

6. **Inside Information:**

I hereby certify that neither I, nor any member of my immediate family, has disclosed or used, is disclosing or using, or will disclose or use information relating to the Corporation's business, except as listed below. ***If none, so state***:

7. Other:

List any other activities in which you or your immediate family are engaged that might be regarded as constituting a potential conflict of interest with the Corporation. ***If none, so state:***

I hereby agree to report promptly to the President, or the President's designee or, if I am a member of the Board of Trustees of the Corporation, to the Chairman of the Board or the Chairman's designee, any situation or transaction that may arise during the forthcoming year that constitutes a potential conflict of interest.

Printed Name:

Signature: **Date:**

Please return ***within twenty (20) days*** of receipt to:

Kimberly A. O'Connell, Esq.
Vice President and General Counsel
CharterCARE Health Partners
825 Chalkstone Avenue
Providence, RI 02908

Exhibit B

Form of Quitclaim Deed

See Attached

EXHIBIT B

FORM OF QUITCLAIM DEED

Prepared by and return to:
Nixon Peabody LLP
One Citizens Plaza, Suite 500
Providence, RI 02903
Attention: James D. Kerouac, Esq.

QUITCLAIM DEED

_____, a Rhode Island corporation, with an address at c/o CharterCARE Health Partners, 825 Chalkstone Avenue, Providence, RI 02908 ("Grantor"), for consideration of _____Dollars and __/100 ($_____) paid, grants to _____, a Rhode Island limited liability company, with an address of c/o Prospect CharterCare, LLC, 825 Chalkstone Avenue, Providence, RI 02908, Attention: Kenneth Belcher, Chief Executive Officer ("Grantee"), with QUITCLAIM COVENANTS, the following parcel:

That certain lot or parcel of land with all the buildings and improvements thereon, located at _____, in the [City of Providence/Town of North Providence], Providence County, State of Rhode Island, being more particularly described on Exhibit A attached hereto and made a part hereof (the "Property").

Grantor hereby covenants that it is a resident of Rhode Island and is therefore exempt from R.I.G.L. 44-30-71.3.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Grantor has caused this Quitclaim Deed to be executed as of this _____ day of _____, 2013, by its proper officer duly authorized.

_____

By:_____
Name:_____
Title:_____

STATE OF _____
COUNTY OF _____

In _____, on this _____ day of _____, 2013, before me personally appeared _____, the _____ of _____, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of _____, and s/he acknowledged said instrument, by her/him executed to be her/his free act and deed in said capacity and the free act and deed of _____.

_____
NOTARY PUBLIC
My Commission Expires:_____

14621869.1

Exhibit A

Legal Description of the Property

Exhibit C

Form of Tenant Estoppel Certificate

See Attached

EXHIBIT C

FORM OF TENANT ESTOPPEL CERTIFICATE

To: Prospect CharterCare, LLC, a Rhode Island limited liability company, and [INSERT ENTITY PURCHASING REAL ESTATE] (collectively "Buyer")

The undersigned hereby certifies and agrees as follows:

1. The undersigned is the tenant (the "Tenant") under that certain _____ (the "Lease") by and between Tenant and _____ (such party, together with its successors and assigns hereinafter collectively referred to as the "Landlord") dated _____, with respect to the lease of space for antennas and other mobile communications facilities in or on the building located at _____, [City of Providence/Town of North Providence], Providence County, State of Rhode Island (the "Building") .

2. The Lease commenced on _____.

3. The Lease shall expire on _____. Tenant has the option to extend the term of the Lease for _____ (__) additional _____ (__) year terms by giving Landlord at least _____ (__) months' prior written notice.

4. Tenant is occupying the entire premises demised to it under the Lease (the "Premises").

5. Tenant has not paid rent or additional rent beyond the current month and agrees not to pay rent or additional rent more than one month in advance at any time.

6. Rent payable in the amount of $_____ per month has been paid for the month of _____, 201_.

7. There are no defenses to or offsets against the enforcement of the Lease or any provision thereof by the Landlord.

8. A security deposit in the amount of $_____ has been made pursuant to the terms of the Lease.

9. Landlord has not agreed to grant Tenant any free rent or rent rebate or to make any contribution to tenant improvements. Landlord has not agreed to reimburse Tenant for or to pay Tenant's rent obligation under any other lease.

10. Tenant has not advanced any funds for or on behalf of Landlord for which Tenant has a right to deduct from or offset against future rent payments.

11. The Lease is in full force and effect without default thereunder by Tenant or, to the best knowledge of Tenant, Landlord.

12. The Lease is the entire agreement between the Landlord and Tenant pertaining to the Premises.

13. The Lease has not been amended, modified or supplemented except as set forth in Paragraph 1 above.

14. Tenant does not have any purchase option, right of first refusal, right of first offer or similar right with respect to the Building or the land on which it is located. Tenant does not have any right or option for additional space in the Building.

Tenant acknowledges that Buyer will rely on this Certificate in in connection with the purchase of the Building and the land on which the Building is located. This Certificate may also be relied upon by any lender making a loan to be secured by the Building and/or the land on which the Building is located.

This Certificate has been executed on the _____ day of _____, 2013.

_____

By:_____
Name:_____
Title:_____

Exhibit E

Form of Leasehold Assignment and Assumption Agreement

See Attached

EXHIBIT E

FORM OF LEASEHOLD ASSIGNMENT AND ASSUMPTION AGREEMENT

This LEASEHOLD ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is made this _____ day of _____, 2013, by _____, a Rhode Island corporation, with an address at c/o CharterCARE Health Partners, 825 Chalkstone Avenue, Providence, RI 02908 ("Assignor"), to and for the benefit of _____, a Rhode Island limited liability company, with an address of c/o Prospect CharterCare, LLC, 825 Chalkstone Avenue, Providence, RI 02908, Attention: Kenneth Belcher, Chief Executive Officer ("Assignee").

WHEREAS, Assignor is the Tenant under that certain _____ (the "Lease") dated as of _____, 20__ by and between Assignor and _____, a _____ (the "Landlord"), pursuant to which Assignor leased _____ located at _____, Rhode Island (the "Premises");

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement dated _____, 2013 (the "Purchase Agreement"), pursuant to which Assignee shall acquire certain assets of Assignor, including Assignor's right, title and interest in the Lease;

WHEREAS, pursuant to the terms and conditions of the Purchase Agreement, Assignor desires to assign the Lease to Assignee and Assignee desires to assume the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Effective as of the Effective Time (as defined in the Purchase Agreement), Assignor hereby assigns, sells, grants, conveys, transfers and delivers to Assignee all of Assignor's right, title and interest in, to and under the Lease.

2. Acceptance, Assumption. Effective as of the Effective Time, Assignee accepts such assignment and assumes all obligations of the Tenant (including payment obligations) under the Lease.

3. Consent of Landlord. By executing this Assignment, Landlord hereby consents to the assignment of the Lease by Assignor and the assumption of the Lease by Assignee. From and after the date of this Assignment, Landlord shall look solely to Assignee for the performance of Tenant's obligations arising under the Lease after the Effective Time.

4. **[USE IF LEASES INVOLVES MORE THAN 5,000 SQUARE FEET OF SPACE OR ANNUAL RENT IN EXCESS OF $100,000:** Estoppel. By executing this Assignment, Landlord represents and warrants to Assignee that:

a. The Lease commenced on _____.

b. The Lease shall expire on _____. Tenant has the option to extend the term of the Lease for _____ (__) additional _____ (__) year terms by giving Landlord at least _____ (__) months' prior written notice.

c. Tenant is occupying the entire premises demised to it under the Lease (the "Premises").

d. Tenant has not paid rent or additional rent beyond the current month and agrees not to pay rent or additional rent more than one month in advance at any time.

e. Rent payable in the amount of $_____ per month has been paid for the month of _____, 201_.

f. There are no defenses to or offsets against the enforcement of the Lease or any provision thereof by the Landlord.

g. A security deposit in the amount of $_____ has been made pursuant to the terms of the Lease.

h. Landlord has not agreed to grant Tenant any free rent or rent rebate or to make any contribution to tenant improvements. Landlord has not agreed to reimburse Tenant for or to pay Tenant's rent obligation under any other lease.

i. Tenant has not advanced any funds for or on behalf of Landlord for which Tenant has a right to deduct from or offset against future rent payments.

j. The Lease is in full force and effect without default thereunder by either Landlord or, to the best knowledge of Landlord, Assignor.

k. The Lease is the entire agreement between the Landlord and Tenant pertaining to the Premises.

l. The Lease has not been amended, modified or supplemented except as set forth herein.

m. Tenant does not have any purchase option, right of first refusal, right of first offer or similar right with respect to the building or the land in or on which the Premises are located. Tenant does not have any right or option for additional space in the building in which the Premises .

n. The address of Landlord for all notices and communications under the Lease is as follows:

_____
_____
_____
Attention: _____]

5. Notices. All notices and other communications required or permitted hereunder shall be in writing and sent to the recipient party at the address set forth for such party in the preamble hereto, or to such other address which either party hereunder may designate by notice to the other given as required hereby. Any such notice or communication shall be given either (a) by registered or certified mail, postage prepaid and return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier which provides a receipt to sender, (c) by facsimile or (d) by electronic mail. Such notices shall be deemed given when received or refused by the recipient.

6. Headings. The title of articles and the headings preceding text of paragraphs and sub-paragraphs herein are for convenience of reference only and shall not constitute a part of this Assignment, nor shall they affect its meaning or construction.

7. Invalidity of Provision. If any provision, term or condition of this Assignment or the application thereof to any persons or circumstances should be declared invalid by the final ruling of a court of competent jurisdiction, the remaining provisions, terms and conditions hereof and their application to persons and circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the parties, and in the place of such invalid or unenforceable provision, there shall be substituted a like but valid provision which comports to the findings of such court and most nearly accomplishes the original intention of the parties.

8. Waiver. The waiver by either party to this Assignment of the other's breach of any provision, term or condition hereof shall not be held or construed (unless expressly so declared in writing) to impair the continuing obligation of such provision, term or condition, nor, except as to the specific instance, to permit similar acts or omissions by the other. The failure of either party to enforce against the other, or to insist on strict performance by the other of, any provision, term or condition hereof shall not be deemed a waiver of the latter's default with respect thereto, nor a waiver of the former's right to enforce the same or any other provision, term or condition hereof in the future.

9. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

10. Governing Law. This Assignment shall be governed by the laws of the State of Rhode Island.

11. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

12. Entire Agreement. Except for the Purchase Agreement, this Assignment constitutes the entire agreement between the parties hereto with respect to the matters described herein and, except for the Purchase Agreement, supersedes any prior or contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, in such regard. The terms and conditions of this Assignment are subject to the terms and conditions

of the Purchase Agreement, and in the event of any conflict or inconsistency between the terms and conditions of this Assignment and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall control. No verbal statements made by anyone with respect to such matters shall be construed as a part hereof unless incorporated herein by writing. This Assignment may be amended, modified or supplemented only by an instrument in writing executed and delivered by both parties hereto.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Assignment as of the date set forth in the preamble hereof.

ASSIGNOR:

_____

By:_____
Name: _____
Title: _____

ASSIGNEE:

_____

By:_____
Name: _____
Title: _____

AGREED AND ACKNOWLEDGED WITH RESPECT TO PARAGRAPH[S] 4 [AND 5]

LANDLORD:

_____

By:_____
Name: _____
Title: _____

Exhibit F

Form of Bill of Sale

See Attached

Exhibit F to Asset Purchase Agreement
Form of Bill of Sale and Assignment and Assumption Agreement
(***To Be Used for Non-Real Property Assets***)

[*To Be Duplicated for Each Assigning Entity*]

BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT ([NAME OF ASSIGNING ENTITY])

This Bill of Sale and Assignment and Assumption Agreement (this "Bill of Sale") is made and entered into as of _____, 2014, by and among _____, a _____ ("Seller") and [Prospect CharterCare RWMC, LLC, a Rhode Island limited liability company ("RWMC SMLLC"), Prospect CharterCare SJHSRI, LLC, a Rhode Island limited liability company ("SJHSRI SMLLC"), Prospect CharterCare Elmhurst, LLC, a Rhode Island limited liability company ("Elmhurst SMLLC"), and Prospect CharterCare Physicians, LLC, a Rhode Island limited liability company ("Physicians SMLLC"] or "Buyer").

WHEREAS, Seller and Buyer, among others, are parties to that certain Asset Purchase Agreement dated as of September 24, 2013 (the "Purchase Agreement");

WHEREAS, pursuant to the Purchase Agreement, among other things, Seller has agreed to sell to the Company (as defined in the Purchase Agreement), and the Company has agreed to purchase from Seller, either directly or through the Company Subsidiaries (as defined in the Purchase Agreement), substantially all of Seller's right, title and interest in and to certain assets of Seller, including without limitation those contemplated herein; and

WHEREAS, pursuant to the Purchase Agreement, Seller has agreed to assign certain rights to the Company or the Company Subsidiaries, and the Company has agreed to assume or to cause one or more of the Company Subsidiaries to assume certain obligations of Seller, including without limitation those contemplated herein.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. *Capitalized Terms*. Capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the Purchase Agreement.

2. *Sale and Transfer of Assets*. Effective as of the Effective Time and subject to the terms and provisions of the Purchase Agreement, Seller hereby unconditionally and irrevocably sells, transfers, assigns, conveys, sets over, grants, releases, delivers, vests and confirms (collectively, "Transfers") unto the Buyer, free and clear of all Encumbrances, all of Seller's right, title, benefit, privileges and interest in and to all of the Purchased Assets owned, leased or licensed by such Seller on the Closing Date that are held for use or used in the Business (collectively, such Purchased Assets being referred to as the "Transferred Items").

3. *Assumption of Liabilities*. Except as specifically provided for in an Assignment and Assumption Agreement delivered in connection with the Closing of the Purchase

Agreement, effective as of the Effective Time and subject to the terms and provisions of the Purchase Agreement, Buyer hereby assumes all of the duties, obligations, terms, provisions, covenants and liabilities of Seller to be observed, performed, paid or discharged from and after the Effective Time, in connection with the Assumed Liabilities of such Seller. Notwithstanding anything herein to the contrary, no Buyer shall assume any Excluded Liabilities, and the parties hereto agree that all such Excluded Liabilities shall remain the sole responsibility of Seller or the other Sellers (as such term is defined in the Purchase Agreement), as the case may be.

4. *Further Actions*. Seller covenants and agrees to warrant and defend the Transfer of the Transferred Items hereby made against all persons whomsoever and to take all steps reasonably necessary to establish the record of Buyer's title to the Transferred Items, all at the sole cost and expense of Seller. Each of the parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of any other party hereto, such further instruments of transfer and assignment and take such other actions as may be reasonably requested to more effectively consummate the transactions contemplated by this Bill of Sale.

5. *Power of Attorney*. Without limiting Section 4 hereof, Seller hereby constitutes and appoints each Buyer the true an lawful agent and attorney in fact of Seller, with full power of substitution and resubstitution, in whole or in part, in the name and stead of Seller by, on behalf of and for the benefit of Buyer and its successors and assigns from time to time:

   (a) to demand, receive and collect any and all of the Transferred Items, and to give receipts and releases for and with respect to the same, or any part thereof;

   (b) to institute and prosecute, in the name of Seller or otherwise, any and all proceedings at law, in equity or otherwise, that Buyer or its successors and assigns may deem proper in order to collect or reduce to possession any of the Transferred Items, and in order to collect or enforce any claim or right of any kind hereby Transferred to Buyer, or intended so to be; and

   (c) to do all things legally permissible, required or reasonably deemed by Buyer to be required to recover and collect the Transferred Items, and to use Seller's name in such manner as such Buyer may reasonably deem necessary for the collection and recovery of same.

   Seller hereby declares that the foregoing powers are coupled with an interest and are and shall be irrevocable by Seller.

6. *Terms of the Purchase Agreement*. The terms of the Purchase Agreement, including but not limited to Seller's representations, warranties, covenants, agreements and indemnities relating to the Transferred Items and the Assumed Liabilities, are incorporated herein by this reference. Seller acknowledges and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided

therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

7. *Choice of Law*. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Rhode Island, without giving effect to any choice or conflict of law provision or rule thereof that would require the application of any other law.

8. *Execution of this Agreement.* This Bill of Sale may be executed in multiple counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument. A signature delivered by facsimile or PDF will be sufficient for all purposes among the parties hereto and shall be deemed to have the same legal effect as delivery of an original.

[*Signature page follows.***]**

IN WITNESS WHEREOF, the parties have executed this Bill of Sale and Assignment and Assumption Agreement as of the date first above written.

SELLER:

[SELLER NAME],
a _____

By:_____

Name:_____

Title:_____

BUYER:

[PROSPECT CHARTERCARE RWMC, LLC,
a Rhode Island limited liability company

By:_____

Name:_____

Title:_____

PROSPECT CHARTERCARE SJHSRI, LLC,
a Rhode Island limited liability company

By:_____

Name:_____

Title:_____

PROSPECT CHARTERCARE ELMHURST, LLC, a Rhode Island limited liability company

By:_____

Name:_____

Title:_____

PROSPECT CHARTERCARE PHYSICIANS, LLC, a Rhode Island limited liability company]

By:_____

Name:_____

Title:_____

[*Signature Page to Bill of Sale and Assignment and Assumption Agreement***]**

Exhibit G

Form of Assignment and Assumption Agreement

See Attached

Exhibit G to Asset Purchase Agreement
Form of Assignment and Assumption Agreement
(To Be Used for Rights and Obligations Unrelated to Real Property)

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment and Assumption Agreement") is made and entered into as of _____, 201__, by and among CharterCARE Health Partners, a Rhode Island non-profit corporation ("CCHP"), Roger Williams Medical Center, a Rhode Island non-profit corporation ("RWMC"), St. Joseph Health Services of Rhode Island, a Rhode Island non-profit corporation ("SJHSRI"), Roger Williams Realty Corporation, a Rhode Island non-profit corporation ("RWRC"), RWGH Physicians Office Building, Inc., a Rhode Island non-profit corporation ("RWOB"), Elmhurst Extended Care Facilities, Inc., a Rhode Island non-profit corporation ("Elmhurst ECF"), Roger Williams Medical Associates, Inc., a Rhode Island non-profit corporation ("RWMA"), Roger Williams PHO, Inc., a Rhode Island non-profit corporation ("PHO"), Elmhurst Health Associates, Inc., a Rhode Island corporation ("Elmhurst HA"), Our Lady of Fatima Ancillary Services, Inc., a Rhode Island corporation ("Our Lady"), The Center for Health and Human Services, a Rhode Island non-profit corporation ("TCHHS"), SJH Energy, LLC, a Rhode Island limited liability company ("SJHE"), and Rosebank Corporation, a Rhode Island corporation ("Rosebank" and together with CCHP, RWMC, SJHSRI, RWRC, RWOB, Elmhurst ECF, RWMA, PHO, Elmhurst HA, Our Lady, TCHHS and SJHE, each a "Seller" and, collectively, "Sellers"), Prospect CharterCare, LLC, a Rhode Island limited liability company (the "Company"), Prospect CharterCare RWMC, LLC, a Rhode Island limited liability company ("RWMC SMLLC"), Prospect CharterCare SJHSRI, LLC, a Rhode Island limited liability company ("SJHSRI SMLLC"), Prospect CharterCare Elmhurst, LLC, a Rhode Island limited liability company ("Elmhurst SMLLC"), and Prospect CharterCare Physicians, LLC, a Rhode Island limited liability company ("Physicians SMLLC" and together with RWMC SMLLC, SJHSRI SMLLC, Elmhurst SMLLC, each a "Company Subsidiary" and collectively, the "Company Subsidiaries"). Sellers, the Company, and each Company Subsidiary are each a "Party" and collectively, the "Parties".

WHEREAS, the Parties hereto are also parties to that certain Asset Purchase Agreement dated as of September ____, 2013 (the "Purchase Agreement"), pursuant to which, among other things, the Company (as defined in the Purchase Agreement) has purchased from Sellers, either directly or through the Company Subsidiaries (as defined in the Purchase Agreement), substantially all of Sellers' right, title and interest in and to certain of the assets that are held for use or used in the operation of the Business (as defined in the Purchase Agreement); and

WHEREAS, pursuant to Section 2.1(f) of the Purchase Agreement, Sellers have agreed to assign certain rights and agreements to the Company or the Company Subsidiaries, and the Company has agreed to assume or to cause one or more of the Company Subsidiaries to assume certain obligations of Sellers, in connection with the Assumed Contracts (as defined in the Purchase Agreement), including without limitation those contemplated herein, and this Assignment and Assumption Agreement is contemplated by Sections 3.3(g) and 3.4(c) of the Purchase Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. *Capitalized Terms*. Capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the Purchase Agreement.

2. *Assignment and Assumption*. Effective as of the Effective Time, each Seller hereby unconditionally and irrevocably assigns, sells, transfers and sets over (collectively, "Assigns") to the Company or a Company Subsidiary, as specifically designated for each Assumed Contract on Schedules A through M hereto, all of such Seller's right, title, benefit, privileges and interest in and to, and all of such Seller's burdens, obligations and liabilities in connection with, each of the Assumed Contracts. Each of the Company and the Company Subsidiaries, to the extent designated as assignee on Schedules A through M hereto, hereby accepts the Assignment of the Assumed Contracts identified on Schedules A through M hereto, as applicable, and assumes and agrees to observe and perform all of the duties, obligations, terms, provisions and covenants, and to pay and discharge all of the liabilities of the assigning Seller to be observed, performed, paid or discharged from and after the Effective Time, in connection with such Assumed Contracts. Notwithstanding anything herein to the contrary, neither the Company nor any Company Subsidiary shall assume any Excluded Liabilities, and the parties hereto agree that all such Excluded Liabilities shall remain the sole responsibility of Sellers, as the case may be.

3. *Further Actions*. Each of the parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of any other party hereto, such further instruments of transfer and assignment and take such other actions as may be reasonably requested to more effectively consummate the assignments and assumptions contemplated by this Assignment and Assumption Agreement.

4. *Terms of the Purchase Agreement*. The terms of the Purchase Agreement, including but not limited to Sellers' representations, warranties, covenants, agreements and indemnities relating to the Assumed Contracts, are incorporated herein by this reference. The Parties hereby acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

5. *Choice of Law*. This Assignment and Assumption Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island, without giving effect to any choice or conflict of law provision or rule thereof that would require the application of any other law.

6. *Execution of this Agreement.* This Assignment and Assumption Agreement may be executed in multiple counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument. A signature

delivered by facsimile or PDF will be sufficient for all purposes among the parties hereto and shall be deemed to have the same legal effect as delivery of an original.

[*Signature page follows.*]

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Agreement as of the date first above written.

SELLERS:

CHARTERCARE HEALTH PARTNERS

By:_____
Name:
Title:

ROGER WILLIAMS MEDICAL CENTER

By: _____
Name:
Title:

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND

By:_____
Name:
Title:

ROGER WILLIAMS REALTY CORPORATION

By: _____
Name:
Title:

RWGH PHYSICIANS OFFICE BUILDING, INC.

By:_____
Name:
Title:

ELMHURST EXTENDED CARE FACILITIES, INC.

By: _____
Name:
Title:

ROGER WILLIAMS MEDICAL ASSOCIATES, INC.

By: _____
Name:
Title:

ROGER WILLIAMS PHO, INC.

By:_____
Name:
Title:

ELMHURST HEALTH ASSOCIATES, INC.

By: _____
Name:
Title:

OUR LADY OF FATIMA ANCILLARY SERVICES, INC.

By: _____
Name:
Title:

[*Signature Page to Assignment and Assumption Agreement*]

THE CENTER FOR HEALTH AND HUMAN SERVICES

By: _____
Name:
Title:

ROSEBANK CORPORATION

By: _____
Name:
Title:

SJH ENERGY, LLC

By: _____
Name:
Title:

THE COMPANY:

PROSPECT CHARTERCARE, LLC

By: _____
Name:
Title:

COMPANY SUBSIDIARIES:

PROSPECT CHARTERCARE RWMC, LLC

By: _____
Name:
Title:

PROSPECT CHARTERCARE SJHSRI, LLC

By: _____
Name:
Title:

PROSPECT CHARTERCARE ELMHURST, LLC

By: _____
Name:
Title:

PROSPECT CHARTERCARE PHYSICIANS, LLC

By: _____
Name:
Title:

Schedule A

Assignment of Assumed Contracts
by
CharterCARE Health Partners

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Schedule B

Assignment of Assumed Contracts
by
Roger Williams Medical Center

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Schedule C

Assignment of Assumed Contracts
by
St. Joseph Health Services of Rhode Island

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Schedule D

Assignment of Assumed Contracts
by
Roger Williams Realty Corporation

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Schedule E

Assignment of Assumed Contracts
by
RWGH Physicians Office Building, Inc.

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Schedule F

Assignment of Assumed Contracts
by
Elmhurst Extended Care Facilities, Inc.

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Schedule G

Assignment of Assumed Contracts
by
Roger Williams Medical Associates, Inc.

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Schedule H

Assignment of Assumed Contracts
by
Roger Williams PHO, Inc.

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Schedule I

Assignment of Assumed Contracts
by
Elmhurst Health Associates, Inc.

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Schedule J

Assignment of Assumed Contracts
by
Our Lady of Fatima Ancillary Services, Inc.

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Schedule K

Assignment of Assumed Contracts
by
The Center for Health and Human Services

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Schedule L

Assignment of Assumed Contracts
by
SJH Energy, LLC

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Schedule M

Assignment of Assumed Contracts
by
Rosebank Corporation

Title of Assumed Contract	*Other Parties*	*Date*	*Assignee*

Exhibit H

Management Services Agreement

See Attached

MANAGEMENT SERVICES AGREEMENT

This MANAGEMENT SERVICES AGREEMENT (this "Agreement") is made and entered into as of the [___] day of **[_____]**, 201__ (the "Effective Date") by and between Prospect East Hospital Advisory Services, LLC, a Delaware limited liability company (collectively with its Affiliates, "Manager"), and Prospect CharterCare, LLC, a Rhode Island limited liability company (the "Company").

RECITALS

A. The Company operates a healthcare system comprised of the Affiliates (as defined in ARTICLE I below) and facilities set forth on Exhibit A attached hereto, as it may be updated from time to time as and if additional facilities are acquired or developed (each, a "Facility" and, collectively, the "Facilities") (the Company and its Affiliates, hereafter, collectively, the "Company").

B. Manager, through its executives and other personnel, has certain experience and expertise in the management, operations, financial and administrative aspects of businesses like that of the Company.

C. The Company desires to engage Manager to provide certain administrative and management services set forth on Exhibit B hereto (the "Management Services") on behalf of the Company for the Facilities as its agent, and Manager desires to provide the Management Services on behalf of the Company for the Facilities as its agent, pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for their mutual reliance, the parties agree as follows:

ARTICLE I
RECITALS; AFFILIATES

1.1 Recitals. The recitals set forth above are hereby incorporated into this Agreement as if fully set forth in this Section 1.1.

1.2 Affiliate. As used herein, "Affiliate" means, as to the Company or Manager, any person or entity that directly or indirectly controls, is controlled by, or is under common control with, as applicable, the Company or Manager and any successors or assigns of such person or entity; and the term "control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of, as applicable, the Company or Manager whether through ownership of voting securities, by appointment of trustees, directors, and/or officers, by contract or otherwise.

ARTICLE II
APPOINTMENT AND ACCEPTANCE; CONTROL

2.1 Appointment. For and during the Term (as defined in ARTICLE VI below), the Company grants to Manager, upon the terms and conditions as set forth herein, the sole and exclusive right to manage the operations of the Company's business at, and with respect to, the Facilities (the "Business"). Throughout the Term, Manager shall be vested, to the fullest extent permitted by applicable law and subject to the terms hereof, with authority over the business, operations and assets of the Business.

2.2 Acceptance. Manager hereby accepts such appointment by the Company and agrees that it will faithfully perform its duties and responsibilities hereunder, and will consult with the Company from time to time relating to the operation of the Business.

2.3 Maintenance of Control. Nothing in this Agreement is intended to alter, weaken, displace or modify the ultimate authority of the Board of Directors of the Company as set forth in the Amended & Restated Limited Liability Company Agreement of the Company (the "Operating Agreement"), dated as of the Effective Date, by and among the Company, and each of Prospect East Holdings, Inc. and Prospect CharterCare, LLC (collectively, the "Members"). During the Term, the Board of Directors of the Company shall exercise ultimate authority, supervision, direction and control over the business, policies, operation and assets of the Company, and shall retain the ultimate authority and responsibility regarding the powers, duties and responsibilities vested in the Board of Directors of the Company by any and all applicable laws and regulations. Nothing in this Agreement is intended to alter, weaken, displace or modify the responsibility of the Board of Directors of the Company for the Company's direction and control.

ARTICLE III
RIGHTS AND RESPONSIBILITIES OF MANAGER

Subject to the provisions of this Agreement and the Operating Agreement, Manager shall provide, in the name of and on behalf of the Company, the Management Services set forth on Exhibit B.

ARTICLE IV
RIGHTS AND RESPONSIBILITIES OF THE COMPANY

Subject to the provisions of this Agreement and the Operating Agreement, the Company shall have the following duties, responsibilities and authority:

4.1 Designated Liaison Person. The Company shall direct all inquiries regarding operations, procedures, policies, employee relations, patient care and all other matters concerning the Business to such person as Manager may from time to time designate.

4.2 Cooperation with Manager. The Company will fully cooperate with Manager in operating and managing the operations of the Business. The Company shall provide timely responses to Manager's requests and inquiries to enable Manager to perform the Management Services hereunder. All of the Members shall fully cooperate with Manager in the fulfillment of

its duties hereunder, including, without limitation, attending (or sending representatives to attend) committee meetings, providing information and input to Manager, being available for consulting and signing documents and providing information with regard to Medicare certification and state licensing.

4.3 Work Space; Equipment. At each Facility, the Company shall provide Manager with sufficient working space and other reasonable physical accommodations, as well as access to telephones, facsimile machines, internet connections and copiers, to enable Manager to fulfill its duties and responsibilities hereunder.

4.4 Required Funds. The Company shall provide Manager with access to such funds as may be required for the operation of the Business and to pay the Management Fee (as defined in Section 5.2(a)), any other amounts due to Manager under this Agreement, and all other amounts payable by the Company in accordance with this Agreement.

4.5 Access of Manager; Patient Records.

(a) During the Term, Manager shall be given complete access to the Company's records (including Patient Records as defined below), offices and Facilities, in order that it may carry out its obligations hereunder, subject to the confidentiality requirements relating to Patient Records.

(b) The Company shall maintain, to the fullest extent of the law, sole and exclusive responsibility for the preparation, storage and destruction of all patient medical records, clinical treatment plans, charts and similar documents generated in connection with the operation of the Business (collectively, the "Patient Records"). Subject to the responsibilities of Manager hereunder, the Company shall assure that the Patient Records are prepared in compliance with all applicable federal, state and local laws and regulations. All Patient Records will be maintained by the Company and shall remain the property of the Company.

(c) To the extent permitted by law including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the standards or regulations promulgated thereunder, including the Privacy Standards and the Security Standards, as well as the federal Health Information Technology for Economic and Clinical Health Act (including any and all standards and regulations promulgated thereunder) and professional ethics regarding confidentiality and disclosure of medical information, the Company shall make such information available to Manager to enable Manager to perform its duties hereunder and for any and all other reasonable purposes. For the purposes of this Section 4.5, Manager shall be referred to as the Company's Business Associate ("Business Associate"). As a Business Associate, Manager agrees to enter into the Business Associate Agreement with the Company, attached hereto as Exhibit C.

ARTICLE V
FEES; EXPENSES

5.1 Reimbursement of Expenses. Except as otherwise expressly provided in this Agreement, the Company shall be solely, fully and individually financially responsible for all liabilities arising out of the ownership, operation or maintenance of the Business (including,

without limitation, the Management Fee and any other amounts due to Manager or any of its Affiliates in connection with this Agreement). The Company shall, within ten (10) days after its receipt of a demand from Manager for reimbursement, reimburse Manager for all costs, expenses and liabilities incurred, paid or satisfied by Manager in connection with the performance of its obligations under this Agreement or otherwise arising out of the operation or maintenance of the Business (including, without limitation, all travel and out of pocket expenses incurred by Manager); provided, however, that the Company shall not be responsible for general corporate overhead costs of Manager, other than those variable costs directly attributable to services provided to the Company, such as the compensation and other costs of executives hired by Manager but who work exclusively for the Company (including, without limitation, the CEO and other management personnel), which shall not constitute general corporate overhead and shall be reimbursed to the Manager on a pass-through basis.

5.2 Management Fee.

(a) As consideration for the Management Services rendered by Manager hereunder, for each full or partial calendar month during the Term, the Company shall pay to Manager a monthly fee equal to two percent (2%) of the Net Revenues (as defined below) during such calendar month (or portion thereof) (the "Management Fee").

(b) As used herein, "Net Revenues" means total operating revenues derived, directly or indirectly, by the Company with respect to the Business, 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 ("GAAP") net of (A) allowances 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.

5.3 Billing.

(a) On or before the tenth (10th) day of each month, Manager shall send the Company an invoice for the Management Fee and any expenses incurred by Manager in performing the Management Services during the prior month. The Company shall pay to Manager the amount shown on such invoice via wire transfer of immediately available funds within five (5) days of receipt of the invoice. Manager's wire transfer information is as follows:

[insert Manager's wiring instructions]

(b) The Company shall pay to Manager interest calculated at the then current prime rate plus one percent (1%) on all delinquent invoiced amounts.

ARTICLE VI
TERM

The term of this Agreement shall commence on the Effective Date and shall continue until the twentieth (20^{th}) anniversary of the Effective Date (the "Initial Term"), unless earlier terminated pursuant to the terms set forth in ARTICLE VII below. At the end of the Initial Term, this Agreement shall automatically renew without any further action by either party for

successive ten (10) year terms, unless terminated pursuant to ARTICLE VII. The Initial Term and any renewal terms are collectively referred to in this Agreement as the "Term."

ARTICLE VII
TERMINATION

7.1 Termination by Either Party for Cause. If either party materially defaults in the performance of any material covenant, agreement, term or provision of this Agreement to be performed by it and such material default continues for a period of ninety (90) days after written notice is delivered to the breaching party from the other party stating the specific default, then the non-breaching party may terminate this Agreement by giving written notice thereof to the breaching party; provided, however, that the non-breaching party shall not have the right to terminate under this Section 7.1 at the end of such ninety (90) day period so long as the breaching party has commenced a cure within such ninety (90) day period and thereafter diligently pursues such cure to completion, which shall be no later than one hundred eighty (180) days after the initial written notice.

7.2 Termination Upon Bankruptcy, Etc. If either party shall apply for or consent to the appointment of a receiver, trustee or liquidator for it or for all or substantially all of its assets, file a voluntary petition in bankruptcy or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or any answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law, or if an order, judgment or decree shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating either party to be bankrupt or appointing a receiver, trustee or liquidator of either party with respect to all or substantially all of the assets of either party, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days, then this Agreement shall automatically terminate.

7.3 Termination upon Closure, Abandonment or Dissolution. This Agreement shall terminate immediately and automatically if the Business and the Facilities are closed (for any reason whatsoever) or abandoned by the Company or if the Company files for dissolution.

7.4 Termination by Manager for Failure to Pay or Provide Funding. Manager shall have the right to terminate this Agreement upon ten (10) days written notice to the Company if the Company fails to pay any amounts when due to Manager under this Agreement, or fails to provide funding needed for it to comply with any other requirements hereunder.

7.5 Regulatory Matters. If the performance by either party of any material covenant, agreement, term or provision of this Agreement would (a) result in the de-certification of a Facility under any federal government or any state government program or by any other regulatory agency that would have a material adverse effect on the operation of the Business, (b) result in the loss of any Facility's accreditation, or (c) be in violation of any statute or regulation, or for any other reason be or become illegal and such violation or illegality would have a material adverse effect on the operation of the Business, and in any such event, the reason therefor cannot be corrected by good faith negotiations and effort of the parties hereto within sixty (60) days after written notice thereof (with the objective of keeping the financial intent of

the parties hereunder materially the same), then either party may at its option terminate this Agreement.

7.6 Rights Upon Termination. In the event of the termination of this Agreement for any reason, Manager shall immediately be paid any accrued and unpaid Management Fees and reimbursed for all expenses incurred for which reimbursement is required hereunder. The right to terminate this Agreement, and to receive payment of any amounts owing as of the effective date of termination, shall be in addition to any other remedy available pursuant to the provisions hereof. The termination of this Agreement for any reason shall be without prejudice to any payments or obligations that may have accrued or become due hereunder prior to the effective date of termination, or that may become due after such termination.

7.7 Cessation of Use of Proprietary Rights Upon Termination. Upon termination of this Agreement, the each party shall immediately discontinue the use of, and will promptly return to the other party, as applicable, all Confidential Information (to the extent in tangible format) that was made available to such party by reason of its participation in this Agreement, including any copies that it may have in its possession or control.

7.8 Failure to Terminate. Failure to terminate this Agreement shall not waive any breach of this Agreement.

7.9 Survival. To the extent set forth or contemplated in this Agreement, provisions of this Agreement shall survive the termination of this Agreement.

ARTICLE VIII
LIABILITY, INDEMNIFICATION, PROFITABILITY AND INDEPENDENT CONTRACTOR

8.1 Limitation of Liability. Except for Manager's gross negligence or willful misconduct, Manager shall not by reason of this Agreement or any Management Services rendered pursuant to this Agreement have any liability in connection with the operation of the Business or be deemed to have assumed any liabilities associated with or incident to the operation of the Business. All such liabilities shall remain with the Company. Without limiting the generality of the foregoing, Manager shall have no liability for any breach of any obligation under this Agreement unless such breach shall constitute gross negligence or willful misconduct; it being understood that in such case of a breach of an obligation that does not constitute gross negligence or willful misconduct, the Company's sole remedies shall be to obtain damages and/or to terminate this Agreement as provided herein.

8.2 Indemnification.

(a) The Company hereby agrees to defend, indemnify and hold Manager and its Affiliates, and their respective officers, directors, managers, members, employees, shareholders, agents, successors and assigns (each, an "Manager Indemnified Party") harmless, from and against any and all liabilities, causes of action, damages, losses, demands, claims, penalties, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and related costs) of any kind or nature whatsoever that may be sustained or suffered by any Manager Indemnified Party in any way relating to, arising out of or resulting from (i) the

management, ownership, operation or maintenance of the Business, except to the extent caused by Manager's gross negligence or willful misconduct, or (ii) any breach by the Company of any of its representations, warranties, covenants, obligations or duties under this Agreement.

(b) Manager hereby agrees to defend, indemnify and hold the Company, and its Affiliates, and their respective officers, directors, managers, members, employees, shareholders, agents, successors and assigns (each a "Company Indemnified Party") harmless, from and against any and all liabilities, causes of action, damages, losses, demands, claims, penalties, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and related costs) of any kind or nature whatsoever that may be sustained or suffered by any Company Indemnified Party in any way caused by Manager's gross negligence or willful misconduct related to the management of the Business.

(c) The provisions of this Section 9.2 shall survive the termination of this Agreement.

8.3 No Representation of Profitability, Etc.. Manager does not guarantee or represent that operation of the Business will be profitable, or have a certain amount of revenues or cash flow. Manager shall not be liable for the Company's losses, whether from operation of the Business or otherwise.

8.4 Independent Contractor Status. Manager does not under this Agreement act in any other capacity, except as an independent contractor and does not, under this Agreement, act as principal in the operation of the Facilities. The Company acknowledges that Manager or one of its Affiliates is also a Member of the Company and is the "manager" under the Operating Agreement, and that such does not impact the forgoing sentence.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES

9.1 Of Manager. Manager represents and warrants to the Company as follows:

(a) Manager has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Delaware, with full corporate power to own its properties and to conduct its business under such laws.

(b) Manager has the full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and all necessary actions for the due authorization, execution, delivery and performance of this Agreement by Manager have been duly taken. The individual executing this Agreement on behalf of Manager is duly authorized and has the requisite power and authority to execute this Agreement.

(c) Neither the execution of this Agreement, the performance by Manager under this Agreement, nor compliance by Manager with any provision of this Agreement will conflict with or violate Manager's certificate of incorporation or bylaws, any agreements to which Manager is a party, or any material provision of applicable federal, state and local laws, rules and regulations.

(d) Upon Manager's execution of this Agreement, this Agreement shall constitute a valid and binding obligation of Manager, enforceable in accordance with its terms.

(e) Neither Manager, nor its Affiliates, employees, and agents (i) is currently excluded, debarred or otherwise ineligible to participate in any federal or state health care program, (ii) has been convicted of a criminal offense related to the provision of healthcare items and services and (iii) is a Specially Designated National or a Blocked Person by the Office of the Foreign Asset Control of the U.S. Department of Treasury.

9.2 Of the Company. The Company represents and warrants to Manager as follows:

(a) The Company has been duly organized and is validly existing as a limited liability company in good standing under the laws of the State of Rhode Island, with full limited liability company power to own its properties and to conduct its business under such laws.

(b) The Company has the full power and authority as a limited liability company to execute and deliver this Agreement and to perform its obligations hereunder, and all necessary actions for the due authorization, execution, delivery and performance of this Agreement by the Company have been duly taken. The individual executing this Agreement on behalf of the Company is duly authorized and has the requisite power and authority to execute this Agreement.

(c) Neither the execution of this Agreement, the performance by the Company under this Agreement, nor compliance by the Company with any provision of this Agreement will conflict with or violate the Company's certificate of formation or the Operating Agreement, any agreements to which the Company is a party, or any material provision of applicable federal, state and local laws, rules and regulations.

(d) Upon the Company's execution of this Agreement, this Agreement shall constitute a valid and binding obligation of the Company, enforceable in accordance with its terms.

(e) Neither the Company nor its Affiliates, employees, and agents (i) is currently excluded, debarred or otherwise ineligible to participate in any federal or state health care program, (ii) has been convicted of a criminal offense related to the provision of healthcare items and services and (iii) is a Specially Designated National or a Blocked Person by the Office of the Foreign Asset Control of the U.S. Department of Treasury.

ARTICLE X
INSURANCE

10.1 Manager's Required Coverage. During the Term hereof, Manager shall maintain, at its own expense, workers' compensation coverage in accordance with statutory requirements for Manager's employees who provide services under this Agreement, and commercial general liability insurance in an amount not less than One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) in the annual aggregate. The limits above may be satisfied by any combination of self insurance or umbrella policies, and Manager may carry any

insurance required by this Agreement under a blanket policy. The Company shall be an additional named insured under Manager's general liability insurance policy.

10.2 The Company's Required Coverage. The Company shall maintain, at the Company's expense, at all times during the Term: (a) workers' compensation coverage in accordance with statutory requirements for the Company's employees; (b) commercial property damage and fire/hazard insurance written on full replacement value basis for all of the Company's assets and real property; (c) professional liability insurance covering the Company's employees who perform any work, duties, or obligations against claims for bodily injury, death, malpractice and property damage, which insurance shall provide coverage on a claims-made or occurrence basis with a per occurrence limit of not less than One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) in the annual aggregate; and (d) comprehensive commercial general liability insurance in an amount not less than One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) in the annual aggregate. The above limits may be satisfied by any combination of primary and excess or umbrella policies. The Company may carry any insurance required by this Agreement under a blanket policy. Manager shall be an additional named insured under the Company's general liability insurance policy.

10.3 Certificates of Insurance. On the Effective Date and at any time upon request, each party shall provide the other party certificates of insurance evidencing the coverages required hereby, and shall notify the other party immediately of the cancellation, termination, or non-renewal of, or material change in, such insurance coverage.

ARTICLE XI
ARMS-LENGTH BARGAINING

The parties agree that the compensation provided herein has been determined in arm's-length bargaining and is consistent with fair market value in arm's length transactions and is not and has not been determined in a manner that takes into account the volume or value of any referrals or business otherwise generated for or with respect to the Facilities or between the parties or any of the undersigned persons or equity holders thereof for which payment may be made in whole or in part under Medicare or any state health care program or under any other payor program.

ARTICLE XII
ASSIGNMENT

The Company shall not, directly or indirectly, assign or otherwise transfer this Agreement, or any interest herein or obligation hereunder, without the prior written consent of Manager, which may be withheld in Manager's sole discretion. In no event may the Company assign this Agreement unless the assignee shall have executed and delivered to Manager a written assumption of this Agreement in form and substance satisfactory to Manager in its sole discretion. Manager shall be permitted, without the consent of the Company, to assign this Agreement: (a) upon the purchase or sale of fifty percent (50%) or more of the assets of Manager to the purchaser of such assets; or (b) to any Affiliate of Manager.

ARTICLE XIII
NOTICES

All notices required or permitted hereunder shall be given in writing by actual delivery or by certified mail, postage prepaid or by nationally recognized overnight courier service. Notice shall be deemed given upon delivery, or if given by mail, upon receipt or if sent by next day delivery by a nationally recognized overnight courier service, on the next business day. Notice shall be delivered or mailed to the parties at the following addresses or at such other places as a party shall designate in writing:

If to the Company: Prospect CharterCare, LLC
825 Chalkstone Avenue
Providence, RI 02908
Attention: Ken Belcher, Chief Executive Officer

with a copy to: Sills Cummis & Gross P.C.
One Riverfront Plaza
Newark, NJ 07102
Attention: Gary W. Herschman, Esq

with a copy to: Prospect Medical Holdings, Inc.
10780 Santa Monica Boulevard, Suite 400
Los Angeles, CA 90025
Attention: Samuel S. Lee, Chief Executive Officer

If to Manager: Prospect East Hospital Advisory Services, LLC
10780 Santa Monica Boulevard, Suite 400
Los Angeles, CA 90025
Attention: Ellen J. Shin, General Counsel

with a copy to: Sills Cummis & Gross P.C.
One Riverfront Plaza
Newark, NJ 07102
Attention: Gary W. Herschman, Esq.

ARTICLE XIV
RECORD ACCESS AND RETENTION

14.1 Access to Records. Each party hereto shall permit, and shall ensure that any subcontractor retained by it permits, the United States Department of Health and Human Services and General Accounting Office to review appropriate books and records relating to the performance hereunder to the extent required under Section 1861(v)(1) of the Social Security Act, 42 U.S.C. Section 1395x(v)(1)(I), or any successor law or regulation for a period of four (4) years following the last day Manager provided services hereunder. The access shall be provided in accordance with the provisions of Title 42, Code of Federal Regulations, Part 420, Subpart D.

14.2 Notification. Each party shall notify the other party immediately of the nature and scope of any request for access to books and records described above and shall provide copies of any books, records or documents to the other party prior to the provision of same to any governmental agent to give such other party an opportunity to lawfully oppose such production of documents. Nothing herein shall be deemed to be a waiver of any applicable privilege (such as the attorney-client privilege) by either party.

ARTICLE XV
MISCELLANEOUS

15.1 Choice of Law; Dispute Resolution.

(a) Choice of Law. The parties agree that this Agreement shall be governed by and construed in accordance with the Laws of the State of Rhode Island, without giving effect to any choice or conflict of law provision or rule thereof that would require the application of any other law.

(b) Dispute Resolution. All disputes, controversies or claims that may arise among the parties, including any dispute, controversy or claim arising out of this Agreement, or any other relevant document, or the breach, termination or invalidity thereof (a "Dispute"), shall be settled solely and finally pursuant to the procedures set forth in this Section 16.1.

(i) The parties shall attempt in good faith to resolve any Dispute of whatever nature arising between the parties, promptly by negotiation (including at least one in person meeting). If the Dispute has not been resolved within thirty (30) days after delivery of a notice of a Dispute by one party to the other party, any of such parties may initiate arbitration of the Dispute as provided below.

(ii) If the Dispute has not been resolved by negotiation as provided above, then either party may submit the Dispute to binding arbitration. Such arbitration shall be conducted by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, by one neutral arbitrator, which shall be selected from a list of ten (10) potential candidates provided by JAMS' office in New York City (none of whom work or reside in Rhode Island or California, or any State contiguous to either of the foregoing). The award made by the arbitrator shall be final and binding upon the parties thereto and the subject matter, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. Unless otherwise agreed by the parties, the arbitration shall be held in Providence, Rhode Island. The arbitrator shall not have the authority to award punitive or exemplary damages. Each party shall be responsible for the costs and fees of the arbitration and for its own attorneys' fees; provided, however, that the prevailing party in any such arbitration shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs and expenses (including arbitration fees) incurred in connection with the arbitration to the extent such recovery is permitted by the law(s) governing the claim(s) asserted.

(c) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AND BY JUDGE IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE)

ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

15.2 Severability. Should any provision of this Agreement be found void or unenforceable, the remainder hereof nevertheless shall continue in full force and effect. A new provision shall be amended to this Agreement that is similar to the provision found unenforceable but which is enforceable.

15.3 Approval or Consent. Except as otherwise provided herein, whenever under any provisions of this Agreement, the approval or consent of either party is required, such approval or consent shall not be unreasonably withheld, conditioned or delayed.

15.4 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and the parties expressly agree that this Agreement supersedes and rescinds any prior agreement between them (verbal or written) pertaining to the subject matter hereof.

15.5 No Third Party Beneficiary. Except as expressly provided in this Agreement, no person or entity that is not a party to this Agreement shall be a third party beneficiary of any rights or obligations hereunder or be entitled to enforce any of said rights or obligations.

15.6 Interpretation. The article and paragraph headings contained herein are for convenience of reference only, do not constitute part of this Agreement, and are not intended to define, limit or describe the scope of intent of any provision of this Agreement. All gender references used in this Agreement shall include all genders, and the singular shall include the plural and the plural shall include the singular whenever and as often as may be appropriate.

15.7 Force Majeure. Manager shall not be deemed to be in violation of this Agreement, and shall not be liable for any resulting claims, losses, damages, expenses and liabilities if it is prevented, hindered or delayed, either directly or indirectly, from performing any of its obligations hereunder for any reason beyond its reasonable control, including, without limitation, shortages, lack of the Company's financial resources, labor disputes, fires, storms, earthquakes, acts of God, or any statute, regulation or rule of the federal government, any state or local government or any agency thereof.

15.8 Amendments; Course of Dealing. This Agreement may only be amended or supplemented if in a writing signed by both parties. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

15.9 Cooperation; Further Assistance. From time to time, as and when reasonably requested by either party hereto, the other party will (at the expense of the requesting party) execute and deliver, or cause to be executed or delivered, all such documents, instruments and consents and will use reasonable efforts to take all such action as may be reasonably requested or necessary to carry out the intent and purpose of this Agreement.

15.10 Counterparts. The parties may execute this Agreement in two (2) or more counterparts, which shall, in the aggregate, be signed by all the parties; each counterpart shall be deemed an original instrument as against any party who has signed it.

IN WITNESS WHEREOF, the parties have executed this Agreement, through their duly authorized representatives, effective as of the date first above written.

MANAGER:

PROSPECT EAST HOSPITAL ADVISORY SERVICES, LLC,
a Delaware limited liability company

By: Prospect Medical Holdings, Inc., its Manager

By:_____
Name:
Title:

THE COMPANY:

PROSPECT CHARTERCARE, LLC,
a Rhode Island limited liability company

By:_____
Name:
Title:

EXHIBIT A
FACILITIES

EXHIBIT B
MANAGEMENT SERVICES

In consideration of the payments to be made hereunder, Manager shall from time to time and as appropriate provide, or may provide through one or more of its Affiliates, the following Management Services to Company:

Management Oversight.

Manager shall supervise and manage the day-to-day business affairs and operations of the Company and such other health care facilities as the parties may from time to time agree. Manager shall use commercially reasonable efforts to cause the Company's business to be conducted in a manner consistent with best practices.

Chief Executive Officer of the Facilities.

Ken Belcher shall be the Chief Executive Officer (the "CEO") of the Facilties and shall perform all functions and shall otherwise have all duties associated with such office. Mr. Belcher shall be subject to the supervision of senior management of Manager and shall serve as CEO until his (i) death, disability or resignation, or (ii) termination of employment in accordance with the Amended and Restated Limited Liability Company Agreement of the Company.

Business Development/Strategy

Manager shall with assistance of local Company management assist to develop short, medium and long-range plans, objectives and goals for the Company and shall present the plans, objectives and goals to Company for review and approval. Upon such approval, Manager shall cause Company to be operated in compliance with such plans, objectives and goals. Included in such plans, objectives and goals will be:

- Consideration of trends in the industry, make recommendations, regarding new and/or expanded services and programs, physician alignment & recruitment, IT/EMR capabilities and improvements, technology implementation, ACOs and other reform-driven strategies, and managed care strategies

- Review, assessment and recommendations of potential service consolidation and restructurings to achieve efficiencies

- Review, assessment and recommendations of new clinical service lines, programs and locations

- Review, assessment and recommendations of physician-alignment strategies, joint ventures and other strategic initiatives

Operations

Manager shall cause local Company Management to develop policies and operating procedures for the Company and each of its facilities (including all departments, divisions, service lines, programs and initiatives). :

- Expenditures and Contracts. Manager will work with local Company management to analyze the Company's expenditure and spending patterns, evaluate standard procurement lifecycle methodologies including working cash vs. discount modeling, invoice synchronization and vendor payment management. Manager shall oversee local management's negotiation and execution of agreements, contracts and orders and causing local Company management to make such expenditures as Manager may deem necessary or advisable for the operation and maintenance of the Company in amounts and of the types consistent with the Company's annual budget, operational requirements and based upon sound business practices. Such expenditures and contracts would include without limitation:
    - Third party service providers
    - Supply contracts
    - Contracts with outside contractors or consultants
    - Preventive maintenance with respect to equipment and building
    - Upkeep and maintenance of the physical facilities
- Capital Expenditure Management. Manager shall cause local Company Management to provide capital expenditure evaluation and procurement including pro forma modeling, return on investment calculations, bench marking, and assumption testing.
- Supply Chain Management Manager shall provide Company access to participate in one or more of Manager's volume purchasing programs and systems to the extent that such participation does not result in a breach of the Company's existing agreements or contractual obligations. Company-related rebates/discounts will accrue to the Company.
- Reimbursement. Manager shall from time-to-time and as appropriate provide third party reimbursement strategies and consultation on strategy and compliance with all applicable reimbursement rules. Manager shall cause local Company management to prepare and submit all required cost reports and shall coordinate and file on a timely basis any appeals and/or audits. If Manager or Company determines that an outside third party is required to prepare such cost reports or that legal action is required in connection with such matters, the cost of such action is not included in the Management Fee, and any such legal action shall be paid for by Company. ·

- Audit. Manager shall as appropriate and its discretion conduct periodic audits of the Company and shall report the results thereof to Company. During the course of the audit, Company's local management shall provide all data as requested by Manager and/or its consultants. If Manager hires others to perform audit functions, the costs of such audit functions shall not be included in the Management Fee and shall be paid by Company. In conjunction with the audit, Manager shall provide recommendations to help ensure financial data integrity, reduce expenses, capture additional revenues, and improve cash flow..

- Legal. Manager shall provide access to its staff attorneys who shall assist Company with operational issues relating to the Company as reasonably necessary, including assistance with contract preparation and review, consultation regarding regulatory issues, transactions and litigation oversight and management. It is not intended that the Manager's or the Company's in-house legal staff handle all legal matters of the Company, and Manager shall determine when outside legal counsel would be desirable for a specific issue or matter. In such event, the Manager's in-house legal staff shall select and oversee the work of outside legal counsel so engaged. The costs of outside counsel are not included in the Management Fee and shall be paid by Company. In general, the costs of transactions and/or litigation (including the fees an costs of outside counsel relating to the evaluation of a claim, matter or dispute prior to the implementation of formal litigation) are not covered by the Management Fee. :

- Compliance Programs. Manager shall cause local Company management to develop, implement and maintain a compliance program that is committed to promoting, preventing, detecting and resolving instances of conduct that do not conform to federal or state laws..

- Treasury. Manager may at its discretion and as appropriate review cash account and bank fees for cost savings opportunities, recommend cash receipt and disbursement processes to improve efficiencies, identify and assess risk and reward profiles associated with incremental investment activities and assist management to identify and select treasury and finance system selection and systems implementation..

- Financial/Accounting. Manager shall cause local Company management to establish, maintain, and supervise the Company's accounting systems and supervise the preparation of monthly and annual statements of income and loss. Manager shall have the overall oversight and authority to make all decisions as to accounting principles and elections, whether for book or tax purposes (and such decisions may be different for each purpose) and to set up or modify record keeping, billing, and accounts payable accounting systems. Manager shall prepare the Company's annual tax return by an outside third party (the cost of which shall be the responsibility of the Company).

- Revenue Cycle Management Manager shall oversee the business operations of the Company, which shall include but not be limited to, providing recommendations regarding patient accounting and receivables management, clinical documentation, and managed care contracting, Upon Company's request, Manager shall provide additional, specialized services to focus on specific areas of revenue cycle. If such additional,

specialized services require outside resources, the cost of those resources shall be a cost of the Company.

Human Resources Manager shall provide advice and recommendations to the Company's human resources functions and provide employee benefits to all personnel who provide services at the Company. The cost of such benefits shall be the responsibility of the Company. Manager shall:

- Develop strategies with respect to the Company's unions, CBAs, negotiations, and other labor relations matters
- Develop and administer employee benefit plans and conditions of employment for Company
- Provide assistance with personnel, including without limitation the recruitment and retention of physicians, executive management and other medical and non-medical personnel
- Provide assistance the development and administration of human resource and payroll policies.

Insurance Manager shall have the responsibility and authority to enter into or cause local Company management to acquire, and enter into any contract of insurance that Manager deems necessary and proper for the protection of Company, for the conservation of Company's assets, or for any purpose convenient or beneficial to Company.

Public Affairs

- Public Relations. Manager shall provide Company with assistance in such issues as crisis communications and local and national media relations services as may be necessary to operate the public relations functions of the Company. To the extent an outside third party is used, the cost of those services shall be the responsibility of the Company.

Additional Management Services

The Company and Manager expressly recognize that there may be additional services provided by Manager that are not specifically set forth herein, it being the intent of the parties that all other management, financial, operations and administrative services relating to the Company provided by the Manager shall be included in "Management Services" pursuant to the provisions of this Agreement.

EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is entered into as of the last date of signature (the "Effective Date") by and between Prospect CharterCare, LLC ("Covered Entity") and Prospect East Hospital Advisory Services, LLC, by and on behalf of its covered entity subsidiaries, affiliates, and related organizations (collectively, the "Business Associate").

R E C I T A L S

Covered Entity and Business Associate have entered into a signed Management Services Agreement and/or other documented arrangement (collectively, the "Services Agreement") pursuant to which Business Associate provides services to Covered Entity ("Services") that may require Business Associate to access, create and use health information that is protected by state and/or federal law; and

WHEREAS, the Business Associate is obligated to protect the privacy and security of individually identifiable health information ("Protected Health Information" or "PHI") and electronic protected health information ("EPHI") created and/or maintained by Covered Entity in accordance with the Health Insurance Portability and Accountability Act of 1996 and its implementing privacy and security regulations at 45 C.F.R. Parts 160 and 164 promulgated by the U.S. Department of Health and Human Services ("HHS"), as amended by the federal Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and its implementing regulations (collectively "HIPAA"); and

WHEREAS, Covered Entity and Business Associate desire to enter into this Agreement in order to comply with HIPAA, as may be modified or amended, including future issuance of regulations and guidance by HHS, and reflect their understanding of the use, disclosure and general confidentiality obligations of Business Associate as it relates to the Services Agreement.

NOW, THEREFORE, in consideration of the mutual promises and other consideration contained in this Agreement, the parties agree as follows:

ARTICLE XVI
DEFINITIONS

Capitalized terms used herein but not otherwise defined in this Agreement shall have the same meanings as set forth in HIPAA, as may be modified or amended, including future issuance of regulations and guidance by HHS.

ARTICLE XVII
OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

17.1 Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as permitted or required by law.

17.2 Business Associate may use and disclose PHI for the proper management and administration of Business Associate; provided that with respect to any disclosures of PHI, such disclosures are required by law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person. Business Associate may, in accordance with the Privacy Rule, de-identify PHI. Without limitation of the foregoing, Covered Entity acknowledges that the legal structure of the Business Associate and its affiliates, including Prospect Medical Holdings, Inc., affords the Business Associate the opportunity to be characterized for HIPAA purposes as a participant in an affiliated covered entity arrangement as part of such legal structure ("HIPAA Arrangement"), and as such Covered Entity agrees that disclosure of PHI may be made to the other participants in such HIPAA Arrangement and that such other participants in such HIPAA Arrangement may use or disclose PHI, only in compliance with the terms of this Agreement.

17.3 Business Associate agrees to use appropriate physical and technical safeguards to prevent the use or disclosure of Covered Entity's PHI for any purpose other than the provision of Services under this Agreement.

17.4 Upon written request from the Covered Entity, Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of PHI not in compliance with this Agreement.

17.5 In the event Business Associate engages any agent or subcontractor to perform the services under this Agreement and discloses PHI to such agent or subcontractor, Business Associate will require any such agent or subcontractor to agree to the same restrictions and conditions required in this Agreement.

17.6 Upon written request from the Covered Entity, Business Associate agrees to make PHI available to individuals in accordance with 45 CFR Section 164.524 of HIPAA governing access of individuals to PHI.

17.7 Upon written request from the Covered Entity, Business Associate agrees to make PHI available for amendment and incorporate any amendments in accordance with 45 CFR Section 164.526 of HIPAA governing amendments to PHI.

17.8 Upon written request from the Covered Entity, Business Associate agrees to make any and all information available for the purpose of providing patients an accounting of disclosures in accordance with 45 CFR Section 164.528 of HIPAA governing accounting for disclosures.

17.9 Business Associate agrees to make its internal practices, books and records related to the use and disclosure of PHI received from, created or received by Business Associate on behalf of Covered Entity, available to the Secretary of HHS and the HHS Office for Civil Rights for the purposes of determining Covered Entity's compliance with HIPAA.

17.10 Business Associate shall implement and maintain safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains or transmits on behalf of Covered Entity.

17.11 Business Associate and Covered Entity agree to comply with all applicable rules and regulations promulgated under HIPAA in effect during the term of this Agreement.

17.12 Business Associate will report to Covered Entity within a reasonable time period of discovery, any (a) Security Incident, or (b) Security Breach as defined at 45 C.F.R. Part 164, Subpart D. Business Associate may supplement its initial report as information becomes available in order to identify:

(a) The nature of the non-permitted use or disclosure including how such use or disclosure was made;

(b) The unsecured PHI used or disclosed;

(c) If possible and applicable, the identity of the person/entity who received the unsecured PHI;

(d) What corrective action Business Associate took;

(e) What Business Associate did to mitigate any deleterious effect; and

(f) Such other information as Covered Entity may request.

17.13 At all times during the term of this Agreement, Business Associate will comply with all applicable federal, state and local laws, rules and regulations pertaining to patient records and the confidentiality of patient information, including Covered Entity's PHI. Business Associate acknowledges that HITECH imposes new requirements on business associates with respect to the privacy and security of PHI and notification of breaches involving Unsecured PHI. Business Associate contemplates that such requirements shall be implemented by regulations to be adopted by HHS, and agrees to comply with such regulations commencing on the applicable effective date. Business Associate and Covered Entity each further agree that the provisions of HIPAA and HITECH, including the HITECH BA Provisions, that apply to business associates and that are required to be incorporated into a HIPAA business associate agreement are hereby incorporated into this Agreement as if set forth in this Agreement in their entirety and are effective as of the applicable effective date.

ARTICLE XVIII
OBLIGATIONS OF COVERED ENTITY

18.1 Covered Entity will notify Business Associate of any agreement Covered Entity makes regarding any restriction or requirement for confidential communication with respect to the use or disclosure of PHI, to the extent that such restriction agreement or confidential communication requirement may affect Business Associate's use or disclosure of PHI.

18.2 Covered Entity will: (i) use safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate, until such PHI is received by Business Associate; and (ii) inform Business Associate of any consent or authorization, including any changes in or withdrawal of any such consent or authorization, provided to the Covered Entity by an individual.

ARTICLE XIX
TERM AND TERMINATION

19.1 This Agreement shall remain in effect until such time as the Services Agreement expires or is terminated.

(a) Except for the requirements set forth in Section 4.2, which shall survive as set forth therein, and except as otherwise provided in Section 4.1(b), this Agreement will terminate on the date that the Services Agreement is terminated or expires.

(b) This Agreement may be terminated by Covered Entity upon the breach of any material provision of this Agreement by Business Associate, which breach is not corrected within thirty (30) days after written notice of such breach is given to Business Associate. If cure of the breach and termination of this Agreement is not feasible, Covered Entity may report the breach to HHS as required by law.

19.2 Business Associate agrees that, upon termination of the Services Agreement and this Agreement, Business Associate will return or destroy all PHI received from or created or received on behalf of Covered Entity. In the event Business Associate determines that return or destruction is not feasible, Business Associate will extend the protections required in this Agreement to the PHI and limit further uses and disclosures to only those purposes that make the return or destruction of the information infeasible.

ARTICLE XX
MISCELLANEOUS

20.1 Regulatory References. A reference to HIPAA or the HITECH Act, or a section thereof, and its regulations and requirements means the provisions and section(s) in effect, as may be modified or amended, including issuance of regulations and guidance by HHS.

20.2 Amendment. Both parties agree that the provisions of HIPAA and the HITECH Act, including provisions to be adopted by HHS which apply to business associates and that are required to be incorporated into a HIPAA business associate agreement, are hereby incorporated into this Agreement as if set forth in this Agreement in their entirety and are effective as of the applicable effective date. Notwithstanding the foregoing, the parties agree to take such action as is required by law to amend this Agreement pursuant to final regulation or amendment of HIPAA and the HITECH Act.

20.3 Notices. Any notices to be delivered hereunder shall be delivered to the addresses set forth in and consistent with the requirements for delivery contained in, the Services Agreement; provided, that a copy of any notice to Covered Entity hereunder shall also be delivered to: Prospect East Hospital Advisory Services, LLC, 10780 Santa Monica Blvd., Suite 400, Los Angeles, CA 90025, Attention: Privacy Office. Notice shall be in writing and shall be deemed effective when personally delivered or, if mailed, three (3) calendar days after the date deposited in the United States mail, first class, postage prepaid, to the addressee at its current business address.

20.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and when taken together shall constitute one agreement.

20.5 Choice of Law. All issues and questions concerning the validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the state identified in the Services Agreement.

20.6 Voluntary Execution. Each party has read and understands this Agreement, and represents that this Agreement is executed voluntarily and should not be construed against any party hereto solely because it drafted all or a portion hereof.

20.7 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision and this Agreement will be reformed, construed, and enforced as if such invalid, illegal or unenforceable provision had never been contained herein.

20.8 No Modification. No modification of this Agreement will be effective unless made in writing and executed by each party hereto, except as otherwise provided hereunder.

20.9 Entire Agreement. This Agreement supersedes any and all prior agreements and understandings between the parties related to the subject matter hereof.

20.10 Independent Contractor. None of the provisions of this Agreement are intended to create any relationship between the parties other than that of independent entities contracting with each other for the purpose of effecting the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Business Associate Agreement to be executed and delivered as of the day and year first above written.

COVERED ENTITY:	BUSINESS ASSOCIATE:
PROSPECT CHARTERCARE, LLC	PROSPECT EAST HOSPITAL ADVISORY SERVICES, LLC By: Prospect Medical Holdings, Inc., its manager
SPECIMEN – DO NOT SIGN	SPECIMEN – DO NOT SIGN
BY: _____	BY: _____
NAME: _____	NAME: _____
ITS: _____	ITS: _____
DATE_____	DATE: _____

EXHIBIT D
JOINDER TO MANAGEMENT SERVICES AGREEMENT
[Insert Date]

Reference is made to the Management Services Agreement dated [_____], 2013 (the "Agreement") by and between Prospect East Hospital Advisory Services, LLC, a Delaware limited liability company (hereinafter referred to as "Manager"), and Prospect CharterCare, LLC, a Rhode Island limited liability company (hereinafter referred to as the "Company").

The undersigned hereby acknowledges that the undersigned will benefit directly from the Agreement. In consideration thereof, the undersigned agrees with and guarantees to Manager and the Company that the undersigned shall abide by the terms and conditions of the Agreement, including without limitation the covenants contained in ARTICLE [____] of the Agreement, as if an original party to the Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Joinder as of the date first set forth above.

[_____]

SPECIMEN – DO NOT SIGN

_____
By:

Acknowledged:

PROSPECT CHARTERCARE, LLC

SPECIMEN – DO NOT SIGN

_____
By:
Its:

Acknowledged:

PROSPECT EAST HOSPITAL ADVISORY SERVICES, LLC

SPECIMEN – DO NOT SIGN

_____
By:
Its:

2345002 v3

Exhibit I

FIRPTA Certificates

See Attached

EXHIBIT I

FORM OF FIRPTA CERTIFICATE

NON-FOREIGN CERTIFICATION

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by _____, a Rhode Island corporation (the "Transferor"), the undersigned hereby certifies as follows:

1. Undersigned is the Secretary of Transferor.

2. Transferor is not a foreign corporation, foreign partnership, foreign estate, foreign person or non-resident alien (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

3. Transferor is not a disregarded entity as defined by Income Tax Regulations Section 1.1445-2(b)(2)(iii).

4. Transferor's Employer Identification Number is _____.

5. Transferor's address is: c/o CharterCARE Health Partners
825 Chalkstone Avenue
Providence, RI 02908

The undersigned understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement herein could be punished by fine, imprisonment or both. The undersigned further understands that transferee is relying on this certification in determining whether or not withholding is required upon the subject transfer.

Under penalties of perjury, the undersigned declares that he has examined this certification and to the best of his knowledge and belief it is true, correct and complete, and he has the authority to sign this document on behalf of Transferor.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate as of this ____ day of _____, 2013.

_____

By:_____
Name:_____
Title:_____

STATE OF _____
COUNTY OF _____

In _____, on this _____ day of _____, 2013, before me personally appeared _____, the _____ of _____, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of _____, and s/he acknowledged said instrument, by her/him executed to be her/his free act and deed in said capacity and the free act and deed of _____.

_____
NOTARY PUBLIC
My Commission Expires:_____

Exhibit J

Limited Power of Attorney

See Attached

EXHIBIT J

Form of Limited Power of Attorney

_____("Registrant") is licensed to operate a **[pharmacy/laboratory]** under the laws of the State of Rhode Island under **license number [ ]**, maintains a **state controlled substances registration certificate under license number [ ]**, and maintains a controlled substances registration certificate under **DEA registration number [ ]**. This Limited Power of Attorney is being delivered pursuant to that certain Asset Purchase Agreement, dated September 24, 2013, by and among Registrant, Company, and certain other parties (the "Asset Purchase Agreement").

1. To the extent permitted by applicable law:

(a) I, _____ (name of person granting power), the undersigned, who am authorized to sign the current application for DEA registration on behalf of the above-named Registrant under the Controlled Substances Act or Controlled Substances Import and Export Act, have made, constituted, and appointed, and by these presents, do make, constitute, and appoint_____ (the "Company"), my true and lawful attorney-in-fact for me in my name, place, and stead, to execute applications for Forms 222 and to sign orders for Schedule I and II controlled substances, whether these orders be on Form 222 or electronic, in accordance with 21 U.S.C. § 828 and Part 1305 of Title 21 of the Code of Federal Regulations, for the Limited Period described in paragraph 3 below. I hereby ratify and confirm all that the Company must lawfully do or cause to be done by virtue hereof.

(b) The Company shall have the right, for the Limited Period described in paragraph 3 below, to operate under the licenses and registrations of Registrant relating to controlled substances and the operations of the **[pharmacy/laboratory]**, until it is able to obtain such licenses and registrations for itself.

2. Registrant recognizes that it remains legally responsible for the DEA registration issued to it, during the period in which this Limited Power of Attorney is in effect. Therefore, Registrant grants this Limited Power of Attorney to the Company based upon the following covenants and warranties of the Company: (a) the Company shall follow and abide by and comply with all federal and state laws governing the regulation of controlled substances and the operation of the **[pharmacy/laboratory]** at all times while utilizing this Limited Power of Attorney and shall indemnify and hold the Registrant harmless from and against any claims arising out of the Company's failure to do so; and (b) the Company, or its designee, shall make application for and pursue its own **[pharmacy/laboratory]** licenses and DEA and other registrations which are required by law as soon as practicable.

3. This Limited Power of Attorney shall remain in effect for a period not to exceed one hundred twenty (120) days following the closing date of the Asset Purchase Agreement (the "Limited Period").

4. Registrant may revoke this Limited Power of Attorney at any time by executing the Notice of Revocation, attached hereto at Exhibit A.

This Limited Power of Attorney may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on all of the parties hereto.

IN WITNESS WHEREOF, Registrant and the Company have executed this Limited Power of Attorney as of the _____ day of _____, 201_, to be effective as of 12:01 a.m. Eastern Time on the ____ day of _____, 201_.

By:	By:
Name:	Name:
Title:	Title:
Witness:	Witness:
Witness:	Witness:

Exhibit A

The Limited Power of Attorney, executed on _____, is hereby revoked by the undersigned, who is authorized to sign the current application for DEA registration. Written notice of this revocation has been given to the attorney-in-fact this same day.

By:

Name:

Title:

Witness:

Witness:

Exhibit K

Charity Care/Financial Assistance Policy

See Attached

ROGER WILLIAMS MEDICAL CENTER HOSPITAL POLICY AND PROCEDURE	TITLE:	Number
Coverage For Uninsured & Under-Insured Patients Receiving Services at Roger Williams Medical Center	**Financial Assistance Policy**	Source **Patient Financial Services**
		Approved

Date Issued	Date Effective	Updated	Distribution	Page
03/09/2011	03/09/2011	2/17/06, 3/4/11, 3/1/12, 2/4/13	See Below	1 of 3

It is the policy of Roger Williams Medical Center, a voluntary not-for-profit corporation, to provide medically necessary/essential health services to any person regardless of his/her ability to pay in full or in part for those services provided by the Hospital.

Purpose:

Roger Williams Medical Center provides Financial Assistance to patients who meet specified financial criteria and request such assistance. Consideration will be given to a patient's financial status, including indebtedness for existing medical bills, pursuant to state regulation. Roger Williams Medical Center will provide public "Notice of Hospital Financial Aid" (Attachment A) on the Hospital's website, at appropriate intake/registration locations, and make notice of availability to patients on patient bills. Roger Williams Medical center shall provide its "Financial Aid Criteria" (Attachment B) for qualifying patients/guarantors for financial assistance including partial assistance. Roger Williams Medical Center will make these notices available in other languages in accordance with the "*Standards for Culturally and Linguistically Appropriate Services in Health Care"* (Standards 4 & 7, based on Title VI of the Civil Rights Act of 1964).

Financial Assistance may be extended when a review of a patient's individual financial circumstance has been conducted and documented. This should include a review of the patient's existing medical bills (including any accounts that have gone to bad debt within twelve (12) months of application date).

Procedure:

Patients who qualify for Financial Assistance should be identified as soon as possible in the revenue cycle. Patients requiring medically necessary/essential healthcare services, who are identified as being without federal, state, local, or private healthcare coverage, shall receive the following:

- Financial Assistance counseling along with a packet of information that addresses the Financial Assistance policy and procedure, including an application for assistance.

1. An evaluation for Financial Assistance can be initiated by:
   - A call from a patient with a self-pay balance due, taken by any RWMC employee or vendor.
   - A patient presents at a clinical area without insurance and states that he/she cannot afford to pay the medical expenses associated with current or previous medical services.
   - A physician or other clinician refers a patient for financial assistance evaluation.
2. The Hospital will designate a person(s) who will be responsible for taking Financial Assistance applications. Designees can be employees of RWMC or their associated vendors.
3. Criteria to be met for Financial Assistance Approval:
   a. Residency – Financial Assistance is intended for uninsured or underinsured low-income Rhode Island residents.
   b. Income – For 100% Discount, income must not exceed 200% of the current Federal Poverty Guideline.
   c. Income – For Sliding Scale Discounts (20-80%), income must not exceed 201-300% of the current Federal Poverty Guideline.
   d. Assets – Cannot exceed the assets protection threshold which is updated annually.
      Current Protection Threshold: $9,400.00 Individual and $14,100.00 per family. (Updated 02/2013)
      Types of Assets Considered but not limited to:
      Investments that could be converted to cash within one (1) year
      Savings or Checking Accounts
      Certificates of Deposit
      Money-Market Accounts
      Property – other than primary residence
   e. All insurance benefits have been exhausted.

4. A patient can qualify for Financial Assistance either through lack of sufficient insurance or excessive medical expenses. Once a patient has submitted all required information, the Financial Counselor will review and analyze the application and forward it to the Patient Financial Services Department for final determination of eligibility based on applicable guidelines. Financial Assistance will be denied to patients/guarantors who do not fully cooperate in applying for available coverage, or who fail to provide the information and documentation necessary to apply for financial assistance; with the exception of Presumptive Charity Care Eligibilityt. In such cases where the patient/guarantor is not cooperative, Roger Williams Medical Center may place the outstanding account in bad debt status and pursue collections accordingly.

5. A department can continue to use a government-sponsored application process and associated income scale, as required by the terms of a program grant or other outside authority governing that program.

6. Once a patient is approved for Financial Assistance, it is expected that the patient/guarantor will continue to meet his/her required financial commitments to Roger Williams Medical Center. If a patient is approved for a percentage allowance (partial charity) due to financial hardship and the patient does not make the required initial payment within thirty (30) days towards the outstanding balance, the Financial Assistance allowance will be reversed and the patient will owe the entire amount.

7. If the patient/guarantor has a change in financial status, the patient/guarantor should promptly notify the Hospital. The patient/guarantor may request and apply for financial assistance or a change in their payment plan terms.

Medical Indigence:

A patient's medical indigence is determined by Roger Williams Medical Center by giving exclusive consideration to a patient's income level in relation to the amount of their medical bills. Medically indigent patients are those who do not have appropriate insurance coverage that applies to services related to their significant or catastrophic health care requirements. Such patients may have a reasonable level of income but a low level of liquid assets and payment of their medical bills would be seriously detrimental to their basic financial well-being and survival. Roger Williams Medical Center shall make a decision regarding a patient/guarantor's medically indigent status by reviewing formal documentation for any circumstance in which a patient is considered eligible for a financial assistance discount on the basis of medical indigence.

In addition to the required information to be considered for financial assistance the following documents may be required to support medical indigence:

- Copies of all patient/guarantor medical bills.
- Information related to the patient's prescription drug costs.
- Multiple instances of high-dollar patient co-pays, deductibles, and/or other medical liabilities.
- Other evidence of high-dollar amounts related to healthcare costs such as documentation of a HSA that has been fully expended.

Presumptive Charity Care Eligibility:

There are instances when a patient may appear eligible for charity care discounts; however, a financial assistance form cannot be completed due to a lack of supporting documentation. Often there is adequate information provided by the patient or other sources that could provide Roger Williams Medical Center with sufficient evidence that the patient would otherwise qualify for a financial assistance discount. Once eligibility has been determined, due to the inherent nature of the presumptive circumstances, a financial assistance discount of 100% of the account balance will be granted.
Presumptive eligibility may be determined on the basis of a patient's life circumstances that may include the following:

- Homeless or living in a shelter.
- No income.
- Participation in Women's Infant's, and Children's programs (WIC).
- Food stamp eligibility.
- Eligibility for other state or local assistance programs that are unfunded (e.g.; Medicaid spend-down).
- Documentation provided by family or friends of the patient establishing the patient's inability to pay for medical care (e.g.; letter of support).
- Low income/subsidized housing is provided as a valid address.
- Patient is deceased with no known estate.
- If the patient is mentally or physically incapacitated and has no one to act on his/her behalf.
- Participation in the SSTAR Program

Appeal Rights of Patient/Guarantors:

If a patient/guarantor disagrees with the denial of financial assistance decision, the patient/guarantor may request in writing an appeal within forty-five (45) business days of receiving notification. The denial letter will advise the patient that he or she has the right to appeal the decision and that the patient will be provided the information necessary to file a written appeal. The Director of Patient Financial Services will review all appeals and make a final decision regarding the financial assistance. The final decision will be communicated to the patient/guarantor in writing within fourteen (14) business days. Collection activity halted as a result of the financial assistance process will continue to be halted during the appeal process until the committee makes a final determination.

Financial Assistance Signature Authority:

Supervisor/Manager/Director – Patient Financial Services
VP Finance
Chief Financial Officer

Recording of Financial Assistance:

Roger Williams Medical Center shall provide the Rhode Island Department of Health (on an annual basis or as required by the Director) information including but not limited to:

- The "Annual Financial-Aid Data Filing
- The public "Notice of Hospital Financial Aid"
- HIPAA Compliant Bill including the public "Notice of Hospital Financial Assistance"
- The "Notice of Financial Aid Criteria"
- The "Application for Financial Assistance"
- The Hospital's adopted Appeals Process
- The Hospital's adopted Collections Process

St. Joseph Health Services of Rhode Island HOSPITAL POLICY AND PROCEDURE	TITLE:	Number 01-950-92
Coverage For Uninsured & Under-Insured Patients Receiving Services at St. Joseph Health Services of Rhode Island	**Financial Assistance Policy**	Source **Administration**
		Approved

Date Issued	Date Effective	Updated	Distribution	Page
03/09/2011	04/01/2007	03/01/2012, 2/4/2013	See Below	1 of 3

It is the policy of St. Joseph Health Services of Rhode Island, a voluntary not-for-profit corporation, to provide medically necessary/essential health services to any person regardless of his/her ability to pay in full or in part for those services provided by the Hospital.

Purpose:

St. Joseph Health Services of Rhode Island provides Financial Assistance to patients who meet specified financial criteria and request such assistance. Consideration will be given to a patient's financial status, including indebtedness for existing medical bills, pursuant to state regulation. St. Joseph Health Services of Rhode Island will provide public "Notice of Hospital Financial Aid" (Attachment A) on the Hospital's website, at appropriate intake/registration locations, and make notice of availability to patients on patient bills. St. Joseph Health Services of Rhode Island shall provide its "Financial Aid Criteria" (Attachment B) for qualifying patients/guarantors for financial assistance including partial assistance. St. Joseph Health Services of Rhode Island will make these notices available in other languages in accordance with the "*Standards for Culturally and Linguistically Appropriate Services in Health Care*" (Standards 4 & 7, based on Title VI of the Civil Rights Act of 1964).

Financial Assistance may be extended when a review of a patient's individual financial circumstance has been conducted and documented. This should include a review of the patient's existing medical bills (including any accounts that have gone to bad debt within twelve (12) months of application date).

Procedure:

Patients who qualify for Financial Assistance should be identified as soon as possible in the revenue cycle. Patients requiring medically necessary/essential healthcare services, who are identified as being without federal, state, local, or private healthcare coverage, shall receive the following:

- Financial Assistance counseling along with a packet of information that addresses the Financial Assistance policy and procedure, including an application for assistance.

1. An evaluation for Financial Assistance can be initiated by:
   - A call from a patient with a self-pay balance due taken by any SJHSRI employee or vendor.
   - A patient presents at a clinical area without insurance and states that he/she cannot afford to pay the medical expenses associated with current or previous medical services.
   - A physician or other clinician refers a patient for financial assistance evaluation.
2. The Hospital will designate a person(s) who will be responsible for taking Financial Assistance applications. Designees can be employees of SJHSRI or their associated vendors.
3. Criteria to be met for Financial Assistance Approval:
   a. Residency – Financial Assistance is intended for uninsured or underinsured low-income Rhode Island residents.
   b. Income – For 100% Discount, income must not exceed 200% of the current Federal Poverty Guideline.
   c. Income – For Sliding Scale Discounts (20-80%), income must not exceed 201-300% of the current Federal Poverty Guideline.
   d. Assets – Cannot exceed the assets protection threshold which is updated annually.
      Current Protection Threshold: $9,400.00 Individual and $14,100.00 per family. (Updated 02/2013)
      Types of Assets Considered but not limited to:
      - Investments that could be converted to cash within one (1) year
      - Savings or Checking Accounts
      - Certificates of Deposit
      - Money-Market Accounts
      - Property – other than primary residence

   e. All insurance benefits have been exhausted.

St. Joseph Health Services of Rhode Island HOSPITAL POLICY & PROCEDURE	Date Effective 4/1/07	Page 2 of 3	Number 01-950-92

4. A patient can qualify for Financial Assistance either through lack of sufficient insurance or excessive medical expenses. Once a patient has submitted all required information, the Financial Counselor will review and analyze the application and forward it to the Patient Financial Services Department for final determination of eligibility based on applicable guidelines. Financial Assistance will be denied to patients/guarantors who do not fully cooperate in applying for available coverage, or who fail to provide the information and documentation necessary to apply for financial assistance; with the exception of Presumptive Charity Care Eligibility. In such cases where the patient/guarantor is not cooperative, St. Joseph Health Services of Rhode Island may place the outstanding account in bad debt status and pursue collections accordingly.

5. A department can continue to use a government-sponsored application process and associated income scale, as required by the terms of a program grant or other outside authority governing that program.

6. Once a patient is approved for Financial Assistance, it is expected that the patient/guarantor will continue to meet his/her required financial commitments to St. Joseph Health Services of Rhode Island. If a patient is approved for a percentage allowance (partial charity) due to financial hardship and the patient does not make the required initial payment within thirty (30) days towards the outstanding balance, the Financial Assistance allowance will be reversed and the patient will owe the entire amount.

7. If the patient/guarantor has a change in financial status, the patient/guarantor should promptly notify the Hospital. The patient/guarantor may request and apply for financial assistance or a change in their payment plan terms.

Medical Indigence:

A patient's medical indigence is determined by St. Joseph Health Services of Rhode Island by giving exclusive consideration to a patient's income level in relation to the amount of their medical bills. Medically indigent patients are those who do not have appropriate insurance coverage that applies to services related to their significant or catastrophic health care requirements. Such patients may have a reasonable level of income but a low level of liquid assets and payment of their medical bills would be seriously detrimental to their basic financial well-being and survival. St. Joseph Health Services of Rhode Island shall make a decision regarding a patient/guarantor's medically indigent status by reviewing formal documentation for any circumstance in which a patient is considered eligible for a financial assistance discount on the basis of medical indigence.

In addition to the required information to be considered for financial assistance the following documents may be required to support medical indigence:

- Copies of all patient/guarantor medical bills.
- Information related to the patient's prescription drug costs.
- Multiple instances of high-dollar patient co-pays, deductibles, and/or other medical liabilities.
- Other evidence of high-dollar amounts related to healthcare costs such as documentation of a HSA that has been fully expended.

Presumptive Charity Care Eligibility:

There are instances when a patient may appear eligible for charity care discounts; however, a financial assistance form cannot be completed due to a lack of supporting documentation. Often there is adequate information provided by the patient or other sources that could provide St. Joseph Health Services of Rhode Island with sufficient evidence that the patient would otherwise qualify for a financial assistance discount. Once eligibility has been determined, due to the inherent nature of the presumptive circumstances, a financial assistance discount of 100% of the account balance will be granted.
Presumptive eligibility may be determined on the basis of a patient's life circumstances that may include the following:

- Homeless or living in a shelter.
- No income.
- Participation in Women's Infant's, and Children's programs (WIC).
- Food stamp eligibility.
- Eligibility for other state or local assistance programs that are unfunded (e.g.; Medicaid spend-down).
- Documentation provided by family or friends of the patient establishing the patient's inability to pay for medical care (e.g.; letter of support).
- Low income/subsidized housing is provided as a valid address.
- Patient is deceased with no known estate.
- If the patient is mentally or physically incapacitated and has no one to act on his/her behalf.
- Participation in the SSTAR Program

Appeal Rights of Patient/Guarantors:

If a patient/guarantor disagrees with the denial of financial assistance decision, the patient/guarantor may request in writing an appeal within forty-five (45) business days of receiving notification. The denial letter will advise the patient that he or she has the right to appeal the decision and that the patient will be provided the information necessary to file a written appeal. The Director of Patient Financial Services will review all appeals and make a final decision regarding the financial assistance. The final decision will be communicated to the patient/guarantor in writing within fourteen (14) business days. Collection activity halted as a result of the financial assistance process will continue to be halted during the appeal process until the committee makes a final determination.

Financial Assistance Signature Authority:

Supervisor/Manager/Director – Patient Financial Services
VP Finance
Chief Financial Officer

Recording of Financial Assistance:

St. Joseph Health Services of Rhode Island shall provide the Rhode Island Department of Health (on an annual basis or as required by the Director) information including but not limited to:

- The "Annual Financial-Aid Data Filing
- The public "Notice of Hospital Financial Aid"
- HIPAA Compliant Bill including the public "Notice of Hospital Financial Assistance"
- The "Notice of Financial Aid Criteria"
- The "Application for Financial Assistance"
- The Hospital's adopted Appeals Process
- The Hospital's adopted Collections Process

Exhibit L

Essential Services

1. The Company and the Company Subsidiaries shall cause each Hospital to maintain a 24-hour emergency department that complies with applicable federal and state laws with respect to the evaluation and treatment of patients who present or are determined to have an emergency medical condition, or who, in the judgment of a staff physician, have an immediate emergency need; no emergency patient shall be turned away from the Hospitals because of age, race, gender, insurance status, inability to pay or any other non-clinical factor that is not relevant to the provision of medical services; provided, however, that the foregoing provisions of this Exhibit L shall be subject in all respects to changes in governmental policy.

2. In addition to the foregoing, Essential Services to be provided by the Company and the Company Subsidiaries, collectively, shall consist of the following:

- Medical/Surgical Services and Intensive/Coronary Care Unit
- Acute Dialysis Services
- Inpatient and Outpatient Rehabilitation Services, including Sub-acute and Skilled Nursing facility
- Ambulatory Care Services
- Emergency Services
- Inpatient and Outpatient Psychiatric/Mental Health/Addiction Medicine Services
- Diagnostic Imaging and Interventional/Radiology Services, including diagnostic cardiac catheterization
- Laboratory/Pathology
- Inpatient and Outpatient Cancer Services including Blood and Marrow Transplantation/Surgical and Radiation Oncology
- Sleep Lab
- Wound Care/Hyperbaric Services
- Dermatology
- Health center services (GYN & pediatric clinic, adult and pediatric dentistry, immunizations, WIC)
- Homecare/Hospice services

Exhibit M
Catholicity Standards for Legacy SJHSRI Locations

SJHSRI Locations:

Any and all facilities owned or operated by SJHSRI immediately prior to Closing, including without limitation Our Lady of Fatima Hospital ("SJHSRI Locations").

Standards:

1. Each SJHSRI Location (as defined above) shall be operated in full compliance with the Ethical and Religious Directives for Catholic Health Care Services as promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop of the Roman Catholic Diocese of Providence, Rhode Island (the "Bishop"), as the same may be amended from time to time (the "ERDs"). The Bishop shall be the sole arbiter with respect to matters relating to compliance with the ERDs at the SJHSRI Locations.

2. At Our Lady of Fatima Hospital, the existing chapel shall be maintained in good condition and repair as a Catholic Chapel with the Blessed Sacrament, and the Roman Catholic priest chaplaincy program shall be maintained. Both of the foregoing shall be financially supported from budgeted revenues.

3. The existing signs, symbols and images of Catholic identity at each SJHSRI Location, both interior and exterior to the facilities, shall be maintained and financially supported from budgeted revenues.

4. The Company's chief executive shall meet with the Bishop on an annual basis to report on compliance with the foregoing.

5. Notwithstanding any provision in this Agreement to the contrary, the obligations set forth in this Exhibit M are for the specific benefit of the Bishop. The parties acknowledge and agree that any breach of the foregoing covenants shall cause irreparable harm as to which no adequate remedy at law exists and that the Bishop may seek specific performance and injunctive relief in addition to all other remedies in equity or at law. As provided in Section 15.5(b) of this Agreement, if, in such circumstances, the Bishop is unsuccessful in obtaining specific performance and/or injunctive relief, the Company and the Company Subsidiaries shall, if requested by the Bishop in his sole discretion, cease operating under the names "St. Joseph" or "Our Lady of Fatima" or any other name that implies Catholicity.

6. Notwithstanding the foregoing, no provision of this Agreement shall be effective or enforceable if and to the extent that it may cause the Company or a Company Subsidiary, or any facility owned or operated thereby, to be in violation of applicable law or regulations or to be out of compliance with Medicare or Medicaid certification or participation requirements or The Joint Commission's standards of accreditation. The provision of such laws, regulations or participation criteria shall supersede the covenants set forth in this Exhibit M to the minimum extent necessary to comply with such laws, regulations and participation criteria.

Exhibit N

Services Restrictions for Other Company Locations

Company Locations:

Any and all facilities owned or operated by the Company or a Company Subsidiary other than the SJHSRI Locations described in Exhibit M, including Roger Williams Medical Center and any other facilities owned, operated or acquired by the Company or a Company Subsidiary following the Closing Date ("Company Locations").

Standards:

1. No Company Location (as defined above) shall cause or permit the following procedures, as defined below (collectively, the "Prohibited Procedures"), to be performed anywhere in its facilities or as part of its operations:

    - Abortion (including embryo reduction or any like procedure) and research involving embryo destruction

        - *Definition:* "Abortion" means the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus. Every procedure the sole immediate effect of which is the termination of pregnancy before viability is an abortion, which, in its moral context, includes the interval between conception and implantation of the embryo.

    - Euthanasia

        - *Definition:* "Euthanasia" means an action or omission that of itself or by intention causes the death of an individual in order to alleviate all suffering.

    - Physician-Assisted Suicide

        - *Definition:* "Physician-Assisted Suicide" means euthanasia attended by a physician.

2. The Company's chief executive shall meet with the Bishop of the Roman Catholic Diocese of Providence, Rhode Island (the "Bishop") on an annual basis to report on compliance with the foregoing and, more broadly, on the activities and operations of the Company and the Company Subsidiaries.

3. Notwithstanding any provision in this Agreement to the contrary, the obligations set forth in this Exhibit N are for the specific benefit of the Bishop. The parties acknowledge and agree that any breach of the foregoing covenants shall cause irreparable harm as to which no adequate remedy at law exists and that the Bishop may seek specific performance and

injunctive relief in addition to all other remedies in equity or at law. As provided in Section 15.5(b) of this Agreement, if, in such circumstances, the Bishop is unsuccessful in obtaining specific performance and/or injunctive relief, the Company and the Company Subsidiaries shall, if requested by the Bishop in his sole discretion, cease operating under the names "St. Joseph" or "Our Lady of Fatima" or any other name that implies Catholicity.

4. Notwithstanding the foregoing, no provision of this Agreement shall be effective or enforceable if and to the extent that it may cause the Company or a Company Subsidiary, or any facility owned or operated thereby, to be in violation of applicable law or regulations or to be out of compliance with Medicare or Medicaid certification or participation requirements or The Joint Commission's standards of accreditation. The provision of such laws, regulations or participation criteria shall supersede the covenants set forth in this Exhibit N to the minimum extent necessary to comply with such laws, regulations and participation criteria.

Exhibit 23

FINAL

AMENDED & RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

PROSPECT CHARTERCARE, LLC

(a Rhode Island Limited Liability Company)

June 20, 2014

THE MEMBERSHIP INTERESTS IN PROSPECT CHARTERCARE, LLC HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SUCH ACTS. EXCEPT AS SPECIFICALLY OTHERWISE PROVIDED IN THIS AGREEMENT, THE INTERESTS MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED WITHOUT REGISTRATION UNDER SUCH ACTS OR AN OPINION OF COUNSEL THAT SUCH TRANSFER MAY BE LEGALLY EFFECTED WITHOUT SUCH REGISTRATION. ADDITIONAL RESTRICTIONS ON TRANSFER AND SALE OF SUCH MEMBERSHIP INTERESTS ARE SET FORTH IN THIS AGREEMENT.

Table of Contents

EXHIBITS:

AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
PROSPECT CHARTERCARE, LLC

This Amended & Restated Limited Liability Company Agreement (this "Agreement") is entered into and effective as of June 20, 2014, by and between CHARTERCARE HEALTH PARTNERS, a Rhode Island not-for-profit corporation ("CCHP"), and PROSPECT EAST HOLDINGS, INC., a Delaware corporation (the "Prospect Member"), and PROSPECT CHARTERCARE, LLC, a Rhode Island limited liability company (the "Company").

WITNESSETH

WHEREAS, the Company was formed on August 21, 2013 through the filing of Articles of Organization with the Office of the Secretary of State of Rhode Island;

WHEREAS, pursuant to the terms, and subject to the conditions, of that certain Asset Purchase Agreement, dated as of September 24, 2013, among CCHP, the CCHP Affiliates, Prospect Medical Holdings, Inc. ("Prospect"), the Prospect Member, the Company, Prospect CharterCare RWMC, LLC ("RWMC SMLLC"), Prospect CharterCare SJHSRI, LLC ("SJHSRI SMLLC"), Prospect CharterCare Elmhurst, LLC ("Elmhurst SMLLC"), and Prospect CharterCare Physicians, LLC ("Physicians SMLLC" and together with RWMC SMLLC, SJHSRI SMLLC, Elmhurst SMLLC, each a "Company Subsidiary" and collectively, "Company Subsidiaries") (the "Purchase Agreement"), CCHP and the CCHP Affiliates agreed to sell certain assets relating to Roger Williams Medical Center, Our Lady of Fatima Hospital, and certain other assets to the Company and/or the Company Subsidiaries, in exchange for both cash consideration of $45 million (subject to adjustments and other terms and conditions as set forth in the Purchase Agreement) and a 15% membership interest in the Company;

WHEREAS, prior to the effective date hereof, the Prospect Member was the sole member (100%) of the Company, and in connection with the consummation of the transactions contemplated by the Purchase Agreement, the Members desire to enter into this Agreement to amend and restate any prior operating agreements with respect to the Company;

WHEREAS, the Members desire to enhance and improve the delivery of cost-effective, quality health care services in the greater Providence, Rhode Island metropolitan service area, to provide health care services to the indigent, and to offer services to an increased population more efficiently and cost-effectively; and

WHEREAS, subject to the terms and conditions hereof (and the Purchase Agreement), the Prospect Member will contribute $50 million of additional capital to the Company over four (4) years.

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings hereinafter contained, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. DEFINITIONS. As used herein, including Exhibit A attached hereto, the following terms have the following meanings:

1.1 "Act" means the Rhode Island Limited Liability Company Act, Rhode Island General Laws Chapter 7-16, as amended from time to time.

1.2 "Additional Member" means a Person who is admitted into the Company as a Member pursuant to the terms of Section 13.4 hereof.

1.3 "Adjusted Capital Contribution" means, with respect to a Member, the actual Capital Contributions made by such Member (or its predecessors in interest); provided that with respect to the Prospect Member (and its successors in interest), the Prospect Member's Adjusted Capital Contribution shall be increased by the portion of its Long-Term Capital Commitment that has been funded. The Members' Adjusted Capital Contributions are set forth on Exhibit B hereto.

1.4 "Affiliate" means, as to the Person in question, any Person that directly or indirectly controls, is controlled by, or is under common control with, the Person in question and any successors or assigns of such Person; and the term "control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person whether through ownership of voting securities, by appointment of trustees, directors, and/or officers, by contract or otherwise.

1.5 "Agreement" means this Amended & Restated Limited Liability Company Agreement of Prospect CharterCare, LLC, as from time to time amended pursuant to Section 17.11 hereof.

1.6 "Approval of the Board" or "Approved by the Board" means:

(a) In the event CCHP owns greater than 5% of the Units issued and outstanding, (i) the affirmative vote, consent or approval of at least a majority of those Category A Directors present at a meeting at which a Quorum of the Category A Directors exists, and (ii) the affirmative vote, consent or approval of at least a majority of those Category B Directors present at a meeting at which a Quorum of the Category B Directors exists. For purposes of this Section 1.6(a), a "Quorum" means a majority of the Category A Directors then serving and a majority of the Category B Directors then serving; and

(b) In the event CCHP owns 5% (or less) of the Units issued and outstanding, the affirmative vote, consent or approval of at least a majority of those Directors present at a meeting at which a Quorum exists. For purposes of this Section 1.6(b), a "Quorum" means a majority of all Directors then serving.

For purposes of this Agreement, the phrases "determined by the Board", "deemed by the Board", "consented to by the Board", or the like shall mean the same as "Approved by the Board."

1.7 "Articles" means the Articles of Organization of the Company, as amended from time to time.

1.8 "Bankruptcy" means, as to any Member, the Member's taking or acquiescing to the taking of any action seeking relief under, or advantage of, any applicable debtor relief, liquidation, receivership, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar Law affecting the rights or remedies of creditors generally, as in effect from time to time. For the purpose of this definition, the term "acquiescing" shall include, without limitation, the failure to file within the time specified by Law, an answer or opposition to any proceeding against such Member under any such Law and a failure to file, within thirty (30) days after its entry, a petition, answer or motion to vacate or to discharge any order, judgment or decree providing for any relief under any such Law.

1.9 "Borrowing Limit" means a loan or series of related loans in excess of Ten Million Dollars ($10,000,000). For the avoidance of doubt, indebtedness of Affiliates of the Company (including, without limitation, the Prospect Member and Prospect) that is guaranteed by the Company or the Company Subsidiaries, or secured by a lien on the assets of the Company or the Company Subsidiaries, shall not count against the Borrowing Limit, so long as the Company and the Company Subsidiaries are not the primary obligor thereof.

1.10 "Capital Contribution" means, as to any Member, the amount of cash or the Agreed Value (as defined in Exhibit A attached hereto) of tangible or intangible property contributed or deemed contributed to the Company by the Member, which initial amount is set forth opposite such Member's name on the attached Exhibit B under the heading "Initial Capital Account".

1.11 "Category A Directors" means the members of the Board of Directors elected or appointed from time to time by CCHP.

1.12 "Category B Directors" means the members of the Board of Directors elected or appointed from time to time by the Prospect Member.

1.13 "CCHP Affiliate" means any Affiliate of CCHP (other than a natural person).

1.14 "Code" means the Internal Revenue Code of 1986, as amended, or any successor thereto.

1.15 "Consumer Price Index" means the Consumer Price Index for All Urban Consumers, Medical Care Services (1982-84=100), published by the United States Bureau of Labor Statistics. In the event that such Index is discontinued or is so changed as not to reflect substantially the same information as it does in 2013, then the index to be used for these computations shall be the index then published by the United States Bureau of Labor Statistics that most clearly reflects the increase or decrease in consumer prices for the periods in question.

1.16 "Credit Agreement" means that certain Credit Agreement, dated as of May 3, 2012, by and among Prospect, the lenders party thereto and Morgan Stanley Senior Funding, Inc., as administrative agent, including any notes, mortgages, guarantees, collateral documents and other documents executed in connection therewith, in each case, as amended, restated,

modified, supplemented, renewed, replaced, extended, increased or refinanced in whole or in part from time to time.

1.17 "Days Cash on Hand" means (i) the sum of the Company's cash and investments, divided by (ii) the quotient of (x) the Company's rolling twelve (12) months operating expense minus (1) depreciation and amortization expense and (2) one-time non-cash operating expenses, divided by (y) the number of days in the rolling twelve month period. Days Cash on Hand is measured monthly as of month end. Expressed as a formula: (cash and investments) / ((rolling 12-month operating expense minus depreciation and amortization expense minus one-time non-cash operating expenses) / days in rolling 12-month period)).

1.18 "Distributable Cash" shall be defined as the sum of (a) all cash of the Company on its balance sheet, minus (b) Reserves.

1.19 "Fatima Hospital" means Our Lady of Fatima Hospital located in North Providence, Rhode Island.

1.20 "Hospitals" means the general acute care hospitals Roger Williams Medical Center, located in Providence, Rhode Island, and Our Lady of Fatima Hospital, located in North Providence, Rhode Island.

1.21 "Indenture" means that certain Indenture, dated as of May 3, 2012, by and among Prospect, the Subsidiary Guarantors identified therein and U.S. Bank National Association, as Trustee, including any notes, mortgages, guarantees, collateral documents and other documents executed in connection therewith, in each case, as amended, restated, modified, supplemented, renewed, replaced, extended, increased or refinanced in whole or in part from time to time.

1.22 "Interim Management Advisory Agreement" means that certain Interim Management Advisory Agreement by and between Prospect and CCHP, dated as of September 24, 2013, as it may be amended from time to time.

1.23 "Joint Commission" means the national organization (formerly JCAHO) which issues standards for health care organizations for purposes of Medicare program accreditation.

1.24 "Law" means any federal, state, local, municipal, foreign or other law, common law, statute, ordinance, rule, regulation, requirement, interpretation, judgment, ruling, order or writ of any governmental entity.

1.25 "Liquidator" means the Person who liquidates the Company under Article XVI hereof.

1.26 "Long-Term Capital Commitment" means the Prospect Member's obligation to contribute additional capital to the Company in the aggregate amount of (i) $50,000,000 over a four (4)-year period (which shall be in addition to the routine capital investment by the Company and the Company Subsidiaries of at least $10,000,000 per year), less (ii) any amount or amounts with respect to which the Prospect Member exercises its right, from time to time, to an offset pursuant to the provisions of Section 17.2 below and Sections 2.9(e) and 14.8 of the Purchase Agreement.

1.27 "Management Agreement" means the Management Services Agreement, of even date herewith, between Prospect or an Affiliate thereof and the Company.

1.28 "Manager" means the manager of the Company, which shall be Prospect or an Affiliate thereof, and in all events shall be a Restricted Subsidiary as defined in the Indenture.

1.29 "Member" means the Prospect Member or any Prospect Affiliate that becomes a Member, CCHP, and any Substituted Member or Additional Member, but excluding any Person who ceases to be a member of the Company pursuant to this Agreement. "Members" means all of the Persons who are members of the Company as defined in this Section 1.29.

1.30 "Person" means any individual, partnership, corporation, trust, limited liability company or other entity.

1.31 "Prospect Affiliate" means any Affiliate of Prospect or the Prospect Member (other than a natural person).

1.32 "Prospect Member" means Prospect East Holdings, Inc., a Delaware corporation, and any other Prospect Affiliate or Affiliates that are Members from time to time.

1.33 "Reserves" shall mean the amount of cash established by the Board of Directors from time to time equal to the sum of (i) fifteen (15) Days Cash on Hand, plus (ii) the amount of capital expenditures set forth in the budget for the next quarter, plus (iii) any allocated unspent funded amount provided to the Company as part of the Long-Term Capital Commitment (but excluding any Initial Working Capital Amount and any amounts provided under Section 4.2(d) below); plus (iv) any agreed upon reserves for specific matters.

1.34 "Roger Williams" means Roger Williams Medical Center located in Providence, Rhode Island.

1.35 "Sharing Percentage" means, as to a Member, the percentage obtained by dividing the number of Units owned by such Member by the total number of Units owned by all Members (and Exhibit B sets forth the initial Sharing Percentages of the respective Members). The Members hereby agree that their Sharing Percentages shall constitute their "interests in the Company profits" for purposes of determining their respective shares of the Company's "excess nonrecourse liabilities" (within the meaning of Section 1.752-3(a)(3) of the Regulations).

1.36 "Substituted Member" means any Person admitted to the Company as a Member pursuant to Section 13.3 hereof.

1.37 "Treasury Regulations" or "Regulations" means the regulations promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code. All references herein to sections of the Treasury Regulations or the Regulations shall include any corresponding provision or provisions of succeeding, similar or substitute proposed, temporary or final regulations.

1.38 "Units" shall mean a unit of undivided membership interest in the Company. Such interest includes any and all rights to which such Member may be entitled as provided in this

Agreement, together with all obligations of such Member to comply with the terms and provisions of this Agreement. All of a Member's Units shall constitute such Member's entire interest in the Company. The Units shall constitute ordinary voting common member interests in the Company. The Members' initial Units in the Company are set forth on Exhibit B hereto.

1.39 **Index of Other Defined Terms.**

Term	Section
Additional Capital Contribution	4.2(d)
Alternate Appraisal Process	14.6(c)
Appraised Fair Market Equity Value of the Company	14.6(a)
Appraised Value of the Units	14.6(a)
Appraiser; Appraisers	14.6(c)
Board of Directors	12.1
Capital Account	4.3
Capital Projects	4.2(b)
Call Election Notice	14.4(b)
CCHP	First paragraph
Company	First paragraph
Company Purposes	3.3
Company Subsidiaries	Recitals
Contributing Member	4.2(e)
Deadlock	12.5(b)
Elmhurst SMLLC	Recitals
Health Care Opportunity	10.3
Initial Appraisers	14.6(c)
Initial Working Capital Amount	4.2(c)
Initiation Date	14.6(c)
Interest	14.2
Liability	17.1(b)
Local Board	12.4
Noncontributing Member	4.2(e)
Non-Proposing Party	10.3
Offer	14.2
Offered Units	14.1
Offeror	14.2
Opportunity Decision Notice	10.3
Physicians SMLLC	Recitals
Proposing Party	10.3
Prospect	Recitals
Prospect Member	First paragraph
Purchase Agreement	Recitals
Put Election Notice	14.5(b)
Qualified Appraiser	14.6(c)

Representatives	17.1(a)
Required Investment Amount	10.3
Right of First Offer	14.1
Right of First Refusal	14.2
RWMC SMLLC	Recitals
Selling Member	14.2
SJHSRI SMLLC	Recitals
Tag-Along Right	14.3
Third Appraiser	14.6(c)
Transfer	13.1
Unpaid Indemnification Amount	17.2(a)
Valuation; Valuations	14.6(c)

II. ORGANIZATION.

2.1 Formation. The Company was formed on August 21, 2013 via the filing of Articles of Organization with the Office of the Secretary of State of Rhode Island. The Member's respective Capital Accounts, Units, Sharing Percentages and Adjusted Capital Contributions as of the date hereof are set forth on Exhibit B hereto.

2.2 Name. The name of the Company is "Prospect CharterCare, LLC" and the business of the Company shall be conducted under that name or such other name or names as may be Approved by the Board from time to time; except that with respect to the Hospitals and other facilities and business operated by CCHP prior to the date hereof and that continue to be operated by the Company after the date hereof, the Company shall continue to operate them using their same (or similar) names and shall obtain authority (via filings with the Secretary of State of the State of Rhode Island) to use d/b/a names and/or alternate names with respect thereto.

2.3 Principal Office. The principal office of the Company shall be located at 825 Chalkstone Avenue, Providence, Rhode Island 02908, or at such other place or places in the State of Rhode Island as the Board of Directors may from time to time determine.

2.4 Term. The Company began on the date the Articles were filed with the Secretary of State of the State of Rhode Island as provided in Section 2.1 hereof, and shall continue until the date on which the Company is dissolved pursuant to Article XV hereof and thereafter, to the extent provided for by applicable Law, until wound up and terminated pursuant to Article XVI hereof.

2.5 Registered Agent and Office. The registered agent of the Company shall be Corporation Service Company and the registered office of the Company shall be located at 222 Jefferson Boulevard, Suite 200, Warwick, Rhode Island 02888. The registered office or the registered agent, or both, may be changed by the Manager from time to time upon filing the statement required by the Act. The Company shall maintain at its registered office such records, if any, as may be specified by the Act.

2.6 No State Law Partnership. The Members intend that the Company will not be a partnership or limited partnership, and that no Member will be a partner of any other Member, for any purposes other than federal and state tax purposes, and this Agreement shall not be construed to suggest otherwise.

2.7 Appointment of Manager. The day-to-day operation of the business of the Company shall be managed by the Manager in accordance with the terms of this Agreement and the Management Agreement, subject to the ultimate authority and control of the Board of Directors as provided herein. The Manager shall be Prospect or an Affiliate of Prospect.

2.8 Operation Through Company Subsidiaries. The parties agree and acknowledge that the business of the Company may be conducted both directly by the Company and through the Company Subsidiaries. Any such Company Subsidiary shall be operated in accordance with the terms of this Agreement and no actions may be taken through a Company Subsidiary that could not otherwise be taken by the Company. Unless otherwise determined by the Board, each Company Subsidiary: (i) shall be a limited liability company having the Company as its sole member; and (ii) shall be member-managed such that all governance and management authority resides in the Company as the sole member thereof. All rights and authority reserved hereunder to the Company's Board with respect to the Company's own assets and operations shall extend fully to each Company Subsidiary, as though owned or undertaken directly by the Company. Similarly, the rights and obligations of the Manager set forth herein with respect to the Company's own assets and operations shall apply fully to each Company Subsidiary, as though owned or undertaken directly by the Company.

III. PURPOSES AND POWERS, NATURE OF THE COMPANY'S BUSINESS, OPERATING COMMITMENTS

3.1 Purposes.

The purposes of the Company are: (i) to provide and promote the growth of health care services in the greater Providence, Rhode Island metropolitan service area (including charitable care and community health services); (ii) to provide efficient and cost-effective rendering of health care services for the benefit of health care consumers in the greater Providence, Rhode Island metropolitan service area; (iii) to provide quality medical care at competitive charges; (iv) to provide consumers of health care choice in providers of care; (v) to own, manage, operate, lease or take any other action in connection with operating the Hospitals and other health care related services and businesses; (vi) to acquire (through asset acquisition, stock acquisition, lease or otherwise) and develop other property, both real and personal, in connection with providing health care related services, including, without limitation, general acute care hospitals, specialty care hospitals, diagnostic imaging centers, ambulatory surgery centers, nursing homes, clinics, home health care agencies, psychiatric facilities and other health care providers; (vii) to deploy ambulatory locations of care; (viii) to recruit and integrate physicians; (ix) to institute safety and quality improvement initiatives; and (x) generally to engage in such other business and activities and to do any and all other acts and things that the Board of Directors deems necessary, appropriate or advisable from time to time in furtherance of the purposes of the Company as set forth in this Section 3.1.

Notwithstanding the foregoing, and notwithstanding any other provision of this Agreement, insofar as the purposes set forth above implicate both (i) CCHP's charitable purposes of serving the healthcare needs of the local area, and (ii) the Prospect Member's profit-making objectives, in the event that any aspect of the Company's activities and operations results in a direct conflict between such charitable purposes and such profit-making objectives, charitable purposes shall prevail in determining the Company's handling of such matter. In the event that CCHP invokes the foregoing provision as the basis for its objection to any aspect of the Company's activities and operations, the parties shall attempt in good faith to resolve the matter through meetings between the senior management of CCHP and Prospect over a period of not less than sixty (60) days. If, as of the conclusion of such discussion period, the matter remains unresolved to CCHP's satisfaction, CCHP may in its sole discretion submit the matter to non-binding mediation pursuant to Section 17.4(a)(ii) below. If, as of the conclusion of such mediation, the matter remains unresolved to CCHP's satisfaction, CCHP may in its sole discretion submit the matter to binding arbitration pursuant to Section 17.4(a)(iii) below; provided, however, that in such event, the Prospect Member shall have the option to purchase CCHP's Units in the Company pursuant to the process set forth in Section 14.4 below.

3.2 Nature of the Business.

(a) In furtherance of the purposes of the Company described in Section 3.1, the Board of Directors and the Manager shall conduct the business and operations of the Company and the Company Subsidiaries by, among other things: (i) accepting all Medicare and Medicaid patients; (ii) accepting all patients in an emergency condition in the emergency room without regard to source of payment or the ability of such emergency patients to pay; (iii) maintaining an open medical staff; (iv) providing public health programs of educational benefit to the community; (v) generally promoting the health, wellness and welfare of the community by providing quality health care at a reasonable cost; and (vi) providing indigent care in the manner described in Section 13.14 of the Purchase Agreement (collectively, the "Standards").

(b) The Company shall operate its business and that of the Company Subsidiaries in such a manner so that: (i) the financial results of the Company and the Company Subsidiaries can be consolidated with those of Prospect; (ii) the assets of and equity interests held by the Prospect Member in the Company and the equity interests in the Company Subsidiaries can be pledged as collateral security to (or otherwise serve as collateral for) Prospect's lenders and noteholders; (iii) CCHP can continue its tax-exempt status; and (iv) allocations of the Company's income and loss to CCHP are exempt from federal income taxation (*i.e.*, are treated as other than unrelated business taxable income under Code Sections 511-514).

(c) Notwithstanding Subsection 3.2(b)(iii) above, in the event that CCHP's tax-exempt status is jeopardized due to its ownership interest and/or involvement in the Company (as set forth in a written legal opinion of CCHP's experienced healthcare counsel, a copy of which shall be provided to the Prospect Member), or any of Prospect's lenders attempts to foreclose on the assets of the Company or any Company Subsidiaries, then if the Members cannot mutually agree on an acceptable resolution, CCHP shall have the option to sell its Units in the Company to the Prospect Member pursuant to the process set forth in Section 14.5 below.

3.3 Powers. Subject to the limitations contained in this Agreement and in the Act, the Company purposes and nature of the business as defined in Sections 3.1 and 3.2 (collectively, the "Company Purposes") may be accomplished by the Manager or the Board of Directors taking any action permitted under this Agreement that is customary or reasonably related to accomplishing such Company Purposes.

3.4 Conflicts of Interest Policy. The Board of Directors and the Manager shall cause the Company to adopt and maintain the policy concerning conflicts of interest attached as Exhibit C hereto (or any new and/or amended conflicts policies or practices hereafter adopted by the Board of Directors).

3.5 Conduct of Operations. The Company shall conduct its activities and those of the Company Subsidiaries consistent with the operating commitments set forth in Sections 13.13 through 13.17 of the Purchase Agreement, and in a manner that materially complies with all applicable Law.

IV. CAPITAL CONTRIBUTIONS, LOANS, CAPITAL ACCOUNTS.

4.1 Capital Contributions. The interests of the Members shall be divided into Units. Each of the Members and other Persons who may, from time to time, become Members has contributed to the capital of the Company the amount listed on Exhibit B attached hereto, as the same may be amended from time to time pursuant to Section 17.11 to reflect the admission of new Members, transfers and other appropriate revisions to the information set forth therein. Each of the Members has been issued the number of Units listed on Exhibit B.

4.2 Additional Capital Contributions.

(a) The Company and the Company Subsidiaries shall fund additional capital expenditures related to the Hospitals and their facilities in an annual amount of at least $10,000,000 per year, or such greater amount as Approved by the Board.

(b) The Prospect Member hereby commits to make additional Capital Contributions to the Company in an aggregate amount of the Long-Term Capital Commitment, to be made within four (4) years of the date of this Agreement at such times and in such increments as the Board of Directors causes the Manager to request. With respect to each request for a Capital Contribution from the Prospect Member pursuant to the Long-Term Capital Commitment: (i) such request shall be supported by a return-on-investment calculation or a material needs assessment (in each case, acceptable to both Members); and (ii) the Capital Contributions shall neither reduce CCHP's interest or Units in the Company nor increase the Prospect Member's interest or Units in the Company. Subject to the foregoing, and except as otherwise provided in Sections 4.2(c) and (d) below, the Company shall cause the Long-Term Capital Commitment to be used by the Company or the Company Subsidiaries on (x) the development and implementation of physician engagement strategies, and (y) projects related to facilities and equipment ("Capital Projects"). Capital Projects currently identified include the following: expansion of the cancer center at Roger Williams; expanding the emergency department at Roger Williams; renovating and/or reconfiguring the emergency department at Fatima Hospital; renovating the operating rooms at Roger Williams; converting all patient rooms

to private rooms at the Hospitals; renovating and expanding the ambulatory care center at Fatima Hospital; installing new windows at the Hospitals; installing a new generator at Fatima Hospital; providing a face lift for the facades at the Hospitals; and constructing handicap access at the front entrances of the Hospitals (with the specific Capital Projects to be funded as determined by the Board).

(c) Notwithstanding Section 4.2(b) above:

(i) In the event that, during the period between execution of the Purchase Agreement and the date hereof, Prospect or a Prospect Affiliate has advanced to CCHP any amounts pursuant to that certain Interim Management Advisory Agreement between Prospect and CCHP entered into concurrently with the Purchase Agreement, as of the date hereof, such amounts shall be treated as partial satisfaction of the Long-Term Capital Commitment;

(ii) In the event that, during the period commencing as of the date hereof and continuing for a period of up to three (3) months following the effective date hereof, the Company (including the Company Subsidiaries, for purposes of this Section 4.2(c)) requires cash to fund operations and the Prospect Member determines to provide such cash, then: (x) such amount shall not exceed Ten Million Dollars ($10,000,000); (y) the aggregate amount of cash provided by the Prospect Member (the "Initial Working Capital Amount") shall be treated as partial satisfaction of the Long-Term Capital Commitment; and (z) for a period of up to four (4) years after the effective date hereof, if and as the Company and the Company Subsidiaries accrue excess cash beyond their collective budgeted operating and capital needs, including Reserves, such excess cash, in an amount (to the extent of such excess cash) equal to the amount of the Initial Working Capital Amount, shall be made available to be used for Capital Projects described in Section 4.2(b) above (and subject to the process and requirements therein). The foregoing shall be in addition to the annual commitment of the Company and the Company Subsidiaries to fund Capital Projects set forth in Section 4.2(a) above. The Company shall periodically report to the Board amounts provided by the Prospect Member which are included in the Initial Working Capital Amount, and the subsequent use of excess cash by the Company and the Company Subsidiaries for other Capital Projects as described in subpart (z) above; and

(iii) With respect to that certain capital lease obligation entered into by and between Roger Williams and Philips Medical dated December 27, 2012, with respect to Sellers' cardiac catheterization laboratory, which capital lease obligation is being assumed by the Company as of the effective date hereof pursuant to the Purchase Agreement, the long-term portion of such lease as of the date of the Purchase Agreement (*i.e.*, $558,288), shall be treated as partial satisfaction of the Long-Term Capital Commitment.

(d) Outside of the circumstances contemplated by Section 4.2(c) above, if funds are required for any expenditure of the Company (including the Company Subsidiaries, for purposes of this Section 4.2(d)) necessary for the operation of the Company and/or any expansion of the Company as Approved by the Board, the Company shall seek such funds from sources in the following order of priority: (A) cash generated by the operations of the Company and the Company Subsidiaries; (B) from the Prospect Member pursuant to the Prospect Member's Long-Term Capital Commitment; (C) commercial loans from third parties on

mutually agreeable terms (and in compliance with the Indenture, the Credit Agreement and any other debt agreements of Prospect or an applicable Prospect Affiliate); (D) loans from Prospect or any Prospect Affiliate to the extent available at market rates and on mutually agreeable terms (and in compliance with the Indenture, the Credit Agreement and any other debt agreements of Prospect or such Prospect Affiliate); and (E) if the Company has made commercially reasonable efforts to obtain the needed funds as set forth above and has been unable to obtain such funds and the Prospect Member's Long-Term Capital Commitment has been fully satisfied, the Manager, with Approval of the Board, shall have the right to request that the Members make additional Capital Contributions pro rata in accordance with each Member's Sharing Percentage ("Additional Capital Contributions").

(e) Subject to (d) above, if the Manager, as Approved by the Board, makes a request to the Members for an Additional Capital Contribution, no Member shall be required to make such Additional Capital Contribution, provided that if any Member elects not to make a portion or all of the Additional Capital Contribution (a "Noncontributing Member"), the other Members (the "Contributing Members") shall have the right, but not the obligation, to contribute to the Company the amount of cash that the Noncontributing Member or Members failed to contribute. The Members shall have thirty (30) days after the Manager's request in which to elect to make or not make such Additional Capital Contributions. Effective as the end of such thirty (30)-day period, if some but not all of the Members make such Additional Capital Contributions, then the Members' Sharing Percentages shall be adjusted as follows (and a pro rata adjustment shall also be made to each Member's Units): Each Member's Sharing Percentage thereafter shall be equal to a fraction (converted to a percentage), the numerator of which is the amount of such Member's (including its predecessors in interest) Adjusted Capital Contributions (including the Additional Capital Contributions just made by such Member, if any) and the denominator of which is the aggregate amount of all Members' (including their predecessors in interest) Adjusted Capital Contributions (including the Additional Capital Contributions just made); provided that no change in Sharing Percentages shall occur by reason of the Prospect Member's Long-Term Capital Commitment; and provided further that in no event may the Sharing Percentage of CCHP be diluted to less than five percent (5%), and if CCHP's Sharing Percentage equals 5%, then any additional amounts contributed by the Prospect Member shall be treated as loans from the Prospect Member to the Company. The number of Units held by each Member shall be adjusted automatically to reflect any change in the Members' Sharing Percentages under this Section 4.2(e). No person other than a Member or Manager of the Company may enforce any provision of this Agreement relating to the payment of additional capital.

4.3 Capital Accounts. A capital account ("Capital Account") shall be established and maintained for each Member for the full term of this Agreement in accordance with the capital account maintenance rules of Section 1.704-1(b)(2)(iv) of the Regulations. The initial Capital Accounts of the Members are set forth on Exhibit B attached hereto. Each Member shall have only one Capital Account, regardless of the number or classes of Units or other interests in the Company owned by such Member and regardless of the time or manner in which such Units or other interests were acquired by such Member. Pursuant to the basic capital account maintenance rules of Section 1.704-1(b)(2)(iv) of the Regulations, the balance of each Member's Capital Account shall be:

(a) Increased by the amount of money contributed by such Member (or such Member's predecessor in interest) to the capital of the Company pursuant to this Article IV and decreased by the amount of money distributed to such Member (or such Member's predecessor in interest) pursuant to Articles VI and XVI hereof;

(b) Increased by the fair market value of each property (determined without regard to Section 7701(g) of the Code) contributed by such Member (or such Member's predecessor in interest) to the capital of the Company pursuant to this Article IV (net of all liabilities secured by such property that the Company is considered to assume or take subject to under Section 752 of the Code) and decreased by the fair market value of each property (determined without regard to Section 7701(g) of the Code) distributed to such Member (or such Member's predecessor in interest) by the Company pursuant to Article VI or XVI hereof (net of all liabilities secured by such property that such Member is considered to assume or take subject to under Section 752 of the Code);

(c) Increased by the amount of each item of Company profit allocated to such Member (or such Member's predecessor in interest) pursuant to Section 3.1 of Exhibit A hereto;

(d) Decreased by the amount of each item of Company loss allocated to such Member (or such Member's predecessor in interest) pursuant to Section 3.1 of Exhibit A hereto;

(e) Otherwise adjusted as follows:

(i) Effective immediately prior to any "Revaluation Event" (as defined in Exhibit A hereto), the balances of all Members' Capital Accounts shall be adjusted to reflect the manner in which items of profit or loss, as computed for book purposes, equal to the "Unrealized Book Gain Or Loss" (as defined in Exhibit A hereto) then existing with respect to each Company property (to the extent not previously reflected in the Members' Capital Accounts) would be allocated among the Members pursuant to Section 3.1 of Exhibit A hereto if there were a taxable disposition of such property immediately prior to such Revaluation Event, for its fair market value (as determined by the Manager taking into account Section 7701(g) of the Code);

(ii) With respect to items of Company profit and loss, the balances of all the Members' Capital Accounts shall be adjusted solely for allocations of such items, as computed for book purposes, under Section 3.1 of Exhibit A hereto and shall not be adjusted for allocations of correlative Tax Items under Section 3.2 of Exhibit A hereto;

(iii) Immediately before giving effect under Section 4.3(b) hereof to any adjustment attributable to the distribution of property to a Member, the balances of all the Members' Capital Accounts first shall be adjusted to reflect the manner in which items of profit or loss, as computed for book purposes, equal to the Unrealized Book Gain Or Loss existing with respect to the distributed property (to the extent not previously reflected in the Members' Capital Accounts) would be allocated among the Members pursuant to Section 3.1 of Exhibit A hereto if there were a taxable disposition of such property on the date of such distribution by the Company for its fair market value at the time of such distribution (as agreed to in writing by the Members) taking Section

7701(g) of the Code into account (i.e., such value shall not be agreed to be less than the amount of Nonrecourse Liabilities to which such property is subject); and

(f) Upon the transfer of all or part of any Unit or other interest in the Company, the Capital Account of the transferor Member, to the extent attributable to the transferred interest, shall carry over to the transferee Member; provided, however, if the transfer causes the termination of the Company for federal income tax purposes under Section 708(b)(1)(B) of the Code, the Capital Account that carries over to the transferee Member shall be subject to adjustment in accordance with Section 4.3(e)(i) hereof in connection with the resulting constructive liquidation of the Company for federal income tax purpose.

4.4 Additional Provisions Regarding Capital Amounts.

(a) If, with the prior Approval of the Board, a Member pays any Company indebtedness or forgives any Company indebtedness owing to such Member, such payment or forgiveness shall be treated as a cash contribution by that Member to the capital of the Company, and the Capital Account of such Member shall be increased by the amount so paid or forgiven by such Member. No Member may, without the prior Approval of the Board, increase its Capital Account by paying any Company indebtedness or by forgiving any Company indebtedness owing to such Member.

(b) Except as otherwise provided herein, no Member may contribute capital to, or withdraw capital from, the Company. To the extent any monies that any Member is entitled to receive pursuant to the Agreement would constitute a return of capital, each of the Members consents to the withdrawal of such capital.

(c) A loan by a Member to the Company shall not be considered a contribution of money to the capital of the Company, and the balance of such Member's Capital Account shall not be increased by the amount so loaned. No repayment of principal or interest on any such loan, reimbursement made to a Member with respect to advances or other payments made by such Member on behalf of the Company, or payments of fees to a Member that are made by the Company shall be considered a return of capital or in any manner affect the balance of such Member's Capital Account.

(d) No Member with a deficit balance in its Capital Account shall have any obligation to the Company or any other Member to restore such deficit balance. In addition, no venturer or partner in any Member shall have any liability to the Company or any other Member for any deficit balance in such venturer's or partner's capital account in the Member in which it is a partner or venturer. Furthermore, a deficit Capital Account balance of a Member (or a capital account of a partner or venturer in a Member) shall not be deemed to be a liability of such Member (or of such venturer or partner in such Member) or a Company asset or property. The provisions of this Section 4.4(d) shall not affect any Member's obligation to make Capital Contributions to the Company that are required to be made by such Member pursuant to this Agreement.

(e) Except as otherwise provided herein, no interest shall be paid on any capital contributed to the Company or the balance in any Member's Capital Account.

(f) All of the provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with the Regulations. If the Board of Directors determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or any of the Members) are computed in order to comply with the Regulations, the Board of Directors may make such modifications, provided that such modifications are not likely to have a material effect on the amounts distributable to any Member from the Company. The Board of Directors shall also make appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Section 1.704-1(b) of the Regulations.

4.5 Loans. The Company may borrow money from, among others, any Member on such terms and conditions as shall be Approved by the Board of Directors and such Member; provided, however, such terms and conditions shall be no less favorable to the Company than the terms and conditions that could be obtained by the Company in an arm's length transaction from an independent third-party. If any Member makes any loan or loans to the Company, the amount of any such loan shall not be treated as a contribution to the capital of the Company, but shall be a debt due from the Company. Any Member's loan to the Company shall, as determined by the Board of Directors, be repayable out of the Company's excess cash, prior to any distribution of Distributable Cash. None of the Members nor any of their Affiliates shall be obligated to loan money to the Company.

V. ALLOCATIONS OF INCOME AND LOSSES.

All items of income or loss of the Company shall be allocated to the Members in accordance with the provisions of Exhibit A attached hereto, which is hereby incorporated by reference for all purposes of this Agreement or as otherwise provided in this Agreement.

VI. DISTRIBUTIONS.

6.1 Distribution of Distributable Cash. Except as may be otherwise provided in Section 6.5 hereof, or as may otherwise be prohibited or required by applicable Law, the Board of Directors in its discretion shall cause the Company to distribute Distributable Cash to the extent available to the Members from time to time, pro rata in accordance with their respective Sharing Percentages. The policy of the Company shall be to distribute Distributable Cash to the extent the Board of Directors deems such distributions advisable.

6.2 Compensation or Reimbursement to the Manager. Authorized amounts payable as compensation or reimbursement to the Manager or to any Person other than in its capacity as a Member, such as for services rendered, goods purchased or money borrowed, shall not be treated as a distribution for purposes of Section 6.1 hereof.

6.3 Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any state or local tax Law with respect to any payment of taxes of Members or distribution to the Members shall be treated as amounts distributed to the Members pursuant to this Article VI for all purposes under this Agreement.

6.4 Distributions in Kind. No Member shall have the right to demand or receive distributions of property other than cash. Except as provided in Article XVI hereof, distributions in kind of Company property shall be made only with the Approval of the Board of Directors and only at a value Approved by the Board of Directors. Prior to any such distribution in kind, the difference between such agreed value and the book value of such property shall be credited or charged, as the case may be, to the Members' (or assignees') Capital Accounts in proportion to their Sharing Percentages. Upon the distribution of such Property, such agreed value shall be charged to the Capital Accounts of the Members (or assignees) receiving such distribution.

6.5 No Restrictions on Distributions. The foregoing provisions of this Article VI to the contrary notwithstanding, no distribution of Distributable Cash shall be declared by the Board of Directors or paid by the Company if and for so long as such distribution would violate any contract or agreement to which the Company, the Prospect Member or any Prospect Affiliate is then a party or any Law or directive of any governmental authority then applicable to the Company. Further, notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall encumber or restrict the Company's ability to make distributions, pay indebtedness or other obligations, make loans or advances, grant liens or transfer property or assets in compliance with, or as required by, the Indenture, Credit Agreement or other documents governing indebtedness of Prospect or a Prospect Affiliate.

VII. BOOKS OF ACCOUNT, TAX COMPLIANCE, FISCAL YEAR.

7.1 Books and Records. The Company, whether through the Manager or otherwise, shall keep books of account and records relative to the business of the Company and the Company Subsidiaries. The books shall be prepared in accordance with "generally accepted accounting principles" using the accrual method of accounting. The accrual method of accounting shall also be used by the Company for income tax purposes. The Company shall also maintain books and records as required by Section 4.3 hereof and Exhibit A hereof. The Company's books and records shall at all times be maintained at the principal business office of the Company (and to the extent required by the Act, at the registered office of the Company) and shall be available for inspection by the Members or their duly authorized representatives during regular business hours. The books and records shall be preserved for four (4) years after the term of the Company ends.

7.2 Determination of Profit and Loss; Financial Statements. All items of Company income, expense, gain, loss, deduction and credit shall be determined with respect to, and allocated in accordance with, this Agreement for each Member for each Company fiscal year. Within one hundred eighty (180) days after the end of each Company fiscal year, the Manager shall cause to be prepared, at the Company's expense, audited financial statements of the Company and the Company Subsidiaries for the preceding fiscal year, including without limitation, a balance sheet, profit and loss statement, statement of cash flows and statement of the balances in the Members' Capital Accounts, prepared accordance with the terms of this Agreement and generally accepted accounting principles consistently applied with prior periods. The Manager shall also cause to be prepared, at Company expense, within ninety (90) days after the end of each Company fiscal year, unaudited financial statements meeting the preceding specifications. These financial statements shall be available for inspection and copying during ordinary business hours at the reasonable request of any Member, and will be furnished to any

other Member upon written request therefor. Any Member may obtain, at such Member's expense, such other reports on the operations and condition of the Company and the Company Subsidiaries as such Member may reasonably request.

7.3 Tax Returns and Information. The Members intend for the Company to be treated as a partnership for tax purposes, but not for any other purposes. The Members intend for each Company Subsidiary to be treated as a disregarded entity for tax purposes, but not for any other purposes. The Company shall prepare or cause to be prepared all federal, state and local income and other tax returns that the Company is required to file and shall furnish such returns to the Members, together with a copy of each Member's Form K-1 and any other information that any Member may reasonably request relating to such returns, within the time required by Law (including any applicable extension periods available under the Code).

7.4 Tax Audits. The Prospect Member shall be the "tax matters partner" of the Company under Section 6231(a)(7) of the Code. The Prospect Member shall inform the Members of all matters that come to its attention in its capacity as tax matters partner by giving the Members notice thereof within ten (10) days after becoming so informed. The Prospect Member shall not take any action contemplated by Sections 6222 through 6232 of the Code unless the Prospect Member has first given the Members notice. This provision is not intended to authorize the Prospect Member to take any action that is left to the determination of the individual Members under Sections 6222 through 6232 of the Code.

7.5 Fiscal Year. The fiscal year of the Company and each Company Subsidiary shall be the twelve (12) month period commencing on October 1st and ending on September 30th.

VIII. DUTIES OF AND LIMITATIONS ON THE MANAGER.

8.1 Duties of the Manager. Except as otherwise set forth in the Act, the Articles or this Agreement, the Board of Directors shall have overall oversight and ultimate authority over the affairs of the Company and the Company Subsidiaries. Subject to this general principle, and subject to the limitations imposed upon the Manager in this Agreement (including, without limitation, Section 8.3 hereof) and in the Management Agreement, and to the fiduciary obligations and limitations imposed upon it at law (to the extent not modified herein or in the Articles) and by general principles of equity, and subject to Article III above, the Manager shall manage the day-to-day operations of the Company and the Company Subsidiaries and act on behalf of the Company and the Company Subsidiaries pursuant to and in accordance with the terms of this Agreement and the Management Agreement, and in material compliance with applicable Law.

8.2 Rights to Rely on the Manager. No Person or governmental body dealing with the Company or any Company Subsidiary shall be required to, inquire into, or to obtain any other documentation as to, the authority of the Manager to take any action permitted under Section 8.1 hereof. Furthermore, any Person or governmental body dealing with the Company or any Company Subsidiary may rely upon a certificate signed by the Manager as to the following:

(a) The identity of the Manager or any Member;

(b) The existence or nonexistence of any fact or facts that constitute a condition precedent to acts by the Manager or which are in any other manner germane to the affairs of the Company or the Company Subsidiary;

(c) The Persons who are authorized to execute and deliver any instrument document of the Company or the Company Subsidiary; or

(d) Any act or failure to act by the Company or a Company Subsidiary on any other matter whatsoever involving the Company, any Member thereof, or a Company Subsidiary.

8.3 Specific Limitations on the Manager. Notwithstanding anything to the contrary in the Management Agreement, this Agreement, the Act or the Articles, each of the following actions shall require Approval of the Board:

(a) Adopting any new and/or modified purposes, mission and values statement for the Company or any Company Subsidiary;

(b) Development and approval of a strategic plan for the Company (including the Company Subsidiaries), including any and all strategic initiatives and objectives;

(c) Approving the annual operating and capital budgets of the Company (including the Company Subsidiaries), which shall be consistent with the Company's strategic plan;

(d) Changing the charity care policy of the Company and the Company Subsidiaries, and overseeing the record of its implementation;

(e) Approving the appointment of the Chief Executive Officer of the Company recommended by the Manager;

(f) Approving the Manager's recommendation to terminate the employment of the Chief Executive Officer of the Company at any time prior to the second (2nd) anniversary of the date of this Agreement;

(g) Appointing individuals to serve on the Local Boards of the Hospitals (as per Section 12.4 below);

(h) Approving Medical Staff credentialing, other Medical Staff related decisions, and quality assurance and accreditation matters, all as per recommendations of the Local Boards of the Hospitals (subject to Section 12.4 below);

(i) Approving the process for managing conflicts among leadership groups at the Hospitals;

(j) Approving any reduction in Essential Services at either Hospital, if and as provided in Section 13.15 of the Purchase Agreement;

(k) Approving any change in the medical staff bylaws and structure of the Hospitals, if and as provided in Section 13.17 of the Purchase Agreement;

(l) Approving any change of a Hospital's name;

(m) Requests for the Prospect Member to make an additional Capital Contribution to the Company in connection with its Long-Term Capital Commitment, as provided in Section 4.2(b) above;

(n) Requests for the Members to make Additional Capital Contributions to the Company, as provided in Section 4.2(e) above;

(o) Decisions to make Certificate of Need Filings or reverse Certificate of Need Filings;

(p) Entering into a contract to incur an obligation to repay borrowed money; provided that Approval of the Board is not required for the Manager to cause the Company to borrow funds up to the Borrowing Limit;

(q) Electing to distribute or not distribute the Distributable Cash;

(r) Entering into or modifying any agreement, arrangement or business dealings between the Company (and/or any Company Subsidiary) and the Prospect Member or any Prospect Affiliate; provided, however, that such action shall require the approval of only the Category A Directors;

(s) Admitting any additional Members or issuing additional Units, except in accordance with the provisions of Article XIII hereof;

(t) Recognizing the transfer of a Member's interest in the Company, unless such transfer is in compliance with the provisions of Article XIII hereof;

(u) Acquiring or disposing of any health care related facility and its related assets in a single transaction or series of related transactions;

(v) Engaging in any merger, consolidation, share exchange or reorganization of the Company or any Company Subsidiary, or sale of all or substantially all of the assets of the Company or any Company Subsidiary;

(w) Amendments to the Articles, this Agreement and other governing documents of the Company (except as otherwise expressly provided in Section 17.11 below or where required by Law); and

(x) Approving a decision to dissolve or liquidate the Company or any Company Subsidiary.

8.4 Management Obligations of the Manager. Subject to the terms and conditions of the Management Agreement, the Manager shall devote such time to the Company and the

Company Subsidiaries as may be necessary to fulfill the Company Purposes, and manage and supervise the business and affairs of the Company and the Company Subsidiaries. Nothing in this Agreement shall preclude the Manager, at the expense of the Company, from contracting with or employing any Affiliate of a Member or a third party to provide management or other services to the Company or a Company Subsidiary, subject to Section 8.3(r) above.

8.5 Compensation of the Manager. As its sole compensation and consideration for the performance of its duties and responsibilities as Manager, the Manager (or an Affiliate thereof) shall be entitled to receive a management fee as set forth in the Management Agreement.

8.6 Independent Activities. The Manager and any of its Affiliates may engage in or possess interests in other business ventures of every nature and description, independently, and with others, whether such activities are competitive with the Company (including any Company Subsidiary, for purposes of this Section 8.6) or otherwise, subject to Section 10.3 below. The Members and any of their Affiliates may engage in or possess interests in other business ventures of every nature and description, independently and with others, whether such activities are competitive with the Company or otherwise, without having or incurring any obligation to offer any interest in such activities to the Company or any Member. The foregoing, however, does not relieve CCHP and its Affiliates from any restrictions set forth in the Purchase Agreement.

8.7 Prospect Debt Documents. Each of the Members acknowledges and agrees that, in connection with the formation of the Company and the consummation of the transactions contemplated by the Purchase Agreement, the Company and each Company Subsidiary shall (a) become a "Restricted Subsidiary" and a "Subsidiary Guarantor" in accordance with the terms of the Indenture and a "Guarantor" in accordance with the terms of the Credit Agreement and (b) grant a security interest in its assets to the Collateral Trustee (as defined in the Indenture and the Credit Agreement) to the extent required under the Indenture, the Credit Agreement or other indebtedness of Prospect or a Prospect Affiliate. From time to time from and after the date of this Agreement, without the further consent of any Member, the Manager shall be authorized to execute and deliver such documents, and take such other actions, in the name and on behalf of the Company and the Company Subsidiaries as may be reasonably necessary to cause the Company and each Company Subsidiary to continue as or become a Restricted Subsidiary, a Subsidiary Guarantor and a Guarantor (or similar terms), including, without limitation, in the event of any amendment, restatement, supplement, renewal, replacement, increase, extension or refinancing of the Indenture or the Credit Agreement or the incurrence of any other indebtedness of Prospect or a Prospect Affiliate. CCHP shall reasonably cooperate with the Manager, and shall execute and deliver such documents and take such other actions as may be reasonably requested by the Manager, to give effect to the foregoing.

IX. RIGHTS AND STATUS OF MEMBERS.

9.1 General. Except to the extent expressly otherwise required by the Act or provided in this Agreement, the Members shall not take part in the management or control of the business of the Company or the Company Subsidiaries, such powers being vested exclusively in the Board of Directors and the Manager as provided herein.

9.2 Limitation of Liability. No Member shall have any personal liability whatever, solely by reason of its status as a Member of the Company, whether to the Company, the Company Subsidiaries, the Manager, another Member or any creditor of the Company, for the debts of the Company or the Company Subsidiaries or any of their collective losses beyond the amount of the Member's obligation to contribute its Capital Contribution to the Company; provided, however, the foregoing shall not limit or affect obligations undertaken and/or liabilities incurred by a Member pursuant to the Purchase Agreement.

X. SPECIAL COVENANTS OF THE MEMBERS.

10.1 Compliance with Debt Covenants. The Company and the Company Subsidiaries shall comply with, and take no action (or inaction) inconsistent with, the covenants, restrictions and requirements of the Indenture, Credit Agreement or other indebtedness of Prospect or a Prospect Affiliate.

10.2 AOB Ratio. At all times the Company will maintain, and will cause the Company Subsidiaries (as applicable) to maintain, a full-time equivalent to adjusted occupied bed ratio consistent with prevailing industry best practice.

10.3 Pursuit of Health Care Opportunities in Rhode Island. If either Member or any Affiliate of a Member desires to purchase, invest in, own (in whole or in part), lend funds to, manage, consult for, or in any other manner participate with, a health care service, facility or related business in Rhode Island (a "Health Care Opportunity"), then such Member or its Affiliate (the "Proposing Party") shall first provide written notice of such Health Care Opportunity to the other Member (the "Non-Proposing Party"), containing all material terms, including the total amount of funds needed to pursue the Health Care Opportunity, purchase price, capital commitment, amount to be loaned and working capital requirements (collectively, the "Required Investment Amount"). The Non-Proposing Party shall have thirty (30) days thereafter to provide written notice (the "Opportunity Decision Notice") to the Proposing Party that either:

(a) The Health Care Opportunity should be pursued by the Company (either directly or through a Company Subsidiary), in which case: (i) the Non-Proposing Party must also agree in writing (in the same notice) to fund, through Additional Capital Contributions to the Company, its pro rata share of the Required Investment Amount; (ii) the Company (as opposed to the Proposing Party) shall proceed to pursue the Health Care Opportunity; and (iii) within twenty (20) days thereafter, the Members shall fund, through Additional Capital Contributions to the Company, their respective pro rata shares of the Required Investment Amount; or

(b) The Health Care Opportunity should not be pursued by the Company (either directly or through a Company Subsidiary), in which case the Proposing Member shall be free to pursue the Health Care Opportunity on its own or through another entity.

In the event the Non-Proposing Party fails to provide the Opportunity Decision Notice on a timely basis, the Proposing Member shall be free to pursue the Health Care Opportunity on its own or through another entity.

XI. MEETINGS OF MEMBERS AND MEANS OF VOTING.

11.1 Actions by the Members. The Members agree that all decisions regarding the Company and the Company Subsidiaries shall be made by the Manager or the Board of Directors, as described in Article VIII. If, notwithstanding the foregoing, the Members are required by the Act to vote on any Company matter (after due consideration of whether the Act's provisions have been effectively superseded by the express provisions set forth in this Agreement), then such vote shall be conducted in accordance with this Article XI.

11.2 Meetings of the Members. Meetings of the Members may be called by the Manager and shall be promptly called upon the written request of any one or more Members that own in the aggregate five percent (5%) or more of the aggregate Units in the Company. The notice of a meeting shall state the nature of the business to be transacted at such meeting, and actions taken at any such meeting shall be limited to those matters specified in the notice of the meeting. Notice of any meeting shall be given to all Members not less than ten (10), and not more than thirty (30), days prior to the date of the meeting. Members may vote in person at such meeting; notwithstanding the provisions of the Act, voting by proxy shall not be permitted.

Except as required by the express provisions of the Act, the requisite vote of the Members shall be the approval of Members holding at least a majority of the Units issued and outstanding at the time of the vote. Each Member's voting rights shall be the same as that Member's number of Units at the time of the vote. The presence of any Member at a meeting shall constitute a waiver of notice of the meeting with respect to such Member unless, such Member attends the meeting for the sole purpose of objecting to the holding of such meeting. The Members may, at their election, participate in any regular or special meeting by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other. A Member's participation in a meeting pursuant to the preceding sentence shall constitute presence in person at such meeting for all purposes of this Agreement.

11.3 [Intentionally omitted]

11.4 Conduct of Meeting. Each meeting of Members shall be conducted by the Chairman of the Board of Directors or by a Person appointed by the Board of Directors. The meeting shall be conducted pursuant to such rules (if any) as may be adopted by the Board of Directors or the Person appointed by the Board of Directors for the conduct of the meeting.

11.5 Action Without a Meeting. Notwithstanding anything to the contrary in this Agreement, any action that may be taken at a meeting of the Members may be taken without a meeting if there is a consent in writing signed by Members holding at least a majority of the Units, setting forth the action so taken. In the event any action is taken pursuant to this Section 11.5, it shall not be necessary to comply with any notice or timing requirements set forth in Section 11.2 hereof. Prompt written notice of the taking of action without a meeting shall be given to the Members who have not consented in writing to such action.

11.6 Closing of Transfer Record; Record Date. For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members, any reconvening thereof, or to act by consent, the Manager may provide that the transfer record shall be closed for at least ten (10) days immediately preceding such meeting (or such shorter time as may be reasonable in

light of the period of the notice) or the first solicitation of consents in writing. If the transfer record is not closed and if no record date is fixed for determining the Members entitled to notice of or to vote at a meeting of Members or by consent, the date on which the notice of the meeting is mailed, or the first written consent is received by the Manager, shall be the record date for such determination.

XII. BOARD OF DIRECTORS.

12.1 Board of Directors. Effective for all purposes on the date of this Agreement, the Members shall form a board of directors of the Company (the "Board of Directors"), comprised of natural Persons (the "Directors" and each a "Director"), to have overall oversight and ultimate authority over the affairs of the Company and the Company Subsidiaries, to consider those matters pertaining to the business of the Company and the Company Subsidiaries for which Approval of the Board is required (see Section 8.3 above) or appropriate, and to oversee the activities of the Manager and the Local Boards (see Section 12.4) including: (i) evaluations of the CEO; (ii) strategic plans and operating and capital budgets; (iii) compliance with Joint Commission criteria; and (iv) fostering community relationships and opportunities.

The Board of Directors shall consist of eight (8) members, with four (4) Category A Directors (including at least one (1) physician) and four (4) Category B Directors; provided, however, that if CCHP's Sharing Percentage is reduced to 5%, then the Board of Directors shall consist of seven (7) members, with three (3) Category A Directors and four (4) Category B Directors, and CCHP shall submit to the Company the name of such Class A Director who shall resign and shall cause such Director to tender his or her resignation effective immediately (and if CCHP fails to do so within 5 days, then the Company by action of the Class B Directors in their sole and absolute discretion shall remove one Class A Director effective immediately upon written notice to CCHP). Each individual selected to serve on the Board of Directors shall serve for a term of one (1) to three (3) years, at the discretion of the Member that elected or appointed such individual, and thereafter until his successor is elected or appointed, unless he sooner resigns or is removed. A member of the Board of Directors may be removed at any time, with or without cause, by the Member that elected or appointed such director. The unexpired term of a removed director shall be filled by an individual appointed by the Member that appointed or elected the removed director. The Board of Directors shall elect annually the Chairman of the Board of Directors. The Chairman of the Board of Directors shall preside over all the meetings of the Board of Directors.

12.2 Manner of Exercise of Board of Directors' Authority. All actions or exercise of authority or responsibility of the Board hereunder shall be Approved by the Board. All responsibilities of the Board of Directors under this Agreement shall be exercised by the Board of Directors as a body and, accordingly: (i) no member of the Board of Directors, acting alone, shall have the authority to act on behalf of the Board of Directors; and (ii) except as otherwise expressly provided herein, neither Category of directors, by itself, shall have the authority to act on behalf of the Board of Directors. In no event shall the Board of Directors be deemed a manager under the Act or have the authority to act on behalf of, or to bind in any way, the Company or any Company Subsidiary. The actions of the Board of Directors shall be carried out by the Manager as provided for in this Agreement and the Management Agreement.

12.3 Meetings of the Board of Directors. The Board of Directors shall hold regular meetings on at least a quarterly basis, with at least one (1) meeting per year held in person (face-to-face). In addition, each member of the Board of Directors shall be available at all reasonable times to consult with other members of the Board of Directors on matters relating to the duties of the Board of Directors. Meetings of the Board of Directors shall be held at the call of the Manager, the Chairman of the Board of Directors, or any three (3) members of the Board of Directors requesting such meeting through such Chairman, upon not less than ten (10) business days' written or telephonic notice to the members of the Board of Directors, such notice specifying all matters to come before the Board of Directors for action at such meeting. The presence of any member of the Board of Directors at a meeting shall constitute a waiver of notice of the meeting with respect to such member unless such member attends the meeting for the sole purpose of objecting to the holding of such meeting. The members of the Board of Directors may, at their election, participate in any regular or special meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. A member's participation in a meeting pursuant to the preceding sentence shall constitute presence in person at, such meeting for all purposes of this Agreement. No action taken shall be valid unless a Quorum, as defined in Section 1.6 above, exists. Members of the Board may vote in person at such meeting; voting by proxy shall not be permitted.

12.4 Local Boards. Effective for all purposes on the date of this Agreement, the Board of Directors shall form a Local Board for each Hospital (each such Board being referred to as a "Local Board"). The Board of Directors shall have the authority to appoint additional or replacement individuals to each of the Local Boards. The Local Boards shall be comprised of at least six (6) individuals, and 50% of each Local Board shall consist of physicians on the Hospital's medical staff, and the other 50% shall consist of the Hospital's local CEO and community representatives. Each individual selected to serve on the Local Board shall serve for a term of three (3) years and thereafter until his successor is elected or appointed, unless he sooner resigns or is removed. No individual may serve on a Local Board for more than three (3) consecutive full three (3)-year terms; such individual may again serve on a Local Board after an absence of at least two (2) years. Each Local Board shall meet on a regular basis and have the following responsibilities: (a) recommendations regarding medical staff credentialing, quality assurance and accreditation; (b) reviewing, and making recommendations with respect to, strategic and capital plans; (c) providing guidance and support on local market and community concerns, considerations, strategies, issues and politics; and (d) performing such other duties, and providing review and recommendations with respect to other matters, as requested by the Company's Board of Directors.

12.5 Board of Directors Deadlock.

(a) It is the intention of the Board of Directors to make a good faith effort to resolve Deadlocks (as defined below) between the Category A Directors and the Category B Directors; provided, however, that this provision shall apply only with respect to Deadlocks regarding decisions set forth in:

(i) Sections 8.3(f) through (m), and Sections (o) through (r);

(ii) Section 8.3(n), but only at such time after which the Long-Term Capital Commitment has been satisfied and only to the extent that the additional capital will be spent on projects that are supported by a return on investment calculation or a material needs assessment (including operational needs) with respect to the Company Subsidiaries in the State of Rhode Island; and

(iii) Section 8.3(u), in the case of transactions having an aggregate value of less than Seven Hundred Fifty Thousand Dollars ($750,000).

(b) For purposes of this Agreement, the term "Deadlock" shall mean the failure or inability to obtain on a timely basis the Approval of the Board with respect to any resolution or proposal that is reasonably necessary for the Company or a Company Subsidiary to continue to carry on its business activities or to comply with applicable Law, where such resolution or proposal has been approved by one Category of directors but not the other (accordingly, Deadlock may not occur if CCHP's interest is reduced to 5% and class voting no longer applies). In the event of any such Deadlock, the parties shall act in accordance with the following procedures:

(i) First, each category of Directors shall negotiate in good faith with the other category of Directors to try to settle any dispute for a period of thirty (30) days (which time period shall be reduced as may be necessary to address urgent and/or imminent circumstances, timeframes or deadlines). The Board of Directors shall meet at least once during such period (in person to the extent practicable) to attempt to resolve the dispute (beyond the meeting at which the deadlock became apparent).

(ii) In the event that by the end of the 30-day (or such lesser) period referred to in (i) above, the dispute is not settled pursuant to the procedures set forth in (i) above, then one designee from each of CCHP and Prospect shall meet (in person to the extent practicable, or via telephone) to attempt to resolve the dispute. If the dispute is still not resolved after such meeting and conferences, then the decision of the Category B Directors shall constitute the decision of the Board of Directors of the Company, notwithstanding any provision of this Agreement that specifically requires a majority vote of the Category A Directors or a majority vote of all Directors (and notwithstanding any other rights of the Category A Directors and CCHP hereunder).

(c) Notwithstanding the foregoing, in the event the Board of Directors should be Deadlocked with respect to the approval of an annual capital budget or an annual operating budget as described in Section 8.3(c) above, the Manager shall have the right, power and authority to make expenditures on behalf of the Company for budgeted items in amounts up to the following:

(i) With respect to each item of operating expense other than taxes and insurance, an amount equal to the amount set forth in the most recent annual operating budget that has received the Approval of the Board, increased by the percentage increase, if any, in the Consumer Price Index for the period beginning on the first day of the fiscal year to which the most recent annual budget approved by the Board

relates and ending on the first day of the fiscal year in which such expenditure is to be made;

(ii) With respect to each item relating to taxes and insurance, an amount equal to the amount of the actual expense incurred by the Company or a Company Subsidiary in respect of such item; and

(iii) With respect to each item of capital improvement or capital expenditure, an amount equal to the amount deemed reasonably necessary by the Manager to preserve the safety of the Hospitals, their patients and other occupants, to avoid the suspension of any services provided by the Hospitals or to preserve the accreditation of the Hospitals and their services.

Notwithstanding the foregoing, if any emergency involving manifest danger to life or property exists with respect to which expenditures are necessary for the preservation or safety of the Hospitals, for the safety of the patients and other occupants of the Hospitals, or to avoid the suspension of any necessary service to the Hospitals, such expenditures may be made by the Manager without the prior Approval of the Board. Any expenditure made by the manager in accordance with the authority granted by this section shall be deemed to have received Board approval for all purposes under this Agreement.

XIII. TRANSFER OF RIGHTS AND ADDITIONAL MEMBERS.

13.1 Transfers by Members. Except as otherwise set forth in this Article XIII, a Member may not sell, assign (by operation of Law or otherwise), transfer, pledge or hypothecate ("Transfer") all or any part of its interest in the Company (either directly or indirectly through the transfer of the power to control, or to direct or cause the direction of the management and policies of, such Member). If a transfer is otherwise permitted by this Article XIII, then a Member may sell its interest in the Company if each of the following conditions is satisfied:

(a) The sale, transfer or assignment is with respect to one or more Units;

(b) The Member and its transferee execute, acknowledge and deliver to the Manager such instruments of Transfer and assignment with respect to such transaction as are in form and substance satisfactory to the Manager;

(c) Unless waived in writing by the Manager, the Member delivers to the Manager an opinion of counsel satisfactory to the Manager covering such federal and state securities, healthcare (e.g., Medicare and DOH) and tax Laws and other aspects of the proposed Transfer as the Manager may reasonably request;

(d) The Member has furnished to the transferee a written statement showing the name and taxpayer identification number of the Company in such form and together with such other information as maybe required under Section 6050K of the Code and the Regulations thereunder; and

(e) The Member pays the Company a transfer fee that is sufficient to pay all reasonable expenses of the Company (which shall include any and all expenses of the Manager) in connection with such transaction.

13.2 Permitted Transfers.

(a) Notwithstanding the restriction in Section 13.1, the following Transfers are permitted and shall not be deemed to violate the restrictions contained in Section 13.1:

(i) Transfers pursuant to Article XIV; provided that the Prospect Member may not sell its Units pursuant to Article XIV for a period of five (5) years from the initial date of this Agreement;

(ii) Transfers by a Member to one or more of its Affiliates, or a Transfer by CCHP to CharterCARE Health Partners Foundation (f/k/a St. Joseph Health Services Foundation), with any such transferee automatically becoming a Substituted Member; and

(iii) pledges or hypothecations by the Prospect Member of its interest in the Company to a financial institution, lender or other party as collateral for loans or other indebtedness of Prospect or any Affiliate thereof, including, without limitation, pursuant to the Indenture, Credit Agreement or other indebtedness, and any Transfer occurring upon the enforcement of such pledges or hypothecations and other indebtedness.

(b) Notwithstanding anything to the contrary in this Agreement, any change in control or change in the ownership of (i) Prospect or the Prospect Member, or any other direct or indirect parent of the Company (including, without limitation, upon the exercise of remedies pursuant to the Indenture, Credit Agreement and other indebtedness) or (ii) the Company upon the exercise of remedies pursuant to the Indenture, Credit Agreement or other indebtedness shall not constitute a Transfer of an interest in the Company for purposes of this Agreement, such changes will not be subject to the provisions of Sections 14.2 and 14.3 and such changes are permitted without the consent of the Manager or any Member or any approval of the Board. Any change in control or change in the ownership of a Company Subsidiary upon the exercise of remedies pursuant to the Indenture, Credit Agreement or other indebtedness are permitted without the consent of the Manager or any Member or any approval of the Board.

Any Member who Transfers all or any portion of its interest in the Company shall promptly notify the Manager of such Transfer and shall furnish to the Manager the name and address of the transferee and such other information as may be required under Section 6050K of the Code and the Regulations thereunder.

13.3 Substituted Member. No Person taking or acquiring, by whatever means, the interest of any Member in the Company, except as provided in Section 13.2 hereof, shall be admitted as a Substituted Member without the Approval of the Board (which consent may be withheld in the Board's sole discretion), and unless such Person:

(a) Elects to become a Substituted Member by delivering notice of such election to the Company;

(b) Executes, acknowledges and delivers to the Company such other instruments as the Manager may deem necessary or advisable to effect the admission of such Person as a Substituted Member, including, without limitation, the written acceptance and adoption by such Person of the provisions of this Agreement;

(c) Pays a transfer fee to the Company in an amount sufficient to cover all reasonable expenses (including legal fees) connected with the admission of such Person as a Substituted Member; and

(d) the requirements of Section 13.1 have been satisfied.

13.4 Additional Member. The Company may not issue Units to any Person who will be a new Member without the Approval of the Board.

13.5 Basis Adjustment. Upon the Transfer of all or part of an interest in the Company, the Manager may, in its reasonable discretion, cause the Company to elect, pursuant to Section 754 of the Code or the corresponding provisions of subsequent Law, to adjust the basis of the Company properties as provided by Sections 734 and 743 of the Code.

13.6 Invalid Transfer. No Transfer of an interest in the Company that is in violation of this Article XIII shall be valid or effective, and the Company shall not recognize any improper transfer for the purposes of making allocations, payments of profits, return of capital contributions or other distributions with respect to such Company interest or part thereof. The Company may enforce the provisions of this Article XIII, either directly or indirectly or through its agents, by entering an appropriate stop transfer order on its books or otherwise refusing to register or transfer or permit the registration or transfer on its books of any proposed transfers not in accordance with this Article XIII.

13.7 Distributions and Allocations in Respect of a Transferred Unit. If any Member Transfers any part of its interest in the Company during any accounting period in compliance with the provisions of this Article XIII, Company income, gain, deductions and losses attributable to such interest for the respective period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the applicable accounting period in accordance with Section 706(d) of the Code. All Company distributions on or before the effective date of such Transfer shall be made to the transferor, and all Company distributions thereafter shall be made to the transferee. Solely for purposes of making Company tax allocations and distributions, the Company shall recognize a Transfer on the day following the day of Transfer. Neither the Company nor the Manager shall incur any liability for making Company allocations and distributions in accordance with the provisions of this Section 13.7, whether or not the Manager or the Company has knowledge of any Transfer of any interest in the Company or part thereof where the transferee is not admitted as a Substituted Member.

13.8 Additional Requirements of Admission to Company. The Manager shall not admit any Person as a Member if such admission would have the effect of causing the Company to be re-classified for federal income tax purposes as an association (taxable as a corporation under the

Code), or would violate any Medicare or other health care Law (assuming applicable notices, filings, etc.), or would violate applicable exemptions from securities registration and securities disclosure provisions under federal and state securities Laws.

13.9 Amendment to Exhibit B. The Manager shall amend Exhibit B attached to this Agreement from time to time to reflect the admission of any Substituted Members or Additional Members, or the termination of any Member's interest in the Company.

XIV. RIGHT TO LIQUIDATE OR PURCHASE COMPANY INTERESTS.

14.1 Right of First Offer. In the event that CCHP at any time wishes to Transfer any Units to any third party, CCHP shall give written notice to the Company and the Prospect Member of CCHP's intention to seek a purchaser for such Units (the "Offered Units"). The Prospect Member shall have until the thirtieth (30^{th}) day following delivery of such notice to determine whether or not to submit an offer to purchase the Offered Units and to determine the terms and conditions of any such offer (the "Right of First Offer"). During such thirty (30)-day period, CCHP shall not Transfer the Offered Units. If an offer to purchase is made by the Prospect Member, CCHP may accept or reject such offer in its sole discretion, and in the latter case, the Transfer of Units by CCHP shall be further subject to compliance with the Right of First Refusal of the Prospect Member as set forth in Section 14.2 below.

14.2 Right of First Refusal. Subject to the restriction in Section 13.2(a)(i), if any Member (the "Selling Member") receives or obtains an offer from a third party (the "Offeror") to acquire in any manner all or any part of its Units in the Company (the "Interest"), which offer the Member intends to accept, the Member shall promptly notify the other Members in writing of the offer received, including the name of the Offeror, the number of whole or partial Units offered to be purchased, the proposed purchase price and the other terms and conditions of the offer. Such notice shall include a copy of the offer, which shall (i) be in writing; (ii) set forth with specificity all of the material terms and conditions of the offer; (iii) be made by a Person that is financially capable of completing such offer (and attaches documents supporting same); and (iv) provide for closing no later than one hundred eighty (180) days after the date on which such offer is received (the "Offer"). The other Member(s) shall have the right (the "Right of First Refusal") for a period of sixty (60) days from the day it receives notice of such Offer to purchase the Interest subject to the Offer on the same terms and conditions contained in the Offer, provided that for the purposes of this Agreement, any provisions in the Offer requiring payment of non-cash or non-promissory note consideration, any security therefore and any ancillary agreements shall be null, void and of no effect. The other Member(s) may exercise such Right of First Refusal by notifying the Selling Member prior to the end of the sixty (60)-day period of its intent to exercise such right. If the other Member(s) fails to exercise the Right of First Refusal or indicates in writing that it will not exercise the Right of First Refusal within the period provided, or if the other Member(s) exercises the Right of First Refusal but fails to effect the purchase within one hundred eighty (180) days thereafter, then the Selling Member may convey or dispose of the Interest, but only at the price, terms and conditions contained in the Offer, and only to the Offeror. If the Selling Member agrees to terms and conditions that are different in any material respects from those offered to the other Member(s), the other Member(s) shall again have the right to purchase the Selling Member's interest in the Company which is subject to the more favorable or different purchase terms in accordance with this Section 14.2 (under the timeframes

described above, as if a new Offer was provided). The other Member(s) may assign its rights under this Section 14.2 to the Company, in which event the Member's interest may be liquidated (rather than purchased) by the Company. The Member(s) and the Company shall not be liable or accountable to any Selling Member that attempts to transfer its interest in the Company for any loss, damage, expense, cost or liability resulting from the Member's exercise or failure to exercise the Right of First Refusal under this Section 14.2, delay in notifying the Selling Member of its intention not to exercise the Right of First Refusal, or its enforcement of the requirements of this Section 14.2 in the event that it elects not to exercise the Right of First Refusal. A Member's failure to exercise the Right of First Refusal or to indicate in writing that it is electing not to exercise the Right of First Refusal shall not be deemed a consent of the Member to allow any third party transferee to become a Substituted Member, such consent being controlled by the provisions of Sections 13.1 and 13.3 hereof.

14.3 Tag-Along Rights. If at any time after the fifth (5^{th}) anniversary of the date of this Agreement, a Selling Member that holds a Sharing Percentage greater than fifty percent (50%) gives the notice required by Section 14.2 hereof in connection with an Offer to acquire in any manner all or any part of such Selling Member's Units in the Company, and the other Member(s) does not exercise its Right of First Refusal (or assign such right to the Company) with respect to such Offer, the other Member shall have (in addition to its Right of First Refusal under Section 14.2 hereof) the right (the "Tag-Along Right") to require, as a condition to any sale or disposition to the Offeror, that the Offeror purchase from the other Member, at the same price and on the same terms and conditions as specified in the notice given pursuant to Section 14.2 hereof, the number of Units owned by the other Member multiplied by a fraction, the numerator of which is the number of Units proposed to be sold by the Selling Member and the denominator of which is the total number of Units owned by the Selling Member. Such other Member shall have the Tag-Along Right for a period of sixty (60) days from the day it receives the notice required by Section 14.2 hereof (which is the same 60-day period for purposes of exercising its Right of First Refusal), and in the event that a Member shall elect to exercise such Tag-Along Right, such Member shall communicate such election in writing to the Selling Member within such time period.

14.4 Prospect Member Call Option.

(a) Within 90 days following a determination by CCHP to submit a matter to binding arbitration pursuant to Section 3.1(b) above, the Prospect Member shall have the option to purchase from CCHP, and CCHP shall have the obligation to sell to the Prospect Member, all of the Units held by CCHP in exchange for a payment in cash of a purchase price equal to the Appraised Value of the Units (as per Section 14.6 below).

(b) Within the 90-day period referenced in Section 14.4(a) above, the Prospect Member shall give written notice to CCHP of its election to exercise the option to purchase all of CCHP's Units (the "Call Election Notice"). If Prospect fails to give a Call Election Notice within the applicable ninety (90)-day time limit, the option to purchase shall lapse. The closing of the purchase and sale of CCHP's Units to the Prospect Member shall be held at a mutually acceptable place on a mutually acceptable date not more than ninety (90) days after the date on which the Call Election Notice is received by CCHP; provided that such time period shall be extended if needed such that the closing occurs within forty-five (45) days following the

determination of the Appraised Fair Market Equity Value of the Company pursuant to Section 14.6 below. The Prospect Member shall make payment to CCHP for the Units being purchased by delivering immediately available funds to an account designated by CCHP in the full amount of the purchase price applicable to the Units. CCHP shall transfer to the Prospect Member all of the Units being sold, free and clear of all claims, liabilities, options, pledges or other encumbrances of any kind (other than those arising under this Agreement and applicable Law).

14.5 CCHP Put Option.

(a) Within 90 days following either -- (i) the fifth (5^{th}) anniversary of the date of this Agreement, or (ii) the occurrence either of the conditions set forth in Section 3.2(c) of this Agreement -- CCHP shall have the option to sell to the Prospect Member, and the Prospect Member shall have the obligation to purchase, all of the Units held by CCHP in exchange for a payment in cash of a purchase price equal to the Appraised Value of the Units (as per Section 14.6 below). The Prospect Member shall give the Company and CCHP written notice of the foreclosure referenced in Section 3.2(c) as soon as practicable, but in no event later than thirty (30) days after such event has occurred. The Prospect Member's failure to give such notice shall not affect CCHP's rights granted herein.

(b) Within the 90-day period referenced in Section 14.5(a) above, CCHP shall give written notice to the Prospect Member and the Company of its election to exercise the option to sell all of its Units to the Prospect Member (the "Put Election Notice"). If CCHP fails to give a Put Election Notice within the applicable ninety (90)-day time limit, the option to sell shall lapse. The closing of the purchase and sale of CCHP's Units to the Prospect Member shall be held at a mutually acceptable place on a mutually acceptable date not more than ninety (90) days after the date on which the Put Election Notice is received by the Prospect Member; provided that such time period shall be extended if needed such that the closing occurs within forty-five (45) days following the determination of the Appraised Fair Market Equity Value of the Company pursuant to Section 14.6 below. The Prospect Member shall make payment to CCHP for the Units being purchased by delivering immediately available funds to an account designated by CCHP in the full amount of the purchase price applicable to the Units. CCHP shall transfer to the Prospect Member all of the Units being sold, free and clear of all claims, liabilities, options, pledges or other encumbrances of any kind (other than those arising under this Agreement and applicable Law).

14.6 Appraised Value.

(a) For purposes of Section 14.4 and 14.5 above, the "Appraised Value of the Units" shall be the product determined by multiplying (i) the Appraised Fair Market Equity Value of the Company (hereinafter defined), times (ii) CCHP's Sharing Percentage. For purposes of this Agreement, the term "Appraised Fair Market Equity Value of the Company" shall mean the fair market value of the equity of the Company, as determined below.

(b) The Prospect Member and CCHP shall negotiate in good faith with one another following the Call/Put Election Notice (pursuant to Section 14.4(b) or 14.5(b) above, as applicable) to determine the Appraised Fair Market Value of the Company. The Prospect Member and CCHP agree to use their best efforts to negotiate and agree upon the Appraised Fair

Market Value of the Company. If the Prospect Member and CCHP reach an agreement as to the Appraised Fair Market Value of the Company, then the Appraised Fair Market Value of the Company shall be the amount determined by the Prospect Member and CCHP.

(c) Either party may notify the other party that it is initiating the Appraisal Process described below, or such other appraisal process upon which the parties may mutually agree in writing within ten (10) days of the date on which either party has initiated the appraisal process (the "Alternate Appraisal Process"). If either the Prospect Member or CCHP shall have initiated the Appraisal Process (and the parties shall not have agreed in writing to an Alternate Appraisal Process within ten (10) days), then the Prospect Member and CCHP shall each engage a "Qualified Appraiser" as defined below (collectively, the "Initial Appraisers", and individually, an "Initial Appraiser") within twenty (20) days after the date upon which the party received notice of the other party's intent to initiate the Appraisal Process (the "Initiation Date"). The Prospect Member and CCHP also shall engage jointly one additional Qualified Appraiser that is mutually acceptable to the parties (the "Third Appraiser", the Initial Appraisers and the Third Appraiser are referred to collectively as the "Appraisers"). If the parties cannot mutually agree upon the identity of the Third Appraiser within fifteen (15) days after the Initiation Date, the parties shall direct the Initial Appraisers to select and engage the Third Appraiser on behalf of the parties. Each of the Prospect Member and CCHP shall pay the fees and expenses of its respective Appraiser, and the fees and expenses of the Third Appraiser shall be shared equally by the Prospect Member and CCHP. For purposes of the Agreement, the term "Qualified Appraiser" shall mean an independent, third party, nationally recognized investment bank or MAI-certified appraiser who (i) has substantial experience in the valuation of health care entities comparable to the Company and (ii) has, within the twenty-four (24) month period preceding the date of the Election Notice, delivered appraisals and/or fairness opinions, on a going concern basis, in connection with at least three (3) other transactions involving the sales of hospitals. The Appraisers so selected shall each then conduct an appraisal to determine the Appraised Fair Market Equity Value of the Company (i) on a going concern basis, (ii) using valuation techniques then customary and accepted in the industry but without consideration of minority interest discounts, (iii) using performance information respecting the Facilities that is acceptable to the Prospect Member and CCHP and that has been supplied to each of the Appraisers, (iv) viewing the enterprise of the Company as a whole, (v) taking into account the future prospects of the Facilities, and (vi) assuming that the Company were to be sold on a stand-alone basis (and not as a part of a portfolio sale). Each Appraiser's determination of the Appraised Fair Market Equity Value of the Company (individually, a "Valuation" and collectively, the "Valuations") shall be expressed as a single value rather than a range of values. Each party shall cause the Initial Appraiser engaged by it to submit such Initial Appraiser's sealed Valuation to the other party within sixty (60) days of the Initiation Date, and both parties shall use their reasonable best efforts to cause the Third Appraiser to submit its sealed Valuation to both parties within such period. Once the Prospect Member and CCHP have received from all three Appraisers their respective Valuations, the Appraised Fair Market Equity Value of the Company shall be determined based upon the Valuations as follows:

(i) if the three Valuations are within ten percent (10%) of one another (i.e., if each of the highest Valuation and the middle Valuation is no greater than 1.10 times the lowest Valuation); the Appraised Fair Market Equity Value of the Company shall be the average of all three Valuations;

(ii) if subsection (i) above is inapplicable and two Valuations are within ten percent (10%) of one another, (i.e., if the higher of such two Valuations is no greater than 1.10 times the lower of such two Valuations), the Appraised Fair Market Equity Value of the Company shall be the average of such two Valuations;

(iii) if subsections (i) and (ii) above are inapplicable and the three Valuations are within twenty percent (20%) of one another (i.e., if each of the highest Valuation and the middle Valuation is no greater than 1.20 times the lowest Valuation), the Appraised Fair Market Equity Value of the Company shall be the average of all three Valuations;

(iv) if subsections (i) through (iii) above are inapplicable and two Valuations are within twenty percent (20%) of one another (i.e., if the higher of such two Valuations is no greater than 1.20 times the lower of such two Valuations), the Appraised Fair Market Equity Value of the Company shall be the average of such two Valuations; and

(v) if subsections (i) through (iv) above are inapplicable, the Appraised Fair Market Equity Value of the Company shall be the average of all three Valuations.

XV. DISSOLUTION.

15.1 Causes. Each Member expressly waives any right that it might otherwise have to dissolve the Company except as set forth in this Article XV. The Company shall be dissolved upon the first to occur of the following:

(a) The Approval of the Board of an instrument dissolving the Company;

(b) The dissolution of the Company by judicial decree; or

(c) The Approval of the Board of the dissolution of the Company after having determined that a rule, ordinance, regulation, statute or government pronouncement has or may be enacted that would make any material aspect of this Agreement or the activities conducted by the Company unlawful or eliminate or substantially reduce, either directly or indirectly, the benefits that would accrue to the Members with respect to continuing the Company's business operations; provided, however, that the Members agree to first use their best efforts to restructure the Company in such a manner that will avoid the unlawful or adverse effect and, to the extent practicable, will preserve the existing financial and business relationships among them; and provided further that the foregoing shall not apply in the event CCHP's tax-exempt status is impacted (but rather in such event CCHP's sole remedy is exercising its rights under Section 14.5).

15.2 Limitation. Nothing contained in Section 15.1 is intended to grant to any Member the right to dissolve the Company at will (by retirement, resignation, withdrawal or otherwise), or to exonerate any Member from liability to the Company and the remaining Members if it dissolves the Company at will. Any dissolution at will of the Company shall be in contravention

of this Agreement for purposes of the Act. Dissolution of the Company under Section 15.1(c) shall not constitute a dissolution at will.

XVI. WINDING UP AND TERMINATION.

16.1 General. If the Company is dissolved and is not reconstituted, the Members who own at least eighty percent (80%) of the aggregate Members' Sharing Percentages shall select an independent third party (meaning, for these purposes, a person or persons other than Prospect, the Prospect Member, the Manager or any other Prospect Affiliate) to serve as liquidator or liquidating committee (herein referred to as the "Liquidator"). The Liquidator shall commence to wind up the affairs of the Company and to liquidate and sell the Company's assets, with an obligation to treat Members equally in proportion to their membership interest. The Liquidator shall have sufficient business expertise and competence to conduct the winding up and termination of the Company and, in the course thereof, to cause the Company to perform any contracts that the Company has or thereafter enters into. The Liquidator shall have full right and unlimited discretion to determine the time, manner and terms of any sale or sales of Company property under such liquidation, having due regard for the activity and condition of the relevant market and general financial and economic conditions. The Liquidator shall be entitled to receive such reasonable compensation for its services as shall be agreed upon by the Liquidator and those Members who own at least eighty percent (80%) of the aggregate Members' Sharing Percentages. The Liquidator may resign at any time by giving fifteen (15) days prior written notice and may be removed at any time, with or without cause, by written notice of Members who own at least eighty percent (80%) of the aggregate Members' Sharing Percentages. Upon the death, dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all the rights, powers and duties of the original Liquidator) will, within thirty (30) days thereafter, be appointed by those Members who own at least eighty percent (80%) of the aggregate Members' Sharing Percentages, evidenced by written appointment and acceptance. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring, and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provisions hereof, and every reference herein to the Liquidator will be deemed to refer also to any such successor or substitute Liquidator appointed in the manner herein provided. The Liquidator shall have and may exercise, without further authorization or consent of any of the parties hereto or their legal representatives or successors in interest, all of the powers conferred upon the Manager under the terms of this Agreement to the extent necessary or desirable in the good faith judgment of the Liquidator to perform its duties and, functions. The Liquidator shall not be liable to the Members except to the extent provided in the Act and shall, while acting in such capacity on behalf of the Company, be entitled to the indemnification rights set forth in Section 17.1 hereof.

16.2 Court Appointment of Liquidator. If, within ninety (90) days following the date of dissolution or other time provided in Section 16.1 hereof, a Liquidator or successor Liquidator has not been appointed in the manner provided therein, any interested party shall have the right to make application to any United States Federal District Judge (in his individual and not judicial capacity) for the District of Rhode Island for appointment of a Liquidator or successor Liquidator, and the Judge, acting as an individual and not in his judicial capacity, shall be fully authorized and empowered to appoint and designate a Liquidator or successor Liquidator who shall have all the powers, duties, rights and authority of the Liquidator herein provided.

16.3 Liquidation. The Liquidator shall give all notices to creditors of the Company and shall make all publications required by the Act. In the course of winding up and terminating the business and affairs of the Company, the assets of the Company (other than cash) shall be sold or distributed in kind to the Members, in the reasonable discretion of the Liquidator, its liabilities and obligations to creditors, including any Members who made loans to the Company as provided in Section 4.5 hereof, and all expenses incurred in its liquidation shall be paid, and all resulting items of Company income, gain, loss or deduction shall be credited or charged to the Capital Accounts of the Members in accordance with Article V hereof. The fair market value of any assets of the Company distributed in kind to the Members shall be determined by an independent appraiser chosen by the Board of Directors. Any distribution in kind need not be made on a pro rata basis so long as the value of the assets and cash (if any) distributed to each Member is in compliance with this Article. All Company assets (except to the extent reserves have been established pursuant to Section 16.4 hereof) shall be distributed among all Members having positive Capital Account balances (as determined after giving effect to all adjustments attributable to allocations of items of profit and loss realized by the Company during the fiscal year in question (including items of profit and loss realized on the liquidation) and all adjustments attributable to contributions and distributions of money and property effected prior to such distribution), pro rata in accordance with such positive Capital Account balances. This distribution shall be made no later than the end of the Fiscal Year during which the Company is liquidated (or, if later, ninety (90) days after the date on which the Company is liquidated). Upon the completion of the liquidation of the Company and the distribution of all the Company assets, the Company shall terminate and the Liquidator shall have the authority to execute and record all documents required to effectuate the dissolution and termination of the Company. In the discretion of the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Members may instead be distributed to a trust established for the benefit of the Members for the purposes of liquidating Company property, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the, Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Liquidator, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Agreement.

16.4 Creation of Reserves. After making payment or provision for payment of all debts and liabilities of the Company and all expenses of liquidation, the Liquidator may set up such cash reserves as the Liquidator may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company.

16.5 Final Statement. Within a reasonable time following the completion of the liquidation, the Liquidator shall supply to each of the Members a statement that sets forth the assets and the liabilities of the Company as of the date of complete liquidation; each Member's pro rata portion of distributions under Section 16.3 hereof, and the amount retained as reserves by the Liquidator under Section 16.4 hereof.

XVII. MISCELLANEOUS.

17.1 Standard of Care; Indemnification.

(a) The members of the Board of Directors, the Members and the Manager (the "Representatives") shall not be liable, responsible or accountable in damages to any Member or the Company for any act or omission on behalf of the Company performed or omitted by them in good faith and in a manner they reasonably believed to be in the best interests of the Company and, in the case of a criminal proceeding, if they had no reasonable cause to believe that the conduct was unlawful.

(b) To the fullest extent permitted by the Act, the Company shall indemnify each Representative against reasonable expenses (including reasonable attorneys' fees), judgments, taxes, penalties, fines (including any excise tax assessed with respect to an employee benefit plan) and amounts paid in settlement (collectively "Liability"), incurred by the Representative in connection with defending any threatened, pending or completed action, suit or proceeding (whether civil, criminal, administrative or investigative, and whether formal or informal) to which the Representative is, or is threatened to be made, a party because they are or were a Representative, provided that (i) the Representative acted in good faith and in a manner reasonably believed by the Representative to be in the best interest of the Company; (ii) in the case of a criminal proceeding, the Representative had no reasonable cause to believe the conduct was unlawful; (iii) in connection with a proceeding brought by or in the right of the Company, the Representative was not adjudged liable to the Company; and (iv) the Representative was not adjudged liable in a proceeding charging improper personal benefit.

(c) To the fullest extent authorized or permitted by the Act, the Company shall pay or reimburse reasonable expenses (including reasonable attorneys' fees) incurred by a Representative who is a party to a proceeding in advance of final disposition of such proceeding if (i) the Representative furnishes the Company a written affirmation of its, his or her good faith belief that it, he or she has met the standard of conduct described in Section 17.1(b) hereof; (ii) the Representative furnishes the Company a written undertaking, executed personally or on the Representatives behalf, to repay the advance if it is ultimately determined that the Representative did not meet the standard of conduct and the Board reasonably believes such Representative would have the ability to repay such advance; and (iii) a determination is made that the facts then known to those making the determination would not preclude indemnification under the provisions of Section 17.1(b) hereof.

(d) The indemnification against Liability and advancement of expenses provided by, or granted pursuant to, this Section 17.1 shall not be deemed exclusive of any other rights to which these seeking indemnification or advancement may be entitled under any agreement, action of Members or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office of the Company, shall continue as to an entity or person who has ceased to be a Representative, and shall inure to the benefit of the successors, assigns, heirs, executors and administrators of such an entity or person.

(e) Any repeal or modification of this Section 17.1 by the Members shall not adversely affect any right or protection of the Representatives under this Section 17.1 with respect to any act or omission occurring prior to the time of such repeal or modification.

17.2 Purchase Agreement Indemnification Obligations.

(a) In the event that CCHP is required to pay the Company or Prospect an amount pursuant to the indemnification provisions of the Purchase Agreement (an "Unpaid Indemnification Amount"), and fails to pay all of such amount within thirty (30) days, then Prospect may, in its sole and absolute discretion, recoup or offset, as applicable, on a dollar-for-dollar basis, all or a portion of the Unpaid Indemnification Amount in the following order of priority to the extent amounts are available in each such category: (x) by receiving distributions from the Company otherwise due to CCHP in respect of its Units (pursuant to the provisions of Section 17.2(b) below), (y) by reducing the Long-Term Capital Commitment, or (z) by treating such amount as an additional capital contribution by Prospect to the Company and adjusting the Prospect Member's and the Seller Members' respective Sharing Percentages (pursuant to the provisions of Section 17.2(c) below), or any combination of the foregoing, all pursuant to the terms of the Amended and Restated Agreement.

(b) If and to the extent Prospect elects to receive distributions in respect of an Unpaid Indemnification Amount as provided for in clause (x) of Section 17.2(a) above, if the Unpaid Indemnification Amount is due to Prospect, the Company shall pay to Prospect all distributions due hereunder to CCHP until the Unpaid Indemnification Amount due to Prospect from CCHP has been fully satisfied; and (ii) if the Unpaid Indemnification Amount is due to the Company, the Company shall offset all distributions due hereunder to CCHP until the Unpaid Indemnification Amount due to the Company has been fully satisfied, and shall make a special distribution to Prospect equal to the Unpaid Indemnification Amount. In such an event, the distributions which would have otherwise been made to CCHP shall be treated as if they were actually made to CCHP and then paid by CCHP to Prospect or to the Company, as applicable.

(c) If and to the extent Prospect elects to receive distributions in respect of an Unpaid Indemnification Amount as provided for in clause (z) of Section 17.2(a) above, the Unpaid Indemnification Amount (including interest thereon) shall be treated as an Additional Capital Contribution by Prospect to the Company pursuant to Section 4.2(e) above, and CCHP's and the Prospect Member's Sharing Percentage (and Units) shall be adjusted as per such provision, as if CCHP were a Non-Contributing Member (provided, however, that this provision shall not cause CCHP's Sharing Percentage to fall below 5%).

17.3 Notices. All notices given pursuant to this Agreement shall be in writing and shall be deemed effective when personally delivered or when placed in the United States mail, registered or certified with return receipt requested, when sent by nationally recognized overnight courier service, or when sent by prepaid telegram or facsimile followed by confirmatory letter. For purposes of notice, the addresses of the Members shall be as stated under their names on the attached Exhibit B; notices to the Company shall be sent to 825 Chalkstone Avenue, Providence, RI 02908, to the attention of the Chief Executive Officer, with a copy to the Prospect Member. Notwithstanding the foregoing, each Member shall have the right to change its address for notice hereunder to any other location by the giving of thirty (30) days' notice to the Manager in the manner set forth above.

17.4 Choice of Law and Dispute Resolution.

(a) Choice of Law. The parties agree that this Agreement shall be governed by and construed in accordance with the Laws of the State of Rhode Island, without giving effect

to any choice or conflict of law provision or rule thereof that would require the application of any other law.

(b) Dispute Resolution. In the event that any dispute, controversy or claim arises among the parties, including any dispute, controversy or claim arising out of this Agreement or any other relevant document, or the breach, termination or invalidity thereof (a "Dispute"), the parties shall attempt in good faith to resolve such Dispute promptly by negotiation (including at least one in-person meeting) over a period of not less than thirty (30) days, commencing upon one party's delivery of a written notice of Dispute to the other parties.

(i) If the Dispute has not been resolved by negotiation as provided above and such Dispute involves claims of One Million Dollars ($1,000,000) or more, a party may submit the matter to a court of law or equity through the filing of a claim. The parties agree that, except as otherwise expressly provided in Section 17.4(b)(ii)(2) and Section 17.5 below, venue for any and all claims associated with a Dispute between the parties shall rest with the state courts of the State of Delaware; provided, however, that such court shall construe and apply the Laws of the State of Rhode Island as provided in Section 17.4(a) above.

(ii) If the Dispute has not been resolved by negotiation as provided above and such Dispute involves claims of less than One Million Dollars ($1,000,000), such Dispute shall be settled solely and finally pursuant to the following procedures:

(1) Either party may submit the Dispute to non-binding mediation. Such mediation shall be conducted by JAMS by a neutral mediator, which shall be selected from a list of 10 potential candidates provided by JAMS' office in New York City (none of whom work or reside in Rhode Island or California, or any State contiguous to either of the foregoing). If complete agreement cannot be reached within 45 calendar days of submission to mediation, any remaining issues will be resolved by binding arbitration as provided below.

(2) If the Dispute has not been resolved by mediation as provided above, then either party may submit the Dispute to binding arbitration. Such arbitration shall be conducted by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, by one neutral arbitrator, which shall be selected from a list of 10 potential candidates provided by JAMS' office in New York City (none of whom work or reside in Rhode Island or California, or any State contiguous to either of the foregoing). Unless otherwise agreed by the parties, the arbitration shall be held in Providence, Rhode Island. In conducting such arbitration, the arbitrator shall be bound to adhere to the Laws of the State of Rhode Island, as well as the precedents established by decisions of the state courts of Rhode Island. The award made by the arbitrator shall be final and binding upon the parties thereto and the subject matter, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The arbitrator shall not have the authority to award punitive or exemplary damages. The costs and fees of the arbitration shall be borne responsible for its own attorneys' fees; provided, however, that the prevailing party in any such arbitration shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs and expenses (including, without limitation arbitration fees) incurred in connection with the arbitration to the extent such recovery is permitted by the Law(s) governing the claim(s) asserted. Notwithstanding anything in this Section 17.4(b)(ii) to the contrary, either party shall be entitled to seek enforcement of the

arbitrator's final rulings, and to pursue injunctive relief, in a court of competent jurisdiction in the State of Rhode Island.

(c) Waiver of Trial by Jury or Judge. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR, IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY OR A JUDGE. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY OR JUDGE ARISING FROM ANY SOURCE INCLUDING, BUT NOT LIMITED TO, THE CONSTITUTION OF THE UNITED STATES OR ANY STATE THEREIN, COMMON LAW OR ANY APPLICABLE STATUTE OR REGULATIONS. EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY OR JUDGE.

17.5 Specific Performance. Notwithstanding anything to the contrary contained herein, each party acknowledges and agrees that the non-breaching parties would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by a party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which the non-breaching parties may be entitled, at law or in equity, they shall be entitled to enforce any provision of this Agreement by seeking, from a court of competent jurisdiction in the State of Rhode Island, a decree of specific performance and temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

17.6 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Members, and their respective heirs, legal representatives, successors and permitted assigns; provided, however, that nothing contained herein shall negate or diminish the restrictions set forth in Articles XIII or XIV hereof.

17.7 Construction. Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member. The failure by any party to specifically enforce any term or provision hereof or any rights of such party hereunder shall not be construed as the waiver by that party of its rights hereunder. The waiver by any party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

17.8 Time. Time is of the essence with respect to this Agreement.

17.9 Waiver of Partition. Notwithstanding any statute or principle of Law to the contrary, each Member hereby agrees that, during the term of the Company, it shall have no right (and hereby waives any right that it might otherwise have had) to cause any Company property to be partitioned and/or distributed in kind.

17.10 Entire Agreement. This Agreement, together with the Purchase Agreement, contain the entire agreement among the Members relating to the subject matter hereof, and all prior agreements relative hereto that are not contained herein are terminated.

17.11 Amendments. Except as otherwise expressly provided in this Section 17.11, amendments or modifications may be made to this Agreement only by setting forth such amendments or modifications in each document receiving Approval of the Board, and any alleged amendment or modification herein that is not so documented and approved shall not be effective as to any Member. The Manager may, without the approvals set forth in this Section 17.11, amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required connection therewith to the extent necessary to reflect:

(a) a change in the location of the principal place of business of the Company not inconsistent with the provisions of Section 2.3, or a change in the registered office or the registered agent of the Company;

(b) admission of a Member into the Company or termination of any Member's interest in the Company in accordance with this Agreement;

(c) qualification of the Company as a limited liability company under the Laws of any state or that is necessary or advisable in the opinion of the Manager to ensure that the Company will not be treated as an association taxable as a corporation for federal income tax purposes, provided, in either case, such action shall not adversely affect any Member; or

(d) a change that is required or contemplated by this Agreement.

17.12 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable Law. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain among the Members as expressed herein, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by Law.

17.13 Gender and Number. Whenever required by the context, as used in this Agreement, the singular number shall include the plural and the neuter shall include the masculine or feminine gender and vice versa.

17.14 Exhibits. Each Exhibit to this Agreement is incorporated herein for all purposes.

17.15 Additional Documents. Each Member, upon the request of the Manager, agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

17.16 Headings. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any section.

17.17 Counterpart. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute but one document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Members have entered into this Agreement as of the date first written above.

CHARTERCARE HEALTH PARTNERS

By:_____
Name:_____
Title:_____

PROSPECT EAST HOLDINGS, INC.

By:_____
Name: Sam Lee
Title: CEO

PROSPECT CHARTERCARE, LLC

By:_____
Name: Sam Lee
Title: CEO

IN WITNESS WHEREOF, the Members have entered into this Agreement as of the date first written above.

CHARTERCARE HEALTH PARTNERS

By: _____
Name: Kenneth Belcher
Title: President

PROSPECT EAST HOLDINGS, INC.

By: _____
Name: _____
Title: _____

PROSPECT CHARTERCARE, LLC

By: _____
Name: _____
Title: _____

EXHIBIT A
TO
AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
PROSPECT CHARTERCARE, LLC

Allocations of Profit and Loss and Other Tax Matters

ARTICLE 1
DEFINITIONS

Section 1.1 Definitions. The following definitions shall be applicable in this Exhibit A and as used in the Agreement:

(a) Adjusted Capital Account Deficit.

"Adjusted Capital Account Deficit" shall mean with respect to any Member, the deficit balance, if any, in such Member's Section 704 Capital Account as of the end of any relevant fiscal year, after giving effect to the following adjustments:

(i) credit to such Section 704 Capital Account any amount that such Member is obligated to restore to the Company under Section 1.704-1(b)(2)(ii)(c) of the Regulations, and any addition thereto pursuant to the next to last sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations;

(ii) debit to such Section 704 Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations:

This definition is intended to comply with the provisions of Sections 1.704-1(b)(2)(ii)(d) and 1.704-2 of the Regulations and shall be interpreted consistently with those provisions.

(b) Adjusted Net Income or Loss.

"Adjusted Net Income Or Loss" for any fiscal year (or portion thereof) shall mean the excess (or deficit) of (x) the Gross Income for such period (not including Gross Income (if any) allocated during such period pursuant to Sections 3.1(a), 3.1(b) and 3.1(c) hereof) over (y) the Deductible Expenses for such period (not including Deductible Expenses (if any) allocated during such period pursuant to Sections 3.1(d) and 3.1(e) hereof) with the following modifications:

(i) Any item of Company profit that is exempt from federal income tax and not otherwise taken into account in computing Adjusted Net Income or Loss pursuant to this Section 1.1(b) shall be treated as additional Gross Income and, if not otherwise allocated pursuant to Section 3.1(a), 3.1(b) or 3.1(c) hereof, added to the amount otherwise calculated as Adjusted Net Income or Loss under Section 1.1(b); and

(ii) Any Company expenditure that is described in Section 705(a)(2)(B) of the Code (relating to Company expenditures that are not deductible for federal income tax purposes in computing taxable income and not properly chargeable to capital), or treated as so described pursuant to Section 1.704-1(b)(2)(iv)(i) of the Regulations, and not otherwise taken into account in computing Adjusted Net Income Or Loss pursuant to this Section 1.1(b) shall be treated as an additional Deductible Expense and, if not otherwise allocated pursuant to Section 3.1(d) or 3.1(e) hereof; subtracted from the amount Otherwise calculated as Adjusted Net Income Or Loss under this Section 1.1(b).

(c) Agreed Value.

"Agreed Value" of any property contributed to the capital of the Company shall mean the fair market value of such property at the time of contribution determined without regard to the amount of liabilities to which such property is subject (as agreed to in writing by the Members without regard to Section 7701(g) of the Code).

(d) Book Basis.

The initial "Book Basis" of any Company property shall be equal to the Company's initial adjusted tax basis in such property; provided, however, that the initial "Book Basis" of any Company property contributed to the capital of the Company shall be equal to the Agreed Value of such property. Effective immediately after giving effect to the allocations of profit and loss, as computed for book purposes, for each fiscal year under Section 3.1 hereof, the Book Basis of each Company property shall be adjusted downward by the amount of Book Depreciation allowable to the Company for such Fiscal Year with respect to such property. In addition, effective immediately prior to any Revaluation Event, the Book Basis of each Company property shall be further adjusted upward or downward, as necessary, so as to equal the fair market value of such property at the time of such Revaluation Event (as agreed to in writing by the Members taking Section 7701(g) of the Code into account (i.e., such value shall not be agreed to be less than the amount of Nonrecourse Liabilities to which such property is subject)).

(e) Book Depreciation.

The amount of "Book Depreciation" allowable to the Company for any fiscal year with respect to any Company property shall be equal to the product of (1) the amount of Tax Depreciation allowable to the Company, for such year with respect to such property, multiplied by (2) a fraction, the numerator of which is the property's Book Basis as of the beginning of such year (or the date of acquisition if the Property is acquired during such year) and the denominator of which is the property's adjusted tax basis as of the beginning of such year (or the date of acquisition if the property is acquired during such year). If the denominator of the fraction described in clause (2) above is equal to zero, the amount of "Book Depreciation" allowable to the Company for any Fiscal Year with respect to the Company property in question shall be determined under any reasonable method selected by the Manager.

(f) Book Gain Or Loss.

"Book Gain Or Loss" realized by the Company in connection with the disposition

of any Company property shall mean the excess (or deficit) of (1) the amount realized by the Company in connection with such disposition (as determined under Section 1001 of the Code) over (2) the Book Basis of such property at the time of the disposition.

(g) Book/Tax Disparity Property.

"Book/Tax Disparity Property" shall mean any Company property that has a Book Basis which is different from its adjusted tax basis to the Company. Thus, any property that is contributed to the capital of the Company by a Member shall be a "Book/Tax Disparity Property" if its Agreed Value is not equal to the Company's initial tax basis in the property. In addition, once the Book Basis of a Company property is adjusted in connection with a Revaluation Event to an amount other than its adjusted tax basis to the Company, the property shall thereafter be a "Book/Tax Disparity Property."

(h) Capital Transaction.

"Capital Transaction" shall mean (1) any transaction pursuant to which the Company borrows funds, all or part; of the Company's properties are sold, condemned, exchanged, abandoned or otherwise disposed of, insurance proceeds or other damages are recovered by the Company or (2) any other transaction which, in accordance with generally accepted accounting principles; is considered capital in nature (including, without limitation, any transaction that is entered into in connection with,, or results in, the Liquidation of the Company).

(i) Company Minimum Gain.

"Company Minimum Gain" shall mean the amount of Company "minimum gain" that is computed strictly in accordance with the principles of Section 1.704-2(d)(1) of the Regulations, A Member's share of such "Company Minimum Gain" shall be calculated in accordance with the provisions of Section 1.704-1(g) of the Regulations.

(j) Deductible Expenses.

"Deductible Expenses" for any fiscal year (or portion thereof) shall mean all items, as calculated for book purposes, which are allowable as deductions to the Company for such period under Federal income tax accounting principles (including Book Depreciation, but excluding any expense or deduction attributable to a Capital Transaction).

(k) Economic Risk Of Loss.

"Economic Risk Of Loss" borne by any Member for any Company liability shall mean the aggregate amount of economic risk of loss that such Member and all Related Persons to such Member are treated as bearing with respect to such liability pursuant to Section 1.752-2 of the Regulations.

(l) Gross Income.

"Gross Income" for any Fiscal Year (or portion thereof) shall mean the gross

income derived by the Company from all sources (other than from capital contributions and loans to the Company and other than from a Capital Transaction) during such period, as calculated for book purposes in accordance with Federal income tax accounting principles.

(m) Liquidation.

"Liquidation" of a Member's Units or other interest in, the Company shall mean and be deemed to occur upon the earlier of (1) the date upon which the Company is terminated under Section 708(b)(1) of the Code, (2) the date upon which the Company ceases to be a going concern (even though it may continue in existence for the limited purpose of winding up its affairs, paying its debts arid distributing any remaining Company properties to the Members) or (3) the date upon which there is a liquidation of the Member's Units or other interest in the Company (but the Company is not terminated) under Section 1.761-1(d) of the Regulations. "Liquidation" of the Company shall mean and be deemed to occur upon the earlier of (a) the date upon which the Company is terminated under Section 708(b)(1) of the Code or (b) the date upon which the Company ceases to be a going concern (even though it may continue in existence for the limited purpose of winding up its affairs, paying its debts and distributing any remaining Company properties to the Members).

(n) Member Nonrecourse Debt Minimum Gain.

"Member Nonrecourse Debt Minimum Gain" shall mean an amount, with, respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result, if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i) of the Regulations.

(o) Member Nonrecourse Debt.

"Member Nonrecourse Debt" shall mean any Company liability that is treated as a "partner nonrecourse debt" under Section 1.704-2(b)(4) of the Regulations.

(p) Member Nonrecourse Deductions.

"Member Nonrecourse Deductions" shall mean any and all items of Book Depreciation and other Deductible Expenses that are treated as "partner nonrecourse deductions" under Section 1.704-2(i)(2) of the Regulations

(q) Nonrecourse Deductions.

"Nonrecourse Deductions" shall mean any and all items of Book Depreciation and other Deductible Expenses that are treated as "nonrecourse deductions" under Section 1.704-2(c) of the Regulations.

(r) Nonrecourse Liability.

"Nonrecourse" Liability" shall mean any Company liability treated as a "nonrecourse liability" under Section 1.704-2(b)(3) of the Regulations. Subject to the foregoing sentence, "Nonrecourse Liability" shall mean any Company liability (or portion thereof) for

which no Member bears the Economic Risk Of Loss.

(s) Recourse Debt.

"Recourse Debt" shall mean any Company liability (or portion thereof) that is neither a Nonrecourse Liability nor a Member Nonrecourse Debt.

(t) Related Person.

"Related Person" shall mean, as to any Member, any person who is related to such Member (within the meaning of Section 1.752-4(b) of the Regulations).

(u) Revaluation Event.

"Revaluation Event" shall mean any of the following occurrences: (1) the contribution of money or other property (other than a de minimis amount) by a new or existing Member to the capital of the Company as consideration for the issuance of additional Units or other interest in the Company; (2) the distribution of money or other property (other than a de minimis amount) by the Company to a retiring or continuing Member as consideration for Units or other interest in the Company; or (3) the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations (other than pursuant to Section 708(b)(1)(B) of the Code); provided, however, under no circumstances shall the issuance of Units pursuant to Section 13.3 of the Agreement constitute a Revaluation Event; and provided further, that the occurrence of an event described in clause (1) or (2) above shall not constitute Revaluation Event if the Board of Directors reasonably determines that it is not necessary to adjust the Book Bases of the Company's assets or the Members' Capital Accounts in connection with the occurrence of any such event.

(v) Section 704 Capital Account.

"Section 704 Capital Account" shall have the meaning assigned to such term in Article 2 of this Exhibit A.

(w) Tax Depreciation.

"Tax Depreciation" for any Fiscal Year shall mean the amount of depreciation, cost recovery or other amortization deductions allowable to the Company for Federal income tax purposes for such year.

(x) Tax Items.

"Tax Items" shall mean, with respect to any property, all items of profit and loss (including Tax Depreciation) recognized by or allowable to the Company with respect to such property, as computed for Federal income tax purposes.

(y) Unrealized Book Gain Or Loss.

"Unrealized Book Gain Or Loss" with respect to any Company property shall

mean the excess (or deficit) of (1) the fair market value of such property (as agreed to in writing by the Members taking Section 7701(g) of the Code into account (i.e., such value shall not be agreed to be less than the amount of Nonrecourse Liabilities to which such property is subject)), over (2) the Book Basis of each property.

ARTICLE 2
SECTION 704 CAPITAL ACCOUNTS

A "Section 704 Capital Account" (herein so called) shall be determined and maintained for each Member throughout the full term of the Agreement in accordance with Article IV of the Agreement.

ARTICLE 3
ALLOCATIONS OF PROFIT AND LOSS

Section 3.1 Allocation of Book Items.

Subject to the provisions of Section 3.3 of this Exhibit A, all items of profit and loss realized by the Company during each fiscal year shall be allocated among the Members (after giving effect to all adjustments attributable to all contributions and distributions of money and property effected during such year) in the manner prescribed in this Section 3.1.

- Pursuant to Section 1.704-2(f) of the Regulations (relating to minimum gain chargebacks), if there is a net decrease in Company Minimum Gain for such year (or if there was a net decrease in Company Minimum Gain for a prior fiscal year and the Company did not have sufficient amounts of Gross Income and Book Gain during prior years to allocate among the Members under this Section 3.1(a)), then items of Gross Income and Book Gain shall be allocated, before any other allocation is made pursuant to the succeeding provisions of this Section 3.1 for such year, to each Member in an amount equal to such Member's share of the net decrease in such Company Minimum Gain.

- Pursuant to Section 1.704-2(i)(4) of the Regulations (relating to minimum gain chargebacks), if there is a net decrease in Member Nonrecourse Debt Minimum Gain with respect to a Member Nonrecourse Debt for such year (or if there was a net decrease in such Member Nonrecourse Debt Minimum Gain for a prior fiscal year and the Company did not have sufficient amounts of Gross' Income and Book Gain during prior years to allocate among the Members under this Section 3.1(b)), then items of Gross Income and Book Gain shall be allocated, before any other allocation is made pursuant to the succeeding provisions of this Section 3.1 for such year, to each Member with a share of such Member Nonrecourse Debt Minimum Gain as of the first day of such year in an amount equal to such Member's share of the net decrease in such Member Nonrecourse Debt Minimum Gain.

- Pursuant to Section 1.704-1(b)(2)(ii)(d) of the Regulations (relating to "qualified income offsets"), if a transaction described in Section 1.704-

1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations occurs unexpectedly, items of Company income and gain shall be allocated, before any other allocation is made pursuant to the succeeding provisions of this Section 3.1 for such year, among each Member with an Adjusted Capital Account Deficit in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 3.1(c) shall be made only if, and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made as if this Section 3.1(c) were not in this Exhibit A.

- All Member Nonrecourse Deductions attributable to a Member Nonrecourse Debt shall be allocated among the Members bearing the Economic Risk Of Loss for such debt; provided, however, that if more than one Member bears the Economic Risk Of Loss for such debt, the Member Nonrecourse Deductions attributable to such debt shall be allocated to and among such Members, pro rata in the same proportion that their Economic Risks Of Loss bear to one another.

- All Nonrecourse Deductions shall be allocated among the Members, pro rata in accordance with their respective Sharing Percentages.

- Any Adjusted Net Income realized by the Company for such year and, except as provided in Section 3.1(h) hereof, any Book Gain derived from a Capital Transaction occurring during such year and not allocated pursuant to Sections 3.1(a), 3.1(b), 3.1(c), 3.1(d), and 3.1(e) hereof, shall be allocated among the Members, as necessary, so as to cause the balances in their respective Section 704 Capital Accounts to be in the same ratio to one another as are their Sharing Percentages, with all remaining amounts of Adjusted Net Income and Book Loss to be allocated to the Members, pro rata in accordance with their respective Sharing Percentages.

- Any Adjusted Net Loss realized by the Company for such year and, except as provided in Section 3.1(h) hereof, any Book Loss derived from a Capital Transaction occurring during such year and not allocated pursuant to Sections 3.1(a), 3.1(b), 3.1(c), 3.1(d), and 3.1(e) hereof shall be allocated among the Members, as necessary, so as to cause the balances in their respective Section 704 Capital Accounts to be in the same ratio to one another as are their Sharing Percentages, with all remaining amounts of Adjusted Net Loss and Book Loss to be allocated to the Members pro rata in accordance with their respective Sharing Percentages.

- Book Gain Or Loss derived from a Capital Transaction that is entered into in connection with, or results in, the Liquidation of the Company shall be allocated among the Members as follows in the following order of priority (after giving effect to all adjustments attributable to allocations of items of Company profit and loss made pursuant to the preceding provisions of this Section 3.1 for such year and after giving effect to all adjustments attributable to contributions and distributions

or money and property effected prior to such determination).

- Book Gain remaining after the allocations provided for in Sections 3.1(a), 3.1(b) and 3.1(c) hereof shall be allocated as follows and in the following order of priority:

(A) First: Book Gain equal to the deficit balance (if any) in each Member's Capital Account shall be allocated to such Member;

(B) Second: An amount of Book Gain shall be allocated next among the Members to the least extent necessary to cause their positive Section 704 Capital Account balances to equal their respective Sharing Percentages; and

(C) Third: All remaining amounts of Book Gain shall be allocated among the Members pro rata in accordance with their respective Sharing Percentages.

- Book Loss (if any) shall he allocated as follows and in the following order of priority:

(A) First: Book Loss shall be allocated to the Members to the least extent necessary to cause the positive balances in their Section 704 Capital Accounts to be in the same proportion to one another as are their respective Sharing Percentages.

(B) Second: All remaining amounts of Book Loss shall be allocated among the Members pro rata in accordance with their respective Sharing Percentages.

- For purposes of determining the nature (as ordinary or capital) of any Company profit allocated among the Members for Federal income tax purposes pursuant to this Section 3.1, the portion of such profit required to be recognized as ordinary income pursuant to Sections 1245 and/or 1250 of the Code shall be deemed to be allocated among the Members in the same proportion that they were allocated and they claimed the Book Depreciation deductions, or basis reductions, directly or indirectly giving rise to such treatment under Sections 1245 and/or 1250 of the Code.

- The parties intend that the foregoing allocation provisions of this Section 3.1 shall produce Section 704 Capital Account balances of the Members that will permit liquidating distributions that are made in accordance with final Capital Account balances under Section 16.3 of the Agreement to be made to the Members pro rata in accordance with their respective Sharing Percentages. To the extent that the allocation provisions of this Section 3.1 would fail to cause the Members' final Capital Account balances to be in such ratio, (i) such provisions shall be amended by the Members if and to the extent necessary to produce such result and (ii) taxable income and taxable loss of the Company for prior open years (or items of Gross income and Deductible Expenses of the Company for such years) shall be reallocated among the Members to the extent it is not possible to achieve such result with allocations of items of income (including Gross Income) and Deductible

Expenses for the current year and future years. This Section 3.1(l) shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority.

Section 3.2 Allocation of Tax Items.

(z) Except as otherwise provided in the succeeding provisions of this Section 3.2, each Tax Item shall be allocated among the Members in the same manner as each correlative item of profit or loss, as calculated for book purposes, is allocated pursuant to the provisions of Section 3.1 hereof.

(aa) The Members hereby acknowledge that all Tax Items in respect of any Book/Tax Disparity Property owned by the Company are required to be allocated among the Members in the same manner as under Section 704(c) of the Code (as specified in Sections 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(2)(iv)(g) of the Regulations) and that the principles of Section 704(c) of the Code require that such Tax Items must be shared among the Members so as to take account of the variation between, the adjusted tax basis and Book Basis of each such Book/Tax Disparity Property. Thus, notwithstanding anything in Sections 3.1 or 3.2(a) to the contrary, the Members' distributive shares of Tax Items in respect of each Book/Tax Disparity Property shall be separately determined and allocated among the Members in accordance with the principles of Section 704(c) of the Code. For purposes of making tax allocations pursuant to Section 704(c) of the Code (including allocations pursuant to Section 1.704-1(b)(2)(iv)(f) if a Revaluation Event occurs) the Manager shall determine the method or methods to be used by the Company.

Section 3.3 Allocations Of Profit And Loss And Distributions In Respect Of Interests Transferred.

(bb) If any Unit or other interest in the Company is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any Fiscal Year, each item of Adjusted Net Income Or Loss, Book Gain Or Loss and other Company profit and loss for such year shall be divided and allocated among the Members in question by taking account of their varying interests in the Company during such year on a daily, monthly or other basis, as determined by the Manager using any permissible method under Section 706 of the Code and the Regulations thereunder,

(cc) Distributions of Company in respect of a Unit or other interest in the Company shall be made only to the persons or entities who, according to the Company's books and records, are the holders of record of the Units or other interests in the Company in respect of which such distributions are made on the actual date of distribution. Neither the Company nor the Manager shall incur any liability for making distributions it accordance with the provisions of the preceding sentence, whether or not the Company or the Manager has knowledge or notice of any transfer or purported transfer of ownership of any Unit or other interest in the Company.

(dd) Notwithstanding any provision above to the contrary, Book Gain Or Loss (and taxable gain or loss to the extent permitted by the Code and Regulations) realized in connection with a sale or other disposition of any Company properties shall be allocated solely

among the parties owning Units or other interests in the Company as of the date such sale or other disposition occurs.

EXHIBIT B
TO
AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
PROSPECT CHARTERCARE, LLC

Capital Accounts, Units and Sharing Percentages

NAME OF MEMBER	INITIAL CAPITAL ACCOUNT	INITIAL UNITS	INITIAL SHARING PERCENTAGE	ADJUSTED CAPITAL CONTRIBUTION*
CharterCARE Health Partners 825 Chalkstone Avenue Providence, Rhode Island 02908	$16.76 M	16,760	15%	$16.76M
Prospect East Holdings, Inc. 10780 Santa Monica Boulevard Suite 400 Los Angeles, California 90025	$45.00 M	95,000	85%	$95.00M*

* Assumes full funding of Long-Term Capital Commitment

EXHIBIT C
TO
AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
PROSPECT CHARTERCARE, LLC

Conflicts of Interest Policy

(as per Section 3.4)

CharterCARE Health Partners *Policy & Procedure*	Title:	Number: 4.1
Coverage: **All Designated Persons as Defined in This Policy**	CharterCARE HEALTH PARTNERS **Conflict of Interest Disclosure Policy**	Source: Board of Trustees Approved: Board of Trustees

Date Issued:	Date Effective:	Supersedes:	Distribution:	
09/08/2011	09/08/2011	01/08/2009	Designated Persons	Page 1 of 9

I. POLICY ADOPTION

CharterCARE Health Partners including its affiliates (the "Corporation"), is committed to pursuing its mission and to conducting its affairs in accordance with high professional and ethical standards which include the avoidance of detrimental conflicts of interest. The Corporation believes that avoiding such conflicts is imperative in preserving the public's trust. Persons who agree to serve the Corporation should not use their position for personal gain, or to expose the Corporation to potential harm as a result of conflict of interest.

This Conflict of Interest Policy (the "Policy") is adopted for the Corporation in order better to assure: (i) compliance with the provisions of the Bylaws of the Corporation (the "Bylaws") that pertain to Conflict of Interest and Competitor Relationships; (ii) a uniform conflict of interest policy for Designated Persons (as defined below) and (iii) effective communication and decision making regarding potential conflicts of interest. This Policy is intended to supplement, but not replace, any applicable federal or state laws governing conflicts of interest applicable to nonprofit and charitable corporations or the fiduciary duties of corporate officers and trustees.

The Policy applies to Designated Persons as defined below and deliberations by the Board of Trustees and its committees or sub-committees, the Medical Executive Committee and its committees or subcommittees, and any other committee or task force that the Board or Finance, Audit, Compliance Committee shall designate from time to time.

II. GENERAL PRINCIPLES

Any Designated Person has an obligation to: (i) protect decisions involving the Corporation against conflicts of interest; (ii) maintain the confidentiality of information obtained through service to the Corporation; (iii) assure that the Corporation 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 Corporation or in which the Corporation 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 Corporation or its property. In their dealings with and on behalf of the Corporation, 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 Corporation 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 Corporation 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 hereinafter defined.

Failure to comply with this 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 Corporation, 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 member, either in an elected or ex officio capacity, of the Board of Trustees of the Corporation (a "Trustee," the "Board"), the Trustee shall be deemed to have resigned.

III. DEFINITIONS

A. **"Designated Persons"** shall include the following:

1. Members of the Board of Trustees of the Corporation;
2. Members of administration, senior management, directors, and managers of the Corporation;
3. Chief and/or President of the Medical Staff, Medical Executive Committee, Medical Staff Departmental Chairmen, Divisional Chiefs, other physicians serving as elected officers or in Medical Staff leadership positions who have the ability to influence the use of Corporation resources;
4. Members of the Medical Staff holding a medical administrative position with the Corporation or engaged by the Corporation for compensation to render professional services;
5. Physicians with the authority to select or influence the purchase of costly implant devices and/or supplies, as recommended by senior management and/or the Board or Board-delegated Committee;
6. Members of the Pharmacy and Therapeutics Committee, Value Analysis Team, and Materials Management Department with the authority to purchase, to select or to influence the purchase of goods or services on behalf of the Corporation, ; and
7. Any other person(s) and/or staff member(s) whom the Board or Board-delegated Committee may from time to time designate.

B. **"Business Entity"** means any publicly or privately held corporation, partnership, sole proprietorship, firm, franchise association, organization, holding company, joint stock company, receivership, business or real estate trust or any other legal entity organized on a for-profit basis or not-for-profit basis, but excluding the Corporation.

C. **"Compensation"** means anything of value whether in the form of salary, honoraria, forgiveness of debt, gifts, interest in real or personal property, rent or any other form of compensation in cash or in kind.

D. **"Entity"** shall mean any corporation, individual, partnership or other business entity.

E. **"Financial Interest"** includes without limitation: (1) an ownership or investment interest, (2) a compensation arrangement; or (3) a potential ownership or investment interest or a compensation arrangement with any entity or individual with which the Corporation is negotiating a transaction or arrangement. Financial Interests may be through an ownership or investment interest, or compensation arrangement, and may be held directly or indirectly, for example through an Immediate Family Member or other intermediate entity.

An "ownership or investment interest" may be through equity, debt or other means, e.g., a right of first refusal, but shall not include (i) a combined direct and indirect interest that, when aggregated for the Designated Person and his/her Immediate Family Members, (a) does not exceed a fair market value of $10,000, and (b) does not exceed five percent (5%) of the outstanding shares of voting stock and/or bonds of a publicly traded company; or (ii) any interest in a mutual fund, pensions or other investments over which the person has no control.

"Compensation" includes direct and indirect remuneration that, when aggregated for the Designated Person and his/her Immediate Family Members, does not exceed a fair market value of $10,000 per year, except with respect to gifts, entertainment or other material benefits in which case the applicable annual limit is $250 in the aggregate. Compensation includes without limitation, consulting or employment; gifts, entertainment or other material benefits; royalties or licensing fees, copyrights (whether actual or by contractual right).

A Financial Interest is not necessarily a conflict of interest. Under this Policy a Designated Person who has a Financial Interest has a conflict of interest only based on the criteria and procedures set forth in this Policy.

F. **"Immediate Family"** of a Designated Person means spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren.

G. **"Medical Staff"** means the Medical Staff of any health care facility owned or operated by the Corporation which, for purposes of this Policy, shall include House Staff.

H. **"Related Party"** means any Business Entity:

1. in which a Designated Person or his/her Immediate Family has an Ownership Interest;
2. from which the Designated Person or his/her Immediate Family derives compensation or a consulting fee;
3. in which a Designated Person or his/her Immediate Family serves as an officer or director; or
4. from which a Designated Person or his/her Immediate Family otherwise has a financial interest or directly or indirectly receives financial benefits.

I. **"Staff Member"** means (1) part-time or full-time members of the Medical Staff; (2) other part-time or full-time employees of the Corporation; (3) consultants to the Corporation and (4) members of any Committee of the Corporation, whether designated by senior management or by the Board, who are in a position to influence patient outcomes or business relationships, including without limitation purchasing/contracting decisions, as determined by the Board or Board-delegated Committee.

J. **"Interested Person"** shall mean any Designated Person or member of a Committee or Sub-Committee with Board delegated powers, who has a direct or indirect financial interest.

K. **"Consultant, Consulting"** shall mean the performing of any service as an independent contractor for which any form of remuneration is received. This includes the rendering of advice, providing technical expertise, serving as a speaker or lecturer or evaluating existing or proposed products, etc.

L. **"Organization Doing or Seeking to Do Business with the Corporation"** shall mean any present or potential supplier of products and/or services and will include manufacturers, distributors, purchasing-related organizations or alliances, consulting or accounting firms, employment or travel agencies or any other entity which may be remunerated by the Corporation as a result of a service which it may perform for any of them.

IV. PERMITTED INTERESTED TRANSACTIONS

A. The Corporation may purchase goods or services from or otherwise contract with an Entity in which a Designated Person has a direct or indirect financial interest (a "Designated Person-affiliated entity") provided that a majority of the non-interested Trustees or committee members have determined that:

1. The terms of the transaction are fair and reasonable and competitive with what the Corporation could receive from a non-Designated Person-affiliated entity using reasonable efforts;

2. The transaction is otherwise in the best interest of the Corporation;

3. The nature of the Designated Person's involvement in the Designated Person-affiliated entity has been fully disclosed in accordance with this Policy; and

4. The interested Designated Person has not voted on the transaction at any meeting held to act on the transaction.

B. A Designated Person may take advantage of a personal business opportunity that may be of interest to, competitive with, or impact the interests of, the Corporation if:

1. The Designated Person has fully disclosed the opportunity in accordance with this Policy;

2. The opportunity has not arisen out of any impermissible use of confidential or proprietary information of the Corporation;

3. A majority of the non-interested Trustees or committee members have determined that the Corporation has no present interest in availing itself of the opportunity and that the Designated Person may take advantage of the opportunity.

V. POTENTIAL CONFLICTS

A conflict of interest exists in any instance in which a Designated Person's personal activities or interests conflict with the activities or interests of the Corporation. Although it is impossible to list every circumstance giving rise to a possible conflict of interest, the following will serve as examples of the types of activities which might give rise to such a conflict and which should be reported in a detailed and timely fashion to the President of the Corporation (the "President") or the President's designee or, with respect to Trustees, the Chairman of the Board (the "Chairman") or the Chairman's designee.

A. OTHER HEALTHCARE AFFILIATIONS

To serve as a volunteer or paid trustee, director, officer, partner, employee, consultant, agent, or advisor of or to any hospital, medical clinic or healthcare facility or organization not affiliated with the Corporation.

B. OUTSIDE INTERESTS AND OPPORTUNITIES

1. To hold, directly or indirectly, a financial interest in any outside company, organization or concern which the Designated Person has reason to believe makes payments to or receives payments from the Corporation (whether on account of goods, loans or other transactions), or which provides services in competition with the Corporation.

2. To compete, directly or indirectly, with the Corporation in the purchase or sale of property or any property right, interest or service.

3. To accept or take advantage of a business opportunity that the Designated Person knows or has reason to know may be of interest to or competitive with the Corporation.

C. OUTSIDE ACTIVITIES

1. To render directorial, managerial, or consultative services to, or to engage in any material financial transaction with, any person or concern which does business with, or competes with the Corporation.

2. To render other services in competition with, or to the disadvantage of, the Corporation.

D. GIFTS AND ENTERTAINMENT

To accept a gift, entertainment, or other material benefit from any individual or Organization Doing or Seeking to Do Business with the Corporation or is a competitor of the Corporation, under circumstances from which it might be reasonably inferred that such gift, entertainment, or other material benefit was intended to influence or possibly would influence the Designated Person in the performance of his or her duties for the Corporation, except that, in accordance with Section III.E of this Policy, the acceptance of gifts, entertainment and other material benefits of value less than $250 in the annual aggregate shall not be construed as creating a Financial Interest.

E. INSIDE INFORMATION

To disclose or use information relating to the Corporation's business, including but not limited to methods of operation and research and product development, for personal profit or advantage, or to divulge confidential information in advance of official authorization of its release.

VI. PROCEDURES

As soon as any potential conflict of interest described above, or any situation as to which a Designated Person may be in doubt, comes to the attention of a Designated Person, full disclosure must be made to (i) the President or the President's designee, (ii) with respect to Trustees, the Chairman or the Chairman's designee, or (iii) with respect to committees, the committee chairman, so as to permit an impartial and objective determination of whether a real or potential conflict of interest exists. The President, Chairman, or committee chair shall consult with the disclosing Designated Person and with such other individuals as he or she may deem appropriate.

A. The Board or committee shall utilize the following procedures regarding any Board or committee discussion or decision of a transaction that may involve or affect a firm, entity or arrangement in which a Designated Person has a Financial Interest or organizational affiliation:

1. Prior to the Board's or committee's consideration of any matter that may involve or affect a firm, entity or arrangement in which a Designated Person has a Financial Interest or organizational affiliation, the Designated Person shall raise with the Board or committee the issue of a potential conflict of interest, and if such Financial Interest has not yet been disclosed pursuant to this Policy, the Designated Person shall provide the Board or committee with sufficient information about the Financial Interest or affiliation to enable the Board or committee to consider fully whether a conflict exists.

2. The Board or committee, in its reasonable discretion, may request of such Designated Person additional details regarding the nature of the Financial Interest or organizational affiliation if the Board or committee determines that such additional information will assist it in the deliberation of whether a conflict of interest exists.

3. If a Designated Person believes that providing a full disclosure as provided in Sections VI.A.1 and/or VI.A.2 above may breach a confidentiality provision to which the Designated Person is bound, such Financial Interest or organizational affiliation shall be deemed automatically to be a conflict of interest.

4. The Designated Person with the potential conflict shall leave the meeting while the remaining members of the Board or committee discuss and vote upon whether a conflict of interest exists. The interested Designated Person(s) may be counted for purposes of a quorum, however.

5. If a conflict of interest is determined to exist, the interested Designated Person shall continue to absent himself/herself from the meeting during the discussion and any vote on the transaction or arrangement; provided, however, that the Board or committee may, by a 2/3 vote of its members (excluding the interested person), waive this requirement, except with respect to a Financial Interest or organizational affiliation that is deemed a conflict pursuant to Section VI.A.3.

6. Approval of the transaction or arrangement shall require a majority of disinterested members of the Board or committee present to determine that the transaction or arrangement is in the Corporation's best interest and for its own benefit, and that it is fair and reasonable to the Corporation.

7. The minutes of Board or committee meetings in which a conflict of interest transaction or arrangement is addressed shall include:

   a. Names of any persons who disclosed or otherwise were found to have a financial interest, the general nature of such, and whether the Board or committee determined there was, in fact, a conflict of interest; and

   b. Names of those present for discussions and votes relating to the transaction or arrangement, the general nature of the discussions (specifically including whether any alternatives existed to the proposed transaction or arrangement and the general nature of such alternatives) and a record of the vote.

B. In addition to making ongoing disclosures of potential conflicts of interest as described above, Designated Persons must make any and all potential conflicts of interest a matter of record through an initial and annual procedure that are outlined below:

1. Within thirty (30) days from the date of becoming a Designated Person, Designated Persons are affirmatively required to disclose all Financial Interests and organizational affiliations that may give rise to an actual or potential conflict of interest, or indicate that no such conflicts of interest exist, using the Conflict of Interest Disclosure Form (the "Disclosure Form") attached hereto and incorporated by reference. The Board or Audit Committee may from time-to-time designate appropriate individuals to receive such Disclosure Forms.

2. Annually, (i) the President or the Chairman of the Board or their designees shall advise each Designated Person in writing of this Policy, provide to the Designated Person a copy of this Policy, and request that each Designated Person complete and submit the completed Disclosure Form.

3. Each Designated Person shall submit the completed Disclosure Forms *within twenty (20) days of receipt* to:

   Kimberly A. O'Connell, Esq.
   Vice President and General Counsel
   CharterCARE Health Partners
   825 Chalkstone Avenue
   Providence, RI 02908

4. The President or the Chairman, or their respective designee, with consultation from the Corporate Compliance Officer, shall review all Disclosure Forms. The Corporation may seek advice from legal counsel on any issue associated with the administration of this Policy. It is understood that these Disclosure Forms shall be maintained by the Corporate Compliance Officer and any request for release of a Disclosure Form shall be made directly to the Corporate Compliance Officer. Disclosure Forms will be used only to the extent necessary for the administration and verification of this Policy and will be kept confidential to the extent allowed by law.

5. At least annually the Board or a designated committee shall review standard relationships with local banks, insurance firms, and other entities serving the Corporation to assure that the relationship is in the best interests of the Corporation and is otherwise consistent with the terms of this Policy.

6. This Policy shall be reviewed annually by the Audit Committee of the Board and each new Designated Person shall be advised of the policy prior to employment or selection as a Designated Person and, prior to assuming a position as a Designated Person, shall be required to file the Disclosure Form in accordance with Section V.B.1 of this Policy.

VII. DESIGNATED PERSON-AFFILIATED VENDORS — RELATIONSHIPS WITH THE CORPORATION

A Designated Person-affiliated vendor providing goods or services to the Corporation, as a condition for doing business with the Corporation, will be advised in writing of its obligation to conduct all business relating to the contract or arrangement whereby it provides such goods or services through the usual channels for administration of the Corporation's contracts, and the Interested Designated Person will scrupulously refrain from utilizing his/her position as a Designated Person to negotiate, conduct or arbitrate contractual matters. Infractions of this policy may subject the Designated Person-affiliated vendor with termination of its relationship with the Corporation.

VIII. NOTIFICATION OF VIOLATIONS/ENFORCEMENT

A. If a Designated Person has reasonable cause to believe that another Designated Person has failed to disclose an actual or potential conflict of interest, he/she shall inform the President (or in the case of a non-disclosure relating to the President, to the Treasurer, or, in the case of a Designated Person who is a member of the Board to the Chairman of the Board (or, in the case of a non-disclosure relating to the Chairman, to the Vice-Chairman) of the basis for the belief.

B. Upon receipt of such an allegation, as described in Section VIII.A, a committee of the Board shall be convened to review the matter, with such committee being either a newly established committee or an existing Board committee, such as the Finance, Audit, Compliance Committee, with the authority given to it to review such matter in accordance with this provision. The Committee shall afford the Designated Person the opportunity to explain the alleged failure to disclose and, if appropriate to update his/her Disclosure Form. If after hearing the response of the Designated Person and making such further investigation as may be warranted in the circumstances, the Committee determines that a Designated Person has, in fact, failed to disclose an actual or potential conflict of interest, it shall make such recommendations to the full Board for appropriate disciplinary and corrective action.

C. Failure to comply with this Policy may disqualify a person from serving as a Designated Person or, if already serving as a Designated Person, the Designated Person shall, if an employee, be subject to disciplinary action up to and including dismissal, subject to and in accordance with the terms of any applicable employment or collective bargaining agreement or, if a Trustee, the Trustee shall be subject to removal pursuant to the Bylaws.

APPROVED BY: **Board of Trustees**
DATE: **September 8, 2011**

APPROVED BY:

Kimberly A. O'Connell, Esq.
Senior Vice President & General Counsel

Joel K. Goloskie, Esq.
Deputy General Counsel
Director of Compliance,
Privacy & Ethics

Attachment A:

Conflict of Interest Questionnaire and Disclosure Form

Attachment A

CONFLICT OF INTEREST QUESTIONNAIRE
AND
DISCLOSURE FORM
FISCAL YEAR

Please Return to: Kimberly A. O'Connell, Esq., Vice President and General Counsel

I hereby affirm that a I have received a copy of the Conflict of Interest Policy ("Policy") of CharterCARE Health Partners and its affiliates (the "Corporation") requiring disclosure of certain interests, that I have read and understand the Policy, and that I agree to comply with its terms. In addition I hereby affirm my understanding that the Corporation is a charitable organization and that, in order for it to maintain its federal tax exemption, it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

Consistent with the purposes and intentions of the Policy, I hereby state that I or members of my immediate family (spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren) have the following affiliations or interests and have taken part in or are now taking part in the following transactions that, considered in conjunction with my position with or relation to the Corporation, might possibly constitute a conflict of interest (***state "none" where applicable***):

1. **Business Affiliations.** Please list below any affiliations you, or any member of your immediate family have as a trustee, director, officer, partner, employee, consultant, agent, or advisor of any person, firm or organization which, to the best of your information and belief, is a supplier of goods or services to the Corporation, and briefly describe the type of goods or services so supplied. ***If none, so state:***

_____

_____

_____

2. **Other Healthcare Affiliations.** Please list below the name and address of any healthcare company or facility which you or any member of your immediate family serve as a volunteer or paid director, trustee, officer, partner, employee, consultant, employee or agent or advisor and the capacity in which you so serve. ***If none, so state:***

_____

_____

_____

7. Other:

List any other activities in which you or your immediate family are engaged that might be regarded as constituting a potential conflict of interest with the Corporation. ***If none, so state:***

I hereby agree to report promptly to the President, or the President's designee or, if I am a member of the Board of Trustees of the Corporation, to the Chairman of the Board or the Chairman's designee, any situation or transaction that may arise during the forthcoming year that constitutes a potential conflict of interest.

Printed Name:

Signature: **Date:**

Please return ***within twenty (20) days*** of receipt to:

Kimberly A. O'Connell, Esq.
Vice President and General Counsel
CharterCARE Health Partners
825 Chalkstone Avenue
Providence, RI 02908

Exhibit 24

ChartерCARE Health Partners

Resolution of the Board of Trustees
February 27, 2014

RESOLVED: That upon the Closing Date of the transaction between CharterCARE Health Partners, et. als. and Prospect Medical Holdings, et als., and pursuant to the Asset Purchase Agreement dated September 24, 2014, by and among those parties, the Cash Purchase price of Forty-Five Million Dollars ($45,000,000) shall be used as follows:

- $16,550,000 will be used to fully redeem St. Joseph Health Services of Rhode Island revenue bonds issued in 1999 by Rhode Island Health and Educational Building Corporation (RIHEBC).
- $11,062,500 will be used to redeem Roger Williams Medical Center revenue bonds issued in 1998 by Rhode Island Health and Educational Building Corporation (RIHEBC).
- $3,387,500 will be used to redeem Roger Williams Realty Corporation revenue bonds issued in 1999 by Rhode Island Health and Educational Building Corporation (RIHEBC).
- $14,000,000 shall be applied to the St. Joseph Health Services of Rhode Island defined benefit plan.

Exhibit 25

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 "SJHSRI" 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..

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

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 indemnity 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 indemnity 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.

659504.1