Case Number: PC-2017-3856
Filed in Providence/Bristol County Superior Court
Submitted: 9/27/2018 4:34 PM
Envelope: 1734007
Reviewer: Sharon S.

HEARING DATE: OCTOBER 10, 2018
BUSINESS CALENDAR

STATE OF RHODE ISLAND
PROVIDENCE, S.C.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND, INC.

v.

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

C.A. No. PC-2017-3856

MEMORANDUM IN SUPPORT OF JOINT OBJECTION OF PROSPECT MEDICAL HOLDINGS, INC., PROSPECT EAST MEDICAL HOLDINGS, INC., PROSPECT CHARTERCARE, LLC, PROSPECT CHARTERCARE SJHSRI, LLC AND PROSPECT CHARTERCARE RWMC, LLC TO RECEIVER'S PETITION FOR SETTLEMENT INSTRUCTIONS

NOW COME Prospect Medical Holdings, Inc. ("Prospect"), Prospect East Medical Holdings, Inc. ("Prospect East"), Prospect Chartercare, LLC ("Prospect Chartercare"), Prospect Chartercare SJHSRI, LLC ("Prospect SJHSRI"), and Prospect Chartercare RWMC ("Prospect RWMC," or collectively with Prospect, Prospect East, Prospect Chartercare, and Prospect SJHSRI, the "Prospect Entities"), by and through their attorneys, and hereby file this memorandum of law in support of their joint objection to the Receiver's Petition for Settlement Instructions ("Petition for Instructions"). For the reasons set forth below, the Court should reject the Receiver's Petition for Instructions because the proposed settlement will negatively impact the continued operation of the hospitals in question, violates Rhode Island law and disregards the contractual obligations spelled out in the limited liability agreement that governs the relationship between Chartercare Community Board ("CCCB") and Prospect East.

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INTRODUCTION

The Court should deny the Receiver's petition because the Settlement Agreement the Receiver purportedly has entered into – and for which he has already filed a UCC-1 to effectuate (apparently under the belief that it is appropriate to consummate and implement a settlement before interested parties have had an opportunity to object and before it is approved by the Court) – exceeds the scope of his authority as a fiduciary of this Court, violates the regulatory approvals that were required in order to permit the transfer of the hospitals in 2014, and violates the LLC Agreement under which CCCB participates as a 15% shareholder of Prospect Chartercare. The statement in the Settlement Agreement that the culpability of CCCB is "small compared to the proportionate fault of the other defendants" (Settlement Agreement at ¶ 30)–a statement made by the entity that was responsible for funding that same pension plan for decades, up until the time it put it into receivership for being grossly underfunded–is an absurd, collusive falsehood that ignores the reality that brought us to this moment.

As detailed below, the Settlement Agreement that the Receiver entered into–and has already begun to implement, even before receiving this Court's approval, has numerous problems. CCCB is a shareholder in Prospect Chartercare, which operates two hospitals (acquired in 2014 from CCCB) through subsidiaries. The Settlement Agreement effectively liquidates CCCB and places the Receiver in its shoes in connection with, among other things, the operation of the hospitals. Not only does this exceed the proper function of a court receiver, but it violates the approvals that Prospect Chartercare obtained from the Rhode Island Attorney General and the Rhode Island Department of Health in order to acquire the hospitals from CCCB. The Settlement Agreement's transfer of authority to the Receiver implicates Prospect Chartercare's voting authority under the LLC Agreement, and regulatory approval is required

from the RIDOH to alter the voting authority of Prospect Chartercare; as a result, Prospect Chartercare has filed a Petition for Declaratory Order pursuant to R.I. Gen. Laws § 42-35-8. The change in voting authority also violates the LLC Agreement – CCCB cannot simply give away its interest or its voting authority to someone else, which is exactly what the Settlement Agreement purports to do.

The Receiver's task is to preserve and enlarge the pension plan's assets. But this Settlement Agreement reflects an overreach that will only create additional litigation and administrative proceedings at great expense to the parties involved as well as the receivership estate. For these and the additional reasons set out below, the Court should reject the Settlement Agreement, because it exceeds the scope of a receiver's function and the terms of the agreement violate the law.

FACTS

Prior to 2014, St. Joseph Health Services, Inc. ("SJHSRI") owned and operated Our Lady of Fatima Hospital ("Fatima Hospital") and, as a benefit to its employees, SJHSRI sponsored the St. Josephs Health Services of Rhode Island Retirement Plan ("the Plan"). However, over many years, SJHSRI sustained significant financial losses and, as a result, entered into an affiliation agreement ("Affiliation Agreement") to share operational expenses with Roger Williams Hospital, a corporation that owned and operated Roger Williams Hospital ("RWH," or collectively with Fatima Hospital, "the Hospitals"). As part of the Affiliation Agreement, RWH and SJHSRI organized into Chartercare Health Partners ("CCHP," which later changed its name to Chartercare Community Board ("CCCB")).

Despite the Affiliation Agreement, the Hospitals continued to incur significant financial losses and ultimately solicited offers for outside capital from entities that invested in or operated

hospitals. Prospect responded to such solicitation and in 2014, Prospect purchased the Hospitals from SJHSRI and RWH ("2014 Sale") for (1) a cash payment of $45 million, (2) a commitment to capital project and network development, and (3) a grant to CCCB of a fifteen percent (15%) ownership interest in a newly-formed limited liability company, Prospect Chartercare, which wholly owned Prospect SJHSRI and Prospect RWMC (the entities to own the Hospitals post-sale).[1] The 2014 Sale was expressly conditioned upon any liability for the Plan remaining with SJHSRI. The 2014 Sale was reviewed, evaluated, and approved by the Rhode Island Department of Health ("RIDOH") and the Rhode Island Attorney General ("RIAG") pursuant to the Hospital Conversion Act ("HCA") and the Health Care Facility Licensing Act of Rhode Island ("HLA").

Over three years later, SJHSRI filed a petition with this Court, requesting that the Court place the Plan into receivership ("Receivership Action"). The Court appointed a receiver ("Receiver"), and also, at the Receiver's request, approved the engagement of a special counsel ("Special Counsel") to investigate and assert any claims that the Plan had or may have. The Special Counsel issued numerous subpoenas to a plethora of individuals and entities, and filed an action against the Prospect Entities and others, including SJHSRI, RWH, and CCCB ("OldCo Entities,"[2] or "Settling Parties") in the Rhode Island Superior Court ("the "State Action") and in the District Court for the District of Rhode Island ("Federal Action").

On September 4, 2018, the Receiver filed a Petition for Settlement Instructions ("Settlement Petition") in the Receivership Action, requesting that the Court approve a settlement agreement ("Settlement Agreement") that had already been negotiated and executed

[1] CCCB's fifteen percent interest in Prospect Chartercare is subject to the Amended and Restated Limited Liability Company Agreement of Prospect Chartercare, LLC ("LLC Agreement").

[2] The name OldCo Entities arises by virtue of SJHSRI, CCCB, and RWH's status as the selling entities in the 2014 Sale.

among the Receiver, SJHSRI, RWH, and CCCB. Specifically, the Settlement Petition requests that the Court, among other things, "approv[e] the Proposed Settlement as in the best interests of the Receivership Estate, the Plan, and the Plan participants" and "authoriz[e] and direct[] the Receiver to proceed with the Proposed Settlement . . . ." Notably, the Receiver is not requesting that the Court authorize him to *enter into* the settlement agreement, but rather to *approve* the Settlement Agreement, which has already been executed by him and the Settling Parties, and which the Receiver and the Settling Parties are treating as though the Court has already instructed the Receiver to proceed with the settlement. On September 7, 2018, pursuant to the terms of the "proposed" settlement–and over a month before the hearing before this Court–CCCB granted the Receiver a security interest in all assets of CCCB. A copy of the UCC-1 filed on September 7, 2018 is annexed hereto as **Exhibit A**.

ARGUMENT

The Court should reject the Settlement Agreement because the Settlement Agreement includes terms that are inconsistent with the role of the Receiver in administering the Plan. If approved by this Court, the Settlement Agreement will (1) subject the Plan, through the Receiver, to a plethora of additional litigation flowing directly from the terms of the settlement; (2) violate R.I. Gen. Laws § 23-17.14-35 ("Settlement Statute") inasmuch as many of the provisions set forth in the Settlement Agreement evidence collusion and other wrongful or tortious conduct between, or contemplated by, the Receiver and the Settling Parties; and (3) violate the HCA and HLA by disregarding the prior administrative and regulatory decisions of the RIAG and RIDOH by authorizing the transfer of CCCB's interest in Prospect Chartercare and CCF's assets.

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A. The Receiver Has Acted in a Manner Inconsistent with his Role as a Fiduciary of the Court, and the Court Should Refrain from Approving, Ratifying, or Adopting Such Actions as its Own.

When the Court orders that an entity be placed into receivership, the Court, not the receiver, has ultimate control and supervision over the receivership and has the power to make discretionary decisions. "A trial court abuses its discretion when it acts without reference to any guiding rules or principles," and while the appointment of a receiver is generally within the discretion of the trial judge, there are 'certain well-established rules' to guide that discretion." *Peck v. Jonathan Michael Builders, Inc.,* 2006 R.I. Super. LEXIS 145, at *20 (R.I. Super. Oct. 27, 2006) (citing 16 William Meade Fletcher et. al., *Cyclopedia of the Law of Private Corporations* §§ 7697, 7708).

The Rhode Island Supreme Court has explained the following:

> Where the possession of a receiver is merely derivative, that is, acquired pursuant to a judicial act of the court establishing the receivership, its possession is ordinarily held to be that of the court. In other words, when a receiver acquires possession of property, whether it is as an incident of the performance of a judicial act by the court or as part of the receivership estate, *the receiver is a mere instrument of the court* and with respect to such property *he may act only as the court orders or directs*.

Manchester v. Manchester, 181 A.2d 235, 238 (R.I. 1962) (citing *Allen v. Gerard*, 44 A. 592, 593 (R.I. 1899). Furthermore, the Supreme Court stated that "[a]s officers of the court, the receivers are obliged to assist the court in protecting the estate during the litigation and in disposing of the property pursuant to the court's decision. By acting as receivers, *these attorneys serve the court and do not represent any particular party*." *Cavanagh v. Cavanagh*, 375 A.2d 911 (R.I. 1977) (emphasis added). Accordingly, litigation in the context of a receivership is not the same as litigation between private parties. In the context of a receivership, the Receiver, as an instrument of the Court, does not represent any party, but rather is one of the parties.

Therefore, the Court, acting through the Receiver, has the ultimate power to make decisions relating to the litigation filed by the Receiver as an instrument of the Court. The responsibility and duty of the Court in authorizing a settlement by its Receiver is unique in that the Court is in effect one of the parties with ultimate decision making authority over the terms of the settlement.

Here, the Receiver has entered into a Settlement Agreement without first having sought instructions from the Court. Having already negotiated, executed and partially implemented the Settlement Agreement, the Receiver is asking the Court to approve a settlement that is being presented as a *fait accompli*. Had the Receiver sought instructions on whether or not to enter into the Settlement Agreement, all interested parties would have had the opportunity to object before the parties finalized their agreement. That the Settlement Agreement was fully negotiated and executed by the Receiver and the Settling Parties should carry no weight in the Court's decision on whether to grant judicial approval.

The Receiver urges the Court simply to approve the Settlement Agreement and fails to address the many questions and implications that this Settlement Agreement raises, such as: whether its terms violate clear contractual agreements; whether or not it will result in the illegal transfer of funds from a non-profit foundation; whether or not it will violate the approvals granted by the RIAG and RIDOH in the HCA proceeding that approved the 2014 Sale; and whether or not it will spawn multiple new lawsuits and administrative proceedings that will have to be adjudicated by the Courts and administrative bodies. For instance, the Settlement Agreement contains a provision for the transfer of CCCB's membership interest in Prospect Chartercare that violates the LLC Agreement, as discussed *infra*. In this respect, the Receiver has acted beyond the scope of his role and has recommended that the Court approve a Settlement Agreement that disregards private contracts, subjects the Receiver and settling parties to

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additional suits, violates law, and ignores prior judicial and regulatory decisions. While the Receiver has an interest and obligation to maximize and protect the estate (here, the Plan), such interest and obligation is not unrestricted, and the Receiver must carry out his duties within the bounds of the law, within the confines of third-party contracts not subject to the receivership, and consistent with judicial and regulatory decisions. As such, because the Receiver is the Court's instrumentality, the Court should refuse to adopt and ratify the actions of the Receiver and reject the Settlement Agreement in its entirety.

B. The Settlement Agreement Violates the Settlement Statute As its Provisions Plainly Evidence Collusion Among the Settling Parties, the Receiver, and Special Counsel to Prejudice the Rights of Non-Settling Parties in the Federal Action and in the State Court *Cy Pres* Action.

The Court should deny the Settlement Petition and reject the Settlement Agreement because it violates the Settlement Statute as it plainly evidences collusion among the Receiver, Special Counsel, and the Settling Parties. The Settlement Statute, in relevant part, provides the following:

> The following provisions apply solely and exclusively to judicially approved good-faith settlements of claims relating to the St. Joseph Health Services of Rhode Island retirement plan, also sometimes known as the St. Joseph Health Services of Rhode Island pension plan:
>
> [. . .]
>
> (3) For purposes of this section, a good-faith settlement is one that *does not exhibit collusion, fraud, dishonesty, or other wrongful or tortious conduct intended to prejudice the non-settling tortfeasor(s)*, irrespective of the settling or non-settling tortfeasors' proportionate share of liability.

(Emphasis added). Unambiguously, the Settlement Agreement plainly evidences the Settling Parties' complicit capitulation to its provisions. Such collusion is evident in the Settling Parties' admission of liability, their admission of causing "at least" $125,000,000 in damages, and

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allowing the Receiver to oversee and conduct the Settling Parties' dissolution and liquidation. The Settling Parties' yielding to the Receiver and Special Counsel's demands can be nothing more than the Receiver, Special Counsel, and Settling Parties acting in cohort to the detriment of other litigants in the Federal Action, the exact actions that the Settlement Statute was enacted to prevent. The collusion among the Settling Parties, the Receiver, and Special Counsel is plainly evident in several paragraphs of the Settlement Agreement.

First, despite the Receiver *not* being appointed to administer the affairs of the Settling Parties, the Settlement Agreement authorizes the Receiver to direct the judicial liquidation of the Settling Parties and requires the Settling Parties to cooperate with the Receiver in opposing or limiting claims of their creditors. *See* Settlement Agreement at ¶¶ 21-25. Specifically, the Settlement Agreement provides (1) that the Settling Parties, upon demand of the Receiver, will file petitions to liquidate their assets; and (2) that the Settling Parties will "cooperate with and follow the requests of the Receiver and [] take all reasonable measures" to obtain court approval for the petitions for liquidation, including opposing and seeking to limit the claims of other creditors. *See id*. The Settling Parties' apparent uncontested acquiescence to their relinquishment of control over *all* their assets evidences their collaboration with the Receiver and Special Counsel in negotiating the Settlement Agreement. Furthermore, the Receiver, in negotiating these provisions has grossly overstepped the limits of his authority by compelling the Settling Parties to allow him to direct a subsequent judicial liquidation proceeding. The forced judicial liquidation of a third-party entity not subject to the Receivership Action is not a proper role for the Receiver and should not be approved by the Court.

Second, the Settlement Agreement requires the Settling Parties to request that the district court, in the Federal Action, certify a class of plaintiff-litigants pursuant to Rule 23(b)(1)(B) of

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the Federal Rules of Civil Procedure. *See id.* at ¶ 5. This Court should not authorize and direct the Receiver to strong-arm the Settling Parties into "requesting" certification of a class asserting claims against them and their co-defendants in the Federal Action. As the Settling Parties will ultimately be dismissed from the Federal Action if the Settlement Agreement is approved, such requested certification of the plaintiff class is *solely* to benefit the plaintiffs and prejudice the remaining defendants in the Federal Action. While a Receiver settling claims against defendants may be appropriate, it is clearly inappropriate for a court-appointed Receiver to then use those defendants as pawns in pending litigation against third-parties.

Third, the Settlement Agreement includes an astonishing admission of liability by the Settling Parties that the Receiver's claims in the Federal Action are "at least $125,000,000." *See id.* at ¶ 28. Very few, if any, settlement agreements include an admission of liability and a statement of unproven damages. Once again, such concession, as to the Federal Action in which the Settling Parties will be dismissed as a result of the settlement, would solely be "intended to prejudice the non-settling tortfeasors, *irrespective of the settling or non-settling tortfeasors' proportionate share of liability*." R.I. Gen. Laws § 23-17.14-35 (emphasis added).

Fourth, the Settlement Agreement includes an admission of the Settling Parties that their proportionate fault in causing the $125,000,000 in damages "is small compared to the proportionate fault of the other defendants in the Federal [] Action and the State Court Action . . . ." *See* Settlement Agreement at ¶ 30. This extraordinary statement that the Settling Parties percentage share of damages is "small" is ludicrous and prejudicial on its face. It is undisputed that the Settling Parties, prior to the 2014 Sale were the actual employers under the Plan, and after the 2014 Sale were directly responsible for funding the Plan. A statement by the Settling Parties that their proportionate fault is "small compared to the proportionate fault of the

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other defendants" borders on the absurd, is factually incorrect, and is further evidence of collusion.

Lastly, the Settlement Agreement includes an agreement by the Settling Parties to allow the Receiver to direct and control the Settling Parties in the pending *Cy Pres* Proceeding. *See id.* at ¶ 32. In essence, the Settling Parties are agreeing to collude with the Receiver to influence the outcome of the pending *Cy Pres* Proceeding.

As a result of the plain evidence of collusion among the Receiver, Special Counsel, and Settling Parties, the Court should deny the Settlement Petition and reject the Settlement Agreement as it violates the Settlement Statute and represents an extraordinary overreach by a court-appointed fiduciary.

C. The Settlement Petition Should be Denied and the Court Should Reject the Settlement Agreement Because it Disregards Administrative and Regulatory Decisions and Violates the HCA, HLA, and LLC Agreement.

The Settlement Petition should be denied and the Court should reject the Settlement Agreement because it (1) disregards prior administrative and regulatory decisions relative to the Hospitals; (2) violates the HCA and HLA; and (3) violates the LLC Agreement.

a. *The Proposed Settlement Seeks To Transfer Interests that are the Subject of Final Administrative Orders Resulting From Agency Proceedings Under R.I. Gen. Laws §§ 23-17.14-1 et seq. and §§ 23-17-1 et seq.*

The 2014 Sale was subject to RIAG and RIDOH approval under the HCA, which is codified at §§ 23-17.14-1 et seq., and subject to the HLA, which is codified at §§ 23-17-1 et seq. The proposed transfer under the Settlement Agreement by the Settling Parties, namely CCCB, of its fifteen percent membership interest in Prospect Chartercare violates the hospital conversion decision relative to Fatima Hospital and RWH, which is incorporated into the Hospitals' current licensure. Furthermore, the transfer contemplated by the Settlement Agreement of CCCB's

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fifteen percent interest in Prospect Chartercare implicates Prospect Chartercare's voting authority under the LLC Agreement, and regulatory approval is required from the RIDOH to alter the voting authority of Prospect Chartercare. In relation to the transfer of CCCB's fifteen percent interest in Prospect Chartercare, Prospect Chartercare has filed a Petition for Declaratory Order pursuant to R.I. Gen. Laws § 42-35-8 ("Petition for Declaratory Order"), which is attached hereto as **Exhibit B**. The Prospect Entities reference and incorporate herein the arguments set forth in the Petition for Declaratory Order.

b. *The Proposed Settlement Includes an Agreement by the Settling Parties to Execute an Irrevocable Assignment to the Receiver of all CCCB Foundation's Rights and Assets and To Turn Over More than $11 Million Dollars that Is Currently Available To Fund the Non-Profit Programs and Grants Offered By CCCB to the State.*

The Settlement Agreement provides that CCCB Foundation, the sole member of Chartercare Foundation ("CCF"), will provide the Receiver with an irrevocable assignment of CCCB Foundation's rights in CCF. *See* Settlement Agreement at ¶¶ 13-14. However, as set forth in CCF's Objection to the Receiver's Petition for Settlement Instructions and Emergency Cross-Motion to Postpone September 13, 2018 Hearing as it Relates to Proposed Settlement Terms Regarding Chartercare Community Board's Alleged Membership Interest in Chartercare Foundation and its subsequently filed memorandum ("CCF Motion"), the Court should deny the Settlement Petition and reject the Settlement Agreement because (1) CCCB Foundation has no authority to transfer any of CCF's assets as it had abandoned its rights as CCF's sole member; (2) CCCB was precluded from controlling CCF as a condition to the RIAG's HCA decision regarding the 2014 Sale; and (3) controlling a charitable organization is an inappropriate role for a Receiver. The Prospect Entities reference and incorporate herein the arguments set forth in the CCF Motion.

c. *The Transfer of CCCB's Membership Interest in Prospect Chartercare Violates the LLC Agreement.*

The Court should deny the Settlement Petition and reject the Settlement Agreement because the Settlement Agreement proposes the transfer of CCCB's membership interest in Prospect Chartercare to the Receiver, which violates the LLC Agreement. Specifically, the LLC Agreement provides that

> . . . [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.

However, despite such provision, the Settlement Agreement provides that CCCB will hold its membership interest in Prospect Chartercare in trust for the Receiver and that the Receiver will have the full beneficial interests of that interest. *See* Settlement Agreement at ¶ 17. It further provides that the Receiver shall have the right and power to (1) direct and control CCCB's Put Option[3] under the LLC Agreement, *see id.* at ¶ 18; and (2) sue in the name of CCCB to collect or otherwise obtain the value of the beneficial interest in Prospect Chartercare, *see id.* at ¶ 19. Additionally, the Settlement Agreement provides that (1) upon the Receiver's demand, CCCB will file a petition for judicial liquidation; and (2) the Receiver may take a security interest in CCCB's assets, investment property, and general intangibles, all of which would include its membership interest in Prospect Chartercare.[4] *See id.* at ¶¶ 24, 29. Such provisions of the

[3] The LLC Agreement provides that after certain conditions are met, CCCB "shall have the option to sell to [Prospect East], and [Prospect East] shall have the obligation to purchase, all of the [membership interest] held by [CCCB] in exchange for a payment in cash of a purchase price equal to the Appraised Value of the [membership interest]."

[4] Notably, even though the Court has yet to approve the Settlement Agreement, the Receiver has filed a UCC-1 filing, asserting a security interest in practically all assets of CCCB. The Receiver sought Court approval for such filing, but nevertheless acted without the Court's authorization.

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Settlement Agreement plainly include a hypothecation of CCCB's interest in Prospect Chartercare, by the granting of a security interest, by the transfer of CCCB's beneficial interest, and by the transfer to the Receiver of the power to control and direct CCCB.[5] As such, the purported transfers contemplated by the Settlement Agreement violate the LLC Agreement and constitute invalid transfers under the LLC Agreement; therefore, the Court should deny the Settlement Petition and reject the Settlement Agreement.

D. To the Extent that the Court is Inclined to Approve a Settlement, the Receiver Should be Required to Obtain all Necessary Regulatory Approvals to Exercise the Put Option in the LLC Agreement.

If despite the forgoing objections, the Court is inclined to approve a settlement that implicates CCCB's interest in Prospect Chartercare, the Receiver should be instructed to do so in a manner that respects the contractual obligations of CCCB under the LLC Agreement and that complies with all regulatory requirements. In an amended version of the settlement agreement, the Receiver can contract with CCCB to require CCCB to pay money to the Receiver and to exercise the Put Option set forth in the LLC Agreement. However, in doing so, the Receiver should be required to obtain any and all necessary regulatory approvals implicated by the transfer of control of CCCB. The Receiver can and should be instructed to accomplish his goal of bringing value to the receivership estate without trampling the rights of Prospect East and without disregarding the regulatory requirements that govern the effective control of the hospitals.

[5] Any suggestion by the Receiver that CCCB has not hypothecated its interest in Chartercare should be rejected out of hand. The plain meaning and definition of hypothecate is "to enter into a contract whereby certain specified real or personal property is designated as security for the performance of an act, without any transfer of the possession of the property." *Ballantine's Law Dictionary*, 2010 LexisNexis. CCCB's granting of a security interest to the Receiver, without more, is a clear hypothecation of its interest.

CONCLUSION

The Court should reject the Settlement Agreement because the terms of the Settlement Agreement are not in the best interest of the receivership estate as they (1) violate R.I. Gen. Laws § 23-17.14-35 ("Settlement Statute") by including terms that evidence collusion between the Receiver and the Settling Parties; (2) violate the HCA and HLA by disregarding the prior administrative and regulatory decisions of the RIAG and RIDOH by authorizing the transfer of CCCB's interest in Prospect Chartercare and CCF's assets; (3) will subject the Plan, through the Receiver, to a plethora of additional litigation flowing directly from the terms of the settlement; and (4) will result in the Receiver directing CCCB to breach its contractual obligations under its LLC Agreement.

[SIGNATURE PAGE TO FOLLOW]

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Respectfully Submitted,

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AND PROSPECT EAST HOLDINGS, INC.
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CERTIFICATE OF SERVICE

I hereby certify that, on the 27th day of September 2018:

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/s/ Allison Y. Charette

State of Rhode Island
Nellie M. Gorbea
SECRETARY OF STATE

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Secured Parties		
ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN (STEPHEN DEL SESTO, RECEIVER) C/O ONE FINANCIAL PLAZA, 26TH FLOOR PROVIDENCE RI 02903		
Collateral Information		
all accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property and investment accounts, letter-or-credit rights, letters of credit, money, and general intangibles of the Debtor and any and all proceeds of any thereof, whether now or hereafter existing or arising.		

Close

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ATTORNEY GENERAL

In the Matter of: Prospect CharterCARE, LLC

PETITION FOR DECLARATORY ORDER
R.I. Gen. Laws §42-35-8

Introduction

1. Petitioner, Prospect CharterCARE, LLC holds all membership in those entities that operate and hold the licensure for two, acute care community hospitals, Our Lady of Fatima Hospital and Roger Williams Medical Center.[1]

2. Petitioner, Prospect CharterCARE, LLC holds all membership interest in Prospect SJHSRI, LLC and Prospect RWH, LLC, which own and operate the Hospitals, as pursuant to final Rhode Island Hospital Conversion Act ("HCA"), R.I. Gen. Laws §27-17.14-1 *et seq.*, decisions rendered by the Rhode Island Department of Health and Rhode Island Department of Attorney General dated May 19, 2014 and May 16, 2014, respectively (the HCA decisions are referred to herein as the "Final Conversion Decisions" and the HCA proceedings that resulted in the Final Conversion Decisions are referred to herein as the "HCA Proceedings" or the "Conversion").

3. In addition, as pursuant to Rhode Island law, the HCA Proceedings were consolidated with Change in Effective Control or "CEC Proceedings" under the Rhode Island Hospital Licensure Act ("HLA"), R.I. Gen. Laws §23-17-1 *et seq.*, resulting in a "Final CEC Decision" being issued by the Department of Health on or about May 19, 2014, after full hearings before and recommendations issued by the Rhode Island Health Services Council (the

[1] Our Lady of Fatima Hospital and Roger Williams Medical Center were part of the CharterCARE Health Partners network and referenced herein as the "Hospitals". The Hospitals were converted to the CharterCARE Health Partners system in 2009, to try and stem severe operating losses.

"Health Services Council") in accord with §4 of the HLA Regulations. Such licensure proceedings are a legal pre-requisite to the Final Conversion Decisions and are defined by the Rhode Island Administrative Procedures Act, R.I. Gen. Laws §42-35-1 *et seq.*, as "contested cases" with full rights of judicial review.

4. Prospect CharterCARE, LLC was a Transacting Party in the HCA and CEC Proceedings and thus, hereinafter, Prospect CharterCARE, LLC is referred to as the "Acquiror" for the purposes of this Petition.

5. Prior to the Conversion, the entity that owned and operated Our Lady of Fatima Hospital was St. Joseph Health Services of Rhode Island, Inc. ("SJHSRI"), a non-profit corporation organized under the laws of the State of Rhode Island with its Class A Member being CharterCARE Health Partners and its Class B Member being The Roman Catholic Bishop of Rhode Island.

6. SJHSRI and its Class A Member, CharterCARE Health Partners were Transacting Parties in the HCA and CEC Proceedings and thus, SJHSRI is hereinafter referred to as "SJHSRI" or the "Acquiree" for the purposes of this Petition. After the Conversion, CharterCare Health Partners became known as the CharterCare Community Board or ("CCCB"). CCCB holds fifteen (15%) percent of the limited liability company membership and fifty (50%) percent of the voting authority in Petitioner, Prospect CharterCARE, LLC.

7. Prior to and after the Conversion, SJHSRI was and remained the Plan Administrator for the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan'). It is critical to emphasize that as pursuant to Section 8.1 of the Plan, the Plan Administrator is defined as the "Employer" and the "Employer" is defined as SJHSRI.

8. Upon information and belief, the Plan is a retirement vehicle or "pension plan" which pays out to a beneficiary (presumably, a former employee of SJHSRI), a structured payment over time based, in part, upon the employee's compensation level while employed, length of service, and the funding of the Plan.

9. The Rhode Island General Assembly in enacting the HCA, in 1997, made a specific finding that the very survival of the not-for-profit hospital system in Rhode Island may well be dependent upon the ability of not-for-profit hospitals to enter into agreements that result in the investment of private capital and the conversion of not-for-profit hospitals to for-profit status. *See* HCA at §2(6). The General Assembly has been proven to be correct.

10. In turn, the General Assembly provided the Department of Health and the Department of Attorney General with jurisdiction to review and approve such agreements that provide for the investment of private capital and the resulting conversion of not-for-profit hospitals assets, including voting rights, to for-profit status. *Id.* §3(4).

11. In short, there cannot be such a conversion, as defined by the HCA, without application to and the prior approval of the Department of Health and the Department of Attorney General. In order to gain said approval, the Transacting Parties have to submit their transactional agreements and an application which, in part, details how the transactional structure relates to, amongst other assets and liabilities, the acquiree's pension plans. *Id.* at §6(13).

12. In the underlying Conversion, the issue of pension plan liability was critical as SJHSRI just prior to conversion was sustaining considerable operating losses and when combined with what was disclosed as a $79M Plan liability, SJHSRI could not survive without private investment, conversion to for-profit status, and approval of a structure to de-couple Plan liability from Hospital ownership and operation, post-Conversion.

13. Thus, as set forth below, it was submitted from the outset of the relevant transaction that the Hospital system, at issue (the former CharterCARE Health Partners' system), would not survive if it remained coupled to Plan liability. As such, it was determined that the ownership and operation of the Hospitals, post-Conversion, would be separated from the Plan and any liability therefore. In turn, the Plan and any liability therefore, would remain with the Acquiree, including its Class A Member, CCCB's predecessor, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

14. If that critical aspect of the Conversion were not approved, the Conversion would not have taken place and in all likelihood, as determined by independent experts engaged by the Department of Health and the Department of Attorney General, the Hospitals would not have been able to continue to provide essential healthcare services to the community.

15. From a hypothetical standpoint, the Department of Health and the Department of Attorney General could have determined that the Acquiror be liable for the Plan. If the Final Conversion and CEC Decisions had resulted in the Acquiror being liable for the Plan, then the Department of Attorney General would have exercised its authority under §28(c) of the HCA, to require the Acquiror to make certain minimum investments, post-Conversion, into the Plan. However, it was decided that the Acquiror would not have any liability for the Plan. Thus, the Department of Attorney General acted in accordance with the HCA and did not require any minimum investments into the Plan by the Acquiror, post-Conversion, because it was determined that the Acquiror would have no liability for the Plan and that liability would remain with the Acquiree.

16. The Attorney General under §28(c) of the HCA, can establish minimum investment requirements specifically for community benefit. It was properly decided, that the

balance of community interests was best served if the Hospitals continued to provide essential healthcare services for five (5) years, post-Conversion and any Plan liability remained with SJHSRI, what is now CCCB, and the Roman Catholic Bishop of Rhode Island.

17. In summary, if the final administrative agency decision was that the Plan and the liability therefor remained coupled to the Hospitals, post-Conversion, then the Acquiror would not have implemented the Conversion and the Hospitals would have failed to survive. Such an outcome would have been at variance with the General Assembly's findings in the HCA, dating back to 1997, that the very survival of the not-for-profit hospital system in Rhode Island may well be dependent upon the ability of not-for-profit hospitals to enter into agreements that result in the investment of private capital and the conversion of those not-for-profit hospitals to for-profit status. It is critical that private capital, most often from outside of the State of Rhode Island, be able to rely on those final agency decisions which approve hospital conversions and pave the way for the investment of considerable, capital into the State of Rhode Island's healthcare system to ensure that the system continues to serve various communities.

18. Thus, as a result of the Conversion, the Acquiror did not assume any liability for the Plan and/or the continuing risk for the Plan, including what the Health Services Council during hearings in May of 2016, referred to as "investment risk" or the obligation to continue funding the Plan.

19. In or about August of 2017, SJHSRI, presumably in its role as Plan Administrator, petitioned the Plan into Receivership in the matter entitled *St. Joseph's Health Services of Rhode Island, Inc. v. St. Joseph's Health Services of Rhode Island Retirement Plan, as amended*, Rhode Island Superior Court, PC-2017-3856 (J. Stern, presiding) (hereinafter, the "Receivership").

20. In the Receivership Petition, the Acquiror was defined as the "Hospital Purchaser". Of great significance, SJHSRI, in the Receivership Petition, judicially admitted that the Acquiror "**had no role in the evaluation of the Plan or its funding level**" during the Conversion or thereafter and, the Acquiror did not "**assume [ ] the Plan or any liability with respect thereto as clearly stated forth in the asset purchase agreement among the parties**."

21. The asset purchase agreement (hereinafter, the "Asset Purchase Agreement") identified by SJHSRI in the Petition for Receivership was reviewed, approved, and incorporated by specific reference into the Final Conversion and CEC Decisions.

22. On or about June 18, 2018, the Receiver, by and through the Receiver's Special Counsel, Wistow Sheehan & Lovely P.C. (hereinafter, "Special Counsel"), filed a Complaint in the United States District Court for the District of Rhode Island entitled *Stephen Del Sesto, as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan et al. v. Prospect CharterCARE, LLC et al.,* C.A. No. A-18-cv-00328-WES-LDA (the "Federal Court Litigation") alleging, in part, that the Acquiror has some liability for the Plan.

23. 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. *See Francis v. Buttonwood Realty Co.*, 765 A.2d 437, 443 (R.I. 2001). SJHSRI participated as a Transacting Party in the Conversion in which administrative agencies with jurisdiction acting in a quasi-judicial manner determined that the Acquiror would have no liability for the Plan. In fact, SJHSRI advocated for that result. This uncontested conclusion was judicially admitted by SJHSRI in the Receivership Petition.

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24. Nevertheless, the Receiver now seeks to circumvent the jurisdiction of the Department of Health and the Department of Attorney General by alleging that the Acquiror has liability for the Plan.

25. Furthermore, on September 4, 2018, the Receiver filed a Petition for Instructions with the Receivership Court asking the Receivership Court to authorize the Receiver to enter into a settlement agreement (the "Settlement") which would result in CCCB transferring its fifteen (15%) percent membership interest and fifty (50%) percent voting authority in Prospect CharterCARE, LLC to the Receiver.

26. The Final Conversion and CEC Decisions de-coupled the Plan and Plan liability from Hospital ownership and operation to ensure the Hospitals' viability and ongoing ability to provide essential healthcare services to the community. The Receiver's proposed Settlement seeks to re-attach Plan liability to Hospital ownership and operation.

27. Thus, the transfer of ownership and voting interests proposed by the Receiver to advance the Settlement is in violation of the Conversion, at variance with the HCA and the HLA, and at variance the determinations embodied within final agency decisions that the Acquiror has no liability for the Plan.

28. Accordingly, as pursuant to R.I. Gen. Laws §42-35-8, if the HCA and HLA are properly interpreted and applied, and the Final Conversion and CEC Decisions are properly applied to the Petitioner, the transfer proposed by the Receiver in furtherance of the Settlement would not be allowed without review and approval by the Department of Health and the Department of Attorney General. In turn, if an application for administrative review and approval were property submitted by the Receiver, the administrative agencies would be required to reject the application based upon the doctrine of administrative finality.

29. Finally and of critical importance, the transfer proposed by the Receiver to advance the Settlement seeks to re-attach the Plan and Plan liability to the ownership and operation of the Hospitals and it is based, in large part, upon the allegations in the Federal Court Litigation that the Acquiror has liability for the Plan. However, said cause of action in the Federal Court Litigation as against the Acquiror is barred by the doctrine of *res judicata* and said bar should be enforced by the agencies with jurisdiction over the Conversion and CEC Proceedings.

General Allegations

30. In or about March of 2013, the Transacting Parties to the Conversion entered into a Letter of Intent which is incorporated into the Final Conversion and CEC Decisions. The Letter of Intent specifically provided that the new company or "Newco" to be formed to own and operate the Hospitals would not purchase the Plan. In turn, the Letter of Intent made it clear that the Seller, as defined in the Letter of Intent, would remain liable for the Plan and the Plan would specifically be an "Excluded Asset" and an "Excluded Liability".

31. Simply stated, the Acquiror from the outset of the transaction that was ultimately reviewed and approved pursuant to the Final Conversion and CEC Decisions, made it clear that the Hospitals would not survive if they remained linked to Plan liability. Thus, the Transaction, as structured, proposed that Plan liability be de-coupled from Hospital ownership and operation and remain with the Acquiree and its Class A Member, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

32. In or about September of 2013, the Transacting Parties to the Conversion entered into the Asset Purchase Agreement which is also incorporated into the Final Conversion and

CEC Decisions. The Asset Purchase Agreement specifically listed the Plan as an "Excluded Liability".

33. In turn, in or about October of 2013, the Transacting Parties filed HCA and CEC applications (collectively, the "Application"). The Application specifically stated that the Transacting Parties on the Acquiror side would not acquire the Plan or assume any Plan liability.

34. The Department of Health and the Department of Attorney General, as is allowed under the HCA, both engaged financial experts to review the Application and the Transaction as structured in the Asset Purchase Agreement. Both experts were very candid in their review of the Transaction, making it clear that the Acquiror was not assuming any liability for the Plan. The expert for the Department of Health specifically stated that the $14M of the purchase price to be deposited by the Acquiree into the Plan would simply reduce what was then disclosed by the expert to be at least a $79M Plan deficiency. Moreover, the Department of Health's expert specifically testified before Health Services Council as pursuant to the CEC Proceedings, that there was no actuarial support as to the Acquiree's representations regarding Plan funding requirements going forward, post-Conversion. In turn, it was made clear and confirmed by the Health Services Council that the Acquiree would carry the risk for Plan funding and Plan liability, post-Conversion.

35. The Department of Attorney General's expert also made it clear that the Hospital system could not survive if it remained linked to Plan liability.

36. As above stated, the General Assembly in enacting the HCA looked to review and approve private investment in not-for-profit hospitals, in large part, to ensure their survival. In accord with the reports of the financial experts, the Final Conversion and CEC Decisions undertook a balancing analysis and determined that the Hospitals would not survive, if Plan

liability remained coupled to the Hospitals. This is especially evident in the Final Conversion Decision by the Department of Attorney General which provided in part as follows:

> Significant operating efficiencies have been achieved as a result of the 2009 CCHP affiliation. Based on operating revenue alone, the combined CCHP hospital system reduced operating losses not including pension losses to approximately $3 million per year. Although a significant improvement, CCHP realized that the losses that it was continuing to experience cannot be sustained and still ensure its continued viability. Furthermore, although capital expenditures have been made, the physical plants at the Existing Hospitals were aging and need upgrading.
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> Of additional concern to CCHP is its pension funding (an issue that is impacting many hospitals throughout the country). If pension losses are taken in consideration, in fiscal year 2012, the CCHP system sustained losses of over $8 million which are increasing without additional contributions. Such losses cannot be sustained by CCHP. Facing these significant financial concerns, CCHP realized it needed additional capital to ensure its continued viability to fulfill its responsibilities to the citizens of Rhode Island which it serves.

37. In short, the Department of Attorney General recognized that Plan liability had remained attached to Hospital ownership and operations as a result of the 2009 CharterCARE Healthcare Partners' hospital conversion, and as of 2016, the Hospitals were failing, in large part, due to that fact. Therefore, the relevant Conversion had to be approved in a manner that separated Plan liability from Hospital ownership and operation. If not, there may still exist issues with Plan funding and the Hospitals would have failed.

38. Thus, the Final Conversion and CEC Decisions incorporated the Asset Purchase Agreement and the Applications and made it an absolute requirement that the Conversion be implemented in accord with those documents. In turn, the Asset Purchase Agreement and the Application made it clear that Acquiror was not acquiring or assuming any liability for the Plan.

Quite simply, to propose otherwise was a recipe for failure of the entire Hospital system. The Receiver is not in position, as a matter of law, to change that administrative determination.

39. The decision to de-couple the Plan from Hospital ownership and operation resulted from a balancing that placed significant weight on the Hospitals' viability and ability to continue to provide essential healthcare services to the community, and a recognition that the Acquiree and its membership would remain liable for the Plan. In other words, the Conversion did not change the equation with regard to the Plan. The Acquiree and its membership would remain liable for the Plan just as they were, pre-Conversion. However, the Decisions that separated Plan liability from Hospital ownership and operation were deemed necessary to ensure that the Hospitals would continue, post-Conversion, to serve the community.

40. As part of that balancing, the administrative agencies with jurisdiction thought it more in line with the HCA, to require a commitment by the Acquiror to continue essential healthcare services at the Hospitals. Accordingly, one of the conditions incorporated into the Final Conversion and CEC Decisions, was that the Acquiror had to maintain all essential services at the Hospitals for a period of five (5) years after the Conversion. If the Receiver were to circumvent the Final Conversion and CEC Decisions and re-attach Plan liability to the Hospitals, such a commitment would be in jeopardy.

41. Moreover, under §28(c) of the HCA, the Department of Attorney General can establish conditions requiring minimum investments to protect Hospital assets, post-Conversion. This is critical as the Department of Attorney General placed no requirement on the Acquiror to make minimum investments, post-Conversion, into the Plan, because it was the final decision of the administrative agencies that the Acquiror would have no responsibility for the Plan. Rather, it was decided that the Plan liability would be de-coupled from the Hospital assets and liabilities

acquired and assumed by the Acquiror. Thus, the actions of the Department of Health and the Department of Attorney General were wholly appropriate in that liability for the Plan would remain with SJHSRI and its Class A Member, CCCB's predecessor, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

42. As such, the Acquiror was not required to report any ongoing contributions to the Plan or report as to the condition of the Plan under §28 of the HCA, post-Conversion, because it was a final agency decision that the Acquiror assumed no liability for the Plan.

43. In or about August of 2017, SJHSRI, presumably in its role as Plan Administrator, petitioned the Plan into Receivership, above-defined as the "Receivership", in an effort to restructure the Plan.

44. In so doing, SJHSRI judicially admitted that the Acquiror had no role in the evaluation of the Plan or its funding levels during the Conversion or CEC Proceedings and that the Acquiror assumed no liability for the Plan in accord with the Asset Purchase Agreement by the Final Conversion and CEC Decisions. Under Rhode Island law, a judicial admission is a deliberate, clear and unequivocal statement of a party about a concrete fact with that party's knowledge which is considered conclusive and binding as to the party making the admission. The judicial admission relieves an opposing party from having to prove the admitted fact and bars the party who made the admission from disputing same. In other words, under Rhode Island law, a judicially admitted fact is conclusively established.

45. In or about June of 2018, the Receiver, despite the Final Conversion and CEC Decisions, and the judicial admissions in the Petition for the Appointment of a Receiver, filed the Federal Court Litigation alleging, in part, that the Transacting Parties on the Acquiror side, including the Petitioner herein, may have liability for the Plan.

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46. On or about September 4, 2018, the Receiver petitioned the Receivership Court to grant the Receiver authority to enter into what is defined above as the Settlement with SJHSRI and the other Transacting Parties on the Acquiree's side of the Conversion, by having the Acquiree transfer its fifteen (15%) percent interest and fifty (50%) percent voting authority in Prospect CharterCARE, LLC to the Receiver. The Settlement, if hypothetically approved, would transfer the Acquiree's interest and voting authority in the Prospect CharterCARE, LLC to the Receiver as a vehicle to address Plan liability. Thus, the Receiver, through the proposed Settlement, seeks to re-attach the Plan to the Hospitals, post-Conversion, which violates the Final Conversion and CEC Decision.

47. Accordingly, the Petitioner seeks a declaratory order as follows:

a. If the HCA and HLA are properly interpreted and applied and/or the Final Conversion and CEC Decisions are properly applied to the Petitioner, the transfer proposed by the Receiver to advance the Settlement violates the HCA and HLA, as it is at variance with the Final Conversion and CEC Decisions. Thus, the Receiver would have to apply to the administrative agencies with jurisdiction for relief;

b. If the HCA and HLA are properly interpreted and applied, the transfer proposed by the Receiver to advance the Settlement is a "conversion" as defined by §4(6) of the HCA, as it would result in the transfer of more than 20% of the voting control of the Acquiror. Thus, the Receiver could not effectuate such a conversion without application to, review, and approval by the Departments of Health and/or the Department of Attorney General;

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c. If the Receiver applied to modify the Final Conversion and/or CEC Decisions, or applied for the review and approval of the proposed conversion embodied within the Settlement, the Receiver's application would be barred by the doctrine of administrative finality; and

d. The Receiver's cause of action in the Federal Court Litigation alleging Plan liability as against the Acquiror is barred by the doctrine of *res judicata* and the bar should be enforced in the first instance by the administrative agencies with jurisdiction over the Conversion and CEC Proceedings.

First Request for Declaratory Order

48. Acquiror submits that a proper interpretation and application of the HCA and HLA, and a proper application of the Final Conversion and CEC Decisions issued by the respective administrative agencies in May of 2014, must result in a determination that the transfer proposed by the Receiver to advance the Settlement violates the HCA and HLA and is at variance with the Final Conversion and CEC Decisions.

49. The Final Conversion and CEC Decisions issued by the Department of Health and Department of Attorney General expressly incorporated the Asset Purchase Agreement and the Amended and Restated Operating Agreement ("Operating Agreement") of the Petitioner.

50. The Final Conversion and CEC Decisions recognized and determined that the Hospitals, including Our Lady of Fatima Hospital, could not survive if the Plan and the liability therefore, remained attached to the Hospitals. Accordingly, the Final Conversion and CEC Decisions determined that the Plan and the liability therefore, would be separated from the Hospitals and remain with Acquiree, including the Class A Member, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

51. Furthermore, the Final Conversion and CEC Decisions incorporating the Operating Agreement, provided for a "joint venture" approach to ownership and operation of the Hospitals, post-Conversion, with 15% of the joint venture being owned by a community-based, healthcare entity which would continue to advance the original not-for-profit healthcare mission of the so-called "Heritage Hospitals" for a minimum of five (5) years after the Conversion, which took place on June 14, 2014.

52. In addition, the healthcare policy was to have a not-for-profit, community-based facet to the ongoing voting and governance structure of the Hospitals. Thus, the Final Conversion and CEC Decisions incorporated the concept of a "50/50 board" as set forth in the Operating Agreement.

53. The transfer proposed by the Receiver to advance the Settlement is at absolute variance with those concepts and policy adopted by the Final Conversion and CEC Decisions and cannot be allowed absent regulatory relief.

54. In short, the hospital conversion policies and determinations embodied within the Final Conversion and CEC Decisions should not be abandoned simply to create a vehicle to fund liabilities for the Plan. To do so, would be the absolute opposite of the decision made to separate Plan liability from Hospital ownership and operation, post-Conversion, so that that those Hospitals could survive and continue to serve the healthcare needs of the community with Plan liability remaining with the Acquiree and its Class A Member, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

Second Request for Declaratory Order

55. Acquiror seeks a declaratory order and submits that a proper interpretation and application of the HCA would result in a determination that the transfer proposed by the

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Receiver to advance the Settlement is a "conversion" as that term is defined in §4(6) of the HCA and thus, the Conversion would not be allowed absent application to review and approval by the Department of Health and/or Department of Attorney General under the HCA and/or the HLA.

56. As set for above, the Final Conversion and CEC Decisions acknowledged and required that the Conversion be implemented and operated with the concept of a 50/50 Board.

57. The HCA defines a Conversion to include the conversion of more than 20% of the voting authority of a Hospital. *See* HCA at §4(6).

58. The transfer proposed by the Receiver in order to advance the Settlement clearly seeks to transfer more than 20% of voting authority. Accordingly, the proposed transfer would require review and approval as a Hospital Conversion.

59. Moreover, in order to approve a Conversion of this nature, §8 of the HCA and §4.2(h) of the HCA Regulations would require the Receiver to demonstrate compliance with the Final Conversion and CEC Decisions. In this instance, for the reasons set forth herein, the Receiver would not be able to demonstrate compliance with those Decisions and thus, the proposed Conversion could not be approved.

Third Request for Declaratory Order

60. Acquiror seeks a declaratory order and submits that a proper application of the Final Conversion and CEC Decisions to the Acquiror would render any application by the Receiver for the review and approval of the proposed transfer to advance the Settlement as barred by the doctrine of administrative finality.

61. Acquiror submits that the Receiver would have to file some form of application with the Department of Health and Department of Attorney General to grant relief and/or to

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approve a conversion that would allow for the Receiver's proposed transfer of Acquiree's ownership and voting authority in the Hospitals.

62. Said application would be seeking same relief as the prior Conversion and CEC applications and there has been no change in material circumstances.

63. The material circumstances surrounding Plan liability remain exactly the same with regard to the prior conversion and licensure proceedings that resulted in the Final Conversion and CEC Decisions in that the Hospitals could not survive if their ownership and operation continued to be attached to Plan liability.

64. A subsequent application by the Receiver would be seeking to approve a transfer, so that the Acquiree's Hospital ownership and voting authority would be used as a vehicle to address Plan liability that was previously separated from Hospital ownership and operations, post-Conversion, per final agency decision.

65. The doctrine of administrative finality has been adopted by the Rhode Island Supreme Court and applied to administrative agencies addressing healthcare issues, so that administrative healthcare policy decisions remain consistent unless there is a material change in circumstances. In this instance, it was determined that in order for the Hospitals to survive and continue to serve the healthcare needs of the community, Plan liability had to be separated from the Hospital ownership and operations, post-Conversion. This decision was critical in attracting the investment of private capital to allow for the survival of the Hospitals and the continued service of the healthcare needs of the community. Potential investors, often times from outside of the State of Rhode Island, must be able to rely on those policy decisions and the doctrine of administrative finality was designed for that very purpose.

Fourth Request for Declaratory Order

66. Acquiror requests a declaratory order and submits a proper application of the Final Conversion and CEC Decisions bar any claim that Acquiror is liable for the Plan, including such claims in the Federal Court Litigation based upon the doctrine of *res judicata*.

67. Under Rhode Island law, the doctrine of *res judicata* makes a prior decision in a quasi-judicial agency action between the same parties conclusive regarding the issues that were litigated in the prior action or, that could have been presented and litigated therein.

68. Under Rhode Island law there are three prerequisites for the doctrine of *res judicata* to be invoked: (1) whether the first and second actions involve in the same parties, or their privies; (2) whether the first and second actions compromise the same cause of action; and (3) whether a administrative agency in a quasi-judicial proceeding entered a final decision.

69. The proceedings that resulted in a Final Conversion and CEC Decisions were quasi-judicial, including but not limited to the fact that §34 of the HCA, §9 of the HLA and, §§9.2 and 16.1 of the HCA Regulations and §4 of the HLA Regulations all set forth that the prior proceedings are contested agency proceedings, which have full rights of appeal.

70. In addition, the CEC licensure proceedings are a legal pre-requisite to the Conversion and the procedures set forth in §4 of the HLA Regulations are clearly quasi-judicial, including the burden of proof and review criteria before the Health Services Council. In addition, the Rhode Island Administrative Procedures Act clearly defines such proceedings as contested agency proceedings with an absolute right of judicial review.

71. 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 and the Receivership Estate were both Transacting Parties in the Conversion and CEC Proceedings.

72. Furthermore, there is no dispute that there was an identity of issues as the Conversion and CEC Proceedings and the Federal Court Litigation both address the very same transaction considered in the Conversion and CEC Proceedings. Moreover, the following is beyond dispute:

a. The HCA requires that an HCA application address pension plan liability;
b. The transactional documents and HCA/CEC Applications submitted by the Transacting Parties all stated that the Acquiror would have no liability for the Plan;
c. The experts engaged by the Department of Health and the Department of Attorney General all reviewed that aspect of the transaction and advised that the $14M of the Purchase Price that would be put in to the Plan by the Acquiree would merely reduce what was then identified as $79M funding deficiency and that any testimony by the Acquiree of how to fund the Plan going forward had no actuarial support;
d. The Conversion and CEC Proceedings, incorporating the relevant transactional documents and the independent expert analysis specifically established that the risk of funding the Plan, post-Conversion, remained with the Acquiree;
e. The experts concluded that the Hospitals would not survive if their ownership and operation remained connected to Plan liability;
f. The expert testimony was specifically adopted by the Department of Attorney General in its decision that provided:

> Significant operating efficiencies have been achieved as a result of the 2009 CCHP affiliation. Based on operating revenue alone, the combined CCHP hospital system reduced operating losses not including pension losses to approximately

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> $3 million per year. Although a significant improvement, CCHP realized that the losses that it was continuing to experience cannot be sustained and still ensure its continued viability. Furthermore, although capital expenditures have been made, the physical plants at the Existing Hospitals were aging and need upgrading.
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> Of additional concern to CCHP is its pension funding (an issue that is impacting many hospitals throughout the country). If pension losses are taken in consideration, in fiscal year 2012, the CCHP system sustained losses of over $8 million which are increasing without additional contributions. Such losses cannot be sustained by CCHP. Facing these significant financial concerns, CCHP realized it needed additional capital to ensure its continued viability to fulfill its responsibilities to the citizens of Rhode Island which it serves.

g. The Department of Attorney General and the Department of Health, thus, realized that a prior conversion was attempted that left Plan liability attached to Hospital ownership and operation and that did not work;

h. Accordingly, the Final Conversion and CEC Decisions required that the Conversion be implemented pursuant to the Application and the transactional documents which specifically provided that Plan liability would be separated from Hospital ownership and operation, post-Conversion, and remain with the Acquiree; and

i. This is further reflected by the fact that the Department of Attorney General did not exercise its authority under §28(c) of the HCA and require the Acquiror to make ongoing investments in the Plan, post-Conversion, because it was determined by the Final Conversion and CEC Decisions that liability for the Plan would remain with the Acquiree and its Class A Member, CCCB's predecessor, CharterCARE Health Partners and its Class B Member, The Roman Catholic Bishop of Rhode Island.

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73. The Final Conversion and CEC Decisions were final agency decisions that were never appealed and thus, the claims in the Federal Court Litigation that the Acquiror and/or its affiliates are somehow liable for the Plan are barred by the doctrine of *res judicata* and that bar should be enforced by the administrative agencies with jurisdiction over the Conversion and CEC Proceedings.

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