

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

In Re:	§	Chapter 7
	§	
LITTLE RIVER HEALTHCARE	§	Case No. 18-60526-rbk
HOLDINGS, LLC, <i>et al.</i>	§	
	§	(Jointly Administered)
Debtors.¹	§	

APPLICATION REQUESTING ORDER (I) AUTHORIZING CHAPTER 7 TRUSTEE TO (A) ENTER INTO AND PERFORM UNDER SETTLEMENT PURSUANT TO 11 U.S.C. § 105(a) AND BANKRUPTCY RULE 9019, (B) USE CASH COLLATERAL AND GRANT ADEQUATE PROTECTION, (C) OBTAIN POST-PETITION FINANCING ON A SECURED, SUPERPRIORITY BASIS, AND (D) SELL ESTATE PROPERTY FREE AND CLEAR OF ALL INTERESTS PURSUANT TO 11 U.S.C. § 363(B) AND 363(F), (II) APPROVING SALE PROCEDURES, AND (III) GRANTING RELATED RELIEF

This pleading requests relief that may be adverse to your interests.

The Trustee anticipates requesting that this Application be set for hearing. A notice of hearing will be sent once the Court has set the hearing date.

Any response to this Application should be filed and served prior to the hearing on this matter.

COMES NOW James Studensky, Trustee ("Trustee"), the duly appointed and acting Chapter 7 trustee in the above-captioned bankruptcy case, and files this Application Requesting Order (I) Authorizing Chapter 7 Trustee to (A) Enter Into and Perform Under Settlement Pursuant to 11 U.S.C. § 105(a) and Bankruptcy Rule 9019, (B) Use Cash Collateral and Grant Adequate Protection, (C) Obtain Post-Petition Financing on a Secured, Superpriority Basis, and (D) Sell Estate Property Free and Clear of All Interests Pursuant to 11 U.S.C. § 363(b) and

¹ The Debtors in these chapter 7 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Compass Pointe Holdings, LLC (1142), Little River Healthcare Holdings, LLC (7956), Timberlands Healthcare, LLC (1890), King's Daughters Pharmacy, LLC (7097), Rockdale Blackhawk, LLC (0791), Little River Healthcare - Physicians of King's Daughters, LLC (5264), Cantera Way Ventures, LLC (7815), and Little River Healthcare Management, LLC (6688). The Debtors' mailing address is 1700 Brazos Avenue, Rockdale, Texas 76567.

363(f), (II) Approving Sale Procedures, and (III) Granting Related Relief (the “Application”) and would respectfully show the Court as follows:

I. SUMMARY

1. Monroe Capital Management Advisors, LLC, as administrative agent (the “Agent”) on behalf of itself and the other lenders (the “Lenders”) claims perfected, first-priority priming liens and security interest on substantially all of the Debtors’ assets. Since the Conversion Date, the Trustee has engaged in negotiations with Agent in an effort to create an estate that has the opportunity to benefit unsecured claimants. The Trustee and Agent have reached an agreement (the “Agreement”)² that the Trustee believes creates a substantial opportunity for a return to unsecured claimants. Pursuant to the Agreement, the Trustee will be able to administer assets that are subject to Agent’s lien claims in a manner that 1) provides for adequate funding of the administration of the chapter 7 estate and 2) creates certain carve-outs and other potential carve-outs that may enable distributions to be made to unsecured creditors. The Agreement is the result of long arms’ length negotiations and reflects substantial efforts by both the Trustee and Agent to accommodate the anticipated desires of numerous constituencies in these bankruptcy cases. Appended hereto and incorporated herein by reference is a form of order (the “Order”) which encapsulates the Agreement, including in particular the provisions relating to sharing arrangement with respect to proceeds generated by the Trustee from various sources;³ the Trustee herein requests that the Court grant relief in substantially the form reflected in the Order.

²The Trustee and the Agent, on behalf of itself and the Lenders, may choose to incorporate the Agreement set forth in the Order into a separate settlement agreement. In such event, the Trustee will file a notice and supplement this Application with such settlement agreement.

³To the extent of any conflict between the terms in the Order attached hereto and the description thereof in this Application, the Order shall control. Parties are encouraged to read the attached Order in its entirety.

II. JURISDICTION

2. This Court has jurisdiction over this proceeding under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates include 11 U.S.C. §§ 105 and 363(b), 364, and 365.

III. BACKGROUND

3. On July 24, 2018 (the “Petition Date”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code.

4. After notice and a hearing, on December 7, 2018 (the “Conversion Date”), the Court entered an order [Dkt. No. 547] converting the Debtors’ bankruptcy cases to chapter 7.

5. The Trustee is the duly appointed and acting Chapter 7 trustee in the above-captioned jointly administered bankruptcy cases.

6. Monroe Capital Management Advisors, LLC, as administrative agent (in such capacity, the “Agent”), on behalf of itself and the other lenders (the “Lenders”) party to that certain *Credit Agreement* dated as of March 31, 2015, holds valid, enforceable, and allowable claims against the Debtors secured by, among other things, perfected, first-priority priming liens and security interests on substantially all of the Debtors’ assets pursuant to, among other things, the Court’s Final Order (I) Authorizing Debtors to (A) Use Cash Collateral on a Limited Basis and (B) Obtain Post-Petition Financing on a Secured, Superpriority Basis, (II) Granting Adequate Protection, (III) Scheduling a Final Hearing, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief [Docket No. 346] (as amended, extended, supplemented, or otherwise modified from time to time, the “Final Financing Order”). Agent’s and Lenders’ claims are secured against substantially all assets of the Debtors.

7. On December 21, 2018, the Trustee filed his Emergency Motion for Order (I)

Authorizing Chapter 7 Trustee to (A) Liquidate and Protect Estate Assets, (B) Use Cash Collateral and Grant Adequate Protection, and (C) Continue Cash Management System, and (II) Granting Related Relief [Dkt. No. 605] (the “Liquidation Motion”). Among other things, the Liquidation Motion reflected an interim agreement between the Trustee and the Agent whereby the Trustee could begin administering the Debtors’ estates while obtaining carve-outs from Agent’s and Lenders’ collateral that could eventually be used to make distributions on unsecured claims.

8. On December 27, 2018, the Court entered an order [Dkt. No. 629] (the “Liquidating Order”) granting the relief requested in the Liquidation Motion.

9. While operating under the terms of the Liquidating Order, the Trustee and Agent have been engaged in long-running, arms’ length negotiations aimed at realizing a permanent solution that would ensure adequate funding of the chapter 7 estate while creating a potential for certain monies to be realized free and clear of Agent’s and Lenders’ claims so that distribution might be made on unsecured claims. Those negotiations have resulted in the Agreement. The Trustee believes that the Agreement reflects the best interests of the creditors and these bankruptcy estates and requests that the Court approve the same.

IV. TERMS OF SETTLEMENT

10. As reflected in the Order, the Trustee is requesting that the following substantive terms of the Agreement be incorporated into the Order approving this Application:

(a) The Parties agree that the goal of the Settlement is to provide a functional path to allow the Trustee and the Estate to pursue the liquidation of all assets in the Estate, including the liquidation of claims held by the Estate but which are subject to the Agent’s and the Lenders’ liens through and pursuant to various Loan Documents (as defined in the Final Financing Order), the Pre-Petition Claim Documents (as defined in the Final Financing Order), the DIP Facility Documents (as defined in the Final Financing Order), the Final Financing Order, the Liquidating Order, or otherwise, and to provide for mechanisms to fund the payment of chapter 7 administrative expense claims, including

litigation expenses involving Estate claims and causes of action against Blue Cross and Blue Shield of Texas ("BCBS of Texas", and together with any of its subsidiaries, affiliates, parents, or other related entities or persons, "BCBS"). The automatic stay of section 362 of the Bankruptcy Code shall remain lifted as to the Agent and the Lenders in accordance with the Final Financing Order, as confirmed by the Liquidating Order; provided, however, that the Agent, on behalf of itself and the Lenders, shall not exercise its rights or remedies as to Estate assets in a manner that would deprive the Trustee or the Estate of rights under this Settlement unless the Trustee (i) breaches or otherwise defaults under this Settlement, and the Agent provides notice of such breach or default with a 10-day opportunity for the Trustee to cure such breach or default or to obtain from the Court an order that no breach or default in fact occurred, or (ii) seeks any of the relief as described in Paragraph [5(r)] below. The terms "Trustee" and "Estate" as used herein shall mean and include both the Estate and the Trustee acting on behalf of the Estate. Subject to the Agent's and the Lenders' rights set forth in this Paragraph [5(a)] and Paragraph [5(r)] below, the Agent, on behalf of itself and the Lenders, agrees that it will not foreclose its liens against any of the BCBS Claims (as defined below) after the Trustee has settled same or reduced same to judgment pending collection and distribution in accordance with the terms of this Settlement; provided, however, that the Trustee shall continue to prosecute all BCBS Claims for collection and any post-settlement or adjudication matters or proceedings. The Agent acknowledges that the Trustee might seek a temporary restraining order or other injunctive relief from the Court; provided, however, that the Agent does not consent to the entry of any such temporary restraining order or other injunctive relief, and reserves and any all of its rights and remedies to contest or object to same, and to commit such other acts or take such other actions as are available to the Agent cumulatively, including without limitation, under the Loan Documents, the Pre-Petition Claim Documents, the DIP Facility Documents, orders entered by the Court in these Cases or the Debtors' chapter 11 cases, and applicable law. Subject to the Agent's rights set forth in this Paragraph [5(a)] and Paragraph [5(r)] below, the Agent agrees that it will not foreclose its liens against the Estate's real property assets and other residual assets not specifically identified herein; provided, however, that (i) the Trustee sells such assets on a date that is on or prior to 180 days after June 5, 2019 or such later date as may be agreed to in writing by the Agent and filed in a notice on the docket of the Cases, and (ii) the proceeds of such sale by the Trustee shall remain in the Estate to be used in accordance with the Estimate (as defined below).

(b) Subject to the availability of adequate Estate funds, funding provided by the Agent, or third-party litigation funding, the Trustee will prosecute the claims and causes of action asserted by Debtor Rockdale Blackhawk, LLC d/b/a Little River Healthcare against BCBS of Texas in the proceedings styled as Case No. 01-18-0001-0136 pending before the American Arbitration Association (the "BCBS Arbitration Claims"), and any other claims and causes of action of the Debtors or the Estate against BCBS (all such claims and causes of action, including the BCBS Arbitration Claims, the "BCBS Claims"), and the Trustee, in his reasonable discretion, may pursue legal action and claims and causes of action in the following matters and against the following parties, as applicable:

- (i) the Debtors' directors and officers (the "D&O Claims");

- (ii) claims and causes of action arising under chapter 5 of the Bankruptcy Code (the “Avoidance Actions”);
- (iii) Huron Consulting Group, Inc., Health Management Partners, LLC, and H2C Analytics, LLC; and
- (iv) any other Estate claims and causes of action.

(c) An estimate of agreed cash use (the “Estimate”) agreeable to the Agent and the Trustee in writing shall be established for matters related to the Estate for the use of all cash of the Estate, both Cash Collateral (as defined in the Liquidating Order) of the Agent and other available cash, for (i) pursuit of legal actions outlined in Paragraph [5(b)], and (ii) payment of reasonable and allowed chapter 7 administrative expense claims to complete all other matters the Trustee is engaged in related to the wind-down of the Estate, including the payment in the ordinary course of business of fees and expenses of professionals and other persons that the Trustee chooses to retain, including but not limited to the following:

- (i) an accountant;
- (ii) Ryan Downton and the Law Offices of Ryan Downton;
- (iii) Sean McKenna;
- (iv) EPIQ Bankruptcy Solutions (claims servicing and noticing agent);
- (v) Graves Dougherty Heaton & Moody, P.C.;
- (vi) HSSK, LLC;
- (vii) Duane Morris LLP;
- (viii) Tony Fay & Associates; and
- (ix) AlixPartners, LLC.

(d) The Estimate may be revised by written consent of the Agent and the Trustee to account for new developments or other reasons as the Parties may determine. Except as otherwise provided herein, for each [bi-weekly/monthly] period set forth in the Estimate, the actual disbursements made by the Trustee during such period shall not in any event exceed the aggregate amount of the disbursements estimated to be made during such period by more than [●] percent ([●]%). Notwithstanding the foregoing, it shall not be a breach of this Settlement if the Trustee pays vendors or Estate professionals amounts in excess of the Estimate if the aggregate amounts paid in excess of the Estimate do not exceed \$200,000. The Estimate will include the Trustee’s use of Cash Collateral arising from net proceeds of the Debtors’ accounts receivable and real property in the amount of \$500,000, up to \$250,000 of which shall be reserved and used, if and as necessary, for the Trustee’s payment on behalf of the Estate of claims against the Estate arising under section 503(b)(8), as set forth in the Liquidating Order and the Order Converting Chapter 11 Cases to Chapter 7 [Docket No. 547] and, to the extent such \$250,000 is not necessary for the payment of claims against the Estate arising under section 503(b)(8), the balance of such amount may be used to pay other expenses in the Estimate. The Estimate will include the use of all other Estate funds as well as funds that may be provided by the Agent or third-party litigation funding. The Estimate shall be a limit on the Agent’s consent to use of its Cash Collateral by the Trustee and the Estate, but shall not be interpreted as any other limit on payment of chapter 7 administrative expense claims to any particular person or categories of persons, and serves as a guideline to monitor the

availability of Estate funds for use in pursuing the claims described in Paragraph [5(b)] above. The Estimate shall include allowance for the payment of quarterly fees payable to the Office of the United States Trustee (the "U.S. Trustee") pursuant to 28 U.S.C. § 1930 (the "UST Quarterly Fees").

(e) Except as expressly provided herein, the Agent shall retain all of its liens, whether in existence as of the Petition Date (as defined in the Application), granted by the Court pursuant to the Final Financing Order or the Liquidating Order, or granted under the under the Loan Documents, the Pre-Petition Claim Documents, DIP Facility Documents, or otherwise, but consents to the following carve-outs (collectively, the "Settlement Carve-Out") of asset proceeds (after payment of the applicable statutory commission payable to the Trustee calculated pursuant to section 326 of the Bankruptcy Code (the "Trustee Fee")) for use by the Trustee first for payments contemplated under the Estimate and, following payment in full of such payments, then subsequently to payment of other administrative expense claims and general unsecured claims in accordance with Bankruptcy Code § 726:

- (i) Previously agreed-upon funds of \$180,000.00 shall remain free and clear of the Agent's and the Lenders' liens to the extent set forth in (A) the Order Granting Chapter 7 Trustee's Motion for Authority to Sell Property of the Estate Free and Clear of All Interests Pursuant to 11 U.S.C. §§363(b) and 363(f) and to Authorize Apportionment of All Proceeds and Distribution of Portion of the Proceeds [Docket No. 703], (B) the Order Granting Chapter 7 Trustee's Motion for Authority to Sell Property of the Estate Free and Clear of All Interests Pursuant to 11 U.S.C. §§363(b) and 363(f), to Assume and Assign a Software Licensing Agreement, and to Authorize Apportionment of All Proceeds and Distribution of Portion of Proceeds [Docket No. 708], and (C) the Order Granting Chapter 7 Trustee's Motion for Authority to Sell Property of the Estate Free and Clear of All Interests Pursuant to 11 U.S.C. §§363(b) and 363(f) and to Authorize Apportionment of All Proceeds and Distribution of Portion of the Proceeds and Rejection of Lease of Real Property Associated with Purchased Personal Property [Docket No. 759]. Additionally, the Estate will receive \$120,000.00 from the sale of the Estate's real property located in Rockdale, Texas (old HEB building) free and clear of the Agent's liens, subject to Paragraph [5(r)] below.
- (ii) Cash proceeds of \$220,000.00 from the auction of medical equipment to be conducted by Centurion Services, with these proceeds being used first for medical records disposition and then being used for other chapter 7 administrative expense claims.
- (iii) The first \$500,000.00 in net proceeds (after payment of the Trustee Fee, the Estate's counsel's fees, and expenses and reimbursement to the Agent of all costs paid by the Agent or paid using Cash Collateral, directly related to recovery on the D&O Claims) received by the Estate from recoveries on D&O Claims shall be free and clear of the Agent's liens, subject to Paragraph [5(r)] below. Thereafter, 60% of the net proceeds recovered from D&O Claims (after payment of the Trustee Fee, the

Estate's counsel's fees, and expenses and reimbursement to the Agent of all costs paid by the Agent or paid using Cash Collateral, directly related to recovery on the D&O Claims) shall be subject to the Settlement Carve-Out.

- (iv) The first \$500,000.00 in net proceeds (after payment of the Trustee Fee, the Estate's counsel's fees, and expenses and reimbursement to the Agent of all costs paid by the Agent or paid using Cash Collateral, directly related to recovery on the Avoidance Actions) received by the Estate from Avoidance Actions shall be free and clear of Monroe's liens, subject to Paragraph [5(r)] below. Thereafter, 60% of the net proceeds received by the Estate from recoveries on Avoidance Actions (after payment of the Trustee Fee, the Estate's counsel's fees, and expenses and reimbursement to the Agent of all costs paid by the Agent or paid using Cash Collateral, directly related to recovery on the Avoidance Actions) shall be subject to the Settlement Carve-Out.
- (v) (A) the first \$125,000.00 in net proceeds (after payment of the Trustee Fee, the Estate's counsel's fees, and expenses and reimbursement to the Agent of all costs, paid by the Agent or paid using Cash Collateral, directly related to recovery on the Estate's claims and causes of action against Little River Healthcare – Meridian Surgery Center LLC ("Meridian", and such claims and causes of action, the "Meridian Claims")) received by the Estate from the Meridian Claims; (B) the first \$125,000.00 in net proceeds (after payment of the Trustee Fee, the Estate's counsel's fees, and expenses and reimbursement to the Agent of all costs, paid by the Agent or paid using Cash Collateral, directly related to recovery on claims and causes of action against Medicare (the "Medicare Claims")) received by the Estate from the Medicare Claims, and (C) the first \$125,000.00 in net proceeds (after payment of the Trustee Fee, the Estate's counsel's fees, and expenses and reimbursement to the Agent of all costs, paid by the Agent or paid using Cash Collateral, directly related to recovering other claims against payors, other than the BCBS Claims (the "Payor Claims")) received by the Estate from the Payor Claims shall be free and clear of Monroe's liens, subject to subject to Paragraph [5(r)] below. Thereafter, 20% of the net proceeds received by the Estate from the Meridian Claims, the Medicare Claims, and the Payor Claims (after payment of the Trustee Fee and reimbursement to the Agent of all costs paid by the Agent or paid using Cash Collateral directly related to recovering the Meridian Claims, the Medicare Claims, and the Payor Claims) shall be subject to the Settlement Carve-Out.

(f) Any determination of whether costs of the Agent in Paragraph [5(e)(i)-v)] above are directly related to recovery of an asset for purposes of determining the Settlement Carve-Out as described herein shall be made on a good-faith estimated basis by the Agent.

(g) Should the Estate through pursuit of the BCBS Claims receive Net BCBS Proceeds (as defined below) sufficient to satisfy in full all of the Agent's and the Lenders' claims against the Debtors and the Estate (the "Lenders' Claims"), the 40% portion of net proceeds the Agent earns from D&O Claims and Avoidance Actions and the 80% of Other Litigation Claims will be shared by the Parties based on the percentages identified in the table attached as Exhibit [1] rather than the applicable percentages identified above (for the avoidance of doubt, the terms of such Exhibit shall be given effect as if fully set forth herein) (i.e., the Agent will consent to leaving its 40% share of net proceeds from D&O Claims and Avoidance Actions and 80% of Other Litigation Claims until such time as the BCBS Claims are completed).

(h) The Agent and the Trustee will consent to the Trustee pursuing the BCBS Claims on behalf of the Estate. Any settlement offer related to the BCBS Claims (a "BCBS Settlement Offer") received by the Trustee shall be disclosed to the Agent. Should the Agent reject a BCBS Settlement Offer the Trustee deems acceptable, the Trustee shall provide the Agent with ten (10) days' notice of his intent to file a motion under Bankruptcy Rule 9019 with respect to such BCBS Settlement Offer. During such 10-day notice period, the Agent shall have the option to elect (the "BCBS Claims Auction Election") that (i) the motion to approve such BCBS Settlement Offer not be filed and (ii) the Trustee will conduct an auction process for the sale of the BCBS Claims under section 363 of the Bankruptcy Code (the "BCBS Claims Auction"), including all rights, contracts, engagement agreements, privileges, work product, information, and records relating to same, in each case as determined by the Agent, on an expedited basis with an auction being held with notice of the auction to the case electronic service list (not the master service list or entire case mailing matrix) within ten (10) days of such BCBS Claims Auction Election at which the Agent may credit bid with the intent of acquiring and continuing pursuit of the BCBS Claims. The pleadings (including without limitation, the Application) seeking approval of the Settlement shall be deemed a motion to sell such BCBS Claims pursuant to section 363 of the Bankruptcy Code and such related assets per the expedited BCBS Claims Auction procedure above. The Trustee may obtain an expedited hearing within two (2) business days after such BCBS Claims Auction for the Court to consider entry of a sale order in form and substance acceptable to the Agent transferring the BCBS Claims and such related assets to the Agent (or other prevailing bidder at the BCBS Claims Auction) free and clear of claims and liens. In the event such BCBS Claims Auction Election results from a rejection of a BCBS Settlement Offer deemed acceptable to the Trustee, the Agent will credit bid at the BCBS Claims Auction an amount greater than or equal to the BCBS Settlement Offer received by the Trustee. In the event that the Agent's credit bid is the highest amount bid at the BCBS Claims Auction, the Trustee shall consummate the sale of the BCBS Claims and such related assets to the Agent which shall not affect, reduce, or impair in any way the scheduled distributions to the Estate or Downton (as defined below) from any recovery on the BCBS Claims as provided in any provision in this Settlement. For the avoidance of doubt, the Agent shall not be required to bid any cash as part of its credit bid for the BCBS Claims, and the Agent's credit bid shall receive credit and include any amount of expenses, the Trustee Fee, and expenses, and any amount that may be shared per Paragraph [5(j)] below based on an assumed adjudication of the BCBS Claims. Except

pursuant to the Trustee's option set forth below in this Paragraph [5(h)], the sale or other acquisition of the BCBS Claims by the Agent by any means shall not affect, reduce, or impair in any way the scheduled distributions to the Estate or Downton from any recovery on the BCBS Claims as provided in Paragraph [5(j)] below or any other provision in this Settlement. In the event the Agent acquires the BCBS Claims, all proceeds from the recovery of the BCBS Claims (the "BCBS Proceeds") shall be held by the Agent in trust until such distributions to the Estate and Downton are paid in full, which shall occur within thirty (30) days after the Agent's receipt of BCBS Proceeds. After the sale or other acquisition of the BCBS Claims by the Agent, the Estate will have the same information cooperation rights as the Agent. The obligations for payment of Net BCBS Proceeds by the Agent to the Estate and Downton shall be deemed absolute and survive the closing of the Cases upon approval of this Settlement by the Court after notice and hearing. If (i) Duane Morris LLP, as special counsel to the Debtors and the Estate, recommends the acceptance of a settlement offer to the Estate, (ii) the Trustee agrees with such recommendation and gives notice to the Agent of his intention to obtain court approval as set forth above, (iii) the Agent makes a BCBS Claims Auction Election to require a BCBS Claims Auction and 363 sale to be conducted by the Trustee, (iv) the Agent credit bids on the BCBS Claims as set forth above, and (v) is the prevailing bidder at the BCBS Claims Auction, then the Trustee shall have the ability to pursue either of two options described herein. The Trustee may elect to notify required parties in writing within five (5) business days of the Agent's acquisition of the BCBS Claims either that (x) the sale or other acquisition of the BCBS Claims by the Agent will not affect, reduce, or impair in any way the scheduled distributions to the Estate or Downton from the Net BCBS Claims as provided in Paragraph [5(j)] below or any other provision in this Settlement, or (y) the Estate shall be paid from the first Net BCBS Proceeds received by the Agent the amount that the Estate would have been entitled to in accordance with Paragraph [5(j)] below if such rejected BCBS Settlement Offer had been consummated. In such circumstance, the Estate shall forego and not be paid any amounts the Estate would have been entitled to receive in accordance with Paragraph [5(j)] below that are on account of recoveries in excess of the amount of such rejected BCBS Settlement Offer. If the Trustee does not make such election within such five (5) business days of the Agent's acquiring the BCBS Claims, then the Agent shall choose within five (5) business days of the deadline for the Trustee to make such election whether [Paragraph 5(h)(x) or Paragraph 5(h)(y)] above applies.

(i) The Trustee and his counsel shall reasonably cooperate to assist the Agent with obtaining information regarding the BCBS Claims, including the ability to reasonably observe proceedings and obtain discovery and communications. The Agent acknowledges that Duane Morris LLP is special counsel for the Estate only and does not represent the Agent. The Agent stipulates that Duane Morris LLP does not owe any duties to the Agent in its representation of the Estate.

(j) The Agent and the Trustee consent to revenue sharing on Net BCBS Proceeds that may become available from settlement or adjudication of the BCBS Claims. As used in this Order, "Net BCBS Proceeds" shall mean the BCBS Proceeds less: (i) payment of the Trustee Fee, (ii) payment of the Estate's counsel's fees directly related to the BCBS

Claims, and (iii) reimbursement of all of the Agent's Cash Collateral and monies expended for any fees and expenses incurred in the pursuit of the BCBS Claims and the Cases. Net BCBS Proceeds shall be made available to the Estate for distribution after payment of the amounts in subsections (i)-(iii) of the preceding sentence. A portion of such Net BCBS Proceeds available for distribution will be shared with the Estate in the percentages set forth in the table attached as Exhibit [2] (for the avoidance of doubt, the terms and the applicable percentages of such Exhibit shall be given effect as if fully set forth herein).

(k) In addition to the Net BCBS Proceeds shared with the Estate in accordance with Paragraph [5(j)] above, a portion of Net BCBS Proceeds will be paid by the Estate to Ryan Downton and the Law Offices of Ryan Downton (collectively, "Downton") in accordance with the engagement letter attached as Exhibit C to the Application for Retention of Ryan Downton and the Law Office of Ryan Downton as Counsel and Consultant for the Estate Pursuant to 11 U.S.C. §327(e) [Docket No. 792] that was approved by the Order Granting Retention of Ryan Downton and the Law Offices of Ryan Downton as Counsel for the Estate Pursuant to 11 U.S.C. §327(e) [Docket No. 887]. The remainder of Net BCBS Proceeds shall be paid to the Agent.

(l) The Trustee stipulates and agrees that all funds recovered from the BCBS Claims up to the amount of the Lenders' Claims (including principal, interest, fees, costs, etc.) are the Agent's Cash Collateral, subject to the distribution to the Estate set forth in Paragraph [5(j)] above, which is contemplated to apply unless there has been a dismissal of the Cases, in which case Paragraph [5(r)] shall apply. All BCBS Proceeds will be paid to the Estate, and after payment of the Trustee Fee, BCBS Claims expenses then due, and reimbursement of fees and expenses of the Agent in connection with the BCBS Claims and the Cases, the Trustee will make distributions to the Agent and Downton as provided in Paragraph [5(j)] and Paragraph [5(k)]. The Trustee will deposit such funds in a separate account and provide the Agent reconciliation reports with each distribution showing how such distribution has been calculated under this Settlement. If such reconciliation cannot be reasonably calculated in a manner for the Estate to make timely distributions, either of the Parties may seek to have the Court determine the appropriate amount of the distribution to effectuate this Settlement. Subject to the distribution to the Estate set forth in Paragraph [5(j)], and Paragraph [5(r)], and after payment in full of all of the Lenders' Claims, the Estate's share of such recovered funds in accordance with the table on Exhibit [2] will be deemed property of the Estate free and clear of the Agent's liens, and will be available to pay creditors of the Estate in accordance with the priorities set forth in the Bankruptcy Code. All distributions to the Agent or on its behalf, under Paragraph [5(j)] or otherwise in this Settlement, shall be credited to the Lenders' Claims until the Lenders' Claims are satisfied in full, and any additional amounts from any of the sharing provisions or other terms herein shall be retained by the Agent. All distributions to the Agent under Paragraph [5(j)] shall be paid within thirty (30) days of the Estate's receipt of BCBS Proceeds without further order or action of the Court. Except as otherwise provided in this Settlement, all distributions under Paragraph [5(j)] and this Paragraph [5(l)] or otherwise shall be subject to the Trustee Fee, which will be deducted and held by the Estate prior to the distribution. The Agent and Downton shall

each be liable for any of their respective taxes on distributions that either receive under this Settlement or through other distributions or payments by the Estate.

(m) The Agent consents to fund from its Cash Collateral all expenses tied to the BCBS Claims until the BCBS Claims are completed. In addition to the fund transfer set forth in Paragraph [5(o)] below, and as further described in Paragraph [5(p)] below, the Agent guarantees up to \$1 million of the timely payment of fees and expenses due that are related to the BCBS Arbitration Claims, including but not limited to, Duane Morris LLP's fees and expenses, Downton's fees and expenses, and costs payable to the American Arbitration Association, provided that the Estate first exhausts all funds other than a reserve of \$250,000 available for payments of such fees and expenses and that the Trustee has in good faith used his best efforts to promptly liquidate assets of the Estate into cash that can fund such expenses. In that event, the Trustee will provide to the Agent the unpaid invoices that are due and the Agent will pay sufficient funds to the Estate so such invoices can be promptly paid by the Trustee. The Trustee shall have the option of engaging a litigation financing firm in his discretion to fund fees and expenses related to the pursuit of BCBS Claims other than the BCBS Arbitration Claims on behalf of the Estate subject to the consent of the Agent, not to be unreasonably withheld, and provided that the Lenders' Claim is adequately protected in connection with same.

(n) The Agent consents to leaving all Cash Collateral generated through collection activities other than the BCBS Claims in the Estate until such time as the BCBS Claims are completed to be used in accordance with the Estimate. The Trustee agrees to use his best efforts to distribute all Net BCBS Proceeds and any other Cash Collateral due to the Agent within thirty (30) days of receipt of any BCBS Proceeds, and in the event of any dispute, the Agent shall have the right to seek payment of such Net BCBS Proceeds and any other Cash Collateral due to the Agent via a motion filed with the Court and set for hearing on an expedited basis.

(o) The Agent shall transfer to the Estate the sum of \$800,000 of the \$1,670,000 distribution (the "Distribution") made by the Trustee to the Agent upon agreement among the Agent and the Trustee on the terms of the Estimate, which funds shall remain available for payment of estimated and agreed chapter 7 administrative expense claims, including expenses related to BCBS Claims. The Trustee may direct the Agent to deposit some or all of the \$800,000 in the escrow account of Duane Morris LLP to be used for payment of current and future fees and expenses related to the BCBS Arbitration Claims. Use of such funds for payment of expenses, distributions back to the Agent or otherwise will not be subject to the Trustee Fee. After payment of any legal expenses incurred by the Agent in the BCBS Claims, the Agent will transfer any remaining funds from the Distribution to the Estate for the same purposes as stated above. Subject to the Estimate, the Agent consents to the payment of all agreed chapter 7 fees and expenses, and superior tax liens, in each of the Cases, including Trustee Fees and Trustee expenses, UST Quarterly Fees, and tax liens, and consents to the immediate distribution to the Agent of all remaining Cash Collateral in such Estate, in the Trustee's reasonable discretion, including but not limited to the following cases: Cantera Way Ventures, LLC, King's Daughters Pharmacy, LLC, Timberlands Healthcare, LLC. Upon receiving such

distributions, the Agent agrees to make available such funds for payment of BCBS Claims' fees and expenses if such BCBS Claims have not be fully resolved and agrees to promptly deposit such funds with Duane Morris LLP for future payment of BCBS Claims' fees and expenses.

(p) The Agent agrees to provide the Estate with additional capital as needed for legal, expert witness, and key employee expenses related to pursuit of the BCBS Arbitration Claims as a loan to the Estate with all protections available under section 364 of the Bankruptcy Code (subject to any carve-outs agreed upon in writing by the Agent). Such funds shall be made available upon depletion of cash on hand under control of the Trustee other than a reserve of \$250,000. Funds to be provided under this provision by the Agent shall be limited to the \$1 million set forth in Paragraph [5(m)] above. The Agent shall have the option to consent to additional funding up to \$10 million if requested by the Trustee. For the avoidance of doubt, the Trustee shall exhaust all cash on hand and immediately anticipated cash collections other than a reserve of \$250,000 before requesting funds under this provision from the Agent. The Trustee must also demonstrate that liquidation of any assets of the Estate is not being unduly delayed before requesting additional funds from the Agent. Any funds advanced under these conditions by the Agent shall be the first funds repaid in any distribution by the Agent. The Agent shall also earn [12]% interest, a 2% commitment fee on such [\$1 million] plus any increase to such principal amount, and a 2% exit fee upon repayment of such loans with such interest and fees to be paid to the Agent immediately upon attaining full recovery of all principal, interest, fees, expenses and royalties due from the Estate.

(q) Court approval shall be required to approve any settlement of legal matters outlined in Paragraph [5(b)(i)-(iii)] above.

(r) The Trustee and the Agent agree not to attempt to dismiss any of the Cases without Court approval, provided that the Trustee may not seek to abandon or dismiss any of the BCBS Claims without the Agent's consent. The Trustee shall retain the right to abandon other assets of the Estate other than the BCBS Claims that are of inconsequential value or burdensome to the Estate, provided that the Agent shall have the option to elect to have the Trustee conduct a sale process for the sale of such assets pursuant to section 363 of the Bankruptcy Code in which the Agent shall have the option to credit bid prior to any such abandonment. The Trustee reserves the right to file a no-asset report in any Case and permit that Case to be administratively closed if the Trustee believes that such Estate holds no assets or assets of inconsequential value, and also retains the right to file a motion to reopen any closed Case if facts warranted the reopening of a Case. In the event that (i) the Trustee breaches or otherwise defaults under this Settlement, and the Agent provides notice of such breach or default with a 10-day opportunity for the Trustee to cure such breach or default or to obtain from the Court an order that no breach or default in fact occurred (including any use of Cash Collateral that has not been agreed upon with the Agent), or (ii) any of the Cases are dismissed, the Trustee and the Estate shall forfeit all rights to distributions or otherwise under this Settlement and any and all Settlement Carve-Outs described herein shall not include payment of any claims of the Estate with the sole exception of chapter 7 administrative

expense claims paid or incurred in compliance with this Settlement prior to breach or, solely if the Agent has consented to a dismissal, the date of dismissal. Further, in the event of any dismissal of any of the Cases by the Trustee, and notwithstanding any other terms herein (i) there shall be no carve-outs (including but not limited to the Settlement Carve-Outs) except chapter 7 administrative expense claims as set forth in the prior sentence and expressly set forth in writing in such dismissal order, (ii) the Settlement Carve-Out or other carve-out provided for herein that is not expressly set forth in writing in such dismissal order shall be null and void ab initio, (iii) all rights, protections and remedies of the Agent under the Loan Documents, the Pre-Petition Claim Documents, the DIP Facility Documents, this Settlement, orders of the Court, and applicable law shall be preserved and continue following such dismissal of the Cases, and the Agent shall have the option exercised upon notice to the Trustee prior to such dismissal for the Trustee to conduct a process to sell assets of the Estate pursuant to section 363 of the Bankruptcy Code as designated by the Agent (which could be up to all assets of the Estate less only chapter 7 administrative expense claims paid or payable through the date of any breach or, solely if the Agent has consented to a dismissal, the date of dismissal) in exchange for a credit to the Lenders' Claims in an amount to be determined, and (iv) the security interests and liens of the Agent and the Lenders shall be reinstated as to any and all property of the Estate held free and clear with the same priority as such security interests and liens had prior to such property becoming free and clear, and all cash held by the Trustee and the Estate, except for allowed chapter 7 administrative expense claims, carve-outs as set forth in the prior sentence and expressly set forth in writing in such dismissal order, shall be paid to the Agent prior to such dismissal becoming effective. In the event of the abandonment of any assets of the Estate by the Trustee, the Agent shall have the option exercised upon notice to the Trustee prior to acquire any such abandoned assets of the Estate in exchange for a credit to the Lenders' Claims as determined by the Agent.

V. THE LIQUIDATING ORDER

11. The Trustee further requests that the Order contain the following provisions relating to the Liquidating Order in order to enable the administration of the Bankruptcy Estates to proceed pursuant to the Agreement:

- a. Effective as of the entry of this Order, the Liquidating Order is hereby approved, and the Court grants the relief therein on a final basis. All modifications and/or amendments to the Liquidating Order made by or pursuant to this Order in Paragraphs [7]-[8] below or otherwise shall be effective on a go-forward basis as of the entry of this Order. Such modifications and/or amendments shall not affect the terms of the Liquidating Order as in effect at any time prior to entry of this

Order, and the terms of the Liquidating Order then in effect shall remain applicable to any period prior to entry of this Order. Except as modified by paragraphs 6 through 8 above, the Liquidating Order shall remain in full force and effect.

- b. Effective as of the entry of this Order, the Liquidating Order shall be amended and restated such that the following paragraphs of the Liquidating Order shall read in full as follows:

i. Paragraph 6:

The Trustee is hereby authorized, pursuant to Bankruptcy Code §§ 105 and 363, to incur and pay, subject to the terms of this Liquidating Order and the Liquidating Expenses (as defined in the Motion), consistent with the Estimate (as defined in the *Order (I) Authorizing Chapter 7 Trustee to (A) Enter Into and Perform Under Settlement Pursuant to 11 U.S.C. §105(a) and Bankruptcy Rule 9019, (B) Use Cash Collateral and Grant Adequate Protection, (C) Obtain Post-Petition Financing on a Secured, Superpriority Basis, and (D) Sell Estate Property Free and Clear of All Interests Pursuant to 11 U.S.C. 363(b) and 363(f), (II) Approving Sale Procedures, and (III) Granting Related Relief* (the “Settlement Order”) and the Settlement Order (any payment so authorized, an “Agreed Payment”).

ii. Paragraph 25:

Except as otherwise provided in the Settlement Order, until such time as the Lenders’ Pre-Petition Claim and the DIP Obligations shall have been indefeasibly paid and satisfied in full in accordance with the terms of the Pre-Petition Claim Documents and the DIP Facility Documents, the Trustee shall not be authorized to obtain credit secured by a lien or security interest in the Collateral or the DIP Collateral, other than the DIP Facility, without the prior written consent of the Agent, for itself and for and on behalf of the Lenders, or by order of the Court upon reasonable notice.

iii. Paragraph 35:

Except as otherwise provided in the Settlement Order, as set forth in the Final Financing Order, no priority claims shall be allowed that are or will be prior to or on parity with the secured claims of the Agent and the

Lenders against the Debtors and their estates arising under this Liquidating Order.

iv. Paragraph 43:

The Agent's consent and the Trustee's authority to use Cash Collateral, subject to the limitations above, shall be effective upon entry of this Liquidating Order to and including the earlier of: (a) notice of the occurrence of a Post-Petition Default, and (b) the occurrence of a default by the Trustee under the Settlement Order pursuant to the terms thereof, at which time all of the Trustee's authority to use Cash Collateral on behalf of the Debtors' chapter 7 estates and this Liquidating Order shall terminate, unless extended by written agreement of the Trustee and the Agent, a copy of which agreement shall be promptly filed with this Court by the Trustee (the "Expiration Date").

- c. Furthermore, the Liquidating Order shall be amended and restated such that Paragraphs 11 and 34 of the Liquidating Order shall be deleted in their entirety and shall be *void ab initio* effective on a go-forward basis as of the entry of this Order. Such deletion shall not affect the effectiveness of such terms of the Liquidating Order as in effect at any time prior to entry of this Order, and the terms of the Liquidating Order then in effect shall remain applicable to any period prior to entry of this Order.

APPROVAL OF AUCTION PROCEDURES

12. In the event that the Agent makes the BCBS Claims Auction Election within the 10-day notice period as described above and in the Order, the Trustee further requests that the Order contain the following provisions relating to what shall occur in the event that the auction procedures set for in the Agreement language referred to above is approved:

- a. The Application constitutes a motion to sell all property of the Estate free and clear of claims, liens, and interests pursuant to section 363(b) and 363(f) of the Bankruptcy Code.

b. The auction procedures set forth in Paragraph [5(h)] for the BCBS Claims Auction are hereby approved in their entirety and the Trustee is authorized and directed, upon the a BCBS Claims Auction Election, to conduct such BCBS Claims Auction, to act in accordance with the Settlement, and implement the terms thereof and hereof. The Application constitutes a motion for emergency or expedited hearing, as applicable, to approve any sale contemplated herein, and no other or further motion, pleading, or notice shall be required to obtain an emergency hearing from the Court to consider same. Upon a BCBS Claims Auction Election, the Trustee shall implement and carry out the following auction procedures consistent with the terms of the Settlement:

- i. Within one (1) calendar day following the date the Agent makes a BCBS Claims Auction Election, the Trustee shall provide written notice of the time and location of the BCBS Claims Auction, along with all other information concerning the BCBS Claims Auction that the Trustee deems appropriate and consistent with the Bankruptcy Code and the Bankruptcy Rules, to the parties identified on the electronic service list in these Cases (but not, for the avoidance of doubt, the master service list or the entire case mailing matrix) and such other parties as the Trustee determines advisable;
- ii. Within one (1) calendar day following the date the Agent makes a BCBS Claims Auction Election, the Trustee shall contact the Court and obtain an emergency hearing to be held within two (2) business days following the BCBS Claims Auction to consider approval of the results of the BCBS Claims Auction and entry of a sale order in form and substance acceptable to the Agent transferring the BCBS Claims and related assets to the prevailing bidder free and clear of claims, liens, and interests pursuant to section 363 of the Bankruptcy Code, and shall serve the parties identified in Paragraph [10(a)] with same;
- iii. Within one (1) business day following the BCBS Claims Auction, Agent shall file a notice on the docket of the Court containing the proposed sale order in form and substance acceptable to the Agent for the sale of the BCBS Claims to the prevailing bidder at the BCBS Claims Auction, and shall serve the parties identified in Paragraph [10(a)] with same; and

- iv. Within one (1) business day following the Court's entry of the sale order in form and substance acceptable to the Agent approving the sale of the BCBS Claims to the prevailing bidder at the BCBS Claims Auction (or such time as may be extended by such prevailing bidder), the Trustee shall take all measures as may be required by such prevailing bidder to consummate the sale of the BCBS Claims.
- c. Except as provided above, the Trustee shall not be required to provide any other or further notice of the BCBS Claims Auction or the hearing to consider approval of the sale of the BCBS Claims following the BCBS Claims Auction, and the Trustee's compliance with the notice procedures set forth above shall be deemed to be (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Court Rules of the United States Bankruptcy Court for the Western District of Texas, and (iii) adequate and sufficient under the circumstances of these Cases, and no other or further notice is required. Notice of the Application and the notice procedures set forth above provide a reasonable opportunity for parties in interest and creditors in these Cases to object or be heard regarding the relief requested in the Application.
- d. The Trustee and the Agent shall reasonably agree to establish auction and/or sale procedures to govern the sale of any and/or all assets of the Estate, as applicable, upon the Trustee's proposed abandonment of Estate assets or the dismissal of any of the Cases under Paragraph [5(r)] prior to the date of such abandonment and/or dismissal, and the Trustee shall implement the terms and carry out such auction and/or sale procedures with sufficient time and notice to consummate any such sale prior to such abandonment and/or dismissal, as applicable.

- e. The Trustee is authorized to take all actions necessary to effectuate the BCBS Claims Auction consistent herewith or to effectuate a sale of any and/or all assets of the Estate, as applicable, upon the Trustee's proposed abandonment of Estate assets or the dismissal of any of the Cases under Paragraph [5(r)].
- f. The Agent shall have the right to credit bid at the BCBS Claims Auction and at any other auction or sale of any Estate property under this Order or otherwise. All of the Agent's and the Lenders' rights to credit bid under this Order, the Final Financing Order, the Loan Documents, the Pre-Petition Claim Documents, and the DIP Facility Documents or otherwise are hereby approved or confirmed, as applicable.

VI. DISTRIBUTION MECHANICS

13. The Trustee requests that in accordance with Paragraph [5(l) and (n)] of the Order, and subject to the provisions governing any dispute as contemplated in Paragraph [5(n)], the Trustee shall be authorized to make distributions of Net BCBS Proceeds to the Agent and Downton, as applicable, in accordance with the terms of the Settlement. The Trustee furthermore requests that he be authorized to make any such distribution and any and all other distributions of property of the Estate without the need to seek further approval of the Court or to file any motion, notice, or other pleading with the Court or on the Court's docket.

VII. LITIGATION FINANCING FROM THE AGENT

14. The Trustee further requests that, pursuant to section 364 of the Bankruptcy Code, the following provisions be included in the Order as a means of ensuring that sufficient funds will be available to liquidate litigation claims:

- a. The Trustee, on behalf of the Estate, is hereby authorized, pursuant to section 364

of the Bankruptcy Code, to obtain post-conversion loans, credit, and/or financing from the Agent and the Lenders strictly in accordance with the terms of the Settlement and this Order, in an amount not to exceed \$10 million (the “**Litigation Financing**”), solely for the purposes set forth herein and to fund the costs and expenses relating to the BCBS Arbitration Claims.

- b. The Agent, on behalf of itself and the Lenders, may provide such Litigation Financing, subject to the terms of the Settlement and this Order and strictly for the purposes set forth therein. The Trustee, on behalf of the Estate, is authorized to execute, deliver, and perform under any credit documents, agreements, or other documentation as may be negotiated by the Parties as may be required by the Agent and the Lenders to document the terms of the Litigation Financing, and the terms of such documentation are hereby approved in their entirety.
- c. The Agent, for itself and for and on behalf of the Lenders, is entitled to and is hereby granted first-priority claims, priming liens in and security interests on all property of the Estate and the protections of good-faith credit providers under sections 364(c)(1), (c)(2), and, where applicable, (c)(3), 364(d)(1), and 364(e) of the Bankruptcy Code to secure the Litigation Financing, senior to all other liens and security interests, including adequate protection and replacement liens granted in these Cases, which priming liens and security interests shall secure the Litigation Financing and all obligations thereunder (including, without limitation, principal and any other extensions of credit, interest, fees, expenses, and any fees and expenses of the Agent and the Lenders, however incurred) (the “**Litigation Financing Liens**”). The Litigation Financing Liens securing the Litigation

Financing are valid and automatically perfected first-priority priming liens and security interests, and are granted in and attach to any and all property of the Estate.

- d. The Agent, for itself and on behalf of the Lenders, is hereby granted superpriority administrative claims and all other benefits and protections allowable under sections 364(c)(1), 507(b), and 503(b)(1) senior in priority to all other administrative claims against the Estate on account of the Litigation Financing.
- e. As adequate protection of the Agent's and the Lenders' interest in the property of the Estate pursuant to the Litigation Financing Liens granted hereby and for the Trustee's use of such Litigation Financing (and only so long as a default under the applicable documents governing the Litigation Financing has not occurred), the Trustee is authorized to use the funds under the Litigation Financing strictly in accordance with the Estimate and the Settlement.
- f. The Agent's and the Lenders' consent to the Trustee's use of and their agreement to extend credit under the Litigation Financing extend only to amounts due under the Litigation Financing and amounts actually incurred in accordance with the Estimate and the Settlement.
- g. This Order shall be sufficient and conclusive evidence of the priority, perfection, attachment, and validity of all of the Litigation Financing Liens, and such Litigation Financing Liens shall constitute valid, automatically perfected and unavoidable security interests and liens, with the priorities granted and created herein, effective as of the date hereof, without the necessity of creating, filing, recording, or serving any financing statements, mortgages, or other documents

that might otherwise be required under federal or state law in any jurisdiction or the taking of any other action to validate or perfect the Litigation Financing Liens granted to the Agent and the Lenders by this Order.

- h. The Trustee is hereby authorized and directed to perform all acts, take any action, and execute and comply with the terms of any documentation

MISCELLANEOUS

15. The Trustee further requests that the Order contain the following miscellaneous provisions relating to the Agreement intended to effectuate implementation of the Agreement:

- a. The terms and provisions of this Order and any actions taken pursuant hereto shall survive entry of any order that may be entered in the Cases dismissing these Cases, except for the Trustee's authority to use Cash Collateral on behalf of the Estate (which shall immediately terminate upon entry of such an order).
- b. Consistent with the Final Financing Order and the Liquidating Order, the Court hereby expressly retains jurisdiction over all persons and entities, co-extensive with the powers granted to the Court under the Bankruptcy Code, to enforce the terms of this Order and to adjudicate any and all disputes in connection therewith by motion and without necessity of an adversary proceeding.
- c. Nothing in this Order or any consent for the Trustee's use of Cash Collateral on behalf of the Estate shall constitute a waiver by the Agent of any previous or other default, breach, or other right under the Final Financing Order or the Liquidating Order.
- d. This Order shall be and hereby is binding upon the Trustee, the Estate, the Debtors, all creditors of the Estate, and all other parties in interest in these Cases

and their respective successors and assigns, as applicable, for all purposes.

- e. The requirements of Bankruptcy Rule 6004(a) are waived.
- f. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), and 6006, the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.
- g. Notwithstanding anything to the contrary in this Order and unless otherwise agreed to in writing by the Agent, a condition precedent to the effectiveness of this Order and to the agreements of the Agent, on behalf of itself and the Lenders, hereunder shall be that this Order shall (i) have been entered on or before July 17, 2019 and (ii) not be subject to any further motion and shall have become final and non-appealable and not subject stay or pending appeal on or before July 31, 2019, and in the event this condition precedent is not satisfied, this Order and the agreements of the Agent, on behalf of itself and the Lenders, hereunder shall be null and void without further Order or action of this Court and the terms and provisions of the Liquidating Order shall apply.
- h. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

VIII. SETTLEMENT AGREEMENT APPROVED UNDER RULE 9019

16. Federal Rule of Bankruptcy Procedure 9019 provides that the Court, upon notice and a hearing, may approve a compromise or settlement. FED. R. BANKR. P. 9019(a). In general, the Court should approve a proposed compromise if it is fair, equitable and in the best interest of the estate. *See In re Cajun Electric Power Coop., Inc.*, 199 F.3d 349, 355 (5th Cir. 1997); *In re Foster Mortgage Corp.*, 68 F.3d 914, 917 (5th Cir. 1995).

17. The Court has wide discretion to determine whether a proposed compromise should be approved. In determining whether a compromise is fair, equitable and in the best interest of the estate, the Court should consider: (i) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (ii) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and (iii) all other factors bearing on the wisdom of the compromise, such as the interest of the creditors and the extent to which the settlement was the product of arms-length negotiation. *Cajun Electric*, 199 F.3d at 355-56; *see also Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *Matter of Jackson Brewing Co.*, 624 F.2d 599, 604 (5th Cir. 1980).

18. The proposed agreement between the Trustee and the Agent on behalf of itself and the Lenders is fair, equitable and in the best interest of the estate. The compromise satisfies all factors in *Cajun Electric*. With respect to the first factor, the relationship between the Debtors and Agent on behalf of itself and the Lenders contains various factual and circumstantial issues which militate the conclusion that the proposed Agreement is the best result for each of the Debtors, the Agent on behalf of itself and the Lenders, and the creditors; it creates the prospect of a potential return to unsecured creditors, a result which is not likely to be possible if Agent forecloses on its collateral or the cases are dismissed.

19. For similar reasons, the second factor favors approval of the compromise. Agent on behalf of itself and the Lenders claim substantially all assets of the bankruptcy estates as their collateral and are owed greatly in excess of the cash available to satisfy their claims. Finalizing the Agreement now creates the prospect of not only reducing costs to the bankruptcy estates but also providing funding to pursue claims against third-parties.

20. Finally, approval of the compromise is supported by other factors. The compromise has been negotiated between the parties in good faith and at arms' length. The interest of creditors is well served by a resolution of the dispute without the attendant expense and delay of further litigation. It is probable that the only means of recovering funds sufficient to create a distribution to unsecured creditors relies upon the Agreement being consummated.

21. Based on the foregoing, the Trustee believes that the compromise is fair, equitable and in the best interest of the Debtor, the bankruptcy estate, the creditors, and all parties-in-interest. Accordingly, the Trustee requests the Court approve the Agreement.

WHEREFORE, PREMISES CONSIDERED, the Trustee respectfully request that the Court enter an order authorizing the Trustee to enter into the Agreement, and for such other and further as to which the Trustee may be entitled.

Respectfully submitted,

By: /s/ James Studensky

James Studensky, Chapter 7 Trustee

GRAVES, DOUGHERTY, HEARON & MOODY, P.C.
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Austin, TX 78701
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Facsimile: 512.536.9926
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By: /s/ Brian T. Cumings

Brian T. Cumings

**COUNSEL FOR JAMES STUDENSKY,
CHAPTER 7 TRUSTEE**

CERTIFICATE OF SERVICE

I hereby certify that on this the 25th day of June, 2019, I electronically filed this Application with the Clerk of Court using the CM/ECF system which will send notification of such filing to those receiving electronic service, or service was made as reflected below and as reflected on the Service List appended to this Application.

Little River Healthcare Holdings, LLC
Attn: Ronald Winters, Former Chief
Restructuring Officer
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rwinters@hcmpllc.com

Office of the United States Trustee
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Shane.P.Tobin@usdoj.gov

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Debtors' Counsel

By: /s/ Brian T. Cumings
Brian T. Cumings

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

In re:)	
)	Case No. 18-60526 (rbk)
Little River Healthcare Holdings, LLC, <i>et al.</i>)	
)	Chapter 7
Debtors. ¹)	
)	(Jointly Administered)

**AGREED ORDER (I) AUTHORIZING CHAPTER 7 TRUSTEE TO (A) ENTER INTO
AND PERFORM UNDER SETTLEMENT PURSUANT TO 11 U.S.C. § 105(a) AND
BANKRUPTCY RULE 9019, (B) USE CASH COLLATERAL AND GRANT ADEQUATE
PROTECTION, (C) OBTAIN POST-PETITION FINANCING ON A SECURED,
SUPERPRIORITY BASIS, AND (D) SELL ESTATE PROPERTY FREE
AND CLEAR OF ALL INTERESTS PURSUANT TO 11 U.S.C. § 363(B) AND 363(F),
(II) APPROVING SALE PROCEDURES, AND (III) GRANTING RELATED RELIEF**

Upon the [*Motion for Order (I) Authorizing Chapter 7 Trustee to (A) Enter Into and
Perform Under Settlement Pursuant to 11 U.S.C. § 105(a) and Bankruptcy Rule 9019, (B) Use*

¹ The Debtors in these chapter 7 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Compass Pointe Holdings, LLC (1142), Little River Healthcare Holdings, LLC (7956), Timberlands Healthcare, LLC (1890), King's Daughters Pharmacy, LLC (7097), Rockdale Blackhawk, LLC (0791), Little River Healthcare - Physicians of King's Daughters, LLC (5264), Cantera Way Ventures, LLC (7815), and Little River Healthcare Management, LLC (6688). The Debtors' mailing address is 1700 Brazos Ave, Rockdale, TX 76567.

Cash Collateral and Grant Adequate Protection, (C) Obtain Post-Petition Financing on a Secured, Superpriority Basis, and (D) Sell Estate Property Free and Clear of All Interests Pursuant to 11 U.S.C. 363(b) and 363(f), (II) Approving Sale Procedures, and (III) Granting Related Relief [Docket No. [●]] (the “**Motion**”) filed by the chapter 7 trustee (the “**Trustee**”) for the estates (collectively, the “**Estate**”) of the debtors (collectively, the “**Debtors**”) in the above-captioned chapter 7 cases (collectively, the “**Cases**”) seeking, *inter alia*, the entry of an order (this “**Order**”) granting the relief set forth herein; and this court (the “**Court**”) having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.
2. Any objections to the Motion not resolved or otherwise withdrawn are **OVERRULED**.

APPROVAL OF SETTLEMENT

3. Effective as of the date of entry of this Order, the Trustee, on behalf of the Debtors’ chapter 7 estates (the “**Estate**”), shall be deemed to have entered into the settlement set forth herein (the “**Settlement**”) with Monroe Capital Management Advisors, LLC, as

administrative agent (in such capacity, the “**Agent**”), on behalf of itself and the other lenders (the “**Lenders**”) party to that certain *Credit Agreement* dated as of March 31, 2015 (as amended, restated, supplemented, and/or otherwise modified from time to time), pursuant to section 105(a) of the Bankruptcy Code² and Federal Rule of Bankruptcy Procedure (the “**Bankruptcy Rules**”) 9019, and all of the terms and conditions of the Settlement set forth herein are hereby approved.

4. The Trustee, on behalf of the Estate, and the Agent, on behalf of itself and the Lenders, are hereby authorized to take any and all acts necessary to effectuate and implement the Settlement and the terms of this Order.

TERMS OF SETTLEMENT

5. Provided that the condition precedent in paragraph 30 shall have been met, paragraphs [5(a)] through [5(r)] of this Order shall constitute the terms of the Settlement among the Trustee, on behalf of the Estate, and the Agent, on behalf of itself and the Lenders (the Trustee and the Agent, the “**Parties**”). The terms of such Settlement are hereby authorized and approved in their entirety and shall be binding upon the Trustee, the Estate, the Agent, the Lenders, all creditors of the Debtors and the Estate, and all other parties in interest in these Cases.

- (a) The Parties agree that the goal of the Settlement is to provide a functional path to allow the Trustee and the Estate to pursue the liquidation of all assets in the Estate, including the liquidation of claims held by the Estate but which are subject to the Agent’s and the Lenders’ liens through and pursuant to various Loan Documents (as defined in the Final Financing Order³), the Pre-Petition Claim Documents (as defined in the Final

² “**Bankruptcy Code**” shall mean 11 U.S.C. §§ 101 *et seq.*

³ “**Final Financing Order**” shall mean the Court’s *Final Order (I) Authorizing Debtors to (A) Use Cash Collateral on a Limited Basis and (B) Obtain Post-Petition Financing on a Secured, Superpriority Basis, (II) Granting Adequate Protection, (III) Scheduling a Final Hearing, (IV) Modifying the Automatic Stay, and*

Financing Order), the DIP Facility Documents (as defined in the Final Financing Order), the Final Financing Order, the Liquidating Order,⁴ or otherwise, and to provide for mechanisms to fund the payment of chapter 7 administrative expense claims, including litigation expenses involving Estate claims and causes of action against Blue Cross and Blue Shield of Texas (“**BCBS of Texas**”, and together with any of its subsidiaries, affiliates, parents, or other related entities or persons, “**BCBS**”). The automatic stay of section 362 of the Bankruptcy Code shall remain lifted as to the Agent and the Lenders in accordance with the Final Financing Order, as confirmed by the Liquidating Order; *provided, however*, that the Agent, on behalf of itself and the Lenders, shall not exercise its rights or remedies as to Estate assets in a manner that would deprive the Trustee or the Estate of rights under this Settlement unless the Trustee (i) breaches or otherwise defaults under this Settlement, and the Agent provides notice of such breach or default with a 10-day opportunity for the Trustee to cure such breach or default or to obtain from the Court an order that no breach or default in fact occurred, or (ii) seeks any of the relief as described in Paragraph [5(r)] below. The terms “Trustee” and “Estate” as used herein shall mean and include both the Estate and the Trustee acting on behalf of the Estate. Subject to the Agent’s and the Lenders’ rights set forth in this Paragraph [5(a)] and Paragraph [5(r)] below, the Agent, on behalf of itself and the Lenders, agrees that it will not foreclose its liens against any of the BCBS Claims (as defined below) after the Trustee has settled same or reduced same to judgment pending collection and distribution in accordance with the terms of this Settlement; *provided, however*, that the Trustee shall continue to prosecute all BCBS Claims for collection and any post-settlement or adjudication matters or proceedings. The Agent acknowledges that the Trustee might seek a temporary restraining order or other injunctive relief from the Court; *provided, however*, that the Agent does not consent to the entry of any such temporary restraining order or other injunctive relief, and reserves and any all of its rights and remedies to contest or object to same, and to commit such other acts or take such other actions as are available to the Agent cumulatively, including without limitation, under the Loan Documents, the Pre-Petition Claim Documents, the DIP Facility Documents, orders entered by the Court in these Cases or the Debtors’ chapter 11 cases, and applicable law. Subject to the Agent’s rights set forth in this Paragraph [5(a)] and Paragraph [5(r)] below, the Agent agrees that it will not foreclose its liens against the Estate’s real property assets

(V) *Granting Related Relief* [Docket No. 346] (as amended, extended, supplemented, or otherwise modified from time to time).

⁴ “**Liquidating Order**” shall mean the Court’s *Interim Order (I) Authorizing Chapter 7 Trustee to (A) Liquidate and Protect Estate Assets, (B) Use Cash Collateral and Grant Adequate Protection, and (C) Continue Cash Management System, and (II) Granting Related Relief* [Docket No. 629] (as amended, extended, supplemented, or otherwise modified from time to time).

and other residual assets not specifically identified herein; *provided, however*, that (i) the Trustee sells such assets on a date that is on or prior to 180 days after June 5, 2019 or such later date as may be agreed to in writing by the Agent and filed in a notice on the docket of the Cases, and (ii) the proceeds of such sale by the Trustee shall remain in the Estate to be used in accordance with the Estimate (as defined below).

- (b) Subject to the availability of adequate Estate funds, funding provided by the Agent, or third-party litigation funding, the Trustee will prosecute the claims and causes of action asserted by Debtor Rockdale Blackhawk, LLC d/b/a Little River Healthcare against BCBS of Texas in the proceedings styled as Case No. 01-18-0001-0136 pending before the American Arbitration Association (the “**BCBS Arbitration Claims**”), and any other claims and causes of action of the Debtors or the Estate against BCBS (all such claims and causes of action, including the BCBS Arbitration Claims, the “**BCBS Claims**”), and the Trustee, in his reasonable discretion, may pursue legal action and claims and causes of action in the following matters and against the following parties, as applicable:
 - (i) the Debtors’ directors and officers (the “**D&O Claims**”);
 - (ii) claims and causes of action arising under chapter 5 of the Bankruptcy Code (the “**Avoidance Actions**”);
 - (iii) Huron Consulting Group, Inc., Health Management Partners, LLC, and H2C Analytics, LLC; and
 - (iv) any other Estate claims and causes of action.
- (c) An estimate of agreed cash use (the “**Estimate**”) agreeable to the Agent and the Trustee in writing shall be established for matters related to the Estate for the use of all cash of the Estate, both Cash Collateral (as defined in the Liquidating Order) of the Agent and other available cash, for (i) pursuit of legal actions outlined in Paragraph [5(b)], and (ii) payment of reasonable and allowed chapter 7 administrative expense claims to complete all other matters the Trustee is engaged in related to the wind-down of the Estate, including the payment in the ordinary course of business of fees and expenses of professionals and other persons that the Trustee chooses to retain, including but not limited to the following:
 - (i) an accountant;
 - (ii) Ryan Downton and the Law Offices of Ryan Downton;
 - (iii) Sean McKenna;
 - (iv) EPIQ Bankruptcy Solutions (claims servicing and noticing agent);

- (v) Graves Dougherty Hearon & Moody, P.C.;
 - (vi) HSSK, LLC;
 - (vii) Duane Morris LLP;
 - (viii) Tony Fay & Associates; and
 - (ix) AlixPartners, LLC.
- (d) The Estimate may be revised by written consent of the Agent and the Trustee to account for new developments or other reasons as the Parties may determine. Except as otherwise provided herein, for each [bi-weekly/monthly]⁵ period set forth in the Estimate, the actual disbursements made by the Trustee during such period shall not in any event exceed the aggregate amount of the disbursements estimated to be made during such period by more than [●] percent ([●]%).⁶ Notwithstanding the foregoing, it shall not be a breach of this Settlement if the Trustee pays vendors or Estate professionals amounts in excess of the Estimate if the aggregate amounts paid in excess of the Estimate do not exceed \$200,000. The Estimate will include the Trustee's use of Cash Collateral arising from net proceeds of the Debtors' accounts receivable and real property in the amount of \$500,000, up to \$250,000 of which shall be reserved and used, if and as necessary, for the Trustee's payment on behalf of the Estate of claims against the Estate arising under section 503(b)(8), as set forth in the Liquidating Order and the *Order Converting Chapter 11 Cases to Chapter 7* [Docket No. 547] and, to the extent such \$250,000 is not necessary for the payment of claims against the Estate arising under section 503(b)(8), the balance of such amount may be used to pay other expenses in the Estimate. The Estimate will include the use of all other Estate funds as well as funds that may be provided by the Agent or third-party litigation funding. The Estimate shall be a limit on the Agent's consent to use of its Cash Collateral by the Trustee and the Estate, but shall not be interpreted as any other limit on payment of chapter 7 administrative expense claims to any particular person or categories of persons, and serves as a guideline to monitor the availability of Estate funds for use in pursuing the claims described in Paragraph [5(b)] above. The Estimate shall include allowance for the payment of quarterly fees payable to the Office of the United States Trustee (the "*U.S. Trustee*") pursuant to 28 U.S.C. § 1930 (the "*UST Quarterly Fees*").
- (e) Except as expressly provided herein, the Agent shall retain all of its liens, whether in existence as of the Petition Date [(as defined in the Motion)],

⁵ [NTD: to be determined]

⁶ [NTD: to be determined]

granted by the Court pursuant to the Final Financing Order or the Liquidating Order, or granted under the under the Loan Documents, the Pre-Petition Claim Documents, DIP Facility Documents, or otherwise, but consents to the following carve-outs (collectively, the “**Settlement Carve-Out**”) of asset proceeds (after payment of the applicable statutory commission payable to the Trustee calculated pursuant to section 326 of the Bankruptcy Code (the “**Trustee Fee**”)) for use by the Trustee first for payments contemplated under the Estimate and, following payment in full of such payments, then subsequently to payment of other administrative expense claims and general unsecured claims in accordance with Bankruptcy Code § 726:

- (i) Previously agreed-upon funds of \$180,000.00 shall remain free and clear of the Agent’s and the Lenders’ liens to the extent set forth in (A) the *Order Granting Chapter 7 Trustee’s Motion for Authority to Sell Property of the Estate Free and Clear of All Interests Pursuant to 11 U.S.C. §§363(b) and 363(f) and to Authorize Apportionment of All Proceeds and Distribution of Portion of the Proceeds* [Docket No. 703], (B) the *Order Granting Chapter 7 Trustee’s Motion for Authority to Sell Property of the Estate Free and Clear of All Interests Pursuant to 11 U.S.C. §§363(b) and 363(f), to Assume and Assign a Software Licensing Agreement, and to Authorize Apportionment of All Proceeds and Distribution of Portion of Proceeds* [Docket No. 708], and (C) the *Order Granting Chapter 7 Trustee’s Motion for Authority to Sell Property of the Estate Free and Clear of All Interests Pursuant to 11 U.S.C. §§363(b) and 363(f) and to Authorize Apportionment of All Proceeds and Distribution of Portion of the Proceeds and Rejection of Lease of Real Property Associated with Purchased Personal Property* [Docket No. 759]. Additionally, the Estate will receive \$120,000.00 from the sale of the Estate’s real property located in Rockdale, Texas (old HEB building) free and clear of the Agent’s liens, subject to Paragraph [5(r)] below.
- (ii) Cash proceeds of \$220,000.00 from the auction of medical equipment to be conducted by Centurion Services, with these proceeds being used first for medical records disposition and then being used for other chapter 7 administrative expense claims.
- (iii) The first \$500,000.00 in net proceeds (after payment of the Trustee Fee, the Estate’s counsel’s fees, and expenses and reimbursement to the Agent of all costs paid by the Agent or paid using Cash Collateral, directly related to recovery on the D&O Claims) received by the Estate from recoveries on D&O Claims shall be free and clear of the Agent’s liens, subject to Paragraph [5(r)] below. Thereafter, 60% of the net proceeds recovered from D&O Claims (after payment of the Trustee Fee, the Estate’s counsel’s

fees, and expenses and reimbursement to the Agent of all costs paid by the Agent or paid using Cash Collateral, directly related to recovery on the D&O Claims) shall be subject to the Settlement Carve-Out.

- (iv) The first \$500,000.00 in net proceeds (after payment of the Trustee Fee, the Estate's counsel's fees, and expenses and reimbursement to the Agent of all costs paid by the Agent or paid using Cash Collateral, directly related to recovery on the Avoidance Actions) received by the Estate from Avoidance Actions shall be free and clear of Monroe's liens, subject to Paragraph [5(r)] below. Thereafter, 60% of the net proceeds received by the Estate from recoveries on Avoidance Actions (after payment of the Trustee Fee, the Estate's counsel's fees, and expenses and reimbursement to the Agent of all costs paid by the Agent or paid using Cash Collateral, directly related to recovery on the Avoidance Actions) shall be subject to the Settlement Carve-Out.
- (v) (A) the first \$125,000.00 in net proceeds (after payment of the Trustee Fee, the Estate's counsel's fees, and expenses and reimbursement to the Agent of all costs, paid by the Agent or paid using Cash Collateral, directly related to recovery on the Estate's claims and causes of action against Little River Healthcare – Meridian Surgery Center LLC ("**Meridian**", and such claims and causes of action, the "**Meridian Claims**")) received by the Estate from the Meridian Claims; (B) the first \$125,000.00 in net proceeds (after payment of the Trustee Fee, the Estate's counsel's fees, and expenses and reimbursement to the Agent of all costs, paid by the Agent or paid using Cash Collateral, directly related to recovery on claims and causes of action against Medicare (the "**Medicare Claims**")) received by the Estate from the Medicare Claims, and (C) the first \$125,000.00 in net proceeds (after payment of the Trustee Fee, the Estate's counsel's fees, and expenses and reimbursement to the Agent of all costs, paid by the Agent or paid using Cash Collateral, directly related to recovering other claims against payors, other than the BCBS Claims (the "**Payor Claims**")) received by the Estate from the Payor Claims shall be free and clear of Monroe's liens, subject to subject to Paragraph [5(r)] below. Thereafter, 20% of the net proceeds received by the Estate from the Meridian Claims, the Medicare Claims, and the Payor Claims (after payment of the Trustee Fee and reimbursement to the Agent of all costs paid by the Agent or paid using Cash Collateral collateral directly related to recovering the Meridian Claims, the Medicare Claims, and the Payor Claims) shall be subject to the Settlement Carve-Out.

- (f) Any determination of whether costs of the Agent in Paragraph [5(e)(i)-v)] above are directly related to recovery of an asset for purposes of determining the Settlement Carve-Out as described herein shall be made on a good-faith estimated basis by the Agent.
- (g) Should the Estate through pursuit of the BCBS Claims receive Net BCBS Proceeds (as defined below) sufficient to satisfy in full all of the Agent's and the Lenders' claims against the Debtors and the Estate (the "**Lenders' Claims**"),⁷ the 40% portion of net proceeds the Agent earns from D&O Claims and Avoidance Actions and the 80% of Other Litigation Claims⁸ will be shared by the Parties based on the percentages identified in the table attached as **Exhibit [1]** rather than the applicable percentages identified above (for the avoidance of doubt, the terms of such Exhibit shall be given effect as if fully set forth herein) (*i.e.*, the Agent will consent to leaving its 40% share of net proceeds from D&O Claims and Avoidance Actions and 80% of Other Litigation Claims until such time as the BCBS Claims are completed).
- (h) The Agent and the Trustee will consent to the Trustee pursuing the BCBS Claims on behalf of the Estate. Any settlement offer related to the BCBS Claims (a "**BCBS Settlement Offer**") received by the Trustee shall be disclosed to the Agent. Should the Agent reject a BCBS Settlement Offer the Trustee deems acceptable, the Trustee shall provide the Agent with ten (10) days' notice of his intent to file a motion under Bankruptcy Rule 9019 with respect to such BCBS Settlement Offer. During such 10-day notice period, the Agent shall have the option to elect (the "**BCBS Claims Auction Election**") that (i) the motion to approve such BCBS Settlement Offer not be filed and (ii) the Trustee will conduct an auction process for the sale of the BCBS Claims under section 363 of the Bankruptcy Code (the "**BCBS Claims Auction**"), including all rights, contracts, engagement agreements, privileges, work product, information, and records relating to same, in each case as determined by the Agent, on an expedited basis with an auction being held with notice of the auction to

⁷ The Agent and the Trustee acknowledge and agree that (a) there are binding stipulations and findings as to the Lenders' Claims set forth in the Final Financing Order, (b) the Lenders' Claims also include such other amounts including professional fees to the fullest extent permitted by the under the Loan Documents, the Pre-Petition Claim Documents, the DIP Facility Documents, the Final Financing Order, the Liquidating Order, any other orders of the Court, and applicable law, and (c) the Lenders' Claims will continue to increase with the passage of time.

⁸ "**Other Litigation Claims**" as used herein shall mean litigation claims and causes of action of the Estate but expressly excluding (a) the BCBS Claims, (b) D&O Claims, (c) Avoidance Actions, (d) claims against Huron Consulting Group, Inc., (e) claims against Health Management Partners, LLC (f) claims against H2C Analytics, LLC, (g) Meridian Claims, (h) Medicare Claims, and (i) assets or proceeds arising from asset receipts, collections, transfers, sales, abandonment, or disposition of any type including, without limitation, being or from accounts, chattel paper, contracts, commercial tort claims, equipment, inventory, intangibles, fixtures, or real estate.

the case electronic service list (not the master service list or entire case mailing matrix) within ten (10) days of such BCBS Claims Auction Election at which the Agent may credit bid with the intent of acquiring and continuing pursuit of the BCBS Claims. The pleadings (including without limitation, the Motion) seeking approval of the Settlement shall be deemed a motion to sell such BCBS Claims pursuant to section 363 of the Bankruptcy Code and such related assets per the expedited BCBS Claims Auction procedure above. The Trustee may obtain an expedited hearing within two (2) business days after such BCBS Claims Auction for the Court to consider entry of a sale order in form and substance acceptable to the Agent transferring the BCBS Claims and such related assets to the Agent (or other prevailing bidder at the BCBS Claims Auction) free and clear of claims and liens. In the event such BCBS Claims Auction Election results from a rejection of a BCBS Settlement Offer deemed acceptable to the Trustee, the Agent will credit bid at the BCBS Claims Auction an amount greater than or equal to the BCBS Settlement Offer received by the Trustee. In the event that the Agent's credit bid is the highest amount bid at the BCBS Claims Auction, the Trustee shall consummate the sale of the BCBS Claims and such related assets to the Agent which shall not affect, reduce, or impair in any way the scheduled distributions to the Estate or Downton (as defined below) from any recovery on the BCBS Claims as provided in any provision in this Settlement. For the avoidance of doubt, the Agent shall not be required to bid any cash as part of its credit bid for the BCBS Claims, and the Agent's credit bid shall receive credit and include any amount of expenses, the Trustee Fee, and expenses, and any amount that may be shared per Paragraph [5(j)] below based on an assumed adjudication of the BCBS Claims. Except pursuant to the Trustee's option set forth below in this Paragraph [5(h)], the sale or other acquisition of the BCBS Claims by the Agent by any means shall not affect, reduce, or impair in any way the scheduled distributions to the Estate or Downton from any recovery on the BCBS Claims as provided in Paragraph [5(j)] below or any other provision in this Settlement. In the event the Agent acquires the BCBS Claims, all proceeds from the recovery of the BCBS Claims (the "**BCBS Proceeds**") shall be held by the Agent in trust until such distributions to the Estate and Downton are paid in full, which shall occur within thirty (30) days after the Agent's receipt of BCBS Proceeds. After the sale or other acquisition of the BCBS Claims by the Agent, the Estate will have the same information cooperation rights as the Agent. The obligations for payment of Net BCBS Proceeds by the Agent to the Estate and Downton shall be deemed absolute and survive the closing of the Cases upon approval of this Settlement by the Court after notice and hearing. If (i) Duane Morris LLP, as special counsel to the Debtors and the Estate, recommends the acceptance of a settlement offer to the Estate, (ii) the Trustee agrees with such recommendation and gives notice to the Agent of his intention to obtain court approval as set forth above, (iii) the Agent

makes a BCBS Claims Auction Election to require a BCBS Claims Auction and 363 sale to be conducted by the Trustee, (iv) the Agent credit bids on the BCBS Claims as set forth above, and (v) is the prevailing bidder at the BCBS Claims Auction, then the Trustee shall have the ability to pursue either of two options described herein. The Trustee may elect to notify required parties in writing within five (5) business days of the Agent's acquisition of the BCBS Claims either that (x) the sale or other acquisition of the BCBS Claims by the Agent will not affect, reduce, or impair in any way the scheduled distributions to the Estate or Downton from the Net BCBS Claims as provided in Paragraph [5(j)] below or any other provision in this Settlement, or (y) the Estate shall be paid from the first Net BCBS Proceeds received by the Agent the amount that the Estate would have been entitled to in accordance with Paragraph [5(j)] below if such rejected BCBS Settlement Offer had been consummated. In such circumstance, the Estate shall forego and not be paid any amounts the Estate would have been entitled to receive in accordance with Paragraph [5(j)] below that are on account of recoveries in excess of the amount of such rejected BCBS Settlement Offer. If the Trustee does not make such election within such five (5) business days of the Agent's acquiring the BCBS Claims, then the Agent shall choose within five (5) business days of the deadline for the Trustee to make such election whether [Paragraph 5(h)(x) or Paragraph 5(h)(y)] above applies.

- (i) The Trustee and his counsel shall reasonably cooperate to assist the Agent with obtaining information regarding the BCBS Claims, including the ability to reasonably observe proceedings and obtain discovery and communications. The Agent acknowledges that Duane Morris LLP is special counsel for the Estate only and does not represent the Agent. The Agent stipulates that Duane Morris LLP does not owe any duties to the Agent in its representation of the Estate.
- (j) The Agent and the Trustee consent to revenue sharing on Net BCBS Proceeds that may become available from settlement or adjudication of the BCBS Claims. As used in this Order, "***Net BCBS Proceeds***" shall mean the BCBS Proceeds less: (i) payment of the Trustee Fee, (ii) payment of the Estate's counsel's fees directly related to the BCBS Claims, and (iii) reimbursement of all of the Agent's Cash Collateral and monies expended for any fees and expenses incurred in the pursuit of the BCBS Claims and the Cases. Net BCBS Proceeds shall be made available to the Estate for distribution after payment of the amounts in subsections (i)-(iii) of the preceding sentence. A portion of such Net BCBS Proceeds available for distribution will be shared with the Estate in the percentages set forth in the table attached as **Exhibit [2]** (for the avoidance of doubt, the terms and the applicable percentages of such Exhibit shall be given effect as if fully set forth herein).

- (k) In addition to the Net BCBS Proceeds shared with the Estate in accordance with Paragraph [5(j)] above, a portion of Net BCBS Proceeds will be paid by the Estate to Ryan Downton and the Law Offices of Ryan Downton (collectively, “**Downton**”) in accordance with the engagement letter attached as Exhibit C to the *Application for Retention of Ryan Downton and the Law Office of Ryan Downton as Counsel and Consultant for the Estate Pursuant to 11 U.S.C. §327(e)* [Docket No. 792] that was approved by the *Order Granting Retention of Ryan Downton and the Law Offices of Ryan Downton as Counsel for the Estate Pursuant to 11 U.S.C. §327(e)* [Docket No. 887]. The remainder of Net BCBS Proceeds shall be paid to the Agent.⁹
- (l) The Trustee stipulates and agrees that all funds recovered from the BCBS Claims up to the amount of the Lenders’ Claims (including principal, interest, fees, costs, etc.) are the Agent’s Cash Collateral, subject to the distribution to the Estate set forth in Paragraph [5(j)] above, which is contemplated to apply unless there has been a dismissal of the Cases, in which case Paragraph [5(r)] shall apply. All BCBS Proceeds will be paid to the Estate, and after payment of the Trustee Fee, BCBS Claims expenses then due, and reimbursement of fees and expenses of the Agent in connection with the BCBS Claims and the Cases, the Trustee will make distributions to the Agent and Downton as provided in Paragraph [5(j)] and Paragraph [5(k)]. The Trustee will deposit such funds in a separate account and provide the Agent reconciliation reports with each distribution showing how such distribution has been calculated under this Settlement. If such reconciliation cannot be reasonably calculated in a manner for the Estate to make timely distributions, either of the Parties may seek to have the Court determine the appropriate amount of the distribution to effectuate this Settlement. Subject to the distribution to the Estate set forth in Paragraph [5(j)], and Paragraph [5(r)], and after payment in full of all of the Lenders’ Claims, the Estate’s share of such recovered funds in accordance with the table on Exhibit [2] will be deemed property of the Estate free and clear of the Agent’s liens, and will be available to pay creditors of the Estate in accordance with the priorities set forth in the Bankruptcy Code. All distributions to the Agent or on its behalf, under Paragraph [5(j)] or otherwise in this Settlement, shall be credited to the Lenders’ Claims until the Lenders’ Claims are satisfied in full, and any additional amounts from any of the sharing provisions or other terms herein shall be retained by the Agent. All distributions to the Agent under Paragraph [5(j)] shall be paid within thirty (30) days of the Estate’s receipt of BCBS Proceeds without further order or action of the Court. Except as otherwise provided in this Settlement, all distributions under Paragraph [5(j)] and this Paragraph [5(l)] or otherwise shall be

⁹ Downton shall be paid from Estate cash subject to the Estimate in Paragraph [5(c)] above for amounts owed as his hourly fees that are unrelated to his contingent fee payment calculated based upon Net BCBS Proceeds.

subject to the Trustee Fee, which will be deducted and held by the Estate prior to the distribution. The Agent and Downton shall each be liable for any of their respective taxes on distributions that either receive under this Settlement or through other distributions or payments by the Estate.

- (m) The Agent consents to fund from its Cash Collateral all expenses tied to the BCBS Claims until the BCBS Claims are completed. In addition to the fund transfer set forth in Paragraph [5(o)] below, and as further described in Paragraph [5(p)] below, the Agent guarantees up to \$1 million of the timely payment of fees and expenses due that are related to the BCBS Arbitration Claims, including but not limited to, Duane Morris LLP's fees and expenses, Downton's fees and expenses, and costs payable to the American Arbitration Association, provided that the Estate first exhausts all funds other than a reserve of \$250,000 available for payments of such fees and expenses and that the Trustee has in good faith used his best efforts to promptly liquidate assets of the Estate into cash that can fund such expenses. In that event, the Trustee will provide to the Agent the unpaid invoices that are due and the Agent will pay sufficient funds to the Estate so such invoices can be promptly paid by the Trustee. The Trustee shall have the option of engaging a litigation financing firm in his discretion to fund fees and expenses related to the pursuit of BCBS Claims other than the BCBS Arbitration Claims on behalf of the Estate subject to the consent of the Agent, not to be unreasonably withheld, and provided that the Lenders' Claim is adequately protected in connection with same.
- (n) The Agent consents to leaving all Cash Collateral generated through collection activities other than the BCBS Claims in the Estate until such time as the BCBS Claims are completed to be used in accordance with the Estimate. The Trustee agrees to use his best efforts to distribute all Net BCBS Proceeds and any other Cash Collateral due to the Agent within thirty (30) days of receipt of any BCBS Proceeds, and in the event of any dispute, the Agent shall have the right to seek payment of such Net BCBS Proceeds and any other Cash Collateral due to the Agent via a motion filed with the Court and set for hearing on an expedited basis.
- (o) The Agent shall transfer to the Estate the sum of \$800,000 of the \$1,670,000 distribution (the "***Distribution***") made by the Trustee to the Agent upon agreement among the Agent and the Trustee on the terms of the Estimate, which funds shall remain available for payment of estimated and agreed chapter 7 administrative expense claims, including expenses related to BCBS Claims. The Trustee may direct the Agent to deposit some or all of the \$800,000 in the escrow account of Duane Morris LLP to be used for payment of current and future fees and expenses related to the BCBS Arbitration Claims. Use of such funds for payment of expenses, distributions back to the Agent or otherwise will not be subject to the Trustee Fee. After payment of any legal expenses incurred by the Agent in

the BCBS Claims, the Agent will transfer any remaining funds from the Distribution to the Estate for the same purposes as stated above. Subject to the Estimate, the Agent consents to the payment of all agreed chapter 7 fees and expenses, and superior tax liens, in each of the Cases, including Trustee Fees and Trustee expenses, UST Quarterly Fees, and tax liens, and consents to the immediate distribution to the Agent of all remaining Cash Collateral in such Estate, in the Trustee's reasonable discretion, including but not limited to the following cases: Cantera Way Ventures, LLC, King's Daughters Pharmacy, LLC, Timberlands Healthcare, LLC. Upon receiving such distributions, the Agent agrees to make available such funds for payment of BCBS Claims' fees and expenses if such BCBS Claims have not be fully resolved and agrees to promptly deposit such funds with Duane Morris LLP for future payment of BCBS Claims' fees and expenses.

- (p) The Agent agrees to provide the Estate with additional capital as needed for legal, expert witness, and key employee expenses related to pursuit of the BCBS Arbitration Claims as a loan to the Estate with all protections available under section 364 of the Bankruptcy Code (subject to any carve-outs agreed upon in writing by the Agent). Such funds shall be made available upon depletion of cash on hand under control of the Trustee other than a reserve of \$250,000. Funds to be provided under this provision by the Agent shall be limited to the \$1 million set forth in Paragraph [5(m)] above. The Agent shall have the option to consent to additional funding up to \$10 million if requested by the Trustee. For the avoidance of doubt, the Trustee shall exhaust all cash on hand and immediately anticipated cash collections other than a reserve of \$250,000 before requesting funds under this provision from the Agent. The Trustee must also demonstrate that liquidation of any assets of the Estate is not being unduly delayed before requesting additional funds from the Agent. Any funds advanced under these conditions by the Agent shall be the first funds repaid in any distribution by the Agent. The Agent shall also earn [12]% interest, a 2% commitment fee on such [\$1 million] plus any increase to such principal amount, and a 2% exit fee upon repayment of such loans with such interest and fees to be paid to the Agent immediately upon attaining full recovery of all principal, interest, fees, expenses and royalties due from the Estate.
- (q) Court approval shall be required to approve any settlement of legal matters outlined in Paragraph [5(b)(i)-(iii)] above.
- (r) The Trustee and the Agent agree not to attempt to dismiss any of the Cases without Court approval, provided that the Trustee may not seek to abandon or dismiss any of the BCBS Claims without the Agent's consent. The Trustee shall retain the right to abandon other assets of the Estate other than the BCBS Claims that are of inconsequential value or burdensome to the Estate, provided that the Agent shall have the option to

elect to have the Trustee conduct a sale process for the sale of such assets pursuant to section 363 of the Bankruptcy Code in which the Agent shall have the option to credit bid prior to any such abandonment. The Trustee reserves the right to file a no-asset report in any Case and permit that Case to be administratively closed if the Trustee believes that such Estate holds no assets or assets of inconsequential value, and also retains the right to file a motion to reopen any closed Case if facts warranted the reopening of a Case. In the event that (i) the Trustee breaches or otherwise defaults under this Settlement, and the Agent provides notice of such breach or default with a 10-day opportunity for the Trustee to cure such breach or default or to obtain from the Court an order that no breach or default in fact occurred (including any use of Cash Collateral that has not been agreed upon with the Agent), or (ii) any of the Cases are dismissed, the Trustee and the Estate shall forfeit all rights to distributions or otherwise under this Settlement and any and all Settlement Carve-Outs described herein shall not include payment of any claims of the Estate with the sole exception of chapter 7 administrative expense claims paid or incurred in compliance with this Settlement prior to breach or, solely if the Agent has consented to a dismissal, the date of dismissal. Further, in the event of any dismissal of any of the Cases by the Trustee, and notwithstanding any other terms herein (i) there shall be no carve-outs (including but not limited to the Settlement Carve-Outs) except chapter 7 administrative expense claims as set forth in the prior sentence and expressly set forth in writing in such dismissal order, (ii) the Settlement Carve-Out or other carve-out provided for herein that is not expressly set forth in writing in such dismissal order shall be null and *void ab initio*, (iii) all rights, protections and remedies of the Agent under the Loan Documents, the Pre-Petition Claim Documents, the DIP Facility Documents, this Settlement, orders of the Court, and applicable law shall be preserved and continue following such dismissal of the Cases, and the Agent shall have the option exercised upon notice to the Trustee prior to such dismissal for the Trustee to conduct a process to sell assets of the Estate pursuant to section 363 of the Bankruptcy Code as designated by the Agent (which could be up to all assets of the Estate less only chapter 7 administrative expense claims paid or payable through the date of any breach or, solely if the Agent has consented to a dismissal, the date of dismissal) in exchange for a credit to the Lenders' Claims in an amount to be determined, and (iv) the security interests and liens of the Agent and the Lenders shall be reinstated as to any and all property of the Estate held free and clear with the same priority as such security interests and liens had prior to such property becoming free and clear, and all cash held by the Trustee and the Estate, except for allowed chapter 7 administrative expense claims, carve-outs as set forth in the prior sentence and expressly set forth in writing in such dismissal order, shall be paid to the Agent prior to such dismissal becoming effective. In the event of the abandonment of any assets of the Estate by the Trustee, the Agent shall have the option exercised upon notice to the

Trustee prior to acquire any such abandoned assets of the Estate in exchange for a credit to the Lenders' Claims as determined by the Agent.

LIQUIDATING ORDER

6. Effective as of the entry of this Order, the Liquidating Order is hereby approved, and the Court grants the relief therein on a final basis. All modifications and/or amendments to the Liquidating Order made by or pursuant to this Order in Paragraphs [7]-[8] below or otherwise shall be effective on a go-forward basis as of the entry of this Order. Such modifications and/or amendments shall not affect the terms of the Liquidating Order as in effect at any time prior to entry of this Order, and the terms of the Liquidating Order then in effect shall remain applicable to any period prior to entry of this Order. Except as modified by paragraphs 6 through 8 above, the Liquidating Order shall remain in full force and effect.

7. Effective as of the entry of this Order, the Liquidating Order shall be amended and restated such that the following paragraphs of the Liquidating Order shall read in full as follows:

(a) Paragraph 6:

The Trustee is hereby authorized, pursuant to Bankruptcy Code §§ 105 and 363, to incur and pay, subject to the terms of this Liquidating Order and the Liquidating Expenses (as defined in the Motion), consistent with the Estimate (as defined in the *Order (I) Authorizing Chapter 7 Trustee to (A) Enter Into and Perform Under Settlement Pursuant to 11 U.S.C. §105(a) and Bankruptcy Rule 9019, (B) Use Cash Collateral and Grant Adequate Protection, (C) Obtain Post-Petition Financing on a Secured, Superpriority Basis, and (D) Sell Estate Property Free and Clear of All Interests Pursuant to 11 U.S.C. 363(b) and 363(f), (II) Approving Sale Procedures, and (III) Granting Related Relief* (the "Settlement Order") and the Settlement Order (any payment so authorized, an "Agreed Payment").

(b) Paragraph 25:

Except as otherwise provided in the Settlement Order, until such time as the Lenders' Pre-Petition Claim and the DIP Obligations shall have been indefeasibly paid and satisfied in full in accordance with the terms of the

Pre-Petition Claim Documents and the DIP Facility Documents, the Trustee shall not be authorized to obtain credit secured by a lien or security interest in the Collateral or the DIP Collateral, other than the DIP Facility, without the prior written consent of the Agent, for itself and for and on behalf of the Lenders, or by order of the Court upon reasonable notice.

(c) Paragraph 35:

Except as otherwise provided in the Settlement Order, as set forth in the Final Financing Order, no priority claims shall be allowed that are or will be prior to or on parity with the secured claims of the Agent and the Lenders against the Debtors and their estates arising under this Liquidating Order.

(d) Paragraph 43:

The Agent's consent and the Trustee's authority to use Cash Collateral, subject to the limitations above, shall be effective upon entry of this Liquidating Order to and including the earlier of: (a) notice of the occurrence of a Post-Petition Default, and (b) the occurrence of a default by the Trustee under the Settlement Order pursuant to the terms thereof, at which time all of the Trustee's authority to use Cash Collateral on behalf of the Debtors' chapter 7 estates and this Liquidating Order shall terminate, unless extended by written agreement of the Trustee and the Agent, a copy of which agreement shall be promptly filed with this Court by the Trustee (the "Expiration Date").

8. Furthermore, the Liquidating Order shall be amended and restated such that Paragraphs 11 and 34 of the Liquidating Order shall be deleted in their entirety and shall be *void ab initio* effective on a go-forward basis as of the entry of this Order. Such deletion shall not affect the effectiveness of such terms of the Liquidating Order as in effect at any time prior to entry of this Order, and the terms of the Liquidating Order then in effect shall remain applicable to any period prior to entry of this Order.

APPROVAL OF AUCTION PROCEDURES

9. The Motion constitutes a motion to sell all property of the Estate free and clear of claims, liens, and interests pursuant to section 363(b) and 363(f) of the Bankruptcy Code.

10. The auction procedures set forth in Paragraph [5(h)] for the BCBS Claims Auction are hereby approved in their entirety and the Trustee is authorized and directed, upon the a BCBS Claims Auction Election, to conduct such BCBS Claims Auction, to act in accordance with the Settlement, and implement the terms thereof and hereof. The Motion constitutes a motion for emergency or expedited hearing, as applicable, to approve any sale contemplated herein, and no other or further motion, pleading, or notice shall be required to obtain an emergency hearing from the Court to consider same. Upon a BCBS Claims Auction Election, the Trustee shall implement and carry out the following auction procedures consistent with the terms of the Settlement:

- (a) Within one (1) calendar day following the date the Agent makes a BCBS Claims Auction Election, the Trustee shall provide written notice of the time and location of the BCBS Claims Auction, along with all other information concerning the BCBS Claims Auction that the Trustee deems appropriate and consistent with the Bankruptcy Code and the Bankruptcy Rules, to the parties identified on the electronic service list in these Cases (but not, for the avoidance of doubt, the master service list or the entire case mailing matrix) and such other parties as the Trustee determines advisable;
- (b) Within one (1) calendar day following the date the Agent makes a BCBS Claims Auction Election, the Trustee shall contact the Court and obtain an emergency hearing to be held within two (2) business days following the BCBS Claims Auction to consider approval of the results of the BCBS Claims Auction and entry of a sale order in form and substance acceptable to the Agent transferring the BCBS Claims and related assets to the prevailing bidder free and clear of claims, liens, and interests pursuant to section 363 of the Bankruptcy Code, and shall serve the parties identified in Paragraph [10(a)] with same;
- (c) Within one (1) business day following the BCBS Claims Auction, Agent shall file a notice on the docket of the Court containing the proposed sale order in form and substance acceptable to the Agent for the sale of the BCBS Claims to the prevailing bidder at the BCBS Claims Auction, and shall serve the parties identified in Paragraph [10(a)] with same; and
- (d) Within one (1) business day following the Court's entry of the sale order in form and substance acceptable to the Agent approving the sale of the BCBS Claims to the prevailing bidder at the BCBS Claims Auction (or

such time as may be extended by such prevailing bidder), the Trustee shall take all measures as may be required by such prevailing bidder to consummate the sale of the BCBS Claims.

11. Except as provided above, the Trustee shall not be required to provide any other or further notice of the BCBS Claims Auction or the hearing to consider approval of the sale of the BCBS Claims following the BCBS Claims Auction, and the Trustee's compliance with the notice procedures set forth above shall be deemed to be (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Court Rules of the United States Bankruptcy Court for the Western District of Texas, and (iii) adequate and sufficient under the circumstances of these Cases, and no other or further notice is required. Notice of the Motion and the notice procedures set forth above provide a reasonable opportunity for parties in interest and creditors in these Cases to object or be heard regarding the relief requested in the Motion.

12. The Trustee and the Agent shall reasonably agree to establish auction and/or sale procedures to govern the sale of any and/or all assets of the Estate, as applicable, upon the Trustee's proposed abandonment of Estate assets or the dismissal of any of the Cases under Paragraph [5(r)] prior to the date of such abandonment and/or dismissal, and the Trustee shall implement the terms and carry out such auction and/or sale procedures with sufficient time and notice to consummate any such sale prior to such abandonment and/or dismissal, as applicable.

13. The Trustee is authorized to take all actions necessary to effectuate the BCBS Claims Auction consistent herewith or to effectuate a sale of any and/or all assets of the Estate, as applicable, upon the Trustee's proposed abandonment of Estate assets or the dismissal of any of the Cases under Paragraph [5(r)].

14. The Agent shall have the right to credit bid at the BCBS Claims Auction and at any other auction or sale of any Estate property under this Order or otherwise. All of the Agent's and the Lenders' rights to credit bid under this Order, the Final Financing Order, the Loan Documents, the Pre-Petition Claim Documents, and the DIP Facility Documents or otherwise are hereby approved or confirmed, as applicable.

DISTRIBUTION MECHANICS

15. In accordance with Paragraph [5(l) and (n)] of this Order, and subject to the provisions governing any dispute as contemplated in Paragraph [5(n)], the Trustee shall make distributions of Net BCBS Proceeds to the Agent and Downton, as applicable, in accordance with the terms of the Settlement. The Trustee is hereby authorized to make any such distribution and any and all other distributions of property of the Estate without the need to seek further approval of the Court or to file any motion, notice, or other pleading with the Court or on the Court's docket.

LITIGATION FINANCING FROM THE AGENT

16. The Trustee, on behalf of the Estate, is hereby authorized, pursuant to section 364 of the Bankruptcy Code, to obtain post-conversion loans, credit, and/or financing from the Agent and the Lenders strictly in accordance with the terms of the Settlement and this Order, in an amount not to exceed \$10 million (the "***Litigation Financing***"), solely for the purposes set forth herein and to fund the costs and expenses relating to the BCBS Arbitration Claims.

17. The Agent, on behalf of itself and the Lenders, may provide such Litigation Financing, subject to the terms of the Settlement and this Order and strictly for the purposes set forth therein. The Trustee, on behalf of the Estate, is authorized to execute, deliver, and perform under any credit documents, agreements, or other documentation as may be negotiated by the

Parties as may be required by the Agent and the Lenders to document the terms of the Litigation Financing, and the terms of such documentation are hereby approved in their entirety.

18. The Agent, for itself and for and on behalf of the Lenders, is entitled to and is hereby granted first-priority claims, priming liens in and security interests on all property of the Estate and the protections of good-faith credit providers under sections 364(c)(1), (c)(2), and, where applicable, (c)(3), 364(d)(1), and 364(e) of the Bankruptcy Code to secure the Litigation Financing, senior to all other liens and security interests, including adequate protection and replacement liens granted in these Cases, which priming liens and security interests shall secure the Litigation Financing and all obligations thereunder (including, without limitation, principal and any other extensions of credit, interest, fees, expenses, and any fees and expenses of the Agent and the Lenders, however incurred) (the “**Litigation Financing Liens**”). The Litigation Financing Liens securing the Litigation Financing are valid and automatically perfected first-priority priming liens and security interests, and are granted in and attach to any and all property of the Estate.

19. The Agent, for itself and on behalf of the Lenders, is hereby granted superpriority administrative claims and all other benefits and protections allowable under sections 364(c)(1), 507(b), and 503(b)(1) senior in priority to all other administrative claims against the Estate on account of the Litigation Financing.

20. As adequate protection of the Agent’s and the Lenders’ interest in the property of the Estate pursuant to the Litigation Financing Liens granted hereby and for the Trustee’s use of such Litigation Financing (and only so long as a default under the applicable documents governing the Litigation Financing has not occurred), the Trustee is authorized to use the funds under the Litigation Financing strictly in accordance with the Estimate and the Settlement.

21. The Agent's and the Lenders' consent to the Trustee's use of and their agreement to extend credit under the Litigation Financing extend only to amounts due under the Litigation Financing and amounts actually incurred in accordance with the Estimate and the Settlement.

22. This Order shall be sufficient and conclusive evidence of the priority, perfection, attachment, and validity of all of the Litigation Financing Liens, and such Litigation Financing Liens shall constitute valid, automatically perfected and unavoidable security interests and liens, with the priorities granted and created herein, effective as of the date hereof, without the necessity of creating, filing, recording, or serving any financing statements, mortgages, or other documents that might otherwise be required under federal or state law in any jurisdiction or the taking of any other action to validate or perfect the Litigation Financing Liens granted to the Agent and the Lenders by this Order.

23. The Trustee is hereby authorized and directed to perform all acts, take any action, and execute and comply with the terms of any documentation

MISCELLANEOUS

24. The terms and provisions of this Order and any actions taken pursuant hereto shall survive entry of any order that may be entered in the Cases dismissing these Cases, except for the Trustee's authority to use Cash Collateral on behalf of the Estate (which shall immediately terminate upon entry of such an order).

25. Consistent with the Final Financing Order and the Liquidating Order, the Court hereby expressly retains jurisdiction over all persons and entities, co-extensive with the powers granted to the Court under the Bankruptcy Code, to enforce the terms of this Order and to adjudicate any and all disputes in connection therewith by motion and without necessity of an adversary proceeding.

26. Nothing in this Order or any consent for the Trustee's use of Cash Collateral on behalf of the Estate shall constitute a waiver by the Agent of any previous or other default, breach, or other right under the Final Financing Order or the Liquidating Order.

27. This Order shall be and hereby is binding upon the Trustee, the Estate, the Debtors, all creditors of the Estate, and all other parties in interest in these Cases and their respective successors and assigns, as applicable, for all purposes.

28. The requirements of Bankruptcy Rule 6004(a) are waived.

29. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), and 6006, the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.

30. Notwithstanding anything to the contrary in this Order and unless otherwise agreed to in writing by the Agent, a condition precedent to the effectiveness of this Order and to the agreements of the Agent, on behalf of itself and the Lenders, hereunder shall be that this Order shall (i) have been entered on or before July 17, 2019 and (ii) not be subject to any further motion and shall have become final and non-appealable and not subject stay or pending appeal on or before July 31, 2019, and in the event this condition precedent is not satisfied, this Order and the agreements of the Agent, on behalf of itself and the Lenders, hereunder shall be null and void without further Order or action of this Court and the terms and provisions of the Liquidating Order shall apply.

31. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Agreed to and Accepted by:

TRUSTEE

By:_____

Name: James Studensky

Title: Chapter 7 Trustee for the Estates of the Debtors in the Above-Captioned Chapter 7 Cases

MONROE CAPITAL MANAGEMENT ADVISORS, LLC, as administrative agent

By:_____

Name:_____

Title:_____

Exhibit 1

*Potential Sharing Arrangement of Net Proceeds of
D&O Claims, Avoidance Actions, Payor Claims, and Other Litigation Claims*

Net Proceeds Received Above Lenders' Claims	Percent of Net Proceeds Payable to the Estate
\$1,000,000 - \$2,000,000	10%
\$2,000,000 - \$3,000,000	25%
\$3,000,000 - \$4,000,000	40%
\$4,000,000 - \$5,000,000	55%
\$5,000,000 - \$6,000,000	70%
\$6,000,000 - \$7,000,000	85%
\$7,000,000 and above	100%

Exhibit 2

Distribution of Net BCBS Proceeds¹

Net BCBS Proceeds	Estate Share	
	Settle	Adjudicate
\$0-\$10,000,000	4.0%	7.5%
>\$10MM & <\$20MM	4.0%	7.5%
>\$20MM & <\$30MM	4.5%	7.0%
>\$30MM & <\$40MM	4.5%	7.0%
>\$40MM & <\$50MM	5.0%	8.0%
>\$50MM & <\$60MM	5.0%	8.0%
>\$60MM to 100% Agent Recovery	8.5%	8.5%
100% Agent Recovery to 100% Agent Recovery plus \$10MM	50%	50%
100% Agent Recovery plus \$10MM to <\$150MM	30.0%	30.0%
>\$150MM & <\$180MM	45.0%	45.0%
>\$180MM & <\$300MM	65.0%	65.0%
>\$300MM	70.0%	70.0%

¹ The percentages outlined in the table below are tied to the specific tier referenced and are cumulative. As an example, should the Net BCBS Proceeds available for distribution in the event of adjudication be \$10MM, the Trustee would receive \$750,000 (7.5% of \$10MM). Should Net BCBS Proceeds available for distribution in the event of adjudication be \$20MM, the Trustee would receive \$1.5MM (7.5% tied to the first \$10MM, plus 7.5% tied to the next \$10MM). Should Net BCBS Proceeds available for distribution be less than 100% of a tier, the share tied to that tier would be proportional. As an example, should Net BCBS Proceeds available for distribution in the event of adjudication be \$25MM, the Trustee would receive \$1.85MM (7.5% tied to the first \$10MM, plus 7.5% tied to the next \$10MM, plus 7.0% tied to the next \$5MM).

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