

· **Hearing: May 31, 2018, 10 a.m. ET**
· **Objections Due: May 24, 2018, 4 p.m. ET**

LIPPES MATHIAS WEXLER FRIEDMAN LLP
· *Counsel to HSHS*
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
(716) 853-5100
Raymond L. Fink, Esq. / rfink@lippes.com
John A. Mueller, Esq. / jmueller@lippes.com

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

CHAPTER 11

HHH CHOICES HEALTH PLAN, LLC, *ET AL.*

CASE NO. 15-11158-MEW
CASE NO. 15-13264-MEW
CASE NO. 16-10028-MEW

DEBTORS.

(JOINTLY ADMINISTERED)

**NOTICE OF MOTION FOR THE ENTRY OF AN ORDER APPROVING HEBREW
HOSPITAL SENIOR HOUSING, INC.'S (I) DISCLOSURE STATEMENT, (II) FORM AND
MANNER OF NOTICES, (III) FORM OF BALLOTS, (IV) SOLICITATION MATERIALS
AND PROCEDURES, AND (V) SCHEDULING CONFIRMATION HEARING**

PLEASE TAKE NOTICE that on the date hereof, in accordance with Rule 3017(a) of the Bankruptcy Rules, Hebrew Hospital Senior Housing, Inc., as debtor and debtor-in-possession (“Debtor” or “HSHS”), hereby provide notice (“Disclosure Statement Notice”) of its motion (“Motion”) for the entry of an Order: (i) approving the proposed Disclosure Statement dated April 18, 2018 (“Disclosure Statement”)¹ for the *Joint Chapter 11 Plan of Liquidation Proposed by the Debtor and the Official Committee of Unsecured Creditors* dated April 18, 2018 (“Plan”);

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Disclosure Statement or Plan.

(ii) approving the form and manner of notices; (iii) approving the form of Ballots; (iv) approving the solicitation materials and Solicitation Procedures (as defined herein); and (v) scheduling a Plan Confirmation Hearing.

PLEASE TAKE FURTHER NOTICE that the Debtor have requested that responses or objections, if any, to the relief requested in the Motion, including any objection to the adequacy of the Disclosure Statement, be required to be filed electronically with the Court on the above captioned docket and be required to be served upon: (i) counsel to the Debtor, LIPPES MATHIAS WEXLER FRIEDMAN LLP, 50 Fountain Plaza, Suite 1700, Buffalo, NY 14202, Attn: Raymond L. Fink, Esq. and John A. Mueller, Esq.; (ii) OFFICE OF THE UNITED STATES TRUSTEE FOR THE SOUTHERN DISTRICT OF NEW YORK, 201 Varick Street, Room 1006, New York, NY, 10006 Attn: Greg M. Zipes, Esq.; (iii) counsel to the Creditors Committee appointed in this Chapter 11 case, DLA PIPER LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10020-1104, Attn: Thomas R. Califano, Esq. and Rachel Nanes, Esq.; and (iv) all persons and entities that have formally requested notice by filing a written request for notice, pursuant to Bankruptcy Rule 2002 and the Local Bankruptcy Rules by no later than **4 p.m. ET on May 24, 2018.**

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written objection to the relief requested in this Motion, the Bankruptcy Court may deem any opposition waived, treat the Motion as conceded (as applicable), and enter an order granting the relief requested in the Motions (as applicable) without further notice or hearing.

PLEASE TAKE FURTHER NOTICE that the hearing to consider approval of the Plan will commence at **10 a.m. ET on May 31, 2018,** or as soon thereafter as counsel can be heard, before the Honorable Michael E. Wiles, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York. The approval hearing may be continued

from time to time by announcing such continuance in open court or otherwise, all without further notice to parties with claims.

Dated: April 18, 2018

LIPPES MATHIAS WEXLER FRIEDMAN, LLP

/s/ John A. Mueller
Raymond L. Fink, Esq.
John A. Mueller, Esq.
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
Tel: (716) 853-5100
Fax: (716) 853-5199
rfink@lippes.com
jmueller@lippes.com

· *Counsel to HSHS*

· **Hearing: May 31, 2018, 10 a.m. ET**
· **Objections Due: May 24, 2018, 4 p.m. ET**

LIPPES MATHIAS WEXLER FRIEDMAN LLP
· *Counsel to HSHS*
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
(716) 853-5100
Raymond L. Fink, Esq. / rfink@lippes.com
John A. Mueller, Esq. / jmueller@lippes.com

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

CHAPTER 11

HHH CHOICES HEALTH PLAN, LLC, *ET AL.*

CASE NO. 15-11158-MEW
CASE NO. 15-13264-MEW
CASE NO. 16-10028-MEW

DEBTORS.

(JOINTLY ADMINISTERED)

**MOTION FOR THE ENTRY OF AN ORDER APPROVING HEBREW HOSPITAL
SENIOR HOUSING, INC.'S (I) DISCLOSURE STATEMENT, (II) FORM AND MANNER
OF NOTICES, (III) FORM OF BALLOTS, (IV) SOLICITATION MATERIALS AND
PROCEDURES, AND (V) SCHEDULING CONFIRMATION HEARING**

Hebrew Hospital Senior Housing, Inc., as debtor and debtor-in-possession (“Debtor” or “HSHS”), hereby file this motion (“Motion”) for the entry of an Order: (i) approving the proposed Disclosure Statement dated April 18, 2018 (“Disclosure Statement”)¹ for the *Joint Chapter 11 Plan of Liquidation Proposed by the Debtor and the Official Committee of Unsecured Creditors* dated April 18, 2018 (“Plan”); (ii) approving the form and manner of notices; (iii) approving the form of Ballots; (iv) approving the solicitation materials and Solicitation Procedures (as defined herein); and (v) scheduling a Plan Confirmation Hearing. In support of this Motion, the Debtor

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Disclosure Statement or Plan.

respectfully state as follows:

I. INTRODUCTION

The Debtor believes that the Plan is consistent with Chapter 7 structure and distribution scheme, but avoids the additional layer of administrative expenses and delay in distributions if converted to Chapter 7. The Plan will be implemented by the Plan Administrator in a manner consistent with the terms and conditions set forth in the Plan and the Confirmation Order. The Plan Administrator will act for the Debtor in a fiduciary capacity as applicable to a board of directors, subject to the provisions of the Plan and vested with all of the rights and authority of a Chapter 7 trustee and as augmented by the Plan. As a result, the treatment of creditors under the Plan contemplates a greater recovery than that which they are likely to achieve under other alternatives for the reorganization or liquidation of the Debtor; that the Plan accomplishes the objectives of Chapter 11 of the Bankruptcy Code; and that acceptance of the Plan is in the best interests of the Debtor, its creditors, the Estate, and all parties in interest.

II. JURISDICTION & VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334.
2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The statutory predicates for the relief requested herein are Sections 1125 and 1126 of Chapter 11 of Title 11 of the United States Code (“Bankruptcy Code”).

III. BACKGROUND

5. On December 9, 2015, HSH commenced this Chapter 11 Case (Case No. 15-13264-mew) by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in

the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”) [HSH Docket No. 1].

6. On December 28, 2015, the U.S. Trustee for Region 2 (“UST”) appointed the Committee, which then retained DLA PIPER LLP (US) as legal counsel and COHNREZNICK LLP as financial advisor, both effective as of January 5, 2016 [Joint Docket Nos. 144 and 177].

7. On January 15, 2016, the Bankruptcy Court ordered the joint administration of HSH’s Chapter 11 Case with the cases of related entities: (i) HHH Choices Health Plan, LLP (Case No. 15-11158-mew) (“HHH Choices”); and (ii) Hebrew Hospital Home of Westchester, Inc. (Case No. 16-10028- mew) (“HHHW”) [see HHHW Docket No. 19].

8. The Debtor has continued in possession and management of its property as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

9. On April 18, 2018, the Motion, along with the proposed Disclosure Statement and related Plan (annexed hereto as **Exhibit A**) are getting filed with the Bankruptcy Court.

IV. RELIEF REQUESTED

10. By this Motion, the Plan Proponents respectfully request entry of an order: (i) approving (a) the Disclosure Statement, as amended or modified through the date of entry of the Disclosure Statement Order, (b) the form and manner of notices, (c) the form of Ballots, and (d) the solicitation materials and Solicitation Procedures (as defined herein); and (ii) scheduling a Plan Confirmation Hearing.

A. *Disclosure Statement*

11. The Debtor respectfully submits that the Disclosure Statement should be approved by the Bankruptcy Court for distribution to creditors as it sets forth information sufficient to meet the requirements of Section 1125 of the Bankruptcy Code

12. Section 1125(b) of the Bankruptcy Code requires that a disclosure statement containing “adequate information” be approved by the court prior to solicitation of acceptances or rejections of a Chapter 11 plan.

13. Section 1125(a) of the Bankruptcy Code defines “adequate information” as:

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.

14. A disclosure statement must provide information that will permit impaired creditors to make an informed judgment to accept or reject the proposed Chapter 11 plan. *Kirk v. Texaco, Inc.*, 82 B.R. 678, 681 (S.D.N.Y. 1988). Disclosure statements are evaluated on a case-by-case basis, focusing on the unique facts and circumstances of each case. *See In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988) (adequacy of a disclosure statement “is to be determined on a case-specific basis under a flexible standard that can promote the policy of Chapter 11 towards fair settlement through a negotiation process between informed interested parties.”). In examining the adequacy of the information contained in a disclosure statement, courts have broad discretion. *In re Ionosphere Clubs, Inc.*, 179 B.R. 24, 29 (S.D.N.Y. 1995).

15. The Debtor respectfully submits that the Disclosure Statement addresses each of the salient types of information necessary to provide holders of impaired claims that are entitled to vote to accept or reject the Plan with adequate information to allow them to make an informed

judgment about the Plan. Specifically, the Disclosure Statement includes:

- (i) a description of which holders of claims are entitled to vote on the Plan and information relating to the Confirmation Hearing (Articles IV and VI);
- (ii) a summary of the Plan, and the classification and treatment of Claims and Interests thereunder (Article IV);
- (iii) a detailed description and history of the Debtor's business (Article II);
- (iv) an overview of the Debtor's Chapter 11 Case (Article III);
- (v) the means of implementation of the Plan (Section IV);
- (vi) conditions precedent to confirmation of the Plan (Section IV);
- (vii) the means of modification, revocation, and withdrawal of the Plan (Section IV);
- (viii) the provisions of the Plan governing releases, injunctions, and exculpation (Section IV);
- (ix) a description of the confirmation process, including the Confirmation Hearing and the consummation of the Plan (Section VI);
- (x) a discussion of the alternatives to confirmation and consummation of the Plan, including liquidation under the Bankruptcy Code (Section VIII);
- (xi) a summary of the voting procedures (Section IV);
- (xii) a discussion of certain risk factors to be considered relating to the Debtor's Chapter 11 Case (Sections V);
- (xiii) the federal income tax consequences of the Plan to the Debtor and Holders of certain Claims (Section VII);
- (xiv) the Plan Proponents' recommendation with respect to the Plan (Section IX); and
- (xv) copies of the Plan and a Liquidation Analysis as exhibits.

16. The Debtor submits that the information contained in the Disclosure Statement provides adequate information for creditors to make an informed decision to accept or reject the Plan. Accordingly, the Debtor respectfully requests that the Disclosure Statement be approved.

17. The Debtor also requests that the Bankruptcy Court authorize them to make non-

material changes to the Disclosure Statement and related documents before distributing Solicitation Packages (as defined below) to each person or entity in accordance with the terms of the Disclosure Statement Order. If so permitted, the Debtor will file copies with the Bankruptcy Court of any changed pages redlined to show changes from the prior version.

B. *Form & Manner of Notices*

18. In addition to the Disclosure Statement, the Debtor would like to provide notices to creditors in order to proceed in an orderly, efficient and clear manner towards confirmation of the Plan.

(i) The Confirmation Hearing

19. Once a disclosure statement is approved for distribution to creditors, the date of the confirmation hearing, and deadline for objections to confirmation, must be set.

20. Rules 2002(b) and (d) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) require not less than twenty-eight (28) days’ notice to all creditors and equity security holders of the deadline for filing objections to the Plan and of the date of the hearing to consider confirmation of a Chapter 11 plan. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the court,” and Rule 3020-1(a) of the Local Bankruptcy Rules for the Southern District of New York (“Local Rules”) states that such objections shall be filed not later than seven (7) days prior to the confirmation hearing.

21. In accordance with the proposed solicitation schedule outlined below, the Debtor requests that the Bankruptcy Court schedule a hearing on confirmation of the Plan (“Confirmation Hearing”) on or after **July 16, 2018**, which is at least thirty-five (35) days after the anticipated date for the entry of an order approving the Disclosure Statement (as required by a combination of Bankruptcy Rule 2002 and Local Rule 3020-1(a)). The proposed schedule is in compliance with

the Bankruptcy Rules and will enable the Debtor to pursue confirmation of the Plan in accordance with the statutory timetable.

22. Consistent with the proposed schedule, the Debtor proposes to provide all creditors and equity holders with a copy of the notice of confirmation hearing substantially in the form attached hereto as **Exhibit B** (“Confirmation Hearing Notice”). The Confirmation Hearing Notice contains a description of the date, time and location of the Confirmation Hearing, as well as the deadline and manner for filing objections to the Plan

23. The Confirmation Hearing Notice provides, and the Debtor requests that the Court require, that objections to the Plan: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim of such party; (iii) state with particularity the basis and nature of any objection or proposed modification; and (iv) be filed with the Clerk of the Bankruptcy Court, with a copy delivered to chambers, and served so as to be received by (a) counsel to the Debtor, (b) counsel to the Creditors Committee, (c) the Office of the United States Trustee, and (d) parties filing a notice of appearance and request for service, **no later than 4 p.m. ET on the date that is seven (7) days prior to the date of the Confirmation Hearing** (“Plan Objection Deadline”). Proceeding in this manner will afford the Debtor and other parties with claims sufficient time to consider and perhaps resolve any objections and proposed modifications before the Confirmation Hearing.

24. The Debtor submits that the approval and implementation of the foregoing proposed procedures for providing notice of the Confirmation Hearing and objections to the Plan shall afford adequate notice of same.

(ii) Non-Voting Status

25. The Plan provides that the Debtor will not solicit the votes of the holders of Claims in Classes 1 and 2 because such classes are presumed to accept the Plan pursuant to Section 1126(f) of the Bankruptcy Code.

26. Although votes will not be solicited from the holders of Claims in Classes 1 and 2 the Debtor will provide a notice to such holders that informs them: (i) of the treatment of their claims under the Plan; (ii) of the relevant confirmation deadlines; and (iii) of the fact that they are not entitled to vote on the Plan. To that end, the Debtor seeks authorization to send a notice to holders of Claims in Classes 1 and 2 (which Claims are unimpaired under the Plan and which Classes are deemed to have accepted the Plan), substantially in the form attached hereto as **Exhibit C** (“Non-Voting Notice”). Along with these notices to Classes 1 and 2, the Debtor will provide a copy of the Disclosure Statement, Plan and Confirmation Hearing Notice.

(iii) Form of Ballots

27. Bankruptcy Rule 3017(d) requires the Debtor to mail a form of ballot, which substantially conforms to Official Form No. 14, only to “creditors and equity security holders entitled to vote on the plan.” The Debtor has prepared and customized a ballot, substantially in the form attached hereto as **Exhibit D** (“Ballot”). The Debtor proposes to use the Ballot to solicit votes from holders of Claims in Class 3, the only class of Claims under the Plan that is entitled to vote to accept or reject the Plan. By this Motion, the Debtor seeks authority to distribute the Ballot to holders of Claims in Class 3.

C. Solicitation & Voting Procedures

28. To conduct an effective solicitation of acceptances or rejections of the Plan that is consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules and due process,

the Debtor also seeks approval of the following solicitation procedures (“Solicitation Procedures”).

(i) Solicitation Package

29. Bankruptcy Rule 3017(d) identifies materials that must be provided to holders of claims for purposes of soliciting votes and providing adequate notice of the hearing on confirmation of a plan. In accordance with Rule 3017(d), the Debtor proposes that, as soon as reasonably possible after entry of an order approving the Disclosure Statement for distribution to creditors, that the Claims Agent retained in the Bankruptcy Case, Prime Clerk, distribute the materials identified below to the following: (i) all known holders of Claims in Class 3; and (ii) all known holders of Administrative Claims and Priority Tax Claims (“Solicitation Package”):

- (i) Disclosure Statement;
- (ii) Plan;
- (iii) Ballot (as applicable to holders of Claims in Class 3);
- (iv) Confirmation Hearing Notice;
- (v) Order of the Bankruptcy Court approving the Disclosure Statement; and
- (vi) Such other materials as the Bankruptcy Court may direct.

(ii) Record Date for Voting & Voting Deadline

30. Bankruptcy Rule 3017(d) provides that, for purposes of voting on a plan under chapter 11 of the Bankruptcy Code, “creditors and equity security holders shall include holders of stock, bonds, debentures, notes and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Accordingly, the Debtor proposes that the Court set the date that the Court approves the Disclosure Statement as the record date (“Voting Record Date”) for purposes of determining which creditors are entitled to vote on the Plan.

31. The Debtor also proposes that, on or before the Plan Objection Deadline (“Voting Deadline”), holders of Claims in Class 3 must return the Ballot to following (“Voting Agent”):

LIPPES MATHIAS WEXLER FRIEDMAN, LLP
Attn: Ian Klak
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202-2216

(iii) Voting Procedures

32. Pursuant to the Plan, only holders of Claims in Class 3 (“Voting Claims”) are impaired and entitled to vote on the Plan. For purposes of voting, alone, and not for the purpose of determining allowed claims or who is entitled to receive a distribution under the Plan, the Debtor would like authority to proceed such that each holder of a Voting Claim shall have an allowed claim, for purposes of voting on the Plan, in an amount equal to: (i) the amount of such claims that is set forth as a claim in the Debtor’s Schedules, only to the extent such claim is not listed as being contingent, unliquidated, or disputed (excluding scheduled Claims that have been superseded by filed Claims); or (ii) the amount set forth on a filed proof of claim which has not been disallowed, disqualified, suspended, reduced or estimated and temporarily allowed for voting purposes prior to computation of the vote on the Plan.

33. The Bankruptcy Code enables creditors to have the amount of their claims estimated and temporarily allowed, pursuant to an order of the Court, for purposes of voting. Bankruptcy Rule 3018(a) provides that the “court after notice and hearing may temporarily allow the claim in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” The Debtor respectfully requests that the Court enter an order requiring that a party must file any motion for temporary allowance pursuant to Bankruptcy Rule 3018(a) by no later than the Voting Record Date. To the extent any claims are temporarily allowed for purposes of voting, the amount fixed by the court shall be used for purposes of calculating acceptances and rejections of

the Plan.

34. With respect to any transferred Voting Claim (other than a disputed Claim), the Debtor proposes that the transferee be entitled to receive the Solicitation Package and vote to accept or reject the Plan on account of the transferred Claim only if: (i) all actions necessary to effect the transfer of the Claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date; or (ii) the transferee files, no later than the Voting Record Date, (a) the documentation required by Bankruptcy Rule 3001(e) to evidence the transfer of the Claim and (b) a sworn statement of the transferor supporting the validity of the transfer. In the event a Claim is transferred after the transferor has completed a Ballot, the transferee of such Claim shall be bound by any vote (and the consequences thereof) made on the Ballot by the Holder of such transferred Claim.

(iv) Tabulation Procedures

35. The Debtor requests authority to utilize the following procedures in tabulating the Ballots:

- (i) only original Ballots bearing original signatures shall be counted;
- (ii) any Ballot which is properly completed, executed and timely returned to the Voting Agent that does not indicate an acceptance or rejection of the Plan or that indicates both an acceptance and rejection of the Plan shall be deemed to be a vote to accept the Plan;
- (iii) any Ballot which is returned to the Voting Agent indicating acceptance or rejection of the Plan, but which is unsigned or does not bear an original signature shall not be counted;
- (iv) whenever a holder of a Claim casts more than one Ballot voting the same claim prior to the Voting Deadline, only the last timely Ballot received by the Voting Agent shall be counted;
- (v) if a holder of a claim casts simultaneous duplicative Ballots voted inconsistently, then such Ballots shall count as one vote accepting the Plan;

- (vi) if a holder of a claim casts simultaneous duplicative Ballots that are not voted inconsistently, only one such Ballot shall be counted;
- (vii) each holder of a Claim shall be deemed to have voted the full amount of its Claim;
- (viii) each holder of any Claim shall be entitled to vote all of the Claims it holds, but may only cast a single Ballot as to all Claims within a particular class;
- (ix) any Ballots that partially reject and partially accept the Plan shall not be counted;
- (x) any Ballot received by the Voting Agent by facsimile, e-mail, or other electronic communication shall not be counted;
- (xi) if a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person shall be required to indicate such capacity when signing and, upon request of the Voting Agent, must submit proper evidence satisfactory to the Voting Agent to so act on behalf of a holder of a Claim; and
- (xii) the Debtor shall maintain and tabulate all Ballots received in accordance with the aforementioned procedures. Within three (3) Business Days following the Voting Deadline, the Voting Agent shall produce copies of all Ballots received to the Debtor and the United States Trustee together with a written summary of the votes accepting and rejecting the Plan. Ballots and any written summary thereof shall not be filed with the Court.

V. NOTICE

36. In accordance with Bankruptcy Rule 3017(a), the Debtor shall provide notice (“Disclosure Statement Notice”) of this Motion and the hearing to consider approval of the relief sought herein (“Disclosure Statement Hearing”), not less than twenty-eight (28) days prior to the Disclosure Statement Hearing. The Disclosure Statement Notice and a copy of this Motion, as well as all exhibits thereto (including the Plan and Disclosure Statement), shall be provided by first class mail to: (i) the Office of the United States Trustee; and (ii) all parties having requested notices in this Chapter 11 Case. The Debtor respectfully submits that, under the circumstances, no other

or further notice is required.

VI. NO PRIOR REQUEST

37. No prior motion for the relief requested herein has been made to this or any other Court.

VII. CONCLUSION

WHEREFORE, the Debtor requests that the Bankruptcy Court enter an Order, substantially in the form attached hereto as **Exhibit E**: (i) approving (a) the Disclosure Statement, as amended or modified through the date of entry of the Disclosure Statement Order, (b) the form and manner of notices, (c) the form of Ballots, and (d) the solicitation materials and Solicitation Procedures (as defined herein); and (ii) scheduling a Plan Confirmation Hearing, along with such other and further relief as the Bankruptcy Court deems necessary or appropriate.

Dated: April 18, 2018

LIPPES MATHIAS WEXLER FRIEDMAN, LLP

/s/ John A. Mueller

Raymond L. Fink, Esq.
John A. Mueller, Esq.
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202-2216
Tel: (716) 853-5100
Fax: (716) 853-5199
rfink@lippes.com
jmueller@lippes.com

· *Counsel to HSHS*

Exhibit A

Disclosure Statement
&
Draft Plan

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT YET BEEN APPROVED BY THE COURT.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

CHAPTER 11

HHH CHOICES HEALTH PLAN, LLC, *ET AL.*

CASE No. 15-11158-MEW
CASE No. 15-13264-MEW
CASE No. 16-10028-MEW

DEBTORS.

(JOINTLY ADMINISTERED)

**DISCLOSURE STATEMENT FOR THE CHAPTER 11 PLAN OF LIQUIDATION FOR
HEBREW HOSPITAL SENIOR HOUSING INC. PROPOSED BY THE DEBTOR**

LIPPES MATHIAS WEXLER FRIEDMAN, LLP

Raymond L. Fink, Esq.
John A. Mueller, Esq.
50 Fountain Plaza, Suite 1700
Buffalo, NY 14202-2216
Tel: (716) 853-5100
Fax: (716) 853-5199
rfink@lippes.com
jmueller@lippes.com

· Counsel to Hebrew Hospital Senior Housing, Inc.

Dated: April 18, 2018

DISCLAIMER

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN AND CERTAIN OTHER DOCUMENTS AND FINANCIAL INFORMATION. THE INFORMATION INCLUDED IN THIS DISCLOSURE STATEMENT IS PROVIDED SOLELY FOR THE PURPOSE OF SOLICITING ACCEPTANCES OF THE PLAN AND ONE SHOULD NOT RELY UPON IT FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER AND HOW TO VOTE ON THE PLAN.

NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

THE DEBTOR ADVISES AND ENCOURAGES ALL CREDITORS TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING. THE DEBTOR BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE. THE SUMMARIES OF ANY FINANCIAL INFORMATION AND ANY DOCUMENTS THAT ARE ATTACHED TO, OR INCORPORATED BY REFERENCE IN, THE DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO SUCH INFORMATION AND DOCUMENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THE DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR THE OTHER DOCUMENTS AND FINANCIAL INFORMATION INCORPORATED IN THE DISCLOSURE STATEMENT BY REFERENCE, THE PLAN OR THE OTHER DOCUMENTS AND FINANCIAL INFORMATION, AS THE CASE MAY BE, SHALL GOVERN FOR ALL PURPOSES. THE STATEMENTS AND FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE OF THE DISCLOSURE STATEMENT UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS SHOULD NOT ASSUME AT THE TIME OF REVIEWING THE DISCLOSURE STATEMENT THAT THE FACTS SET FORTH IN THE DISCLOSURE STATEMENT ARE UNCHANGED SINCE THE DATE OF THE DISCLOSURE STATEMENT.

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR IN ACCORDANCE WITH APPLICABLE LAW, THE DEBTOR IS UNDER NO DUTY TO UPDATE OR SUPPLEMENT THIS DISCLOSURE STATEMENT. THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF THE MERITS OF THE PLAN BY THE BANKRUPTCY COURT. THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. ANY ENTITIES DESIRING ANY SUCH ADVICE SHOULD CONSULT WITH THEIR OWN ADVISORS.

ANY FINANCIAL INFORMATION CONTAINED IN OR INCORPORATED BY REFERENCE INTO THIS DISCLOSURE STATEMENT IS UNAUDITED, EXCEPT AS SPECIFICALLY INDICATED OTHERWISE. ANY FINANCIAL ANALYSIS OR PROJECTIONS ARE NECESSARILY BASED ON A VARIETY OF ESTIMATES AND ASSUMPTIONS THAT ARE INHERENTLY UNCERTAIN AND BEYOND THE CONTROL OF THE DEBTOR'S MANAGEMENT.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND BANKRUPTCY RULE 3016 AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAW OR OTHER APPLICABLE NON-BANKRUPTCY LAW. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING CLAIMS AGAINST THE DEBTOR SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH EACH WAS PREPARED. ONE SHOULD NOT CONSTRUE THIS DISCLOSURE STATEMENT AS ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE REORGANIZATION OF THE DEBTOR, AS TO HOLDERS OF CLAIMS AGAINST THE DEBTOR.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER PENDING, THREATENED, OR POTENTIAL LITIGATIONS OR OTHER ACTIONS, THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION, OR WAIVER BY THE DEBTOR OR ANY OTHER PARTY, BUT RATHER AS A STATEMENT MADE IN THE CONTEXT OF SETTLEMENT NEGOTIATIONS IN ACCORDANCE WITH FED. R. EVID. 408. AS SUCH, THIS DISCLOSURE STATEMENT IS NOT ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY IN INTEREST, NOR SHOULD ONE CONSTRUE IT AS CONCLUSIVE ADVICE ON THE TAX, SECURITIES, FINANCIAL OR OTHER EFFECTS OF THE PLAN TO HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTOR OR ANY OTHER PARTY IN INTEREST.

TABLE OF CONTENTS

| | <u>PAGE</u> |
|---|-------------|
| I. INTRODUCTION | 1 |
| A. Overview of Chapter 11 | 2 |
| B. Rules of Interpretation and Construction | 2 |
| C. Recommendation of the Debtor | 3 |
| II. HISTORY OF THE DEBTOR..... | 3 |
| A. HHH System | 3 |
| B. Statutory & Regulatory Requirements..... | 3 |
| C. Initial Startup & Funding..... | 4 |
| D. Residency Agreements..... | 5 |
| E. Pre-Petition Financial Results..... | 6 |
| F. Restructuring Committee..... | 7 |
| G. Pre-Petition Sale Efforts | 8 |
| III. BANKRUPTCY | 9 |
| A. Voluntary Petition..... | 9 |
| B. Administration | 9 |
| C. First Day & Related Orders | 9 |
| D. Appointment of Committee | 10 |
| E. Retention & Employment of Professionals..... | 10 |
| F. Joint Administration..... | 10 |
| G. Schedules and Statements | 11 |
| H. Claims Bar Date..... | 11 |
| I. Post-Petition Financing & Agreement to Sell..... | 11 |
| J. Bid Procedures | 11 |
| K. Resident Meeting Notices, Revised Bids & Questionnaires..... | 12 |
| L. Resident Meeting & Ballot Results..... | 13 |
| M. Post-Resident Meeting Revised Bids & Board Deliberations | 13 |
| N. Sale Hearing & Closing | 14 |
| O. Residency Agreement Addendum | 14 |
| P. Post-Sale Operations..... | 14 |
| Q. 1199 Settlement | 14 |
| R. Director & Officer Litigation..... | 16 |
| S. Former Resident Litigation..... | 16 |
| IV. PLAN – SUMMARY & TERMS..... | 17 |
| A. Overall Structure..... | 17 |
| B. Classification & Treatment of Claims | 17 |
| E. Voting Procedures and Requirements..... | 27 |
| F. Distributions..... | 30 |
| G. Procedures for Disputed Claims | 32 |
| H. Executory Contracts & Unexpired Leases..... | 33 |
| M. Conditions to Confirmation & Effective Date | 34 |
| N. Modification, Revocation or Withdrawal of the Plan..... | 35 |

| | | |
|-------|--|----|
| O. | Injunctions, Exculpation & Indemnification..... | 36 |
| P. | Retention of Jurisdiction..... | 38 |
| Q. | Miscellaneous Provisions..... | 38 |
| V. | RISKS AND CONSIDERATIONS..... | 41 |
| A. | Bankruptcy Considerations..... | 41 |
| B. | No Duty to Update Disclosures..... | 42 |
| C. | Representations Outside this Disclosure Statement..... | 42 |
| D. | No Admission..... | 42 |
| VI. | CONFIRMATION..... | 42 |
| A. | Plan Confirmation Hearing..... | 42 |
| B. | General Requirements..... | 43 |
| C. | Plan Consummation..... | 44 |
| D. | Acceptance by Impaired Classes..... | 44 |
| F. | Cramdown..... | 45 |
| G. | Feasibility..... | 45 |
| H. | Best Interests Test..... | 46 |
| I. | Liquidation Analysis..... | 46 |
| VII. | INCOME TAX CONSEQUENCES..... | 47 |
| A. | Certain United States Federal Income Tax Consequences to Holders of Allowed Claims..... | 48 |
| B. | Certain United States Federal Tax Consequences to the Debtor..... | 50 |
| VIII. | ALTERNATIVES TO PLAN..... | 50 |
| A. | Liquidation Under Chapter 7..... | 50 |
| B. | Alternative Plan of Reorganization..... | 51 |
| C. | Dismissal of the Debtor’s Chapter 11 Case..... | 51 |
| IX. | RECOMMENDATION AND CONCLUSION..... | 51 |

I. INTRODUCTION

This is the disclosure statement (“Disclosure Statement”) for the Joint Plan of Liquidation (“Plan”) for Hebrew Hospital Senior Housing, Inc. (“Debtor” or “HSSH”), as proposed by the Debtor in the above-captioned Chapter 11 case (“Chapter 11 Case”) pending before the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”).

A copy of the Plan is annexed to this Disclosure Statement as **Exhibit A**. Unless otherwise set forth herein, all capitalized terms used in the Disclosure Statement shall have the meaning ascribed to them in the Plan. All references to the Plan or particular provisions thereof are qualified in their entirety by reference to the Plan. In conjunction with the Committee, the Debtor has prepared, filed, and served this Disclosure Statement, including any attached and/or accompanying exhibits, which are incorporated herein by reference, to the Holders of all known Claims against the Debtor and all other parties in interest pursuant to Section 1125(b) of the Bankruptcy Code, unless otherwise set forth herein.

This Disclosure Statement seeks to provide to the claimants such material information as is necessary to enable a hypothetical reasonable investor typical of the Holders of Claims to make a reasonably informed judgment about the Plan and to arrive at an informed decision in exercising its right to vote to accept or reject the Plan.

The Plan provides a means by which the proceeds of the liquidation of the Debtor’s assets will be distributed under Chapter 11 of the Bankruptcy Code, and sets forth the treatment of all Claims against the Debtor. As described in more detail below, the Debtor consummated the sale of substantially all of its assets in the fall of 2016. The Plan implements the distribution of the remaining proceeds of the sale (and any other available proceeds and cash) to holders of Allowed Claims, and provides for the liquidation of any remaining assets and a process for recovery of any causes of action belonging to the Debtor and its estate, including without limitation, certain litigation now pending against the Debtor’s current and former directors and officers.

The Debtor urges you to review the Disclosure Statement and Plan with your legal counsel. If the Bankruptcy Court confirms the Plan, it will constitute a legally binding contract and the terms and treatment set forth therein will be binding upon each claimant, whether or not the claimant votes on the Plan. Should the Bankruptcy Court receive more than one timely and properly completed Ballot by a creditor, it will only count the Ballot that bears the latest date and time for purposes of voting tabulation.

The Bankruptcy Court’s approval of this Disclosure Statement does not constitute a verification of the accuracy or completeness of the information contained herein, nor does it constitute an endorsement of the Plan.

IF YOU ARE ENTITLED TO VOTE TO APPROVE THE PLAN, YOU ARE RECEIVING A BALLOT WITH YOUR COPY OF THIS DISCLOSURE STATEMENT. THE DEBTOR URGES YOU TO VOTE TO ACCEPT THE PLAN.

THIS DISCLOSURE STATEMENT IS THE ONLY DOCUMENT AUTHORIZED FOR USE IN CONNECTION WITH THE PLAN. NO SOLICITATION FOR OR AGAINST THE PLAN MAY BE MADE EXCEPT THROUGH THIS DISCLOSURE STATEMENT.

THE DEBTOR RECOMMENDS THAT CREDITORS SUPPORT AND VOTE TO ACCEPT THE PLAN. IT IS THE OPINION OF THE DEBTOR THAT THE TREATMENT OF CREDITORS UNDER THE PLAN CONTEMPLATES A GREATER RECOVERY THAN THAT WHICH THEY ARE LIKELY TO ACHIEVE UNDER OTHER ALTERNATIVES FOR THE REORGANIZATION OR LIQUIDATION OF THE DEBTOR. ACCORDINGLY, THE DEBTOR BELIEVES THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS.

A. *Overview of Chapter 11*

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. In addition to permitting debtor rehabilitation, Chapter 11 promotes equality of treatment for similarly situated holders of claims and equity interests, subject to the priority of distributions prescribed by the Bankruptcy Code.

The commencement of a Chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the commencement of the Chapter 11 case. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a “debtor-in-possession.”

Consummating a plan is the principal objective of a Chapter 11 case. A bankruptcy court’s confirmation of a plan binds the debtor, any entity acquiring property under the plan, any holder of a claim or equity interest in a debtor and all other entities as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code, to the terms and conditions of the confirmed plan. Subject to certain limited exceptions, the order issued by the bankruptcy court confirming a plan provides for the treatment of claims and equity interests in accordance with the terms of the confirmed plan.

Prior to soliciting acceptances of a proposed Chapter 11 plan, Section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of the Chapter 11 plan. This Disclosure Statement is being submitted in accordance with the requirements of Section 1125 of the Bankruptcy Code.

B. *Rules of Interpretation and Construction*

Unless otherwise specified, all section or exhibit references in the Disclosure Statement are to the respective section in, or exhibit to, the Disclosure Statement, as the same may be amended, waived, or modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Disclosure Statement as a whole and not to any particular section, subsection, or clause contained therein. The rules of construction contained in Section 1102 of the Bankruptcy Code shall apply to the Disclosure Statement. The headings in this Disclosure Statement are for convenience of reference only and shall not limit or

otherwise affect the interpretation of the Disclosure Statement. Unless otherwise provided, any reference in this Disclosure Statement to an existing document, exhibit or schedule means such document, exhibit or schedule as it may have been amended, restated, revised, supplemented or otherwise modified. Further, where appropriate from a contextual reading of a term, each term includes the singular and plural form of the term regardless of how the term is stated and each stated pronoun is gender neutral. In computing any period of time set forth in the Disclosure Statement, the provisions of Bankruptcy Rule 9006(a) shall apply.

C. *Recommendation of the Debtor*

The Debtor believes that the Plan is consistent with Chapter 7 structure, but avoids the additional layer of administrative expenses and delay in distributions if converted to Chapter 7. As a result, the treatment of creditors under the Plan contemplates a greater recovery than that which they are likely to achieve under other alternatives for the reorganization or liquidation of the Debtor; that the Plan accomplishes the objectives of Chapter 11 of the Bankruptcy Code; and that acceptance of the Plan is in the best interests of the Debtor, its creditors, the Estate, and all parties in interest. Accordingly, the Debtor urges creditors to vote to accept the Plan.

II. HISTORY OF THE DEBTOR

A. *HHH System*

The Debtor was incorporated in the State of New York on or about October 2, 1997 pursuant to § 402 of the Not for Profit Corporation Law (“NFPLC”) as a Type B corporation. As such, the Debtor does not have any shareholders and it is constituted with a self-directed board.

The Debtor was formed as a complement to the larger Hebrew Hospital Home Health System (“HHH”) that was initially established in 1928 as a not-for-profit nursing home in the Tremont section of the Bronx. HHH’s mission was to provide the premiere level of residential and related health care services to the nearby senior population.

More specifically, the Debtor was formed for the purposes of sponsoring, developing, constructing and operating a Continuing Care Retirement Community (“CCRC”) consisting of 120 independent living apartment units and a 20 bed skilled nursing facility, which also included an adult day care health program and a 10 bed enriched housing unit. The independent apartment facility was commonly referred to as *Westchester Meadows* and the skilled nursing component was denominated as the *Fieldstone*.

B. *Statutory & Regulatory Requirements*

CCRCs were authorized pursuant to Article 46 of the New York Public Health Law (“NYPHL”). The establishment of a CCRC requires the issuance of a certificate of authority from the New York State Department of Health (“DOH”) and is subject to regulatory oversight by the DOH, as well as the New York State Department of Financial Services (“DFS”). Further, as a not-for-profit corporation, the New York State Attorney General (“NYSAG”) also has broad regulatory oversight over the Debtor.

From a regulatory standpoint, the DOH is the lead agency that is responsible for issuing the requisite certificate of authority (“COA”), along with the operating certificates required for the skilled nursing and enriched housing programs. The DOH is entrusted with monitoring the quality of care and services provided to the senior resident population. Accordingly, it performs periodic audits and physical inspections. The CCRC sponsor/operator is required to provide periodic financial reporting. The DFS is principally responsible for monitoring the finances of a CCRC in accordance with the requirements of applicable regulations as promulgated and set forth in 11 NYCCRR § 350.0. In part, the aforementioned regulations prescribe a detailed formulation for a CCRC’s establishment and maintenance of operating reserves.

The basic concept of a CCRC is that eligible senior citizens, who become residents of the independent apartment units, are assured a continuum of care as their physical and mental needs may diminish over time, such that additional levels of care are required. A CCRC resident may avail his or herself of assisted living and skilled nursing services, as the case may be, along with other physical and other therapies and treatment plans. The entry point is a senior resident who is capable of independent living and as circumstances dictate, may require additional levels of health care services.

C. Initial Startup & Funding

Prior to undertaking the development and construction of the Debtor’s CCRC facility, the Debtor’s board of directors (“Board”) engaged consultants to assess the viability and feasibility of the CCRC project. Specifically, the Board hired a recognized consultant in the field, Retirement Living Service (“RLS”), to develop and market the CCRC project. The Board also entered into a management agreement with RLS Management LLC (“RLS Management”) to operate the facility once opened. KPMG was engaged to assess and prepare a financial feasibility study, including an assessment of the initial project funding, which contemplated the issuance of two tranches of tax exempt bonds. The bond underwriters were HJ Sims & Co., Inc. and Solomon Smith Barney.

In early 2000, based upon the RLS analysis, projections and marketing plans, KPMG examined the proposed financial structure which included the issuance of two tiered tax exempt revenue bonds (Series 2000 Bonds) in the aggregate amount of \$48,560,000 to be issued by the County of Westchester Industrial Development Agency (“WCIDA”). The bonds consisted of an \$18,560,000 fixed rate bond denominated as the Series 2000A Long-Term Bond (“Long-Term Bond”) and a \$30,000,000 variable rate demand bond denominated as the Series 2000B Short-Term Bond (“Short-Term Bond”). KPMG calculated the entire project cost, including applicable interest expenses and reserves, totaled \$57,563,000. To paraphrase, KPMG concluded that: (i) the CCRC Project was feasible; (ii) the financial forecasts as presented conformed with the guidelines established by AICPA; (iii) the underlying assumptions provided a reasonable basis for the Debtor’s forecasts; and (iv) that the financial forecasts indicated that there were sufficient funds to be generated from the Project to cover and meet the Debtor’s operating expenses, working capital needs and other financial requirements.

On or about July 19, 2000, the bond underwriters, Herbert J. Sims & Co., Inc. and Solomon Smith Barney, generated an offering prospectus. The bonds were fully subscribed and

the funding was put in place for the commencement of the development and construction of the Project.

In January of 2008, the Debtor refinanced the Long-Term Bond through the issuance of tax exempt variable rate bonds with a face value of \$14,985,000 (“Replacement Bond”). The Replacement Bond included a fixed rate of interest for the first five (5) years and had a stated maturity date of July 1, 2028. The Manufacturers and Traders Trust Company (“M&T Bank”) provided a credit enhancement through its issuance of its letter of credit (“M&T LOC”), which was secured and collateralized, in part, by a first mortgage encumbering the Debtor’s facilities, and also collateralized with marketable securities pledged by the Hebrew Hospital Home Foundation, Inc. (“Foundation”). In order to reduce the Debtor’s interest expense, on August 15, 2015, the Foundation’s securities were deployed to partially redeem the Replacement Bond such that the outstanding principal balance was reduced to \$5,455,000.

D. *Residency Agreements*

A CCRC offers incoming residents a form of Residency Agreement (“Residency Agreement”) that delineates the scope of services and corresponding financial commitments, along with other relevant matters. CCRC’s may offer different types of Residency Agreements which vary the financial components and scope of services. The Residency Agreements are referred to as Type A, Type B or Type C contracts. The form and substance of the Residency Agreements require regulatory approval from both the DOH and DFS. The components of the Residency Agreement include the payment of an initial entrance fee, monthly apartment rental fees and additional charges for other defined services. Provisions for the refunding of a portion of the initial entrance fees are set forth in the applicable Residency Agreement. Changes to the Residency Agreement require approvals from the DOH and DFS. While it is true that a CCRC may use the entrance fees in operations, the statutes also require the creation and maintenance of reserves. For a period of time prior to the Debtor’s Chapter 11 bankruptcy filing, it was unable to maintain the minimum statutory reserve requirements set forth in 11 NYCRR § 350, which left the Debtor unable to honor its obligations to make entrance fee refunds to its residents.

At its inception, the Debtor offered a single form of Type A Residency Agreement. The initial entrance fee and the monthly rental charges varied depending upon the size and features of the particular apartment unit. With respect to the entrance fee, the Debtor’s Type A contract was comprised of a residential and life care component. The value of the life care component was set at approximately \$18,000 and the balance attributable to the residential fee portion. The residential component portion of the entrance fee was 90% refundable upon the earlier of: (i) the expiration of twelve (12) months from the date of a resident’s departure from the apartment; or (ii) upon the re-renting of the subject apartment unit. As discussed herein, the Debtor’s Type A contract proved to be financially untenable, particularly given the unlimited duration of the life care services. Accordingly, in 2009 with the approval of the regulatory agencies, the Debtor eliminated the Type A Residency Agreement and replaced it with a Type B contract. Notably, the changes included assessing an initial 4.0% administrative fee and a 2.0% per month amortization of the residential fee portion; the life care component was limited to 60 days. For residents who enrolled prior to January 1, 2006, the entrance fee refund liability, which was used in part to fund operating expenses of the Debtor and entrance fee refunds of residents when due, was subject to a minimum refund of 90%. For those residents who enrolled after January 1,

2006, the entrance fee refund minimum was set at 65%. Any life care services after the expiration of the 60-day limit were subject to fees for services rendered.

A further revision to the Type B Residency Agreement was instituted effective February 1, 2013, with the approval of the regulatory agencies. That modification provided that the residential refund component continued to be reduced at the rate of 2% per month, however, without any floor. Accordingly, after the expiration of fifty-one (51) months of occupancy, the residential fee component was fully amortized. The life care component remained unchanged as described above.

E. *Pre-Petition Financial Results*

Notwithstanding an initial 100% occupancy of the independent living apartment units achieved in the spring of 2002 (when the Debtor opened its doors), from a financial perspective the Debtor incurred net operating losses from its inception up until 2014. From the outset, the Debtor realized operating losses, attributable, in part, to the insufficient level of reimbursement rates under various governmental programs applicable to the assisted living and skilled nursing programs. Significantly, the Debtor's continued operating losses were funded through the subsidization of other affiliates or related parties, including HHCS, Inc. The Foundation also continued to provide financial support. The magnitude of the operating losses was exacerbated in 2008 through 2009 due to the widespread turbulence in the domestic and world-wide financial markets. The Debtor's ability to attract new residents was substantially impaired. The census numbers at Westchester Meadows steadily declined based upon attrition and the lack of replacements. From 2010 through 2015, audited financials from Abbate Demarinis, LLP, the Debtor's auditor, noted deficiencies of unrestricted operating revenues over operating expenses, working capital deficiencies, and negative cash flows from operating activities, all of which threatened the viability of the Debtor. During this period of time the Debtor continued to market to new residents until mid-2015 when the Debtor implemented and pursued various financial and operational changes to address its financial challenges. As previously indicated, the Debtor refinanced the original Long-Term Bond, which afforded it debt service relief in terms of the cash flow requirements. As referenced above, the Debtor obtained approval from DFS and DOH to replace the previous Type A Residence Agreement with a new Type B Agreement and then a further revised Type B Agreement.

Further operational changes were implemented including, without limitation:

- (i) A top to bottom management assessment of all departments, which resulted in staffing reductions by layoff and attrition;
- (ii) The outsourcing of various services through competitive bidding, including the dietary/nutrition, housekeeping, maintenance, security and pharmacy programs;
- (iii) Insurance coverages were put out for competitive bids, including the combining of coverages with the other HHH system entities in order to obtain favorable pricing and premiums; and

- (iv) The administrative services and purchasing of goods and services were consolidated with the other HHH systems' programs to obtain better bulk pricing.

From 2013 through the first quarter of 2015, the Debtor and its Board engaged Hamlyn Marketing to improve upon its high vacancy rate and overall poor financial condition. In accordance with the changes to the Residency Agreements as mentioned above, entrance fees were reduced to attract new residents. New prospective residents were also offered free trial visits and short-term stay at Westchester Meadows, free indoor parking was made available during the winter months.

Notwithstanding all of the financial and programmatic changes that were implemented, the vacancy rate grew, and the Debtor continued to suffer net operating losses.

DFS, along with the Debtor's auditor, Abbate Demarinis, LLP, continued to monitor the Debtor's financial performance and it was evident at the end of calendar year 2010 that the Debtor was unable to comply with the statutory reserve requirements. The Debtor's senior management was in regular communications with DFS regarding the reserve deficiencies. Unfortunately, notwithstanding all of the financial programmatic and operational changes, the Debtor was still unable to meet the regulatory requirements for maintaining the mandated reserves. From January 1, 2011 through December 31, 2015, the Debtor lost approximately \$9.6 million.

F. *Restructuring Committee*

In February 2015, the Board formed an ad hoc committee to develop its strategic course of action ("Restructuring Committee"). To provide professional assistance, the Restructuring Committee engaged the financial consulting and turnaround firm GETZLER HENRICH AND ASSOCIATES LLC ("Getzler Henrich"), as well as HARTER SECRET & EMERY LLP ("HSE") as legal counsel. The Board concluded that a sale of the Debtor's CCRC as a going concern was the best course of action.

The Restructuring Committee contemplated that from the net proceeds that the Debtor's sister company, Hebrew Hospital Home of Westchester, Inc. ("HHHW"), realized from the sale of its 160 bed skilled nursing home on April 30, 2015, it would access about \$5,544,000 and satisfy the balance of the Replacement Bond. It was believed by the Debtor and the Board that this could free up the Debtor's real estate to use as collateral to pay for a new credit facility that would enable the Debtor to fund entrance fee refunds and generate working capital, pending a sale of Westchester Meadows. Any usage of HHHW's sale proceeds were subject to regulatory approval and an order of the Westchester County Supreme Court. However, this plan did not come to fruition given the strenuous objections raised by the NYSAG and certain other interested parties. Additionally, the specter of joint and several substantial pension plan liabilities across the HHH system resulting from the closure of the home health care programs operated by HHHW and a related entity, Hebrew Hospital Home Care, Inc. ("Home Care"), proved to be an obstacle to the usage of the surplus funds to benefit Westchester Meadows.

G. *Pre-Petition Sale Efforts*

In early 2015, the Debtor engaged the services of the Marwood Group to market Westchester Meadows and potentially seek a stalking horse buyer.¹ The Board's intention was for the Debtor to file for chapter 11 relief once it had negotiated an asset purchase agreement with a stalking horse buyer. The presumed asset purchase agreement would provide the platform for a competitive sale pursuant to applicable provisions of the Bankruptcy Code.

As the Debtor's resident population came to learn that Westchester Meadows was being marketed for sale, the Westchester Meadow's Residents Council ("Residents' Council") mobilized and sought to obtain guidance from outside professionals, specifically legal and accounting firms. Accordingly, the Residents' Council engaged DLA Piper LLP (US) ("DLA Piper"), as its legal counsel, and CohnReznick LLP ("CohnReznick"), as its financial advisor. The Debtor entered into a letter of intent with a prospective purchaser. However, based upon the Residents' Council's concerns with the compressed timeframe of Marwood's marketing efforts, and other considerations regarding the qualifications of the prospective stalking horse bidder identified by Marwood, the Debtor terminated the extant letter of intent.

The Board agreed to start the sale process anew. Based upon the recommendation of DLA Piper and CohnReznick, the Debtor engaged RBC Capital Markets ("RBC") as its investment banker. In the fall of 2015, RBC undertook the task of pursuing a new stalking horse purchaser in anticipation that a proposed sale transaction would provide a segue for a chapter 11 filing and a platform for a competitive sale process.

The Debtor's cash flow from operations continued to deteriorate. Lawsuits and threats of future litigation by legal representatives of former residents who were owed entrance fee refunds continued to mount. The Debtor needed to address its need for working capital. Once again, the focal point of resources was the proceeds from HHHW's sale of its skilled nursing home. As a result of multi-party negotiations, on October 20, 2015, a Restructuring Support and Loan Agreement ("RSA") was entered into among the NYSAG, the Residents' Council, Debtor and HHHW, whereby a secured loan facility in the amount of \$3,500,000 (secured by a second mortgage upon the Debtor's real estate) was conceived. The funds were earmarked for the repayment of approximately \$2,275,000 of resident refund claims² and the balance for continued operations and to enable the Debtor to enter into chapter 11 ("HHHW Secured Loan Facility").

The RSA was approved by the Supreme Court of Westchester County on October 21, 2015, and upon obtaining the consents of M&T Bank, the WCIDA and Bond Trustee, the HHHW mortgage was recorded and the funds released for their intended purposes. Repayment of the HHHW Secured Loan facility was to come from the sale of the Debtor's assets.

The Debtor, in conjunction with DLA Piper and CohnReznick, pursued post-petition debtor-in-possession ("DIP") financing, which once negotiated would also provide a segue for the Debtor's chapter 11 filing. Concurrently, RBC continued to solicit prospective purchasers of

¹ The Marwood Group assisted Home Care and HHHW with the sale of their home health care program.

² See HHSB Docket No. 2 at page 25

the Debtor's assets as a going concern. Eventually, the Debtor negotiated a proposed DIP loan package with Lapis Municipal Opportunities Fund II LP and Lapis Aquilo Fund II LP (together, "Lapis") in the principal amount of \$12,200,000, which was to be secured by a first mortgage lien and broad security interests in all the pre/post-petition assets of the Debtor ("Lapis DIP Loan"). The Lapis proposal required satisfaction of M&T's first mortgage, as well as HHHW's second mortgage of \$3,500,000, and the transfer of title from the WCIDA to the Debtor. Upon negotiation of the final transactional DIP loan documents, the Debtor was positioned to commence its Chapter 11 case.

III. BANKRUPTCY

A. *Voluntary Petition*

On December 9, 2015 ("Petition Date"), the Debtor filed its voluntary petition under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") under case #15-13264-MEW.

B. *Administration*

After the Petition Date, and in accordance with Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continued to operate its businesses and manage its property as a debtor-in-possession. No trustee or examiner was appointed in the Chapter 11 Case.

C. *First Day & Related Orders*

Contemporaneously, with the filing of the chapter 11 petition, the Debtor also filed several interim motions for first day orders, including: (i) a motion to extend the deadline for the Debtor to file its schedules of assets, liabilities and statement of financial affairs; (ii) an interim motion for the Debtor to continue to use its existing bank accounts and business forms; (iii) a motion for interim and final orders authorizing the Debtor to pay payroll and employee benefits; (iv) a motion to prohibit utility providers from discontinuing services and approving a proposed form of adequate protection; (v) interim and final orders authorizing, but not directing, the Debtor to pay pre-petition obligations of certain critical vendors; (vi) a motion for an order authorizing the Debtor to assume the RSA; and finally, (vii) the Debtor's motion for interim and final orders approving the Lapis Dip Loan package.

At the initial court hearing in December 2015, the Bankruptcy Court approved various orders: (i) extending the deadline for the Debtor to file its schedules of assets, liabilities and statement of affairs; (ii) on an interim basis authorizing the Debtor's payment of pre-petition employee obligations and payroll; (iii) on an interim basis authorizing the Debtor to continue using existing bank accounts and business forms; and (iv) on an interim basis prohibiting utility providers from altering, refusing or discontinuing the provision of utility services and setting forth a procedure to provide adequate assurances. All were entered on December 17, 2015.

However, in light of objections and concerns raised by various constituents, as well as the Bankruptcy Court, the Debtor's motions for: (i) interim and final orders concerning the payment of pre-petition claims of certain critical vendors; (ii) assumption of the RSA; and (iii) Lapis DIP

Loan were not approved and consideration of those matters were deferred. In particular, with respect to the Lapis DIP Loan facility, the magnitude of the facility and its requirements were of concern, particularly given the retirement of pre-petition secured debt that would consume the vast majority of the Lapis DIP Loan facility, leaving proportionately limited working capital for the Debtor. The lender-imposed timetable for the anticipated sale process was perceived to be unrealistic and problematic. Eventually, the Debtor withdrew its motions for the assumption of the RSA, payment of critical vendors and the Lapis DIP Loan facility.

D. *Appointment of Committee*

On December 28, 2015, the UST appointed the Committee pursuant to Section 1102(a) of the Bankruptcy Code, consisting of the following members: (i) 1199 SEIU Benefit and Pension Funds (“1199”); (ii) Andrea Taber, Esq. on behalf of Lucille and Selig Poplik; (iii) Richard A. Bobbe; (iv) Mary Blumenthal-Lane on behalf of Julia Blumenthal-Lane; and (v) Peter Clark on behalf of Ann Clark. Following its formation, the Committee retained DLA Piper and CohnReznick as its legal counsel and financial advisor, respectively.

In January 2016, the Committee’s legal counsel filed a motion under Bankruptcy Rule 2004 for the production of documents and other discovery of the Debtor.³ The motion was never ruled upon. Notwithstanding, throughout the Chapter 11 Case, the Debtor has provided, and continued to provide, documentation to the Committee’s professionals, along with on-site access to personnel and records.

E. *Retention & Employment of Professionals*

The Debtor sought and obtained authority to retain and employ the following professionals to assist in the administration of the Chapter 11 Case: (i) HSE as primary bankruptcy counsel to the Debtor; (ii) Getzler Henrich as financial advisor to the Debtor; (iii) ABBATE DEMARINIS LLP as accountant to the Debtor; (iv) MCCULLOUGH GOLDBERGER & STAUDT LLP (“MGS”) as special counsel to the Debtor for general corporate, real estate and other legal matters; (iv) RBC as investment banker for a sale of to the Debtor; (v) GRIFFIN, COOGAN, SULZER & HORGAN, P.C. as special counsel to the Debtor for a tax assessment dispute; and in early 2017, (vi) LIPPES MATHIAS WEXLER FRIEDMAN, LLP (“LMWF”) was substituted as primary bankruptcy counsel to the Debtor, with HSE transitioning to a special counsel role for health and employment-related matters.

In addition to the Debtor’s professionals, the UST appointed David N. Crapo as patient care ombudsman for the Debtor, who in turn retained GIBBONS P.C. as counsel.

F. *Joint Administration*

On January 8, 2016, the Debtor (and two related debtors) filed a motion authorizing joint administration of the Debtor’s Chapter 11 Case with those of related debtors, HHH Choices Health Plan, LLC (“HHH Choices”) and HHHW [Docket No. 55]. On January 14, 2016, an order was entered on the motion providing for the consolidation of the three cases for procedural purposes only and providing for the cases to be jointly administered by the Bankruptcy Court

³ See Docket No. 79.

[Docket No. 61].

G. *Schedules and Statements*

On January 18, 2016, the Debtor filed its schedules of assets/liabilities and statements of financial affairs (collectively, and as amended, "Schedules").

H. *Claims Bar Date*

By order dated June 16, 2016, the Bankruptcy Court fixed a general bar date of July 29, 2016, and a government bar date of August 19, 2016, as the deadlines for claimants to file Proofs of Claim [Docket No. 267].

I. *Post-Petition Financing & Agreement to Sell*

In order to address the Debtor's continued need for post-petition working capital, the HHHW board approved a \$2,000,000 loan facility to be secured by a *pari passu* second mortgage co-equal with the existing pre-petition \$3,500,000 mortgage. In respect thereof, HHHW filed its own voluntary petition under chapter 11 of the Bankruptcy Code on January 8, 2016. The Debtor and HHHW both filed motions seeking approval of the HHHW Secured Loan Facility. However, that motion met with opposition from creditor constituents, the UST and Bankruptcy Court, so the transaction was not approved.

The Debtor's need for working capital continued given the diminishing prospects for obtaining a DIP loan facility in the early stages of this Chapter 11 Case. Interim funding support came from the voluntary disgorgement of pre-petition retainers paid to the Debtor's professionals. Through careful and scrupulous management of operations, the Debtor was able to continue thereafter to support its operations for a limited period of time.

As this Chapter 11 Case continued into the spring of 2016, without materialization of a prospective stalking horse purchaser, the prospects for a successful sale appeared rather dim. The various constituents of the Debtor and HHHW, along with their professionals and committees, convened a summit meeting to address the prolonged and yet to be proven productive sale process.

In a collaborative spirit, the numerous constituents and regulators concluded that the Debtor should file a motion for the sale of its assets, notwithstanding the lack of an actual stalking horse bidder and to accelerate the process on a compressed time frame. With the assistance of HHHW's committee counsel, the Debtor negotiated a limited DIP loan facility with Gordon Brothers in the amount of \$1,000,000, which was designed and intended to provide a runway for the finalization of the sale process.

J. *Bid Procedures*

Following the multi-party meeting noted above, the Debtor filed a motion with the Bankruptcy Court on June 8, 2016, to approve bidding procedures, corresponding notices and related relief ("Bid Procedures Motion") [Docket No. 264]. On June 23, 2016, the Bankruptcy

Court entered an order granting the Bid Procedures Motion (“Bid Procedures Order”) [Docket No. 276]. In accordance with the Bid Procedures Order and approved Bidding Procedures, the Debtor received two (2) timely “Qualified Bids”: (i) GF Westchester Holdings LLC (“Focus”); and (ii) The Bethel Methodist Home, Inc. (“Bethel”) (Focus and Bethel collectively, the “Qualified Bidders”). The Qualified Bids were vastly different proposals. The Bethel proposal envisioned the continuity of the Debtor’s operations as a CCRC; while the Focus proposal contemplated a conversion of the facility to luxury rental senior housing. Further, Bethel was an established not-for-profit operator of senior care facilities in New York State. Focus was an established national owner/operator of for-profit senior housing complexes.

Given the disparate nature of the Qualified Bids, the Debtor consulted with the Notice Parties, as defined in the Bid Procedures Order, and made a series of determinations that were communicated to legal counsel for the Qualified Bidders on Wednesday, July 20, 2016, particularly: (i) no live auction would occur, as was originally scheduled for Friday, July 22, 2016; (ii) Debtor would provide lists of issues and concerns to each Qualified Bidder by no later than Tuesday, July 26, 2016; (iii) Qualified Bidders would have until the close of business on Thursday, July 28, 2016, to address the issues via final offers and corresponding one-page summaries; and (iv) Debtor would schedule a meeting of the residents, former residents and their families for either Tuesday or Wednesday, August 2-3, 2016, during which each Qualified Bidder would have the opportunity to make a presentation and answer questions (“Resident Meeting”). Per the above, the Debtor sent letters to legal counsel for each of the Qualified Bidders on Tuesday, July 26, 2016 (collectively, “Bid Issue Letters”).

K. *Resident Meeting Notices, Revised Bids & Questionnaires*

On Tuesday, July 26, 2016, the Debtor distributed an initial notice for the Resident Meeting at 7 p.m. on Wednesday, August 3, 2016 (“First Resident Notice”). In response to the Bid Issue Letters, both Focus and Bethel submitted updated Qualified Bids to the Debtor on Thursday, July 28, 2016, which included revised Asset Purchase Agreements, related document exhibits and the requested one-page summaries intended for the Resident Meeting (collectively, “First Revised Qualified Bids”). The Debtor filed the Asset Purchase and Sale Agreements (each an “APA”) associated with the First Revised Qualified Bids via ECF [Docket Nos. 304 and 305], and posted them to a sale website (“Sale Website”) with the approved claims agent, Prime Clerk LLC, along with the one-page summaries for each.

On Friday, July 29, 2016, the Debtor distributed a second notice for the Resident Meeting confirming the date/time of the meeting, details for the Sale Website, balloting process and how to submit questions (“Second Resident Notice”). The Debtor also circulated a form ‘Ballot’ with the Second Resident Notice, both of which the Debtor immediately uploaded to the Sale Website.

Throughout this process, the Debtor was receiving requests for information and specific questions from current residents, representatives of former residents and several of the Notice Parties. Accordingly, the Debtor compiled the inquiries into separate questionnaires and delivered them to counsel for each of the Qualified Bidders on Monday, August 1, 2016

(collectively, "Bid Questionnaires"). Both Qualified Bidders submitted responses to the Bid Questionnaires and in turn, the Debtor uploaded them to the Sale Website as early as possible on Wednesday, August 3, 2016.

L. *Resident Meeting & Ballot Results*

The Resident Meeting took place at the Debtor's location on August 3, 2016, and lasted approximately 2 ½ hours. During that time, the Qualified Bidders made formal presentations and conducted Q&A with the audience, with both remaining on the premises afterwards to informally address further questions and concerns. The Resident Meeting had in-person attendance from current residents, former residents and/or members of their families, representatives of the Notice Parties and personnel from local politicians' offices. A conference call-in was also available for the Resident Meeting, so numerous parties were able to attend telephonically, and the Debtor tape-recorded the proceedings. The Debtor placed a ballot box and additional forms in the reception area of the facility. Per request of the Office of the Attorney General of the State of New York (a member of the Notice Parties), the deadline was extended such that current and former residents had until 5 p.m. on Sunday, August 7, 2016, to submit ballots in favor of a Qualified Bidder, and could also change their vote up until the deadline, if desired. Once compiled, the ballot totals stemming from the Resident Meeting were in favor of Bethel.

M. *Post-Resident Meeting Revised Bids & Board Deliberations*

In response to certain issues raised at the Resident Meeting and the general spirit of competition, both Qualified Bidders sought to revise certain terms of their respective proposals. At the Debtor's request, each Qualified Bidder prepared and submitted revised Qualified Bids on Friday, August 5, 2016, which the Debtor uploaded to the Sale Website immediately upon receipt (collectively, "Second Revised Qualified Bids").

On the morning of Monday, August 8, 2016, Bethel submitted terms for a further revised Qualified Bid that substantially increased the 'cash consideration' from Bethel's Second Revised Qualified Bid ("Final Bethel Bid"). The Debtor's Board convened via teleconference during the late morning of August 8th to review all materials, discuss the long-term implications of each Qualified Bidder and select the Successful Bidder, in accordance with applicable U.S. bankruptcy law.

In light of the Final Bethel Bid and other considerations, the Debtor's Board selected Bethel as the *conditional* Successful Bidder and Purchaser. However, in response to the significant financial changes in the Final Bethel Bid, Focus sought to improve its Second Revised Qualified Bid and submitted terms for a further revised Qualified Bid to Debtor's counsel in the early morning hours of Tuesday, August 9, 2016 ("Final Focus Bid").

The Debtor's Board convened via telephone during the morning of August 9, 2016. Given the potential changes in treatment for current residents under the Final Focus Bid, the Debtor's Board determined that it should not (deeming it inappropriate and improper) make a final determination of the Successful Bidder, without further input from the Notice Parties,

constituents and other parties-in-interest. Accordingly, counsel for the Debtor circulated an e-mail to the Notice Parties, Committees and others with the following information: (i) terms of the Final Focus Bid; (ii) current positions of the Debtor's Board and both Qualified Bidders; (ii) request for responses and/or input as to the positions of all recipients of the e-mail; and (iii) notice of the Board's pending meeting scheduled for that night.

N. *Sale Hearing & Closing*

On the afternoon of August 9, 2016, the Debtor filed a Bid Process Summary and Notice of Conditional Successful Bid identifying Bethel as the proposed Purchaser. The Committee opposed the Debtor's selection of Bethel and asserted that the Bankruptcy Court should instead approve a sale to Focus. During the period of August 10-16, 2016, the Bankruptcy Court conducted multi-day extensive hearings to determine the successful bidder. After the close of the evidentiary hearing, on August 17, 2016, the Bankruptcy Court issued a bench decision approving the sale to Bethel. The formal order was entered on August 19, 2016, which included cash consideration of \$16,114,000, settlement with the bondholders and M&T Bank, and the sale closing on October 31, 2016.

O. *Residency Agreement Addendum*

One of the closing conditions required by Bethel was that all of the existing residents enter into binding amendments to their then existing residency agreements ("Residency Addendum"), which would be assigned to Bethel as part of the closing. The form and substance of the Residency Addendum revised and restructured the terms and manner of payment of the respective entrance fee refunds, in accordance with the terms and conditions of the Final Bethel Bid. The Residency Addendum was vetted by the regulatory agencies and approved in form and substance. All of the residents executed and delivered the Residency Addendums, which were then assigned and assumed by Bethel.

P. *Post-Sale Operations*

The Debtor has engaged in a gradual wind-down since the sale closing. On October 31, 2016, the Debtor and Bethel entered into a License Agreement for the Debtor to utilize space at the facility until January 31, 2017. The Debtor vacated the premises prior to expiration of the License Agreement with Bethel. Beginning January 1, 2017, the Debtor's affiliate, HHCS, Inc., entered into a similar license agreement with special counsel, MGS, to utilize space at its offices for the operations and wind down of the Debtor, and certain affiliates. Throughout this process, the Debtor has drastically reduced staff, operations and related costs.

Q. *1199 Settlement*

The creditors with the largest Claims against the Debtor are 1199SEIU United Healthcare Workers East and eight (8) 1199SEIU pension and benefit funds ("1199 Funds").

The 1199SEIU Healthcare Employees Pension Fund ("1199 Pension Fund"), one of the 1199 Funds and a multi-employer pension plan, filed a proof of claim against the Debtor in the

amount of \$32,799,263.00, representing the alleged withdrawal liability of the Debtor under the Multiemployer Pension Plan Amendments Act of 1980 for the complete withdrawal of the Debtor, HHH Choices and HHHW (collectively, “Debtors”), and related non-debtor entities from the 1199 Pension Fund. The 1199 Pension Fund alleged that the liability of the Debtors and related non-debtor entities was joint and several because all were members of the same controlled group. The Debtors’ Committees disagreed with the amount of the withdrawal liability claim based on several legal and factual arguments, but agreed that the Debtors and related non-debtor entities were members of the same controlled group. As part of a settlement agreement entered into by the Debtors, their respective Committees, the 1199 Funds, including the 1199 Pension Fund and 1199, approved by the Bankruptcy Court on August 9, 2017 (“Settlement”) [Docket No. 582], the 1199 Pension Fund will have: (i) an Allowed Unsecured Claim against the Debtors for withdrawal liability in the amount of \$5,759,751; and (ii) an Allowed Claim against the Debtors for withdrawal liability that is subordinated to all Allowed Unsecured Claims against the Debtors in the amount of \$5,759,751.

1199 filed proofs of claim for unpaid pre-petition wages and benefits owed to employees of the Debtors and related non-debtor entities who were members of 1199, and the 1199 Funds filed proofs of claim for unpaid, required pre-petition contributions of the Debtors and one related non-debtor entity, and interest on those amounts. On the basis of the single employer doctrine which may be applied under standards established by federal labor common law, 1199 and the 1199 Funds asserted that the Debtors and one related non-debtor entity together constituted a single employer. As a result, alleged 1199 and the 1199 Funds, each of the Debtors is jointly and severally liable for these unpaid wages and fund contributions. The Debtors and their respective Committees denied the application of the single employer doctrine. As part of the Settlement, 1199 will have Allowed Unsecured Claims of \$603,865.94 against the Debtors for the unpaid wages of 1199 employees of the Debtors and the related non-debtor entity, and the 1199 Funds will have Allowed Unsecured Claims of \$5,696,134.06 against the Debtors for unpaid contributions and interest.

The total allowed non-subordinated, Unsecured Claims of 1199 and the 1199 Funds under the terms of the Settlement are \$12,059,571. Under the Settlement, these Claims will be allocated against the Debtors as follows:

- (i) HHHW will pay the Allowed Unsecured Claims of 1199 and the 1199 Funds with the assets of the HHHW estate that remain after HHHW pays on hundred percent (100%) of the allowed administrative, priority and general unsecured claims of HHHW’s other creditors;
- (ii) Fifty percent (50%) of the 1199 and 1199 Funds’ Claims that are not paid by HHHW will be allowed against HHH Choices and paid *pari passu* (equally and without preference) with the allowed general unsecured claims of the other creditors of HHH Choices; and
- (iii) Fifty percent (50%) of the 1199 and 1199 Funds’ Claims that are not paid by HHHW will be allowed against the Debtor and paid *pari passu* with the Allowed Unsecured Claims of the other creditors of the Debtor.

Under the terms of the Settlement: (i) each of the Debtors waives and releases any claim, right of contribution or indemnification it has or may have against the other Debtors arising from or related to the Settlement payments to be made to 1199 and the 1199 Funds; and (ii) 1199 and the 1199 Funds release the Debtors, their officers and directors and the creditors' committees of the Debtors from all claims except as provided in the Settlement.

R. *Director & Officer Litigation*

After performing a preliminary investigation, the Committee determined that viable claims exist against some or all persons who served prior to and as of the Petition Date as the Debtor's officers and directors. For several years prior to and following the Petition Date, the Debtors had in place insurance policies that cover certain actions against the Debtor's directors and officers ("D&O Policies"). The D&O Policies provide coverage for, among other things, fiduciary liabilities, including negligent acts, breach of fiduciary duties, and responsibilities or obligations imposed upon fiduciaries by common law or statutory law. The D&O Policies are "claims made" policies, with an aggregate limit of liability of \$10,000,000 from the Debtor's primary carrier, RSUI Indemnity Company ("RSUI"), an aggregate limit of liability of \$10,000,000 from the Debtor's excess policy carrier, Great American Insurance Company ("Great American"), and an aggregate limit of liability of \$5,000,000 from the Debtor's secondary excess policy carrier, QBE Insurance Corporation ("QBE"). On August 31, 2015, the Debtor's counsel sent a letter to RSUI, Great American, and QBE for the "purpose [of] plac[ing] each of the carriers on notice" of "eventual" claims against the Debtor's officers and directors. On January 6, 2017 and January 9, 2017, RSUI and Great American, respectively, were both put on notice of claims made. RSUI and Great American acknowledged receipt on January 17, 2017.

On or about December 5, 2017, the Committee and Debtor entered into a stipulation conferring the Committee with standing to pursue claims against the Debtor's officers and directors for the benefit of the Estate; however, without any admission of liability on the part of the officers and directors. Pursuant to the stipulation, the Bankruptcy Court entered an order on December 8, 2017, authorizing the Committee to stand in place of the Debtor to pursue any potential claims against the directors and officers [Docket No. 751].

Accordingly, on December 8, 2017, the Committee filed an adversary complaint against certain of the Debtor's directors and officers seeking monetary damages based upon the allegations set forth therein ("D&O Litigation") [Docket No. 753].⁴ It is anticipated that the insurance carriers will undertake the defense of the D&O Litigation.

S. *Former Resident Litigation*

Just prior to the Petition Date, eight (8) of the Debtor's former residents received entrance fee refunds in the total amount of approximately \$2,275,000. The Debtor examined these transactions and determined that potentially viable claims exist against the former residents. Accordingly, on December 7 and 8, 2017, the Debtor filed adversary complaints against each of the former residents to preserve these claims for monetary damages pursuant to

⁴ Assigned Adversary Proceeding No. 17-01240-mew.

avoidance and other related causes of action, which are based upon the specific allegations set forth therein (“Former Resident Litigation”) [Docket Nos. 743-748, 750 and 752].⁵ The Committee recently opined that the Former Resident Litigation was inappropriate. It is anticipated that the Plan Administrator, as defined herein, will undertake the prosecution of the Former Resident Litigation, if deemed appropriate.

IV. PLAN – SUMMARY & TERMS

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT, AND IMPLEMENTATION OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT, AND TO THE EXHIBITS ATTACHED THERETO, OR FILED IN ACCORDANCE WITH ANY APPLICABLE DEADLINE.

ALTHOUGH THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN DOCUMENTS REFERRED TO THEREIN, THIS DISCLOSURE STATEMENT DOES NOT PURPORT TO BE A PRECISE OR COMPLETE STATEMENT OF ALL THE TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO THEREIN, AND REFERENCE IS MADE TO THE PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS.

THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN WILL CONTROL THE TREATMENT OF CREDITORS AND EQUITY SECURITY HOLDERS UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTOR AND OTHER PARTIES IN INTEREST.

A. *Overall Structure*

In general, and as more fully described herein, the Plan: (i) divides Claims into four (4) unclassified categories and three (3) classes; (ii) sets forth the treatment afforded to each category and class; and (iii) provides the means by which the proceeds of the Debtor’s assets will be distributed.

B. *Classification & Treatment of Claims*

The following table designates the Classes of Claims against the Debtor and specifies whether each such Class is: (i) Impaired or Unimpaired by the Plan; and (ii) entitled to vote to accept or reject the Plan in accordance with Section 1126 of the Bankruptcy Code. The table also designates, where applicable, those Classes deemed to reject the Plan in accordance with Section 1126 of the Bankruptcy Code. The Bankruptcy Code provides that Unimpaired Classes are conclusively presumed to accept the Plan, and therefore, solicitation of acceptance from such Classes is not required.

⁵ Assigned Adversary Proceeding Nos. 17-01229-mew through 17-01235-mew and 17-01238.

A Claim is placed in a particular Class only to the extent that such Claim falls within the designation of that Class, and is classified in other Classes to the extent that any portion of the Claim falls within the designation of such other Classes.

| <i>Class</i> | <i>Designation</i> | <i>Treatment</i> | <i>Entitled to Vote</i> |
|--------------|-----------------------|---|-------------------------|
| --- | Administrative Claims | Each holder of an Allowed Administrative Claim, in full and final satisfaction, release and settlement of such Allowed Administrative Claim, shall receive Cash from the Remaining Cash in an amount equal to such Allowed Administrative Claim on or as soon as reasonably practicable after the later of: (i) the Effective Date; and (ii) the date on which such Claim becomes Allowed or otherwise payable, unless such holder shall agree to a different and less favorable treatment of such Claim. | No |
| --- | Professional Claims | Each holder of an Allowed Professional Claim shall be paid in Cash from the Remaining Cash in an amount equal to such Allowed Professional Claim on or as soon as reasonably practicable after the first Business Day following the date upon which such Claim becomes Allowed by Final Order, unless such holder shall agree to a different and less favorable treatment of such Claim. | No |
| --- | Priority Tax Claims | Unless the holder thereof shall agree to a different and less favorable treatment, each holder of an Allowed Priority Tax Claim, in full and final satisfaction, release and settlement of such Allowed Claim, shall receive payment in Cash from the Remaining Cash in an amount equal to such Allowed Priority Tax Claim on or as soon as reasonably practicable after the later of: (i) the | No |

| <i>Class</i> | <i>Designation</i> | <i>Treatment</i> | <i>Entitled to Vote</i> |
|--------------|----------------------------|---|--|
| | | Effective Date; and (ii) the date on which such Claim becomes Allowed. Any Claim or demand for penalty relating to any Priority Tax Claim (other than a penalty of the type specified in Section 507(a)(8)(G) of the Bankruptcy Code) shall be disallowed, and the holder of an Allowed Priority Tax Claim shall not assess or attempt to collect such penalty from the Estate or any of its respective property or Assets. | |
| --- | United States Trustee Fees | U.S. Trustee Fees incurred by the Estate prior to the Effective Date shall be paid from the Remaining Cash on the Effective Date in accordance with the applicable schedule for payment of such fees. Until the Case is closed by entry of a final decree of the Court, the Plan Administrator shall pay all additional U.S. Trustee Fees incurred in accordance with the applicable schedule for the payment of such fees. | No |
| 1 | Secured Claims | Each holder of an Allowed Secured Claim, in full and final satisfaction, release and settlement of such Claim, shall receive one of the following alternative treatments, at the election of the Plan Administrator: (i) payment in full in Cash on or as soon as reasonably practicable after the later of (a) the Effective Date and (b) the date the Claim becomes due and payable by its terms; (ii) the legal, equitable and contractual rights to which such Claim entitles the holder, unaltered by the Plan; (iii) the treatment described in Section 1124(2) of the Bankruptcy Code; or (iv) all collateral securing such Claim, without representation or | No (Presumed to Accept – All were Paid at 10/31/16 Closing) |

| <i>Class</i> | <i>Designation</i> | <i>Treatment</i> | <i>Entitled to Vote</i> |
|--------------|-----------------------|---|----------------------------|
| | | <p>warranty by or recourse against the Debtor. To the extent that the value of the collateral securing an Allowed Secured Claim is less than the amount of such Allowed Secured Claim, the undersecured portion of such Claim shall be treated for all purposes under the Plan as an Allowed Unsecured Claim in Class 3 and shall be classified as such.</p> <p>· Class 1 is an Unimpaired Class and is deemed to have accepted the Plan.</p> | |
| 2 | Other Priority Claims | <p>Each holder of an Allowed Other Priority Claim, in full and final satisfaction, release and settlement of such Claim, shall be paid in full in Cash on or as soon as reasonably practicable after the later of: (i) the Effective Date; and (ii) the date on which such Claim becomes Allowed, unless such holder shall agree to a different and less favorable treatment of such Claim (including, without limitation, any different treatment that may be provided for in the documentation governing such Claim or in a prior agreement with such holder).</p> <p>· Class 2 is an Unimpaired Class and is deemed to have accepted the Plan.</p> | No (Presumed to Accept) |
| 3 | Unsecured Claims | <p>The holders of Allowed Unsecured Claims, in full and final satisfaction, release and settlement of such Allowed Claims, shall from time to time receive Pro Rata distributions of Cash from the Net Proceeds.</p> | Yes |

| <i>Class</i> | <i>Designation</i> | <i>Treatment</i> | <i>Entitled to Vote</i> |
|--------------|--------------------|---|-------------------------|
| | | <ul style="list-style-type: none"> · Class 3 is an Impaired Class that is entitled to vote on the Plan. The Debtor estimates that the recovery for holders of Allowed Unsecured Claims will be 0% to 5%. | |

1. Treatment of Unclassified Claims under the Plan

(i) Administrative Claims

· *Administrative Claims Bar Date* – Requests for payment of Administrative Claims must be filed no later than forty-five (45) days after occurrence of the Effective Date. **Holders of Administrative Claims who do not file such requests by such time shall be forever barred from asserting such Claims, and such Claims shall be forever barred from assertion, against the Debtor and/or its property.**

· *Estimation of Administrative Claims* – The Plan Administrator reserves the right, for purposes of allowance and distribution, to seek to estimate any unliquidated Administrative Claim, if the fixing or liquidation of such Administrative Claim would unduly delay the administration of and distributions under the Plan.

· *Treatment* – Each holder of an Allowed Administrative Claim, in full and final satisfaction, release and settlement of such Allowed Claim, shall receive Cash from the Remaining Cash in an amount equal to such Allowed Administrative Claim on or as soon as reasonably practicable after the later of: (i) the Effective Date; and (ii) the date on which such Claim becomes Allowed, or otherwise payable, unless such holder shall agree to a different and less favorable treatment of such Claim. After the Effective Date, the Plan Administrator may, in the ordinary course of business, satisfy any liabilities, expenses and other Claims incurred by the Plan Administrator in the ordinary course of business and without further order of the Court. The Debtor estimates that Allowed Administrative Claims will total approximately \$250,000 to \$300,000.

(ii) Professional Claims

· *Professional Fee Claims Bar Date* – All final applications for payment of Professional Fee Claims for the period through and including the Effective Date

shall be filed with the Court on or before the Professional Fee Claims Bar Date, or such later date as may be agreed to by the Plan Administrator. **Any Professional Fee Claim that is not asserted in accordance with the Plan shall be forever barred from assertion against the Debtor and/or its property.**

· *Treatment* – Each holder of an Allowed Professional Fee Claim shall be paid in Cash from the Remaining Cash in an amount equal to such Allowed Professional Fee Claim on or as soon as reasonably practicable after the first Business Day following the date upon which such Claim becomes Allowed by Final Order, unless such holder shall agree to a different and less favorable treatment of such Claim. The Debtor estimates that Allowed Professional Fee Claims will total approximately \$500,000 to \$1,000,000.⁶

· *Post-Effective Date Services* – The fees and expenses of professionals retained by the Plan Administrator and the Post-Effective Date Committee on and after the Effective Date shall be paid by the Plan Administrator upon his receipt and approval of invoice(s) therefor, without the need for further Court authorization or entry of a Final Order, but subject to the approval of the Post-Effective Date Committee, which approval shall not be unreasonably withheld. If the Plan Administrator, a professional and/or the Post-Effective Date Committee cannot agree on the amount of Post-Effective Date fees and expenses to be paid to such professional, such amount shall be determined by the Court.

(iii) Priority Tax Claims

· *Treatment* – Unless the holder thereof shall agree to a different and less favorable treatment, each holder of an Allowed Priority Tax Claim, in full and final satisfaction, release and settlement of such Allowed Claim, shall receive payment in Cash from the Remaining Cash in an amount equal to such Allowed Priority Tax Claim on or as soon as reasonably practicable after the later of: (i) the Effective Date; and (ii) the date on which such Claim becomes Allowed. Any Claim or demand for penalty relating to any Priority Tax Claim (other than a penalty of the type specified in Section 507(a)(8)(G) of the Bankruptcy Code) shall be Disallowed, and the holder of an Allowed Priority Tax Claim shall not assess or attempt to collect such penalty from the Estate, or any of their respective property or Assets. The Debtor estimates that Allowed Priority Tax Claims will total approximately \$0.

(iv) United States Trustee Fees

· *Treatment* – U.S. Trustee Fees incurred by the Estate prior to the Effective Date shall be paid from the Remaining Cash on the Effective Date in accordance with the applicable schedule for payment of such fees. Until the Case is closed by entry of a final decree of the Court, the Plan Administrator shall pay all additional U.S.

⁶ This amount is difficult to estimate because the Debtor did not receive the requested fee estimates for either the Committee's legal counsel or financial advisor, prior to filing.

Trustee Fees incurred in accordance with the applicable schedule for the payment of such fees.

2. Treatment of Classified Claims under the Plan

(i) Secured Claims – Class 1

· *Composition* – Class 1 consists of Allowed Secured Claims. For convenience of identification, the Plan describes Allowed Secured Claims in Class 1 as a single Class. The Debtor estimates that Allowed Secured Claims will total approximately \$0.

· *Treatment* – Each holder of an Allowed Secured Claim shall receive, in full and final satisfaction, release and settlement of such Claim, one of the following alternative treatments, at the election of the Plan Administrator: (i) payment in full in Cash on or as soon as reasonably practicable after the later of (a) the Effective Date and (b) the date the Claim becomes due and payable by its terms; (ii) the legal, equitable and contractual rights to which such Claim entitles the holder, unaltered by the Plan; (iii) the treatment described in Section 1124(2) of the Bankruptcy Code; or (iv) all collateral securing such Claim, without representation or warranty by or recourse against the Debtor. To the extent that the value of the collateral securing an Allowed Secured Claim is less than the amount of such Allowed Secured Claim, the undersecured portion of such Claim shall be treated for all purposes under the Plan as an Allowed Unsecured Claim and shall be classified as such. Class 1 is an Unimpaired Class and is deemed to have accepted the Plan.

(ii) Other Priority Claims – Class 2

· *Composition* – Class 2 consists of Allowed Other Priority Claims. The Debtor estimates that Allowed Other Priority Claims will total approximately \$10,000.

· *Treatment* – Each holder of an Allowed Other Priority Claim, in full and complete satisfaction, release and settlement of such Claim, shall be paid in full in Cash on or as soon as reasonably practicable after the later of: (i) the Effective Date; and (ii) the date on which such Claim becomes Allowed, unless such holder shall agree to a different and less favorable treatment of such Claim (including, without limitation, any different treatment that may be provided for in the documentation governing such Claim or in a prior agreement with such holder). Class 2 is an Unimpaired Class and is deemed to have accepted the Plan.

· *Bar Date* – Any Claim against the Debtor asserted pursuant to Section 502(f) of the Bankruptcy Code must be filed no later than forty-five (45) days after the Effective Date. **Claims against the Debtor asserted pursuant to Section 502(f) of the Bankruptcy Code that are not filed by such time shall be forever barred from assertion against the Debtor and/or its property.**

(iii) Unsecured Claims – Class 3

· *Composition* – Class 3 consists of Allowed Unsecured Claims. The Debtor estimates that Allowed Unsecured Claims will total approximately \$11,000,000 to \$14,000,000, and that holders thereof will receive a recovery in the range of 0% to 5%. Attached hereto as **Exhibit B** is an estimated recovery analysis prepared by the Debtor’s financial advisor.

· *Treatment* – The holders of Allowed Unsecured Claims, in full and final satisfaction, release and settlement of such Allowed Claims, shall from time to time receive Pro Rata distributions of Cash from the Net Proceeds. Class 3 is Impaired and is entitled to vote on the Plan.

C. Implementation of the Plan & Plan Administrator

1. Implementation of the Plan

The Plan will be implemented by the Plan Administrator in a manner consistent with the terms and conditions set forth in the Plan and the Confirmation Order. _____, of _____ is the proposed Plan Administrator.

2. Appointment of the Plan Administrator

On the Effective Date, the monetization of the Debtor’s remaining Assets and Causes of Actions, and distributions to creditors, shall become the general responsibility of the Plan Administrator. The Confirmation Order shall provide for the appointment of the Plan Administrator. The compensation for the Plan Administrator shall be \$_____ per hour. The Plan Administrator shall be deemed the Estate’s representative in accordance with Section 1123 of the Bankruptcy Code and shall have all powers, authority and responsibilities specified under Sections 704 and 1106 of the Bankruptcy Code. The Plan Administrator shall be required to obtain and maintain a bond in an amount equal to one hundred and ten percent (110%) of Remaining Cash. As Remaining Cash is reduced through distributions and payments by the Plan Administrator and/or additional Cash comes into the Estate, the Plan Administrator shall, at the appropriate time, adjust the amount of the bond to an amount equal to at least 110% of the amount of Cash in the Estate.

3. Duties of the Plan Administrator

The Plan Administrator will act for the Debtor in a fiduciary capacity as applicable to a board of directors, subject to the provisions of the Plan and vested with all of the rights and authority of a Chapter 7 trustee and as augmented by the Plan. On the Effective Date, the Plan Administrator shall succeed to all of the rights of the Debtor with respect to the Assets necessary to protect, conserve, abandon and liquidate all Assets as quickly as reasonably practicable, including, without limitation, control over (including the right to waive) all attorney-client privileges, work-product privileges, accountant-client privileges and any other evidentiary privileges relating to the Assets that, prior to the Effective Date, belonged to the Debtor pursuant to applicable law. The powers and duties of the Plan Administrator shall include, without further order of the Court, except where expressly stated otherwise, the right:

- (i) to invest Cash in accordance with Section 345 of the Bankruptcy Code, and withdraw and make distributions of Cash to holders of Allowed Claims and pay taxes and other obligations owed by the Debtor or incurred by the Plan Administrator in connection with the wind-down of the Estate in accordance with the Plan;
- (ii) to receive, manage, invest, supervise, and protect the Assets, including paying taxes or other obligations incurred in connection with the Assets;
- (iii) subject to the approval of the Post-Effective Date Committee (which approval shall not be unreasonably withheld), to engage attorneys, consultants, agents, employees and all professional persons, to assist the Plan Administrator with respect to the Plan Administrator's responsibilities;
- (iv) subject to the approval of the Post-Effective Date Committee (which approval shall not be unreasonably withheld), or further order of the Court, to pay the fees and expenses for the attorneys, consultants, agents, employees and professional persons engaged by the Plan Administrator and the Post-Effective Date Committee and to pay all other expenses for winding down the affairs of the Debtor in accordance with the terms of the Plan;
- (v) to execute and deliver all documents, and take all actions, necessary to consummate the Plan and wind-down the Debtor's business;
- (vi) subject to the approval of the Post-Effective Date Committee (which approval shall not be unreasonably withheld), to dispose of, and deliver title to others of, all the remaining Assets;
- (vii) to coordinate the collection of outstanding accounts receivable;
- (viii) to coordinate the storage and maintenance of the Debtor's books and records;
- (ix) to oversee compliance with the Debtor's accounting, finance, regulatory and reporting obligations;
- (x) to prepare United States Trustee quarterly reports;
- (xi) to oversee the filing of final tax returns, audits and corporate dissolution documents if required;
- (xii) to perform any additional corporate actions as necessary to carry out the wind-down, liquidation and ultimate dissolution of the Debtor, in accordance with applicable law;
- (xiii) to communicate regularly with and respond to inquiries from the Post-Effective Date Committee, including providing to the Post-Effective Date information on all receipts and disbursements on a quarterly basis;

- (xiv) subject to Section 8 of the Plan, to object to Claims against the Debtor;
- (xv) subject to Section 8 of the Plan, to compromise and settle Claims against the Debtor;
- (xvi) to act on behalf of the Debtor in all adversary proceedings and contested matters (including, without limitation, any Causes of Action), then pending or that can be commenced in the Court and in all actions and proceedings pending or commenced elsewhere, and to settle, retain, enforce or dispute any adversary proceedings or contested matters (including, without limitation, any Causes of Action) and otherwise pursue actions involving Assets of the Debtor that could arise or be asserted at any time under the Bankruptcy Code or otherwise, unless otherwise specifically waived or relinquished in the Plan; provided, however, that settlements by the Plan Administrator of Causes of Action shall be subject to the approval of the Post-Effective Date Committee, which approval shall not be unreasonably withheld, or further order of the Court;
- (xvii) to accept assignments of Causes of Action for the benefit of the Debtor's estate, upon determining that such Causes of Action assert colorable and meritorious claims;
- (xviii) to implement and/or enforce all provisions of the Plan;
- (xix) to implement and/or enforce all agreements entered into prior to the Effective Date; and
- (xx) such other powers as may be vested in or assumed by the Plan Administrator pursuant to the Plan or Court order or as may be necessary and proper to carry out the provisions of the Plan.

D. *Post-Effective Date Committee*

- (i) On the Effective Date, the Committee shall continue as the Post-Effective Date Committee. The Post-Effective Date Committee shall be comprised of the members of the Committee, unless any particular member opts not to be a member thereof. If a member of the Post-Effective Date Committee resigns or is removed, a replacement who holds an Unsecured Claim against the Debtor may be appointed by the remaining members of the Post-Effective Date Committee. The duties and powers of the Post-Effective Date Committee shall terminate upon the closing of the Case. The Post-Effective Date Committee's role shall be to consult with the Plan Administrator, and to perform the functions set forth in the Plan.
- (ii) The Post-Effective Date Committee shall have the power and authority to utilize the services of counsel and a financial advisor as and if necessary to perform the duties of the Post-Effective Date Committee and to authorize and direct such Persons to act on behalf of the Post-Effective Date Committee in connection with any matter requiring its attention or action, including but not limited to the D&O

Litigation. The Plan Administrator shall pay the reasonable and necessary fees and expenses of the Post-Effective Date Committee's counsel and financial advisor without the need for Court approval.

- (iii) Except for the reimbursement of reasonable, actual costs and expenses incurred in connection with their duties as members of the Post-Effective Date Committee, the members of the Post-Effective Date Committee shall serve without compensation. Reasonable expenses incurred by members of the Post-Effective Date Committee may be paid by the Plan Administrator without need for Court approval.
- (iv) The Plan Administrator shall report all material matters to the Post-Effective Date Committee.

E. *Voting Procedures and Requirements*

1. Eligibility to Vote

Pursuant to the Bankruptcy Code, only Classes of Claims against the Debtor that are "Impaired" under the Plan are entitled to vote on whether to accept or reject the Plan. Generally, a class is "impaired," unless the plan: (i) leaves unaltered the legal, equitable and contractual rights to which the claim entitles the holder of such claim; (ii) cures any default and reinstates the original terms of such claim; or (iii) provides that, on the consummation date, the holder of such claim receives cash equal to the allowed amount of that claim. Holders of Claims in Impaired Classes are entitled to vote only if receiving or retaining property on account of such Claims under the Plan. Impaired Classes that will neither receive nor retain property under the Plan on account of their Claims are conclusively deemed to have rejected the Plan under Section 1126(g) of the Bankruptcy Code. Therefore, there is no need to solicit Holders of Claims in Impaired Classes that will neither receive nor retain property under the Plan.

Holders of Claims in Unimpaired Classes are conclusively deemed to have accepted the Plan under Section 1126(f) of the Bankruptcy Code. Therefore, there is no need to solicit Holders of Claims in Unimpaired Classes.

2. Acceptance by a Class

A Class of Claims entitled to vote to accept or reject the Plan shall be deemed to accept the Plan if the Holders of Claims in such voting Class that hold at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Claims that vote in such Class vote to accept the Plan. Classes 1 and 2 are Unimpaired under the Plan and are conclusively presumed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code.

3. Claims Not Entitled to Vote

Holders of Claims are not entitled to vote if, as of the Voting Record Date, the Claim: (i) has been disallowed; (ii) is the subject of a pending objection; or (iii)(a) was not listed on the Debtor's Schedules or was listed on the Debtor's Schedules as unliquidated, contingent or

disputed, and (b) a Proof of Claim was not filed or was filed for an unliquidated, contingent or disputed Claim, unless on or before the Voting Record Date the Bankruptcy Court enters a Final Order directing otherwise. However, if a Claim is disallowed in part, the Holder shall be entitled to vote the Allowed portion of the Claim. Insiders are entitled to vote on the Plan subject to and in accordance with the Bankruptcy Code.

The Debtor may disregard a vote if the Bankruptcy Court determines, pursuant to Section 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith, or in accordance with the provisions of the Bankruptcy Code.

4. Factors to Consider Prior to Voting

There are a variety of factors that all holders of Claims entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors may affect recoveries under the Plan and include:

- (i) Unless otherwise specifically indicated, any financial information contained in the Disclosure Statement is unaudited and based on an analysis of data available at the time of the preparation of the Plan and Disclosure Statement;
- (ii) Although the Debtor believes that the Plan complies with all applicable provisions of the Bankruptcy Code, the Debtor can assure neither such compliance nor that the Bankruptcy Court will confirm the Plan; and
- (iii) The Debtor is requesting Confirmation without the acceptance of all Impaired Classes in accordance with Section 1129(b) of the Bankruptcy Code.

While these factors could affect distributions available to Holders of Allowed Claims under the Plan, the occurrence or impact of such factors will not necessarily affect the validity of the vote of the Impaired Classes entitled to vote to accept or reject the Plan (“Voting Classes”) or necessarily require a re-solicitation of the votes of holders of Claims in such Voting Classes.

5. Solicitation Procedures

a. Claim Holder Solicitation Package

The following materials will constitute the solicitation package (“Solicitation Package”) distributed to holders of Claims entitled to vote to accept or reject the Plan: (i) appropriate Ballot(s) and applicable voting instructions; (ii) the Disclosure Statement, including the Plan with all exhibits; (iii) the notice of the Confirmation Hearing; (iv) the order approving this Disclosure Statement; (v) a pre-addressed postage paid return envelope; and (vi) such other materials as the Court may direct.

b. Distribution of Solicitation Package

The Debtor will distribute Solicitation Packages to holders of Claims in Class 3, as well as to Contract Counterparties (as defined herein), after Bankruptcy Court approval of the Disclosure Statement, and at least thirty (30) days before the Confirmation Hearing. If you hold a

Claim in any of the Classes entitled to vote, or if you are a Contract Counterparty, but you do not receive the Solicitation Package, or if the materials are damaged or lost, you should contact:

LIPPES MATHIAS WEXLER FRIEDMAN, LLP
Attn: Ian Klak
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202-2216
(716) 853-5100
iklak@lippes.com

One may also obtain copies of any pleadings via the Case Website:
<https://cases.primeclerk.com/HebrewHospital/Home-Index>

c. Voting Procedures

The Voting Record Date will be the date for determining which Holders of Claims are entitled to vote to accept or reject the Plan and receive the Solicitation Package in accordance with the solicitation procedures. The Holders of Claims in the Voting Classes must properly complete, execute and deliver their Ballots, so that they are *actually received on or before the Voting Deadline*, to the following address:

LIPPES MATHIAS WEXLER FRIEDMAN, LLP
Attn: Ian Klak
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202-2216

If you hold Claims in more than one Class (as classified in the Plan), you must submit a separate Ballot for each such Claim. You may file Ballots accepting or rejecting the Plan with the Bankruptcy Court at any time before the Voting Deadline.

IF THE BANKRUPTCY COURT RECEIVES A BALLOT AFTER THE VOTING DEADLINE, IT WILL NOT COUNT UNLESS THE DEBTOR AND COMMITTEE DETERMINE OTHERWISE IN THEIR SOLE DISCRETION.

ANY BALLOT THAT IS PROPERLY EXECUTED BY THE HOLDER OF A CLAIM BUT THAT: (I) DOES NOT CLEARLY INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN; OR (II) INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

EACH HOLDER OF A CLAIM MUST VOTE ALL OF ITS CLAIMS EITHER TO ACCEPT OR REJECT THE PLAN AND MAY NOT SPLIT SUCH VOTES. BY SIGNING AND RETURNING A BALLOT, EACH HOLDER OF A CLAIM WILL CERTIFY TO THE BANKRUPTCY COURT AND THE DEBTOR THAT NO OTHER BALLOTS WITH RESPECT TO SUCH CLAIM HAVE BEEN CAST OR, IF ANY OTHER BALLOTS HAVE BEEN CAST WITH RESPECT TO SUCH CLASS OF CLAIMS, SUCH OTHER BALLOTS INDICATED THE SAME VOTE TO ACCEPT OR REJECT THE PLAN. IF A HOLDER

CASTS MULTIPLE BALLOTS WITH RESPECT TO THE SAME CLASS OF CLAIMS AND THOSE BALLOTS ARE IN CONFLICT WITH EACH OTHER, SUCH BALLOTS WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

IT IS IMPORTANT THAT THE HOLDER OF A CLAIM ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED ON OR ACCOMPANYING SUCH HOLDER'S BALLOT.

6. Cramdown

The Debtor requests Confirmation under Section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to Section 1126 of the Bankruptcy Code. The Debtor reserves the right to modify the Plan to the extent that Confirmation pursuant to Section 1129(b) of the Bankruptcy Code requires modification.

F. Distributions

1. Transfer of Claims

The various transfer registers for each of the Classes of Claims as maintained by the Debtor, or its respective agents, shall be deemed closed as of the close of business on the Confirmation Date. Thereafter, any change of the Holder of a Claim shall be effective on a date selected by the Debtor or the Reorganized Company that is no later than thirty (30) days after the transferee is substituted for the transferor of such Claim pursuant to Bankruptcy Rule 3001.

2. Distributions

All distributions under the Plan shall be made by the Plan Administrator on or after the Effective Date, or as otherwise provided herein.

3. Timing

Distributions to be made on account of Claims that are Allowed Claims shall be made by the Plan Administrator as provided in the Plan, or as ordered by the Bankruptcy Court. Any distribution to be made on the Effective Date pursuant to the Plan shall be deemed as having been made on the Effective Date, if such distribution is made on the Effective Date or as soon thereafter, as is practicable. Any payment or distribution required under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day.

4. Interest on Claims

Unless otherwise expressly provided for in the Plan, the Confirmation Order, or required by applicable bankruptcy law, post-petition interest shall not accrue or be paid on Claims, and no Claim Holder shall be entitled to interest accruing on or after the Petition Date on any Claim. To the extent required by applicable bankruptcy law, and not otherwise provided for in the Plan or the Confirmation Order, post-petition interest shall accrue on Claims at the applicable non-default rate.

5. Consent to Different Treatment

To the extent the Holder of any Claim or any party to an Executory Contract agrees in writing to a treatment less favorable than that otherwise provided under the Plan, those agreed-upon provisions, rather than the Plan, shall specify the treatment of such Claim or Executory Contract.

6. Setoffs

The Plan Administrator may, but shall not be required to, setoff against any claims of any nature whatsoever that the Debtor may have against the Holder of such Claim for purposes of determining the Allowed amount of such Claim on which a distribution shall be made. Neither the failure to perform such setoff nor the allowance of any Claim hereunder shall constitute a waiver or release of any such claim that the Debtor may have against the Holder of such Claim.

7. Manner of Payment

At the option of the Plan Administrator, any cash payment to be made under the Plan may be made by a check, wire transfer, or as otherwise required or provided in any applicable agreement between the Plan Administrator and the Holder of an Allowed Claim receiving the disbursement.

8. Delivery

All distributions to any Holder of an Allowed Claim not made by wire transfer shall be made by regular mail, postage prepaid, to the address of such Holder as set forth on the Schedules or on the Debtor's books and records, unless: (i) the Debtor has been notified in writing of a change of address, including by the filing of a Proof of Claim by such Holder; or (ii) the Plan or any agreement executed in connection with the Plan provides otherwise. In all cases of delivery by mail, the date of delivery or distribution shall be the date of mailing.

9. Minimum Distributions

No payment of Cash in an amount of less than \$10.00 shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan.

10. Allocation of Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a distribution under the Plan includes both principal and accrued but unpaid interest, such distribution shall be allocated to the principal amount (as determined for federal income tax purposes) of the Claim first, and then to accrued but unpaid interest.

11. Distributions Free and Clear

Except as otherwise provided in the Plan, any distribution or transfer made under the Plan, including, without limitation, distributions to any Holder of an Allowed Claim, shall be

free and clear of any Liens, Claims, encumbrances, charges and other interests, and no other entity shall have any interest, whether legal, beneficial or otherwise, in property distributed or transferred pursuant to the Plan.

12. Claims Against Directors and Officers of the Board

See Section III.R. above.

13. Unclaimed Distributions

In the event that any distribution to any Holder of an Allowed Claim is returned as undeliverable, the Plan Administrator will use reasonable efforts to determine the current address of such Holder. However, the Plan Administrator will not make a distribution to such Holder unless or until it determines the then current address of such Holder. Any distributions not claimed after six (6) months will revert to the Plan Administrator to be paid to other members of the same Class as the Holder whose distribution is unclaimed in accordance with the provisions of the Plan, subject to the Maximum Claim Allowance, as applicable. Any Claim of any other Holder to property deemed unclaimed shall be discharged and forever barred.

Any check not presented for payment within ninety (90) days after its issuance shall be void. The payee of such check shall have the sole responsibility to request a replacement check from the Plan Administrator, but in no event may the payee make such a request more than six (6) months after the original distribution date of such Claim.

G. Procedures for Disputed Claims

1. Prosecution of Disputed Claims

Except as otherwise provided in the Plan, the Plan Administrator shall have the right to object to all Claims against the Debtor on any basis, including those Claims against the Debtor that are not listed in the Schedules, that are listed therein as disputed, contingent, and/or unliquidated, that are listed therein at a lesser amount than asserted by the respective Creditor, or that are listed therein for a different category of claim than asserted by the respective Creditor. Subject to further extension by the Court for cause with or without notice, the Plan Administrator may object to the allowance of Claims against the Debtor up to one hundred eighty (180) days after the Effective Date; provided, however, that an objection to a Claim against the Debtor based on Section 502(d) of the Bankruptcy Code may be made at any time in any adversary proceeding against the holder of any relevant Claim. The filing of a motion to extend the deadline to object to any Claims against the Debtor shall automatically extend such deadline until a Final Order is entered on such motion. In the event that such motion to extend the deadline to object to Claims against the Debtor is denied by the Court, such deadline shall be the later of the current deadline (as previously extended, if applicable) or 30 days after the Court's entry of an order denying the motion to extend such deadline. From and after the Effective Date, the Plan Administrator shall succeed to all of the rights, defenses, offsets, and counterclaims of the Debtor and the Committee in respect of all Claims against the Debtor, and in that capacity shall have the power to prosecute, defend, compromise, settle, and otherwise deal with all such objections, subject to the terms of the Plan.

2. Settlement of Disputed Claims

Pursuant to Bankruptcy Rule 9019(b), subject to Section 8.2 of the Plan, the Plan Administrator may settle any Disputed Claim (or aggregate of Claims if held by a single Creditor), respectively, without notice, a Court hearing or Court approval. Alternatively, the Plan Administrator may seek Court approval of the proposed settlement upon expedited notice and a hearing.

The Plan Administrator is required to give notice to the Post-Effective Date Committee of: (i) a settlement of any Disputed Class 3 Claim (or aggregate of Claims if held by a single Creditor) that results in the disputed portion of such Disputed Class 3 Claim(s) being Allowed in an amount in excess of \$200,000; or (ii) a settlement of any Disputed Administrative/Priority Claims or Disputed Secured Claim (or aggregate of Claims if held by a single Creditor) that results in the disputed portion of such Disputed Claim(s) being Allowed in an amount in excess of \$25,000. The Post-Effective Date Committee shall have ten (10) days after service of such notice to object to such settlement. Any such objection shall be in writing and sent to the Plan Administrator. If no written objection is received by the Plan Administrator prior to the expiration of such ten (10) day period, the Plan Administrator and the settling party shall be authorized to enter into the proposed settlement without a hearing or Court approval. If a written objection is timely received, the Plan Administrator, the settling party and the objecting party shall use good-faith efforts to resolve the objection. If the objection is resolved, the Plan Administrator and the settling party may enter into the proposed settlement (as and to the extent modified by the resolution of the objection) without further notice or Court approval, provided that the Claim of the settling party against the Estate shall not be greater under the proposed settlement than that disclosed in the notice. Alternatively, the Plan Administrator may seek Court approval of the proposed settlement upon expedited notice and a hearing.

3. No Distributions Pending Allowance

Notwithstanding any provision in the Plan to the contrary, no partial payments and no partial distributions shall be made by the Plan Administrator with respect to any portion of any Claim against the Debtor if such Claim or any portion thereof is a Disputed Claim. In the event and to the extent that a Claim against the Debtor becomes an Allowed Claim after the Effective Date, the holder of such Allowed Claim shall receive all payments and distributions to which such holder is then entitled under the Plan.

H. *Executory Contracts & Unexpired Leases*

1. Assumption of Executory Contracts

Effective on and as of the Confirmation Date, all Executory Contracts are specifically deemed rejected, except for any Executory Contract: (i) that has been specifically assumed or assumed and assigned by the Debtor on or before the Confirmation Date with the approval of the Court; (ii) in respect of which a motion for assumption or assumption and assignment has been filed with the Court on or before the Confirmation Date; or (iii) that is specifically designated as a contract to be assumed on a schedule to the Plan, which schedule, if any, shall be filed as part of the Plan Supplement; provided, however, that to the extent any insurance policy of the Debtor,

or any insurance policy that names or otherwise covers the Debtor as an insured, is deemed or determined to be an Executory Contract, any such insurance policy is deemed assumed by the Debtor effective on and as of the Confirmation Date.

2. Approval of Assumption or Rejection

Entry of the Confirmation Order by the Clerk of the Court, but subject to the condition that the Effective Date occur, shall constitute: (i) the approval, pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption or assumption and assignment of the Executory Contracts assumed or assumed and assigned pursuant to Section 7.1 of the Plan; and (ii) the approval, pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the Executory Contracts rejected pursuant to Section 7.1 of the Plan.

3. Rejection Damages Bar Date

Claims against the Debtor arising out of the rejection of Executory Contracts pursuant to the Plan must be filed with the Court no later than forty-five (45) days after the Effective Date. *Any such Claims not filed within such time shall be forever barred from assertion against the Debtor and/or its property.*

4. Compensation & Benefit Programs

To the extent not previously terminated, all employment and severance agreements and policies, and all employee compensation and benefit plans, policies and programs of the Debtor applicable generally to their respective current employees or officers as in effect on the Confirmation Date, including, without limitation, all savings plans, retirement plans, health care plans, disability plans, severance benefit plans, incentive plans and life, accidental death and dismemberment insurance plans, shall be terminated as of the Confirmation Date.

M. Conditions to Confirmation & Effective Date

1. Conditions to Confirmation

The following conditions are conditions precedent to Confirmation of the Plan unless waived by the Debtor pursuant to Section 9.2 of the Plan: (i) the Confirmation Order must be in a form and substance reasonably acceptable to the Debtor; and (ii) the Confirmation Order shall:

- (i) authorize the appointment of all parties appointed under or in accordance with the Plan, including, without limitation, the Plan Administrator, and direct such parties to perform their obligations under such documents;
- (ii) approve in all respects the transactions, agreements, and documents to be effected pursuant to the Plan;
- (iii) authorize the Plan Administrator and Post-Effective Date Committee to assume the rights and responsibilities fixed in the Plan;
- (iv) approve the exculpation and injunctions granted and created by the Plan;

- (v) order, find, and decree that the Plan complies with all applicable provisions of the Bankruptcy Code, including that the Plan was proposed in good faith; and
- (vi) except as otherwise specifically provided in the Plan, order that nothing in the Plan operates as a discharge, release, exculpation, or waiver of, or establishes any defense or limitation of damages to, any Claim or Cause of Action belonging to the Estate.

2. Conditions to Effective Date

The Plan shall not become effective unless and until the following conditions shall have been satisfied or waived pursuant to Section 9.2 of the Plan:

- (i) the Confirmation Date shall have occurred and the Confirmation Order, in a form consistent with the requirements of Section 9.1 of the Plan, shall have become a Final Order;
- (ii) the Plan Administrator shall have been appointed;
- (iii) all actions, documents and agreements necessary to implement the provisions of the Plan shall be reasonably satisfactory to the Debtor, and such actions, documents, and agreements shall have been effected or executed and delivered; and
- (iv) all other actions required by the Plan to occur on or before the Effective Date shall have occurred.

N. *Modification, Revocation or Withdrawal of the Plan*

1. Modification

The Debtor may alter, amend or modify the Plan pursuant to Section 1127 of the Bankruptcy Code at any time prior to the Confirmation Date. After such time and prior to substantial consummation of the Plan, the Debtor may, so long as the treatment of holders of Claims against the Debtor under the Plan is not adversely affected, institute proceedings in Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, Disclosure Statement or Confirmation Order, and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, notice of such proceedings shall be served in accordance with Bankruptcy Rule 2002 or as the Court shall otherwise order.

2. Revocation or Withdrawal

The Debtor reserves the right to revoke or withdraw the Plan at any time prior to the Effective Date. If the Debtor revokes or withdraws the Plan prior to the Effective Date, then the Plan shall be deemed null and void, and nothing contained in the Plan shall be deemed to constitute a waiver or release of any Claims by or against the Debtor or any other Person, or to

prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

O. *Injunctions, Exculpation & Indemnification*

1. Injunction

Except as otherwise expressly provided in the Plan including, without limitation, the treatment of Claims against the Debtor, and preservation of the D&O Litigation, the entry of the Confirmation Order shall, provided that the Effective Date shall have occurred, operate to enjoin permanently all Persons that have held, currently hold or may hold a Claim against the Debtor,⁷ from taking any of the following actions against the Debtor, the Plan Administrator, the Committee or members thereof, the Post-Effective Date Committee or members thereof, the Professionals, present and former officers, directors and employees of the Debtor, or any of their respective successors, heirs or assigns, or any of their respective assets or properties, on account of any Claim against the Debtor: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind with respect to a Claim against the Debtor; (ii) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order with respect to a Claim against the Debtor; (iii) creating, perfecting or enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind with respect to a Claim against the Debtor; (iv) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any Debt, liability or obligation due to the Debtor or its property or Assets with respect to a Claim against the Debtor; and (v) proceeding in any manner in any place whatsoever that does not conform to or comply with or is inconsistent with the provisions of the Plan; provided, however, nothing in this injunction shall preclude the holder of a Claim against the Debtor or the Board from pursuing any applicable insurance after the Case is closed, from seeking discovery in actions against third parties or from pursuing third-party insurance that does not cover Claims against the Debtor.

2. Exculpation

To the extent permissible under the Bankruptcy Code, the Debtor and its officers, directors and employees for any acts or omissions which may have occurred during the Chapter 11 Case. Also, to the extent permissible under the Bankruptcy Code: (i) the Committee and members of the Committee in their capacity as members of the Committee; (ii) the Plan Administrator; and (iii) the Professionals, shall not have or incur any liability to any Holder of any Claim for any act or omission in connection with, relating to, or arising out of the Chapter 11 Case and related proceedings, including, but not limited to, filing of the Chapter 11 Case, administration of the Chapter 11 Case, the formulation, negotiation, preparation, dissemination, approval, execution, administration, confirmation, implementation, or consummation of, as well as the solicitation of votes for, the Plan (including all distributions thereunder), or the Disclosure Statement; except for the D&O

⁷ To the extent a Person has a direct claim against any present or former directors, officers, trustees, agents, attorneys, advisors, members or employees of the Debtor, confirmation of the Plan will not enjoin such a claim.

Litigation, bad faith, willful misconduct, reckless disregard of duty, criminal conduct, gross negligence, fraud, or self-dealing, or, in the case of an attorney professional and as required under Rule 1.8(h)(1) of the New York State Rules of Professional Conduct, malpractice; and, in all respects, the Debtor, the Committee and its members, and each of their respective members, officers, directors, employees, advisors, professionals, attorneys and agents shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

3. Indemnification

The Plan Administrator and the members of the Post-Effective Date Committee shall be indemnified and receive reimbursement against and from all loss, liability, expense (including counsel fees) or damage which the Plan Administrator or the members of the Post-Effective Date Committee may incur or sustain in the exercise and performance of any of their respective powers and duties under the Plan, to the full extent permitted by law, except if such loss, liability, expense or damage is finally determined by a court of competent jurisdiction to result solely from the Plan Administrator's or the Post-Effective Date Committee member's willful misconduct, fraud, intentional misconduct or gross negligence. The amounts necessary for such indemnification and reimbursement shall be paid by the Plan Administrator out of the Cash held by the Plan Administrator under the Plan. The Plan Administrator shall not be personally liable for this indemnification obligation or the payment of any expense of administering the Plan or any other liability incurred in connection with the Plan, and no person shall look to the Plan Administrator personally for the payment of any such expense or liability. This indemnification shall survive the death, resignation or removal, as may be applicable, of the Plan Administrator and/or the members of the Post-Effective Date Committee, and shall inure to the benefit of the Plan Administrator and the Post-Effective Date Committee's members and their respective successors, heirs and assigns, as applicable.

Upon the Bankruptcy Court's entry of the Confirmation Order, all Holders of Claims and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan by the Debtor and its respective affiliates, employees, advisors, officers and directors and agents.

4. Preservation of Insurance

The provisions of the Plan are not intended to and shall not diminish or impair in any manner the enforceability and/or coverage of any insurance policies, including the D&O Policies (and any agreements, documents, or instruments relating thereto) that may cover Claims against the Debtor, any current or former directors, trustees or officers of the Debtor, or any other Person, other than as expressly as set forth in the Plan.

5. Release of Liens

Except as otherwise provided herein, or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds

of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged.

P. *Retention of Jurisdiction*

Pursuant to Sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising under the Bankruptcy Code or arising in, or related to, the Chapter 11 Case, to the fullest extent permitted by law.

Q. *Miscellaneous Provisions*

1. *Governing Law*

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to conflict-of-laws principles.

2. *Additional Documents*

On or before the Effective Date, the Debtor may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor and all Holders of Claims receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

3. *Reservation of Rights*

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by the Debtor with respect to the Plan, the Disclosure Statement or supplemental filings shall be deemed an admission or waiver of any rights of the Debtor with respect to the Holders of Claims prior to the Effective Date.

4. *Elimination of Vacant Classes*

Any Class of Claims that does not have a Holder of an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of determining acceptance or rejection of the Plan by such Class pursuant to Section 1129(a)(8) of the Bankruptcy Code.

5. Successors and Assigns

The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

6. Substantial Consummation

As soon as practicable after the Effective Date, the Plan Administrator shall file a report of substantial consummation with the Bankruptcy Court.

7. No Tax Advice

The Plan will have tax consequences to the Debtor and Holders of Claims. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan and no tax opinion is given by the Disclosure Statement or Plan. No rulings or determinations of the IRS or any other tax authorities have been obtained or sought with respect to the Plan, and the description below is not binding upon the IRS or such other authorities.

No representations are made regarding the particular tax consequences of the Plan to any Holder of a Claim. The tax consequences of the Plan to Holders of Claims are in many cases uncertain and may vary depending on a Holder's individual circumstances. Each Holder of a Claim is strongly urged to consult its own tax advisor regarding the federal, state, local and foreign tax consequences of the transactions described in the Plan.

8. Entire Agreement

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

9. Plan Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to the Debtor's counsel at the address herein, or by downloading such exhibits and documents from the Case Website: <https://cases.primeclerk.com/HebrewHospital/Home-Index>

10. Severability

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision then will be applicable as altered or interpreted; provided, however, that any such alteration or interpretation must be in form and substance acceptable to the Debtor. In the event of any such holding, alteration or interpretation that is

acceptable to the Debtor, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

11. Section 1125(e) Good Faith Compliance

The Debtor shall be deemed to have acted in good faith under Section 1125(e) of the Bankruptcy Code.

12. Section 1146(a) Exemption

Pursuant to Section 1146(a) of the Bankruptcy Code, any transfers of property under the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee or governmental assessment.

13. Notices

a. Notices to the Debtor

All notices, requests, and demands to or upon the Debtor shall be in writing to be effective, and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered, or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

HEBREW HOSPITAL SENIOR
HOUSING, INC.
Attn: James A. Fasolino
c/o McCullough Goldberger &
Staudt, LLP
1311 Mamaroneck Avenue *and*
Suite 340
White Plains, New York 10605
Tel: (516) 6601737
jfasolino@hhhinc.org

LIPPES MATHIAS WEXLER
FRIEDMAN, LLP
Attn: Raymond L. Fink
John A. Mueller
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
Telephone: (716) 853-5100
Facsimile: (716) 853-5199
rfink@lippes.com
jmueller@lippes.com

b. Notices to the Plan Administrator

All notices to or upon the Plan Administrator pursuant to the Plan shall be in writing to be effective, and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered, or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as set forth in the Plan Supplement.

c. Notices to the Professionals

All notices to or upon the Professionals, including counsel to the Committee, pursuant to the Plan shall be in writing to be effective, and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered, or, in the case of notice by facsimile transmission, when received and telephonically confirmed.

V. RISKS AND CONSIDERATIONS

A. *Bankruptcy Considerations*

Although the Debtor believes that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will confirm the Plan as proposed. Moreover, there can be no assurance that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate the re-solicitation of votes.

If the conditions precedent specified in the Plan have not been satisfied or waived by the Debtor within thirty (30) days after the Confirmation Order becomes a Final Order, which period may be extended by Order of the Court, then: (i) the Confirmation Order shall be vacated; (ii) no distributions under the Plan shall be made; (iii) the Debtor and all Holders of Claims shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred; and (iv) all of the Debtor's obligations with respect to Claims shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any claims or interests by or against the Debtor or any other Person or Entity or to prejudice in any manner the rights of the Debtor or any other Person or Entity in any further proceedings involving the Debtor or otherwise.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims in such class. The Debtor believes that the classification of Claims under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created three (3) Classes of Claims, each encompassing Claims, as applicable, that are substantially similar to the other Claims in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

Pursuant to Section 1129(a)(10) of the Bankruptcy Code, notwithstanding the fact that a Class votes to reject the Plan (or are deemed to reject the Plan), the Bankruptcy Court may confirm the Plan if at least one Impaired Class votes to accept the Plan (with such acceptance being determined without including the vote of any "insider" in such class). As to each Impaired Class that has not accepted the Plan, the Plan may be confirmed under Section 1129(b) of the Bankruptcy Code (*i.e.* cramdown) if the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to these Classes. The Debtor believes that the Plan satisfies these requirements.

B. *No Duty to Update Disclosures*

The Debtor has no duty to update the information contained in this Disclosure Statement as of the date hereof, unless otherwise specified in the Plan, or unless the Debtor is required to do so pursuant to an order of the Bankruptcy Court. Delivery of the Disclosure Statement after the date hereof does not imply that the information contained herein has remained unchanged.

C. *Representations Outside this Disclosure Statement*

This Disclosure Statement contains representations concerning or related to the Debtor and the Plan that are authorized by the Bankruptcy Code and the Bankruptcy Court. Please be advised that any representations or inducements outside this Disclosure Statement and any related documents which are intended to secure your acceptance or rejection of the Plan should not be relied upon by Holders of Claims that are entitled to vote to accept or reject the Plan.

D. *No Admission*

The information and representations contained in the Plan shall not be construed to constitute an admission of, or be deemed evidence of, any legal effect of the Plan on the Debtor or Holders of Claims.

VI. CONFIRMATION

A. *Plan Confirmation Hearing*

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after appropriate notice, to hold a hearing on confirmation of a Plan. On, or as promptly as practicable after the filing of the Plan and this Disclosure Statement, the Debtor will request, pursuant to the requirements of the Bankruptcy Code and the Bankruptcy Rules, that the Bankruptcy Court schedule the Plan Confirmation Hearing. Upon notice to all interested parties, the Confirmation Hearing will occur before the Honorable Michael E. Wiles, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 617, New York, New York 10004-1408. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the objector, the nature and amount of the Claims held or asserted by the objector against the Debtor, the basis for the objection and the specific grounds therefor, and must be filed with the Bankruptcy Court and served upon the entities identified in the Bankruptcy Court's order approving the Disclosure Statement by the specified deadline. Bankruptcy Rule 9014 governs objections to confirmation of the Plan.

UNLESS AN OBJECTION TO CONFIRMATION OF THE PLAN IS TIMELY FILED WITH THE BANKRUPTCY COURT AND SERVED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT IN DETERMINING WHETHER TO CONFIRM THE PLAN.

B. *General Requirements*

At the Confirmation Hearing, the Bankruptcy Court will determine whether the following confirmation requirements specified in Section 1129 of the Bankruptcy Code have been satisfied:

- (i) The Plan complies with the applicable provisions of the Bankruptcy Code;
- (ii) The Debtor has complied with the applicable provisions of the Bankruptcy Code;
- (iii) The Plan has been proposed in good faith and not by any means forbidden by law;
- (iv) Any payment made or promised by the Debtor or by a person issuing securities or acquiring property under the Plan for services or for costs and expenses in or in connection with the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable;
- (v) With respect to each Class of Claims, each holder of an impaired Claim either has accepted the Plan or will receive or retain under the Plan on account of such holders' Claim, property of a value, as of the Effective Date, that is not less than the amount such holder would receive if the Debtor were liquidated on the Effective Date under Chapter 7 of the Bankruptcy Code (*see* discussion of "Best Interests Test" below);
- (vi) Except to the extent that the Plan meets the requirements of Section 1129(b) of the Bankruptcy Code, each Class of Claims has either accepted the Plan or is not impaired under the Plan (*see* discussion of "Unfair Discrimination" below);
- (vii) Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that Allowed undisputed Administrative Expense Claims and Allowed Priority Non-Tax Claims will be paid in full on the Effective Date and that Allowed Priority Tax Claims will receive on account of such Claims deferred cash payments, over a period not exceeding five (5) years after the date of assessment of such Claims, equal to the Allowed amount of such Claims;
- (viii) At least one Class of impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in such Class;
- (ix) Confirmation of the Plan is not likely to be followed by the liquidation or the need

for further financial reorganization of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan;

- (x) The Plan provides for the continuation after the Effective Date of payment of all fees payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of all such fees on the Effective Date; and
- (xi) The Plan provides for the continuation after the Effective Date of payment of all retiree benefits (as defined in Section 1114 of the Bankruptcy Code), at the level established pursuant to Subsection 1114(e)(1)(B) or 1114(g) of the Bankruptcy Code at any time prior to confirmation of the Plan, for the duration of the period that the Debtor has obligated itself to provide such benefits.

C. *Plan Consummation*

Upon Confirmation of the Plan by the Bankruptcy Court, the Plan will be deemed consummated on the Effective Date. Distributions to Holders of Claims receiving a distribution pursuant to the terms of the Plan will occur on or after the Effective Date, as set forth in the Plan.

D. *Acceptance by Impaired Classes*

The Bankruptcy Code requires, as a condition to confirmation, that, except as described herein, each class of claims that is impaired under a plan accept the plan. A class that is not “impaired” under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. As a general matter under the Bankruptcy Code, a class is “impaired,” unless the plan: (i) leaves unaltered the legal, equitable and contractual rights to which the claim entitles the holder of such claim; (ii) cures any default and reinstates the original terms of such claim; or (iii) provides that, on the consummation date, the holder of such claim receives cash equal to the allowed amount of that claim.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the plan. Thus, a class of claims will have voted to accept the plan only if two-thirds (2/3) in amount and a majority in number actually voting cast their ballots in favor of acceptance. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

The Claims in Classes 1 and 2 are Unimpaired under the Plan and, as a result, the Holders of such Claims are deemed to have accepted the Plan. The Claims in Class 3 are Impaired under the Plan and the Holders of such Claims are entitled to vote to accept or reject the Plan.

F. *Cramdown*

Section 1129(b) of the Bankruptcy Code provides that the Bankruptcy Court may confirm a plan even if a class of impaired claims or interests votes to reject the plan if the plan does not “unfairly discriminate” and is “fair and equitable” with respect to each impaired class of claims or interests that has not accepted the plan.

1. No Unfair Discrimination

The “no unfair discrimination” test requires that the plan not provide for unfair treatment with respect to classes of claims or interests that are of equal priority, but are receiving different treatment under the plan.

2. Fair and Equitable (a/k/a Absolute Priority Rule)

The fair and equitable requirement generally applies to classes of claims of different priority and status, such as secured versus unsecured. For a dissenting class of impaired unsecured creditors, a plan is “fair and equitable” only if the allowed value of the claim is to be paid in full, or if the holder of any claim or interest that is junior to the dissenting creditors will not receive or retain any property under the plan on account of such junior claim or interest. This condition is generally referred to as the “absolute priority rule.”

The absolute priority rule prohibits equity interest holders from retaining their equity under a plan unless all senior claims are paid in full. In many cases, a strict application of this rule would be the death knell for an otherwise-confirmable Chapter 11 plan. This is particularly true in Chapter 11 cases of smaller companies where continued participation by current equity holders may be vital to the reorganization effort. Recognizing that sometimes the best option for all parties is to allow old equity to participate in the reorganized debtor, the “new value exception” was created. The new value exception allows equity holders to retain their interests in the debtor even if a senior class of creditors is not paid in full under the plan.

The Debtor believes that the Plan is confirmable pursuant to the above-described “cramdown” provisions over the dissent of any Impaired Classes of Claims in view of the treatment proposed for such Classes. Accordingly, the Debtor requests confirmation of the Plan under Section 1129(b) of the Bankruptcy Code, over the dissent of any Impaired Class of Claims.

G. *Feasibility*

Pursuant to Section 1129(a)(11) of the Bankruptcy Code, a debtor must demonstrate that a bankruptcy court’s confirmation of a plan is not likely to be followed by the liquidation or need for further financial reorganization of the debtor or its successor under the plan, unless such liquidation or reorganization is proposed under the plan. Since the Plan provides for the liquidation of the Debtor, the Court will find that the Plan is feasible if it determines that the Debtor will be able to satisfy the conditions precedent to the Effective Date and otherwise have sufficient funds to meet its post-Confirmation Date obligations to pay for the costs of

administering and fully consummating the Plan and closing the Case. The Debtor believes that the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code.

H. *Best Interests Test*

The Bankruptcy Code requires that, with respect to an impaired class of claims or interests, each holder of an impaired claim or interest in such class either: (i) accept the plan; or (ii) receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount (value) such holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on the effective date.

The Debtor's costs of a Chapter 7 liquidation would necessarily include fees payable to a trustee in bankruptcy, as well as fees likely to be payable to attorneys, advisors, and other professionals that such a Chapter 7 trustee may engage to carry out its duties under the Bankruptcy Code. Other costs of liquidating the Debtor's Estate would include the expenses incurred during the bankruptcy case and allowed by the Bankruptcy Court in the Chapter 7 case, such as reimbursable compensation for the Debtor's professionals, including, but not limited to, attorneys, financial advisors, appraisers, accountants. The foregoing types of claims, costs, expenses, and fees that may arise in a Chapter 7 liquidation case would be paid in full before payments would be made towards pre-Chapter 11 priority and unsecured claims. The Debtor believes that in a Chapter 7 liquidation, Holders of Claims would receive less distribution than such Holders would receive under the Plan.

I. *Liquidation Analysis*

As noted above, the Debtor believes that in a Chapter 7 liquidation, Holders of Claims would receive a smaller distribution than such Holders would receive under the Plan. The Debtor's belief is based primarily on: (i) consideration of the effects that a Chapter 7 liquidation would have on the ultimate proceeds available for distribution to Holders of Impaired Claims, including (a) the increased costs and expenses of a liquidation under Chapter 7 arising from fees payable to a Chapter 7 trustee and professional advisors to the trustee and (b) the substantial delay in distributions to the Holders of Impaired Claims that would likely ensue in a Chapter 7 liquidation; and (ii) the liquidation analysis prepared by the Debtor's financial advisor ("Liquidation Analysis"), which is attached as **Exhibit B** to this Disclosure Statement.

The Debtor recognizes that any liquidation analysis is speculative; as such, an analysis necessarily is premised on assumptions and estimates which are inherently subject to significant uncertainties and contingencies, many of which would be beyond the control of the Debtor. Thus, there can be no assurance as to values that would actually be realized in a Chapter 7 liquidation, nor can there be any assurance that a Bankruptcy Court would accept the Debtor's conclusions or concur with such assumptions in making its determinations under Section 1129(a)(7) of the Bankruptcy Code.

Any liquidation analysis of the Debtor is particularly challenging because the Debtor's principal assets are legal claims which have not been liquidated. As of this date, the Debtor is unable to predict what, if any, recovery will be recognized in connection with the D & O Litigation and any other claims belonging to the Estate.

The Liquidation Analysis necessarily contains an estimate of the amount of Claims that will ultimately become Allowed Claims. This estimate is based solely upon the Debtor's review of its books and records and the Debtor's estimates as to additional Claims that may arise in the event of a conversion of the case from Chapter 11 to Chapter 7. No order or finding has been entered by the Bankruptcy Court or any other court estimating or otherwise fixing the amount of Claims at the projected amounts of Allowed Claims set forth in the Liquidation Analysis. In preparing the Liquidation Analysis, the Debtor has projected an amount of Allowed Claims using information available at this time. The estimate of the amount of Allowed Claims set forth in the Liquidation Analysis should not be relied on for any other purpose, including any determination of the value of any distribution to be made on account of Allowed Claims under the Plan.

The Liquidation Analysis is being provided solely to disclose to Holders of Claims the effects of a hypothetical Chapter 7 liquidation of the Debtor, subject to the assumptions set forth therein.

VII. INCOME TAX CONSEQUENCES

The following is a summary of certain United States federal income tax consequences of the Plan to the Debtor and certain Holders of Allowed Claims. This summary is based on the Internal Revenue Code of 1986, as amended ("Internal Revenue Code"), Treasury Regulations thereunder ("Treasury Regulations"), and administrative and judicial interpretations and practice, all as in effect on the date of this Disclosure Statement and all of which are subject to change, with possible retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. No opinion of counsel has been obtained and the Debtor does not intend to seek a ruling from the Internal Revenue Service as to any of the tax consequences of the Plan discussed below. There can be no assurance that the Internal Revenue Service will not challenge one or more of the tax consequences of the Plan described below.

This summary does not apply to Holders of Allowed Claims that are not United States persons (as such term is defined in the Internal Revenue Code) or that are otherwise subject to special treatment under United States federal income tax law (including, without limitation, banks, governmental authorities or agencies, financial institutions, insurance companies, pass-through entities, tax-exempt organizations, brokers and dealers in securities, mutual funds, small business investment companies, employees, persons holding Allowed Claims that are a hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale, or conversion transaction, and regulated investment companies). Moreover, this summary does not purport to cover all aspects of United States federal income taxation that may apply to the Debtor and Holders of Allowed Claims based upon their particular circumstances. Additionally, this summary does not discuss any tax consequences that may arise under any laws other than United States federal income tax law, including under state, local, or foreign tax law.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A

CLAIM. ALL HOLDERS OF ALLOWED CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL, AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

INTERNAL REVENUE SERVICE CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, ANY TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL REVENUE CODE. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED BY THIS DISCLOSURE STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

A. *Certain United States Federal Income Tax Consequences to Holders of Allowed Claims*

1. Consequences to Holders of Allowed Claims in Classes 1, 2 and 3

Pursuant to the Plan, Allowed Class 1, Class 2 and Class 3 Claims will be exchanged for Cash distributions. A Holder who receives Cash in exchange for its Claim pursuant to the Plan generally will recognize income, gain, or loss for United States federal income tax purposes in an amount equal to the difference between: (i) the amount of Cash received in exchange for its Claim; and (ii) the Holder's adjusted tax basis in its Claim. The character of such gain or loss as capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, the nature of the Claim in such Holder's hands, whether the Claim constitutes a capital asset in the hands of the Holder, whether the Claim was purchased at a discount, and whether and to what extent the Holder has previously claimed a bad debt deduction with respect to its Claim.⁸

HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE RECOGNITION OF GAIN OR LOSS, FOR FEDERAL INCOME TAX PURPOSES, ON THE SATISFACTION OF THEIR CLAIMS

2. Accrued Interest

A portion of the consideration received by Holders of Allowed Claims may be attributable to accrued interest on such Claims. Such amount should be taxable to that Holder as interest income if such accrued interest has not been previously included in the Holder's gross income for United States federal income tax purposes. Conversely, Holders of Claims may be able to recognize a deductible loss to the extent any accrued interest on the Claims was previously included in the Holder's gross income, but was not paid in full by the Debtor.

⁸ See the discussions of "accrued interest" and "market discount" below.

If the fair value of the consideration is not sufficient to fully satisfy all principal and interest on Allowed Claims, the extent to which such consideration will be attributable to accrued interest is unclear. Under the Plan, the aggregate consideration to be distributed to Holders of Allowed Claims in each Class will be allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid interest that accrued on such Claims, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a Chapter 11 plan is binding for United States federal income tax purposes, while certain Treasury Regulations generally treat payments as allocated first to any accrued but unpaid interest and then as a payment of principal. The Internal Revenue Service could take the position that the consideration received by the Holder should be allocated in some way other than as provided in the Plan. Holders of Claims should consult their own tax advisors regarding the proper allocation of the consideration received by them under the Plan.

HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE ALLOCATION OF CONSIDERATION RECEIVED IN SATISFACTION OF THEIR CLAIMS AND THE FEDERAL INCOME TAX TREATMENT OF ACCRUED INTEREST.

3. Market Discount

Under the “market discount” provisions of the Internal Revenue Code, some or all of any gain realized by a Holder of a Claim who exchanges the Claim for an amount may be treated as ordinary income (instead of capital gain), to the extent of the amount of “market discount” on the debt instruments constituting the exchanged Claim. In general, a debt instrument is considered to have been acquired with “market discount” if it is acquired other than on original issue and if its Holder’s adjusted tax basis in the debt instrument is less than: (i) the sum of all remaining payments to be made on the debt instrument, excluding “qualified stated interest”; or (ii) in the case of a debt instrument issued with original issue discount, its adjusted issue price, in each case, by at least a *de minimis* amount (equal to 0.25% of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a Holder on the taxable disposition of Allowed Claims (determined as described above) that were acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while the Allowed Claims were considered to be held by the Holder (unless the Holder elected to include market discount in income as it accrued).

4. Information Reporting and Backup Withholding

In general, information reporting requirements may apply to distributions or payments under the Plan. Additionally, under the backup withholding rules, a Holder of a Claim may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan unless that Holder: (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact; or (ii) timely provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because

of a failure to report all dividend and interest income. Backup withholding is not an additional tax but is, instead, an advance payment that may be refunded to the extent it results in an overpayment of tax; provided that the required information is timely provided to the Internal Revenue Service.

The Plan Administrator, or the applicable withholding agent, will withhold all amounts required by law to be withheld from payments of interest, as necessary. The Plan Administrator will comply with all applicable reporting requirements of the Internal Revenue Service.

THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF UNITED STATES FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A CLAIM IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTION CONTEMPLATED BY THE RESTRUCTURING, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, OR FOREIGN TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

B. *Certain United States Federal Tax Consequences to the Debtor*

Under the Internal Revenue Code, a taxpayer generally recognizes cancellation of debt income (“CODI”) to the extent that indebtedness of the taxpayer is cancelled for less than the amount owed by the taxpayer, subject to certain judicial or statutory exceptions. The most significant of these exceptions with respect to a debtor in bankruptcy is that taxpayers who are operating under the jurisdiction of a federal bankruptcy court are not ordinarily required to recognize such income. In that case, however, the taxpayer must reduce its tax attributes, such as its net operating losses, general business credits, capital loss carryforwards, and tax basis in assets, by the amount of the CODI avoided. In this case, the Debtor expects that it may recognize some CODI from the implementation of the Plan. As a result, the Debtor’s net operating losses may be reduced on account of such CODI.

VIII. ALTERNATIVES TO PLAN

A. *Liquidation Under Chapter 7*

If the Plan is not confirmed, the Chapter 11 Case may be converted to a Chapter 7 case in which case a trustee would be elected or appointed to liquidate the assets of the Debtor for distribution in accordance with the priorities established by the Bankruptcy Code. The Liquidation Analysis prepared by the Debtor provides the likely distributions to creditors under a Chapter 7 liquidation of the Debtor would result in smaller distributions being made to creditors than those provided for in the Plan.

B. *Alternative Plan of Reorganization*

If the Plan is not confirmed, the Debtor or any other party in interest could attempt to formulate a different plan of reorganization. However, the Debtor has concluded that the Plan enables creditors to realize the most value under the circumstances.

C. *Dismissal of the Debtor's Chapter 11 Case*

Dismissal of all of the Chapter 11 Case would have the effect of restoring (or attempting to restore) all parties to the *status quo ante*. Upon dismissal of all of the Chapter 11 Case, the Debtor would lose the protection of the Bankruptcy Code, thereby requiring, at the very least, an extensive and time-consuming process of negotiation with the various creditors of the Debtor, and possibly resulting in costly and protracted litigation in various jurisdictions. Dismissal will also permit unpaid unsecured creditors to obtain and enforce judgments against the Debtor. The Debtor believes that these actions could lead ultimately to the liquidation of the Debtor under chapter 7 of the Bankruptcy Code. Therefore, the Debtor believes that dismissal of the Chapter 11 Case is not a preferable alternative to the Plan.

IX. RECOMMENDATION AND CONCLUSION

The Debtor believes that the Plan is in the best interests of all creditors, and the Debtor urges the Holders of Impaired Claims entitled to vote to accept the Plan and to evidence such acceptance by properly voting and returning their Ballots.

Dated: April 18, 2018

LIPPES MATHIAS WEXLER FRIEDMAN, LLP

/s/ John A. Mueller
Raymond L. Fink, Esq.
John A. Mueller, Esq.
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202-2216
Tel: (716) 853-5100
Fax: (716) 853-5199
rfink@lippes.com
jmueller@lippes.com

· *Counsel to HSH*

Exhibit A

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT YET BEEN APPROVED BY THE COURT.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

CHAPTER 11

HHH CHOICES HEALTH PLAN, LLC, *ET AL.*

CASE NO. 15-11158-MEW
CASE NO. 15-13264-MEW
CASE NO. 16-10028-MEW

DEBTORS.

(JOINTLY ADMINISTERED)

**CHAPTER 11 PLAN OF LIQUIDATION FOR
HEBREW HOSPITAL SENIOR HOUSING INC. PROPOSED BY THE DEBTOR**

LIPPES MATHIAS WEXLER FRIEDMAN, LLP

Raymond L. Fink, Esq.
John A. Mueller, Esq.
50 Fountain Plaza, Suite 1700
Buffalo, NY 14202-2216
Tel: (716) 853-5100
Fax: (716) 853-5199
rfink@lippes.com
jmueller@lippes.com

· Counsel to Hebrew Hospital Senior Housing, Inc.

Dated: April 18, 2018

TABLE OF CONTENTS

| | |
|---|----|
| CHAPTER 11 PLAN OF LIQUIDATION FOR <i>HEBREW HOSPITAL SENIOR HOUSING INC.</i> PROPOSED BY THE DEBTOR | i |
| I. Introduction | 1 |
| II. Defined Terms & Other References..... | 1 |
| 2.1 Defined Terms..... | 1 |
| 2.2 Undefined Terms..... | 6 |
| 2.3 Interpretation | 6 |
| 2.4 Rules of Construction..... | 6 |
| 2.5 Computation of Time | 7 |
| 2.6 Governing Law..... | 7 |
| 2.7 Reference to Monetary Figures..... | 7 |
| III. Administrative & Priority Claims..... | 7 |
| 3.1 Administrative Claims..... | 7 |
| 3.2 Professional Claims..... | 7 |
| 3.3 Priority Tax Claims | 8 |
| IV. Classification & Treatment of Claims | 8 |
| 4.1 Classification Summary | 8 |
| 4.2 Treatment of Classes of Claims | 9 |
| 4.3 Special Provision Governing Unimpaired Claims | 10 |
| V. Means for Implementation | 10 |
| 5.1 Implementation of the Plan | 10 |
| 5.2 Plan Funding | 10 |
| 5.3 Vesting of Assets in the Debtor..... | 10 |
| 5.4 Continuing Existence | 10 |
| 5.5 Liquidation of Remaining Assets..... | 11 |
| 5.6 Management of Debtor..... | 11 |
| 5.7 Powers & Obligations of the Plan Administrator..... | 11 |
| 5.8 Plan Administrator’s Bond..... | 13 |
| 5.9 Post-Effective Date Committee..... | 13 |
| 5.10 Rights of Action..... | 14 |
| 5.11 Corporate Action | 16 |
| 5.12 Cancellation of Existing Instruments & Agreements..... | 16 |
| 5.13 Setoffs..... | 16 |

| | | |
|-------|--|----|
| 5.14 | Funding of the Disputed Claims Reserve | 17 |
| 5.15 | Plan Distributions | 17 |
| 5.16 | Cash Distributions | 18 |
| 5.17 | Delivery of Plan Distributions | 18 |
| 5.18 | Distributions to Holders as of the Confirmation Date | 18 |
| 5.19 | Abandoned Assets | 19 |
| 5.20 | Windup | 19 |
| 5.21 | Disposition of Unclaimed Funds | 19 |
| 5.22 | Indefeasibility of Distributions | 19 |
| 5.23 | Distribution of Unclaimed Property | 19 |
| 5.24 | Saturday, Sunday, or Legal Holiday | 20 |
| 5.25 | Final Order | 20 |
| VI. | Acceptance or Rejection of Plan | 20 |
| 6.1 | Eligibility to Vote | 20 |
| 6.2 | Votes Required for Acceptance | 20 |
| 6.3 | Cramdown | 21 |
| VII. | Treatment of Executory Contracts | 21 |
| 7.1 | Assumption or Rejection of Executory Contracts | 21 |
| 7.2 | Approval of Assumption or Rejection of Executory Contracts | 21 |
| 7.3 | Rejection Damages Claims | 21 |
| 7.4 | Compensation & Benefit Programs | 21 |
| VIII. | Provisions for Resolving & Treating Claims | 22 |
| 8.1 | Prosecution of Disputed Claims | 22 |
| 8.2 | Settlement of Disputed Claims | 22 |
| 8.3 | No Distributions Pending Allowance | 23 |
| IX. | Conditions to Confirmation & Effective Date | 23 |
| 9.1 | Conditions to Confirmation | 23 |
| 9.2 | Conditions to Effective Date | 23 |
| X. | Modification, Revocation or Withdrawal of Plan | 24 |
| 10.1 | Modification | 24 |
| 10.2 | Revocation or Withdrawal | 24 |
| XI. | Injunctions, Exculpation & Indemnification | 24 |
| 11.1 | Injunction | 24 |
| 11.2 | Exculpation | 25 |

| | | |
|-------|--|----|
| 11.3 | Indemnification..... | 25 |
| 11.4 | Preservation of Insurance | 26 |
| 11.5 | Release of Liens..... | 26 |
| XII. | Retention of Jurisdiction | 26 |
| XIII. | Miscellaneous Provisions..... | 26 |
| 13.1 | Governing Law | 26 |
| 13.2 | Additional Documents..... | 27 |
| 13.3 | Reservation of Rights | 27 |
| 13.4 | Preservation of Insurance | 27 |
| 13.5 | Elimination of Vacant Classes..... | 27 |
| 13.6 | Successors and Assigns | 27 |
| 13.7 | Substantial Consummation..... | 27 |
| 13.8 | No Tax Advice..... | 27 |
| 13.9 | Entire Agreement..... | 28 |
| 13.10 | Plan Exhibits..... | 28 |
| 13.11 | Severability..... | 28 |
| 13.12 | Section 1125(e) Good Faith Compliance | 28 |
| 13.13 | Section 1146(a) Exemption | 28 |
| 13.14 | Notices | 29 |
| (i) | Notices to the Debtor | 29 |
| (ii) | Notices to the Plan Administrator | 29 |
| (iii) | Notices to the Professionals | 29 |

I. INTRODUCTION

HEBREW HOSPITAL SENIOR HOUSING, INC. (“Debtor” or “HHSB”), proposes the following Chapter 11 Plan of Reorganization pursuant to Section 1121(a) of title 11 of the United States Code. Reference is made to the Disclosure Statement for a discussion of the Debtor’s history, business, operations, projections, risk factors, a summary and analysis of this Plan and certain related matters.

II. DEFINED TERMS & OTHER REFERENCES

2.1 Defined Terms

The following terms used herein shall have the respective meanings defined below and may be used in both the singular and plural as appropriate to the context:

1. **Administrative Claim** means a Claim for costs and expenses of administration of the Chapter 11 Case pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estate and operating the business of the Debtor; (b) Allowed Professional Claims; and (c) all fees and charges assessed against the Estates pursuant to Section 1930 of Chapter 123 of Title 28 of the United States Code, including, without limitation, all Trustee Fee Claims.

2. **Administrative Claims Bar Date** means the deadline for filing Administrative Claims contained in the Confirmation Order.

3. **Allowed** means, as to a Claim or an Interest, a Claim or Interest or any portion thereof, specifically allowed under the Plan, the Bankruptcy Code, or by a Final Order.

4. **Avoidance Actions** means all avoidance, recovery, subordination, or other claims, actions, or remedies that may be brought by or on behalf of the Debtor or its Estate or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under Sections 502, 510, 542, 544, 545, and 547 through and including Section 553 of the Bankruptcy Code, regardless of whether or not such actions have been commenced prior to the Effective Date.

5. **Ballot** means each of the ballots distributed to each holder of an Impaired Claim that is entitled to vote to accept or reject the Plan and on which such holder is to indicate, among other things, acceptance or rejection of the Plan.

6. **Bankruptcy Code** means Title 11 of the United States Code, as now in effect or hereafter amended.

7. **Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of New York having jurisdiction over the Chapter 11 Case.

8. **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under Section 2075 of title 28 of the United

States Code, and the Local Rules of the Bankruptcy Court, as amended from time to time and applicable to the Chapter 11 Case.

9. **Business Day** means day, other than a Saturday, Sunday, or a legal holiday, as defined in Bankruptcy Rule 9006(a).

10. **Cash** means cash and cash equivalents, in United States Dollars, including, but not limited to, bank deposits, checks payable to the Debtor and similar items.

11. **Causes of Action** means all claims, actions, causes of action, choses in action, suits, debts, damages, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and cross-claims (including all claims and any avoidance, recovery, subordination, or other actions against Insiders and/or any other Entities under the Bankruptcy Code, including Avoidance Actions) of the Debtor, the debtor in possession, and/or the Estate, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, that are or may be pending on the Effective Date or commenced by the Reorganized Company after the Effective Date against any Entity, based in law or equity, including under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order.

12. **Chapter 11 Case** means the case under Chapter 11 of the Bankruptcy Code commenced by the Debtor on the Petition Date in the Bankruptcy Court and originally assigned case number 15-13264-MEW, and being jointly administered in the Bankruptcy Court under case number 15-11158-MEW.

13. **Claim** has the meaning set forth in Section 101(5) of the Bankruptcy Code.

14. **Claimant** means the holder of a Claim as defined by Section 101(5) of the Bankruptcy Code.

15. **Claims Bar Date** means July 29, 2016, the deadline set by the Bankruptcy Court, pursuant to Bankruptcy Rule 3003(c)(3), for the filing of any Proofs of Claim against the Debtor's estate in this Chapter 11 Case.

16. **Claims Objection Deadline** means the deadline set by the Bankruptcy Court, pursuant to Bankruptcy Rule 3007, for objections to the allowance of any Claims against the Debtor's estate in this Chapter 11 Case.

17. **Claims Register** means the official register of Claims against or Interests in the Debtor maintained by the Bankruptcy Court.

18. **Class** means a category of holders of Claims or Interests under Section 1122(a) of the Bankruptcy Code.

19. **Committee** means the statutory committee of unsecured creditors appointed in the Chapter 11 Case on or about December 28, 2015, with members: (i) 1199 SEIU Benefit and

Pension Funds; (ii) Andrea Taber, Esq., on behalf of Lucille and Selig Poplik; (iii) Richard A. Bobbe; (iv) Mary Blumenthal-Lane, on behalf of Julia Blumenthal-Lane; and (v) Peter Clark, on behalf of Ann Clark.

20. **Confirmation** means the entry of the Confirmation Order on the docket of the Chapter 11 Case.

21. **Confirmation Date** means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case within the meaning of Bankruptcy Rules 5003 and 9021.

22. **Confirmation Hearing** means the hearing(s) before the Bankruptcy Court under Section 1128 of the Bankruptcy Code at which the Debtor seeks entry of the Confirmation Order.

23. **Confirmation Order** means the order of the Bankruptcy Court confirming the Plan under Section 1129 of the Bankruptcy Code and approving the Disclosure Statement.

24. **Consummation** means the occurrence of the Effective Date.

25. **Creditor** has the meaning set forth in Section 101(10) of the Bankruptcy Code.

26. **D&O Litigation** means the adversary proceeding filed by the Committee on December 8, 2017 [Docket No. 753], and assigned Adversary Proceeding No. 17-01240-mew.

27. **Debtor** means Hebrew Hospital Senior Housing, Inc., a New York not-for-profit corporation and the debtor in this Chapter 11 Case.

28. **Disclosure Statement** means the disclosure statement for the Plan as may be amended, supplemented or modified from time to time, including all exhibits and schedules thereto, to be approved by the Confirmation Order.

29. **Disputed** means, as to a Claim or Interest, or any portion thereof, that: (i) is not Allowed; (ii) is not disallowed under the Plan, the Bankruptcy Code, or a Final Order; (iii) is the subject of an objection or request for estimation filed in the Bankruptcy Court and which objection or request for estimation has not been withdrawn or overruled by a Final Order of the Bankruptcy Court; or (iv) is otherwise disputed by the Debtor in accordance with applicable law, which dispute has not been withdrawn, resolved or overruled by Final Order.

30. **Disputed Claims Reserve** means the reserve to be established and maintained by the Plan Administrator described in Section 5.14 of the Plan.

31. **Effective Date** means such date designated by the Debtor no later than the first Business Day of the month following the month in which the several conditions to the effectiveness of this Plan specified herein have been satisfied or waived. In no event, shall the Effective Date be more than thirty (30) days after the date the Confirmation Order becomes a Final Order, unless extended by Order of the Bankruptcy Court.

32. **Entity** has the meaning set forth in Section 101(15) of the Bankruptcy Code.

33. **Estate** means the bankruptcy estate of the Debtor created under Sections 301 and 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

34. **Executory Contract** means contract or lease to which the Debtor is a party that is subject to assumption or rejection under Section 365 of the Bankruptcy Code.

35. **Final Decree** means the decree contemplated under Bankruptcy Rule 3022.

36. **Final Order** means an order or judgment of the Bankruptcy Court entered by the clerk of the Bankruptcy Court on the docket in the Chapter 11 Case that is: (i) no longer subject to review, reversal, modification, or amendment by appeal or writ of certiorari, under applicable Bankruptcy Rules or statutes; and (ii) not subject to any stay or injunction against its effectiveness or enforcement.

37. **Former Resident Litigation** means the adversary proceedings filed by the Debtor on December 7-8, 2017 [Docket Nos. 743-748, 750 and 752], and assigned Adversary Proceeding Nos. 17-01229-mew through 17-01235-mew, and 17-01238-mew.

38. **General Unsecured Claim** means any Claim other than an Administrative Claim, Professional Claim, Priority Tax Claim, Secured Claim or Other Priority Claim.

39. **Governmental Unit** has the meaning set forth in Section 101(27) of the Bankruptcy Code.

40. **Holder** means the Person who has the legal right to enforce a negotiable instrument.

41. **Impaired** means, with respect to any Class of Claims or Interests, a Claim or an Interest that is not Unimpaired.

42. **Insider** has the meaning set forth in Section 101(31) of the Bankruptcy Code.

43. **Internal Revenue Code** means Title 26 of the United States Code, as now in effect or hereafter amended.

44. **IRS** means the Internal Revenue Service.

45. **Lien** has the meaning set forth in Section 101(37) of the Bankruptcy Code.

46. **Local Rules** means the *United States Bankruptcy Court Southern District of New York Local Rules of Bankruptcy Procedure* currently effective December 1, 2017.

47. **Net Proceeds** means the Remaining Cash together with the aggregate Cash received after the Effective Date from the liquidation of the Assets or otherwise, minus Cash necessary to fund Allowed Administrative/Priority and Secured Claims, the costs to administer the Plan (including the costs and expenses of the Plan Administrator, the Post-Effective Date Committee and their respective professionals), and the Disputed Claims Reserve.

48. **Other Priority Claim** means any Claim other than an Administrative Claim or a Priority Tax Claim entitled to priority in payment as specified in Sections 507(a)(2), (3), (4), (5), (6), (7), or (9) of the Bankruptcy Code.

49. **Person** has the meaning set forth in Section 101(41) of the Bankruptcy Code.

50. **Petition Date** means December 9, 2015, the date of the filing by the Debtor of its petition for relief under Chapter 11 of the Bankruptcy Code.

51. **Plan** means this chapter 11 plan, as it may be altered, amended, modified or supplemented from time to time, and all exhibits, supplements, appendices and schedules.

52. **Plan Administrator** means _____, or such other Person designated by the Debtor, and approved by the Bankruptcy Court pursuant to the Confirmation Order, or, after the Effective Date, such other person designated pursuant to Section 5.1 of the Plan, to administer the Plan.

53. **Post-Effective Date Committee** means the Committee as it shall function after the Effective Date as more fully described in Section 5.9 of the Plan.

54. **Priority Tax Claim** means any Claim of a Governmental Unit of the specified in Section 507(a)(8) of the Bankruptcy Code. Priority Tax Claims shall include only such Claims for penalties that are related to a Claim specified in Section 507(a)(8) of the Bankruptcy Code and that seek compensation for actual pecuniary loss.

55. **Professional** means an Entity employed in the Chapter 11 Case in accordance with Sections 327 and 1123 of the Bankruptcy Code or otherwise, pursuant to a Final Order of the Bankruptcy Court.

56. **Professional Fee Claim** means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under Sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

57. **Professional Fee Claims Bar Date** means 4:00 p.m. (prevailing Eastern Time) on the date that is sixty (60) days after the Effective Date

58. **Proof of Claim** means a proof of Claim filed against the Debtor in the Chapter 11 Case (conforming substantially to Official Bankruptcy Form No. 10), together with accompanying documentation.

59. **Remaining Cash** means all Cash held by or for the benefit of the Estate upon the Effective Date.

60. **Schedules** means the Schedules of Assets and Liabilities, the Schedules of Executory Contracts and Unexpired Leases and the Statement of Financial Affairs filed by the Debtor pursuant to Section 521 of the Bankruptcy Code, Bankruptcy Rule 1007, and the Official

Bankruptcy Forms of the Bankruptcy Rules, as such statements and schedules have been or may be supplemented or amended through the Confirmation Date.

61. ***Trustee Fees*** means all fees payable pursuant to 28 U.S.C. § 1930.

62. ***Trustee Fee Claim*** means a Claim of the Office of the United States Trustee for the payment of Trustee Fees.

63. ***Unimpaired*** means a Class of Claims or Interests that is unimpaired within the meaning of Section 1124 of the Bankruptcy Code.

2.2 Undefined Terms

A term used in this Plan that is not defined in this Plan shall have the meaning assigned to that term in the Bankruptcy Code.

2.3 Interpretation

For purposes of the Plan, the following rules of interpretation apply: (i) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (ii) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (iii) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (iv) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to any particular portion of the Plan; (v) captions and headings are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (vi) unless otherwise specified herein, the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply; and (vii) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

2.4 Rules of Construction

The rule of “contra proferentum” does not apply to the interpretation of the Plan. The Plan is the product of extensive negotiations between and among the interested parties. Each of whom, including the Debtor and Committee, was represented by independent counsel of their choice who either: (i) participated in the formulation and documentation of; or (ii) was afforded the opportunity to review and provide comments on, the Plan, the Disclosure Statement, and the documents ancillary thereto. Accordingly, unless explicitly stated otherwise, the general rule of contract construction known as “contra proferentum” shall not apply to the construction or interpretation of any provision of this Plan, the Disclosure Statement, or any exhibit, schedule, contract, instrument, release, or other document generated in connection therewith as concerns such parties identified above.

2.5 Computation of Time

Bankruptcy Rule 9006(a) applies in computing any period of time prescribed or allowed herein.

2.6 Governing Law

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to conflict-of-laws principles.

2.7 Reference to Monetary Figures

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

III. ADMINISTRATIVE & PRIORITY CLAIMS

3.1 Administrative Claims

Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtor or Plan Administrator, as applicable, each holder of an Allowed Administrative Claim (other than holders of Professional Claims and Claims for fees and expenses pursuant to 28 U.S.C. § 1930) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim within ninety (90) days of the following: (i) Effective Date; or (ii) if the Administrative Claim is not Allowed as of the Effective Date, the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter. If the Allowed Administrative Claim is based on liabilities incurred by the Debtor in the ordinary course of its business after the Petition Date, then in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claims, without any further action by the holders of such Allowed Administrative Claims. All Administrative Claims for which no application is timely filed shall be forever barred. Notwithstanding the foregoing, all Trustee Fee Claims will be satisfied on or before the Effective Date without need for the filing of an application.

3.2 Professional Claims

All requests for payment of Professional Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be filed no later than sixty (60) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. The Debtor or Plan Administrator, as applicable, shall pay Professional Claims in Cash in the amount the Court Allows within ninety (90) days of the following: (i) Effective Date; or (ii) if the Professional Claim is not Allowed as of the Effective Date, the date on which an order Allowing such Professional Claim becomes a Final Order, or as soon as reasonably practicable thereafter. From and after the Confirmation Date, any requirement that

Professionals comply with Sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Plan Administrator may employ and pay any Professional in the ordinary course of business without any further notice to, or action, order, or approval of, the Bankruptcy Court.

3.3 Priority Tax Claims

Each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive on the Effective Date, payment in Cash in an amount equal to the amount of such Allowed Priority Tax Claim. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtor and Holder of such Claim, or as may be due and payable under applicable non-bankruptcy law, or in the ordinary course of business.

IV. CLASSIFICATION & TREATMENT OF CLAIMS

4.1 Classification Summary

The following table designates the Classes of Claims against the Debtor and specifies whether each such Class is: (i) Impaired or Unimpaired by the Plan; and (ii) entitled to vote to accept or reject the Plan in accordance with Section 1126 of the Bankruptcy Code. The table also designates, where applicable, those Classes deemed to reject this Plan in accordance with Section 1126 of the Bankruptcy Code. The Bankruptcy Code provides that Unimpaired Classes are conclusively presumed to accept this Plan, and therefore, solicitation of acceptance from such Classes is not required.

A Claim is placed in a particular Class only to the extent that such Claim falls within the designation of that Class, and is classified in other Classes to the extent that any portion of the Claim falls within the designation of such other Classes.

| <i>Class</i> | <i>Designation</i> | <i>Impairment</i> | <i>Entitled to Vote</i> |
|--------------|-----------------------|-------------------|---|
| 1 | Secured Claims | Unimpaired | No (Presumed to Accept) ¹ |
| 2 | Other Priority Claims | Unimpaired | No (Presumed to Accept) |
| 3 | Unsecured Claims | Impaired | Yes |

¹ All were paid in full at the sale closing on October 31, 2016.

4.2 Treatment of Classes of Claims

Except to the extent that a Holder of an Allowed Claim, as applicable, agrees to a less favorable treatment, such Holder shall receive under the Plan the treatment described below in exchange for such Holder's Allowed Claim against the Debtor, as applicable. Unless otherwise indicated, the Holder of an Allowed Claim shall receive such treatment on the Effective Date, or as soon as practicable thereafter.

(i) Class 1 – Secured Claims

- (1) *Classification:* Class 1 consists of any Secured Claims against the Debtor.
- (2) *Treatment:* Each Holder of an Allowed Secured Claim shall receive, in full and final satisfaction, release and settlement of such Claim, one of the following alternative treatments, at the election of the Plan Administrator: (i) payment in full in Cash on or as soon as reasonably practicable after the later of (a) the Effective Date and (b) the date the Claim becomes due and payable by its terms; (ii) the legal, equitable and contractual rights to which such Claim entitles the holder, unaltered by the Plan; (iii) the treatment described in Section 1124(2) of the Bankruptcy Code; or (iv) all collateral securing such Claim, without representation or warranty by or recourse against the Debtor. To the extent that the value of the collateral securing an Allowed Secured Claim is less than the amount of such Allowed Secured Claim, the undersecured portion of such Claim shall be treated for all purposes under the Plan as an Allowed Unsecured Claim and shall be classified as such.
- (3) *Voting:* Class 1 is Unimpaired and conclusively presumed to have accepted the Plan under Section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.

(ii) Class 2 – Other Priority Claims

- (1) *Classification:* Class 2 consists of any Other Priority Claims against the Debtor.
- (2) *Treatment:* Each Holder of an Allowed Other Priority Claim, in full and complete satisfaction, release and settlement of such Claim, shall be paid in full in Cash on or as soon as reasonably practicable after the later of: (i) the Effective Date; and (ii) the date on which such Claim becomes Allowed, unless such holder shall agree to a different and less favorable treatment of such Claim (including, without limitation, any different treatment that may be provided for in the documentation governing such Claim or in a prior agreement with such holder).
- (3) *Voting:* Class 2 is Unimpaired and conclusively presumed to have accepted the Plan under Section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.

(iii) Class 3 – Unsecured Claims

- (1) *Classification:* Class 3 consists of any Unsecured Claims against the Debtor.
- (2) *Treatment:* The Holders of Allowed Unsecured Claims shall from time to time receive pro rata distributions of Cash from the Net Proceeds.
- (3) *Voting:* Class 3 is Impaired and entitled to vote to accept or reject the Plan.

4.3 Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtor's rights regarding any Unimpaired Claim, including legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

V. MEANS FOR IMPLEMENTATION

5.1 Implementation of the Plan

The Plan will be implemented by the Plan Administrator in a manner consistent with the terms and conditions set forth in the Plan and the Confirmation Order. _____, of _____ is appointed as the Plan Administrator.

5.2 Plan Funding

The funds utilized to make Cash payments under the Plan have been and/or will be generated from, among other things, collections, the proceeds of sale of substantially all of the Debtor's assets, and the proceeds of the liquidation or other disposition of the remaining Assets of the Debtor

5.3 Vesting of Assets in the Debtor

Except as expressly provided otherwise in the Plan, on the Effective Date, all Assets shall vest with the Plan Administrator free and clear of all Claims, liens, encumbrances, charges, interests and other rights and interests of Creditors and holders of Interests arising on or before the Effective Date, but subject to the terms and conditions of the Plan and the Confirmation Order

5.4 Continuing Existence

From and after the Effective Date, the Debtor shall continue in existence for the purposes of: (i) winding up its affairs as expeditiously as reasonably possible; (ii) liquidating, by conversion to Cash or other methods, any remaining Assets as expeditiously as reasonably possible; and (iii)

performing all such other acts and conditions required by and consistent with consummation of the terms of the Plan and the wind down of its affairs.

5.5 Liquidation of Remaining Assets

Subject to the terms of the Plan, from and after the Effective Date, the Plan Administrator may, without further approval of the Court, use, sell at public or private sale, assign, transfer, or otherwise dispose of any remaining Assets and convert same to Cash; provided, however, that the sale of any remaining Assets shall be subject to the approval of the Post-Effective Date Committee (which approval shall not be unreasonably withheld).

5.6 Management of Debtor

On the Effective Date, the members of the Debtor's board of directors shall be deemed to have resigned therefrom, and shall be relieved of all further responsibilities with the operation of the Debtor becoming the general responsibility of the Plan Administrator in accordance with the Plan.

5.7 Powers & Obligations of the Plan Administrator

(i) The Confirmation Order shall provide for the appointment of the Plan Administrator. The compensation for the Plan Administrator shall be \$_____ per hour. The Plan Administrator shall be deemed the Estate's representative in accordance with Section 1123 of the Bankruptcy Code and shall have all powers, authority and responsibilities specified under Sections 704 and 1106 of the Bankruptcy Code.

(ii) The Plan Administrator will act for the Debtor in a fiduciary capacity as applicable to a board of directors, subject to the provisions of the Plan and vested with all of the rights and authority of a Chapter 7 trustee and as augmented by the Plan. On the Effective Date, the Plan Administrator shall succeed to all of the rights of the Debtor with respect to the Assets necessary to protect, conserve, and liquidate all Assets as quickly as reasonably practicable, including, without limitation, control over (including the right to waive) all attorney-client privileges, work-product privileges, accountant-client privileges and any other evidentiary privileges relating to the Assets that, prior to the Effective Date, belonged to the Debtor pursuant to applicable law. The powers and duties of the Plan Administrator shall include, without further order of the Court, except where expressly stated otherwise, the right:

(a) to invest Cash in accordance with Section 345 of the Bankruptcy Code, and withdraw and make distributions of Cash to holders of Allowed Claims and pay taxes and other obligations owed by the Debtor or incurred by the Plan Administrator in connection with the wind-down of the Estate in accordance with the Plan;

(b) to receive, manage, invest, supervise, and protect the Assets, including paying taxes or other obligations incurred in connection with administering the Assets;

(c) subject to the approval of the Post-Effective Date Committee (which approval shall not be unreasonably withheld), to engage attorneys, consultants, agents, employees and all professional persons, to assist the Plan Administrator with respect to the Plan Administrator's responsibilities;

(d) subject to the approval of the Post-Effective Date Committee (which approval shall not be unreasonably withheld), or further order of the Court, to pay the fees and expenses for the attorneys, consultants, agents, employees and professional persons engaged by the Plan Administrator and the Post-Effective Date Committee and to pay all other expenses in connection with administering the Plan and for winding down the affairs of the Debtor in each case in accordance with the Plan;

(e) to execute and deliver all documents, and take all actions, necessary to consummate the Plan and wind-down the Debtor's business;

(f) subject to the approval of the Post-Effective Date Committee (which approval shall not be unreasonably withheld), to dispose of, and deliver title to others of, all the remaining Assets;

(g) to coordinate the collection of outstanding accounts receivable;

(h) to coordinate the storage and maintenance of the Debtor's books and records;

(i) to oversee compliance with the Debtor's accounting, finance and reporting obligations;

(j) to prepare United States Trustee quarterly reports;

(k) to oversee the filing of final tax returns, audits and corporate dissolution documents if required;

(l) to perform any additional corporate actions as necessary to carry out the wind-down, liquidation and ultimate dissolution of the Debtor, in accordance with applicable law;

(m) to communicate regularly with and respond to inquiries from the Post-Effective Date Committee, including providing to the Post-Effective Date Committee information on all receipts and disbursements on a quarterly basis;

(n) subject to Section 8 of the Plan, to object to Claims against the Debtor;

(o) subject to Section 8 of the Plan, to compromise and settle Claims against the Debtor;

(p) to act on behalf of the Debtor in all adversary proceedings and contested matters (including, without limitation, any Causes of Action), then pending or that can be commenced in the Court and in all actions and proceedings pending or commenced elsewhere, and to settle, retain, enforce, or dispute any adversary proceedings or contested matters (including,

without limitation, any Causes of Action) and otherwise pursue actions involving Assets of the Debtor that could arise or be asserted at any time under the Bankruptcy Code or otherwise, unless otherwise specifically waived or relinquished in the Plan, provided, however, that settlements by the Plan Administrator of Causes of Action shall be subject to the approval of the Post-Effective Date Committee, which approval shall not be unreasonably withheld, or further order of the Court;

(q) to accept assignments of Causes of Action for the benefit of the Debtor's estate, upon determining that such Causes of Action assert colorable and meritorious claims;

(r) to implement and/or enforce all provisions of the Plan;

(s) to implement and/or enforce all agreements entered into prior to the Effective Date, and

(t) to use such other powers as may be vested in or assumed by the Plan Administrator pursuant to the Plan or Bankruptcy Court order or as may be necessary and proper to carry out the provisions of the Plan.

5.8 Plan Administrator's Bond

The Plan Administrator shall obtain and maintain a bond in an amount equal to one hundred and ten percent (110%) of Remaining Cash. As Remaining Cash is reduced through distributions and payments by the Plan Administrator and/or additional Cash comes into the Estate, the Plan Administrator shall, at the appropriate time, adjust the amount of the bond to an amount equal to at least 110% of the amount of Cash in the Estate.

5.9 Post-Effective Date Committee

(i) On the Effective Date, the Committee shall continue as the Post-Effective Date Committee. The Post-Effective Date Committee shall be comprised of the members of the Committee, unless any particular member thereof opts not to be a member thereof. If a member of the Post-Effective Date Committee resigns or is removed, a replacement who holds an Unsecured Claim against the Debtor may be appointed by the remaining members of the Post-Effective Date Committee. The duties and powers of the Post-Effective Date Committee shall terminate upon the closing of the Case. The Post-Effective Date Committee's role shall be to consult with the Plan Administrator, and to perform the functions set forth in the Plan.

(ii) The Post-Effective Date Committee shall have the power and authority to utilize the services of counsel and a financial advisor as and if necessary to perform the duties of the Post-Effective Date Committee and to authorize and direct such Persons to act on behalf of the Post-Effective Date Committee in connection with any matter requiring its attention or action, including but not limited to the D&O Litigation. The Plan Administrator shall pay the reasonable and necessary fees and expenses of the Post-Effective Date Committee's counsel and financial advisor without the need for Court approval.

(iii) Except for the reimbursement of reasonable, actual costs and expenses incurred in connection with their duties as members of the Post-Effective Date Committee, the members of the Post-Effective Date Committee shall serve without compensation. Reasonable expenses

incurred by members of the Post-Effective Date Committee may be paid by the Plan Administrator without need for Court approval.

(iv) The Plan Administrator shall report all material matters to the Post-Effective Date Committee.

5.10 Rights of Action

(i) In accordance with Section 1123(b)(3)(B) of the Bankruptcy Code, the Plan Administrator may pursue all reserved rights of action, including, without limitation, Causes of Action of the Debtor. Any distributions provided for in the Plan and the allowance of any Claim for the purpose of voting on the Plan are and shall be without prejudice to the rights of the Plan Administrator to pursue and prosecute any reserved rights of action. Except as otherwise set forth in the Plan, all Causes of Action of the Debtor shall survive confirmation of the Plan and the commencement and prosecution of Causes of Action of the Debtor shall not be barred or limited by res judicata or any estoppel, whether judicial, equitable or otherwise. In reviewing the Plan and the Disclosure Statement, Creditors and other parties should consider that Causes of Action of the Debtor exist or may exist against them, that, except as otherwise set forth in the Plan, the Plan preserves all Causes of Action of the Debtor, and that the Plan authorizes the Plan Administrator to prosecute all Causes of Action of the Debtor.

(ii) Unless expressly released pursuant to the Plan or a Final Order of the Bankruptcy Court, the failure to identify a Person in this Plan shall not constitute a release of any Causes of Action against such Person.

(iii) The Causes of Action retained by the Debtor that can be pursued and prosecuted by the Plan Administrator include, without limitation:

(a) Former Resident Litigation (as defined herein).

(b) D&O Litigation (as defined herein).

(c) Any Causes of Action of the Debtor related to any of the pre-petition lawsuits with respect to which the Debtor was a party and any pre-petition leases and contracts to which the Debtor was a party. To the extent any person was not identified on, or any transfer, lawsuit, contract or lease was inadvertently omitted from the Schedules, such omission shall not constitute a waiver of any Causes of Action of the Debtor related to such omitted person, transfer, lawsuit, contract or lease, and the Debtor expressly retains and preserves all such Causes of Action. Moreover, for the avoidance of doubt, recovery related to any Causes of Action of the Debtor shall not be limited to any amounts set forth in the Schedules.

(d) Causes of Action of the Debtor retained by the Debtor by a Final Order of the Court as set forth in the Confirmation Order.

(e) Causes of Action of the Debtor to recover money or property from customers, vendors and/or employees whether based on contract or tort, including without limitation all rights pursuant to Section 502(d) of the Bankruptcy Code to assert and prosecute any

Causes of Action of the Debtor against creditors solely for the purpose of establishing that a creditor's claim against the Debtor must be disallowed for failure to repay an avoidable transfer.

(f) Causes of Action of the Debtor to recover accounts receivable or other receivables or rights to payment created or arising in the ordinary course of the Debtor's business.

(g) Causes of Action of the Debtor against vendors, suppliers of goods or services, or other parties for overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guaranties, indemnities or setoffs.

(h) Causes of Action of the Debtor against utilities, vendors, suppliers of goods or services, or other parties for wrongful termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations.

(i) Causes of Action against utilities, vendors, suppliers of goods or services, or other parties for failure to fully perform or to condition performance on additional requirements under contracts with the Debtor before the assumption or rejection of the subject contracts.

(j) Causes of Action of the Debtor for payments, deposits, holdbacks, reserves or other amounts owed by any creditor, lessor, utility, supplier, vendor, insurer, surety, lender, bondholder, lessor or other party.

(k) Causes of Action of the Debtor against any current or former director, officer, trustee, employee or agent of the Debtor arising out of employment related matters, including but not limited to Causes of Action of the Debtor relating to the MAP and FIDA programs, the operation of the Debtor's business, employment contracts, wage and benefit overpayments, travel, expense reimbursements or employee fraud or wrongdoing.

(l) Causes of Action of the Debtor against, among others, related entities including but not limited to HHH Choices Health Plan, LLC and Hebrew Hospital Home of Westchester, Inc.

(m) Causes of Action of the Debtor against insurance carriers, reinsurance carriers, underwriters or surety bond issuers relating to coverage, indemnity, contribution, reimbursement or other matters.

(n) Causes of Action of the Debtor that are counterclaims and/or defenses relating to any action brought against the Debtor or the Plan Administrator.

(o) Causes of Action of the Debtor related to or in connection with pre-petition lawsuits with respect to which the Debtor was a party, whether or not identified in the Schedules.

(p) Causes of Action of the Debtor against local, state and federal taxing authorities for refunds of overpayments or other payments.

(q) Contract, tort or equitable Causes of Action of the Debtor that may exist or subsequently arise, whether or not identified on the Schedules.

(r) Equitable subordination Causes of Action of the Debtor arising under Section 510 of the Bankruptcy Code or other applicable law.

(s) Causes of Action of the Debtor arising under Section 362 of the Bankruptcy Code.

(iv) The Debtor reserves the right of the Plan Administrator to perform a thorough post-confirmation investigation of Causes of Action of the Debtor and to pursue any such additional Causes of Action of the Debtor that may be identified regardless of whether such Causes of Action of the Debtor were specifically identified or known as of the Confirmation Date.

5.11 Corporate Action

On the Effective Date, the appointment of the Plan Administrator, and any and all other matters provided for under the Plan involving corporate action by the Debtor, its directors or its trustees, including, without limitation, the transfer of management responsibilities of the Debtor to the Plan Administrator, shall be deemed to have occurred and shall be in effect from and after the Effective Date pursuant to applicable law, without any requirement of further action by the Debtor's directors, officers or trustees. Upon the distribution of all Assets pursuant to the Plan and the filing by the Plan Administrator of a certification to that effect with the Bankruptcy Court (which may be included in the application for the entry of the final decree), the Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith; provided, however, that the Debtor and/or the Plan Administrator on behalf of the Debtor may take appropriate action to dissolve under applicable law. From and after the Effective Date, the Debtor shall not be required to file any document, or take any action, to withdraw its business operations from any states where the Debtor previously conducted business.

5.12 Cancellation of Existing Instruments & Agreements

On the Effective Date, except as otherwise provided herein, all instruments and agreements governing any Claim against the Debtor shall be deemed cancelled and terminated, and the obligations of the Debtor relating to, arising under, in respect of, or in connection with such instruments or agreements shall be deemed released and/or satisfied as to the Debtor.

5.13 Setoffs

The Plan Administrator may, pursuant to and to the extent permitted by applicable law, setoff against any Claim asserted against the Debtor and/or the Assets, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, any Claims of any nature whatsoever that that Debtor or the Estate may have against the holder of such Claim, provided that the Plan Administrator shall give the holder of such Claim notice of the proposed setoff and the holder of such Claim does not object to the proposed setoff within thirty (30) days service of such notice; provided further that if an objection is timely raised to a proposed setoff, the Plan Administrator may seek relief from the Bankruptcy Court to effectuate the setoff; and provided further that neither the failure to effect a setoff, nor the allowance of any Claim against the Debtor

hereunder, shall constitute a waiver or release of any such Claim the Debtor or the Estate may have against such holder.

5.14 Funding of the Disputed Claims Reserve

(i) The portion of the Assets attributable to Disputed Administrative, Priority Tax, Other Priority and Unsecured Claims, shall be held by the Plan Administrator in the “Disputed Claims Reserve.” As Disputed Claims are resolved, excess Cash in the Disputed Claims Reserve shall be made available for distribution to the holders of Allowed Claims in accordance with the Plan, provided that there is sufficient Cash to administer the Plan and pay Plan expenses. The Plan Administrator may set aside from the Assets an amount of Cash that the Plan Administrator determines is necessary to pay ongoing expenses of administering the Plan.

(ii) For the purposes of effectuating the distributions to the holders of Allowed Claims, the Bankruptcy Court (or another court, if applicable) may estimate the amount of Disputed Claims pursuant to Section 502(c) of the Bankruptcy Code, in which event the amounts so estimated shall be deemed the amounts of the Disputed Claims for purposes of distribution under the Plan. In lieu of estimating the amount of any Disputed Claim for purposes of allowance and distribution, the Bankruptcy Court (or another court, if applicable) may estimate the amount to be reserved for such Disputed Claim (singularly or in the aggregate), or such amount may be fixed by agreement in writing by and between the Plan Administrator and the holder of a Disputed Claim. In the event that the Bankruptcy Court (or another court, if applicable) estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court (or another court, if applicable). If the estimated amount constitutes a maximum limitation on such Claim, the Plan Administrator may elect to pursue any supplemental proceedings to object to any ultimate allowance of such Claim. Claims may be estimated by the Bankruptcy Court (or another court, if applicable) and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court (or another court, if applicable).

5.15 Plan Distributions

The Plan Administrator shall make distributions to holders of Allowed Claims in accordance with Articles III and IV of the Plan on or as soon as reasonably practicable after the Effective Date. From time to time, in consultation with the Post-Effective Date Committee, the Plan Administrator shall make Pro Rata distributions to holders of Allowed Class 3 Claims in accordance with Article IV of the Plan. Notwithstanding the foregoing, the Plan Administrator may retain such amounts: (i) as are reasonably necessary to meet contingent liabilities (including Disputed Claims) and to maintain the value of the Assets of the Estate during liquidation; (ii) to pay reasonable administrative expenses (including the costs and expenses of the Plan Administrator and the Post-Effective Date Committee and the fees, costs and expenses of all professionals retained by the Plan Administrator and the Post-Effective Date Committee, and any taxes imposed in respect of the Assets); (iii) to satisfy other liabilities to which the Assets are otherwise subject, in accordance with the Plan; and (iv) to establish any necessary reserve. All distributions to the holders of Allowed Claims shall be made in accordance with the Plan. The Plan Administrator shall withhold from amounts distributable to any Person any and all amounts determined in the Plan Administrator’s reasonable sole discretion to be required by any law,

regulation, rule, ruling, directive or other governmental requirement. Holders of Allowed Claims shall, as a condition to receiving distributions, provide such information and take such steps as the Plan Administrator may reasonably require to ensure compliance with withholding and reporting requirements and to enable the Plan Administrator to obtain certifications and information as may be necessary or appropriate to satisfy the provisions of any tax law. In the event that a holder of an Allowed Claim does not comply with the Plan Administrator's requests in the preceding sentence within ninety (90) days, no distribution shall be made on account of such Allowed Claim and the Plan Administrator shall reallocate such distribution for the benefit of all other holders of Allowed Claims in accordance with the Plan.

5.16 Cash Distributions

The Plan Administrator shall not be required to make interim or final Cash distributions in an amount less than \$10.00. Any funds so withheld and not distributed on an interim basis shall be held in reserve and distributed in subsequent distributions to the extent the aggregate distribution exceeds \$10,000. Should a final distribution to any holder of an Allowed Claim not equal or exceed \$10.00, that sum shall be distributed to other holders of Allowed Claims in accordance with the Plan.

5.17 Delivery of Plan Distributions

All distributions under the Plan on account of any Allowed Claims shall be made at the address of the holder of such Allowed Claim as set forth in a filed Proof of Claim or on the register on which the Plan Administrator records the name and address of such holders or at such other address as such holder shall have specified for payment purposes in a written notice to the Plan Administrator at least fifteen (15) days prior to such distribution date. In the event that any distribution to any holder is returned as undeliverable, the Plan Administrator shall use reasonable efforts to determine the current address of such holder, but no distribution to such holder shall be made unless and until the Plan Administrator has determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest; provided, however, that such undeliverable or unclaimed distributions shall become Unclaimed Property at the expiration of one hundred twenty (120) days from the date such distribution was originally made. The Plan Administrator shall reallocate the undeliverable and unclaimed distributions for the benefit of all other holders of Allowed Claims in accordance with the Plan.

5.18 Distributions to Holders as of the Confirmation Date

As of the close of business on the Confirmation Date, the claims register shall be closed, and there shall be no further changes in the record holders of any Claims. Neither the Debtor nor the Plan Administrator, as applicable, shall have any obligation to recognize any transfer of any Claims occurring after the close of business on the Confirmation Date, and shall instead be entitled to recognize and deal for all purposes under the Plan (except as to voting to accept or reject the

Plan pursuant to Section 6.1 of the Plan) with only those holders of record as of the close of business on the Confirmation Date.

5.19 Abandoned Assets

Upon the election of the Plan Administrator, with the approval of the Post-Effective Date Committee (which approval shall not be unreasonably withheld), the Plan Administrator may abandon any Assets without the need for additional approval of the Bankruptcy Court, and upon such abandonment, such Assets shall cease to be Assets of the Estate.

5.20 Windup

After: (i) the Plan has been fully administered; (ii) all Disputed Claims have been resolved; (iii) all Causes of Action have been resolved; and (iv) all Assets have been reduced to Cash or abandoned, the Plan Administrator shall effect a final distribution of all Cash remaining (after reserving sufficient Cash to pay all unpaid expenses of administration of the Plan and all expenses reasonably expected to be incurred in connection with the final distribution) to holders of Allowed Claims in accordance with the Plan.

5.21 Disposition of Unclaimed Funds

On or about the time that the final distribution is made, the Plan Administrator may make a charitable donation with undistributed funds if, in the reasonable judgment of the Plan Administrator, the cost of calculating and making the final distribution of the remaining funds exceeds the benefits to the holders of Allowed Claims who would otherwise be entitled to such distributions and such charitable donation is provided to a non-for-profit, non-religious organization that is not related to the Debtor or the Plan Administrator.

5.22 Indefeasibility of Distributions

All distributions provided for under the Plan shall be indefeasible.

5.23 Distribution of Unclaimed Property

Any distribution of property (Cash or otherwise) provided for under the Plan which is unclaimed after one hundred twenty (120) days following such distribution (collectively,

“Unclaimed Property”) shall irrevocably revert to the Estate for re-distribution in accordance with the Plan.

5.24 Saturday, Sunday, or Legal Holiday

If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next Business Day.

5.25 Final Order

Any requirement in the Plan for a Final Order may be waived by the Debtor.

VI. ACCEPTANCE OR REJECTION OF PLAN

6.1 Eligibility to Vote

The holders of Claims in Class 3 (Unsecured Claims) are entitled to vote if: (i) the Debtor has listed such Claim on its Schedules and such Claim is not scheduled as disputed, contingent, or unliquidated; (ii) no objection has been filed as to such holder’s Claim, either before or after the voting record date set forth in the Bankruptcy Court’s order approving the Disclosure Statement; or (iii) the holder of such Claim has filed a Proof of Claim on or before the applicable Claims Bar Date, except where the Debtor has specifically agreed to a late-filed Proof of Claim.

Any Claim in this impaired Class to which an objection is filed and not withdrawn or dismissed is not entitled to vote, regardless of whether a ballot was transmitted to the holder of such Claim, unless the Bankruptcy Court, pursuant to Bankruptcy Rule 3018(a), and upon application of the holder whose Claim was objected to, temporarily allows the Claim in an amount that the Bankruptcy Court deems proper solely for the purpose of voting on the Plan.

The Debtor may disregard a vote if the Bankruptcy Court determines, pursuant to Section 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith, or in accordance with the provisions of the Bankruptcy Code.

The following Classes are *not* entitled to vote to accept or reject the Plan: (i) 1 – Secured Claims; and (ii) 2 – Other Priority Claims.

6.2 Votes Required for Acceptance

Under the Bankruptcy Code, acceptance of a plan of reorganization by a Class of Claims is determined by calculating the amount and, if a Class of Claims, the number of Claims voting to accept, as a percentage of the Allowed Claims or Interests, as applicable, that have voted. Acceptance by a Class of Claims requires an affirmative vote of more than one-half (1/2) in number of total Allowed Claims that have voted and an affirmative vote of at least two-thirds (2/3) in dollar amount of the total Allowed Claims that have voted.

6.3 Cramdown

The Debtor requests confirmation under Section 1129(b) of the Bankruptcy Code with respect to any impaired Class that does not accept this Plan pursuant to Section 1126 of the Bankruptcy Code. The Debtor reserves the right to modify this Plan to the extent, if any, that confirmation pursuant to Section 1129(b) of the Bankruptcy Code requires modification.

VII. TREATMENT OF EXECUTORY CONTRACTS

7.1 Assumption or Rejection of Executory Contracts

Effective on and as of the Confirmation Date, all Executory Contracts are hereby specifically deemed rejected, except for any Executory Contract: (i) that has been specifically assumed or assumed and assigned by the Debtor on or before the Confirmation Date with the approval of the Bankruptcy Court; (ii) in respect of which a motion for assumption or assumption and assignment has been filed with the Bankruptcy Court on or before the Confirmation Date; or (iii) that is specifically designated as a contract to be assumed on a schedule to the Plan; provided, however, that to the extent any insurance policy of the Debtor, or any insurance policy that names or otherwise covers the Debtor as an insured, is deemed or determined to be an Executory Contract, any such insurance policy is deemed assumed by the Debtor effective on and as of the Confirmation Date.

7.2 Approval of Assumption or Rejection of Executory Contracts

Entry of the Confirmation Order by the Clerk of the Court, but subject to the condition that the Effective Date occur, shall constitute: (i) the approval, pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption or assumption and assignment of the Executory Contracts assumed or assumed and assigned pursuant to Section 7.1 of the Plan; and (ii) the approval, pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the Executory Contracts rejected pursuant to Section 7.1 of the Plan.

7.3 Rejection Damages Claims

Claims against the Debtor arising out of the rejection of Executory Contracts pursuant to the Plan must be filed with the Court no later than forty-five (45) days after the Effective Date. *Any such Claims not filed within such time shall be forever barred from assertion against the Debtor and/or its property.*

7.4 Compensation & Benefit Programs

To the extent not previously terminated, all employment and severance agreements and policies, and all employee compensation and benefit plans, policies and programs of the Debtor applicable generally to their respective current employees or officers as in effect on the Confirmation Date, including, without limitation, all savings plans, retirement plans, health care plans, disability plans, severance benefit plans, incentive plans and life, accidental death and dismemberment insurance plans, shall be terminated as of the Confirmation Date.

VIII. PROVISIONS FOR RESOLVING & TREATING CLAIMS

8.1 Prosecution of Disputed Claims

Except as otherwise provided in the Plan, the Plan Administrator shall have the right to object to all Claims against the Debtor on any basis, including those Claims against the Debtor that are not listed in the Schedules, that are listed therein as disputed, contingent, and/or unliquidated, that are listed therein at a lesser amount than asserted by the respective Creditor, or that are listed therein for a different category of claim than asserted by the respective Creditor. Subject to further extension by the Court for cause with or without notice, the Plan Administrator may object to the allowance of Claims against the Debtor up to one hundred eighty (180) days after the Effective Date; provided, however, that an objection to a Claim against the Debtor based on Section 502(d) of the Bankruptcy Code may be made at any time in any adversary proceeding against the holder of any relevant Claim. The filing of a motion to extend the deadline to object to any Claims against the Debtor shall automatically extend such deadline until a Final Order is entered on such motion. In the event that such motion to extend the deadline to object to Claims against the Debtor is denied by the Court, such deadline shall be the later of the current deadline (as previously extended, if applicable) or 30 days after the Court's entry of an order denying the motion to extend such deadline. From and after the Effective Date, the Plan Administrator shall succeed to all of the rights, defenses, offsets, and counterclaims of the Debtor and the Committee in respect of all Claims against the Debtor, and in that capacity shall have the power to prosecute, defend, compromise, settle, and otherwise deal with all such objections, subject to the terms of the Plan.

8.2 Settlement of Disputed Claims

(i) Pursuant to Bankruptcy Rule 9019(b), subject to Section 8.2 of the Plan, the Plan Administrator may settle any Disputed Claim (or aggregate of Claims if held by a single Creditor), respectively, without notice, a Court hearing or Court approval. Alternatively, the Plan Administrator may seek Court approval of the proposed settlement upon expedited notice and a hearing.

(ii) The Plan Administrator shall give notice to the Post-Effective Date Committee of: (i) a settlement of any Disputed Class 3 Claim (or aggregate of Claims if held by a single Creditor) that results in the disputed portion of such Disputed Class 3 Claim(s) being Allowed in an amount in excess of \$200,000; or (ii) a settlement of any Disputed Administrative/Priority Claims or Disputed Secured Claim (or aggregate of Claims if held by a single Creditor) that results in the disputed portion of such Disputed Claim(s) being Allowed in an amount in excess of \$25,000. The Post-Effective Date Committee shall have ten (10) days after service of such notice to object to such settlement. Any such objection shall be in writing and sent to the Plan Administrator. If no written objection is received by the Plan Administrator prior to the expiration of such ten (10) day period, the Plan Administrator and the settling party shall be authorized to enter into the proposed settlement without a hearing or Court approval. If a written objection is timely received, the Plan Administrator, the settling party and the objecting party shall use good-faith efforts to resolve the objection. If the objection is resolved, the Plan Administrator and the settling party may enter into the proposed settlement (as and to the extent modified by the resolution of the objection) without further notice or Court approval, provided that the Claim of the settling party against the Estate

shall not be greater under the proposed settlement than that disclosed in the notice. Alternatively, the Plan Administrator may seek Court approval of the proposed settlement upon expedited notice and a hearing.

8.3 No Distributions Pending Allowance

Notwithstanding any provision in the Plan to the contrary, no partial payments and no partial distributions shall be made by the Plan Administrator with respect to any portion of any Claim against the Debtor if such Claim or any portion thereof is a Disputed Claim. In the event and to the extent that a Claim against the Debtor becomes an Allowed Claim after the Effective Date, the holder of such Allowed Claim shall receive all payments and distributions to which such holder is then entitled under the Plan.

IX. CONDITIONS TO CONFIRMATION & EFFECTIVE DATE

9.1 Conditions to Confirmation

The following conditions are conditions precedent to Confirmation of the Plan unless waived by the Debtor pursuant to Section 9.2 of the Plan: (i) the Confirmation Order must be in a form and substance reasonably acceptable to the Debtor; and (ii) the Confirmation Order shall:

- (i) authorize the appointment of all parties appointed under or in accordance with the Plan, including, without limitation, the Plan Administrator, and direct such parties to perform their obligations under such documents;
- (ii) approve in all respects the transactions, agreements, and documents to be effected pursuant to the Plan;
- (iii) authorize the Plan Administrator and Post-Effective Date Committee to assume the rights and responsibilities fixed in the Plan;
- (iv) approve the exculpation and injunctions granted and created by the Plan;
- (v) order, find, and decree that the Plan complies with all applicable provisions of the Bankruptcy Code, including that the Plan was proposed in good faith; and
- (vi) except as otherwise specifically provided in the Plan, order that nothing in the Plan operates as a discharge, release, exculpation, or waiver of, or establishes any defense or limitation of damages to, any Claim or Cause of Action belonging to the Estate.

9.2 Conditions to Effective Date

The Plan shall not become effective unless and until the following conditions shall have been satisfied or waived pursuant to Section 9.2 of the Plan:

- (i) the Confirmation Date shall have occurred and the Confirmation Order, in a form consistent with the requirements of Section 9.1 of the Plan, shall have become a Final Order;

(ii) the Plan Administrator shall have been appointed;

(iii) all actions, documents and agreements necessary to implement the provisions of the Plan shall be reasonably satisfactory to the Debtor, and such actions, documents, and agreements shall have been effected or executed and delivered; and

(iv) all other actions required by the Plan to occur on or before the Effective Date shall have occurred.

X. MODIFICATION, REVOCATION OR WITHDRAWAL OF PLAN

10.1 Modification

The Debtor may alter, amend or modify the Plan pursuant to Section 1127 of the Bankruptcy Code at any time prior to the Confirmation Date. After such time and prior to substantial consummation of the Plan, the Debtor may, so long as the treatment of holders of Claims against the Debtor under the Plan is not adversely affected, institute proceedings in Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, Disclosure Statement or Confirmation Order, and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, notice of such proceedings shall be served in accordance with Bankruptcy Rule 2002 or as the Bankruptcy Court shall otherwise order.

10.2 Revocation or Withdrawal

The Debtor reserves the right to revoke or withdraw the Plan at any time prior to the Effective Date. If the Debtor revokes or withdraws the Plan prior to the Effective Date, then the Plan shall be deemed null and void, and nothing contained in the Plan shall be deemed to constitute a waiver or release of any Claims by or against the Debtor or any other Person, or to prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

XI. INJUNCTIONS, EXCULPATION & INDEMNIFICATION

11.1 Injunction

Except as otherwise expressly provided in the Plan including, without limitation, the treatment of Claims against the Debtor, and preservation of the D&O Litigation, the entry of the Confirmation Order shall, provided that the Effective Date shall have occurred, operate to enjoin permanently all Persons that have held, currently hold or may hold a Claim against the Debtor,² from taking any of the following actions against the Debtor, the Plan Administrator, the Committee or members thereof, the Post-Effective Date Committee or members thereof, the Professionals, present and former officers, directors and employees of the Debtor, or any of their respective successors, heirs or assigns, or any of their respective assets or properties, on account of any Claim against the Debtor: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind with respect to a Claim against the Debtor; (ii) enforcing, levying, attaching,

² To the extent a Person has a direct claim against any present or former directors, officers, trustees, agents, attorneys, advisors, members or employees of the Debtor, confirmation of the Plan will not enjoin such a claim.

collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order with respect to a Claim against the Debtor; (iii) creating, perfecting or enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind with respect to a Claim against the Debtor; (iv) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any Debt, liability or obligation due to the Debtor or its property or Assets with respect to a Claim against the Debtor; and (v) proceeding in any manner in any place whatsoever that does not conform to or comply with or is inconsistent with the provisions of the Plan; provided, however, nothing in this injunction shall preclude the holder of a Claim against the Debtor or the Board from pursuing any applicable insurance after the Case is closed, from seeking discovery in actions against third parties or from pursuing third-party insurance that does not cover Claims against the Debtor.

11.2 Exculpation

To the extent permissible under the Bankruptcy Code, the Debtor and its officers, directors and employees for any acts or omissions which may have occurred during the Chapter 11 Case. Also, to the extent permissible under the Bankruptcy Code: (i) the Committee and members of the Committee in their capacity as members of the Committee; (ii) the Plan Administrator; and (iii) the Professionals, shall not have or incur any liability to any Holder of any Claim for any act or omission in connection with, relating to, or arising out of the Chapter 11 Case and related proceedings, including, but not limited to, filing of the Chapter 11 Case, administration of the Chapter 11 Case, the formulation, negotiation, preparation, dissemination, approval, execution, administration, confirmation, implementation, or consummation of, as well as the solicitation of votes for, the Plan (including all distributions thereunder), or the Disclosure Statement; except for the D&O Litigation, bad faith, willful misconduct, reckless disregard of duty, criminal conduct, gross negligence, fraud, or self-dealing, or, in the case of an attorney professional and as required under Rule 1.8(h)(1) of the New York State Rules of Professional Conduct, malpractice; and, in all respects, the Debtor, the Committee and its members, and each of their respective members, officers, directors, employees, advisors, professionals, attorneys and agents, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

11.3 Indemnification

The Plan Administrator and the members of the Post-Effective Date Committee shall be indemnified and receive reimbursement against and from all loss, liability, expense (including counsel fees) or damage which the Plan Administrator or the members of the Post-Effective Date Committee may incur or sustain in the exercise and performance of any of their respective powers and duties under the Plan, to the full extent permitted by law, except if such loss, liability, expense or damage is finally determined by a court of competent jurisdiction to result solely from the Plan Administrator's or the Post-Effective Date Committee member's willful misconduct, fraud, intentional misconduct or gross negligence. The amounts necessary for such indemnification and reimbursement shall be paid by the Plan Administrator out of the Cash held by the Plan Administrator under the Plan. The Plan Administrator shall not be personally liable for this

indemnification obligation or the payment of any expense of administering the Plan or any other liability incurred in connection with the Plan, and no person shall look to the Plan Administrator personally for the payment of any such expense or liability. This indemnification shall survive the death, resignation or removal, as may be applicable, of the Plan Administrator and/or the members of the Post-Effective Date Committee, and shall inure to the benefit of the Plan Administrator and the Post-Effective Date Committee's members and their respective successors, heirs and assigns, as applicable.

Upon the Bankruptcy Court's entry of the Confirmation Order, all Holders of Claims and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan by the Debtor and its respective affiliates, employees, advisors, officers, directors and agents.

11.4 Preservation of Insurance

The provisions of the Plan are not intended to and shall not diminish or impair in any manner the enforceability and/or coverage of any insurance policies, including the D&O Policies (and any agreements, documents, or instruments relating thereto) that may cover Claims against the Debtor, any current or former directors, trustees or officers of the Debtor, or any other Person, other than as expressly as set forth in the Plan.

11.5 Release of Liens

Except as otherwise provided herein, or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged.

XII. RETENTION OF JURISDICTION

Pursuant to Sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising under the Bankruptcy Code or arising in, or related to, the Chapter 11 Case, to the fullest extent permitted by law.

XIII. MISCELLANEOUS PROVISIONS

13.1 Governing Law

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to conflict-of-laws principles.

13.2 Additional Documents

On or before the Effective Date, the Debtor may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtor and all Holders of Claims receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

13.3 Reservation of Rights

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by the Debtor with respect to the Plan, the Disclosure Statement or supplemental filings shall be deemed an admission or waiver of any rights of the Debtor with respect to the Holders of Claims prior to the Effective Date.

13.4 Preservation of Insurance

The provisions of the Plan are not intended to and shall not diminish or impair in any manner the enforceability and/or coverage of any insurance policies, including the D&O Policies (and any agreements, documents, or instruments relating thereto) that may cover Claims against the Debtor, any current or former directors, trustees or officers of the Debtor, or any other Person, other than as expressly as set forth herein.

13.5 Elimination of Vacant Classes

Any Class of Claims that does not have a Holder of an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of determining acceptance or rejection of the Plan by such Class pursuant to Section 1129(a)(8) of the Bankruptcy Code.

13.6 Successors and Assigns

The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

13.7 Substantial Consummation

As soon as practicable after the Effective Date, the Plan Administrator shall file a report of substantial consummation with the Bankruptcy Court.

13.8 No Tax Advice

The Plan will have tax consequences to the Debtor and Holders of Claims. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan and no tax opinion is given by the Disclosure Statement or Plan. No rulings or determinations of the IRS or

any other tax authorities have been obtained or sought with respect to the Plan, and the description below is not binding upon the IRS or such other authorities.

No representations are made regarding the particular tax consequences of the Plan to any Holder of a Claim. The tax consequences of the Plan to Holders of Claims are in many cases uncertain and may vary depending on a Holder's individual circumstances. Each Holder of a Claim is strongly urged to consult its own tax advisor regarding the federal, state, local and foreign tax consequences of the transactions described in the Plan.

13.9 Entire Agreement

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

13.10 Plan Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to the Debtor's counsel at the address herein, or by downloading such exhibits and documents from the Case Website: <https://cases.primeclerk.com/HebrewHospital/Home-Index>

13.11 Severability

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision then will be applicable as altered or interpreted; provided, however, that any such alteration or interpretation must be in form and substance acceptable to the Debtor. In the event of any such holding, alteration or interpretation that is acceptable to the Debtor, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

13.12 Section 1125(e) Good Faith Compliance

The Debtor shall be deemed to have acted in good faith under Section 1125(e) of the Bankruptcy Code.

13.13 Section 1146(a) Exemption

Pursuant to Section 1146(a) of the Bankruptcy Code, any transfers of property under the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other

similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee or governmental assessment.

13.14 Notices

(i) Notices to the Debtor

All notices, requests, and demands to or upon the Debtor shall be in writing to be effective, and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered, or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

HEBREW HOSPITAL SENIOR
HOUSING, INC.
Attn: James A. Fasolino
c/o McCullough Goldberger &
Staudt, LLP
1311 Mamaroneck Avenue
Suite 340
White Plains, New York 10605
Tel: (516) 6601737
jfasolino@hhhinc.org

and

LIPPES MATHIAS WEXLER
FRIEDMAN, LLP
Attn: Raymond L. Fink
John A. Mueller
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
Telephone: (716) 853-5100
Facsimile: (716) 853-5199
rfink@lippes.com
jmueller@lippes.com

(ii) Notices to the Plan Administrator

All notices to or upon the Plan Administrator pursuant to the Plan shall be in writing to be effective, and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered, or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as set forth in the Plan Supplement.

(iii) Notices to the Professionals

All notices to or upon the Professionals, including counsel to the Committee, pursuant to the Plan shall be in writing to be effective, and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered, or, in the case of notice by facsimile transmission, when received and telephonically confirmed.

Dated: April 18, 2018

LIPPES MATHIAS WEXLER FRIEDMAN, LLP

/s/ John A. Mueller

Raymond L. Fink, Esq.

John A. Mueller, Esq.

50 Fountain Plaza, Suite 1700

Buffalo, New York 14202-2216

Tel: (716) 853-5100

Fax: (716) 853-5199

rfink@lippes.com

jmueller@lippes.com

· *Counsel to HSH*

DRAFT



Hebrew Hospital Senior Housing, Inc. (HSHH)
Best Interest Test (@ 6/30/18)

| | <u>Chapter 11</u> | <u>Chapter 7</u> | |
|---|---------------------|---------------------|---|
| Sources: | | | |
| Cash | \$ 1,200,000 | \$ 1,200,000 | Remaining net sale proceeds - est. @ 6/30/18 (assumes minimal interim fee payments) |
| Universal Settlement | 144,000 | 144,000 | Three remaining deferred payments |
| GUC in HHH Choices case | 325,000 | 325,000 | Estimated recovery (~25%) from \$1.3 million GUC claim in HHH Choices chapter 11 |
| Administrative Expense Recovery | 150,000 | 150,000 | Estimated (HSHH Administrative Claim asserted against HHHW) |
| Other Recoveries | 15,000 | 15,000 | Vendors (recoveries from overpayments) |
| Avoidance Actions and Litigation Recoveries | - | - | Unknown (D&O Complaint and Resident Refund Preferences filed) |
| Total Sources: | \$ 1,834,000 | \$ 1,834,000 | |

Uses:

| | | | |
|--|---------------------|---------------------|---|
| Administrative Claims: | | | |
| Chapter 7: Trustee and Professional Fees | \$ - | 405,020 | Approx 3% total distributions + \$350k professional/winddown fees |
| Chapter 11: Professional Fees | 750,000 | 750,000 | Estimated incurred and unpaid prior to 6/30/18 (Professionals; UST) |
| Chapter 11: Case Wind-down and Plan | 200,000 | - | Claims reconciliation process and Plan distributions |
| Chapter 11: Other Administrative Claims | 100,000 | 100,000 | Estimated (Unemployment claims, post-petition A/P, other tbd.) |
| 1199 Settlement | 32,428 | 32,428 | Per Global Settlement |
| NYS Health Facilities Assessment | 150,000 | 150,000 | Estimated (Claim setoff vs Universal Settlement possible) |
| Transfer to Foundation | - | - | Allocation/Transfer % of \$150k Bond Professionals' Settlement ==> HHH Foundation |
| Total Administrative Claims: | \$ 1,232,428 | \$ 1,437,448 | |

Priority Claims:

| | | | |
|------------------------------|-----------------|-----------------|-----------------------|
| 1199 Settlement | \$ 6,343 | \$ 6,343 | Per Global Settlement |
| Employee claims <180 days | tbd. | tbd. | Unknown |
| Total Priority Claims | \$ 6,343 | \$ 6,343 | |

Available for General Unsecured Creditors:

| | |
|-------------------|-------------------|
| \$ 595,229 | \$ 390,209 |
|-------------------|-------------------|

General Unsecured Creditors:

| | | | |
|-------------------------------------|----------------------|----------------------|---|
| Former Residents - Refund Claims | \$ 5,635,688 | \$ 5,635,688 | Approximate (includes ~ 25 contracts) |
| PILOT | 1,833,853 | 1,833,853 | Estimated (incl. pre-petition interest and penalties) |
| Trade and other | 1,400,000 | 1,400,000 | Estimated (Subject to claims reconciliation process) |
| Employees | 50,000 | 50,000 | Estimated (PTO; Sick; Personal Time) |
| Union (1199) | 2,942,212 | 2,942,212 | Estimated - 1/2 remainder per Settlement |
| Intercompany (HHCS; HHH Foundation) | - | - | Approx. \$25 MM - subject to discussion/potential subordination |
| Total GUC's: | \$ 11,861,753 | \$ 11,861,753 | |

Est. Recovery to General Unsecured Creditors:

| | |
|-------------|-------------|
| 5.0% | 3.3% |
|-------------|-------------|

Exhibit B

Confirmation Hearing Notice

LIPPES MATHIAS WEXLER FRIEDMAN LLP
· Counsel to HSH
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
(716) 853-5100
Raymond L. Fink, Esq. / rfink@lippes.com
John A. Mueller, Esq. / jmueller@lippes.com

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

CHAPTER 11

HHH CHOICES HEALTH PLAN, LLC, *ET AL.*

CASE NO. 15-11158-MEW
CASE NO. 15-13264-MEW
CASE NO. 16-10028-MEW

DEBTORS.

(JOINTLY ADMINISTERED)

**NOTICE OF (I) HEARING ON CONFIRMATION OF CHAPTER 11 PLAN OF
LIQUIDATION FOR HEBREW HOSPITAL SENIOR HOUSING INC. AND
(II) DATE BY WHICH TO SUBMIT OBJECTIONS TO CONFIRMATION**

BY ORDER OF THE UNITED STATES BANKRUPTCY COURT:

PLEASE TAKE NOTICE that a hearing to consider confirmation of the Joint’s Plan of Liquidation, dated April 18, 2018 (“Plan”), of Hebrew Hospital Senior Housing, Inc. (“Debtor” or “HSH”), under Chapter 11 of the Bankruptcy Code, has been scheduled by the Bankruptcy Court, and the following deadlines and procedures have been established with respect thereto:

I. CONFIRMATION HEARING

1. A hearing at which the Bankruptcy Court will consider whether to confirm the Plan (“Confirmation Hearing”) will commence at **10 a.m. ET on July __, 2018**, before the Honorable Michael E. Wiles, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY. The Confirmation Hearing

may be continued from time to time by announcing such continuance in open court or otherwise, all without further notice to parties with claims.

II. CONFIRMATION HEARING

2. The deadline for filing and serving objections to confirmation of the Plan is **4 p.m. ET on July __, 2018** (“Plan Objection Deadline”). Objections not filed and served by the Plan Objection Deadline in the manner set forth in paragraph 3 below will not be considered by the Bankruptcy Court.

3. In order to be considered by the Bankruptcy Court, objections, if any, to the Plan, must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim of such party; (iii) state with particularity the basis and nature of any objection; (iv) conform to the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and the Local Rules of the Bankruptcy Court (“Local Rules”); and (v) be filed with the Bankruptcy Court electronically by registered users of the Bankruptcy Court’s case filing system (the User’s Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) and by all other parties with claims, on a 3.5 inch disk, in text-searchable Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (in either case, with a hard-copy delivered directly to Chambers), and shall be served upon: (a) counsel to the Debtor, (b) counsel to the Creditors Committee, (c) the Office of the United States Trustee, and (d) all parties filing a notice of appearance and request for service, pursuant to Bankruptcy Rule 2002 and Local Rule 3020-1(a), so that they are received on or before the Plan Objection Deadline.

4. The Bankruptcy Court will consider only written objections filed and served by the Plan Objection Deadline. Objections not timely filed and served in accordance with the provisions of this Notice will not be heard and will be overruled.

5. All documents filed with the Court, including the Plan, are available for inspection via the case website: <https://cases.primeclerk.com/HebrewHospital/Home-Index>.

Dated: April 18, 2018

LIPPES MATHIAS WEXLER FRIEDMAN, LLP

/s/ John A. Mueller

Raymond L. Fink, Esq.

John A. Mueller, Esq.

50 Fountain Plaza, Suite 1700

Buffalo, New York 14202-2216

Tel: (716) 853-5100

Fax: (716) 853-5199

rfink@lippes.com

jmueller@lippes.com

· *Counsel to HSHS*

Exhibit C

Non-Voting Notice

LIPPES MATHIAS WEXLER FRIEDMAN LLP

· Counsel to HSH

50 Fountain Plaza, Suite 1700

Buffalo, New York 14202

(716) 853-5100

Raymond L. Fink, Esq. / rfink@lippes.com

John A. Mueller, Esq. / jmueller@lippes.com

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

CHAPTER 11

HHH CHOICES HEALTH PLAN, LLC, *ET AL.*

CASE NO. 15-11158-MEW

CASE NO. 15-13264-MEW

CASE NO. 16-10028-MEW

DEBTORS.

(JOINTLY ADMINISTERED)

NOTICE OF NON-VOTING STATUS WITH RESPECT TO CERTAIN CLAIMS

PLEASE TAKE NOTICE that Hebrew Hospital Senior Housing, Inc. (“Debtor” or “HSH”), filed its Plan of Liquidation Under Chapter 11 of the Bankruptcy Code dated April 18, 2018 (“Plan”),¹ and Disclosure Statement for the Plan (“Disclosure Statement”) on April 18, 2018. The Bankruptcy Court entered an order on June __, 2018 (“Solicitation Procedures Order”) [Docket No. ___], approving certain procedures in connection with the solicitation of votes on the Plan.

PLEASE TAKE FURTHER NOTICE that under the Solicitation Procedures Order, the provisions of Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et. seq.*, (“Bankruptcy Code”), and the Plan, holders of certain claims or interests under the Plan are not entitled to vote. Specifically, the Plan provides that unimpaired creditors holding the Secured

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Disclosure Statement or Plan.

Claims (Class 1) and Other Priority Claims (Class 2) are not entitled to vote on the Plan (collectively, "Non-Voting Claims").

PLEASE TAKE FURTHER NOTICE that the Debtor has designated your claim as a Non-Voting Claim, and accordingly, you are not entitled to vote on the Plan.

PLEASE TAKE FURTHER NOTICE that copies of the Plan, the Disclosure Statement and exhibits are available vis the case website: <https://cases.primeclerk.com/HebrewHospital/Home-Index> or may be obtained, upon reasonable written request, from the Voting Agent.

PLEASE TAKE FURTHER NOTICE that **4 p.m. ET on July __, 2018** is the deadline for filing and serving objections to confirmation of the Plan ("Plan Objection Deadline"). To be considered, objections, if any, to confirmation of the Plan must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim of such party; (iii) state with particularity the basis and nature of any objection; (iv) conform to the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") and the Local Rules of the Bankruptcy Court ("Local Rules"); and (v) be filed with the Bankruptcy Court electronically by registered users of the Bankruptcy Court's case filing system (the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) and, by all other parties with claims, on a 3.5 inch disk, in text-searchable Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (in either case, with a hard-copy delivered directly to Chambers), and shall be served upon: (a) counsel to the Debtor, (b) counsel to the Creditors Committee, (c) the Office of the United States Trustee, and (d) all parties filing a notice of appearance and request for service, pursuant to Bankruptcy Rule 2002 and Local Bankruptcy Rule 3020-1(a), so that they are received on or before the Plan Objection Deadline.

PLEASE TAKE FURTHER NOTICE that the hearing to consider confirmation of the Plan will commence at **10 a.m. ET on July __, 2018**, or as soon thereafter as counsel can be heard, before the Honorable Michael E. Wiles, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY. The Confirmation Hearing may be continued from time to time by announcing such continuance in open court or otherwise, all without further notice to parties with Claims.

Dated: April 18, 2018

LIPPES MATHIAS WEXLER FRIEDMAN, LLP

/s/ John A. Mueller

Raymond L. Fink, Esq.
John A. Mueller, Esq.
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202-2216
Tel: (716) 853-5100
Fax: (716) 853-5199
rfink@lippes.com
jmueller@lippes.com

· *Counsel to HSHS*

Exhibit D

Ballot

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

CHAPTER 11

HHH CHOICES HEALTH PLAN, LLC, *ET AL.*

CASE NO. 15-11158-MEW

CASE NO. 15-13264-MEW

CASE NO. 16-10028-MEW

DEBTORS.

(JOINTLY ADMINISTERED)

BALLOT

**FOR ACCEPTING OR REJECTING THE PLAN OF LIQUIDATION FOR HEBREW
HOSPITAL SENIOR HOUSING, INC. PROPOSED BY THE DEBTOR**

CLASS 3

ALLOWED GENERAL UNSECURED CLAIMS

**PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS
CAREFULLY BEFORE COMPLETING THE BALLOT.**

This Ballot is being sent to you because records indicate that you are a Holder of a Class 3 Allowed General Unsecured Claim against Hebrew Hospital Senior Housing, Inc. (“Debtor” or “HSSH”). The Debtor has filed the *Plan of Liquidation for Hebrew Hospital Senior Housing, Inc. Proposed by the Debtor* (“Plan”) that accompanies this Ballot. You may vote to accept or reject the Plan. The Plan and your rights under the Plan are described in the *Disclosure Statement for the Plan* (“Disclosure Statement”) that is enclosed with this Ballot. If a copy of the Disclosure Statement or the Plan is not enclosed with this Ballot, you may request a copy from Lippes Mathias Wexler Friedman LLP (“LMWF”), c/o Ian Klak, by calling (716) 853-5100 (“Voting Agent”) or by going to the website: <https://cases.primeclerk.com/HebrewHospital/Home-Index>. Capitalized terms not defined in this Ballot are as defined in the Plan and Disclosure Statement.

This Ballot may not be used for any purpose other than for casting votes to accept or reject the Plan and making certain certifications with respect thereto. If you believe you have received this Ballot in error, please call LMWF at the number listed above.

You should carefully and thoroughly review the Disclosure Statement and Plan before voting. You may wish to seek legal advice concerning the Plan and the classification and treatment of your Claim under the Plan. Your Claim has been placed in Class 3 under the Plan. If you hold Claims in more than one Class, you will receive a Ballot for each Class in which you are entitled to vote. You should timely return all Ballots for each Class in which you are entitled to vote. In

addition, one or more of your affiliates may receive one or more Ballots with respect to their Class 3 Claims. All Persons receiving Ballots with respect to Class 3 Claims should return completed Ballots in accordance with the instructions set forth in their Ballot.

If your Ballot is not received by LMWF on or before 4 p.m. ET on July __, 2018 (“Voting Deadline”), and such deadline is not extended, your vote will not be counted. If the Plan is confirmed by the Bankruptcy Court, it will be binding on you whether or not you vote.

This Ballot is divided into two parts:

PART I WHO SHOULD USE THIS BALLOT; HOW TO USE THIS BALLOT

PART II ITEMS ON THE BALLOT

- Item 1. Certifications
- Item 2. Amount of your Class 3 Claim
- Item 3. Vote - Acceptance or Rejection of the Plan

APPENDIX A INSTRUCTIONS FOR COMPLETING THE CLASS 3 BALLOT

PART I WHO SHOULD USE THIS BALLOT; HOW TO USE THIS BALLOT

Holders of the Class 3 HSH Claim should use this Ballot to cast a vote to accept or reject the Plan. This Ballot may not be used for any purpose other than for casting votes to accept or reject the Plan. This Ballot does not constitute, and shall not be deemed to be, a proof of Claim or an assertion or admission of a Claim. **A return envelope accompanies this Ballot. You must return this Ballot so that the Voting Agent receives this Ballot on or before the Voting Deadline.**

PART II ITEMS ON THE BALLOT

Item 1. Certifications.

By returning this Ballot, you certify to the Bankruptcy Court, and the Plan Proponents that:

- you hold a Class 3 HSH Claim;
- neither you nor anyone else has cast a Ballot with respect to the Class 3 HSH Claim identified in Item 2 or if you or someone else has cast a Ballot with respect to the Class 3 HSH Claim identified in Item 2, that Ballot is revoked; and
- all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned hereunder shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

Item 2. Amount of your Class 3 HSH Claim

Name of Holder: [_____]

Amount of Class 3 HSH Claim: [_____]

Item 3. Vote - Acceptance or Rejection of the Plan

**THE DEBTOR RECOMMENDS THAT YOU ACCEPT THE PLAN BY CHECKING
THE "TO ACCEPT THE PLAN" BOX**

| | |
|---|---|
| The Holder of the Claim set forth in Item 2 votes (please check one): | |
| <input type="checkbox"/> TO ACCEPT THE PLAN, CHECK HERE | <input type="checkbox"/> TO REJECT THE PLAN, CHECK HERE |

**If you do not vote on your Ballot to either accept or reject the Plan or if you vote on your
Ballot to both accept and reject the Plan, then your Ballot will be counted as a vote to
accept the Plan.**

Dated: _____

Name: _____
(Print or Type)

Signature: _____

By: _____
(If Appropriate)

Title: _____
(If Appropriate)

Telephone Number: _____

Street Address: _____

City, State and Zip Code: _____

**PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT TO
THE VOTING AGENT IN THE ENVELOPE PROVIDED**

APPENDIX A

VOTING INSTRUCTIONS FOR COMPLETING THE BALLOT

Hebrew Hospital Senior Housing, Inc. (“Debtor” or “HSHS”) is soliciting your vote with respect to the Plan. Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan and Disclosure Statement. Please review the Plan and Disclosure Statement carefully and thoroughly before you vote. **The attached Ballot may not be used for any purpose other than to cast votes to accept or reject the Plan.**

To have your vote count, you must complete, sign and return the attached Ballot so that it is received by the Voting Agent, at the applicable address below, no later than **4 p.m. ET on July __, 2018** (“Voting Deadline”):

LIPPES MATHIAS WEXLER FRIEDMAN, LLP

Attn: Ian Klak

50 Fountain Plaza, Suite 1700

Buffalo, New York 14202-2216

1. A Class will accept the Plan if: (i) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan; and (ii) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. The Debtor also reserves the right, pursuant to the terms and conditions set forth in the Plan, to seek confirmation of the Plan pursuant to Section 1129(b) of the Bankruptcy Code. Please review the Disclosure Statement for more information.
2. To ensure that your vote is counted, you must: (i) complete the Ballot; (ii) indicate your decision either to accept or reject the Plan in the boxes provided in Part II Item 3 of the Ballot; and (iii) sign and timely return the Ballot in the enclosed envelope.
3. If a Ballot is received after the Voting Deadline, it will not be counted. Except as otherwise provided herein, delivery of Ballots will be deemed made only when the original executed Ballot is **actually** timely **received** by the Voting Agent. In all cases, sufficient time should be allowed to assure timely delivery. **Delivery of a Ballot to the Voting Agent by facsimile, e-mail or any other electronic means will not be accepted.**
4. If multiple Ballots are received from a Holder with respect to the same Claim, the last Ballot timely received or otherwise accepted will supersede and revoke any earlier received Ballot(s).
5. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan.
6. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or an assertion or admission of a Claim.

7. Please be sure to sign and date your Ballot. If you are completing the Ballot on behalf of an entity, indicate your relationship with such entity and the capacity in which you are signing. In addition, please provide your name and mailing address if different from that set forth on the Ballot.

8. If you hold Claims in more than one Class under the Plan, you may receive more than one Ballot, each coded for a different Class. Each Ballot votes only your Claims indicated on that Ballot. Please complete and return each Ballot you receive.

9. The Ballot must be returned in sufficient time to allow it to be RECEIVED by the Voting Agent no later than 4 p.m. ET on or before the Voting Deadline. If you believe you have received the wrong Ballot, please contact the Voting Agent immediately.

**PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND
RETURN IT TO THE VOTING AGENT IN THE ENVELOPE PROVIDED.**

PLEASE RETURN YOUR BALLOT PROMPTLY!

**IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING
PROCEDURES, PLEASE CALL THE VOTING AGENT AT (716) 853-5100**

Exhibit E

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

CHAPTER 11

HHH CHOICES HEALTH PLAN, LLC, *ET AL.*

CASE NO. 15-11158-MEW
CASE NO. 15-13264-MEW
CASE NO. 16-10028-MEW

DEBTORS.

(JOINTLY ADMINISTERED)

**ORDER APPROVING HEBREW HOSPITAL SENIOR HOUSING, INC.'S
(I) DISCLOSURE STATEMENT, (II) FORM AND MANNER OF NOTICES,
(III) FORM OF BALLOTS, (IV) SOLICITATION MATERIALS AND PROCEDURES,
AND (V) SCHEDULING CONFIRMATION HEARING**

Upon the motion ("Motion") of Hebrew Hospital Senior Housing, Inc., as debtor and debtor-in-possession ("Debtor" or "HHS"), for the entry of an Order: (i) approving the proposed Disclosure Statement ("Disclosure Statement")¹ for the *Chapter 11 Plan of Liquidation Proposed by the Debtor*, both dated April 18, 2018 ("Plan"); (ii) approving the form and manner of notices; (iii) approving the form of Ballots; (iv) approving the solicitation materials and Solicitation Procedures (as defined therein); and (v) scheduling a Plan Confirmation Hearing; and it appearing that the relief requested is in the best interests of the Debtor's estate, its creditors and all parties with claims; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and a hearing on the approval of the Disclosure Statement having been held on May 31, 2018 ("Hearing");

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Disclosure Statement or Plan.

NOW, THEREFORE, the Court hereby finds as follows:

- (i) The Disclosure Statement complies with the requirements of the Bankruptcy Code and the Bankruptcy Rules and contains adequate information as such term is defined in Section 1125 of the Bankruptcy Code.
- (ii) Proper and adequate notice of the time fixed for filing objections to the Disclosure Statement and the Hearing on approval of the Disclosure Statement has been given to all parties with claims.
- (iii) The solicitation procedures proposed in the Motion are fair and reasonable.
- (iv) Service of the Disclosure Statement and Plan by Prime Clerk, with objections to the Plan due on July __, 2018, with a Summary of Ballots due by _____, and with a Confirmation Hearing to occur on _____, shall constitute sufficient notice for purposes of Bankruptcy Rule 2002, and Local Bankruptcy Rules 3018-1 and 3020-1.

ACCORDINGLY, after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Disclosure Statement is hereby approved for distribution to creditors; and it is further

ORDERED that, in accordance with the record of the Hearing, the Plan Proponents are authorized to: (i) make non-material changes to the Disclosure Statement and related documents (including, without limitation, the exhibits thereto); and (ii) revise the Disclosure Statement and related documents (including, without limitation, the exhibits thereto) to add further disclosure

concerning events occurring at or after the Hearing, prior to distributing it to each entity whose Claim against the Debtor is impaired and is entitled to vote on the Plan; and it is further

ORDERED that the Confirmation Hearing will be held before the Honorable Michael E. Wiles, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004, at 10 a.m. ET on July __, 2018; and it is further

ORDERED that objections or proposed modifications, if any, to the Plan must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim of such party; (iii) state with particularity the basis and nature of any objection or proposed modification; and (iv) be filed with the Clerk of the Court, with a copy delivered to chambers, and served so as to be received by the following: (a) counsel to the Debtor, LIPPES MATHIAS WEXLER FRIEDMAN LLP, 50 Fountain Plaza, Suite 1700, Buffalo, NY 14202, Attn: Raymond L. Fink, Esq. and John A. Mueller, Esq.; (b) OFFICE OF THE UNITED STATES TRUSTEE FOR THE SOUTHERN DISTRICT OF NEW YORK, 201 Varick Street, Room 1006, New York, NY, 10006 Attn: Greg M. Zipes, Esq.; (c) counsel to the Creditors Committee appointed in this Chapter 11 case, DLA PIPER LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10020-1104, Attn: Thomas R. Califano, Esq. and Rachel Nanes, Esq.; and (d) all persons and entities that have formally requested notice by filing a written request for notice, pursuant to Bankruptcy Rule 2002 and the Local Bankruptcy Rules by no later than **4 p.m. ET on July __, 2018** (“Plan Objection Deadline”); and it is further

ORDERED that the Solicitation Procedures are hereby approved; and it is further

ORDERED that the Plan Proponents shall mail, by June __, 2018: (i) the Plan, Disclosure Statement and Confirmation Hearing Notice to all known holders of Administrative Claims and Priority Tax Claims; and (ii) the Solicitation Package to all known holders of claims in Class 3; and it is further

ORDERED that consistent with Section 1126 of the Bankruptcy Code and Bankruptcy Rule 3017(d), the Solicitation Package will not be distributed to holders of claims against the Debtor that are placed in a class under the Plan that is deemed to accept or reject the Plan under Section 1126 of the Bankruptcy Code; and it is further

ORDERED that June __, 2018, shall be the record date (“Voting Record Date”) for purposes of determining which creditors are entitled to vote on the Plan; and it is further

ORDERED that Ballots completed by holders of claims in Class 3 must be actually received by LIPPES MATHIAS WEXLER FRIEDMAN, LLP, Attn: Ian Klak, 50 Fountain Plaza, Suite 1700, Buffalo, New York 14202-2216 (“Voting Agent”), on or before 4 p.m. ET on July __, 2018 (“Voting Deadline”); and it is further

ORDERED that the Voting Agent shall file a Summary of Ballots, in accordance with Local Bankruptcy Rule 3018-1, by 4 p.m. ET on July __, 2018; and it is further

ORDERED that for purposes of voting only, and not for the purpose of determining allowed claims or who is entitled to receive a distribution under the Plan: each holder of a Voting Claim shall have an allowed claim, for purposes of voting on the Plan, in an amount equal to: (i) the amount of such claims that is set forth as a claim in the Debtor’s Schedules (only to the extent such claim is not listed as being contingent, unliquidated, or disputed (excluding scheduled Claims that have been superseded by filed Claims)); or (ii) the amount set forth on a filed proof of

claim which has not been disallowed, disqualified, suspended, reduced or estimated and temporarily allowed for voting purposes prior to computation of the vote on the Plan; and it is further

ORDERED that any party must file a motion for temporary allowance pursuant to Bankruptcy Rule 3018(a) by no later than the Voting Record Date. To the extent any claims are temporarily allowed for purposes of voting, the amount fixed by the Bankruptcy Court shall be used for purposes of calculating acceptances and rejections of the Plan; and it is further

ORDERED that to ensure that its vote is counted, each holder of a claim in Class 3 must: (i) complete a Ballot; (ii) indicate the holder's decision whether to accept or reject the Plan in the boxes provided in the Ballot; and (iii) sign and return the Ballot, by the Voting Deadline, to the Voting Agent at the address set forth herein; and it is further.

ORDERED that the following procedures in tabulating ballots:

- (i) only original Ballots bearing original signatures shall be counted;
- (ii) any Ballot which is properly completed, executed and timely returned to the Voting Agent that does not indicate an acceptance or rejection of the Plan or that indicates both an acceptance and rejection of the Plan shall be deemed to be a vote to accept the Plan;
- (iii) any Ballot which is returned to the Voting Agent indicating acceptance or rejection of the Plan, but which is unsigned or does not bear an original signature shall not be counted;
- (iv) whenever a holder of a Claim casts more than one Ballot voting the same claim prior to the Voting Deadline, only the last timely Ballot received by the Voting Agent shall be counted;
- (v) if a holder of a claim casts simultaneous duplicative Ballots voted inconsistently, then such Ballots shall count as one vote accepting the Plan;
- (vi) if a holder of a claim casts simultaneous duplicative Ballots that are not voted

inconsistently, only one such Ballot shall be counted;

- (vii) each holder of a Claim shall be deemed to have voted the full amount of its Claim;
- (viii) each holder of any Claim shall be entitled to vote all of the Claims it holds, but may only cast a single Ballot as to all Claims within a particular class;
- (ix) any Ballots that partially reject and partially accept the Plan shall not be counted;
- (x) any Ballot received by the Voting Agent by facsimile, e-mail, or other electronic communication shall not be counted;
- (xi) if a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person shall be required to indicate such capacity when signing and, upon request of the Voting Agent, must submit proper evidence satisfactory to the Voting Agent to so act on behalf of a holder of a Claim; and
- (xii) the Debtor shall maintain and tabulate all Ballots received in accordance with the aforementioned procedures. Within three (3) Business Days following the Voting Deadline, the Voting Agent shall produce copies of all Ballots received to the Debtor and the United States Trustee together with a written summary of the votes accepting and rejecting the Plan. Ballots and any written summary thereof shall not be filed with the Court.

ORDERED that the Debtor is authorized and empowered to take all actions and execute such other documents as may be necessary to implement the relief granted herein; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this order.

Dated: June _____, 2018
New York, New York

HONORABLE MICHAEL E. WILES
U.S. BANKRUPTCY JUDGE