

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE: § Chapter 11  
§  
FRIENDSHIP VILLAGE OF § Case No.: 17-12470  
MILL CREEK, NFP, d/b/a §  
GREENFIELDS OF GENEVA, §  
§  
FEIN: 20-3300991, §  
§  
Debtor. § Hon. LaShonda A. Hunt  
§

**AMENDED JOINT PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE**

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Dated: September 18, 2017

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Friendship Village of Mill Creek, NFP, d/b/a GreenFields of Geneva and Friendship Senior Options NFP propose this Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code.

## **SECTION 1. DEFINITIONS AND INTERPRETATION**

### **A. Definitions.**

Any term contained in the Plan which is defined by section 101 of the Bankruptcy Code (11 U.S.C. §101) shall have the meaning set forth in that section of the Bankruptcy Code. In addition, the following terms used herein shall have the respective meanings below:

1.1 ***Accrued Professional Compensation*** means, at any given moment, all accrued, contingent and/or unpaid fees (including the HJ Sims Success Fee) for legal, financial advisory, accounting and other services and obligations for reimbursement of expenses rendered or incurred before the Effective Date under sections 328, 330(a), 331, or 363 of the Bankruptcy Code by any retained Professional in the Chapter 11 Case that the Bankruptcy Court has not denied by a Final Order.

1.2 ***Administrative Claim*** means any Claim for payment of costs and expenses of administration pursuant to sections 503(b), 507(a)(2) or 507(b) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to chapter 123 of title 28 of the United States Code; (c) the reimbursement of the Illinois Finance Authority in an amount not to exceed \$40,000 for attorneys' fees and disbursements incurred in connection with, and for making a substantial contribution in the Chapter 11 Case pursuant to sections 503(b)(3)(4) and (5) of the Bankruptcy Code; and (d) all requests for compensation or expense reimbursement for any substantial contribution in the Chapter 11 Case pursuant to sections 503(b)(3), (4) and (5) of the Bankruptcy Code.

1.3 ***Allowed*** means, with reference to any Claim against or Interest in the Debtor, a Claim or Interest (i) as to which no objection or request for estimation has been filed on or before any deadline therefor set by the Bankruptcy Court or the expiration of such other applicable period fixed by the Bankruptcy Court or the Plan; (ii) as to which any objection has been settled, waived, withdrawn or denied by a Final Order or in accordance with the Plan; or (iii) that is allowed (a) by a Final Order, (b) by an agreement between the holder of such Claim or Interest and the Debtor or the Reorganized Debtor or (c) pursuant to the terms of the Plan; provided, however, that, notwithstanding anything herein to the contrary, by treating a Claim or Interest as "Allowed" under (i) above (the expiration of the applicable deadline), the Debtor does not waive its rights to contest the amount and validity of any disputed, contingent and/or unliquidated Claim or Interest in the time, manner and venue in which such Claim or Interest would have been determined, resolved or adjudicated if the Chapter 11 Case had not been commenced. An Allowed Claim (i) includes a Disputed Claim to the extent such Disputed Claim becomes Allowed after the Effective Date and (ii) shall be net of any valid setoff exercised with respect to such Claim pursuant to the provisions of the Bankruptcy Code and applicable law. Unless otherwise specified in this Plan, in section 506(b) of the Bankruptcy Code or by Final

Order of the Bankruptcy Court, “Allowed” Claims shall not, for purposes of distributions under the Plan, include interest on such Claim accruing from and after the Petition Date.

1.4 **Assets** means all assets of the Debtor of any nature whatsoever, including, without limitation, all property of the Estate pursuant to Bankruptcy Code section 541, Cash, Avoidance and Other Actions, equipment, inventory, tax refunds, claims of right, interests and property, real and personal, tangible and intangible, and proceeds of any of the foregoing.

1.5 **Bankruptcy Code** means title 11 of the United States Code, as now in effect or hereafter applicable to this Chapter 11 Case.

1.6 **Bankruptcy Court** means the United States Bankruptcy Court for the Northern District of Illinois having jurisdiction over this Chapter 11 Case.

1.7 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure, as amended, and the local rules of the Bankruptcy Court, as applicable to this Chapter 11 Case.

1.8 **Bond Claim** means the aggregate amount due and owing under the Series 2010 Bonds as of the Petition Date, which includes: (a) unpaid principal in the amount of \$97,675,000; (b) accrued and unpaid interest in the amount of \$2,597,341.10; and (c) unliquidated, accrued and unpaid fees and expenses of the Bond Trustee and its professionals, and (d) any other amounts which are payable by the Debtor to the Bond Trustee or to Bond Holders of the Bonds under the terms of the Bond Documents and/or the Bond Indenture.

1.9 **Bond Documents** means the Bond Indenture, Master Trust Indenture, Loan Agreement, Mortgage, or any other agreement of any kind or nature executed in connection with or otherwise providing, granting or perfecting a Lien in connection with the Series 2010 Bonds.

1.10 **Bond Holders** means holders of the Series 2010 Bonds.

1.11 **Bond Indenture** means the Bond Indenture (including all amendments and modifications), dated as of August 1, 2010, between the Issuer and the Bond Trustee wherein the Issuer assigned its rights under the Loan Agreement to the Bond Trustee.

1.12 **Bond Trustee** means UMB Bank, N.A., as successor trustee to Wells Fargo Bank, N.A., in its capacity as trustee under the Bond Indenture, and any successor trustee in such capacity.

1.13 **Bond Trustee Funds** means the funds established by the Bond Indenture and held by the Bond Trustee, including a “Debt Service Reserve Fund” an “Operating Reserve Fund,” and other funds, with an aggregate balance as of the Petition Date of \$2,845,304.07.

1.14 **Budget** means the budget attached to the Final Order (I) Authorizing the Debtor to Use Cash Collateral; (II) Granting Adequate Protection; and (III) Granting Related Relief [Docket No. 78], as such budget may be amended.



1.16 **Business Day** means any day of the calendar week, except Saturday, Sunday, a “legal holiday,” as defined in Bankruptcy Rule 9006(a), or any day on which commercial banks are authorized or required by law to close in Chicago, Illinois.

1.17 **Cash** means cash and cash equivalents including, without limitation, checks and wire transfers held by the Debtor in accounts owned by the Debtor. Cash does not include Bond Trustee Funds or Escrowed Entrance Fees.

1.18 **Causes of Action** means any claim, cause of action, controversy, demand, agreement, right (including to legal or equitable remedies), action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. Cause of Action also includes: (a) any right of setoff, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any state law fraudulent transfer claim; and (f) the Retained Claims.

1.19 **Chapter 11** means chapter 11 of the Bankruptcy Code.

1.20 **Chapter 11 Case** means the above-captioned case.

1.21 **Claim** means a claim, as defined by Bankruptcy Code section 101(5), against the Debtor or its Assets, whether or not asserted.

1.22 **Class** means a class or category of Claims as classified and described in Section 3 of this Plan.

1.23 **Confirmation Date** means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the Bankruptcy Court’s docket.

1.24 **Confirmation Hearing** means the hearing on confirmation of this Plan, and approval of the Disclosure Statement related thereto, pursuant to Bankruptcy Code section 1129.

1.25 **Confirmation Order** means the order entered by the Bankruptcy Court confirming this Plan in accordance with Chapter 11 of the Bankruptcy Code.

1.26 **Corporate Governance Documents** means the certificates of incorporation, certificates of formation, limited liability agreements and by-laws of the Debtor and the Reorganized Debtor.

1.27 **Creditor** means a holder of a Claim.

1.28 **Cure** means the payment of Cash by the Reorganized Debtor, or the distribution of other property (as the parties may agree or the Bankruptcy Court may order), as necessary to (a) cure a monetary default by the Debtor in accordance with the terms of an executory contract or unexpired lease of the Debtor and (b) permit the Reorganized Debtor to assume such executory contract or unexpired lease under Bankruptcy Code section 365(a).

1.29 **Debtor** means Friendship Village of Mill Creek, NFP, d/b/a GreenFields of Geneva, as debtor and debtor-in-possession, and includes the Estate, where appropriate.

1.30 **Disallowed Claim** means any Claim or portion thereof which has been disallowed by a Final Order and includes any Claim which is not an Allowed Claim for any other reason.

1.31 **Disbursing Agent** means the Debtor or the Reorganized Debtor, or the entity or entities chosen by the Debtor or the Reorganized Debtor to make or facilitate distributions pursuant to this Plan. The Disbursing Agent will not charge any fees with respect to any distributions under this Plan, but will be entitled to reimbursement from the proceeds of the Unencumbered Assets, actual costs and expenses incurred.

1.32 **Disclosure Statement** means the Second Amended Disclosure Statement in Support of the Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated September 18, 2017, as the same may be altered, modified, or amended.

1.33 **Disputed** means, with respect to any Claim or Interest, any Claim or Interest that is not yet Allowed and is subject to a claims objection filed before any deadline set by the Bankruptcy Court.

1.34 **Distribution Date** means the date, occurring as soon as practicable after the Effective Date, but occurring no later than two (2) Business Days after the Effective Date, on which the Disbursing Agent first makes distributions to holders of Allowed Claims as provided in this Plan and any date thereafter on which the Disbursing Agent makes distributions to holders of Allowed Claims as provided in this Plan.

1.35 **Distribution Record Date** means, other than with respect to public securities cancelled by the Plan, the Effective Date or such other date as may be designated in the Confirmation Order.

1.36 **Effective Date** means, unless the Confirmation Order directs otherwise, a Business Day selected by the Debtor, which is no later than five (5) Business Days after the date on which each of the conditions to this Plan's Effective Date set forth herein has either been satisfied or waived in accordance with this Plan.

1.37 **Escrow Account** means an escrow account (ending in -9372) maintained by the Elk Grove Village Bank & Trust, 1145 N. Arlington Heights Road, Itasca, IL 60143, as escrowee for the Debtor and persons who are parties to Residency Agreements.

1.38 **Escrow Agent** means Elk Grove Village Bank & Trust, 1145 N. Arlington Heights Road, Itasca, IL 60143, as escrowee for the Debtor under the agreement which established the Escrow Account

1.39 **Escrowed Entrance Fees** means entrance fees which are payable to the Debtor by Residents under the terms of Residency Agreements which entrance fees are held in the Escrow Account.

1.40 **Estate** means the estate of Debtor created by the Chapter 11 Case pursuant to Bankruptcy Code section 541.

1.41 **Executory Contract** means a contract to which the Debtor is a party that is capable of assumption or rejection under Bankruptcy Code section 365.

1.42 **Facility** means the continuing care retirement community known as GreenFields of Geneva, located in Geneva, Illinois which is a full service facility which offers residents a full lifecycle of services during their retirement years from independent living to skilled nursing care.

1.43 **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, which has not been reversed, vacated, or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument, or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or Bankruptcy Rule 9024, may be filed relating to such order shall not cause such order not to be a Final Order.

1.44 **FSO** means Friendship Senior Options, NFP, as manager of the Facility and co-sponsor of this Plan.

1.45 **FSO Claims** means all Claims held by FSO against the Debtor.

1.46 **FSO Equity Contribution** means the equity contribution from FSO in the amount of \$5.0 million that will be contributed by FSO on the Effective Date.

1.47 **HJ Sims Success Fee** means that certain success fee owed to Herbert J. Sims & Co. pursuant to that certain engagement letter dated October 25, 2016 as approved by the Bankruptcy Court.

1.48 **Insurance Policies** means, collectively, all of the Debtor's insurance policies.

1.49 **Interest** means the interest of any holder in an equity security of the Debtor, within the meaning of Bankruptcy Code section 101(16) represented by any issued and outstanding shares of common or preferred stock or other instrument evidencing a present ownership or membership interest in any the Debtor, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest, including a partnership, limited liability company or similar interest in the Debtor.

1.50 **Issuer** means Illinois Finance Authority, a body politic and corporate of the State of Illinois.

1.51 **Lien** has the meaning set forth in Bankruptcy Code section 101(37).

1.52 **Loan Agreement** means the Loan Agreement, dated as of August 1, 2010, between the Issuer and the Debtor whereby the Issuer loaned the proceeds from the sale of the Series 2010 Bonds to the Debtor.

1.53 **Master Trust Indenture** means the Master Trust Indenture, dated as of August 1, 2010, between the Debtor and the Master Trustee.

1.54 **Master Trustee** means UMB Bank, N.A., as successor trustee to Wells Fargo Bank, N.A., in its capacity as trustee under the Master Trust Indenture, and any successor trustee in such capacity.

1.55 **Mortgage** means the Mortgage and Security Agreement, dated as of August 1, 2010, by and between the Debtor and the Master Trustee.

1.56 **Other Priority Claim** means any Claim entitled to priority under Bankruptcy Code sections 507(a)(4) and 507(a)(5).

1.57 **Other Secured Claim** means any Secured Claim other than the Bond Claim.

1.58 **Petition Date** means April 20, 2017.

1.59 **Plan** means this Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated September 18, 2017, as altered, modified, or amended in accordance with the Bankruptcy Code and the Bankruptcy Rules.

1.60 **Priority Tax Claim** means any Claim of a governmental unit of a kind entitled to priority under Bankruptcy Code section 507(a)(8), if Allowed.

1.61 **Professionals** means all professionals employed in this Chapter 11 Case pursuant to Bankruptcy Code sections 327 and 363.

1.62 **Proof of Claim** means a proof of Claim filed against the Debtor in the Chapter 11 Case.

1.63 **Released Parties** means (as applicable) (a) the Debtor, (b) the Reorganized Debtor and its member, (c) FSO in any capacity, (d) each of the Bond Trustee and the Master Trustee in any capacity, (e) the Issuer and (f) the current and former officers, directors, members of Issuer, attorneys and advisors, each in their respective capacities as such, of each of the foregoing.

1.64 **Releasing Parties** means all Persons who have held, hold or may hold Claims or Interests that have been released or discharged pursuant to this Plan.

1.65 **Reorganized Debtor** means the Debtor, Friendship Village of Mill Creek, NFP, from and after the Effective Date of the Plan and the substantial consummation of the Plan.

1.66 **Residency Agreements** means all residency agreements related to independent living, assisted living, agreements related to use of any Debtor-owned parking facility and any additional documents related thereto for which a material performance obligation remains outstanding or unperformed by either party.

1.67 **Retained Claims** means all existing and potential litigation in which the Debtor is the plaintiff or a defendant with a counterclaim or cross claims including, but not limited to the matters listed in the Debtor's Schedule B in Bankruptcy, in response to question 74 (filed in the Case as Document 1, at page 18 of 158).

1.68 **Schedules** means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statement of financial affairs filed by the Debtor pursuant to Bankruptcy Code section 521 and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

1.69 **Secured Claim** means any Claim of a Creditor that is secured by property of the Estate, to the extent of the value of the Creditor's interest in the Estate's interest in such property, as provided in Bankruptcy Code section 506(a). Secured Claim also means a Claim of a creditor that is subject to setoff under Bankruptcy Code section 553, to the extent of the amount subject to setoff, as provided in Bankruptcy Code section 506(a).

1.70 **Series A Bonds** means the \$89,100,000 Revenue Bonds, Series 2010A (GreenFields of Geneva Project).

1.71 **Series B Bonds** means the \$5,000,000 Revenue Bonds, Series 2010B (GreenFields of Geneva Project) (Accelerated Redemption Reset Option Securities (ARROS<sup>SM</sup>)).

1.72 **Series C-1 Bonds** means the \$3,575,000 Revenue Bonds, Series 2010C-1 (GreenFields of Geneva Project) (Tax-Exempt Mandatory Paydown Securities (TEMPS-75<sup>SM</sup>)).

1.73 **Series C-2 Bonds** means the \$8,325,000 Revenue Bonds, Series 2010C-2 (GreenFields of Geneva Project) (Tax-Exempt Mandatory Paydown Securities (TEMPS-65<sup>SM</sup>)).

1.74 **Series C-3 Bonds** means the \$11,600,000 Revenue Bonds, Series 2010C-3 (GreenFields of Geneva Project) (Tax-Exempt Mandatory Paydown Securities (TEMPS-50<sup>SM</sup>)).

1.75 **Series 2010 Bonds** means, collectively, the Series A Bonds, Series B Bonds, Series C-1 Bonds, Series C-2 Bonds, and the Series C-3 Bonds.

1.76 **Series 2010 Refund Payment** means the payment to be made to the Bond Trustee from certain proceeds of the Series 2017A Bonds in the amount of \$52,800,000.

1.77 **Series 2017A Bonds** means the bonds issued by Issuer, subject to its authority and discretion, in one or more series for refunding and related purposes in an aggregate approximate amount of \$67,000,000 (which amount is subject to modification prior to the authorization of the bond issue by the Issuer), which will be offered to clients of Hamlin Capital Management, LLC, subject to modification as to the aggregate amount of the series prior to the Effective Date.

1.78 **Series 2017B Bonds** means the taxable bonds issued by FSO in an approximate amount of up to \$15,000,000.

1.79 **Unencumbered Assets** means the three motor vehicles owned by the Debtor that are not encumbered by any prepetition or postpetition lien.

1.80 **Unexpired Lease** means a lease to which the Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365.

1.81 **U.S. Trustee Fees** means all fees and charges assessed against the Estate of the Debtor under 28 U.S.C. § 1930 of the United States Code.

**B. Interpretation: Application of Definitions and Rules of Construction.**

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, the Plan, 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 Plan as a whole and not to any particular section, subsection, or clause contained therein. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in Bankruptcy Code section 102 shall apply to the Plan. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Unless otherwise provided, any reference in this Plan 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. If a time or date is specified for any payments or other distribution under the Plan, it shall mean on or as soon as reasonably practicable thereafter. 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.

**SECTION 2. TREATMENT OF ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS AND U.S. TRUSTEE FEES**

2.1 **Administrative Claims.** In accordance with Bankruptcy Code section 1123(a)(1), Administrative Claims have not been classified and are treated as described herein. Except as otherwise provided in this Plan, by written agreement of the holder of an Allowed Administrative Claim to accept different treatment than provided under this Plan, or by order of the Bankruptcy Court, a Person holding an Allowed Administrative Claim will receive Cash equal to the unpaid portion of such Allowed Administrative Claim which has come due for payment under any applicable order or law, as soon as practicable after the later of: (a) the third Business Day after the Effective Date; (b) the date on which such Person becomes the holder of such an Allowed Administrative Claim; or (c) the date or dates when that Claim is payable by its terms, consistent with past practice and in accordance with past terms. Allowed Administrative Claims shall only be paid in accordance with any Final Order of the Bankruptcy Court. The Debtor estimates that there will be approximately \$296,000.00 in Allowed Administrative Claims. Administrative Claims shall be paid by the Reorganized Debtor from Cash in the ordinary course. Without limiting the foregoing, the Reorganized Debtor shall be responsible for the fees and expenses of the Illinois Finance Authority.

2.2 **Professional Compensation.** Professionals or other Persons asserting a Claim for Accrued Professional Compensation for services rendered before the Effective Date must request payment for such Professional Compensation no later than thirty (30) days after the Effective Date. All such applications be in the form required by the “Order Granting Debtor’s Motion for Administrative Order Establishing Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals” which was entered by the Court on May 4, 2017 (Docket. 55, hereafter, the “Fee Procedures Order”). Copies of such applications shall be served on the “Notice Parties” identified by that order, each of whom may object to any such final compensation applications within the time allowed by the Fee Procedures Order. The Court shall resolve any objections filed to any timely filed application for Professional Compensation. The Reorganized Debtor shall promptly pay any Allowed Claim for Accrued Professional Compensation from the reserves established for that purpose by this Plan, or, at its sole option, from funds of the Reorganized Debtor. For the avoidance of doubt, the Debtor shall be responsible for payment of the Professional Compensation payable pursuant to the Budget prior to the Effective Date, the Reorganized Debtor shall be responsible for payment of the holdback and other “end of case fees” as provided in the Budget.

Upon the Effective Date, any requirement that Professionals comply with Bankruptcy Code sections 327 through 331 and 1103 in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor may employ and pay any professional for services rendered or expenses incurred after the Effective Date in the ordinary course of business without any further notice to any party or action, order or approval of the Bankruptcy Court.

2.3 **Priority Tax Claims.** In accordance with Bankruptcy Code section 1123(a)(1), Priority Tax Claims have not been classified and are treated as described in this Section 2. Unless otherwise agreed by the holder of an Allowed Priority Tax Claim, any Person holding an Allowed Priority Tax Claim will receive from the Reorganized Debtor in full satisfaction of such Claim, payment in Cash in full on the later of the Effective Date or the date such Claim becomes due and payable in the ordinary course under applicable non-bankruptcy law. The Debtor estimates that there will be no Priority Tax Claims.

2.4 *U.S. Trustee Fees* All U.S. Trustee Fees will be paid in full by the Reorganized Debtor as they become due and owing.

**SECTION 3. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

3.1 *Classification and Specification of Treatment of Claims.* All Claims and Interests, except those described in Section 2, are placed in the following Classes of Claims and Interests, pursuant to Bankruptcy Code section 1123(a)(1), which section specifies the treatment of such Classes of Claims and Interests and of their impaired or unimpaired status, pursuant to Bankruptcy Code sections 1123(a)(2) and 1123(a)(3). A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of the Class and is classified in a different Class to the extent that the Claim or Interest qualifies within the description of that different Class. A Claim or Interest is in a particular Class only to the extent that the Claim or Interest is an Allowed Claim in that Class and has not been paid, released, withdrawn, waived, or otherwise satisfied under this Plan. Unless this Plan expressly provides otherwise, when a Class includes a subclass, each subclass is a separate Class for all purposes under the Bankruptcy Code, including, without limitation, voting and distribution.

Subject to all other applicable provisions of this Plan (including its distribution provisions), classified Claims and Interests shall receive the treatment set forth below. This Plan will not provide any distributions on account of a Claim or Interest to the extent that such Claim or Interest has been disallowed, released, withdrawn, waived, or otherwise satisfied or paid as of the Effective Date, including, without limitation, payments by third parties. Except as specifically provided in this Plan, this Plan will not provide any distributions on account of a Claim, or Interest the payment of which has been assumed by a third party.

3.2 *Classes of Claims.*

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Rights</u>
1	Series 2010 Bond Claims	Impaired	Entitled to Vote
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Unsecured Priority Claims	Unimpaired	Deemed to Accept
4	Unsecured Nonpriority Claims	Impaired	Entitled to Vote
5	Interests	Unimpaired	Deemed to Accept

3.2.1 Class 1 — Series 2010 Bond Claims. This Class consists of the Bond Claim, which is payable to the Bond Trustee for the benefit of Bond Holders. The Bond Claim is an Allowed Claim. In full satisfaction of the Bond Claim, the Bond Trustee shall receive on the Effective Date (a) the Series 2010 Refund Payment; (b) all Cash of the Debtor that is on hand as of the Effective Date after the payment of Professional Compensation as set forth in Section 2.2 hereof and those Administrative Claims accrued before the Effective Date up to the amounts set forth in the Budget; and (c) a payment from the Escrow Account in the amount of \$366,600. In addition, the Master Trustee and the Bond Trustee may apply any and all of the Bond Trustee Funds in their possession as set forth in the Bond Documents free from the automatic stay imposed by Bankruptcy Code section 362(a), the injunction contained in this Plan, or any rights of the Debtor or the Reorganized Debtor. The Debtor estimates that the



Allowed Class 1 Claims will receive approximately \$54,542,233.00 on the Effective Date (exclusive of application of the Bond Trustee Funds). It is anticipated that the Bond Trustee shall receive a distribution of approximately 56% of its Allowed Class 1 Claim (which amount for these calculations includes the \$52.8 million, plus cash provided by the Debtor on the Effective Date as well as the Bond Trustee Funds).

3.2.2 Class 2 — Other Secured Claims. This Class consists of all Secured Claims other than Series 2010 Bond Claims. Unless otherwise agreed by the holder of any Claim in this Class, each Allowed Other Secured Claim that has not been satisfied as of the Effective Date, in full and final satisfaction and discharge of and in exchange for each Allowed Other Secured Claim, will receive (a) deferred Cash payments from the Reorganized Debtor of a value, as of the Effective Date, equal to the holder's Allowed Other Secured Claim; (b) payment in Cash from the Reorganized Debtor in full on the later of: (i) the third (3rd) Business Day after the Effective Date or as soon as reasonably practicable thereafter as determined by the Disbursing Agent; and (ii) the date on which there is a Final Order allowing such Claim; or (c) reinstatement and otherwise left unaltered the legal, equitable and contractual rights to which the holder of such Claim is entitled in accordance with Bankruptcy Code section 1124. The Debtor estimates that the Allowed Class 2 Claims will be approximately \$ 0 on the Effective Date.

3.2.3 Class 3 — Unsecured Priority Claims. This Class consists of Claims that are specified as having priority under Bankruptcy Code section 507(a), if any such Claims still exist as of the Effective Date. Unless otherwise agreed by the holder of any Claim in this Class, each Allowed Claim under Bankruptcy Code section 507(a), which has not been satisfied as of the Effective Date, in full and final satisfaction and discharge of and in exchange for each Allowed Unsecured Priority Claim, will receive from the Reorganized Debtor: (a) deferred Cash payments of a value, as of the Effective Date, equal to the Allowed Priority Claim or (b) payment in Cash in full on the later of: (i) the third (3rd) Business Day after the Effective Date or as soon as reasonably practicable thereafter as determined by the Disbursing Agent; and (ii) the date on which the Claim is Allowed. The Debtor estimates that the Allowed Class 3 Claims will be approximately \$11,000.00 on the Effective Date.

3.2.4 Class 4 — Unsecured Nonpriority Claims. This Class consists of all nonpriority unsecured claims against the Debtor. Except to the extent that a holder of an Allowed Unsecured Nonpriority Claim agrees to a less favorable treatment, in full and final satisfaction and discharge of and in exchange for each Claim, each holder of an Allowed Unsecured Nonpriority Claim will receive payment in Cash of their pro rata share of the Unencumbered Assets on the latest of (a) the third (3rd) Business Day after the Effective Date or as soon as practicable thereafter as determined by the Disbursing Agent, (b) the date such Allowed Unsecured Nonpriority Claim becomes due and payable in the ordinary course of business, and (c) as otherwise agreed to by the Debtor and the holder of such Claim, and (d) the Date such Claim is Allowed. The Debtor reserves its rights, however, to dispute the validity of any Unsecured Nonpriority Claim, whether or not objected to prior to the Effective Date. Notwithstanding the foregoing, no distributions shall be made in respect of any intercompany Claims, including but not limited to the FSO Claims. The Debtor estimates that the Allowed Class 4 Claims will be approximately \$656,000 on the Effective Date.

3.2.5 Class 5 — Interests. This Class consists of all prepetition ownership interests in the Debtor. All Interests shall be affirmed, assumed and deemed Allowed by the Reorganized Debtor on the Effective Date. For the avoidance of doubt, the Interests of FSO, as the sole member of the Debtor, will not be impaired in any way by the Debtor's Chapter 11 Case or by this Plan, and that Interest shall continue to be the sole membership Interest in the Reorganized Debtor after the Effective Date.

### 3.3 *Acceptance or Rejection of the Plan.*

3.3.1 Acceptance by an Impaired Class. In accordance with Bankruptcy Code section 1126(c) and except as provided in section 1126(e), an impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

3.3.2 Presumed Acceptance of the Plan. Classes 2, 3 and 5 are unimpaired under this Plan and are, therefore, conclusively presumed to have accepted this Plan pursuant to Bankruptcy Code section 1126(f).

3.3.3 Voting Class. Classes 1 and 4 are impaired under this Plan and are entitled to vote to accept or reject this Plan.

## SECTION 4. MEANS FOR IMPLEMENTATION OF THIS PLAN

4.1 *Sources of Consideration*. All Cash consideration necessary for the Reorganized Debtor to make payments or distributions pursuant hereto shall be obtained from (a) Cash on hand of the Debtor or Reorganized Debtor as appropriate, including Cash derived from business operations; (b) proceeds of the Series 2017A and Series 2017B Bonds; (c) proceeds from the FSO Equity Contribution; (d) proceeds from the Unencumbered Property; and (d) proceeds of Escrowed Entrance Fees.

4.2 *Distribution of Cash of the Debtor's Estate*. The Debtor's Cash on the Effective Date, including the balance of all deposit accounts owned by the Debtor and any payments received by the Debtor by wire or by check as of the Effective Date which have not yet been deposited in the Debtor's operating account, shall be used, first, to pay or fund reserves to be held by the Reorganized Debtor for the payment of Allowed Administrative Claims (as set forth and limited under the Budget) and U.S. Trustee Fees which have or may accrue at the time of the Effective Date (regardless of whether such Administrative Claims or U.S. Trustee Fees are then payable) and Professional Compensation as set forth in Section 2.2. Any Cash remaining shall be paid to the Bond Trustee for distribution to Bond Holders or for other purposes permitted under the terms of the Bond Documents and the Bond Indenture. Notwithstanding anything to the contrary in this Plan, U.S. Trustee Fees which will become payable by the Reorganized Debtor in the calendar quarter which occurs after the Effective Date will be deemed to have "accrued" on the day before the Effective Date, and shall be paid from reserves established for that purpose.

4.3 *Issuance of Series 2017A and Series 2017B Bonds and Refunding of Series 2010 Bonds*. On the Effective Date or as soon as reasonably practicable thereafter, the

Issuer will issue, subject to its authority and discretion, in accordance with the terms of this Plan, the Series 2017A Bonds in an aggregate approximate principal amount of \$67,000,000 (which amount is subject to modification prior to the authorization of the bond issue by the Issuer). FSO will issue, subject to its authority and discretion, the 2017B Bonds in the aggregate principal amount of \$15,000,000. The net proceeds obtained from the issuance of the Series 2017A Bonds, and, if necessary, the FSO Equity Contribution, shall be used to fund the Series 2010 Refund Payment made by the Debtor to the Bond Trustee. Effective upon the payment of all amounts to the Bond Trustee set forth in Section 3.2.1, the Bond Trustee shall provide the Debtor with an executed release in a form reasonably acceptable to the Reorganized Debtor, which releases any lien, claim or encumbrance held by the Bond Trustee against any property of the Debtor's Estate or any asset of the Reorganized Debtor. The payments made pursuant to this Plan, when made, shall, with respect to the Debtor and the Reorganized Debtor be deemed to effect a complete refunding of the Series 2010 Bonds under the terms of the Bond Documents or the Bond Indenture.

4.4 ***Payments from the Reorganized Debtor.*** The Reorganized Debtor, using funds derived from the FSO Equity Contribution, shall make the following payments: (a) to the Bond Trustee, an amount needed to complete the funding of the Series 2010 Refund Payment, if any; (b) to holders of Class 3 Claims; (c) to holders of Claims under Executory Contracts (other than Residency Agreements), one hundred percent (100%) of the allowed amount of the Claim of such holders for a Cure of the Debtor's pre-petition monetary default under such Executory Contracts, payable no later than the third business day following the Effective Date; and (d) to holders of Claims under Executory Contracts which are Residency Agreements, one hundred percent (100%) of the allowed amount of the Claims of such holders for a Cure of the Debtor's monetary default under such Executory Contracts, payable no later than the third business day following the Effective Date, which amount has not been satisfied from the Escrowed Entrance Fees.

4.5 ***Payments from Escrowed Entrance Fees.*** On or as soon as practicable following the Effective Date, the Reorganized Debtor shall instruct the Escrow Agent which has ownership and charge of the Escrow Account to use the funds in the Escrow Account (to the extent of available funds in that Escrow Account) to pay the following amounts in the following order: (a) first, to the Escrow Agent for any outstanding fees, costs and expenses due to the Escrow Agent under the terms of the agreement which established the Escrow Account; (b) second, to holders of Claims for refunds of deposits which are due under the terms of the applicable Residency Agreements; (c) third, to the Bond Trustee in the amount of \$366,600; and (d) the balance remaining after the payment of the foregoing Claims shall be paid to the Reorganized Debtor, as proceeds of Executory Contracts which the Debtor has assumed pursuant to the terms of this Plan.

4.6 ***Retained Claims.*** The Retained Claims shall vest in the Reorganized Debtor on the Effective Date and the Reorganized Debtor shall be solely responsible for the continuation of any litigation or negotiation related thereto. Nothing in the Chapter 11 Case shall impact the Reorganized Debtor's ability to continue litigation related to the Retained Claims.

4.7 ***Corporate Existence.*** Except as otherwise provided herein or in the Corporate Governance Documents, the Reorganized Debtor shall continue to exist on and after

the Effective Date as a separate non-stock corporate entity with all the powers of a non-stock corporation, pursuant to the applicable law in the jurisdiction in which Reorganized Debtor was incorporated or formed.

4.8 ***Reorganized Debtor Governance.*** The existing members of the Debtor's Board of Directors shall continue to be members of the Board of Directors of the Reorganized Debtor.

4.9 ***Officers of Reorganized Debtor.*** The existing officers of the Debtor shall continue to be officers of the Reorganized Debtor. Such officers shall serve in accordance with applicable non-bankruptcy law.

4.10 ***Vesting of Assets in the Reorganized Debtor.*** Except as otherwise provided in this Plan or any agreement, instrument or other document incorporated herein, on the Effective Date, or as soon as practicable thereafter, all property of the Debtor's Estate and all Causes of Action (except those released pursuant to the Releases by the Debtor) shall vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances (except for Liens securing the Series 2017A and Series 2017B Bonds). On and after the Effective Date, except as otherwise provided in this Plan, the Reorganized Debtor may operate its business and may use, acquire or dispose of property and compromise or settle any Claims or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

4.11 ***Restructuring Transactions.*** On the Effective Date or as soon as reasonably practicable thereafter, the Debtor and the Reorganized Debtor may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by or necessary to effectuate this Plan, including: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution or liquidation containing terms that are consistent with the terms of this Plan and that satisfy the applicable requirements of applicable law and any other terms to which the applicable Persons may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt or obligation on terms consistent with the terms of this Plan and having other terms for which the applicable Persons agree; (c) the filing of appropriate certificates or articles of incorporation or amendments thereof, reincorporation, merger, consolidation, conversion or dissolution pursuant to applicable state law; and (d) all other actions that the applicable Persons determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

4.12 ***Corporate Action.*** Upon the Effective Date, all actions contemplated by this Plan shall be deemed authorized and approved in all respects, including all actions contemplated by this Plan (whether to occur before, on or after the Effective Date). All matters provided for in this Plan involving the corporate structure of the Debtor or the Reorganized Debtor, and any corporate action required by the Debtor or the Reorganized Debtor in connection with this Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the directors or officers of the Debtor or the Reorganized Debtor.

On or (as applicable) before the Effective Date, the appropriate officers of the Debtor or the Reorganized Debtor, as applicable, shall be authorized and directed to issue, execute and deliver the agreements, documents, securities, certificates of incorporation, operating agreements and instruments contemplated by this Plan (or necessary or desirable to effect the transactions contemplated by this Plan) in the name of and on behalf of the Debtor or the Reorganized Debtor, as the case may be, and any and all other agreements, documents, securities and instruments relating to the foregoing.

4.13 ***Section 1146 Exemption from Certain Taxes and Fees.*** Pursuant to Bankruptcy Code section 1146(a), any transfers of property in contemplation of, in connection with, or pursuant to this Plan shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct and be deemed to direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment. Such exemption specifically applies, without limitation, to (a) the creation of any mortgage, deed of trust, lien or other security interest; (b) the making or assignment of any lease or sublease; (c) any restructuring transaction authorized by of this Plan; or (d) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with this Plan, including: (i) any merger agreements; (ii) agreements of consolidation, restructuring, disposition, liquidation or dissolution; (iii) deeds; or (iv) assignments executed in connection with any transaction occurring under this Plan.

4.14 ***Preservation of Causes of Action of the Debtor.*** In accordance with Bankruptcy Code section 1123(b), and except where such Causes of Action have been expressly released (including, for the avoidance of doubt, pursuant to the Releases by the Debtor), the Reorganized Debtor shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, and the Reorganized Debtor's rights to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtor may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtor. No Person may rely on the absence of a specific reference in this Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Debtor or the Reorganized Debtor, as applicable, will not pursue any and all available Causes of Action against them. Except with respect to Causes of Action as to which the Debtor or the Reorganized Debtor have released any Person or Person on or before the Effective Date (including pursuant to the Releases by the Debtor or otherwise), the Debtor or the Reorganized Debtor, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in this Plan. Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised or settled in this Plan or a Bankruptcy Court order, the Reorganized Debtor expressly reserves all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such Causes of Action upon, after or as a consequence of the Confirmation or consummation of this Plan. Notwithstanding the foregoing, the Debtor shall be deemed to have released any claims, causes of action or rights arising under Bankruptcy Code sections 510(c), 544, 545, 547, 548, 549, 550, 551 and 553.

4.15 *Single Satisfaction of Claims.* Holders of Allowed Claims may assert such Claims against the Debtor, and such Claims shall be entitled to share in the recovery provided for the applicable Class of Claims against the Debtor based upon the full Allowed amount of the Claim. Notwithstanding the foregoing, in no case shall the aggregate value of all property received or retained under this Plan on account of an Allowed Claim exceed 100% of the underlying Allowed Claim.

4.16 *Cancellation of Series 2010 Bonds.* As of the Effective Date, the Series 2010 Bonds shall be cancelled without further action by any party, provided, however, the Series 2010 Bonds and the Bond Documents shall be deemed to continue in effect solely to the extent they relate to and are necessary to: (i) allow applicable distributions pursuant to this Plan and Bond Documents, (ii) permit the Master Trustee and the Bond Trustee to be compensated for fees and reimbursed for expenses including expenses of its professionals and enforce its indemnity and other rights and protections with respect to and pursuant to the Bond Documents, (iii) permit the Master Trustee and the Bond Trustee to set one or more record dates and distribution dates with respect to the distribution of funds to beneficial holders of the Series 2010 Bonds, (iv) permit the Master Trustee and the Bond Trustee to appear in the Chapter 11 Case with respect to matters relevant to the Series 2010 Bonds and to enforce their rights under this Plan, (v) otherwise continue to govern relationships of the Master Trustee, the Bond Trustee and holders of the Series 2010 Bonds, and (vi) permit the Master Trustee and the Bond Trustee to perform any functions that are necessary in connection with the foregoing clauses (i) through (v).

## **SECTION 5. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

5.1 *Assumption and Rejection of Executory Contracts and Unexpired Leases.* Except as otherwise provided in this Plan, or in any contract, instrument, release, indenture or other agreement or document entered into in connection with this Plan, all Residency Agreements, without limitation, together with each Executory Contract which is not a Residency Agreement which is designated for assumption by the Reorganized Debtor in a notice to be filed in this Case by the Debtor or FSO prior to the Confirmation Date (the “**Assumption Notice**” shall be deemed assumed as of the Effective Date, unless such Executory Contract or Unexpired Lease: (1) was assumed or rejected previously by the Debtor; (2) expired or terminated pursuant to its own terms before the Effective Date; or (3) is the subject of a motion to reject filed on or before the Effective Date.

**Notwithstanding anything contained in this Plan to the contrary, (i) each Residency Agreement, and all obligations arising thereunder, including all obligations to return or refund, all other entrance deposits, will be assumed by the Reorganized Debtor, as of the Effective Date, pursuant to this Plan and (ii) the Bond Documents will be cancelled as set forth in Section 4.16 of this Plan, with no amounts or other damages owing to or due from the Debtor other than those set forth in this Plan. Notwithstanding the foregoing or anything else in this Plan, the Bond Documents shall not be cancelled until the Debtor and the Reorganized Debtor (as applicable) have paid all amounts provided for in this Plan to the Bond Trustee and the Master Trustee (as applicable).**

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as set forth in this Plan, all pursuant to Bankruptcy Code sections 365(a) and 1123. Unless otherwise indicated, all assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to this Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to this Plan or by Bankruptcy Court order but not assigned to a third party before the Effective Date shall revert in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as such terms may have been modified by such order. Notwithstanding anything to the contrary in this Plan, the Debtor or the Reorganized Debtor, as applicable, reserves the right to alter, amend, modify or supplement the list of Executory Contracts and Unexpired Leases identified in the Assumption Notice at any time before the Effective Date. After the Effective Date, the Reorganized Debtor shall have the right to terminate, amend or modify any intercompany contracts, leases or other agreements with FSO in accordance with their terms without approval of the Bankruptcy Court. All Cure payments related to assumed Executory Contracts and Unexpired Leases will be made with proceeds of the FSO Equity Contribution.

**5.2 Assumption of the Medicare Provider Agreement.**

In addition to the provisions of section 5.1 of the Plan, the following special provisions shall apply to the assumption and cure of the Debtor's Medicare Provider Agreement. In the event of an inconsistency between sections 5.1 and 5.2, the provisions of this section 5.2 shall govern.

A. **Medicare Assumption Date.** Provided that all issues regarding Debtor's cure of any defaults under its Medicare provider agreement on the Confirmation Date are addressed to the satisfaction of Centers for Medicare & Medicaid Services ("CMS"), the Debtor shall assume the Medicare provider agreement on the Effective Date ("Medicare Assumption Date").

B. **Cure Prior to the Medicare Assumption Date.** Prior to the Medicare Assumption Date:

(1) Compliance with Program Requirements. Debtor will comply with all applicable Medicare program requirements as set forth in Title XVIII the Social Security Act, 42 U.S.C. § 1395 et seq. ("Medicare Act"), and all relevant regulations, rules and CMS manual provisions.

(2) Cure. Apart from the provision for identified monetary defaults below, nothing withstanding anything to the contrary in the Plan and any exhibits thereto (now or as amended), or Order of Confirmation of a Plan, the term "cure," for purposes of Debtor's assumption of the Medicare provider agreement, means being governed by, and subject to, the terms and conditions of its Medicare provider agreement and the incorporated statutes, regulations, policies and procedures; and to remain liable for any debt to CMS as if the bankruptcy case had not occurred.

(3) Cure of Specific Monetary Defaults Identified Prior to the Assumption Date. Except as otherwise provided by mutual agreement between CMS and Debtor in a separate written agreement, compromise and/or extended liquidation schedule that Debtor and CMS may (but are not obligated to) enter into prior to the Medicare Assumption Date, Debtor must cure all

monetary defaults due under the Medicare provider agreement that CMS has identified to the Debtor in writing before the Medicare Assumption Date. Any such Cure payment shall be made with proceeds of the FSO Equity Contribution.

CMS's right to cure of such identified monetary defaults will be in addition to and without limitation upon its right to recoup of Medicare debts or its other rights and authorities under the Medicare Act. If Debtor and/or CMS propose a separate agreement, compromise and/or extended liquidation schedule, the process for consideration of any such proposal will remain governed by the Medicare Act, as well as all relevant regulations, rules, and CMS manual provisions, as if Debtor were not in bankruptcy.

**C. CMS Claims Unimpaired.** Without limiting CMS's right to payment of specific identified monetary defaults under the Medicare provider agreement that must be cured prior to assumption as set forth above, all of CMS's claims shall be unimpaired under 11 U.S.C. § 1124 and no court order entered in the Chapter 11 Case, including without limitation an order confirming a plan of reorganization in this case, shall alter, modify or impair or be deemed to alter, modify or impair any right, term or provision in the Debtor's agreements with CMS.

(1) Any amounts due on such claims shall be collected in the ordinary course of business, and the United States, on behalf of CMS, shall not be required to file any separate claim in the bankruptcy to collect any amounts due to CMS under the Medicare program, whether via proof of claim, claim for cure, or administrative claim.

(2) Nothing contained in the Plan and any exhibits thereto (now or as amended) or Order of Confirmation of a Plan shall release or operate to enjoin any claim of the United States, on behalf of CMS, against the Debtor or any non-debtor.

(3) Notwithstanding any provision of the Plan and any exhibits thereto (now or as amended), or Order of Confirmation of a Plan, all agreements, issues, and disputes arising under the Medicare Act, 42 U.S.C. § 1395, et seq., shall be governed exclusively by Medicare statutes, regulations, policies and procedures, without regard to the Bankruptcy Code or Bankruptcy Rules. Judicial review of any final Medicare determinations after exhaustion of jurisdictionally required administrative remedies would lie in the statutorily designated federal court in accordance with the Medicare Act. 42 U.S.C. §§ 405(h) & 1395ii; see, e.g., 42 U.S.C. §§ 405(g), 1395ff, 1395oo.

**5.3 Claims Based on Rejection of Executory Contracts or Unexpired Leases.** All Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be filed with the Bankruptcy Court within 30 days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection; provided, that any such Rejection Claim arising from the rejection of an Unexpired Lease shall be subject to the cap on rejection damages imposed by Bankruptcy Code section 502(b)(6). Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion and shall not be enforceable against the Debtor or the Reorganized Debtor, the Estate or its property without the need for any objection by the Reorganized Debtor or further notice to, or action, order or approval of the Bankruptcy Court.



All Allowed Claims arising from the rejection of the Debtor's Executory Contracts or Unexpired Leases shall be classified as Class 4 Unsecured Nonpriority Claims against the Debtor and shall be treated in accordance with this Plan.

**5.4 *Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.*** The Cure of any defaults under Executory Contracts shall be governed by these rules.

**5.4.1 *Current Residents of GreenFields of Geneva.*** The assumption by the Reorganized Debtor, of Residency Agreements with current residents of GreenFields of Geneva, which will automatically occur on the Effective Date of this Plan, shall be presumed to Cure any default which existed with respect to such Residency Agreements prior to the Effective Date of the Plan.

**5.4.2 *Former Residents of GreenFields of Geneva.*** The Reorganized Debtor shall be presumed to have cured any default with respect to a Residency Agreement between the Debtor and a person who no longer resides at GreenFields of Geneva (or such person's estate), upon the payment, in cash by the Reorganized Debtor, promptly following the Effective Date, of the amount of the refund of the entrance fee deposit due to such former resident (or such person's estate).

**5.4.3 *Non-Resident Claims by Counterparties to Executory Contracts.*** The Reorganized Debtor's right to assume any Executory Contract which is not a Residency Agreement, and the amount of the Cure payment which the Reorganized Debtor must pay to counter-parties of such Executory Contracts, shall be governed by the procedures which the Court may set by a separate order prior to the confirmation of this Plan. If the Court does not set any such procedures, then the Reorganized Debtor shall use its best efforts to resolve any disputes with counterparties to such Executory Contracts by agreement. If there is a dispute which is not resolved by agreement regarding (a) the nature or amount of any Cure, (b) the ability of the Reorganized Debtor to provide "adequate assurance of future performance" (within the meaning of Bankruptcy Code section 365) under the Executory Contract or Unexpired Lease to be assumed or (c) any other matter pertaining to assumption, Cure shall occur following the entry of a Final Order of the Bankruptcy Court resolving the dispute and approving the assumption.

Assumption of any Executory Contract or Unexpired Lease pursuant to this Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the effective date of the assumption.

**5.5 *Insurance Policies.*** Notwithstanding anything herein to the contrary, as of the Effective Date, the Debtor shall assume (and assign to the Reorganized Debtor if necessary to continue the Insurance Policies in full force) all of the Insurance Policies pursuant to Bankruptcy Code section 365(a). Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtor's foregoing assumption of each of the Insurance Policies.

5.6 ***Modifications, Amendments, Supplements, Restatements or Other Agreements.*** Unless otherwise provided, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of the foregoing agreements has been previously rejected or is rejected under this Plan.

Modifications, amendments, supplements and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority or amount of any Claims that may arise in connection therewith, unless such Executory Contract or Unexpired Lease has been previously assumed by the Debtor.

5.7 ***Reservation of Rights.*** Nothing contained in this Plan or the Assumption Notice constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Reorganized Debtor has or have, as the case may be, any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Reorganized Debtor, as applicable, shall have 45 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

5.8 ***Contracts and Leases Entered Into After the Petition Date.*** Notwithstanding any other provision in this Plan, contracts and leases entered into after the Petition Date by the Debtor, including any Executory Contracts and Unexpired Leases assumed by the Debtor, will be performed by the Debtor or the Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

## **SECTION 6. PROVISIONS GOVERNING DISTRIBUTIONS**

6.1 ***Timing and Calculation of Amounts to Be Distributed.*** Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim on the Effective Date, on the date that such a Claim becomes an Allowed Claim, on the next Distribution Date or as soon as reasonably practicable thereafter), each holder of an Allowed Claim against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims in the applicable Class and in the manner provided herein. In the event that any payment or act under this 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 succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in this Plan. Except as otherwise provided herein, holders of Claims shall not be entitled to interest, dividends or accruals on the distributions provided for

herein, regardless of whether such distributions are delivered on or at any time after the Effective Date.

6.2 ***Disbursing Agent.*** Except as otherwise provided in this Plan, all distributions under this Plan shall be made by the Reorganized Debtor as Disbursing Agent or such other Person designated by the Reorganized Debtor as a Disbursing Agent on the Effective Date. With respect to any distribution on account of the Series 2010 Bonds, such distributions shall be paid to the Bond Trustee, and the Bond Trustee shall make such further distributions to Bond Holders as set forth in the Bond Documents.

6.3 ***Rights and Powers of Disbursing Agent.*** The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of this Plan.

6.4 ***Payments and Distributions on Disputed Claims.*** Distributions made after the Effective Date to holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall be deemed to have been made on the Effective Date.

6.5 ***Special Rules for Distributions to Holders of Disputed Claims.*** Notwithstanding any provision otherwise in this Plan and except as may be agreed to by the Debtor or the Reorganized Debtor, on the one hand, and the holder of a Disputed Claim, on the other hand, no partial payments and no partial distributions shall be made with respect to any Disputed Claim until all Disputed Claims held by the holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

6.6 ***Delivery of Distributions in General.*** Except as otherwise provided in this Plan, distributions to holders of Allowed Claims shall be made to the holders of record thereof as of the Distribution Record Date by the Disbursing Agent. Distributions to holders of Allowed Claims will be made at the address of each such holder as set forth in the Debtor's books and records, except that, in the case of Bond Holders, distributions will be made by directly to the Bond Trustee, who will then make distributions to Bond Holders as set forth in the Bond Documents. Distributions under this Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment or like legal process, so that each holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in this Plan. None of the Debtor, the Reorganized Debtor and the applicable Disbursing Agent shall incur any liability whatsoever on account of any distributions under this Plan except for gross negligence, willful misconduct or fraud.

6.7 ***Small Distributions, Undeliverable Distributions and Unclaimed Property.*** Notwithstanding any other provision of this Plan, the Disbursing Agent shall not be required to make distributions to any holder of a Claim which is less than Five Dollars (\$5.00). In the event that any distribution to any holder is returned as undeliverable, no distribution to

such holder shall be made unless and until the Disbursing Agent has determined the then current address of such holder, at which time such distribution shall be made as soon as practicable after such distribution has become deliverable; provided, however, that such distributions shall be deemed unclaimed property under Bankruptcy Code section 347(b) and forfeited at the expiration of six (6) months after the applicable Distribution Date. After such date, all “unclaimed property” or interests in property shall revert to the Reorganized Debtor (notwithstanding any applicable federal or state escheat, abandoned or unclaimed property laws to the contrary), and the Claim of any holder to such property shall be deemed to be a Disallowed Claim and discharged and forever barred.

6.8 ***Withholding and Reporting Requirements.*** In connection with this Plan and all instruments issued in connection therewith, the Disbursing Agent shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under this Plan shall be subject to any such withholding or reporting requirements.

6.9 ***Setoffs.*** Except as set forth herein, the Debtor and the Reorganized Debtor may withhold (but not set off except as set forth below) from the distributions under this Plan on account of any Allowed Claim an amount equal to any claims, equity interests, rights and Causes of Action of any nature that the Debtor or the Reorganized Debtor may hold against the holder of any such Allowed Claim. In the event that any such claims, equity interests, rights and Causes of Action of any nature that the Debtor or the Reorganized Debtor may hold against the holder of any such Allowed Claim are adjudicated by Final Order or otherwise resolved, the Debtor may, pursuant to Bankruptcy Code section 553 or applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant hereto on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim) the amount of any adjudicated or resolved claims, equity interests, rights and Causes of Action of any nature that the Debtor or the Reorganized Debtor may hold against the holder of any such Allowed Claim, but only to the extent of such adjudicated or resolved amount. Neither the failure to effect such a setoff nor the allowance of any Claim under this Plan shall constitute a waiver or release by the Debtor or the Reorganized Debtor of any such claims, equity interests, rights and Causes of Action that the Debtor or the Reorganized Debtor may possess against any such holder, except as specifically provided herein. Notwithstanding anything in this Section 6.9 or any other provision of this Plan, the distributions made to the Bond Trustee or the Master Trustee or to Bond Holders shall not be subject to setoff of any kind.

6.10 ***Insurance Claims.*** Except for payments to be made to the Bond Trustee and the Master Trustee, no distributions under this Plan shall be made on account of Allowed Claims until the holder of such Allowed Claim has exhausted any and all remedies with respect to the Debtor’s Insurance Policies. To the extent that one or more of the Debtor’s insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers’ agreement, such Claim may be deemed to be a Disallowed Claims and may be expunged without a Claims objection having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court.

6.11 ***Applicability of Insurance Policies.*** Except as otherwise provided in this Plan, distributions to holders of Allowed Claims shall be made in accordance with the provisions

of any applicable Insurance Policy. Nothing contained in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor, the Reorganized Debtor or any Person may hold against any other Person, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

## **SECTION 7. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS**

The provisions of the Section 7 shall not be applicable to the Bond Claim, which is Allowed as set forth in Section 3.2.1 hereof:

7.1 ***Prosecution of Objections to Claims.*** The Debtor (before the Effective Date) or the Reorganized Debtor (on or after the Effective Date), as applicable, shall have the exclusive authority to file, settle, compromise, withdraw or litigate to judgment any objections to Claims as permitted under this Plan. From and after the Effective Date, the Debtor and the Reorganized Debtor may settle or compromise any Disputed Claim without approval of the Bankruptcy Court. The Debtor reserves all rights to resolve any Disputed Claim outside the Bankruptcy Court under applicable governing law.

7.2 ***Allowance of Claims.*** Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case before the Effective Date (including the Confirmation Order), the Reorganized Debtor after the Effective Date will have and retain any and all rights and defenses held by the Debtor with respect to any Claim as of the Petition Date. All Claims of any Person against the Debtor shall be disallowed unless and until such Person pays, in full, the amount it owes each such Debtor.

7.3 ***Distributions after Allowance.*** On the Distribution Date following the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the holder of such Claim the distribution (if any) to which such holder is entitled under this Plan as of the Effective Date, without any interest to be paid on account of such Claim.

7.4 ***Estimation of Claims.*** The Debtor (before the Effective Date) or the Reorganized Debtor (on or after the Effective Date) may, at any time, and from time to time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to Bankruptcy Code section 502(c) regardless of whether an objection was previously filed with the Bankruptcy Court with respect to such Claim, or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any Disputed Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim against any party or Person, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor (before the Effective Date) or the Reorganized Debtor (after the Effective Date), may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. All of the objection, estimation, settlement and resolution procedures set forth in this Plan

are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, objected to, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

## **SECTION 8. SETTLEMENT, RELEASE, INJUNCTION AND RELATED PROVISIONS**

### **8.1 *Compromise and Settlement of Claims, Interests and Controversies.***

Pursuant to Bankruptcy Code section 363 and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to this Plan, the provisions of this Plan shall constitute a good faith compromise of all Claims, Interests and controversies relating to the contractual, legal and subordination rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtor, its Estate and holders of Claims and Interests and is fair, equitable and reasonable. In accordance with the provisions of this Plan, pursuant to Bankruptcy Code section 363 and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtor may compromise and settle Claims against them and Causes of Action against other Persons.

**8.2 *Releases by the Debtor.*** Pursuant to Bankruptcy Code section 1123(b) and except as otherwise specifically provided in this Plan, for good and valuable consideration, including the service of the Released Parties to facilitate the expeditious reorganization of the Debtor and the implementation of the restructuring contemplated by this Plan, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtor, the Reorganized Debtor and the Estate from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims asserted or assertable on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtor, the Reorganized Debtor, the Estate or its affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Series 2010 Bonds, the Debtor's Chapter 11 Case, the purchase, sale or rescission of the purchase or sale of any security of the Debtor, the Reorganized Debtor or the Issuer, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in this Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of Claims and Interests before or during the Debtor's Chapter 11 Case, the negotiation, formulation or preparation of this Plan, the Disclosure Statement, any related agreements, instruments or other documents (collectively, the "**Debtor Released Claims**"), other than Debtor Released Claims against a Released Party arising out of or relating to any act or omission of that party constituting willful misconduct or gross negligence.

**8.3 *Limited Releases by Holders of Claims.*** As of the Effective Date and except as set forth in this Plan (including but not limited to all obligations of the Debtor and Reorganized Debtor under this Plan which shall not be deemed released), each holder of a Claim

or Interest (including Bond Holders) shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative Claims assertable on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the preparation, negotiation, Court approval or confirmation of the Plan, the Disclosure Statement or related agreements document or instrument, or the filing of any motion or document (or the failure to take action) in the Debtor's Chapter 11 Case (collectively, "**Released Claims**"), provided, however, the Released Claims shall not include any Claim (i) which arises out of or relates to any Executory Contract which is assumed by the Debtor through the Plan, including all Residency Agreements which are assumed by the Debtor through the Plan; (ii) which arises out of or relates to any act or omission of that party constituting willful misconduct or gross negligence; or any Claim that arises from facts and circumstances other than those which are specifically enumerated above in this section of the Plan, or (ii) which relates to FSO's ownership interest or involvement in any facilities other than the Debtor. Further, nothing in this Plan or the Disclosure Statement, or any other document filed in connection with such documents, shall release or be deemed to release the Released Parties from any Cause of Action held by a governmental entity existing as of the Effective Date based on (i) the Internal Revenue Code or other domestic state, city, or municipal tax code, (ii) the environmental laws of the United States or any domestic state, city, or municipality, (iii) any criminal laws of the United States or any domestic state, city, or municipality, (iv) the Securities and Exchange Act of 1934 (as now in effect or hereafter amended), the Securities Act of 1933 (as now in effect or hereafter amended), or other securities laws of the United States or any domestic state, city or municipality, (v) the Employee Retirement Income Security Act of 1974, as amended, (vi) the laws and regulations of the Bureau of Customs and Border Protection of the United States Department of Homeland Security, or (vii) any federal law, rule or regulation including, but not limited to, those related to the Center for Medicare Services or the Department of Health and Human Services with respect to Medicare reimbursement or recoupment of amounts paid by the Center for Medicare Services which may be subject to a recoupment claim of such agencies or entities made either before or after the Effective Date.

8.4 **Discharge of Claims.** Pursuant to Bankruptcy Code section 1141(d), and except as otherwise specifically provided in this Plan, the distributions, rights and treatment that are provided in this Plan shall be in full and final satisfaction, settlement, release and discharge, effective as of the Effective Date, of all Claims and Causes of Action of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against the Debtor or any of its assets or properties, regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims, including demands, liabilities and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in Bankruptcy Code sections 502(g), 502(h) or 502(i), in each case whether or not: (1) a Proof of Claim based upon such Claim, debt, right or Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim based upon such Claim, debt or right is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the holder of such a Claim has

accepted this Plan. Except as otherwise provided herein, any default by the Debtor or its affiliates with respect to any Claim that existed before or on account of the filing of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims subject to the Effective Date occurring, except as otherwise expressly provided in this Plan.

8.5 ***Injunction.*** FROM AND AFTER THE EFFECTIVE DATE, ALL PERSONS ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THIS PLAN OR THE CONFIRMATION ORDER.

FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES GRANTED IN THIS PLAN, THE RELEASING PARTIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE RELEASED PARTIES AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO THIS PLAN.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN OR RELATED DOCUMENTS, OR FOR OBLIGATIONS PURSUANT TO THIS PLAN, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED OR ARE DISCHARGED, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (2) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (3) CREATING, PERFECTING OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH PERSONS OR THE PROPERTY OR ESTATE OF SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (4) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, SETTLED OR DISCHARGED PURSUANT TO THIS PLAN.

THE RIGHTS AFFORDED IN THIS PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF ALL CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTOR OR ANY OF ITS ASSETS, PROPERTY OR ESTATE. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTOR SHALL BE FULLY RELEASED AND DISCHARGED, AND THE



INTERESTS SHALL BE CANCELLED (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN).

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS PLAN OR OBLIGATIONS PURSUANT HERETO FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTOR SHALL BE FULLY RELEASED AND DISCHARGED, AND ALL INTERESTS SHALL BE CANCELLED, AND THE DEBTOR'S LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER BANKRUPTCY CODE SECTION 502(G).

ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTOR, THE DEBTOR'S ESTATE, THE REORGANIZED DEBTOR, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS OR ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

NOTWITHSTANDING ANY OTHER PROVISION OF THE PLAN, THE FOREGOING INJUNCTION WILL NOT BAR A PARTY WHICH HAS A COUNTERCLAIM AGAINST A CLAIM (INCLUDING THE RETAINED CLAIMS) WHICH THE REORGANIZED DEBTOR MAY ASSERT AGAINST THEM, FROM ASSERTING THAT COUNTERCLAIM AS A DEFENSE IN ANY LEGAL PROCEEDING, ARBITRATION, LAWSUIT OR CLAIM BROUGHT AGAINST THEM BY THE REORGANIZED DEBTOR.

8.6 ***Term of Injunctions or Stays.*** Unless otherwise provided in this Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to Bankruptcy Code sections 105 or 362 or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in this Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

8.7 ***Protection against Discriminatory Treatment.*** Consistent with Bankruptcy Code section 525 and the Supremacy Clause of the U.S. Constitution, all Persons, including governmental units, shall not discriminate against the Reorganized Debtor or deny, revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtor or another Person with whom the Reorganized Debtor has been associated, solely because the Debtor has been a debtor under chapter 11, has been insolvent before the commencement of the Chapter 11 Case (or during the Chapter 11 Case but before the Debtor is granted or denied a discharge) or has not paid a debt that is dischargeable in the Chapter 11 Case.

8.8 ***Release of Liens.*** Except as otherwise provided in this Plan, including, but not limited to, Classes 1 and 2 of this Plan, the Bond Documents, or in any contract, instrument, release or other agreement or document created pursuant to this Plan, on the Effective Date and conditioned upon the applicable distributions made pursuant to this Plan and, in the case of a

Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of 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, and all of the right, title and interest of any holder of such mortgages, deeds of trust, Liens, pledges or other security interests shall revert to the Reorganized Debtor and its successors and assigns. For the avoidance of doubt, except as otherwise provided in this Plan, including Sections 3.2.2 and 3.2.3 of this Plan, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estate shall be fully released and discharged upon payment of the obligations provided under Plan without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code.

## **SECTION 9. CONDITIONS PRECEDENT TO CONFIRMATION OF THIS PLAN AND THE EFFECTIVE DATE**

9.1 ***Conditions Precedent to Confirmation.*** It shall be a condition to Confirmation of this Plan that each of the following provisions, terms and conditions shall have been satisfied or waived pursuant to the provisions of this Plan.

- (a) The Bankruptcy Court shall have entered an order, which shall not be subject to any stay or subject to an unresolved request for revocation under section 1144 of the Bankruptcy Code, in form and substance reasonably acceptable to the Debtor, FSO and the Bond Trustee, approving the Disclosure Statement with respect to this Plan and the solicitation of votes thereon as being in compliance with section 1125 of the Bankruptcy Code and applicable non-bankruptcy law.
- (b) The Confirmation Order (i) shall be, in form and substance, reasonably acceptable to the Debtor, FSO and the Bond Trustee; (ii) shall include Bankruptcy Court authorization to enter into the Series 2017A and Series 2017B Bond transactions; and (iii) shall not be subject to any stay or subject to an unresolved request for revocation under Bankruptcy Code section 1144.
- (c) This Plan, including any schedules, documents, supplements and exhibits thereto shall be, in form and substance, reasonably acceptable to the Debtor, FSO and the Bond Trustee.

9.2 ***Conditions Precedent to the Effective Date.*** It shall be a condition to the Effective Date that each of the following provisions, terms and conditions shall have been satisfied or waived pursuant to the provisions of this Plan.

- (a) The Bankruptcy Court shall have entered one or more orders (which may include the Confirmation Order) authorizing the assumption and rejection of Executory Contracts and Unexpired

Leases by the Debtor as contemplated herein in form and substance reasonably acceptable to the Debtor, FSO and the Bond Trustee.

- (b) The Confirmation Order, in form and substance reasonably acceptable to the Debtor, FSO and the Bond Trustee, shall have been entered by the Bankruptcy Court and shall not be subject to any stay or subject to an unresolved request for revocation under Bankruptcy Code section 1144.
- (c) All of the schedules, documents, supplements and exhibits to this Plan shall have been filed in form and substance reasonably acceptable to the Debtor, FSO and the Bond Trustee.
- (d) All actions, documents, certificates, and agreements necessary to implement this Plan shall have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws.
- (e) The Series 2017A and Series 2017B Bonds are authorized by the Issuer and FSO, respectively, and the related transactions shall have closed.

9.3 ***Waiver of Conditions.*** The conditions to confirmation and consummation of this Plan set forth herein may be waived at any time by the Debtor, with the consent of the Bond Trustee; provided, however, that the Debtor may not waive entry of the Order approving the Disclosure Statement and confirming this Plan.

9.4 ***Effect of Failure of Conditions.*** Unless otherwise agreed by the Debtor and the Bond Trustee, if the consummation of this Plan does not occur by November 10, 2017, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against the Debtor; (2) prejudice in any manner the rights of the Debtor, any holders of Claims or any other Person; or (3) constitute an admission, acknowledgment, offer or undertaking by the Debtor, any holders or any other Person in any respect.

## **SECTION 10. MODIFICATION, REVOCATION OR WITHDRAWAL OF THIS PLAN**

10.1 ***Modification and Amendments.*** Except as otherwise specifically provided herein, the Debtor reserves the right to modify this Plan as to material terms and seek confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in Bankruptcy Code section 1127 and Bankruptcy Rule 3019 and those restrictions on modifications set forth in this Plan, the Debtor expressly reserves its rights to alter, amend or modify materially this Plan with respect to the Debtor, one or more times, after confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend or modify this Plan or remedy any defect or omission, or reconcile any inconsistencies in this Plan, the Disclosure Statement or

the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of this Plan. Any such modification or supplement shall be considered a modification of this Plan and shall be made in accordance with this Plan.

10.2 ***Effect of Confirmation on Modifications.*** Entry of a Confirmation Order shall mean that all modifications or amendments to this Plan occurring after the solicitation thereof are approved pursuant to Bankruptcy Code section 1127(a) and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

10.3 ***Revocation or Withdrawal of this Plan.*** The Debtor reserves the right to, consistent with its fiduciary duties, revoke or withdraw this Plan before the Effective Date. If the Debtor revokes or withdraws this Plan, or if Confirmation does not occur, then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases affected by this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (3) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtor or any other Person; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Person.

## **SECTION 11. RETENTION OF JURISDICTION**

11.1 Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Case and all matters, arising out of or related to, the Chapter 11 Case and this Plan including jurisdiction to:

- (a) allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount or allowance of Claims;
- (b) decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or this Plan;
- (c) resolve any matters related to: (i) the assumption or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor may be liable in any manner and to hear, determine and, if necessary, liquidate, any Claims arising therefrom, including rejection Claims, cure Claims pursuant to Bankruptcy Code section 365 or any other matter related to such Executory Contract or Unexpired Lease; (ii) any

potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (iii) the Reorganized Debtor amending, modifying or supplementing, after the Effective Date, any Executory Contracts or Unexpired Leases on the list of Executory Contracts and Unexpired Leases to be assumed or rejected; and (iv) any dispute regarding whether a contract or lease is or was executory or expired;

- (d) ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;
- (e) adjudicate, decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date;
- (f) adjudicate, decide or resolve any and all matters related to any Cause of Action;
- (g) adjudicate, decide or resolve any and all matters related to Bankruptcy Code section 1141;
- (h) enter and enforce any order for the sale of property pursuant to Bankruptcy Code sections 363, 1123 or 1146(a);
- (i) resolve any Causes of Action over which the Bankruptcy Court has jurisdiction;
- (j) resolve any cases, controversies, suits, disputes or Causes of Action that may arise in connection with the consummation, interpretation or enforcement of this Plan or any Person's obligations incurred in connection with this Plan;
- (k) issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation or enforcement of this Plan;
- (l) resolve any cases, controversies, suits, disputes or Causes of Action with respect to the discharge, releases, injunctions, indemnifications and other provisions contained in this Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions and other provisions;
- (m) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

- (n) determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with this Plan or the Disclosure Statement;
- (o) adjudicate any and all disputes arising from or relating to distributions under this Plan;
- (p) consider any modifications of this Plan, cure any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;
- (q) determine requests for the payment of Claims entitled to priority pursuant to Bankruptcy Code section 507;
- (r) hear and determine disputes arising in connection with the interpretation, implementation or enforcement of this Plan or the Confirmation Order, including disputes arising under agreements, documents or instruments executed in connection with this Plan;
- (s) hear and determine matters concerning state, local and federal taxes in accordance with Bankruptcy Code sections 346, 505 and 1146;
- (t) hear and determine all disputes involving the existence, nature or scope of the Debtor's discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;
- (u) enforce all orders previously entered by the Bankruptcy Court;
- (v) hear any other matter not inconsistent with the Bankruptcy Code; and
- (w) enter an order concluding or closing the Chapter 11 Case.

## **SECTION 12. MISCELLANEOUS PROVISIONS**

12.1 ***Immediate Binding Effect.*** Notwithstanding Bankruptcy Rules 3020(e), 6004(h) or 7062 or any other Bankruptcy Rule, upon the occurrence of the Effective Date, the terms of this Plan shall be immediately effective and enforceable and deemed binding upon the Debtor, the Reorganized Debtor and any and all holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted this Plan), all Persons that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in this Plan, each Person acquiring property under this Plan, and any and all non-

Debtor parties to Executory Contracts and Unexpired Leases with the Debtor. However, notwithstanding the foregoing, nothing in this Plan shall be deemed to impair the right, if any, of any entity which has objected to confirmation of the Plan to seek to appeal the entry of the Confirmation Order, or to seek to stay the enforcement of that order to the extent permitted by law.

12.2 ***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 this Plan. The Debtor or the Reorganized Debtor, as applicable, and all holders of Claims receiving distributions pursuant to this 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 this Plan.

12.3 ***Reservation of Rights.*** Except as expressly set forth in this Plan, this Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of this Plan, any statement or provision contained in this Plan or any action taken or not taken by the Debtor with respect to this Plan, the Disclosure Statement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the holders of Claims or Interests before the Effective Date.

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

12.5 ***Votes Solicited in Good Faith.*** Upon entry of the Confirmation Order, the Debtor and FSO will be deemed to have solicited votes on this Plan in good faith and in compliance with the Bankruptcy Code and any applicable non-bankruptcy law, and pursuant to Bankruptcy Code section 1125(e), the Debtor and its affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale and purchase of securities offered and sold under this Plan, and, therefore, will have no liability for the violation of any applicable law, rule or regulation governing the solicitation of votes on this Plan or the offer, issuance, sale or purchase of the Series 2017A or 2017B Bonds offered under this Plan.

12.6 ***Closing of Chapter 11 Case.*** The Debtor or the Reorganized Debtor shall, promptly after the full administration of the Chapter 11 Case, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

12.7 **Notices.** All notices or requests in connection with this Plan shall be in writing and given by mail addressed to:

If to the Debtor or the Reorganized Debtor:	Stephen Yenchek 350 West Schaumburg Road Schaumburg, IL 60194
With copies to:	Bruce Dopke Stahl Cowen Crowley Addis LLC 55 W. Monroe Street, Suite 1200 Chicago, IL 60603  And  Jeremy R. Johnson Polsinelli PC 600 Third Avenue New York, NY 10016
If to the Bond Holders:	UMB Bank, N.A. Attn: Virginia A. Housum Senior Vice President 120 Sixth Street South Suite 1400 Minneapolis, MN 55403 e-mail: Virginia.housum@umb.com
With copies to:	Mintz Levin Cohn Ferris Glovsky & Popeo PC Attn: Daniel S. Bleck, Esq. One Financial Center Boston, MA 02111 e-mail: dsbleck@mintz.com

All notices and requests to Persons holding any Claim in any Class shall be sent to them at their last known address or to the last known address of their attorney of record in this Chapter 11 Case. Any such holder of a Claim may designate in writing any other address for purposes of this Section, which designation will be effective upon receipt by the Debtor.

12.8 **Headings.** The headings used in this Plan are inserted for convenience only and neither constitute a portion of this Plan nor in any manner affect the construction of the provisions of this Plan.

12.9 **Severability.** If, prior to confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall 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, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

12.10 ***Validity and Enforceability.*** The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms. Should any provision in this Plan be determined by the Bankruptcy Court or any appellate court to be unenforceable following the Effective Date, such determination shall in no way limit the enforceability and operative effect of any and all other provisions of this Plan.

12.11 ***Governing Law.*** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Illinois, without giving effect to the principles of conflicts of laws, shall govern the rights, obligations, construction, and implementation of the Plan and the restructuring transactions consummated or to be consummated in connection therewith.

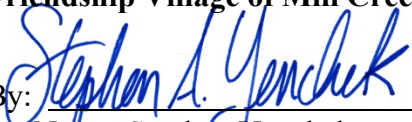
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12.12 ***Request for Confirmation Pursuant to Bankruptcy Code Sections 1129(a) and 1129(b)***. The Debtor and FSO request entry of a Confirmation Order under Bankruptcy Code section 1129(a) and, to the extent necessary, Bankruptcy Code section 1129(b).

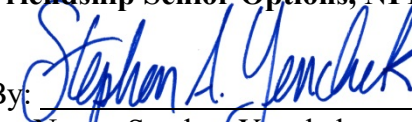
Dated: September 18, 2017

Respectfully submitted,

**Friendship Village of Mill Creek, NFP**

By:   
Name: Stephen Yenchek  
Title: Chief Executive Officer

**Friendship Senior Options, NFP**

By:   
Name: Stephen Yenchek  
Title: Chief Executive Officer

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