

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO**

In re

OTERO COUNTY HOSPITAL  
ASSOCIATION, INC. (d/b/a Gerald  
Champion Regional Medical Center, d/b/a  
Mountain View Catering),

Debtor.

No. 11-11-13686-JA

Re: Docket Nos. 591, 628, 643 and 696

**ORDER CONFIRMING THE THIRD AMENDED CHAPTER 11 PLAN OF  
REORGANIZATION DATED JUNE 20, 2012 FOR OTERO COUNTY HOSPITAL  
ASSOCIATION, INC.**

On August 16, 2011 (the “Petition Date”), Otero County Hospital Association, Inc. d/b/a Gerald Champion Regional Medical Center d/b/a Mountain View Catering (the “Debtor”) filed its voluntary petition (the “Petition”) for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), thereby commencing the above-captioned chapter 11 case (the “Chapter 11 Case”) in the United States Bankruptcy Court for the District of New Mexico (the “Bankruptcy Court”). The Debtor continues to manage and operate its business as a debtor in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested or appointed in the Chapter 11 Case.

On September 1, 2011, the Office of the United States Trustee for Region 20 (the “U.S. Trustee”) appointed an official committee of unsecured creditors for the Chapter 11 Case (the “Creditors’ Committee”).

On May 7, 2012, the Debtor filed its *Chapter 11 Plan of Reorganization for Otero County Hospital Association, Inc.* [Docket No. 499]. On June 20, 2012, the Debtor filed its *Third Amended Chapter 11 Plan of Reorganization for Otero County Hospital Association, Inc.*



[Docket No. 591] (as amended by the East Modification, as defined herein, the “Plan”)<sup>1</sup> and disclosure statement in support thereof [Docket No. 592] (the “Disclosure Statement”).

On June 21, 2012, the Bankruptcy Court entered the *Order (i) Approving the Disclosure Statement Relating to the Third Amended Chapter 11 Plan of Reorganization for Otero County Hospital Association, Inc.; (ii) Approving Form of Ballots and Proposed Solicitation and Tabulation Procedures for the Plan; (iii) Approving the Solicitation Packages and Prescribing the Form and Manner of Notice of Distribution Thereof; (iv) Establishing Procedures for (a) Voting in Connection with the Plan Confirmation Process and (b) Temporary Allowance of Claims Related Thereto; and (v) Scheduling a Hearing on Plan Confirmation* [Docket No. 594] (the “Disclosure Statement Order”).

The Disclosure Statement Order, among other things, (i) established July 26, 2012 as the deadline for voting on the Plan, and (ii) scheduled a hearing commencing on August 3, 2012 at 9:00 a.m. (Prevailing Mountain Time) to consider confirmation of the Plan and objections thereto (the “Confirmation Hearing”).

The Debtor’s noticing, claims, solicitation, balloting and tabulation agent, Kurtzman Carson Consultants LLC (“KCC”) transmitted solicitation packages in accordance with the Disclosure Statement Order, as attested to in the Affidavit of Service [Docket Nos. 620 and 622] (as amended from time to time, the “Solicitation Affidavit”) and the Voting Certification (as defined below).

On July 12, 2012, the Debtor filed a *Notice of Proposed Personal Injury Trustee and Proposed Members of Personal Injury Claims Committee and Filing of Certain Plan Documents pursuant to Section 1.5 of the Disclosure Statement* [Docket No. 643], which included: (i) the

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<sup>1</sup> Where the context requires, each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the *Third Amended Chapter 11 Plan of Reorganization for Otero County Hospital Association, Inc.*

Personal Injury Trust Declaration, which includes governance of the Personal Injury Claims Committee, as Exhibit A; (ii) the proposed Personal Injury Trustee, her qualifications, and any connections to (a) the Trust Personal Injury Claimants, (b) counsel to the United Tort Claimants, (c) the Debtor, (d) the members of the proposed Personal Injury Claims Committee, and (e) any insiders of the forgoing as defined in section 101(31) of the Bankruptcy Code; (iii) the proposed members of the Personal Injury Claims Committee and the role of such member in the Chapter 11 Case; and (iv) the Proposed Procedures for Valuation and Allowance of Trust Personal Injury Claims of Non-United Tort Claimants, as Exhibit C (collectively, as amended by Docket No. 704, the “Initial Plan Documents”). On July 24, 2012, the Debtor filed the Personal Injury Trust Note [Docket No. 696] (together with the Initial Plan Documents, the “Plan Documents”).

Informal objections to confirmation of the Plan were made to the Debtor’s bankruptcy counsel by (i) Sandra J. East, both individually and as personal representative of the estate of Stanley B. East (“East”), and (ii) Robins & Morton. In addition, informal objections relating to the Debtor’s assumption or rejection of executory contracts were made by Public Service Company of New Mexico (“PNM”) and Siemens Medical Solutions USA, Inc. (“Siemens”).

In addition, (a) Cerner Corporation, on behalf of itself and its wholly-owned subsidiary, Cerner Healthcare Solutions, Inc., and (b) Cardinal Health 110, Inc. (“CH 110”) and Cardinal Health 200, Inc. (“CH 200”) filed objections to the assumption of their respective executory contracts with the Debtor (the “Assumption Objections”) [Docket Nos. 673 and 684, respectively]. The informal objections referenced above along with the Assumption Objections are referred to herein as the “Objections.”

On July 31, 2012, the Debtor filed its *Memorandum of Law in (a) Support of Confirmation of Third Amended Chapter 11 Plan of Reorganization for Otero County Hospital*

*Association, Inc., as amended, and (b) Response to Certain Objections Thereto* [Docket No. 706] (the “Confirmation Memorandum”). Further, on the same day, the Debtor filed the Declarations of Robert J. Heckert [Docket No. 707], William Morgan Hay [Docket No. 708], and Dean Flanagan in support of confirmation of the Plan [Docket No. 709] (collectively, the “Declarations in Support of the Plan”).

On July 31, 2012, KCC filed the *Declaration of Kurtzman Carson Consultants, LLC Regarding Tabulation of Votes in connection with the Debtor’s Third Amended Chapter 11 Plan of Reorganization for Otero County Hospital Association, Inc.* [Docket No. 705] (the “Voting Certification”).

The Confirmation Hearing concluded on August 3, 2012.

NOW, THEREFORE, the Bankruptcy Court having considered the Plan, the Solicitation Affidavit, the Voting Certification, the Declarations in Support of the Plan, the Confirmation Memorandum, all evidence proffered or adduced and the arguments of counsel at the Confirmation Hearing, the *Affidavit of William Morgan Hay in Support of First Day Motions and Applications* [Docket No. 21] (the “First Day Affidavit”) and the entire record of the Chapter 11 Case, and after due deliberation thereon and good cause appearing therefor, hereby makes and issues the following Findings of Fact and Conclusions of Law and hereby orders:<sup>2</sup>

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This Confirmation Order constitutes this Bankruptcy Court’s findings of fact and conclusions of law under Federal Rule of Civil Procedure 52, made applicable by Federal Rules of Bankruptcy Procedure 7052 and 9014. Any and all findings of fact shall constitute findings of fact even if they are stated as conclusions of law, and any and all conclusions of law shall constitute conclusions of law even if they are stated as findings of fact.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue. This Bankruptcy Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and Miscellaneous Order No. 84-0324 filed in the United States District Court for the District of New Mexico on March 19, 1992. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Burden of Proof. The Debtor, as proponent of the Plan, has the burden of proving the elements of section 1129(a) of the Bankruptcy Code by a preponderance of the evidence, and, as set forth below, the Debtor has met that burden.

C. Judicial Notice. This Bankruptcy Court takes judicial notice of the docket in the Chapter 11 Case maintained by the clerk of the Bankruptcy Court and/or its duly appointed agent, including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during the Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing.

D. The Record. The following record (the “Record”) was established to support confirmation of the Plan:

- (i) All documents identified by the Debtor at the Confirmation Hearing, including, without limitation, the Confirmation Memorandum, the Plan, the Disclosure Statement and all exhibits, schedules and attachments thereto and filed in connection therewith, and the Plan Documents, all of which were admitted into evidence without objection;
- (ii) The Declarations in Support of the Plan;
- (iii) The Solicitation Affidavit;
- (iv) The Voting Certification;

- (v) The First Day Affidavit;
- (vi) The entire record of the Chapter 11 Case and the docket maintained by the clerk of the Bankruptcy Court and/or its duly appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered, and evidence and argument made, proffered, or adduced at the hearings held before the Bankruptcy Court during the pendency of the Chapter 11 Case, as to all of which the Bankruptcy Court took judicial notice at the Confirmation Hearing; and
- (vii) The statements and argument of counsel on the record at the Confirmation Hearing, and all papers and pleadings filed with the Bankruptcy Court in support of or otherwise in connection with, confirmation of the Plan.

The evidence that was admitted into the Record in support of confirmation of the Plan and all related matters demonstrates, by a clear preponderance of the evidence, that the Plan should be confirmed.

E. Modifications to the Plan. On July 9, 2012, the Debtor filed the *Non-Material Modification of Third Amended Chapter 11 Plan of Reorganization for Otero County Hospital Association, Inc., Dated June 20, 2012, to Resolve the East Claim* [Docket No. 628] (the “East Modification”). Pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the East Modification does not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor does it require that the holders of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan as modified by the East Modification shall constitute the Plan submitted for confirmation by the Bankruptcy Court.

F. Resolution of Objections. As presented at the Confirmation Hearing, the consensual resolutions of the Objections set forth in this Confirmation Order meet all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules and are in the best interest of the Debtor and its estate and are supported by the Record, and, therefore, are hereby approved.

G. Solicitation and Notice. To obtain the requisite acceptance of the Plan, on June 25, 2012, the Debtor completed solicitation of acceptances and rejections of the Plan by distributing the Disclosure Statement and related materials to holders of Claims against the Debtor classified in impaired classes entitled to vote under the Plan.

(i) As evidenced by the Solicitation Affidavit, and in compliance with the requirements of the Disclosure Statement Order, the Debtor transmitted to all known holders of Claims against the Debtor classified in impaired classes entitled to vote under the Plan: (a) a CD-ROM containing or a hard copy of the Disclosure Statement and all schedules and exhibits thereto, including the Plan and Disclosure Statement Order (excluding exhibits); (b) a notice of hearing to consider confirmation of the Plan and deadline for filing objections thereto (the “Confirmation Hearing Notice”); (c) an applicable ballot, customized for each recipient; (d) a letter from the Creditors’ Committee for holders of Unsecured Claims; and (e) a postage prepaid return envelope (collectively, the “Solicitation Packages”).

(ii) Specifically, the Solicitation Packages were distributed to holders of Claims in Class 3 – Secured Claims, Class 4 – Robins & Morton Claim, Class 5 – Trust Personal Injury Claims, Class 5A – East Claims, Class 6 – Unsecured Claims, Class 7 – QHR Claims, and Class 8 – Non-QHR Reimbursement, Contribution and Indemnity Claims.

(iii) In addition, as evidenced by the Solicitation Affidavit, and in compliance with the requirements of the Disclosure Statement Order, the Debtor transmitted to all known holders of Claims against the Debtor that were either classified as unimpaired or deemed to have rejected the Plan: (a) a Confirmation Hearing Notice; and (b) a notice of non-voting status, which informs the creditor that a copy of the Plan and Disclosure Statement may be obtained via the Internet at <http://www.kccllc.net/gcrmc>, or in physical softcopy (CD-ROM), or hardcopy upon

written request to KCC. Specifically, the items listed immediately above were transmitted to holders of Class 1 – Priority Claims, Class 2 – Letter of Credit Claims, and Class 9 – Subordinated Claims.

(iv) Furthermore, as evidenced by the Solicitation Affidavit, the Debtor transmitted to other parties in interest who were not entitled to vote on the Plan: (a) a Confirmation Hearing Notice; and (b) if such parties in interest were former patients of the Debtor, a patient notice.

(v) Finally, as evidenced by the various *Affidavits of Publication*, and in compliance with the requirements of the Disclosure Statement Order, the Debtor caused the Confirmation Hearing Notice to be published in *USA Today* (national edition) [Docket No. 623], *Military Times* [Docket No. 647], *Alamogordo Daily News* [Docket No. 651], *Albuquerque Journal* [Docket No. 670] and *El Paso Times* [Docket No. 671] on or before July 2, 2012. The Confirmation Hearing Notice was also published electronically at <http://www.nmb.uscourts.gov> and <http://www.kccllc.net/gcrmc>.

(vi) The Debtor complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules and all other applicable laws in connection with the solicitation of votes on the Plan and the provision of notice of the Confirmation Hearing and all other relevant deadlines related to the Plan. As such, the notice provided was due and proper with respect to all matters relating to the solicitation of votes on, and the confirmation of, the Plan and satisfied the requirements of due process with respect to all creditors and parties in interest who were provided actual or constructive notice.

H. Voting. As evidenced by the Voting Certification, and except as stated below, each class of Claims either (i) voted to accept the Plan under section 1126 of the Bankruptcy

Code and for purposes of section 1129(a)(8)(A) of the Bankruptcy Code; (ii) is not impaired as provided in section 1124 and 1129(a)(8)(B) of the Bankruptcy Code or (iii) is deemed, under section 1126(g) of the Bankruptcy Code, to have voted to reject the Plan. Of the 20 holders of Class 3 – Secured Claims whose votes on the Plan were solicited, 18 did not timely return a ballot (the “Class 3 Non-Accepting Classes of Secured Claims”).

I. Compromises and Settlements under and in Connection with the Plan. All of the settlements and compromises pursuant to and in connection with the Plan comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

(i) Global Settlement. After numerous informal settlement meetings and two formal mediation sessions presided over by the Honorable Alan C. Torgerson, a federal magistrate judge, the Debtor, the United Tort Claimants, QHR, and Nautilus reached a comprehensive settlement, defined in the Plan as the Global Settlement. As a result of the Global Settlement, the Trust Personal Injury Claims will be resolved in a fair and expeditious manner while consensually fixing the amount of the Debtor’s exposure at a reasonable level. The Global Settlement is fully incorporated into the Plan pursuant to Section 7.5 of the Plan. Each of the Global Settlement and the Global Settlement Documentation is (a) approved in all respects, including, without limitation, pursuant to Bankruptcy Rule 9019; (b) fair, equitable and in the best interest of creditors and all other parties in interest; (c) the product of good faith arm’s-length negotiations; (d) fully consistent with and does not violate the Nautilus Policies in any respect or manner whatsoever and (e) appropriate in all other respects and entered into in good faith.

(ii) Bryant Settlement. In addition to the Global Settlement, the Debtor also reached a consensual agreement with Dr. Bryant. As set forth in the *Settlement Agreement by*

and between Otero County Hospital Association, Inc. and Dr. Frank T. Bryant (the “Bryant Settlement”), the Debtor and Dr. Bryant wished to resolve (a) the Bryant Reimbursement, Contribution and Indemnity Claims; (b) proof of claim number 217 filed by Dr. Bryant on December 7, 2011; (c) the *Motion for Order of Contempt for Violations of the Automatic Stay* [Docket No. 405]; (d) the *Opposed Motion for Relief from the Automatic Stay* [Docket No. 425]; and (e) any claims the Debtor may have against Dr. Bryant. On June 15, 2012, the Debtor filed the *Debtor’s Motion pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Approving the Settlement by and between Otero County Hospital Association, Inc. and Dr. Frank T. Bryant* [Docket No. 561] (the “Bryant Settlement Motion”). On July 17, 2012, the Bankruptcy Court entered an order approving the Bryant Settlement Motion [Docket No. 654]. The Bryant Settlement is approved and complies with the requirements of Bankruptcy Rule 9019 and is fair, reasonable, adequate, and in the best interests of creditors.

(iii) East Settlement. On December 20, 2012, East filed proof of claim no. 262 in the amount of \$2.5 million (the “East Claim”). Prior to the East Modification, the Plan classified the East Claim in Class 5 – Trust Personal Injury Claims. East informally objected to this classification. To resolve East’s objection, the Debtor filed the East Modification pursuant to which the East Claim will be classified in Class 5A – East Claims, which class is unimpaired under the Plan. Further, Class 5A Claims will be treated pursuant to Section 3.1(f) of the Plan. Finally, the settlement set forth in Section 7.14 of the Plan (the “East Settlement”) is (a) approved in all respects, including, without limitation, pursuant to Bankruptcy Rule 9019; (b) fair, equitable and in the best interest of creditors and all other parties in interest; (c) the product of good-faith, arm’s-length negotiations; (d) fully consistent with and does not violate any applicable laws in any respect or manner whatsoever and (e) appropriate in all other respects and

entered into in good faith. East is granted the Debtor's rights to pursue the Quantum Indemnification Rights as provided in the Plan without further order of the Bankruptcy Court.

J. Releases, Exculpations and Injunctions. The releases, exculpations and injunctions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, the Estate and its creditors, and are important to the Global Settlement and the overall objectives of the Plan to finally resolve all Claims among or against the parties in interest in the Chapter 11 Case with respect to the Debtor, its operation and reorganization; and (iv) are consistent with sections 105, 524, 1123, 1129, and 1141 and other applicable provisions of the Bankruptcy Code.

K. Exit Financing. The Debtor has demonstrated that it has a reasonable probability of obtaining the Exit Financing in the approximate amount of \$70 million. The Exit Financing consists of the issuance of Gerald Champion Regional Medical Center Project Series 2012A Bonds (the "2012A Bonds") by the New Mexico Hospital Equipment Loan Council ("HELC"), which will be repaid by the Debtor through a loan agreement to be executed by the Debtor and the HELC. The Exit Financing will be secured by, among other things, the Debtor's real property and equipment located at its main hospital campus, as will be more specifically set forth in the various security documents to be executed by the Debtor in connection with the Exit Financing. The Exit Financing will be used to (i) refund the 2007A Notes and fully satisfy the Letter of Credit Claims; and (ii) reimburse the Debtor for capital expenses related to the construction of the New Patient Tower, which reimbursed amounts can thereafter be used for general corporate purposes.

L. Personal Injury Trust Note. The Personal Injury Trust Note to which the Debtor is a party is consistent with the Global Settlement and constitutes the valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with such Personal Injury Trust Note's terms and New Mexico law. The execution, delivery and performance by the Debtor of the Personal Injury Trust Note are not in contravention of any applicable law or agreements.

M. Executory Contracts and Unexpired Leases. The Debtor has exercised reasonable business judgment in determining whether to reject or assume each of its executory contracts and unexpired leases under the terms of the Plan and this Confirmation Order. Each rejection or assumption of an executory contract or unexpired lease pursuant to Article XII of the Plan will be legal, valid and binding upon the applicable Debtor and all non-Debtor parties to such executory contract or unexpired lease, as applicable, all to the same extent as if such rejection or assumption had been effectuated pursuant to an appropriate order of the Bankruptcy Court entered before the Confirmation Date under section 365 of the Bankruptcy Code. Each of the executory contracts and unexpired leases to be rejected or assumed is deemed to be an executory contract or an unexpired lease, as applicable.

(i) The Plan constitutes a motion to assume such executory contracts and unexpired leases (collectively, the "Assumed Contracts") as set forth in Section 12.1(a) of the Plan. Except as otherwise provided in a separate order of the Bankruptcy Court, any non-Debtor party to an Assumed Contract was required to object to such assumption and assignment or to the cure amounts proposed by the Debtor in connection therewith by no later than ten (10) Business Days prior to the Confirmation Hearing. Upon the entry of this Confirmation Order, (a) all of the requirements of section 365(b) of the Bankruptcy Code will have been satisfied with respect

to each Assumed Contract for which no timely objection was filed, including the requirement under section 365(b)(3) of the Bankruptcy Code that the Debtor provide adequate assurances of future performance; (b) all rights to object to the assumption of any such Assumed Contract will have been waived; (c) except as the Bankruptcy Court may hereafter determine is necessary and appropriate to effect the purpose of the Bankruptcy Code and equity, all rights to object to the cure amounts with respect to any such Assumed Contracts will have been waived; (d) all defaults arising prior to the Effective Date will be cured and waived in all respects; and (e) the assumption of such Assumed Contracts will be approved. Any objections filed with respect to an Assumed Contract will be resolved as set forth in Article XII of the Plan.

(ii) Except as otherwise provided in this Confirmation Order or Section 12.1 of the Plan, the Plan also constitutes a motion to reject the Debtor's executory contracts and unexpired leases set forth on Schedule 1 to the Disclosure Statement – Schedule of Rejected Executory Contracts and Unexpired Leases. Each executory contract or unexpired lease to be rejected pursuant to the Plan is burdensome and the rejection thereof is in the best interests of the Estate.

N. Standing. The Debtor has satisfied section 1121 of the Bankruptcy Code in that the Debtor has standing to file a plan. Furthermore, the Plan reflects the date it was filed with the Bankruptcy Court and identifies the Debtor as submitting it as Plan proponent, thereby satisfying Bankruptcy Rule 3016(a).

O. The Plan Complies with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As set forth below and as demonstrated by the Record, the Plan complies with all relevant sections of the Bankruptcy Code, the Bankruptcy Rules and applicable non-bankruptcy law relating to the confirmation of the Plan. In particular, the Plan complies with all of the requirements of section

1129 of the Bankruptcy Code.

P. Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). The Plan complies fully with the requirements of sections 1122 and 1123 of the Bankruptcy Code. The Plan's classifications conform to the statute and separately classify claims based on valid business and legal reasons. The Debtor's classification has a rational basis because it is based on the respective legal rights of each holder of a Claim against the Debtor's Estate and was not proposed to create a consenting impaired class and, thereby, manipulate class voting. Article II of the Plan designates classes of Claims that require classification.

Q. Specified Unimpaired Classes (11 U.S.C. § 1123(a)(2)). The Plan complies fully with the requirements of section 1123(a)(2) of the Bankruptcy Code. Article III of the Plan specifies which classes of Claims are not impaired under the Plan.

R. Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan complies fully with the requirements of section 1123(a)(3) of the Bankruptcy Code. Article IV of the Plan specifies the treatment of classes of Claims under the Plan, including those which are impaired.

S. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan complies fully with the requirements of section 1123(a)(4) of the Bankruptcy Code. As reflected in the treatment set forth in Article IV of the Plan, the treatment of each of the Claims in each particular class is the same as the treatment of each of the other Claims in such class; provided, however, to the extent any claimant received any better treatment than that described by the Plan for its class on the basis of the standards for compromise and settlement, the Bankruptcy Court hereby finds that such better treatment does not need to be made available to other members of the class.

T. Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan complies fully with the requirements of section 1123(a)(5) of the Bankruptcy Code. The Plan provides adequate

means for implementation of the Plan through, among other things, the re-vesting of the Debtor's Assets to the Debtor, the implementation of the Personal Injury Trust and the borrowing and use of the Exit Financing.

U. Nonvoting Equity Securities (11 U.S.C. § 1123(a)(6)). The Debtor is a New Mexico non-profit corporation qualified to do business pursuant to section 501(c)(3) of title 26 of the United States Code as a public charity. Accordingly, the Debtor has no equity interests and section 1123(a)(6) is inapplicable.

V. Designation of Directors and Officers (11 U.S.C. § 1123(a)(7)). The Plan complies fully with the requirements of section 1123(a)(7) of the Bankruptcy Code. Section 7.2(a)(ii) provides for the appointment of the Personal Injury Trustee, whom the Debtor identified as Linda Murphee, CPA in its Plan Documents. To serve as a liaison between the Personal Injury Trustee and holders of the Trust Personal Injury Claims, the Plan also provides for the creation of a Personal Injury Claims Committee, pursuant to Section 7.3 of the Plan. As disclosed in the Plan Documents, the proposed members of the Personal Injury Claims Committee are Lisa K. Curtis, Victor F. Poulos, Denise M. Torres, and Felicia C. Weingartner. All such Person's previous roles in the Chapter 11 Case are also disclosed in the Plan Documents. Further, the Personal Injury Trust Declaration, a Plan Document, establishes the governance mechanism of the Personal Injury Claims Committee. Section 7.9 of the Plan provides that the Debtor's board of directors and officers will continue to serve in their current capacity on and after the Effective Date.

W. Additional Plan Provisions (11 U.S.C. § 1123(b)). The Plan's provisions are appropriate and consistent with the provisions of the Bankruptcy Code.

X. Debtor's Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The

Plan complies fully with the requirements of section 1129(a)(2) of the Bankruptcy Code. Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of title 11, including, specifically, sections 1125 and 1126 of the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order governing notice, disclosure and solicitation in connection with the Plan, the Disclosure Statement, the Plan Documents and all other matters considered by the Bankruptcy Court in connection with the Chapter 11 Case.

Y. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Plan complies fully with the requirements of section 1129(a)(3) of the Bankruptcy Code. Having examined the totality of the circumstances surrounding the Plan, the Bankruptcy Court has determined that the Plan was proposed in good faith and not by any means forbidden by law. The Plan achieves the reorganizational goals of the Bankruptcy Code by consensually resolving the most important issues in the Chapter 11 Case and allowing the Debtor to continue to operate as a viable non-profit organization serving the healthcare needs of Otero County. Further, the Plan is the result of extensive arm's-length negotiations among the Debtor and the key stakeholders in the Chapter 11 Case and is overwhelmingly supported by the creditors and other parties in interest in the Chapter 11 Case. It is clear that the Plan promotes the reorganizational objectives and purposes of the Bankruptcy Code.

Z. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). The Plan complies fully with the requirements of section 1129(a)(4) of the Bankruptcy Code. Section 5.2 of the Plan provides that each Professional Person who holds or asserts a Fee Claim will be required to file with the Bankruptcy Court, and serve upon all parties required to receive notice, a Fee Application within forty-five (45) days after the Effective Date. Failure to file and serve

such notice timely and properly results in the Fee Claim being forever barred and discharged. A Fee Claim in respect of which a Fee Application has been properly filed and served pursuant to Section 5.2(b) of the Plan will become an Allowed Administrative Claim only to the extent allowed by an order of this Bankruptcy Court. Pursuant to Section 14.12 of the Plan, no award or reimbursement of attorneys' fees or related expenses or disbursements will be allowed on, or in connection with, any Claims, except as set forth in the Plan or as ordered by the Bankruptcy Court. This Bankruptcy Court previously approved interim application procedures under section 331 of the Bankruptcy Code, pursuant to which the Bankruptcy Court authorized and approved the payment of certain fees and expenses of professionals retained in the Chapter 11 Case. All such fees and expenses, as well as all other accrued fees and expenses of professionals through the Effective Date, remain subject to final review for reasonableness by the Bankruptcy Court under applicable provisions of the Bankruptcy Code. The foregoing procedures for this Bankruptcy Court's review and ultimate determination of fees and expenses paid satisfy the objectives of section 1129(a)(4) of the Bankruptcy Code. Any professional fees incurred by the Debtor after the Effective Date shall be payable in the ordinary course of business without further order of the Bankruptcy Court.

AA. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Plan complies fully with the requirements of section 1129(a)(5) of the Bankruptcy Code. Section 7.2(a)(ii) provides for the appointment of the Personal Injury Trustee. Both the appointment of the Personal Injury Trustee and the terms of her compensation are subject to the approval of the Bankruptcy Court. Section 7.9 of the Plan provides that the Debtor's board of directors will continue to serve in their current capacity on and after the Effective Date. Further, the Debtor's officers will continue to serve on and after the Effective Date pursuant to the terms of the QHR

Management Contract, and applicable law. Further, the nature of the compensation of any insiders has been disclosed, including through disclosures at the Confirmation Hearing. Such compensation is reasonable and appropriate and is hereby approved. The identification of the proposed officers and directors of the Debtor and compensation for any insiders satisfies section 1129(a)(5) of the Bankruptcy Code.

BB. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan complies fully with the requirements of section 1129(a)(6) of the Bankruptcy Code. The Plan does not provide for the change of any rate that is within the jurisdiction of any governmental regulatory commission after the occurrence of the Effective Date. Therefore, the provisions of section 1129(a)(6) of the Bankruptcy Code are inapplicable and thus satisfied.

CC. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). The Plan complies fully with the requirements of section 1129(a)(7) of the Bankruptcy Code. As set forth fully in the Liquidation Analysis, attached as Exhibit E to the Disclosure Statement, and by the evidence adduced in the Confirmation Hearing, the “best interests” test is satisfied as to all impaired classes of Claims. Furthermore, a liquidation under chapter 7, as set forth in the Liquidation Analysis, would profoundly and adversely affect the ultimate proceeds available for distribution to all holders of Allowed Claims in the Chapter 11 Case. Moreover, the increased costs associated with a liquidation under chapter 7 would substantially reduce the proceeds available for distribution. These costs would include, among other things, administrative fees and costs payable to a trustee in bankruptcy and professional advisors to such trustee. In the context of the erosion of the asset values and the increased costs and delay associated with the administration of a chapter 7 case, confirmation of the Plan provides each rejecting creditor with a recovery that is not less than such holder would receive in a chapter 7 liquidation of the Debtor. Based upon

the foregoing, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code. Therefore, the “best interests” test is satisfied with respect to each of these classes.

DD. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(8)). Class 9 – Subordinated Claims is deemed to have rejected the Plan pursuant to section 1126(g). Accordingly, section 1129(a)(8) has not and cannot be satisfied. Further, the Class 3 Non-Accepting Classes of Secured Claims did not vote to accept the Plan. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

EE. Treatment of Administrative, Priority and Tax Claims (11 U.S.C. § 1129(a)(9)). The Plan complies fully with the requirements of section 1129(a)(9) of the Bankruptcy Code.

FF. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). The Plan complies fully with the requirements of section 1129(a)(10) of the Bankruptcy Code as at least one class of impaired creditors accepted the Plan. Specifically, Classes 2, 3A, 3B (Ascension Group Architects, LLP, and Alamogordo Clinic Properties), 4, 5, 5A, 6, 7, and 8 have accepted the Plan.

GG. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan complies fully with the requirements of section 1129(a)(11) of the Bankruptcy Code. Based on the Record before the Bankruptcy Court, the Bankruptcy Court concludes that, upon the closing of the Exit Financing, the Debtor will have sufficient means to meet all of its obligations under the Plan. The Record establishes that the reorganized Debtor will emerge from bankruptcy as a viable, financially healthy, business, unlikely to be in need of further financial reorganization. Further, the Debtor has established that has a reasonable probability of closing the Exit Financing in a reasonable time. Based on the foregoing findings and conclusions, the Plan satisfies the feasibility standard

of section 1129(a)(11).

HH. Payment of Fees (11 U.S.C. § 1129(a)(12)). The Plan complies fully with the requirements of section 1129(a)(12) of the Bankruptcy Code. Section 14.1 of the Plan provides for the payment of all statutory fees by the Debtor on or before the Effective Date. The Plan accordingly satisfies section 1129(a)(12) of the Bankruptcy Code.

II. Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(13)-(15)). Sections 1129(a)(13)-(15) are inapplicable as the Debtor (i) does not provide retiree benefits<sup>3</sup> (1129(a)(13)), (ii) has no domestic support obligations (1129(a)(14)), and (iii) is not an individual (1129(a)(15)).

JJ. Transfer of Property (11 U.S.C. § 1129(a)(16)). The Plan complies fully with the requirements of section 1129(a)(16) of the Bankruptcy Code. Any transfers under the Plan will be made in accordance with applicable non-bankruptcy law.

KK. Nonconsensual Confirmation (Cramdown) of Non-Accepting Classes (11 U.S.C. § 1129(b)). The Plan does not discriminate unfairly and is fair and equitable to each Class of Claims that has not accepted the Plan, specifically including the Class 3 Non-Accepting Classes of Secured Claims and Class 9 – Subordinated Claims. Further, within their respective classes, there exists no unfair discrimination of any of the holders of Claims. Finally, the Plan does not violate the “absolute priority” rule contained in section 1129(b)(2).

LL. Confirmation of Only One Plan (11 U.S.C. § 1129(c)). The Plan (including previous versions thereof) is the only plan that has been filed in the Chapter 11 Case which has been found to satisfy the requirements of subsections (a) and (b) of section 1129 of the

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<sup>3</sup> As defined in section 1114 of the Bankruptcy Code, “retiree benefits” means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependants, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under the Bankruptcy Code.

Bankruptcy Code. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

MM. Principal Purpose of Plan (11 U.S.C. § 1129(d)). The Plan complies fully with the requirements of section 1129(d) of the Bankruptcy Code. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.

NN. Satisfaction of Confirmation Requirements. The Plan satisfies all of the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

OO. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based on the record in the Chapter 11 Case, the Debtor, QHR, Nautilus, the Creditors' Committee and its members (in their capacity as such) and the United Tort Claimants, and each of their respective current or former officers, directors, members, employees, agents, attorneys, advisors, accountants, restructuring consultants, financial advisors, and investment bankers have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances to the Plan.

PP. Conditions Precedent to Confirmation. Upon entry of this Confirmation Order, all conditions precedent to confirmation of the Plan contained in Section 11.1 of the Plan, if not waived pursuant to Section 11.3 of the Plan, shall be, and hereby are satisfied.

QQ. Plan Documents. The Plan Documents, as they may be amended as contemplated and permitted by the Plan, have been negotiated in good faith and are, in the judgment of the parties, necessary and appropriate to effectuate the Plan and the Bankruptcy Court so finds.

RR. Patient Care Ombudsman. On September 13, 2011, the U.S. Trustee appointed E. Marissa Lane of E. Marissa Lane, PLLC as the patient care ombudsman (the “Patient Care Ombudsman”) pursuant to section 333 of the Bankruptcy Code. On and after the Effective Date, the Patient Care Ombudsman shall no longer be necessary for the protection of the patients in the Chapter 11 Case.

## **ORDER**

### **Confirmation of the Plan**

1. Pursuant to section 1127 of the Bankruptcy Code, the East Modification is approved, and pursuant to section 1129 of the Bankruptcy Code, the Plan is hereby CONFIRMED. Each of the Objections has been resolved as set forth in paragraph 63 of this Confirmation Order, and all other objections are OVERRULED and denied.

2. Notice of the Confirmation Hearing complied with the terms of the Disclosure Statement Order, was appropriate and satisfactory based on the circumstances of the Chapter 11 Case and was in compliance with the Bankruptcy Code and the Bankruptcy Rules.

3. The following are hereby incorporated by reference into and are an integral part of this Confirmation Order: (a) the Plan, (b) the exhibits to the Plan, and (c) the Plan Documents. The failure to reference any particular Plan Document, or any provision of a Plan Document or the Plan in this Confirmation Order will have no effect on the Bankruptcy Court’s approval and authorization of, or the validity of, binding effect or enforceability of, the Plan and the Plan Documents in their entirety.

### **Compromises and Settlements Under the Plan**

4. The settlements and compromises set forth in the Plan are approved in all respects.

5. The Global Settlement is approved in its entirety. On the Effective Date, the Debtor is authorized to take or cause to be taken all corporate actions necessary or appropriate to implement the Global Settlement and perform all of its obligations under the Global Settlement and the Global Settlement Documentation without further order of the Bankruptcy Court, and the Global Settlement is deemed binding on all of the parties thereto. Without limiting the generality of the foregoing, each party to the Global Settlement, including, without limitation, the Debtor, QHR and Nautilus, shall be obligated to make all payments set forth in the Global Settlement on the terms and conditions set forth therein. Notwithstanding anything else set forth in the Plan, in the event of a conflict between the Global Settlement Documentation and the Plan, the terms of the Plan shall govern. Further, pursuant to the Global Settlement, the Coverage Action is hereby dismissed with prejudice, and the Rescission Action shall be dismissed with prejudice with each party paying its own attorneys' fees and costs relating to such actions. The parties are ordered to take actions reasonably necessary to evidence the dismissal of the Coverage Action and the Rescission Action, including the filing of any necessary dismissal stipulations.

6. The Bryant Settlement is incorporated into the Plan in its entirety. Pursuant to the Bryant Settlement, the Transferred Causes of Action are not transferred to the Personal Injury Trust and are, instead, deemed released as of July 17, 2012, the date the Bankruptcy Court entered the order approving the Bryant Settlement Motion. Further, all Bryant Reimbursement, Contribution and Indemnity Claims are deemed released, and Dr. Bryant is not entitled to any recoveries on account of any Claims he may have ever have or ever have had against the Debtor, including, without limitation, the Bryant Reimbursement, Contribution and Indemnity Claims, under the Plan, from the Personal Injury Trust, the Debtor or otherwise. Additionally, the Debtor is relieved from its obligations under Section 7.2(g) of the Plan.

7. The East Settlement is approved in its entirety. East shall have an Allowed Claim in the amount of \$2,500,000, subject to the limitations set forth in the Plan. Further, East shall be paid \$90,000 from the Personal Injury Trust and \$10,000 from the Debtor but shall have no further rights to recoveries from the Personal Injury Trust or the Debtor. Finally, East is granted the Debtor's rights to pursue the Quantum Indemnification Rights as provided in the Plan and shall be fully empowered to pursue such rights without further order of the Bankruptcy Court.

#### **Exit Financing**

8. The Exit Financing, including, without limitation, the issuance of the 2012A Bonds, is consistent with the Plan and approved in all respects. The Debtor is authorized to take any and all actions necessary to implement the Exit Financing. Such actions shall include (a) the execution of all indentures, loan agreements, mortgages, financing statements, security agreements, instruments and other agreements or documents required to be executed in connection with the Exit Financing (collectively, the "Exit Financing Documents"); (b) upon the closing of the Exit Financing, the granting of all liens required by the Exit Financing Documents; and (c) the payment of all fees and costs related thereto. Without limiting the generality of the foregoing, the fees and costs owed to Jefferies & Company, Inc. ("Jefferies") pursuant to the engagement letter attached to the *Order Granting Debtor's Emergency Motion for Authority to Enter into Agreement with Jefferies & Company, Inc. to Arrange Exit Financing for Plan and the Reorganized Debtor* [Docket No. 588] are hereby approved on a final basis. The Debtor shall pay such fees and costs as required by such engagement letter.

9. The Debtor is authorized to repay (and/or defease) in full the 2007A Notes and the 2007B Notes and the Letter of Credit Claims with its own funds and with the proceeds of the Exit Financing pursuant to a closing mechanism acceptable to the Letter of Credit Lender. Upon the closing of the Exit Financing, all such payments shall be non-refundable and will not be

subject to avoidance or disgorgement for any reason whatsoever, including, without limitation, under sections 544, 547, 548, 549 or 550 of the Bankruptcy Code.

10. Notwithstanding any of the foregoing, nothing in the Exit Financing Documents shall modify the terms of the Personal Injury Trust Note.

11. With respect to the Letter of Credit Claims and all liens and security interests securing the Letter of Credit Claims (collectively, the “Letter of Credit Liens”) and notwithstanding any other provisions of the Plan or this Order:

(a) The treatment of the Letter of Credit Claims and the Letter of Credit Liens under the Plan shall be as described and provided in the Letter of Credit Documents and the *Final Order Approving Stipulation by and between the Debtor and Bank of America, N.A. Providing Adequate Protection and Authorizing the Use of Cash Collateral, and Granting Related Relief* and *Final Order (I) Approving Agreement to Extend Stipulation by and between the Debtor and Bank of America, N.A. Providing Adequate Protection and Authorizing The Use Of Cash Collateral; (II) Approving Payment Of Extension Fee; And (III) Granting Related Relief*” (the “Stipulations and Orders”). The Letter of Credit Documents and the Stipulations and Orders shall be referred to in this Order as the “Letter of Credit Treatment Documents.” The Letter of Credit Treatment Documents are incorporated into this Order as part of its operative provisions by this reference.

(b) The Letter of Credit Lender’s rights as stated in the Letter of Credit Treatment Documents is incorporated in full into the Plan and this Order, and shall be preserved in all respects and the treatment of Letter of Credit Claims and Letter of Credit Liens under the Plan and this Order shall be in accordance with those legal, equitable, and contractual rights.

(c) Letter of Credit Claims as stated in the Letter of Credit Treatment

Documents are valid and enforceable claims in accordance with and subject to the terms of the Letter of Credit Treatment Documents.

(d) Letter of Credit Liens, including, but not limited to, all liens granted under

the Stipulations and Orders, shall remain in full force and effect after confirmation of the Plan, and shall remain first position, valid, and enforceable liens in accordance with and subject to the Letter of Credit Treatment Documents.

(e) On the Effective Date, the Letter of Credit Claims will be satisfied in full

from proceeds of the Exit Financing or other funds provided by the Debtor as required by the Letter of Credit Treatment Documents, and pursuant to closing procedures that are agreed between the Debtor and the Letter of Credit Lender and are approved by the Bankruptcy Court pursuant to a section 1142 implementation motion to be heard on or before the Effective Date.

(f) Upon, and only upon, the payment of all amounts owed to the Letter of

Credit Lender and the complete satisfaction of the Letter of Credit Claims (including, but not limited to, the reimbursement of all draws on the Letter of Credit and payment of all other charges, costs, and fees, including attorney and other professional fees) as set forth in clause (e) above, the liens and other encumbrances securing the Letter of Credit Claims (including the Letter of Credit Liens, including all liens granted under the Stipulations and Orders) will be released pursuant to closing procedures that are agreed on between the Debtor and the Letter of Credit Lender and approved by the Bankruptcy Court as set forth above.

(g) All releases granted to Letter of Credit Lender under the Plan, including

but not limited to the releases stated in Section 14.16(b) of the Plan, are approved and

adjudicated pursuant to this Order and shall be fully effective and enforceable from and after the Effective Date without further order or action by the Bankruptcy Court.

12. Upon the release of liens as set forth in paragraph 11(f), the Letter of Credit Lender shall take whatever actions are reasonably necessary to evidence the release of its liens.

### **Classification and Treatment**

13. All Claims shall be, and hereby are, classified and treated as set forth in the Plan. The Plan's classification scheme shall be, and hereby is, approved.

14. The treatment of all Claims as provided in the Plan and the Plan Documents shall be, and hereby is, approved.

### **Administrative Claims**

15. The holder of an Administrative Claim, other than (i) a Fee Claim, (ii) a liability incurred and payable in the ordinary course of business by the Debtor (and not past due), or (iii) an Administrative Claim that has been Allowed on or before the Effective Date, must file with the Bankruptcy Court and serve on the Debtor and the U.S. Trustee, notice of such Administrative Claim within forty (40) days after service of Notice of Confirmation. **Failure to file and serve such notice timely and properly shall result in the Administrative Claim being forever barred and discharged.**

16. Each Professional Person who holds or asserts a Fee Claim shall be required to file with the Bankruptcy Court, and serve on all parties required to receive notice, a Fee Application within forty-five (45) days after the Effective Date. **The failure to timely file and serve such Fee Application shall result in the Fee Claim being forever barred and discharged.**

17. Notwithstanding the foregoing, all Fee Claims for services after the Effective Date may be paid by the Debtor upon receipt of an invoice for such services, or on such other

terms to which the Debtor and the relevant Professional Person may agree, without the need for further Bankruptcy Court authorization or entry of a Final Order.

### **Enforceability of Plan and Plan Documents**

18. Pursuant to sections 1123(a), 1141(a) and 1142 of the Bankruptcy Code and the provisions of this Confirmation Order, the Plan and all Plan-related documents (including, but not limited to, the Plan Documents) shall be, and hereby are, valid, binding and enforceable notwithstanding any otherwise applicable nonbankruptcy law. Each of the Plan Documents (to the extent not already approved by order of this Bankruptcy Court) is hereby approved. The Debtor may modify, amend or enter into the Plan Documents, without further order of the Bankruptcy Court, in accordance with the provisions of the Plan.

### **Authorization to Implement the Plan**

19. Upon the entry of this Confirmation Order, the Debtor is authorized to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and to execute, enter into, or otherwise make effective all documents arising in connection therewith, including, without limitation, the Plan Documents (as they may be amended or modified as contemplated or permitted by the Plan) and the Exit Financing Documents, prior to, on and after the Effective Date. All such actions taken or caused to be taken shall be, and hereby are, authorized and approved by the Bankruptcy Court such that no further approval, act or action need to be taken under any applicable law, order, rule or regulation, including without limitation, any action otherwise required by the Debtor or the Debtor's officers or directors, including, among other things, the incurrence of all obligations contemplated by the Plan and the Global Settlement, including securing the Exit Financing, and the making of Plan Distributions.

20. On the Effective Date, the officers of the Debtor are authorized and directed to do all things and to execute and deliver all agreements, documents, instruments, notices and certificates as are contemplated by the Plan and the Global Settlement and to take all necessary action required in connection therewith, in the name of and on behalf of the Debtor.

21. The approvals and authorizations specifically set forth in this Confirmation Order are not intended to limit the authority of the Debtor or the Debtor's officers or directors to take any and all actions necessary or appropriate to implement, effectuate and consummate any and all documents or transactions contemplated by the Plan or this Confirmation Order.

22. The Debtor's current officers and directors are authorized to serve, are duly qualified and shall be empowered to act as permitted by applicable non-bankruptcy law on the Effective Date without further reference to the Bankruptcy Court.

#### **Separate Existence/Revesting of Assets**

23. The Debtor shall continue to exist after the Effective Date as a separate entity, with all the powers available to such legal entity, in accordance with applicable law.

24. Upon the occurrence of the Effective Date, except as otherwise expressly provided in the Plan, title to all of the Assets of the Debtor shall vest in the Debtor free and clear of all liens, Claims, interests, security interests and other encumbrances and without further order of the Bankruptcy Court. In the interest of clarity, it is expressly acknowledged that nothing in the Plan or this Confirmation Order shall limit, modify, discharge or affect any of the liens granted in connection with the Exit Financing. On and after the occurrence of the Effective Date, except as otherwise provided in the Plan, the Debtor may operate its business and may use, acquire and dispose of its Assets free of any restrictions of the Bankruptcy Code.

25. The Assets shall vest in the Debtor without further action or approval by any Person and, pursuant to section 1123(a)(5)(D) of the Bankruptcy Code.

26. On and after the occurrence of the Effective Date, except as otherwise provided in the Plan, the Debtor may operate its business and may use, acquire and dispose of its Assets free of any restrictions of the Bankruptcy Code.

#### **Retention of Causes of Action**

27. Except as otherwise set forth in the Plan, all Causes of Action of the Debtor and its Estate shall, upon the occurrence of the Effective Date, be vested in the Debtor. Except as otherwise provided in the Plan, the rights of the Debtor to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date.

28. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Debtor will not pursue any and all available Causes of Action against them. The Debtor and its Estate expressly reserve all rights to prosecute any and all Causes of Action against any Person, except as otherwise provided in the Plan. Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Final Order, the Debtor expressly reserves all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including without limitation, 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 or after the confirmation or consummation of the Plan by reason of entry of this Confirmation Order. It is acknowledged that the Transferred Causes of Action shall be released to the extent required by the Bryant Settlement.

#### **Disbursing Agent/Distributions**

29. Upon the occurrence of the Effective Date, (a) the Debtor shall be appointed to serve as the Disbursing Agent with respect to all Allowed Claims other than Allowed Trust Personal Injury Claims and Allowed Non-QHR Reimbursement, Contribution and Indemnity

Claims; and (b) the Personal Injury Trustee shall be appointed to serve as the Disbursing Agent with respect to Allowed Trust Personal Injury Claims and Allowed Non-QHR Reimbursement, Contribution and Indemnity Claims. Each of the Debtor and the Personal Injury Trustee, in its respective capacity as a Disbursing Agent, shall have all powers, rights, duties and protections afforded the Disbursing Agent under the Plan. Without limiting the generality of the foregoing, the Personal Injury Trustee, in its capacity as Disbursing Agent shall have all the benefit of all of the exculpations set forth in Section 8.3 of the Plan.

30. Pursuant to the terms and provisions of the Plan (and subject thereto), the Disbursing Agent shall be empowered and directed to (a) take all steps and execute all instruments and documents necessary to make Plan Distributions to holders of Allowed Claims; (b) comply with the Plan and the obligations thereunder; (c) employ, retain or replace professionals to represent it with respect to its responsibilities; (d) object to Claims as specified in the Plan, and prosecute such objections; (e) compromise and settle any issue or dispute regarding the amount, validity, priority, treatment, or Allowance of any Claim as provided under the Plan; (f) make annual and other periodic reports regarding the status of distributions under the Plan to the holders of Allowed Claims that are outstanding at such time, with such reports to be made available upon request to the holder of any Contested Claim; and (g) exercise such other powers as may be vested in the Disbursing Agent pursuant to the Plan, the Plan Documents or order of the Bankruptcy Court.

31. Pursuant to the terms and provisions of the Plan, the Disbursing Agent shall make the required Plan Distributions specified under the Plan on the relevant Plan Distribution Date.

32. Interest accrued after the Petition Date will accrue and be paid on Claims only to the extent specifically provided for in the Plan, this Confirmation Order, or as otherwise required

by this Bankruptcy Court or by applicable law. No award or reimbursement of attorneys' fees or related expenses or disbursements shall be allowed on, or in connection with, any Claim, except as set forth in the Plan, this Order or as ordered by this Bankruptcy Court.

33. All Cash necessary for the Debtor to make payments and Plan Distributions in its capacity as Disbursing Agent shall be obtained from the Debtor's existing Cash balances, operations, and the Exit Financing. All Cash necessary for the Personal Injury Trustee to make payments and Plan Distributions in its capacity as Disbursing Agent shall be obtained from the assets of the Personal Injury Trust in accordance with the terms of the Personal Injury Trust Declaration.

34. The Disbursing Agent shall file objections to Claims, if any, with the Bankruptcy Court as soon as practicable, but not later than (a) the date that is one hundred and eighty (180) days after the Effective Date; or (b) such later date as may be established by order of the Bankruptcy Court upon motion of the Disbursing Agent without notice or a hearing. The Disbursing Agent shall serve any objection to a Claim upon the holder of the Claim to which the Debtor objects.

35. The Disbursing Agent shall file motions to value collateral pursuant to section 506(a) of the Bankruptcy Code and Bankruptcy Rule 3012, if any, with the Bankruptcy Court as soon as practicable, but not later than (a) the date that is one hundred and eighty (180) days after the Effective Date; or (b) such later date as may be established by order of the Bankruptcy Court upon motion of the Disbursing Agent without notice or a hearing.

36. The Debtor, in its capacity as Disbursing Agent, may object to the allowance of Claims filed with the Bankruptcy Court with respect to which liability is disputed in whole or in

part. All objections that are filed and prosecuted as provided herein shall be litigated to Final Order or compromised and settled in accordance with Section 10.4 of the Plan.

37. Notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, from and after the Effective Date, the Debtor and/or the Personal Injury Trustee, in its capacity as Disbursing Agent, shall have authority to settle or compromise all Claims and Causes of Action without further review or approval of the Bankruptcy Court.

#### **Administration of the Personal Injury Trust**

38. The Personal Injury Trust Declaration and the Personal Injury Trust Note, substantially in the forms filed as Plan Documents, are hereby approved and shall be fully enforceable according to their respective terms. Without limiting the generality of the foregoing, the exercise of remedies in the event of a default under the Personal Injury Trust Note shall be governed by the provisions of the Personal Injury Trust Note and any conflicts between such provisions and Section 7.3(b) of the Plan shall be resolved in favor of the provisions set forth in the Personal Injury Trust Note.

39. The appointment of Linda Murphee, CPA as the Personal Injury Trustee is hereby approved. The terms of the Personal Injury Trustee's compensation shall be subject to the approval of the Bankruptcy Court. The Personal Injury Trustee shall have all powers, rights, duties and protections afforded the Personal Injury Trustee under the Plan and any applicable Plan Document, including the Personal Injury Trust Declaration.

40. During the period from the Confirmation Date to the Effective Date, the Debtor shall reimburse the Personal Injury Trustee for actual and necessary out-of-pocket expenses incurred by it in preparing to assume its responsibilities under the Personal Injury Trust Declaration in an aggregate amount not to exceed \$10,000.

41. The Personal Injury Trustee shall have the power to administer the assets of the Personal Injury Trust in a manner consistent with the Personal Injury Trust Declaration and the Plan. Without limiting the generality of the foregoing, the Personal Injury Trustee shall (i) hold and administer, the assets of the Personal Injury Trust; (ii) subject to Section 7.2(h) of the Plan, have the sole power and authority to prosecute objections to the Non-QHR Reimbursement, Contribution and Indemnity Claims at its own cost and expense; (iii) have the power and authority to retain, as an expense of the Personal Injury Trust, such other attorneys, advisors, other professionals and employees as may be appropriate to perform the duties required of the Personal Injury Trustee hereunder or in the Personal Injury Trust Declaration; (iv) make distributions as provided in the Personal Injury Trust Declaration and the Plan; and (v) provide periodic reports and updates regarding the status of the administration of the Personal Injury Trust. The Personal Injury Trustee shall be deemed a Disbursing Agent under the Plan when making distributions to holders of Personal Injury Trust Interests pursuant to the Personal Injury Trust Declaration.

42. The Personal Injury Trust shall be solely responsible for paying from the Personal Injury Trust Property (i), subject to Sections 4.1(h) and 7.2(h) of the Plan, any and all Allowed Non-QHR Reimbursement, Contribution and Indemnity Claims; and (ii) all costs and expenses of the Personal Injury Claims Committee.

43. Upon the occurrence of the Effective Date, in exchange for the consideration provided for in the Plan, the Personal Injury Trust shall be deemed, without need for further action, to have assumed responsibility and liability for all Trust Personal Injury Claims. Except for its right to receive payments pursuant to the Personal Injury Trust Note, neither the Personal Injury Trust, or any Trust Personal Injury Claimant shall have any recourse, claims, causes of

action or right to recovery against the Debtor on account of the Trust Personal Injury Claims, except as provided for in Section 7.3(b) of the Plan.

44. All Trust Personal Injury Claims shall be processed, liquidated, and paid pursuant to the Personal Injury Trust Declaration and the Plan, including pursuant to the terms and provisions of the trust distribution procedures set forth in the Personal Injury Trust Declaration. The sole recourse of the holder of a Trust Personal Injury Claim shall be against the Personal Injury Trust, and such holder shall have no rights whatsoever at anytime to assert such holder's Claim against the Debtor, except as set forth in Section 7.3(b) of the Plan. Prior to making distributions to holders of Trust Personal Injury Claims, the Personal Injury Trustee shall establish sufficient reserves to reasonably assure that the Personal Injury Trust is able to (i) pay all of its administrative costs; (ii) pay the costs and expenses of the Personal Injury Claims Committee; and, (iii) subject to Sections 4.1(h) and 7.2(h) of the Plan, satisfy all Allowed Non-QHR Reimbursement, Contribution and Indemnity Claims in full as provided for in the Plan. In the interest of clarity, it is expressly acknowledged that nothing in this paragraph or in Section 7.2(f) of the Plan shall require the Personal Injury Trustee to resolve all of the Trust Personal Injury Claims prior to making partial distributions of Personal Injury Trust Property.

45. On the Effective Date, the Personal Injury Claims Committee shall be established. The Personal Injury Claims Committee's initial members shall be Lisa K. Curtis, Victor F. Poulos, Denise M. Torres, and Felicia C. Weingartner. The Debtor shall have no responsibility for any costs and expenses incurred by the Personal Injury Claims Committee.

#### **Executory Contracts and Unexpired Leases**

46. Except as otherwise provided for in the Plan, on the Effective Date, all executory contracts and unexpired leases of the Debtor shall be, and hereby are, assumed or rejected in accordance with Article XII of the Plan.

47. The assumption of each of the executory contracts and unexpired leases that is designated to be assumed as set forth in the Schedule of Assumed Executory Contracts and Unexpired Leases or as otherwise designated as being assumed in Sections 12.1, 12.3 and 12.4 of the Plan and for which no timely objection was filed as required by Section 12.1(b) of the Plan is approved pursuant to sections 365(a) and (b) of the Bankruptcy Code and any objections to such assumption are hereby deemed waived in all respects.

48. The rejection of each of the executory contracts and unexpired leases that is designated to be rejected as set forth in the Schedule of Rejected Executory Contracts and Unexpired Leases is approved pursuant to sections 365(a) of the Bankruptcy Code. Such rejected executory contract and unexpired leases are burdensome to the Estate and rejection thereof is in the best interests of the Debtor and its Estate.

49. Inclusion of a contract, lease or other agreement on the Schedule of Rejected Executory Contracts and Unexpired Leases shall constitute adequate and sufficient notice that (i) any Claims arising thereunder or related thereto shall be treated as Unsecured Claims under the Plan, and (ii) the Debtor is no longer bound by, or otherwise obligated to perform, any such obligations, transactions, or undertakings relating thereto or arising thereunder.

50. The listing of a document on the Schedule of Rejected Executory Contracts and Unexpired Leases shall not constitute an admission by the Debtor that such document is an executory contract or that the Debtor has any liability thereunder.

51. Claims created by the rejection of executory contracts and unexpired leases or the expiration or termination of any executory contract or unexpired lease prior to the Confirmation Date must be filed with the Bankruptcy Court and served on the Debtor: (a) in the case of an executory contract or unexpired lease rejected by the Debtor prior to the Confirmation Date, in

accordance with the order rejecting such executory contract or unexpired lease; or (b) in the case of an executory contract or unexpired lease that (i) was terminated or expired by its terms prior to the Confirmation Date; or (ii) is rejected pursuant to Article XII of the Plan, no later than thirty (30) days after the Confirmation Date. Any such Claims for which a proof of claim is not filed and served by the deadlines set forth in the Bar Date Notice or Section 12.5 of the Plan, as applicable, will be forever barred from assertion and shall not be enforceable against the Debtor or its Estate. Unless otherwise ordered by this Bankruptcy Court, all such Claims that are timely filed shall be treated as Unsecured Claims under the Plan subject to objection by the Disbursing Agent.

#### **Releases and Exculpations**

52. The releases and exculpations set forth in Sections 14.16, 14.17, 14.18 and 14.19 of the Plan are incorporated herein by reference and shall be, and hereby are, approved, and shall be effective without further action upon the occurrence of the Effective Date.

53. Notwithstanding Section 14.16 of the Plan, the releases in Section 14.16(c) as to Nautilus shall not release Nautilus from any obligations to the Debtor under any insurance policies issued by Nautilus in favor of the Debtor other than the Nautilus Policies, except that Nautilus shall have no obligation of any kind to cover any Trust Personal Injury Claims under any such other insurance policy. For the avoidance of doubt, notwithstanding any other provision of the Plan or this Confirmation Order, the Debtor and its Estate have not and do not release Nautilus from its obligations under the Healthcare Professional Liability Insurance Policy for the policy period April 9, 2008 through April 9, 2009, mentioned in the Bankruptcy Court's *Order Approving the Debtor's Motion Pursuant to Rules 4001 and 9019 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Approving the Joint Stipulation between the Debtor*

*and Steven Hurst Modifying the Automatic Stay to Permit Steven Hurst to Prosecute the State Court Action* [Docket No. 282].

54. Except as otherwise provided in Section 8.3 of the Plan, the Disbursing Agent, together with its officers, directors, employees, agents, and representatives, are exculpated pursuant to the Plan by all Persons, holders of Claims and all other parties in interest, from any and all Causes of Action arising out of the discharge of the powers and duties conferred upon the Disbursing Agent (and each of its respective paying agents), by the Plan, any Final Order of the Bankruptcy Court entered pursuant to or in the furtherance of the Plan, this Order, or applicable law, except solely for actions or omissions arising out of the Disbursing Agent's willful misconduct or gross negligence. No holder of a Claim or representative thereof, shall have or pursue any Cause of Action (a) against the Disbursing Agent or its respective officers, directors, employees, agents, and representatives for making Plan Distributions in accordance with the Plan; or (b) against any holder of a Claim for receiving or retaining Plan Distributions as provided for by the Plan. Nothing contained in Section 8.3 of the Plan shall preclude or impair any holder of an Allowed Claim from bringing an action in the Bankruptcy Court against the Debtor to compel the making of Plan Distributions contemplated by the Plan on account of such Claim. Nothing in this paragraph shall limit, modify, extinguish or impair the rights of the Trust Personal Injury Claimants under the Global Settlement.

55. None of the Debtor, the Creditors' Committee, the United Tort Claimants, the Personal Injury Claims Committee, the QHR Entities or Nautilus or their respective members (in their capacity as such), or any of their respective officers, directors, members, employees, agents, representatives, advisors, attorneys or successors and assigns will have or incur any liability to any Person for any act or omission in connection with, or arising out of, the pursuit of

confirmation of the Plan, the consummation of the Plan, or the implementation or administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence as finally determined by the Bankruptcy Court, and, in all respects shall be entitled to rely upon the advice of counsel and all information provided by other exculpated persons herein without any duty to investigate the veracity or accuracy of such information with respect to their duties and responsibilities under the Plan.

#### **Retention of Jurisdiction**

56. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court shall retain and shall have jurisdiction over any matter: (a) arising under the Bankruptcy Code; (b) arising in or related to the Chapter 11 Case, the Plan, or this Order; or (c) that relates to the matters set forth in Article XIII of the Plan.

#### **Effect of Confirmation**

57. The rights afforded in the Plan and the treatment of all Claims in the Plan shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever against the Debtor, the Estate, the Debtor in Possession or any of their Assets. Except as otherwise provided herein, on the Effective Date, all Claims against the Debtor and the Debtor in Possession shall be satisfied, discharged, and released in full. Except as otherwise provided herein, all Persons shall be precluded and forever barred from asserting against the Debtor, the Estate and its Assets any event, occurrence, condition, thing, or other or further Claims or Causes of Action based upon any act, omission, transaction, or other activity of any kind or nature that occurred or came into existence prior to the Effective Date, whether or not the facts of or legal bases therefore were known or existed prior to the Effective Date.

58. Except as otherwise provided in the Plan or the Confirmation Order, on the Effective Date, without further notice or order, all Claims of any nature whatsoever shall be

automatically discharged forever. Except as otherwise provided in the Plan or the Confirmation Order (including, without limitation, the treatment of the Trust Personal Injury Claims), on the Effective Date, the Debtor and its Estate shall be deemed fully discharged and released from any and all Claims, including, but not limited to, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), and 502(i) of the Bankruptcy Code, whether or not (a) a proof of claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code; (b) a Claim based upon such debt is allowed under section 502 of the Bankruptcy Code; or (c) the holder of a Claim based upon such debt has accepted the Plan. This Order shall be a judicial determination of discharge of all liabilities of the Debtor and its Estate. As provided in section 524 of the Bankruptcy Code, such discharge shall void any judgment against the Debtor and its Estate to the extent it relates to a discharged Claim, and operates as an injunction against the prosecution of any action against the Debtor, its Estate or its Assets to the extent it relates to a discharged Claim. Except as set forth in the Global Settlement (which shall be fully enforceable according to its terms), nothing in the Plan or this Confirmation Order shall discharge any party other than the Debtor from any litigation asserted by the United Tort Claimants in connection with the Trust Personal Injury Claims.

59. Except as otherwise provided in the Plan, upon the occurrence of the Effective Date, the Debtor shall be discharged from all Claims and Causes of Action to the fullest extent permitted by section 1141 of the Bankruptcy Code, and all holders of Claims shall be precluded from asserting against the Debtor, its Assets, or any property dealt with under the Plan, any further or other Cause of Action based upon any act or omission, transaction, event, thing, or other activity of any kind or nature that occurred or came into existence prior to the Effective Date.

60. Pursuant to section 1146 of the Bankruptcy Code, the issuance, transfer, or exchange of notes under the Plan, the creation of any mortgage, deed of trust, lien, pledge or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax to the fullest extent provided in section 1146(a) of the Bankruptcy Code. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. To effectuate the terms of this Confirmation Order and Section 14.10 of the Plan, this Bankruptcy Court may enter any order necessary or appropriate to implement Section 14.10 of the Plan.

### **Injunctions**

61. **On the Effective Date and except as otherwise provided in the Plan, all Persons who could have been, were, are, or may be holders of Claims against the Debtor shall be permanently enjoined from taking any of the following actions against or affecting the Debtor, the Estate, the Assets or the Disbursing Agent, or any of their current or former respective members, directors, managers, officers, employees, agents, and professionals, successors and assigns or their respective assets and property with respect to such Claims (other than actions brought to enforce any rights or obligations under the Plan):**

**(a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without**

limitation, all suits, actions, and proceedings that are pending as of the Effective Date, which must be withdrawn or dismissed with prejudice);

(b) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order;

(c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance; and

(d) asserting any setoff, right of subrogation or recoupment of any kind; provided, that any defenses, offsets or counterclaims which the Debtor may have or assert in respect of the above referenced Claims are fully preserved in accordance with Section 14.14 of the Plan.

62. Any holder of a Tax Claim is enjoined from commencing or continuing any action or proceeding against any responsible person, officer or director of the Debtor that otherwise would be liable to such holder for payment of a Tax Claim so long as the Debtor is in compliance with Section 5.3 of the Plan. So long as the holder of an Allowed Tax Claim is enjoined from commencing or continuing any action or proceeding against any responsible person, officer or director under Section 5.3 of the Plan or pursuant to this Order, the statute of limitations for commencing or continuing any such action or proceeding shall be tolled.

#### **Special Provisions Regarding Resolution of the Objections**

63. The following provisions reflect the consensual resolution of the Objections raised prior to the deadline for objecting to the Plan.

##### **A. Informal Objections to the Plan**

(1) East. As detailed above, the East objection was resolved by the East Settlement and East Modification.

(2) Robins & Morton. In resolution of the informal objection to the Plan raised by Robins & Morton, notwithstanding anything in the Plan or this Confirmation Order to

the contrary, nothing in the Plan is intended to or shall affect Robins & Morton's rights under the stipulation [Docket No. 351] (the "R&M Stipulation") or the Standard Form Agreement entered into by and between the Debtor and Robins & Morton on March 29, 2010, which was assumed pursuant to the R&M Stipulation, including, without limitation, any lien rights. Any liens granted to Robins & Morton in the R&M Stipulation shall remain perfected and in full force and effect until the Robins & Morton Claim has been satisfied as set forth in the Plan. Further, the Debtor shall pay Robins & Morton's reasonable attorneys' fees and costs related the Robins & Morton Claim to the extent required by the R&M Stipulation.

**B. Formal and Informal Assumption Objections**

(1) Cerner Healthcare Solutions, Inc. As to Cerner Healthcare Solutions, Inc., the Debtor acknowledges that it is assuming the entire license with Cerner Healthcare Solutions, Inc. As of July 1, 2012, (the "Cerner Healthcare Solutions Reconciliation Date"), the amount owed to Cerner Healthcare Solutions, Inc., is \$12,322.24 (the "Cerner Healthcare Solutions Cure Amount"). The Cerner Healthcare Solutions Cure Amount shall be promptly paid as a cure amount upon the Plan Distribution Date and sent to: Marc E. Elkins, Esq., Vice President and Associate General Counsel, Cerner Corporation, 2800 Rockcreek Parkway, Kansas City, MO 64117. Any amounts due after the Cerner Healthcare Solutions Reconciliation Date shall be paid in the ordinary course of business on the terms and conditions set forth in the applicable agreements.

(2) Cerner Corporation. As to Cerner Corporation, the Debtor acknowledges that it is assuming the entire license with Cerner Corporation. As of July 1, 2012, (the "Cerner Corporation Reconciliation Date"), the amount owed to Cerner Corporation is \$1,787,477.54 (the "Cerner Corporation Cure Amount"). The Cerner Corporation Cure Amount shall be promptly paid as a cure amount upon the Plan Distribution Date and sent to: Marc E. Elkins,

Esq., Vice President and Associate General Counsel, Cerner Corporation, 2800 Rockcreek Parkway, Kansas City, MO 64117. Any amounts due after the Cerner Corporation Reconciliation Date shall be paid in the ordinary course of business on the terms and conditions set forth in the applicable agreements, except that the payments due in July, 2012, totaling \$161,273.50, shall be paid upon expiration of fourteen (14) days after entry of this Confirmation Order.

(3) As of August 1, 2012 (the “Reconciliation Date”), under that certain Facility Commitment Agreement, Pharmaceutical Products Distribution Services, HealthTrust Purchasing Group Members, with a commencement date of October 1, 2008 (the “Pharmacy Agreement”), the amount owed: (i) to CH 110 by the Debtor is \$327,031.91 (the “CH 110 Pharmacy Claim Cure Amount”), and (ii) to the Debtor by CH 110 is \$25,661.00 (the “Debtor Pharmacy Claim”).

As of the Reconciliation Date, under that certain Facility Commitment Agreement, Medical/Surgical Products Distribution Services, HealthTrust Purchasing Group Members, with a commencement date of December 1, 2008 (the “Medical Agreement”), the amount owed (i) to CH 200 by the Debtor is \$119,791.31 (the “CH 200 Medical Claim Cure Amount”) and (ii) to the Debtor by CH 200 is \$9,010.46 (the “Debtor Medical Claim”).

As of the Reconciliation Date, the amount owed (i) to Cardinal Health, 414, LLC (“CH 414” and, together with CH 110 and CH 200, “Cardinal Health”) by the Debtor is \$28,458.72 (the “CH 414 Claim Amount”), and (ii) to the Debtor by CH 414 is \$0 (the “Debtor 414 Claim”).

Notwithstanding anything else to the contrary in this Confirmation Order, the Plan, or any other Order entered in the Chapter 11 Case:

(i) Cardinal Health shall maintain all rights of setoff and recoupment and, accordingly, the automatic stay imposed by section 362(a) of the Bankruptcy Code is modified for the express and limited purpose of allowing: (x) CH 110 to offset the Debtor Pharmacy Claim against the CH 110 Pharmacy Claim Cure Amount; (y) CH 200 to offset the Debtor Medical Claim against the CH 200 Medical Claim Cure Amount; and (z) CH 414 to offset the Debtor 414 Claim against the CH 414 Claim Amount;

(ii) Upon the Effective Date (x) as a prerequisite to the assumption of the Pharmacy Agreement, pursuant to section 365 of the Bankruptcy Code, CH 110 shall be paid the balance of the CH 110 Cure Amount, after setoff, in the amount of \$301,370.91; (y) as a prerequisite to the assumption of the Medical Agreement, pursuant to section 365 of the Bankruptcy Code, CH 200 shall be paid the balance of the CH 200 Cure Amount, after setoff, in the amount of \$110,780.85; and (z) CH 414 shall be paid the balance of the CH 414 Claim Amount, after setoff, in the amount of \$28,458.72; and

(iii) The Debtor shall also pay to Cardinal Health, in the ordinary course of business, all amounts due and owing to Cardinal Health following the Reconciliation Date, and nothing contained herein shall be deemed to be a waiver by Cardinal Health of any rights or claims against the Debtor and/or its estate with respect to any unpaid amounts owed to Cardinal Health by the Debtor following the Reconciliation Date, including, without limitation, any setoff rights Cardinal Health may have, pursuant to section 553 of the Bankruptcy Code and applicable law, and any claims Cardinal Health may have, pursuant to section 503 of the Bankruptcy Code, and Cardinal Health and the Debtor each hereby expressly reserve all rights with respect to same including, without limitation, the Debtor's right to object to same.

(4) Public Service Company of New Mexico. Notwithstanding anything in

the Plan, PNM shall be paid a cure amount of \$185,622.09 plus any past due post-petition amounts outstanding as of the Effective Date; provided that \$158,000 of such amount shall be payable to PNM through the application of the Debtor's \$158,000 post-petition deposit to such cure amount. The remaining cure amounts shall be payable in Cash. The Debtor shall continue to pay post-petition invoices issued by PNM when due from the Confirmation Date through the Effective Date.

(5) Siemens. The Debtor and Siemens have indicated on the record that they have resolved their disputes concerning the rejection of (a) various unperformed purchase orders issued on December 29, 2010, (b) the various contracts related thereto and any resulting rejection damages to Siemens, subject to final documentation that has not been agreed to by the parties. As a result, notwithstanding anything in the Plan, this Confirmation Order or in the schedules of executory contracts and unexpired leases attached to the Disclosure Statement, such purchase orders, other agreements and rejection claims shall be treated as set forth in the definitive documentation to be provided to the Bankruptcy Court hereafter evidencing the agreement of the parties. The Bankruptcy Court shall maintain jurisdiction over the matters set forth in this paragraph pending final documentation.

#### **Miscellaneous Provisions**

64. The stay in effect in the Chapter 11 Case pursuant to section 362(a) of the Bankruptcy Code shall continue to be in effect until the Effective Date, and at that time shall be dissolved and of no further force or effect, subject to the injunctions set forth in this Confirmation Order, Section 14.20 of the Plan and/or sections 524 and 1141 of the Bankruptcy Code; provided, however, that nothing herein shall bar the filing of financing documents (including Uniform Commercial Code financing statements, security agreements, leases, mortgages, trust agreements and bills of sale) or the taking of such other actions as are necessary

to effectuate the transactions contemplated by the Plan or by this Confirmation Order prior to the Effective Date.

65. During the period from the Confirmation Date through and until the Effective Date, the Debtor shall continue to operate its business as a debtor in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules and all orders of the Bankruptcy Court that are then in full force and effect.

66. Except with respect to the treatment of any Claim, or as otherwise specified herein, nothing in the Plan or this Confirmation Order shall be construed to modify, discharge, alter, amend, or impair the terms of, or rights under or reserved in, any stipulation or agreement (including any reservations of rights contained therein) between the Debtor and any party in interest that has been approved by a Final Order (each an “Agreement”).

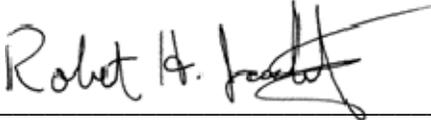
67. On the Effective Date, the Creditors’ Committee shall dissolve automatically, whereupon its members, professionals, and agents shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to (a) applications for Fee Claims or reimbursement of expenses incurred as a member of the Creditors’ Committee, and (b) any motions or other actions seeking enforcement or implementation of the provisions of the Plan or this Confirmation Order or pending appeals of orders entered in the Chapter 11 Case.

68. On the Effective Date, the Patient Care Ombudsman’s services shall terminate automatically, whereupon the Patient Care Ombudsman, its professionals, and agents shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to applications for Fee Claims or reimbursement of expenses incurred as the Patient Care Ombudsman or its professionals.

69. In accordance with Section 14.11 of the Plan, the Debtor shall publish and serve on all known parties in interest and holders of Claims, notice of the entry of the Confirmation Order and all relevant deadlines and dates under the Plan, including, but not limited to, the deadline for filing notice of Administrative Claims, and the deadline for filing rejection damage Claims.

70. To the extent that any provisions of this Confirmation Order may be inconsistent with the terms of the Plan or any Plan Documents, the terms of this Confirmation Order shall be binding and conclusive. Except as expressly provided otherwise in this Confirmation Order, to the extent that any provision of any Plan Document may be in conflict with or inconsistent with any provision of the Plan, the terms of the Plan shall govern and be binding and conclusive.

Dated: Albuquerque, New Mexico  
August \_7\_, 2012

  
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UNITED STATES BANKRUPTCY JUDGE

## Notice Recipients

District/Off: 1084-1  
Case: 11-13686-j11

User: phennessy  
Form ID: pdfor1

Date Created: 8/7/2012  
Total: 6

### Recipients of Notice of Electronic Filing:

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aty	John D. Wheeler	jdw@jdw-law.com
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TOTAL: 6