UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA – FORT MYERS DIVISION

Case No. 2:09-cv-445-FtM-229SPC

DANIEL S. NEWMAN, as Receiver for Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P.,

Plaintiff,

vs.

SUN CAPITAL, INC., a Florida corporation, SUN CAPITAL HEALTHCARE, INC., a Florida corporation, and HLP PROPERTIES OF PORT ARTHUR, LLC, a Texas limited liability company,

Defendants.

JOINT MOTION FOR EXPEDITED APPROVAL OF PROPOSED PROCEDURE TO OBTAIN COURT APPROVAL OF THE PROPOSED SETTLEMENT TRANSACTION

Plaintiff Daniel S. Newman, not individually but solely in his capacity as Receiver (the "Receiver") for Founding Partners Capital Management Company ("FPCM"), Founding Partners Global Fund, Ltd. ("Global Fund"), Founding Partners Stable-Value Fund, L.P. ("Stable-Value"), Founding Partners Stable-Value Fund II, L.P. ("Stable-Value II") and Founding Partners Hybrid-Value Fund, L.P. ("Hybrid-Value") (FPCM, Global Fund, Stable-Value, Stable-Value II and Hybrid-Value are collectively referred to as the "Receivership Entities"; Global Fund, Stable-Value, Stable-Value II and Hybrid Value are collectively referred to as the "Receivership Funds") and Defendants Sun Capital Healthcare, Inc. ("SCHI"), Sun Capital, Inc. ("SCI"), and HLP Properties of Port Arthur, LLC ("HLP," and together with SCHI and SCI, the

"Sun Entities") respectfully submit their Joint Motion for expedited approval of the proposed procedure to obtain Court approval of their proposed settlement transaction

A copy of this Motion with exhibits, and other materials as discussed below, will be sent to all investors in the Receivership Funds at their addresses known to the Receiver based on the books and records of the Receivership Entities, if the Court approves the process outlined herein to give notice of the settlement transaction to the investors.

INTRODUCTION

The parties are pleased to report that they have reached a comprehensive settlement agreement, subject to Court approval.

The purpose of this Motion is, first, to seek approval of the parties' proposed procedure for court approval pursuant to which the investors in the Receivership Entities would be given notice of the proposed settlement transaction and an opportunity to object to the proposed Settlement Agreement, and second, to seek the Court's approval of the Settlement Agreement, after the Court has a chance to consider any objections filed.

In essence, the proposed Settlement Agreement provides that, in exchange for the Sun-Related Parties[1] being released from the Receiver's and the Releasing Investors' claims and potential claims, the Sun Principals, Spouses and Dawson will transfer ownership of their factoring companies (SCHI and SCI) and their hospital companies and associated real estate holding companies (Promise, Success and related entities) (collectively, the "Settlement

[1] The Sun-Related Parties that would be parties to the Settlement Agreement are listed in the attached documents, and are composed of the following: (a) SCHI and SCI, which are Defendants in this case; (b) Messrs. Peter Baronoff, Howard Koslow, and Lawrence Leder (the "Sun Principals"); (c) Malinda Baronoff, Jane Koslow, and Carole Leder, the Sun Principals' spouses (the "Spouses"); (d) Mark Dawson, an individual with an ownership interest in Promise ("Dawson"); (e) Promise Healthcare, Inc. ("Promise"); (f) Success Healthcare, LLC ("Success"); and (g) affiliates of SCHI, SCI, Promise and Success listed on Annex I to the Settlement Agreement. The affiliates listed on Annex I except for Trieste Land Ventures, LLC and F.C.G. Courtyard are collectively referred to as the "Other Acquired Companies".

Entities") to a newly formed entity wholly-owned by Stable-Value (the "FP Designee"), except that the Sun Principals, Spouses and Dawson will collectively retain a 4% ownership interest in Promise on the terms more fully described below.

To the extent approved by the Court, upon closing of the Settlement Agreement, for an interim period thereafter (until the Receiver can distribute membership interests described in the succeeding paragraph at the conclusion of a court-approved claims process), the FP Designee will remain a subsidiary of Stable-Value, operating under a governance structure that is described below.

Following the conclusion of a Court-approved claims process (which will be the subject of a future motion), the Receiver intends, upon Court approval, to distribute membership interests in the FP Designee to Releasing Investors (as hereafter defined) of the Receivership Entities, such that ownership of the FP Designee will be transferred from Stable-Value to such Releasing Investors whose interests are validated through the claims process. To distribute these membership interests as part of a future claims process, the Receiver will seek a fairness hearing under the securities laws, described below.

Under the terms of the Settlement Agreement, only those investors of the Receivership Funds who agree to release the Sun-Related Parties from all claims that those investors may have or have asserted against the Sun-Related Parties and who furnish a signed release ("Releasing Investor") will be eligible for distribution of a membership interest in the FP Designee. Non-releasing investors shall retain any rights and claims they may have against the Sun-Related Parties, but will not be eligible for distribution of a membership interest in the FP Designee. A copy of the proposed release that will be required to be executed by Releasing Investors is attached as Exhibit 1 (the "Investor Release"). It is a condition of closing of the transaction that

a sufficient number of investors have executed such releases (to be held by the Receiver in escrow pending closing, when they will be delivered to the Sun-Related Parties' counsel).

To date, investors purporting to own investments in the Receivership Entities equal to approximately $144 million have executed Consents to the Settlement Agreement, copies of which are attached hereto as Exhibit 2, whereby such investors have approved the settlement on the terms provided in the Settlement Agreement and have agreed to execute and deliver an Investor Release ("Consenting Investors").

The Receiver intends to distribute the form of Investor Release to all known investors as described in Section VI of this Motion. Through a separate motion seeking approval for the initiation of a claims process, the Receiver will seek an order that will provide, among other things, that investors shall be required to return to the Receiver an executed Investor Release (along with other materials typically required for submission of a claim in a receivership) by a deadline to be set by the Court, if they wish to be eligible for distribution of a membership interest in the FP Designee. Investors – such as the Consenting Investors – may execute the Investor Releases at any time prior to the deadline.[2] However, as described below, the Sun-Related Parties are not obligated to close the transaction until a sufficient number and dollar percentage of executed Investor Releases (based on the Investor List, defined below) have been received.

As explained below, the Receiver supports the Settlement Agreement and finds it to be in the best interests of the Receivership Entities. The parties jointly propose that the investors of the Receivership Funds be given notice of the proposed settlement through the mailing of a court-approved disclosure package by the Receiver to known investors, publication in at least

[2] As described below, in the claims process motion, the Receiver intends to request that the Court order that Investor Releases must be returned to the Receiver within 45 days after the entry of an order on the claims process motion, so long as the conditions of execution of Investor Releases have been met.

two newspapers with national circulation for two consecutive weeks and posting online of same on the official Founding Partners Receivership website set up by the Receiver, www.founding partners-receivership.com. The parties further jointly propose that an order be entered requiring that any objections by any investors be made in writing, served on the parties, and filed with the Court in accordance with a schedule to be set by the Court, which will set forth dates for mailing of the notice to all investors, filing of objections by investors, and responses to objections by the Receiver and/or the Sun Entities. The parties are working on a proposed form of order and, with the Court's permission, will submit it by e-mail in accordance with the Court's individual rules.

DISCUSSION

I. APPOINTMENT OF RECEIVER AND THE RECEIVERSHIP ORDER

On April 20, 2009, the United States Securities and Exchange Commission filed its complaint ("SEC Action") against Founding Partners Capital Management Company ("FPCM") and William L. Gunlicks ("Gunlicks"), alleging that FPCM and Gunlicks engaged, and were engaging, in a scheme to defraud investors and violate the federal securities laws (SEC Action, D.E. 1). In the SEC action, the SEC sought, among other relief, entry of a temporary restraining order and a preliminary injunction.

On April 20, 2009, the Court entered an Order Freezing Assets of FPCM and Gunlicks (the "Asset Freeze Order"). The Asset Freeze Order also applies to Stable-Value, Stable-Value II, Global Fund and Hybrid-Value. Also, on April 20, 2009, the Court entered an order (the "Initial Receivership Order") appointing a receiver (the "Initial Receiver") for the Receivership Entities. (SEC Action, D.E. 9).

On May 13, 2009, the Court removed the Initial Receiver. (SEC Action, D.E. 70). On May 20, 2009, the Court entered an order (the "Receivership Order") appointing Daniel S.

Newman, Esq. replacement receiver of the Receivership Entities. (SEC Action, D.E. 73). The Receivership Order provides that the Receiver shall, among other things:

> (a) Take immediate possession of all property, assets and estates of every kind of Founding Partners and each of the Founding Partners Relief Defendants, whatsoever and wheresoever located, including but not limited to all offices maintained by Founding Partners and the Founding Partners Relief Defendants, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of Founding Partners and the Founding Partners Relief Defendants wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order… ;
>
> (b) Investigate the manner in which the affairs of Founding Partners and the Founding Partners Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and on behalf of Founding Partners or the Founding Partners Relief Defendants and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred money or other proceeds directly or indirectly traceable from investors in Founding Partners and the Founding Partners Relief Defendants…; and
>
> …
>
> (f) Defend, compromise or settle legal actions, including the instant proceeding, in which Founding Partners, any of the Founding Partners Relief Defendants, or the Receiver are a party, commenced either prior to or subsequent to this Order, with authorization of this Court….

II. THE SUN LITIGATION

Pursuant to the Receivership Order, on July 14, 2009, the Receiver filed suit against the Sun Entities, seeking the recovery of over $500 million (D.E. 1) (the "Sun Litigation"). The lawsuit asserted, among other things, claims arising from the loan agreements between Stable-Value and the Sun Entities.

On July 15, 2009, the Receiver seized lockbox bank accounts utilized by the Sun Entities. On July 22, 2009, the Sun Entities filed a Motion for a Temporary Restraining Order and

Preliminary Injunction to return control of the lockboxes to the Sun Entities, which was opposed by the Receiver on July 24, 2009. (D.E. 11 & 13). On July 24, 2009, the Court issued a restraining order, temporarily returning control of the lockboxes to the Sun Entities, pending resolution of the Sun Entities' pending Motion for Preliminary Injunction. (D.E. 19).

On July 28, 2009, the Court granted the Receiver's Motion, consented to by the Sun Entities, providing for expedited discovery to be followed by a briefing schedule in connection with the Sun Entities' pending Motion for Preliminary Injunction on the lockboxes. (D.E. 22). Thereupon, the parties engaged in expedited discovery.

On August 24, 2009, the Sun Entities answered the complaint, asserted defenses and asserted counterclaims. (D.E. 29).

On October 9, 2009, the Receiver moved to strike defenses and to dismiss the counterclaims. (D.E. 68). The Sun Entities opposed the Motion (D.E. 88), which is fully briefed.

On January 19, 2010, following the completion of the expedited discovery period, the Receiver filed his Memorandum in Opposition to the Sun Entities' Motion for Preliminary Injunction. (D.E. 125).

On March 3, 2010, the Sun Entities filed their Reply Brief in Further Support of their Motion for Preliminary Injunction. (D.E. 161).

On April 16, 2010, the Receiver filed his Motion to Strike the Sun Entities' Reply Brief and Supporting Declarations, which was opposed by the Sun Entities. (D.E. 182).

Meanwhile, on March 1, 2010, the Receiver filed his Motion to Amend the Complaint. (D.E. 159). The Receiver sought to add claims against the existing Defendants and to assert

claims against the Sun Principals and hospitals, real estate, and other companies that were owned by the Sun Principals.

On March 26, 2010, the Sun Entities opposed the Motion to Amend. (D.E. 180).

On April 12, 2010, Magistrate Judge Sheri Polster Chappell issued a Report and Recommendation, recommending that the Motion to Amend be granted in part and denied in part, to permit the Receiver to add certain claims against existing Defendants, but not to add new defendants in this litigation. (D.E. 181). Following objection by the Receiver (D.E. 190), opposed by the Sun Entities (D.E. 192), the Court adopted the Report and Recommendation (D.E. 193).

On or about June 1, 2010, the Receiver served numerous subpoenas duces tecum on the Sun Entities and related entities.

On June 12, 2010, the Sun Entities filed a Motion to Stay the litigation for 120 days for purposes of settlement discussions. (D.E. 196). In the Motion, the Sun Entities stated that they entered into a term sheet, providing for the terms of a proposed settlement, with a group of investors in one or more of the Receivership Entities (the "Investor Group"). The Motion further stated that the proposed term sheet provided for the settlement of the Receiver's claims against the Sun Entities (and against the Sun Principals and their other companies, which were not permitted to be added to the Sun Litigation), in exchange for the Sun Principals' transferring for the benefit of the investors in the Receivership Entities the Sun Principals' factoring companies (SCHI, SCI) and their hospitals and associated real estate holding companies (Promise, Success and certain related entities), while retaining certain interests in those assets. The Sun Entities attached affidavits from two members of the Investor Group that negotiated the term sheet with

the Sun Entities, stating that an overwhelming majority of the investors they had contacted supported the term sheet and the proposed stay.

On June 28, 2010, the Receiver opposed the Motion to Stay. (D.E. 200). The Receiver argued, among other things, that claims in the Sun Litigation belonged to the Receivership, and thus any settlement had to involve the Receiver. The Receiver also requested that any stay be for less than the requested 120 days.

On July 8, 2010, the Court issued an order staying the Sun Litigation for 60 days and requiring a joint status report at the end of the 60-day stay. (D.E. 202).

In its Order, the Court noted that it would grant the stay because, among other things:

> "The Court clearly has the discretionary authority to grant a reasonable stay in a case, and pursuit of a settlement can be a reasonable basis for a stay. This particular case is not typical, and literally cries out for a good faith effort at resolution before the only people left standing are the lawyers and other litigation professionals. It would appear that a settlement may only be accomplished if the efforts include substantial involvement of an informed Receiver in the settlement process. The Receiver was appointed not only for his legal and business acumen, but to bring common sense to a process, which by its very nature can be complex." (D.E. 202).

The following motions are among those that were fully briefed and remained pending at the time the litigation was stayed: (a) the Receiver's Motion to Strike Sun's Affirmative Defenses and Counterclaims, (b) the Sun Entities' Motion for Preliminary Injunction, and (c) the Receiver's Motion to Strike the Sun Entities' reply papers.

Thereafter, the Receiver and the Sun Entities have requested several extensions of the stay to continue settlement negotiations. The Court granted those requests, and the stay continues through the present.

III. THE PROPOSED SETTLEMENT

This section discusses some of the material provisions of the draft Settlement Agreement, the exhibits thereto and any documents to be executed in connection with the transactions contemplated thereby (collectively, the "Transaction Documents"). Copies of the Transaction Documents, except for certain confidential materials which will be the subject of a motion to file under seal, are attached as Exhibit 3 to this Motion.[3]

In essence, the proposed Settlement Agreement provides that, in exchange for releasing the Sun-Related Parties from the Receiver's claims and potential claims, the Sun Principals will transfer their direct or indirect ownership interests in their factoring companies (SCHI and SCI) and their hospital companies and associated real estate holding companies (Promise, Success and Other Acquired Companies) to the FP Designee, a newly formed, wholly-owned subsidiary of Stable-Value.

A. COMPANIES TO BE TRANSFERRED

The Sun Principals, Spouses and Dawson will directly or indirectly convey to the FP Designee all of the ownership interest in SCHI, SCI, Success and the Other Acquired Companies. They will also cause stock of Promise to be issued, as a result of which the FP Designee will indirectly own all of the preferred stock of Promise and 96% of the common stock of Promise, with the remaining 4% to be retained by the Sun Principals, the Spouses and Dawson.

Collectively, the Settlement Entities own or lease and operate eighteen hospitals, two medical office buildings and a nursing school. Promise's facilities consist of fifteen long term

[3] The confidential materials that the parties wish to file under seal are Mr. Baronoff's employment agreement, a redacted disclosure statement (and exhibits) to the Transaction Documents, and a chart reflecting the organizational structure of the entities following the closing ("Post-Closing Organizational Chart") (collectively "Confidential Materials").

acute care hospitals ("LTACHs"). Promise, the Sun Principals' LTACH division, provides medical care to patients who suffer from conditions too complex to be effectively managed by skilled nursing or sub-acute facilities, and require inpatient care for longer durations than general acute care hospitals are organized or staffed to provide. Success, the Sun Principals' community-based hospital division, operates two general acute care hospitals and one psychiatric facility as well as two medical office buildings and a nursing school. Success hospitals offer a variety of medical-surgical services such as primary care, emergency services, general surgery, bariatric surgery, internal medicine, cardiology, oncology, senior care and wound care. In addition, the hospitals provide inpatient and outpatient ancillary services including rehabilitation and diagnosis. Success' psychiatric hospital offers acute and geriatric services as well as other behavioral care programs.

The Settlement Entities' corporate headquarters are located in Boca Raton, Florida, with a satellite office in Shreveport, Louisiana.

As part of the settlement transaction, ownership of Other Acquired Companies that own the real estate which is utilized by Promise or Success will be conveyed to Promise, such that once the transactions contemplated by the Settlement Agreement are closed, the ownership of the Settlement Entities will be as set forth on the Post-Closing Organizational Chart, which will (together with the other Confidential Materials) be the subject of a joint motion to file under seal, and which will be distributed to investors who execute the required confidentiality agreement. Thus, after the closing, each of SCI, SCHI and Success will be wholly-owned by the FP Designee, and SCHI will own 96% of the issued and outstanding common stock of Promise, while the other 4% thereof will be retained by the Sun Principals, their Spouses and Dawson (the "Retained Equity"), as more fully discussed below.

In exchange for Promise's issuance of 96% of the common stock of Promise to SCHI, along with the preferred stock discussed below, SCHI will cancel approximately $150 million in outstanding indebtedness due SCHI from Promise. In addition, the remaining existing loans made by SCHI to Promise (the "Existing Loans") will be amended and restated as follows:

1. Senior Term Facility: $75 million loan, which shall accrue interest at LIBOR plus 7.5% annually, payable quarterly (the "Senior Term Facility"). The Senior Term Facility shall be deemed fully-funded as of the closing from the Existing Loans, and shall be repaid upon maturity, which shall not exceed 5 years after the closing. It shall be secured by a first-priority security interest in all assets of Promise and its operating and real estate subsidiaries, excepting (i) those assets in which the Sun Principals, Spouses and Dawson are being granted a security interest (and in which SCHI is obtaining a subordinated second-priority security interest) and (ii) certain accounts and books and records and other related assets, which are being pledged to secure a line of credit Promise intends to obtain as a condition precedent to the closing.

2. Subordinated Term Loan: $125 million loan, accruing interest at 12% annually, payable quarterly in kind, which shall be subordinated to the Senior Term Facility (the "Subordinated Term Loan"). The Subordinated Term Loan shall be deemed fully-funded as of the closing from the Existing Loans and shall have a term of 5 years after closing. It shall be secured by a second-priority security interest in all assets of Promise and its subsidiaries, excepting (i) those assets in which the Sun Principals, Spouses and Dawson are being granted a security interest (and in which SCHI is obtaining a subordinated third-priority security interest) and (ii) certain accounts and books and records and other related assets, which are being pledged to secure a line of credit Promise intends to obtain as a condition precedent to the closing.

3. Preferred Stock in Promise will be issued, and will have a liquidation preference and mandatory redemption value of $75 million (the "Preferred Stock"). *See* Article 4 of Exhibit F to the Settlement Agreement (part of Exhibit 3 hereto).

The Senior Term Facility, the Subordinated Term Loan (except for the interest payable thereunder) and the Preferred Stock shall each have priority over the Retained Equity. Therefore, it is anticipated that the FP Designee, as lender, will receive $275 million plus interest in cash on the Senior Term Facility (to the extent of proceeds ultimately available) before the Sun Principals receive anything in respect of the Retained Equity.

B. CLAIMS TO BE RELEASED

Pursuant to the terms of the proposed Settlement Agreement, upon closing of the transaction, the Receiver and the Sun-Related Parties – which include the Defendants in this case as well as the Sun Principals and specified related individuals and entities – agree to mutual general releases (but do not release each other from claims arising from the Transaction Documents), as set forth in the attached releases. The claims to be released therefore include, without limitation, the parties' claims in the Sun Litigation and the Receiver's unasserted claims against individuals and entities other than the Defendants that the Receiver sought to add to the Sun Litigation by amendment.

In addition, pursuant to the terms of the proposed Settlement Agreement, all investors must agree to release the Sun-Related Parties and Receiver from any claims they may have against the Sun-Related Parties as a condition to being eligible to receive an equity interest in the FP Designee through a Court-ordered distribution. As noted, a copy of the required Investor Release is attached as Exhibit 1. Thus, for example, the Receiver is aware that certain investors in the Receivership Funds have filed suit directly against certain of the Sun-Related Parties. If those investors wish to be eligible for a share of the ownership of the FP Designee, they must

execute and deliver an Investor Release prior to the closing. The releases will be held in escrow by the Receiver's counsel to be delivered to the Sun-Related Parties at closing.

C. CONSIDERATION TO BE RECEIVED BY THE SUN PRINCIPALS, SPOUSES AND DAWSON

In exchange for entering into the Settlement Agreement and conveying to the FP Designee their ownership interests in the Settlement Entities, and releasing the Receivership Entities, the Receiver and Releasing Investors from any claims relating to the loans made by Stable-Value to SCHI or SCI, the Principals, their Spouses and Dawson will receive the following material benefits and consideration:

1. Collectively, $5,884,000 of Secured Notes will be issued to the Sun Principals, their Spouses and Dawson in proportion to their ownership interests in Promise following the closing, which Secured Notes will be substantially in the form attached to the Settlement Agreement as Exhibit L, and which generally provide for payment of such amounts, without interest, in three annual payments. *See* ¶ 2 of Exhibit L to the Settlement Agreement (part of Exhibit 3 hereto).

2. Each of Howard Koslow and Lawrence Leder will enter into a Consulting Agreement with Promise substantially in the forms attached to the Settlement Agreement as Exhibits J and K thereto, which generally provide for payment to each of Messrs. Koslow and Leder of $1,800,000, payable $50,000 per month over three years in exchange for their consulting services. *See* § 2(a) of Exhibits J and K to the Settlement Agreement (part of Exhibit 3 hereto).

3. Peter Baronoff will enter into an Employment Agreement with Promise and Success, which will be the subject of a motion to file under seal, which provides for what is

believed to be market-rate compensation for his continuing services as CEO of Promise and Success. [4]

4. The Sun Principals will be granted a first-priority lien on certain real and personal property of certain of the Settlement Entities as security for any payments due to the Sun Principals, their Spouses, or Dawson under the Secured Notes and the Consulting Agreement and for certain continuing personal guaranty obligations of the Sun Principals (the "Performance Security"). *See* § 2.1(o) of the Settlement Agreement (part of Exhibit 3 hereto).

5. Loans made by certain of the Settlement Entities to one or more of the Sun Principals or their Spouses totaling approximately $1.7 million in principal outstanding shall be forgiven. *See* § 2.1(p) of the Settlement Agreement (part of Exhibit 3 hereto).

6. The Sun-Related Parties will receive releases of claims from the Receiver, the Receivership Entities, and Releasing Investors. *See* § 2.1(m) of the Settlement Agreement (part of Exhibit 3 hereto).

7. The Sun Principals, the Spouses and Dawson (collectively, the "Indemnitees") shall be indemnified from and after the closing by each of Promise, Success, SCHI, SCI and FP Designee for any claims relating to their actions or omissions on behalf of any of the Settlement Entities, as more fully described in Article VI of the Settlement Agreement. The indemnification obligations include a duty by the indemnifying parties to defend the Indemnitees and to advance all necessary and reasonable expenses relating to any indemnified proceedings. However, certain types of claims are ultimately not covered by such indemnification. *See* § 6.2(b) of the Settlement Agreement (part of Exhibit 3 hereto).

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[4] This is based on information provided by advisors retained by the Investor Group, who consulted industry sources and a published compensation survey.

8. For a period of six years after the closing, each of Promise and Success agree to maintain directors and officers insurance for the benefit of any Indemnitee who was serving as a director, officer, employee, consultant or agent of any of the Settlement Entities. *See* § 6.4(a) of the Settlement Agreement (part of Exhibit 3 hereto).

9. The Sun Principals, their Spouses and Dawson will continue to own 4% of the issued and outstanding common stock of Promise, in approximate proportion to their current ownership interests in Promise (the "Retained Equity"). The Retained Equity will be subordinate to certain amounts payable under the Senior Term Facility, the Subordinated Term Loan and the Preferred Stock. *See* § 5(b) of the Stockholders Agreement (part of Exhibit 3 hereto). In addition, one-half of the Retained Equity may be subject to cancellation under certain circumstances. See § 5(d) of the Stockholders Agreement (part of Exhibit 3 hereto).

D. RIGHTS OF RECOURSE OF THE FP DESIGNEE AGAINST THE SUN-RELATED ENTITIES

The Sun Principals and Dawson make certain representations and warranties to the FP Designee which are set forth in Schedule 5.2(a) to the Settlement Agreement. In addition, in the Disclosure Statement substantially in the form attached to the Settlement Agreement as Exhibit N thereto (the "Disclosure Statement"), each of the Sun Principals and their Spouses make certain representations and warranties to the FP Designee. These representations and warranties shall survive for a period of 18 months after the closing of the transactions (or until certain earlier liquidity events). Any claim for breach of these representations and warranties must be brought by the FP Designee within that 18-month or shorter period.

E. GOVERNANCE STRUCTURE OF FP DESIGNEE PRIOR TO DISTRIBUTION

Upon Court approval, the FP Designee will be formed by the Receiver as a subsidiary of Stable-Value operating in accordance with the FP Designee organizational documents attached as Exhibit 4.

Prior to the distribution of the equity interests in the FP Designee to Releasing Investors whose interests are validated in the claims process, the FP Designee shall be managed by a board of managers (the "Board") consisting of five members. Under the Settlement Agreement, the Receiver (or his designee) may be one of the five members of the Board, and the remaining four members are to be reasonably qualified to serve in such positions. In addition, for so long as Baronoff is employed as CEO, he will be entitled to one seat on the board of Directors of Promise.

Under the FP Designee organizational documents, the Receiver (or his designee) shall be one of the five members of the Board of the FP Designee, and the remaining four members shall be persons associated with various investors in the Receivership Funds (or their designees); provided, however, that until the distribution of membership interests of the FP Designee to Releasing Investors is completed, the approval of the Receiver or his designee on the Board shall be required to approve certain major decisions specified in the FP Designee's organizational documents; provided, further that in the event that a majority of the other Board members oppose the vote of the Receiver or his designee on any such major decision, they may, if this Court authorizes such a procedure as part of its continuing jurisdiction over the supervision of the Receivership, petition this Court to potentially overrule the vote of the Receiver or his designee on such major decisions. *See* § 8.5 of the FP Designee's Limited Liability Company Agreement (attached hereto as Exhibit 4). The FP Designee anticipates that post-closing, following the

distribution of membership interests to Releasing Investors pursuant to the pre-closing claims process, new Board elections will be held, with the Board to be selected by vote of the members of FP Designee. *See* § 8.2(a)(iii) of the FP Designee's Limited Liability Company Agreement (attached hereto as Exhibit 4).

F. CONDITIONS TO CLOSING

The obligations of the parties to consummate the transactions contemplated by the Transaction Documents are contingent upon, among other things, (i) entry of an order of this Court approving the Settlement Agreement and granting related relief, (ii) the Receiver's receipt of advice as to the application of New York law to the applicable Transaction Documents by New York corporate counsel to be retained by the Receiver, upon Court authorization (which will be the subject of a future motion) and to be paid by the Settlement Entities or Sun Entities, and the Receiver being satisfied with such advice, (iii) receipt of all necessary governmental authorizations or third-party consents, (iv) accuracy of representations and warranties of each party and performance of the covenants applicable to such party, and (v) entry by Promise into a working capital line of credit, and (vi) the solicitation of releases from all Receivership Fund investors and receipt of a sufficient number of executed releases from the investors in the four Receivership Funds. *See* §§ 4.1-4.3 of the Settlement Agreement (part of Exhibit 3 hereto).

IV. SETTLEMENT HEARING, FAIRNESS HEARING, AND CLAIMS PROCESS

The parties anticipate, as set forth below, that the Court will conduct a settlement hearing to determine whether to approve the settlement transactions contemplated by the Settlement Agreement and other Transaction Documents as a means to resolve this lawsuit and other related claims or threatened claims. That settlement hearing would follow the dissemination of notice to

all investors in the four Receivership Funds, receipt of any objections by such investors, and responses thereto submitted by the parties.

The Receiver also anticipates that he will seek approval of a claims process leading to the distribution of membership interests of the FP Designee, which will effectuate the transfer of the ownership of the FP Designee from Stable-Value to the Releasing Investors. The Receiver expects to rely upon Section 3(a)(10) of the Securities Act of 1933 with respect to the issuance of membership interests in the FP Designee to Releasing Investors without registration. *See* 15 U.S.C. § 77c(a)(10). That provision requires that the Court hold a "fairness hearing," *i.e.*, a hearing to determine whether the terms and conditions of the exchange of the investors' claims for the membership interests are fair. *Id.* If the Court determines that the exchange of claims for securities is fair, the Receiver will be able to issue membership interests in the FP Designee to eligible Releasing Investors, which will result in ownership of the FP Designee being transferred from Stable-Value to Releasing Investors. The Receiver intends to file a motion for a fairness hearing, which will fully brief these issues.[5]

V. THE RECEIVER HAS CONCLUDED THAT THE PROPOSED SETTLEMENT IS IN THE BEST INTERESTS OF THE RECEIVERSHIP ESTATES

The Receiver respectfully submits that the Court should approve the proposed settlement because it is in the best interests of the Receivership Entities. The process of reaching the proposed settlement was fair, well-informed, and well-advised by legal and financial professionals.

[5] The Receiver expects that he will recommend to the Court that an investor's particular ownership interest be determined broadly based on the proportion of that investor's total unreturned principal invested in the Receivership Entities compared against the total unreturned principal investments made by all investors. The exact formula for this calculation will be submitted by the Receiver for the Court's consideration in connection with a motion to approve this claims process.

Since the Court's Order staying the Sun Litigation, the Receiver, the Sun Entities and the Investor Group have engaged in extensive settlement discussions, which resulted in the filing of this Motion. Pursuant to confidentiality agreements,[6] the Sun Entities posted voluminous due diligence materials in an electronic data room, including financial records and restructuring information, for review by the Receiver, the Investor Group and individual investors who signed a confidentiality agreement.

Throughout this process, the Receiver and the Investor Group were advised by highly qualified professionals. The Receiver retained financial and legal advisors to assist in his review and analysis of the due diligence materials and to aid in his discussions with the Investor Group and the Sun Entities including accountants, Berkowitz Dick Pollack & Grant ("Berkowitz Dick"), and legal counsel, Broad and Cassel. The Investor Group was advised by their financial advisors, Specialty Finance Advisors LLC ("Specialty Finance"); legal counsel, Patton Boggs LLP; business valuation consultant, Focus Management Group USA, Inc. ("FMG"), investment banker, MTS Health Partners, L.P. ("MTS Health"); and healthcare consultant, Nightingale Consulting, LLC ("Nightingale"). The Receiver and his professionals regularly met with, communicated with, and received information from the Sun Entities, the Investor Group and their professionals while performing his analysis of the settlement transaction.

During the due diligence phase of this settlement process, the professionals engaged by the Receiver and the Investor Group reviewed voluminous financial information and the professionals engaged by the Investor Group conducted numerous site visits. The Sun Entities provided periodic company updates (with a focus on the Promise and Success business units), including recent financial performance, cash forecasts, competitive pressures, and updates to the

[6] The Court-approved July 22, 2010 confidentiality and use restriction agreement with the Receiver is D.E. 203-1.

regulatory and reimbursement environments. The Sun Entities arranged facility site visits for virtually all of Promise's facilities and all of Success's facilities during the summer and fall of 2010. These site visits were completed by representatives of Specialty Finance. In addition, representatives of Specialty Finance and MTS Health attended the opening of the Villages facility in Florida. At each facility visited, Promise executives (*i.e.* the Chief Executive Officer and/or divisional presidents) and local facility management (*e.g.,* the hospital Chief Executive Officer and Chief Operating Officer) gave Specialty Finance (and as applicable, MTS Health) thorough tours of each facility, provided detailed management presentations and engaged in detailed question and answer sessions.

FMG performed a detailed financial and accounting due diligence review. FMG was on-site in the Sun Entities' corporate offices in Boca Raton, Florida from August to October 2010 to perform its due diligence review. FMG prepared a detailed financial and accounting due diligence report (plus an executive summary thereof) dated November 12, 2010 (the "FMG Report") which detailed its findings. The FMG due diligence report has been provided to the Receiver. The Receiver, Specialty Finance, FMG and the Receiver's advisor (Berkowitz Dick) engaged in an all-day discussion on November 16, 2010 to discuss the FMG report to address the Receiver's (and his advisors') questions. Subsequent to the completion of the FMG due diligence report and subsequent discussions, the parties agreed to continue to negotiate definitive documents for the transaction contemplated by the term sheet.

From December 15, 2010 through February 4, 2011, Nightingale performed a detailed clinical due diligence assessment of the Promise and Success facilities (the "Nightingale Report"). The assessment included a site visit to the Boca Raton corporate offices as well as site visits to the Success Hospitals and a representative sample of five Promise Hospitals. The

assessment included a comprehensive evaluation of clinical care, quality, risk and corporate compliance of the Promise and Success billing practices and compliance programs. The Nightingale Report, dated February 15, 2011 has been provided to the Receiver. All issues highlighted in the Nightingale Report have been communicated to Promise and Success management.

The Sun Entities' online data room has been updated on an ongoing basis to include a significant amount of updated information, including updated financial information as well as operational, reimbursement and regulatory information. The Receiver and investors who signed the confidentiality agreement have access to the online data room. Specialty Finance and the Receiver's advisor (Berkowitz Dick) have had numerous follow-up discussions regarding the updated financial information since the completion of the FMG Report. In addition, the Investor Group's counsel, Patton Boggs LLP, engaged in a legal due diligence review of the various contracts, licensing information, organizational and other non-financial information that was provided by the Sun Entities to the online data room, summaries of which were provided to the Receiver.

The Receiver's financial advisor, Berkowitz Dick, has conducted a calculation of value for Promise. *See* Exhibit 5. Based on their analysis, Berkowitz Dick's estimate of preliminary values ranges from $115 million to $203 million. In addition to its own analysis, Berkowitz Dick has reviewed the valuation report prepared by MTS Health dated December 15, 2010 ("MTS Health Report"), which derived a range of values in excess of those provided by Berkowitz Dick.

In addition, it is a condition of closing the settlement transaction that FMG update its work under the FMG Report to a more recent date and provide the Receiver and the FP Designee

with an updated report (the "FMG Update"), and that MTS Health provide the Receiver and the FP Designee with an updated valuation estimate of Promise and Success and their subsidiaries (the "MTS Updated Valuation").

With respect to FMG, a copy of the engagement letter entered into by FMG and the Investor Group, which the Receiver signed, (FMG Agreement") is attached as Exhibit 6. The FMG Agreement provides that the Receiver will be provided with the FMG Update and can rely upon it.

With respect to MTS Health, a copy of the engagement letter entered into by MTS Health and the Receiver ("MTS Health Agreement") -- certain provisions of which are not effective unless and until the Agreement is approved by the Court -- is attached as Exhibit 7. The MTS Health Agreement enabled the Receiver to have access to an earlier valuation report prepared by MTS for the Investor Group ("Prior Valuation") for use by the Receiver in this Joint Motion, and it will enable the Receiver to have access to the updated valuation that will be prepared by MTS Health as a condition of closing ("Updated Valuation"). The MTS Health Agreement further provides, among other things, that if the Receiver distributes either Valuation in a manner inconsistent with the Agreement, and without the consent of MTS Health, the Receivership Entities could be responsible for indemnification liability. However, the MTS Health Agreement provides that such indemnification provisions do not become effective unless and until the Court approves the MTS Health Agreement.[7]

The ultimate inquiry in assessing a proposed receivership settlement is whether "the proposed settlement is fair." *Sterling* v. *Stewart*, 158 F. 3d 1199, 1203 (11th Cir. 1998); *see In re*

[7] If the Court does not approve the MTS Health Agreement, and in the absence of a new agreement that the Court may approve, the Receiver may not get access to the Updated Valuation prior to closing and will not be able to distribute it to investors who sign confidentiality agreements.

Consol. Pinnacle West Sec. Litig./Resolution Trust Corp.-Merabank Litig., 51 F.3d 194, 196-97 (9th Cir. 1995) ("We see no reason to upset the court's conclusion that the settlement process and result were fair.").

Determining the fairness of [a] settlement is left to the sound discretion of the trial court." *Sterling,*158 F. 3d at 1202 (11th Cir. 1998). The Court should examine the following broad array of factors:

> (1) the likelihood of success; (2) the range of possible discovery; (3) the point on or below the range of discovery at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

Sterling, 158 F. 3d at 1204. See also *SEC v. Princeton Economic Int'l*, 2002 WL 206990, *2 (S.D.N.Y. 2002) (receivership court should consider "various factors including, *inter alia*: (1) the probable validity of the claim; (2) the apparent difficulties attending its enforcement through the courts; (3) the collectability of the judgment thereafter; (4) the delay and expenses of the litigation to be incurred; and (5) the amount involved in the compromise").

For example, the district court in *Gordon v. Dadante* "analyze[d] the settlement as a whole, under the totality of the circumstances." 2008 U.S. Dist. LEXIS 32281, *39, 48 (N.D. Ohio April 18, 2008). The Sixth Circuit affirmed, finding that the district court had fulfilled its responsibilities by engaging in an "independent analysis of the settlement," as "the district court had extensive knowledge of the claims involved in the case, the valuation of those claims, and the nature of the settlement," and thus "had more than sufficient information to assess the fairness of the settlement proposed." 2009 U.S. App. LEXIS 15517 at **16, 23. As the district court noted in a later approval proceeding, "the courts must recognize that plans relating to settlement of a receivership are inherently imperfect, "because no proposal can be [perfect]," and

the "task at hand, however, is to do justice to the extent possible." *Gordon v. Dadante*, 2010 U.S. Dist. LEXIS 1979, *13-14 (N.D. Ohio Jan. 11, 2010).

Here, the Receiver respectfully submits that the proposed Settlement Agreement is a fair, adequate, and reasonable resolution of the Sun Litigation. As the Court knows, the Sun Litigation involves complex issues of law and facts, involving extensive, time-consuming, and costly litigation, discovery, and motion practice, with no certain results.[8] Based on the due diligence conducted, the terms of the proposed settlement are fair and reasonable, representing a sensible means of assuring a beneficial outcome for the investors who contributed funds. The Receiver and Consenting Investors, considering the delays and high costs of litigation and the anticipated difficulty of collecting a judgment, believe that the outcome for the Receivership Entities and investors will be better under the settlement transaction than it would be if the Receivership Entities continued this litigation or were forced to file claims in a bankruptcy proceeding of the Settlement Entities.

VI. PROPOSED CONFIRMATION PROCEDURE

As discussed above, the parties seek approval of a process to provide investors in the Receivership Entities with notice of the settlement transaction that the Receiver has concluded is in the best interests of the Receivership Entities. The parties seek an order authorizing and directing the Receiver to disseminate the following package of information to all investors in the four Receivership Funds, within five days of the entry of such order: (a) a notice in the form attached hereto as Exhibit 8, (b) the form of Investor Release; (c) this entire submission, and (d)

[8] .As the Eleventh Circuit has observed in a different context, "Complex litigation – like the instant case – can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive." *In re U.S. Oil and Gas Litigation*, 967 F.2d 489, 493 (11th Cir. 1992).

a form of confidentiality agreement attached as Exhibit 9, to be executed by any investors who seek to review the Confidential Materials.

Confidential Materials will be provided, in a later mailing, to those investors who request the Confidential Materials and who submit an executed confidentiality agreement to the parties. Also in a later mailing, such Fund Investors who have executed the required confidentiality agreement will also be entitled to receive the following materials which have not yet been provided to the Receiver but are required to be delivered to the Receiver: (1) audited financial statements for Promise and Success for prior periods ("Audited Financial Statements") (required prior to either party agreeing to execute the Settlement Agreement), and (2) the FMG Update (required prior to closing of the transaction).[9] In the claims process motion, the Receiver intends to request that the Court order that executed Investor Releases must be returned to the Receiver within 45 days after the entry of an order on the claims process motion, so long as the conditions of execution of Investor Releases have been met. The parties agree that investor elections on whether to sign Investor Releases shall not be required from such investors until after they have received these additional materials. However, such releases must be received by the deadline set by the Court. Assuming a sufficient total number of Investor Releases have been received, the closing can occur.

The parties respectfully request that the Court enter an order providing for, among other things, a schedule for the requested confirmation procedure. (For the Court's convenience, if the Court permits, the parties will provide a proposed form of order by e-mail to the Court.)

[9] In addition, upon request of an investor and subject to the investor's execution of an indemnification and confidentiality agreement acceptable to MTS Health and the above-noted confidentiality agreement acceptable to the parties, the Receiver intends to afford investors the opportunity to receive a copy of the MTS Health Updated Valuation.

The parties further request that the Court order that all investor objections be made in writing, and submitted to the Court and served upon counsel for the Receiver and counsel to the Sun-Related Parties, as follows, within the deadline to be set by the Court:

Counsel for the Receiver

Jonathan Etra, Esq. – jetra@broadandcassel.com
David J. Powers, Esq. – dpowers@broadandcassel.com
Broad and Cassel
One Biscayne Tower
2 South Biscayne Blvd.
21st Floor
Miami, FL 33131

Counsel for the Sun-Related Parties

Sarah Gold, Esq. – sgold@proskauer.com
Karen Clarke, Esq. – kclarke@proskauer.com
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036-8299

Finally, the parties jointly request that the Court authorize and direct the Receiver to provide to counsel to the Sun-Related Parties a current list of all investors in the Receivership Funds with name and outstanding amount(s) in the Receivership Funds (as well as the total outstanding amounts) based upon the current books and records of the Receivership Entities available to the Receiver (the "Investor List"), subject to all such recipients entering into the form of confidentiality agreement attached as Exhibit 10.[10] The Investor List is needed to enable the Sun-Related Parties to determine whether a sufficient percentage of investors, by number and dollar amount, have executed the Investor Releases that are required as a condition of closing.

V. THE NEED FOR EXPEDITED RELIEF

[10] As the claims process has not yet taken place, the Investor List will not reflect any judicial determination of claims.

The parties jointly and respectfully request that the Court consider this Motion, issue a scheduling order, and provide for a hearing on the Motion on an expedited basis, due to the need to move forward expeditiously to complete the transaction to give stability and certainty to the hospitals operated by the Sun-Related Parties.

CONCLUSION

For the foregoing reasons, the Receiver and the Sun-Related Parties jointly and respectfully request that the Court enter an order approving, among other things, the confirmation procedure as jointly requested by the parties, the content of the materials to be sent by the Receiver to the investors in the Receivership Funds, the provision of the Investor List to the Sun-Related Parties' counsel pursuant to the confidentiality agreement attached hereto as Exhibit 10, the formation of the FP Designee by the Receiver in accordance with the organizational documents attached as Exhibit 4 and the filing of related documents in connection with the formation and maintenance of the FP Designee, and the taking of all other actions necessary and appropriate to implement the Court's order and the settlement transaction.

The parties further jointly request that the order provide that the parties to the Settlement Agreement shall be bound by the provisions of Section 7.1 and 7.4 of the Settlement Agreement from the date of such order until the earlier of: (i) the Court's disapproval of the proposed Settlement Agreement, or (ii) the execution and delivery of the Settlement Agreement by the parties thereto.

In addition, the Receiver and the Sun-Related Parties jointly and respectfully request that the Court approve the proposed Settlement Agreement, approve the exclusion of non-Releasing Investors from participating in any manner in the FP Designee or receiving any proceeds resulting from the Settlement Entities, and provide that, upon subsequent closing of the

transactions contemplated by the Settlement Agreement, all claims asserted in this litigation will be dismissed with prejudice.

The Receiver also requests that the Court approve the MTS Health Agreement attached as Exhibit 7.

Finally, the Receiver and the Sun-Related Parties jointly and respectfully request that the Court consider this Motion and provide for a hearing on the Motion on an expedited basis.

Dated: December 9, 2011

Respectfully submitted,

By: /s/ Jonathan Etra

Jonathan Etra
jetra@broadandcassel.com
Florida Bar No. 0686905
BROAD AND CASSEL
2 South Biscayne Blvd., 21st Floor
Miami, FL 33131
Tel.: 305.373.9447
Fax: 305.995.6403
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Jonathan Etra
Jonathan Etra, Esq.

SERVICE LIST

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Counsel for Defendants Sun Capital, Inc., Sun Capital Healthcare, Inc. and HLP Properties of Port Arthur, LLC
Service via CM/ECF

EXHIBIT 1

RELEASE OF CLAIMS (by Fund Investors / FP Designee)

The undersigned person (the "Affiant"), in consideration of:

> the Settlement Agreement made as of [_____], 2011 (the "Settlement Agreement") of which this Release of Claims is an integral part, and the Releases of Claims of all Parties and all Fund Investors delivering Releases of Claims, the mutual promises contained therein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,

on behalf of:

> such Affiant, and his/her/its officers, directors, partners, members, shareholders, managers, agents, representatives, heirs, executors, trustees, administrators, predecessors, subsidiaries, successors, affiliates, assigns, advisors, legal representatives, attorneys, and employees (collectively, the "Releasors"),

hereby releases and discharges:

> the Affiliated Companies, the Principals, the Spouses and Dawson, and the Receiver, and each of their respective officers, directors, partners, members, shareholders, managers, agents, representatives, heirs, executors, trustees, administrators, predecessors, subsidiaries, successors, affiliates, assigns, advisors, legal representatives, attorneys, and employees (collectively, the "Releasees"), but this Release of Claims does not release any of the following persons or entities: Ernst & Young, Mayer Brown LLP, William L. Gunlicks, William V. Gunlicks, Jr., all investment advisors to any of Founding Partners or FPCM, and Cain Brothers & Company, LLC, and their respective officers, directors, partners, members, shareholders, managers, trustees, administrators, predecessors, successors, affiliates, assigns and current or former employees, contractors or vendors,

from:

> all liabilities arising from any and all claims, demands, controversies, actions, causes of action whether asserted or unasserted, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, proceedings, agreements, promises, variances, trespasses, obligations, liabilities, fines, penalties, costs, expenses, attorneys' fees, and damages of whatsoever character, nature, or kind, in law or in equity,

whether known or unknown, fixed or contingent, liquidated or unliquidated, pending or not pending, disclosed or not disclosed, whether directly, representatively, derivatively or in any other capacity (collectively, the "Claims"),

which against the Releasees the Releasors ever had, now have or hereafter can, shall or may have for, upon or by reason of:

any Claims in any way related to the investments by any of the Fund Investors into Founding Partners or FPCM, the Loans and the credit relationship between Founding Partners or FPCM and any of the Companies, and any uses of the proceeds of the Loans by any of the Companies or transfers between the Companies or Affiliated Companies; any Claims in any way related to the facts, statements or omissions alleged in the actions or proceedings listed on Exhibit A and/or in any proposed amended pleading or intervenor pleading that was sought to be filed in such actions or proceedings; and any Claims in any way related to any actions or omissions of the Receiver relating in any manner to his role as the Receiver of Founding Partners and FPCM (collectively, the "Released Claims").

Notwithstanding anything to the contrary set forth in this Release, the Released Claims shall not include any Claims arising under, or relating to the performance under or the enforcement of, the Transaction Documents.

The Releasors shall not commence, prosecute, or assert any action, complaint, demand, cause of action, arbitration or other proceeding of any kind relating to, arising out of or involving in any way the Released Claims including, without limitation, any action for contribution, indemnity or otherwise, against or affecting any of the Releasees or any of their property, except for the purpose of enforcing this or any other Release executed in connection with this Settlement Agreement. In addition, the Releasors shall not assist or cooperate with any other person to commence, prosecute or pursue any claim against any Releasee provided, however, that the Releasors shall be permitted to respond to subpoenas or court orders, in which case the Releasor will notify the affected Party or

Parties of any such subpoena or order promptly so as to afford the affected Party or Parties the opportunity to take such action as they deem appropriate.

In the event that any Releasor breaches the foregoing paragraphs, such Releasor shall indemnify and hold harmless each Releasee for any loss or damages, however suffered, caused by such breach, including, without limitation, costs, expenses and reasonable attorneys' fees, including, without limitation, attorneys' fees incurred in the course of enforcement of this indemnification provision.

The Releasors represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity any claim released hereby that they have had, now have or may have against Releasees or any portion thereof or interest therein.

This Release may be modified only by a writing duly executed by the parties hereto.

This Release is integral to and forms part of the Settlement Agreement.

This Release shall be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to any conflicts of laws rule or principle that might require the application of the laws of another jurisdiction.

Unless otherwise defined herein, capitalized terms used herein shall have the definitions set forth in the Settlement Agreement.

IN WITNESS WHEREOF, the Affiant has set his or her or its hand this ____ day of _____, 2011.

[To be conformed]

[Individual Acknowledgement]

STATE OF)
: ss.:
COUNTY OF)

On _____ ___, 2011, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same, and that by his/her signature on the instrument, the individual executed the instrument.

_____
Notary Public

[Corporate Acknowledgement]

STATE OF)
: ss.:
COUNTY OF)

On _____ ___, 2011, before me, the undersigned, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her corporate capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Signature and Office of individual taking acknowledgment

_____
Notary Public

EXHIBIT A

Actions and Proceedings

1. *Securities and Exchange Commission vs. Founding Partners Capital Management Co. and William L. Gunlicks, et al.*, No. 2:09-cv-229-FtM-29SPC (M.D.Fla.)

2. *Daniel S. Newman, as Receiver for Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. v. Sun Capital, Inc., Sun Capital Healthcare, Inc., HLP Properties of Port Arthur, LLC*, No. 2:09-cv-445-FtM-29SPC (M.D.Fla.)

3. *Annandale Partners, LP, et al. v. Sun Capital, Inc., Sun Capital Healthcare, Inc., Promise Healthcare, Inc., Peter Baronoff, Howard Koslow, and Lawrence Leder*, No. 09-03561 (134th Jud. Dist., Dallas County, Texas)

4. *Roman Catholic Church of the Archdiocese of New Orleans v. Sun Capital Healthcare, Inc., Sun Capital, Inc., Peter R. Baronoff, Howard B. Koslow, Lawrence Leder, and Equitas Capital Advisors, LLC*, No. 09-12364 (La. Civ. Dist. Ct., Orleans Parish)

5. *William Bonewitz, et al. v. Founding Partners Capital Management Company, et al.*, No. 2:09-cv-00718-JES-DNF (M.D. Fla.)

6. *Subpoena Duces Tecum* issued by Louisiana Department of Justice to Daniel S. Newman as Receiver on June 21, 2011, and any related proceedings.

CONSENT

This CONSENT (this "Consent") is entered into by the undersigned Individual Signing Investors (as defined in the Settlement Agreement, as described below).

RECITALS:

WHEREAS, each of the Individual Signing Investors desires to approve and accept the Settlement Agreement (the "Settlement Agreement"; all terms not defined in this Consent shall have the meanings ascribed them in the Settlement Agreement) dated as of [_____] [__], 2011, by and among Sun Capital Healthcare, Inc., a Florida corporation; Sun Capital, Inc., a Florida corporation; Success Healthcare, LLC, a California limited liability company; Promise Healthcare, Inc., a Florida corporation; Peter R. Baronoff, an individual; Howard B. Koslow, an individual; Lawrence Leder, an individual; Malinda Baronoff, an individual; Jane Koslow, an individual; Carole Leder, an individual; Mark Dawson, an individual; the subsidiaries and affiliates of SCHI, SCI, Success, and Promise identified on Annex I attached thereto; and [_____], as designee, of Founding Partners Stable-Value Fund, L.P., a Delaware limited partnership, Founding Partners Global Fund, Ltd., a corporation organized under the laws of the Cayman Islands, Founding Partners Stable-Value Fund II, L.P.; and Founding Partners Hybrid-Value Fund, L.P. (these funds sometimes collectively referred to as "Founding Partners"); and Daniel S. Newman, Esq., as receiver for Founding Partners and Founding Partners Capital Management Company; and

WHEREAS, each of the Individual Signing Investors desires to approve and accept the transactions contemplated by the Settlement Agreement and by the other Transaction Documents.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Individual Signing Investors hereby agrees as follows:

1. Approval and Acceptance. Each of the Individual Signing Investors hereby acknowledges, agrees and confirms that, by its execution of this Consent, such Individual Signing Investor approves and accepts the Settlement Agreement, and the transactions contemplated by the Settlement Agreement and the other Transaction Documents, and in particular agrees to execute a Release of Claims in substantially the form annexed to the Settlement Agreement as Exhibit M-2, as a condition of the closing of the settlement transaction.

2. Covenants. Each of the Individual Signing Investors, agrees to deliver any and all necessary documents, including a Release of Claims, in connection with the Settlement Agreement and the other Transaction Documents, as reasonably requested by the Parties.

3. Representations and Warranties of the Individual Signing Investors. Each Individual Signing Investor, severally and not jointly, hereby represents and warrants that

(a) Legal Capacity to Contract and Perform. (i) Such Individual Signing Investor has the requisite power, authority, and legal capacity to make, execute, enter into, and deliver this Consent and to fully perform its duties and obligations under this Consent, (ii) neither this Consent nor the performance by such Individual Signing Investor of any duty or obligation under this Consent will violate any other contract, agreement, covenant, obligation or restriction by which such Individual Signing Investor is bound, and (iii) such Individual Signing Investor is without knowledge of facts that would make this Consent (or portions thereof) capable of avoidance now or in the future.

(b) No Violation. The execution, delivery and performance by such Individual Signing Investor of this Consent and the Transaction Documents to which such Individual Signing Investor is a party will not conflict with or result in the breach of any material term or provision of, or violate or constitute a material default under, any charter provision or bylaw or under any material agreement, order or Law to which such Individual Signing Investor is a party or by which such Individual Signing Investor is in any way bound or obligated.

(c) Proceedings. There is currently no pending or, to the actual knowledge of such Individual Signing Investor, threatened (in writing) Proceeding by any Person against or relating to such Individual Signing Investor or relating to the transactions contemplated by this Consent and the Transaction Documents or the consummation thereof. Such Individual Signing Investor is not subject to or bound by any currently existing judgment, order, writ, injunction or decree that will prevent the consummation of the transactions contemplated by this Consent.

(d) Investment Amounts. The investment amounts set forth next to such Individual Signing Investor's name on Schedule A attached hereto represent the total amount in which such Individual Signing Investor has authority to consent to the Settlement Agreement or the amount invested by such Individual Signing Investor (in US dollars) based on such Individual Signing Investor's records.

4. Governing Law; Venue. The validity, interpretation and performance of this Consent shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any conflict of laws rule or principle that might require the application of the laws of another jurisdiction. Any action or proceeding arising out of or relating to this Consent shall be brought only in (a) the United States District Court, Middle District of Florida, Fort Myers Division, if said Court expressly retains jurisdiction over all matters relating to the enforcement of the Transaction Documents in the Settlement Approval Order, as shall be requested by the Parties, or (b) if that Court does not expressly retain such jurisdiction, then in a state or federal court situated in New York County, New York.

5. Counterparts. This Consent may be executed in any number of identical counterparts, each of which is an original and all of which, together shall constitute one

and the same Consent. Any signatures delivered by a party by facsimile or electronic mail transmission shall be deemed an original signature hereto.

6. Incorporation by Reference. The Settlement Agreement is incorporated herein by reference and the preamble and recitals of this Consent are hereby incorporated herein.

7. Transaction Document. This Consent shall be a Transaction Document.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has set its hand this 8th day of December, 2011.

EDGE CAPITAL INVESTMENTS LTD.

By _____
Name: Evatt Tamine
Title: Director

IN WITNESS WHEREOF, each of the undersigned has set its hand this ____ day of _____, 2011.

CONVERGENT WEALTH ADVISORS

By _____
Name: David Elliott
Title: CFO

IN WITNESS WHEREOF, each of the undersigned has set its hand this 9 day of December 2011.

BERMUDA COMMERICAL BANK LIMITED

By _____
Name: HORST FINKBEINER
Title: COO

Execution Version
Annex II

IN WITNESS WHEREOF, each of the undersigned has set its hand this 9th day of December, 2011.

SSR CAPITAL PARTNERS LP

By _____
Name: Steven A. Holland
Title: Managing Partner

IN WITNESS WHEREOF, each of the undersigned has set its hand this 9th day of December, 2011.

RHINO HOLDINGS, INC.

By _____
Name: James Brown
Title: Authorized Representative

MOKUTI HOLDINGS LTD.

By _____
Name: James Brown
Title: Authorized Representative

MINGALADON HOLDINGS LLC

By _____
Name: James Brown
Title: Authorized Representative

Schedule A

Investment Amounts

Individual Signing Investor	Stable-Value	Global	Stable-Value II	Hybrid-Value
SSR Capital Partners LP	51,596,796	947,261	-0-	-0-
Rhino Holdings, Inc.		9,642,882	-0-	
Mokuti Holdings Ltd.	-0-	4,290,055	-0-	-0-
Mingaladon Holdings		-0-	4,412,456	
Edge Capital Investments Ltd.	-0-	59,884,428	-0-	-0-
Bermuda Commercial Bank Limited	-0-	10,109,428	-0-	-0-
Convergent Wealth Advisors	-0-	-0-	3,655,106	-0-

CERTIFICATE OF FORMATION

OF

FOUNDING PARTNERS DESIGNEE, LLC

A DELAWARE LIMITED LIABILITY COMPANY

FIRST: The name of the limited liability company is FOUNDING PARTNERS DESIGNEE, LLC (the "Company").

SECOND: The Company's registered office in the State of Delaware is to be located at 615 South Dupont Highway, Dover, Delaware 19901, and its registered agent at such address is Capitol Services, Inc.

IN WITNESS WHEREOF, the undersigned, being an authorized person under Section 18-201 of the Delaware Limited Liability Company Act has executed this Certificate of Formation this _____ day of _____, 2011.

BCRA, LLC, a Florida limited liability company, as Authorized Representative

By:_____
David J. Powers, Manager

LIMITED LIABILITY COMPANY AGREEMENT
OF
FOUNDING PARTNERS DESIGNEE, LLC

This Limited Liability Company Agreement of FOUNDING PARTNERS DESIGNEE, LLC (the "Company"), a Delaware limited liability company, is made and entered into as of _____, 2011, by and between the Company and FOUNDING PARTNERS STABLE-VALUE FUND, L.P., a Delaware limited partnership ("Founding Partners"), and such other Persons as may be admitted from time to time as Members of the Company in accordance with the terms of this Agreement and the Act (as hereinafter defined).

WITNESSETH:

WHEREAS, the Certificate of Formation of the Company has or will be filed with the Secretary of State of Delaware on or about the date hereof, in accordance with the provisions of the Act; and

WHEREAS, Founding Partners desires to set forth herein the manner in which such limited liability company shall be governed and operated.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, Founding Partners and any other Persons who subsequently acquire a Membership Interest, intending to be legally bound hereby, agree as follows.

ARTICLE 1
DEFINITIONS

The following terms have the definitions hereinafter indicated whenever used in this Agreement with initial capital letters.

"*Act*" shall mean the Delaware Limited Liability Company Act, Title 6 of the Delaware Code, Section 18-101 et seq., as same may be amended from time to time.

"*Affiliate*" shall mean any other Person directly or indirectly owning a majority interest in such Person and controlling such Person or owning a minority interest in such Person and controlling such person by virtue of contractual provisions, or a Person who is majority owned by such Person and controlled by such Person or who is minority owned by such Person and controlled by such Person by virtue of contractual provisions; provided, however, that no party to this Agreement shall be considered an affiliate of any other party solely by reason of its investment in the Company.

"*Agreement*" shall mean this Limited Liability Company Agreement as originally executed and as amended from time to time.

"*Board*" means the Board of Managers of the Company.

"Capital Account" shall mean a financial account to be established and maintained by the Company for each Member as computed from time to time in accordance with the capital account maintenance rules set forth in Regulations Section 1.704-1(b)(2), as such Regulations may be amended from time to time.

"Capital Contribution" shall mean the total amount of money or the net fair market value of property (as determined in good faith by the Board) contributed by each Member to the Company pursuant to the terms of this Agreement.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Company" shall mean Founding Partners Designee, LLC, a Delaware limited liability company.

"Company Minimum Gain" shall mean the amount determined in accordance with Regulations Section 1.704-2(d) by (i) computing with respect to each Nonrecourse Liability of the Company the amount of income or gain, if any, that would be realized by the Company if it disposed of the property securing such Nonrecourse Liability in full satisfaction thereof, and (ii) aggregating all separate amounts so computed.

"Court" shall mean the United States District Court, Middle District of Florida – Fort Myers Division, which appointed the Receiver of Founding Partners and certain of its Affiliates.

"Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

"*Equity Securities*" means all Membership Interests of the Company, all securities convertible or exchangeable for Membership Interests of the Company, and all options, warrants, and other rights to purchase or otherwise acquire Membership Interests from the Company, including any unit appreciation or similar rights, contractual or otherwise.

"Fiscal Year" shall mean the annual accounting period specified in Section 10.1 hereof.

"Founding Partners" shall mean Founding Partners Stable-Value Fund, L.P., a Delaware limited partnership, and the initial Member of the Company.

"*Majority Vote*" shall mean the affirmative vote or written consent of Members then owning of record Membership Interests, in the aggregate, representing a majority of the Ownership Percentages owned by all Members.

"*Manager*" means any Person that is a member of the Board.

"Member" shall mean Founding Partners Stable-Value Fund, L.P., a Delaware limited partnership, and any other Person that hereafter acquires a Membership Interest in compliance with the terms of this Agreement.

"Member Nonrecourse Debt" shall have the meaning ascribed to the term "partner nonrecourse debt" in Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Deductions" shall mean any and all items of loss, deduction or expenditure (described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Regulations Section 1.704-2(i)(2), are attributable to Member Nonrecourse Debt.

"Membership Interest" shall mean a Member's entire interest in the Company, including such Member's share of the Profits, Losses and distributions of the Company, and the Member's right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Agreement or the Act.

"Minimum Gain Attributable to Member Nonrecourse Debt" shall have the meaning ascribed to the term "partner nonrecourse debt minimum gain" in Regulations Section 1.704-2(i)(2).

"Nonrecourse Deductions" shall mean that amount determined in accordance with Regulations Section 1.704-2(b)(1).

"Nonrecourse Liability" shall mean any liability of the Company treated as a nonrecourse liability under Regulations Section 1.704-2(b)(3).

"Ownership Percentage" shall mean a Member's percentage interest in the Profits, Losses and distributions of the Company as adjusted under this Agreement. The initial Ownership Percentages are as follows:

Founding Partners: 100%

"Person" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and permitted assigns of any such Person where the context so permits.

"Profit or Loss" shall mean, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such Fiscal Year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments: (a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profit or Loss shall be added to such taxable income or loss; and (b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profit or Loss, shall be subtracted from such taxable income or loss. Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 7.2 hereof shall not be taken into account in computing Profit or Loss.

"Receiver" shall mean Daniel S. Newman, solely in his capacity as the Court appointed receiver of Founding Partners and certain of its Affiliates.

"Regulations" shall mean the Federal Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Settlement Agreement" shall mean that certain Settlement Agreement to be entered into, subject to Court approval, by and among Sun Capital Healthcare, Inc., a Florida corporation; Sun Capital, Inc., a Florida corporation; Success Healthcare, LLC, a California limited liability company; Promise Healthcare, Inc., a Florida corporation; Peter R. Baronoff, an individual; Howard B. Koslow, an individual; Lawrence Leder, an individual; Malinda Baronoff, an individual; Jane Koslow, an individual; Carole Leder, an individual; Mark Dawson, an individual; the subsidiaries and affiliates of SCHI, SCI, Success and Promise identified on Annex I attached thereto; Founding Partners; Founding Partners Global Fund, Ltd., a corporation organized under the laws of the Cayman Islands; Founding Partners Stable-Value Fund II, L.P., a Delaware limited partnership; Founding Partners Hybrid-Value Fund, L.P., a Delaware limited partnership; and Receiver.

"*Subsidiary*" means, with respect to any Person, any Entity that is owned or controlled, directly or indirectly, by (i) such Person, (ii) such person and one or more Subsidiaries of such Person, or (iii) one or more subsidiaries of such Person. For purposes of this definition, the term "controlled" means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"*Transfer*" shall mean a sale, assignment, transfer or other disposition (voluntarily or by operation of law) of, or the granting or creating of a lien, encumbrance or security interest in, a Membership Interest.

ARTICLE 2
ORGANIZATIONAL MATTERS

2.1 Name. The name of the Company is Founding Partners Designee, LLC.

2.2 Principal Place of Business. The principal place of business of the Company is 999 Yamato Road, 3rd Floor, Boca Raton, Florida 33431. The Company may locate its places of business and registered office at any other place or places as the Board may from time to time deem advisable.

2.3 Registered Office and Registered Agent. The Company's initial registered agent within the State of Delaware is Capitol Services, Inc. and the registered office of the Company with the State of Delaware is 615 South Dupont Highway, Dover, Delaware 19901. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State of Delaware pursuant to the Act and the applicable rules promulgated thereunder.

2.4 Term. The term of the Company commenced on the date the Certificate of Formation was filed with the Secretary of State of Delaware and shall continue in perpetuity thereafter until dissolved in accordance with the provisions of this Agreement or the Act.

2.5 Tax Status. The undersigned intends for the Company to be treated as a partnership for federal income tax purposes if the Company has two or more Members, and otherwise as an entity that is disregarded as an entity separate from its owner for federal income tax purposes pursuant to Regulations Section 301.7701-3.

2.6 Bylaws. The bylaws of the Company attached hereto as Annex A (as amended, restated, supplemented or otherwise modified from time to time, the "Bylaws") are hereby adopted and approved by the Members. This Agreement and the Bylaws are intended to serve as a "limited liability company agreement," as such term is defined in Section 18-101(7) of the Act.

ARTICLE 3
BUSINESS OF COMPANY

3.1 Purposes. The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities is necessary or incidental to the foregoing. The Company shall have all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Act.

3.2 Use of Subsidiaries. It is contemplated that the Company will own one or more Subsidiaries. The Board may form and/or acquire such Subsidiaries from time to time. It is the intention of the Members that the use of Subsidiaries not alter their rights herein and references in this Agreement to the Company shall include any Company Subsidiaries where appropriate to accomplish that intent.

ARTICLE 4
SCHEDULE OF MEMBERS

The name and business, mailing or residence address of each of the Members of the Company are set forth on Schedule I hereto. The Board shall amend Schedule I from time to time to accurately reflect the names and business, mailing or residence addresses of each of the Members and each of the Persons who shall become Members after the date hereof.

ARTICLE 5
CONTRIBUTIONS TO THE COMPANY

5.1 Members' Capital Contributions. Simultaneously with the execution of this Agreement, the initial Member shall make the following Capital Contribution in cash to the Company:

Member	Capital Contribution
Founding Partners	$100

5.2 Reimbursement of Expenses. The Company shall reimburse the initial Member for all direct out-of-pocket costs incurred in connection with the formation of the Company.

5.3 Third-Party Loans. In the event that the Board shall determine, at any time and from time to time, that the Company requires additional funds, the Board shall have the right to cause the Company to borrow additional funds from a third-party lender upon such terms and conditions as the Board deem reasonable and appropriate under the circumstances.

5.4 Member Loans. In the event the Company is unable to obtain any third-party loans upon terms acceptable to the Board or the Board determines that the Company requires funds in addition to any amounts borrowed under Section 5.3 above, then the Members may make loans to the Company in such amounts and upon such terms and conditions authorized by the Board. Any loan made by a Member shall not be treated as a Capital Contribution for any purpose under this Agreement, nor shall any such loan entitle a Member to any increase in his or her share of the Profits, Losses or distributions of the Company. Any loan from a Member shall be repayable on the terms and conditions and shall bear interest at the rate agreed to by the lending Member and the Board, if applicable.

5.5 Additional Capital Contributions. The Members shall have the right to make additional Capital Contributions to the Company from time to time, but no Member shall be obligated to make any additional Capital Contributions to the Company.

5.6 Withdrawal or Reduction of Members' Contributions to Capital. A Member shall not receive out of the Company's property any part of such Member's Capital Contribution until all liabilities of the Company have been paid or there remains property of the Company sufficient to pay them. A Member, irrespective of the nature of such Member's Capital Contribution, has only the right to demand and receive cash in return for such Capital Contribution. No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein. The Capital Contribution of a Member shall not be considered as a liability of the Company.

ARTICLE 6
DISTRIBUTIONS

6.1 Distributions. The Company shall make distributions at such times and in such amounts as the Board shall determine to the Members in accordance with their Ownership Percentages.

6.2 Dissolution. Notwithstanding Section 6.1 hereof, upon dissolution of the Company provided in Section 12.3 hereof, all distributions occurring thereafter shall be made in accordance with Section 12.5.

6.3 Limitation Upon Distributions. No distributions shall be made to the Members if prohibited by the Act.

6.4 Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any state, local or other tax law with respect to any payment or distribution to the Members shall be treated as amounts distributed to the Members pursuant to this Article VI for all purposes under this Agreement.

ARTICLE 7
ALLOCATIONS

7.1 Profits and Losses. Subject to Section 2.5, any Profit or Loss realized by the Company for any Fiscal Year or other period shall be allocated among the Members in accordance with their respective Ownership Percentages. Notwithstanding the foregoing, no Loss shall be allocated to a Member to the extent it would cause or increase a deficit balance in such Member's Capital Account. In such case, the Loss shall be allocated to the Members with positive balances in their Capital Accounts in proportion to such balances, and appropriate adjustments shall be made to the allocation of subsequent Profit in order to offset the allocation of such Loss.

7.2 Regulatory Allocations. Notwithstanding Section 7.1 above but subject to Section 2.5, the following special allocations shall be made for each Fiscal Year in the following order of descending priority:

(a) Company Minimum Gain. Except as otherwise provided in Regulations Section 1.704-2(f), if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in proportion to, and to the extent of, an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). This Section is intended to comply with the chargeback of items of income and gain requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Minimum Gain Attributable to Member Nonrecourse Debt. Except as otherwise provided in Regulations Section 1.704-2(i), if there is a net decrease in Minimum Gain Attributable to Member Nonrecourse Debt during any Fiscal Year, each Member with a share of Minimum Gain Attributable to Member Nonrecourse Debt shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in proportion to, and to the extent of, an amount equal to the portion of such Member's share of the net decrease in the Minimum Gain Attributable to Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). This Section is intended to comply with the chargeback of items of income and gain requirement in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the adjusted capital account deficit (as such term is used in Regulations Section 1.704-1 (b)(2)(ii)(d)) of such Member as quickly as possible, provided that an allocation pursuant to this Section 7.2(c) shall be made only after all other allocations provided for in this Article 7 have been tentatively made as if this Section 7.2(c) were not in this Agreement. This Section 7.2(c) is intended to constitute a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii)(d)(3) of the Treasury Regulations and is to be interpreted to the extent possible to comply with the requirements of such Regulation as it may be amended or supplemented from time to time.

(d) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be allocated to the Members in the same ratios that Profit is allocated for the Fiscal Year in accordance with Regulations Section 1.704-2(b)(1). If the Board determines in good faith that the Nonrecourse Deductions must be allocated in a different ratio to satisfy the safe harbor requirements of the Regulations promulgated under Section 704(b) of the Code, then the Board shall revise the prescribed ratio to the numerically closest ratio that does satisfy such requirements.

(e) Member Nonrecourse Deductions. Member Nonrecourse Deductions for any Fiscal Year shall be allocated one hundred percent (100%) to the Member that bears the economic risk of loss (as defined in Regulations Section 1.704-2(b)) with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i). If more than one Member bears the economic risk of loss with respect to a Member Nonrecourse Debt, the Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Members in accordance with the ratios in which they share such economic risk of loss.

7.3 Curative Allocations. The allocations set forth in Section 7.2 (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704-1 (b) and 1.704-2(b). Notwithstanding any other provisions of this Article 7 (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss, and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to such Member if the Regulatory Allocations had not occurred.

7.4 Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder and Regulations Section 1.704-1(b)(4)(i), income, gain, loss and deduction (as computed for federal income tax purposes) with respect to any property contributed to the capital of the Company or otherwise revalued on the books of the Company shall, solely for federal income tax purposes, be allocated among the Members to take into account any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value as determined at the time of the contribution or revaluation. Any elections or other decisions relating to such tax allocations shall be made by the Board.

7.5 Code Section 754 Election. To the extent and at the times provided by law, the Company may, by vote of the Board, elect in a timely manner pursuant to Section 754 of the Code and pursuant to corresponding provisions of applicable state and local tax laws, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

ARTICLE 8
MANAGEMENT

8.1 Management of the Company. Subject to the delegation of rights and powers provided for herein and the Bylaws, the Board shall have the sole right to manage the business and affairs of the Company and shall have all powers and rights necessary, appropriate or advisable to effectuate and carry out the purposes and business of the Company.

8.2 Board Representation.

(a) The Company and the Members shall take such actions as may be required to ensure that (x) the number of Managers constituting the Board shall consist of five individuals, and (y) the presence of a majority of the total number of Managers then in office (and for so long as Founding Partners owns at least a ten (10%) Ownership Percentage, including the Manager nominated under Section 8.2(a)(i) hereof), is required to constitute a quorum of the Board.

(i) Founding Partners shall be entitled (A) to designate one individual to the Board (the "FP Manager") until its successor is elected and qualified, (B) to designate a successor to the FP Manager and (C) to direct the removal from the Board of the FP Manager designated under the foregoing clauses (A) or (B); provided, however, that upon the date on which Founding Partners shall own less than ten percent (10%) of the outstanding Ownership Percentages of the Company, then the Board shall promptly thereafter nominate individuals to serve as Board Members in accordance with the Bylaws and thereafter hold an election to elect five Managers to fill the Board (the "Elected Managers") and to replace all of the then incumbent Board members (except to the extent that any of such incumbents are elected in such election) in accordance with the provisions of Section 8.2(a)(iii). The FP Manager initially appointed to the Board in accordance with this Section 8.2(a)(i) shall be Daniel S. Newman.

(ii) Four individuals that are affiliated with various investors in Founding Partners and/or its Affiliates shall be designated by Founding Partners to serve as members of the Board, subject to their approval by the Court, if the Court agrees to review those designations, until their successors are elected and qualified or their earlier removal by the Court, to the extent that the Court agrees to assume that power.

(iii) Promptly after the date on which Founding Partners shall own less than ten percent (10%) of the outstanding Ownership Percentages of the Company and annually thereafter, the Members other than Founding Partners by Majority Vote (but excluding Founding Partners from such vote) shall be entitled (A) to elect five individuals to serve as Elected Managers until, in each case, their respective successors are elected and qualified, (B) to elect successors to the Elected Managers and (C) to direct the removal from the Board of any Elected Managers.

(iv) Each Board designation or any proposal to remove from the Board any Manager shall be made by delivering to the Company a notice signed by the party or parties entitled to such Board designation or proposal. As promptly as practicable, but in any event within ten (10) days, after delivery of such notice, the Company shall take or cause to be taken such actions as may be reasonably required to cause the appointment or removal proposed in such notice. Such actions may include calling a meeting or soliciting a written consent of the Board, or calling a meeting or soliciting a written consent of the Members (excluding Founding Partners).

(b) Subject to the foregoing, in the event a vacancy is created on the Board by reason of the death, disability, resignation or termination of any Manager, each of the Members hereby agrees that such vacancy shall be filled in accordance with the applicable procedures set forth in this Section 8.2; provided, that if the provisions of Sections 8.2(a)(i) or (ii) are not then applicable, then such vacancy shall be filled by way of a vote of the remaining members of the Board.

(c) Upon execution of this Agreement, the Managers designated in Section 8.2(a) will be elected and will serve until their successors are duly elected and qualified pursuant to the terms of this Agreement and the Bylaws or until their earlier death, disability, resignation, termination (with cause or without cause) or other removal.

(d) No Member, by reason of such Member's status as such, shall have any authority to act for or bind the Company but shall have only the right to vote on or approve the actions to be voted on or approved by such Member as specified in this Agreement or the Bylaws or as required under the Act.

(e) The officers of the Company shall be, and shall be elected, removed and perform such functions, as are provided in the Bylaws; provided, however, that the Company shall not, and shall not permit any Subsidiary to, hire any senior executive officer without the prior approval of the Board except for Peter R. Baronoff's employment agreement that has already been approved along with the Settlement Agreement. Subject to the terms of this Agreement, the Board may appoint, employ or otherwise contract with such other Persons for the transaction of the business of the Company or the performance of services for or on behalf of the Company as they shall determine in their sole discretion. The Board may delegate to any officer of the Company or to any such other Person such authority to act on behalf of the Company as the Board may from time to time deem appropriate in their sole discretion.

(f) Except as otherwise determined by the Board, when the taking of any action has been authorized by the Board, any officer of the Company or any other Person specifically authorized by the Board or the Bylaws may execute any contract or other agreement or document on behalf of the Company and may execute and file on behalf of the Company with the Secretary of State of the State of Delaware any certificates of amendment to the Company's Certificate, one or more restated Certificates and certificates of merger or consolidation and, upon the dissolution and completion of winding up of the Company, or as otherwise provided in the Act, a certificate of cancellation canceling the Company's Certificate.

(g) In addition to all other rights and powers provided by this Agreement, the Bylaws and the Act, the Board shall have the power to set the annual fiscal budget for the Company and to approve or disapprove the annual fiscal budget presented by any of its Subsidiaries from time to time.

(h) The Board shall have the right to establish any committees of the Board deemed appropriate by the Board from time to time. Subject to this Agreement, the Bylaws and the Act, each committee of the Board shall have the rights, powers and privileges granted to such committee by the Board from time to time.

(i) The Company shall execute and deliver a Manager Indemnification Agreement, substantially in the form of Exhibit A attached hereto, in favor of each Manager. The Company may obtain Managers' and Officers' insurance at the discretion of the Board.

8.3 Meetings; Expenses; Compensation. The Company shall reimburse each Manager who is not an employee of the Company for his or her reasonable out-of-pocket expenses (including travel, lodging and meal expenses) incurred in connection with the attendance of meetings of the Board or any committee thereof or the performance of his or her duties.

8.4 Member Voting Rights.

(a) The Members shall not have any voting rights, except (i) as required by the Act or other applicable law or (ii) as otherwise expressly required by this Agreement and the Bylaws. Except for cumulative voting in the election of Managers provided for in the Bylaws, with respect to any matter as to which a vote of the Members is required, such matter shall require the affirmative vote or written consent of the Members whose Membership Interests represent a majority of the then outstanding aggregate Ownership Percentages, unless a higher or lower percentage is otherwise required.

(b) Except as otherwise required by the Act or other applicable law, this Agreement or the Bylaws, each Member shall be entitled to vote on all matters to be voted on by the Members. Each Member may elect to vote none or a portion of his, her or its Membership Interest following the delivery of a written notice to the Board setting forth such election.

8.5 Major Decisions. After the date hereof and for so long as Founding Partners continues to own a Membership Interest representing at least ten percent (10%) of the Ownership Percentages, neither the Company nor any Subsidiary shall take any of the following actions without the prior affirmative vote of the FP Manager with respect to such action; provided, however, that in the event that a majority of the other Board members oppose the vote of the FP Manager as to any such major decision, they shall be permitted to petition the Court to potentially overrule the vote of the FP Manager on such major decision:

(a) (1) issue or authorize any Equity Securities, (2) issue any unit, stock or equity appreciation or similar rights, (3) establish or materially modify any compensation plans of the Company, (4) create a bonus plan or program or issue any bonuses or agree to issue bonuses, the payment of which is contingent upon the occurrence of a Liquidity Event, change of control or similar event, or (5) redeem, repurchase or acquire any Equity Securities, in any such case, other than pursuant to this Agreement;

(b) issue or guarantee any debt for borrowed money or grant a security interest, lien or other encumbrance on any property in connection with any debt for borrowed money;

(c) take any action that is reasonably expected to result in a Liquidity Event;

(d) effect any acquisition by the Company of any business;

(e) effect any sales or other dispositions of assets outside of the ordinary course of business;

(f) commence or terminate the employment of the chief executive officer, chief financial officer or chief operating officer of the Company, or amend or revise the terms of any employment agreement with any such officer;

(g) alter the size of the Board;

(h) enter into, amend, terminate, enforce or grant any waivers under any contract or agreement with any officer, director, stockholder, Affiliate or employee (each a

"Related Person") of the Company or any subsidiary, or with any Affiliate of a Related Person, including, without limitation, for the sale or repurchase of any of the Company's Equity Securities (other than any contract or agreement entered into with such Related Person on terms not less favorable to the Company or Subsidiary, as the case may be, than would be obtained in a transaction with a Person which is not a Related Person, as determined by a mutually agreed upon third party). Notwithstanding the foregoing, such prior approval shall not be required with respect to any contract, agreement, action or transaction explicitly permitted by, required under, or contemplated by, the Settlement Agreement;

(i) declare or pay any dividends or pay any other distribution;

(j) amend this Agreement, the Bylaws or the Company's Certificate of Formation;

(k) amend, terminate or otherwise exercise or waive any rights on behalf of the Company arising under, the Settlement Agreement, in each case, at any time prior to the closing of the transactions contemplated thereby; or

(l) agree to take any of the foregoing actions.

At any applicable time that the Company has any Subsidiary, it shall not permit such Subsidiary to take any of the foregoing actions (with all references to the Company deemed to be references to such Subsidiary) without the prior affirmative vote of the FP Manager with respect to such action.

ARTICLE 9
RIGHTS AND OBLIGATIONS OF MEMBERS

9.1 Limitation on Liability. Each Member's liability shall be limited as set forth in this Agreement, the Act and other applicable law.

9.2 No Liability for Company Obligations. No Member will have any personal liability for any debts or losses of the Company beyond such Member's Capital Contribution, except as provided by law, relating to liability for wrongful distributions.

9.3 Priority and Return of Capital. Except as may be expressly provided herein, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Profits, Losses or distributions. This Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

9.4 Acknowledgement. Each Member acknowledges and agrees that except as required under the Act or applicable federal law and state securities laws, or as expressly provided in this Agreement or any other agreement between the Company and a Member, the Company will have no duty or obligation to disclose to any Member, and no Member will have any right to be advised of, any information regarding the Company or any Subsidiary. Notwithstanding anything in this Agreement, each Member acknowledges and agrees that it is expected that certain of the other Members and their respective Affiliates will on and after the date hereof, make investments in (by way of capital contributions, loans or otherwise), Persons engaged in businesses that directly or indirectly compete with business of the Company and its

Subsidiaries as conducted from time to time. Each Member further acknowledges and agrees that any such investment activity shall not in any way constitute a breach of any term of this Agreement and shall not give rise to any claim, action, right to sue or other remedy against any such Member or their respective Affiliates on behalf of any Member, the Company, any Subsidiary of the Company or any of their respective Affiliates, whether under contract or applicable law.

ARTICLE 10
ACCOUNTING AND TAX MATTERS

10.1 Accounting Period. The Company's annual accounting period shall be the calendar year.

10.2 Accountants. The Company's accountants shall be such accounting firm that is chosen from time to time by the Board.

10.3 Records, Audits and Reports. At the expense of the Company, the Company shall maintain records and accounts of all operations and expenditures of the Company. In addition, the Company shall keep the following records at the principal place of business of the Company:

(a) A current list of the full name and last known address of each Member;

(b) Copies of records to enable a Member to determine the relative voting rights, if any;

(c) A copy of the Certificate of Formation of the Company and all amendments thereto;

(d) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(e) Copy of this Agreement, together with any amendments thereto; and

(f) Copies of any financial statements of the Company for the three most recent years.

10.4 Tax Returns. The Board shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's Fiscal Year.

10.5 Tax Matters Partner. The "tax matters partner" of the Company for all purposes under the Code shall be Founding Partners until such time as it no longer owns at least ten percent of the Ownership Percentages in the Company. Thereafter, the "tax matters partner" shall be such other Member as may be appointed as such by the Board from time to time.

ARTICLE 11
TRANSFERS OF MEMBERSHIP INTERESTS

11.1 Member's or Assignee's Right to Transfer. Any Member may Transfer all or any part of its Membership Interest so long as, prior to or in connection with such Transfer (a) the transferee acknowledges in writing to the Company its receipt of a copy of this Agreement and its agreement to comply herewith and be bound hereby and (b) to the extent reasonably requested by the Board, the transferor to each such Person causes to be delivered to the Company, at its sole cost and expense, a favorable opinion of legal counsel reasonably acceptable to the Company, to the effect that (i) the contemplated Transfer of such Membership Interest to such Person does not require registration under the Securities Act of 1933 or applicable State securities or Blue Sky laws, (ii) such Person has the legal right, power and capacity to own the Membership Interest, and (iii) the contemplated Transfer of such Membership Interest to such Person will not cause the Company to be treated as a corporation for federal income tax purposes.

11.2 Certain Permitted Transfers. Notwithstanding anything to the contrary contained in this Agreement, Founding Partners may, from time to time and in its sole discretion, without the requirement of complying with any of the provisions of this Article, Transfer its Membership Interest, in whole or in part, to Fund Investors (as defined in the Settlement Agreement).

ARTICLE 12
WITHDRAWAL; DISSOLUTION AND TERMINATION

12.1 Withdrawal. No Member shall have the right to withdraw from the Company except with the consent of the Board and upon such terms and conditions as may be specifically agreed upon between the Company and the withdrawing Member. The provisions hereof with respect to distributions upon withdrawal are exclusive, and no Member shall be entitled to claim any further or different distribution upon withdrawal under Section 18-604 of the Act or otherwise. This Section 12.1 shall not apply to Transfers permitted under Article 11 hereof.

12.2 Additional Members. The Board shall have the right to cause the Company to issue additional Membership Interests and to admit additional Members upon the acquisition of such Membership Interests upon such terms and conditions, at such time or times, and for such Capital Contributions as shall be determined by the Board, subject to any limits set forth in this Agreement. In connection with the admission of an additional Member, the Board shall amend Schedule I hereto to reflect the name and address of the additional Member.

12.3 Dissolution. The Company shall be dissolved and its affairs wound up and terminated upon the first to occur of the following:

(a) the determination of the Board to dissolve the Company;

(b) any other event causing a dissolution of the Company under Section 18-801 of the Act (including any applicable definitions contained in Section 18-802 of the Act);

(c) upon a sale of substantially all of the assets of the Company, except that if such disposition involves the receipt by the Company of purchase money obligations or any ongoing contingent obligations of the Company, the Company shall not be dissolved until such

obligations are collected on, abandoned, sold or otherwise disposed of, including to a liquidating trust; and

(d) Notwithstanding anything contained herein to the contrary, no Member's death, status as a debtor in a bankruptcy case, disability, resignation, retirement or other termination of employment with the Company or any Affiliate thereof (for cause or without cause) shall result in the dissolution, winding up or termination of the Company.

12.4 Effect of Dissolution. Upon dissolution, the Company shall cease to carry on its business, except as permitted by the Act. Upon dissolution, the Board shall cause the Company to file a statement of commencement of winding up pursuant to the Act and publish the notice permitted by the Act.

12.5 Winding Up, Liquidation and Distribution of Assets.

(a) Upon dissolution of the Company, no further business shall be conducted except for the taking of such action as shall be necessary for the winding up of the affairs of the Company and the distribution of its assets to the Members pursuant to the provisions of this Section. The Board shall have full authority to wind up the affairs of the Company and to make distributions as provided herein.

(b) Upon dissolution of the Company, the Board shall either sell the assets of the Company at the best price available, or the Board may distribute to the Members all or any portion of the Company's assets in kind. If any assets are to be distributed in kind, the Board shall ascertain the fair market value (by appraisal or other reasonable means) of such assets, and each Member's Capital Account shall be charged or credited, as the case may be, as if such asset had been sold for cash at such fair market value and the net gain or net loss, recognized thereby had been allocated to and among the Members in accordance with Article 7 above.

(c) All assets of the Company shall be applied and distributed by the Board in the following order:

(i) First, to the creditors of the Company;

(ii) Second, to setting up the reserves that the Board may deem reasonably necessary for contingent or unforeseen liabilities or obligations of the Company;

(iii) Third, to the Members in an amount equal to the positive balances of their Capital Accounts in the proportion of such positive balances (after such Capital Accounts have been adjusted to reflect any Profits or Losses to be allocated to the Members in connection with the dissolution and liquidation of the Company); and

(iv) Thereafter, to the Members in accordance with their respective Ownership Percentages.

(d) Except as provided by law upon a "liquidation" within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, if any Member has a deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have

no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

12.6 Certificate of Termination. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, a Certificate of Cancellation shall be executed and filed with the Secretary of State of Delaware in accordance with Section 18-203 of the Act.

12.7 Return of Contribution; Nonrecourse Against Other Members. Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of his or her Capital Contribution. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the contributions of one or more Members, such Member or Members shall have no recourse against any other Member.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Notices. Any and all notices, offers, demands or elections required or permitted to be made under this Agreement ("Notices") shall be in writing, signed by the party giving such Notice, and shall be deemed given and effective (i) when hand-delivered (either in person by the party giving such notice, or by its designated agent, or by commercial courier) or (ii) on the third (3rd) business day (which term means a day when the United States Postal Service, or its legal successor ("Postal Service") is making regular deliveries of mail on all of its regularly appointed week-day rounds in New York City) following the day (as evidenced by proof of mailing) upon which such notice is deposited, postage pre-paid certified mail, return receipt requested, with the Postal Service, and addressed to the other party at such party's respective address as set forth in Article IV hereof, or at such other address as the other party may hereafter designate by Notice.

13.2 Complete Agreement. This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein.

13.3 Application of Delaware Law. This Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Delaware, and specifically the Act.

13.4 Waiver of Right to Partition. Each of the parties hereto irrevocably waives during the term of the Company any right to maintain any action for partition with respect to the property of the Company.

13.5 Amendments. Except as otherwise provided in this Agreement, amendments to this Agreement may only be made upon the written consent of the Board and those Members constituting a Majority Vote, except that (1) without the written consent of all Members, no amendment shall amend this Section 13.5, (2) no amendment may change the requisite

percentage in interest of Members which is needed to give any consent or approval under this Agreement without the written consent of at least such requisite percentage, (3) no amendment shall reduce the Capital Account of any Member without the written consent of such Member, and (4) no amendment shall change in any material respect the method of allocating Profit or Loss or rights upon liquidation of the Company without the written consent of all affected Members.

13.6 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

13.7 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

13.8 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

13.9 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

13.10 No Partnership Intended for Nontax Purposes. The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under either the Delaware Uniform Partnership Act nor the Delaware Uniform Limited Partnership Act. The Members do not intend to be partners one to another, or partners as to any third party for any purpose other than for federal, state, local or foreign tax purposes at such time as the Company has more than one Member. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who is incurs personal liability by reason of such wrongful representation.

13.11 Waiver. No provision of this Agreement will be deemed to have been waived except if such waiver is contained in a written instrument executed by the party against which such waiver is to be enforced, and no such waiver will be deemed to be a waiver of any other or further obligation or liability of the party or parties in whose favor the waiver was given. The rights and remedies of the parties under this Agreement are in addition to all other rights and remedies, at law or in equity, that they may have against the other parties hereto.

13.12 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

13.13 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

13.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

MEMBER:

Founding Partners Stable-Value Fund, L.P.,
a Delaware limited partnership

By: Founding Partners Capital Management Company, a Florida corporation, Its General Partner

By:_____
Daniel S. Newman, Its Court-appointed Receiver

COMPANY:

Founding Partners Designee, LLC,
a Delaware limited liability company

By: Founding Partners Stable–Value Fund, L.P., a Delaware limited partnership, its sole initial member

By: Founding Partners Capital Management Company, a Florida corporation, Its General Partner

By:_____
Daniel S. Newman, Its Court-appointed Receiver

Schedule of Members

Founding Partners Stable-Value Fund, L.P.
One Biscayne Tower
2 South Biscayne Blvd.
21st Floor
Miami, FL 33131
Attn: Daniel S. Newman, Receiver
Facsimile: (305) 995-6387

with a copy to:

Broad and Cassel
7777 Glades Road
Suite 300
Boca Raton, FL 33434
Attention: David J. Powers, P.A.
Facsimile: (561) 218-8960

BYLAWS

OF

FOUNDING PARTNERS DESIGNEE, LLC

INTRODUCTION

A. Operating Agreement. These Bylaws are subject to the Limited Liability Company Agreement dated as of _____ ___, 2011 (as amended, supplemented, modified or otherwise restated from time to time, the "Operating Agreement"), of Founding Partners Designee, LLC, a Delaware limited liability company (the "Company") among the Company and the Members party thereto. In the event of any inconsistency between the terms hereof and the terms of the Operating Agreement, the terms of the Operating Agreement shall control.

B. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Operating Agreement.

ARTICLE I
MEETINGS OF MEMBERS

Section 1. Place of Meetings and Meetings by Telephone.

Meetings of Members shall be held at any place designated by the Board. In the absence of any such designation, meetings of Members shall be held at the principal place of business of the Company. Any meeting of the Members may be held by conference telephone or similar communication equipment so long as all Members participating in the meeting can hear one another, and all Members participating by telephone or similar communication equipment shall be deemed to be present in person at the meeting.

Section 2. Call of Meetings.

Meetings of the Members may be called at any time by any Manager for the purpose of taking action upon any matter requiring the vote or authority of the Members as provided herein or in the Operating Agreement or upon any other matter as to which such vote or authority is deemed by the Board to be necessary or desirable.

Section 3. Notice of Meetings of Members.

All notices of meetings of Members shall be sent or otherwise given in accordance with Section 4 of this Article I not less than five (5) nor more than thirty (30) days before the date of the meeting. The notice shall specify the place, date and hour of the meeting and the general nature of the business to be transacted.

Section 4. Manner of Giving Notice.

Notice of any meeting of Members shall be given personally or by telephone to each Member or sent by first class mail, by telegram, telecopy or email (or similar electronic means) or by a nationally recognized overnight courier, charges prepaid, addressed to the Member at the address of that Member appearing on the books of the Company or the address given by the Member to the Company for the express purpose of receiving notices. Notice shall be deemed to have been given at the time when delivered, with respect to notices given personally or by telephone, or at the time sent or deposited in the mail, with respect to notices given by first class mail, overnight courier, telegram, telecopy or email (or similar electronic means).

Section 5. Adjourned Meeting; Notice.

Any meeting of Members, whether or not a quorum is present, may be adjourned from time to time by the vote of the holders of Membership Interests representing a majority of the Ownership Percentages represented at that meeting, either in person or by proxy. When any meeting of Members is adjourned to another time or place, notice need not be given of the adjourned meeting, unless a new record date of the adjourned meeting is fixed or unless the adjournment is for more than thirty (30) days from the date set for the original meeting, in which case the Board shall set a new record date and shall give notice in accordance with the provisions of Sections 3 and 4 of this Article I. At any adjourned meeting, the Company may transact any business that might have been transacted at the original meeting.

Section 6. Quorum; Voting.

At any meeting of the Members, the holders of Membership Interests representing a majority of the Ownership Percentages, in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of Members holding a higher aggregate Ownership Percentage is required by the Operating Agreement, these Bylaws or applicable law. Except as otherwise required by the Operating Agreement, these Bylaws or applicable law (including in elections of Managers), all matters subject to a vote shall be determined by the Members whose Membership Interests represent a majority of the then outstanding Ownership Percentages. Except as otherwise expressly provided in the Operating Agreement, Managers shall be elected by way of cumulative voting.

Section 7. Waiver of Notice by Consent of Absent Members.

The transaction of a meeting of Members, however called and noticed and wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if a quorum is present either in person or by proxy and, if either before or after the meeting, each person entitled to vote who was not present in person or by proxy signs a written waiver of notice or a consent to a holding of the meeting or an approval of the minutes. The waiver of notice or consent shall specify either the business to be transacted or the purpose of any meeting of Members. Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a

meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting if that objection is expressly made at the beginning of the meeting.

Section 8. Member Action by Written Consent Without a Meeting.

Any action that may be taken at any meeting of Members may be taken without a meeting if a consent in writing setting forth the action so taken is signed by the holders of Membership Interests representing a majority of the Ownership Percentages; provided, that written notice of any actions proposed to be taken by written consent and a brief description of such actions shall be provided to each Member no less than five (5) days and no more than thirty (30) days prior to the date on which such actions are proposed to become effective. Any such written consent may be executed and given by telecopy, email or similar electronic means. Such consents shall be filed with the Secretary of the Company and shall be maintained in the Company's records.

Section 9. Record Date for Member Notice, Voting and Giving Consents.

(a) For purposes of determining the Members entitled to vote or act at any meeting or adjournment thereof, the Board may fix in advance a record date which shall not be greater than sixty (60) days nor fewer than one (1) day before the date of any such meeting. If the Board does not so fix a record date, the record date for determining Members entitled to notice of or to vote at a meeting of Members shall be at the close of business on the business day immediately preceding the day on which notice is given, or if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(b) The record date for determining the Members entitled to give consent to action in writing without a meeting (i) when no prior action of the Board has been taken, shall be the day on which the first written consent is given or (ii) when prior action of the Board has been taken, shall be such date as determined for that purpose by the Board, which record date shall not precede the date upon which the resolution fixing it is adopted by the Board and shall not be more than thirty (30) days after the date of such resolution.

(c) Only Members of record on the record date as herein determined shall have any right to vote or act at any meeting or have any right to give consent to any action relating to such record date; provided, that no Member who transfers all or part of such Member's interest after a record date (and no transferee of such interest) shall have the right to vote or act with respect to the transferred interest as regards the matter for which the record date was set.

Section 10. Proxies.

Each Member entitled to vote or act on any matter at a meeting of Members shall have the right to do so either in person or by proxy; provided, that an instrument authorizing such a proxy to act is executed by the Member in writing. A valid proxy that does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it before the vote pursuant to that proxy by a writing delivered to the Company stating that the proxy is revoked, by a subsequent proxy executed by, or by attendance at the meeting and voting in person by, the person executing that proxy or (ii) written notice of the death or incapacity of the maker of that proxy is received by the Company before the vote pursuant to that proxy is

counted. A proxy purporting to be executed by or on behalf of a Member shall be deemed valid unless challenged at or prior to its exercise and the burden of proving invalidity shall rest on the challenger. Except to the extent inconsistent with the provisions hereof, the Act, and judicial construction thereof by the courts of the State of Delaware, shall be applicable to proxies granted by any Member.

ARTICLE II
MANAGERS AND MEETINGS OF MANAGERS

Section 1. Powers.

The powers of the Managers shall be as provided in the Operating Agreement.

Section 2. Number of Managers.

The Board shall consist of the number of persons as shall be designated subject to and in accordance with the terms of the Operating Agreement.

Section 3. Vacancies.

Vacancies in the authorized number shall be filled in accordance with the terms of the Operating Agreement.

Section 4. Place of Meetings and Meetings by Telephone.

All meetings of the Board may be held at any place that has been designated from time to time by resolution of the Board or in any notice properly given with respect to such meeting. In the absence of such a designation, regular meetings shall be held at the principal place of business of the Company. Any meeting, regular or special, may be held by conference telephone or similar communication equipment; provided, that all Managers participating in the meeting can hear one another, and all Managers participating by telephone or similar communication equipment shall be deemed to be present in person at the meeting.

Section 5. Regular Meetings.

Regular meetings of the Board shall be held at such times and at such places as shall be fixed by approval of the Managers in accordance with the terms of the Operating Agreement. Such regular meetings may not be held without notice.

Section 6. Special Meetings.

Special meetings of the Board for any purpose or purposes may be called at any time by any of the Managers or by the holders of Membership Interests representing a majority of the Ownership Percentages. Notice of the time and place of a special meeting shall be delivered personally or by telephone to each Manager and sent by first class mail, by telegram, telecopy or email (or similar electronic means) or by nationally recognized overnight courier, charges prepaid, addressed to each Manager at that Manager's address as it is shown on the records of the Company. If the notice is mailed, it shall be deposited in the United States mail at least five (5)

business days before the date of the meeting. If the notice is delivered personally or by telephone or by telegram, telecopy or email (or similar electronic means) or overnight courier, it shall be given at least twenty-four (24) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the Manager or to a person designated by such Manager to receive such notice. Any notice of a special meeting shall state generally the nature of the business to be transacted as such meeting.

Section 7. Quorum.

In order to obtain a quorum for the transaction of business, a majority of the total number of Managers then in office must be present, including the FP Manager designated to the Board pursuant to Section 8.2(a)(i) of the Operating Agreement, to the extent such Section is then applicable. Every act done or decision made by the affirmative vote of the Managers holding a majority of the votes present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board except as otherwise required by the Operating Agreement, these Bylaws or applicable law.

Section 8. Waiver of Notice.

Notice of any meeting need not be given to any Manager who either before or after the meeting signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes. The waiver of notice or consent shall specify the purpose of the meeting. All such waivers, consents and approvals shall be filed with the records of the Company or be made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any Manager who attends the meeting without protesting at or prior to its commencement the lack of notice to that Manager.

Section 9. Adjournment.

Managers present at any meeting entitled to cast a majority of all votes entitled to be cast by such Managers, whether or not constituting a quorum, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given unless the meeting is adjourned for more than thirty (30) days, in which case notice of the time and place shall be given before the time of the adjourned meeting in the manner specified in Section 6 of this Article II.

Section 10. Action Without a Meeting.

Any action to be taken by the Board at a meeting may be taken without such meeting by the written consent of the Managers. Any such written consent may be executed and given by telecopy, email or similar electronic means. Such written consents shall be filed with the minutes of the proceedings of the Board.

Section 11. Voting of Managers.

Each Manager shall be entitled to one vote on all matters upon which the Managers are entitled to vote.

Section 12. **Nominating Committee**. The Board shall appoint a nominating committee consisting of three Board members, which committee will be responsible for preparing a slate of Managers for any upcoming elections of the Board. For so long as the FP Manager serves on the Board, it shall also serve on the nominating committee. The nominating committee shall maintain permanent records of its proceedings and actions and shall report to the full Board.

ARTICLE III
OFFICERS

Section 1. **Officers.**

The officers of the Company shall be the Chief Executive Officer (the "CEO"), President, Vice President (if appointed), Secretary, Assistant Secretary (if appointed), Treasurer, Assistant Treasurer (if appointed) and Controller (if appointed). The Company may also have, at the discretion of the Board, such other officers as may be appointed in accordance with the provisions of Section 3 of this Article III. Any number of offices may be held by the same person. Officers may, but need not, be Managers.

Section 2. **Election of Officers.**

The officers of the Company shall be chosen by the Board subject to the requirements in the Operating Agreement and these Bylaws and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any employment contract with the Company.

Section 3. **Additional Officers.**

The Board may appoint such additional officers as the business of the Company may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

Section 4. **Removal and Resignation of Officers.**

Subject to, and only in accordance with, the terms of the Operating Agreement, and the rights, if any, of an officer under any employment contract with the Company, any officer may be removed, with or without cause, by the Board at any regular or special meeting of the Board or by such officer, if any, upon whom such power of removal may be conferred by the Board. Any officer may resign at any time by giving written notice to the Company. Unless otherwise provided in any written agreement with any such officer, any resignation by an officer shall take effect at the date of the receipt of that notice or at any later time specified in that notice, and unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

Section 5. **Vacancies in Offices.**

Subject to, and only in accordance with, the terms of the Operating Agreement, vacancy in any office because of death, disability, resignation, removal, disqualification or other cause shall be filled by the Board.

Section 6. CEO and President.

Each of the CEO and President shall, subject to the control of the Board, be responsible for the general supervision, direction and control of the business and the officers of the Company. He or she shall have such other powers and duties as may be prescribed by the Board, the Operating Agreement, or these Bylaws.

Section 7. Secretary.

The Secretary shall keep or cause to be kept at the principal place of business of the Company, or such other place as the Board may direct, a book of minutes of all meetings and actions of the Board, committees or other delegates of the Board and the Members. The Secretary shall keep or cause to be kept at the principal place of business of the Company a register or a duplicate register showing the names of all Members and their addresses, Ownership Percentage in the Company held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation. The Secretary shall give or cause to be given notice of all meetings of the Members and of the Board (or committees or other delegates thereof) required to be given by these Bylaws, the Operating Agreement, or by applicable law and shall have such other powers and perform such other duties as may be prescribed by the Board or by these Bylaws.

Section 8. Treasurer or Controller.

The Treasurer or Controller shall be the chief financial officer of the Company and shall keep and maintain or cause to be kept and maintained adequate and correct books and records of accounts of the properties and business transactions of the Company. The books of account shall at all reasonable times be open to inspection by any Manager. The Treasurer or Controller shall deposit all monies and other valuables in the name and to the credit of the Company with such depositaries as may be designated by the Board. He or she shall disburse the funds of the Company as may be ordered by the Board, shall render to the Board, whenever they request it, an account of all of his or her transactions as chief financial officer and of the financial condition of the Company and shall have other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

ARTICLE IV
MAINTENANCE AND INSPECTION OF RECORDS

Section 1. Member List.

The Company shall maintain at its principal place of business a record of its Members, giving the names and addresses of all Members and the Ownership Percentage in the Company held by each Member. Subject to such reasonable standards (including standards governing what information and documents are to be furnished and at whose expense) as may be established by the Board from time to time and by the terms of the Operating Agreement, each Member has the right to obtain from the Company, from time to time upon reasonable demand for any purpose reasonably related to the Member's interest as a Member of the Company, a record of the Company's Members.

Section 2. Bylaws.

The Company shall keep at its principal place of business the original or a copy of these Bylaws, as amended or otherwise modified or restated from time to time, which shall be open to inspection by the Members at all reasonable times during usual business hours.

Section 3. Other Records.

The accounting books and records, minutes of proceedings of the Members and the Board and any committees or delegates of the Board and all other information pertaining to the Company that is required to be made available to the Members under the Act shall be kept at such place or places designated by the Board or, in the absence of such designation, at the principal place of business of the Company. The minutes and the accounting books and records and other information relating to the Company shall be kept in written form. The books and records of the Company shall be maintained in accordance with United States generally accepted accounting principles consistently applied during the term of the Company, wherein all transactions and other matters relating to the business, operations and properties of the Company shall be currently entered. Subject to such reasonable standards (including standards governing what information and documents are to be furnished and at whose expense) as may be established by the Board from time to time and to the terms of the Operating Agreement, minutes, accounting books and records and all other records and information relating to the Company shall be open to inspection upon the written demand of any Member at any reasonable time during usual business hours for purposes reasonably related to the Member's interests as a Member. Any such inspection may be made in person or by an agent or attorney and shall include the right to copy and make extracts. Notwithstanding the foregoing, the Board shall have the right to keep confidential from Members (other than from any Member who is a Manager) for such period of time as the Board deems reasonable any information which the Board reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Board in good faith believes is not in the best interests of the Company or could damage the Company or its business or which the Company is required by applicable law or by agreement with a third party to keep confidential.

ARTICLE V
GENERAL MATTERS

Section 1. Checks, Drafts, Evidence of Indebtedness.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable by the Company shall be signed or endorsed in such manner and by such person or persons as shall be designated from time to time in accordance with the resolution of the Board.

Section 2. Representation of Shares of Other Entities Held by Company.

Any officer of the Company authorized by the Board is authorized to vote or represent on behalf of the Company any and all shares of any corporation, partnership, limited liability company, trust or other entity, foreign or domestic, standing in the name of the Company. Such authority may be exercised in person or by a proxy duly executed by such person.

Section 3. Seal.

The Board may approve and adopt an official seal of the Company, which may be altered by them at any time. Unless otherwise required by the Board, any seal so adopted shall not be necessary to be placed on, and its absence shall not impair the validity of, any document, instrument or other paper executed and delivered by or on behalf of the Company.

ARTICLE VI
AMENDMENTS AND INCORPORATION BY REFERENCE

Section 1. Amendment.

Subject to the terms of the Operating Agreement, these Bylaws may be restated, amended, supplemented or repealed only by the affirmative vote of the Board, which majority affirmative vote shall include the FP Manager designated to the Board pursuant to Section 8.2(a)(i) of the Operating Agreement to the extent such Section is then applicable.

Section 2. Incorporation by Reference of Bylaws into Operating Agreement.

These Bylaws and any amendments hereto shall be deemed incorporated by reference in the Operating Agreement.

Section 3. Conflicts.

In the event that any provision of these Bylaws conflicts with any provision of the Operating Agreement, the terms of the Operating Agreement, as applicable, shall control.

ARTICLE VII
INDEMNIFICATION

(a) Each Person who was or is made a party to, or is threatened to be made a party to or is otherwise involved in, any action, suit, investigation or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a "proceeding") by reason of the fact that he, she or it is or was a Manager or an officer of the Company, or is or was serving at the request of the Company as a Manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise Affiliated with the Company (hereinafter an "indemnitee"), whether the basis of such a proceeding is alleged action in an official capacity as a Manager, officer, employee or agent or in any other capacity while serving as a Manager, officer, employee or agent, shall be indemnified and held harmless by the Company to the fullest extent authorized by the Act (including indemnification for negligence but excluding indemnification (i) for acts or omissions involving actual fraud, willful misconduct, gross negligence, willful violation of applicable law, material breaches of the Bylaws, the Operating Agreement, or (ii) with respect to any transaction from which the indemnitee derived an improper personal benefit, as determined by the Board in their reasonable discretion), against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith.

(b) The right to indemnification set forth in paragraph (a) of this Article VII shall include the right to have the Company pay the expenses (including attorneys' fees) incurred in defending any proceeding in advance of its final disposition (hereinafter an "advancement of expenses"). The rights to indemnification and to the advancement of expenses set forth in paragraph (a) of this Article VII and this paragraph (b) shall be contract rights, and such rights shall continue as to an indemnitee who has ceased to be a Manager, officer, employee or agent of the Company and shall inure to the benefit of the indemnitee's assigns, transferees, heirs, executors and administrators.

(c) The rights to indemnification and to the advancement of expenses granted to an indemnitee in this Article VII shall not be exclusive of any other right that any indemnitee may have or hereafter acquire under any statute, agreement, vote of the Board or otherwise. The rights to indemnification and advancement of expenses conferred upon such indemnitee herein shall be contract rights, shall vest when such person becomes a director or officer of the Company and shall continue as vested contract rights, covering acts or omissions allegedly committed while the indemnitee was a director or officer of the Company, even if such person ceases to be a director or officer of the Company.

(d) The Company may maintain insurance, at its expense, to protect itself and any Manager, officer, employee, consultant or agent of the Company or another limited liability company, corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under the Act.

(e) The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of Managers and officers of the Company.

(f) Any amendment or appeal of the provisions of this Article VII shall not adversely affect any right or protection hereunder of any indemnitee in respect of any act or omission occurring prior to the time of such amendment or repeal (regardless of whether the proceeding relating to such act or omission, or any proceeding relating to such person's rights to indemnification or to advancement of expenses, is commenced before or after the time of such amendment, repeal, modification, or adoption), and any such amendment, repeal, modification, or adoption that would adversely affect such person's rights to indemnification or advancement of expenses hereunder shall be ineffective as to such person, except with respect to any proceeding that relates to or arises from (and only to the extent such proceeding relates to or arises from) any act or omission of such person occurring after the effective time of such amendment, repeal, modification or adoption.

* * * * * * *

MANAGER INDEMNIFICATION AGREEMENT

THIS MANAGER INDEMNIFICATION AGREEMENT (this "Agreement") is made as of this [___] day of [_____], [____], by and between Founding Partners Designee, LLC, a Delaware limited liability company (the "Company") and [_____] (the "Indemnitee").

WHEREAS, it is essential to the Company that it be able to retain and attract as managers the most capable persons available;

WHEREAS, increased corporate litigation has subjected managers to litigation risks and expenses, and the limitations on the availability of manager liability insurance have made it increasingly difficult for the Company to attract and retain such persons;

WHEREAS, the Company's governing documents permit it to indemnify its managers to the fullest extent permitted by law and permit it to make other indemnification arrangements and agreements;

WHEREAS, the Company desires to provide the Indemnitee with specific contractual assurance of the Indemnitee's rights to full indemnification against litigation risks and expenses (regardless of any amendment to or revocation of the Company's Limited Liability Company Agreement (the "Operating Agreement") or any change in the ownership of the Company or the composition of its board of managers (the "Board")); and

WHEREAS, the Company acknowledges and agrees that providing the Indemnitee with the rights provided for herein is a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein, the Company and the Indemnitee do hereby covenant and agree as follows:

1. Definitions.

(a) "Corporate Status" describes the status of a person who is serving or has served (i) as a manager of the Company, (ii) in any capacity with respect to any employee benefit plan of the Company or (iii) as a manager (or comparable position) of any other Entity at the request of the Company. For purposes of subsection (iii) of this Section 1(a), a manager of the Company who is serving or has served as a manager or director of a Subsidiary shall be deemed to be serving as the request of the Company.

(b) "Entity" shall mean any corporation, partnership, limited liability company, joint venture, company, foundation, association, organization or other legal entity.

(c) "Expenses" shall mean all fees, costs and expenses incurred in connection with any Proceeding, including, without limitation, attorneys' fees, disbursements and retainers (including, without limitation, any fees, disbursements and retainers incurred by the Indemnitee pursuant to Section 10 of this Agreement), fees and disbursements of expert witnesses, private investigators and professional advisors (including, without

limitation, accountants and investment bankers), court costs, transcript costs, fees of experts, travel expenses, duplicating, printing and binding costs, telephone and fax transmission charges, postage, delivery services, secretarial services and other disbursements and expenses.

(d) "Indemnifiable Expenses," "Indemnifiable Liabilities" and "Indemnifiable Amounts" shall have the meanings ascribed to those terms in Section 3(a) below.

(e) "Liabilities" shall mean judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement.

(f) "Proceeding" shall mean any threatened or pending claim, action, suit, arbitration, alternate dispute resolution process, investigation, administrative hearing, appeal, or any other proceeding, whether civil, criminal, administrative, arbitrative or investigative, whether formal or informal, including a proceeding initiated by the Indemnitee pursuant to Section 10 of this Agreement to enforce the Indemnitee's rights hereunder.

(g) "Subsidiary" shall mean any Entity of which the Company owns (either directly or indirectly) either (i) a general partner, managing member or other similar interest or (ii) (A) 50% or more of the voting power of the voting capital equity interests of such Entity, or (B) 50% or more of the outstanding voting capital stock or other voting equity interests of such Entity.

2. Services of Indemnitee. In consideration of the Company's covenants and commitments hereunder, the Indemnitee agrees to serve or continue to serve as a manager on the Board. However, this Agreement shall not impose any obligation on the Indemnitee or the Company to continue the Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

3. Agreement to Indemnify. The Company hereby agrees to hold harmless and indemnify the Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Subject to the exceptions contained in Section 4(a) and Section 6 below, if the Indemnitee was or is a party or is threatened to be made a party to or participant in any Proceeding (other than an action by or in the right of the Company) by reason of the Indemnitee's Corporate Status, the Indemnitee shall be indemnified and held harmless by the Company against all Expenses and Liabilities incurred or paid by the Indemnitee or on the Indemnitee's behalf in connection with such Proceeding (referred to herein as "Indemnifiable Expenses" and "Indemnifiable Liabilities," respectively, and collectively as "Indemnifiable Amounts").

(b) Subject to the exceptions contained in Section 4(b) and Section 6 below, if the Indemnitee was or is, or is threatened to be made, a party to or participant in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason

of the Indemnitee's Corporate Status, the Indemnitee shall be indemnified and held harmless by the Company against all Indemnifiable Expenses.

(c) In addition to, and without regard to any limitations on, the indemnification provided for in Section 3(a) and (b), the Indemnitee shall be indemnified and held harmless by the Company against all Indemnifiable Amounts if, by reason of the Indemnitee's Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of the Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to the Indemnitee that is finally determined to be unlawful under Delaware law.

4. Exceptions to Indemnification. The Indemnitee shall be entitled to indemnification under Section 3(a) and Section 3(b) above in all circumstances other than the following:

(a) If indemnification is requested under Section 3(a) and it has been adjudicated finally by a court of competent jurisdiction that, in connection with the subject of the Proceeding out of which the claim for indemnification has arisen, the Indemnitee failed to act (i) in good faith and (ii) in a manner the Indemnitee reasonably believed to be in the best interests of the Company, or, with respect to any criminal action or proceeding, the Indemnitee had reasonable cause to believe that the Indemnitee's conduct was unlawful, the Indemnitee shall not be entitled to payment of Indemnifiable Amounts hereunder.

(b) If indemnification is requested under Section 3(b) and

(i) it has been adjudicated finally by a court of competent jurisdiction that, in connection with the subject of the Proceeding out of which the claim for indemnification has arisen, the Indemnitee failed to act (A) in good faith and (B) in a manner the Indemnitee believed to be in the best interests of the Company, then the Indemnitee shall not be entitled to payment of Indemnifiable Expenses hereunder.

(ii) it has been adjudicated finally by a court of competent jurisdiction that the Indemnitee is liable to the Company with respect to any claim, issue or matter involved in the Proceeding out of which the claim for indemnification has arisen, then no Indemnifiable Expenses shall be paid with respect to such claim, issue or matter unless the court of competent jurisdiction in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such Indemnifiable Expenses which such court shall deem proper.

5. Procedure for Payment of Indemnifiable Amounts. The Indemnitee shall submit to the Company a written request specifying the Indemnifiable Amounts for which the Indemnitee seeks payment under Section 3 of this Agreement and a short description of the basis for the claim. The Company shall pay such Indemnifiable Amounts to the Indemnitee within ten (10) calendar days of receipt of the request. At the request of the Company, the Indemnitee shall furnish such documentation and information as are reasonably available to the Indemnitee and necessary to establish that the Indemnitee is entitled to indemnification hereunder.

6. Indemnification for Expenses if Indemnitee is Wholly or Partly Successful. Notwithstanding anything contained in this Agreement to the contrary, to the extent that the Indemnitee is, by reason of the Indemnitee's Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, the Indemnitee shall be indemnified against all Indemnifiable Amounts in connection therewith. If the Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify the Indemnitee against all Indemnifiable Amounts in connection with each successfully resolved claim, issue or matter. For purposes of this Agreement, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter. Notwithstanding any of the foregoing, nothing herein shall be construed to limit an Indemnitee's right to indemnification which he or she would otherwise be entitled to pursuant to Section 3 hereof, regardless of the Indemnitee's success in a Proceeding.

7. Effect of Certain Resolutions. Neither the settlement or termination of any Proceeding nor the failure of the Company to award indemnification or to determine that indemnification is payable shall create an adverse presumption that the Indemnitee is not entitled to indemnification hereunder. In addition, the termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not create a presumption that the Indemnitee did not act in good faith and in a manner which the Indemnitee reasonably believed to be in the best interests of the Company or, with respect to any criminal action or proceeding, had reasonable cause to believe that the Indemnitee's action was unlawful.

8. Agreement to Advance Expenses; Conditions. The Company shall pay to the Indemnitee all Indemnifiable Expenses incurred by the Indemnitee in connection with any Proceeding, including a Proceeding by or in the right of the Company, in advance of the final disposition of such Proceeding. The Indemnitee hereby undertakes to repay the amount of Indemnifiable Expenses paid to the Indemnitee if it is finally determined by a court of competent jurisdiction that the Indemnitee is not entitled under this Agreement to, or is prohibited by applicable law from, indemnification with respect to such Indemnifiable Expenses. For avoidance of doubt, any advances and undertakings to repay shall be unsecured and interest free.

9. Procedure for Advance Payment of Expenses. The Indemnitee shall submit to the Company a written request specifying the Indemnifiable Expenses for which the Indemnitee seeks advancement under Section 8 of this Agreement, together with documentation evidencing that the Indemnitee has incurred such Indemnifiable Expenses. Payment of Indemnifiable Expenses under Section 8 shall be made no later than ten (10) calendar days after the Company's receipt of such request.

10. **Remedies of Indemnitees**.

(a) Right to Petition Court. In the event that the Indemnitee makes a request for payment of Indemnifiable Amounts under Section 3 and Section 5 herein or a request for an advancement of Indemnifiable Expenses under Sections 8 and Section 9 herein and the Company fails to make such payment or advancement in a timely manner pursuant to the terms of this Agreement, the Indemnitee may petition a court to enforce the Company's obligations under this Agreement.

(b) Expenses. The Company agrees to reimburse the Indemnitee in full for any Expenses incurred by the Indemnitee in connection with investigating, preparing for, litigating, defending or settling any action brought by the Indemnitee under Section 10(a) above; provided, however, that if the Indemnitee is unsuccessful, on the merits in such action, then the Company shall have no obligation to the Indemnitee under this Section 10(b).

(c) Validity of Agreement. The Company shall be precluded from asserting in any Proceeding, including, without limitation, an action under Section 10(a) above, that the provisions of this Agreement are not valid, binding and enforceable or that there is insufficient consideration for this Agreement and shall stipulate in court that the Company is bound by all the provisions of this Agreement.

(d) Failure to Act Not a Defense. The failure of the Company (including the Board or any committee thereof, independent legal counsel, or members) to make a determination concerning the permissibility of the payment of Indemnifiable Amounts or the advancement of Indemnifiable Expenses under this Agreement shall not be a defense in any action brought under Section 10(a) above, and shall not create a presumption that such payment or advancement is not permissible.

11. **Notice by Indemnitee**. The Indemnitee agrees to notify the Company promptly upon being served with any summons, citation, subpoena, complaint, indictment, information, or other document relating to any Proceeding which may result in the payment of Indemnifiable Amounts or the advancement of Indemnifiable Expenses hereunder; provided, however, that the failure to give any such notice shall not disqualify the Indemnitee from the right to receive payments of Indemnifiable Amounts or advancements of Indemnifiable Expenses.

12. **Representations and Warranties of the Company**. The Company hereby represents and warrants to the Indemnitee as follows:

(a) Authority. The Company has all necessary power and authority to enter into, and be bound by the terms of, this Agreement, and the execution, delivery and performance of the undertakings contemplated by this Agreement have been duly authorized by the Company.

(b) Enforceability. This Agreement, when executed and delivered by the Company in accordance with the provisions hereof, shall be a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by equitable principles, applicable

bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the enforcement of creditors' rights generally.

13. Contract Rights Not Exclusive; Survival of Rights; Insurance.

(a) The rights to payment of Indemnifiable Amounts and advancement of Indemnifiable Expenses provided by this Agreement shall be in addition to, but not exclusive of, any other rights which the Indemnitee may have at any time under applicable law, the Operating Agreement, or any other agreement, vote of members or managers (or a committee of managers), or otherwise, both as to action in the Indemnitee's official capacity and as to action in any other capacity as a result of the Indemnitee's serving as a manager of the Company. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of the Indemnitee under this Agreement in respect of any action taken or omitted by the Indemnitee in the Indemnitee's Corporate Status prior to such amendment, alteration or repeal. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Indemnitee shall be covered by any managers and officers liability insurance and any other insurance policy or policies providing liability insurance for managers, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person serves at the request of the Company, and the Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such manager, officer, employee, agent or fiduciary under such policy or policies. At the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

14. Successors. This Agreement shall be (a) binding upon all successors and assigns of the Company (including any transferee of all or a substantial portion of the business, equity and/or assets of the Company and any direct or indirect successor by merger or consolidation or otherwise by operation of law) and (b) binding on and shall inure to the benefit of the heirs, personal representatives, executors and administrators of the Indemnitee. This Agreement shall continue for the benefit of the Indemnitee and such heirs, personal representatives, executors and administrators after the Indemnitee has ceased to have Corporate Status.

15. Change in Law. To the extent that a change in Delaware law (whether by statute or judicial decision) shall permit broader indemnification or advancement of expenses than is provided under the terms of the Operating Agreement and this Agreement, the Indemnitee shall

be entitled to such broader indemnification and advancements, and this Agreement shall be deemed to be amended to such extent.

16. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement, or any clause thereof, shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, in whole or in part, such provision or clause shall be limited or modified in its application to the minimum extent necessary to make such provision or clause valid, legal and enforceable, and the remaining provisions and clauses of this Agreement shall remain fully enforceable and binding on the parties.

17. Modifications and Waiver. Except as provided in Section 15 above with respect to changes in Delaware law which broaden the right of the Indemnitee to be indemnified by the Company, no supplement, modification or amendment of this Agreement shall be binding unless executed in writing by each of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement (whether or not similar), nor shall such waiver constitute a continuing waiver.

18. General Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered by hand, (b) when transmitted by facsimile and receipt is acknowledged, or (c) if mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed

(i) If to the Indemnitee, to:

_____
_____
_____
Fax: _____
Tel: _____

(ii) If to the Company, to:

Founding Partners Designee, LLC
_____
_____
_____
Fax: _____
Tel: _____

or to such other address as may have been furnished in the same manner by any party to the others.

19. Governing Law. This Agreement shall be governed by and construed and enforced under the laws of Delaware without giving effect to the provisions thereof relating to conflicts of law.

20. Consent to Jurisdiction. Each of the Company and the Indemnitee hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the Court of Chancery of the State of Delaware and any United States District Court of competent jurisdiction located in the State of Delaware (the "Courts"), for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby, and agrees not to commence any litigation relating thereto except in such Courts. Each of the Company and the Indemnitee hereby irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of or relating to this Agreement in the Courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim that any such Proceeding brought in any such Court has been brought in an inconvenient forum.

21. This Agreement supercedes any and all prior agreements between the Company and the Indemnitee regarding the terms and conditions of the Indemnitee's indemnification by the Company.

[SIGNATURES ON FOLLOWING PAGE(S).]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANY:

FOUNDING PARTNERS DESIGNEE, LLC

By:_____
Name:
Title:

INDEMNITEE:

_____
[_____]

BERKOWITZ DICK POLLACK & BRANT
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December 9, 2011

Daniel Newman, Esq., as Receiver for Founding Partners Capital Management, et al
Broad & Cassel
2 South Biscayne Boulevard
21st Floor
Miami, Florida 33131

Dear Mr. Newman:

In accordance with your counsel's request, we have performed a calculation engagement, as that term is defined in the Statement on Standards for Valuation Services No. 1 ("SSVS") of the American Institute of Certified Public Accountants (AICPA). Under that calculation engagement, we performed certain calculation procedures on Promise Healthcare, Inc. & Affiliates ("Promise" or the "Company"), as of the current date, to determine the calculated enterprise value of the Company on a marketable controlling basis. The enterprise value includes the combined value of a company's equity and its debt.

The calculation procedures were performed solely to assist you in your capacity as Receiver for the Founding Partners' entities in evaluating a proposed settlement between the Receiver, Sun Capital Healthcare, Inc., Sun Capital, Inc., Promise, Success Healthcare, Inc. and related entities and individuals. We understand that this report will be attached to a Joint Motion for Expedited Approval of Proposed Procedure to Obtain Court Approval of the Proposed Settlement Transaction. The resulting calculated values should not be used for any other purpose or by any other party for any purpose. The results of our analysis are necessarily preliminary and are entirely dependent upon our receipt of additional information that we understand is forthcoming, as discussed below.

This calculation analysis was conducted in accordance with SSVS. The estimate of value that results from a calculation engagement is expressed as a calculated value, which may be a single amount or a range. A calculation engagement does not include all of the valuation procedures required for a valuation engagement, as that term is defined in the SSVS. Had a valuation engagement been performed, the results may have been different.

In connection with this engagement, we were provided access to a data room that contained a broad range of information pertaining to the Promise entities, including certain historical and prospective financial information through August 2011, industry information, legal documents, operating data and statistics and other related information. For the purposes of our analysis, we have accepted and assumed that the information contained in the data room is accurate and have not performed any audit or attest services nor have we performed any work to independently verify this information. We were also

provided access to the professionals from Focus Management Group, Inc., who were retained by Patton Boggs LLP to perform due diligence on the Sun, Promise and Success entities and Specialty Finance Advisors, financial advisors to the Sun, Promise and Success entities. We have not been given direct access to Promise management or its employees for purposes of our work nor have we conducted site visits of the Company's facilities.

Audited financial information contained in the data room for the Company are for the years ending June 30, 2007, 2008 and 2009. As it is now December 2011, these audited financial statements are dated and of limited relevance for the purpose of estimating current value. We understand that the Company's auditors will be releasing audited financial statements for Promise for the six months ended December 31, 2009 and the year ended December 31, 2010. To the extent that information contained in these audited financial statements differs from the results reflected in the financial documents contained in the data room, the results of our analysis may change. It must be pointed out, however, that even when the Promise audited financial statements are released, they will reflect the results of a period that is nearly one year old and will not contain an audit opinion on Promise's financial statements for any portion of calendar year 2011.

As part of our work, we have been provided with a Due Diligence Report of Sun Capital Healthcare, Inc. and Sun Capital, Inc. prepared by Focus Management Group dated November 12, 2010, which contained, among other things, a comprehensive cash analysis of the Promise, Success and Sun entities. We understand that Focus will be updating the analysis and findings contained in its Due Diligence Report through approximately October 31, 2011. To the extent that information disclosed in the updated Focus Due Diligence Report differs from the information contained in the data room it may similarly impact the results of our analysis.

Based on our calculation procedures, our estimate of preliminary calculated values ranges from approximately **$115 million to $203 million**. The calculated values were determined using a prior transactions method and a guideline public companies method under the market approach and a capitalized cash flow method and discounted cash flows method under an income approach.

The prior transactions method analyzes specific transactions, generally acquisitions, sales or mergers that have taken place in the market, and applies multiples of revenues or earnings reflected in those transactions to the subject company. Based upon our review and evaluation of transactions involving companies with substantial operations involving long-term acute care facilities, we have observed that purchase prices typically range from approximately 6 to 7 times earnings before interest taxes depreciation and amortization (EBITDA). We have applied this range of EBITDA multiples to pro-forma EBITDA levels for Promise that range from $23 million to $29 million, which results in indicated enterprise values that range from approximately $138 million to $203 million. We have applied the multiples to a range of pro-forma EBITDA levels to reflect the observed variability of the Company's earnings as well as questions we have over the Company's ability to completely eliminate what have been characterized as non-recurring expenses.

Like the prior transactions method, the guideline company method applies multiples of revenues, earnings and/or cash flow observed among public companies to the subject company. We have observed market value of invested capital (i.e. equity plus debt) to EBITDA multiples for companies with significant long term acute care facility operations that range from approximately 6.3 to 7.3. After making adjustments to account for differences between Promise and the guideline companies in size,

growth, risk, control and other factors, EBITDA multiples ranging from 5.0 to 6.0 can be supported, which result in indicated enterprise values that range from approximately $115 million to $188 million.

The capitalized cash flow method provides an indication of value by capitalizing (or dividing) a company's current or pro-forma cash flow by a capitalization rate. Like our estimate of EBITDA, we have estimated adjusted pro-forma after tax cash flows that range from approximately $14.5 million to $16 million. Applying capitalization rates of 9.1% to 10.7%, which reflect a weighted average cost of capital for the Company of between 12.6% and 14.2% and a long-term growth rate of approximately 3.5%, result in enterprise values that range from approximately $140 million to $181 million.

The discounted cash flow method is based on the premise that the value of an ownership interest in a company is equal to the present worth of the future benefits of ownership. When using this approach, the expected or projected future cash flows and the discount rate must be quantified. Included in the information provided to us were certain prospective financial projections that included results projected by management through the year 2015. These results reflected downward revisions to revenues, earnings and cash flows that had been previously prepared by management and its advisors and provided to us in November 2010. Applying discount rates ranging from 13.8% to 16.0% to these projections, based upon an estimate of the Company's weighted average cost of capital, results in enterprise values that range from approximately $169 million to $203 million.

As is the case with the valuation of any company, the range of calculated values presented herein is in no way a guarantee of possible selling price, which can only be determined by the good faith negotiation between a willing buyer and a willing seller within a reasonable time frame. In light of a) the factors surrounding the Founding Partners Receivership and their collective impact on the Promise, Success and Sun entities, b) our reliance on information that has neither been audited nor independently verified, c) the additional uncertainty inherent in the recapitalization and reorganization of the entities subsequent to a settlement agreement, d) the exposure and vulnerability that sudden changes in the regulatory environment may have on the Company and e) the length of time that may transpire between the date of this report and a transaction, the estimates of value contained herein are subject to considerable additional risk and may never be realized in an actual transaction.

As required under SSVS, these calculated values are subject to the attached Statement of Limiting Conditions. We have no obligation to update this report or our calculations of value for information that comes to our attention after the date of this report.

We appreciate the opportunity to be of service to you. Please contact us should you have any questions or comments.

Very truly yours,

Scott M. Bouchner
For the Firm

STATEMENT OF LIMITING CONDITIONS[1]

1. This calculated value is valid only for the stated purpose to estimate the value of the enterprise value of Promise Healthcare, Inc. & Affiliates, as of the current date, to assist Daniel Newman, Esq. (through his counsel), in his capacity as Receiver for the Founding Partners entities, in evaluating a proposed settlement. We understand that this report will be attached to a Joint Motion for Expedited Approval of Proposed Procedure to Obtain Court Approval of the Proposed Settlement Transaction. The calculation report should not be used for any other purpose.

2. We performed a *calculation engagement,* as that term is defined in the Statement on Standards for Valuation Services (SSVS) of the American Institute of Certified Public Accountants. Our calculation engagement was conducted in accordance with the SSVS. The estimate of value that results from a calculation engagement is expressed as a calculated value. A calculation engagement does not include all of the valuation procedures required for a valuation engagement, as that term is defined in the SVSS. Had a valuation engagement been performed, the results may have been different. The valuation analyst expresses the results of the valuation engagement as a calculated value, which may be either a single amount or a range.

3. The valuation analyst has no present or prospective interest in the subject property, and employment and compensation are in no way contingent upon the value(s) reported.

4. Possession of the report, or a copy thereof, does not carry with it the right of publication of all or a part of it, nor may it be used for any purpose by any party, except by the Receiver, and in any event only with prior attribution. No change of any item in this appraisal report shall be made by anyone other than Berkowitz Dick Pollack & Brant, and we shall have no responsibility for any such unauthorized change.

5. The valuation analyst assumes that the Company is in full compliance with applicable federal, state, and local environmental regulations and laws; as well as with all applicable zoning, use and occupancy regulations and restrictions as stated, defined, and considered in this report. The valuation analyst also assumes that all required licenses, permits, consents, or other legislative or administrative authority from any local, state, national government, or private entity organization has been or can be obtained or renewed for any use which has been analyzed in this report. The valuation analyst assumes no liability for determining if the Company is in compliance with environmental regulations and laws.

6. The valuation analyst did not investigate the legal and regulatory requirements applicable to the property, including prior land use, title, liens or encumbrances, which may be against the property.

7. The valuation analyst presents all statements of value as considered opinion based on the facts and data set forth in the report. This calculation report is based to a significant degree on estimates and assumptions about circumstances and events which have not yet taken place (including future market conditions and the ability of the Company to locate a purchaser at the appraised value) and, accordingly are inherently subject to uncertainty and variation depending on evolving events. Therefore, the valuation analyst cannot and does not give assurance that the predicted results and the related appraised value will be obtained.

8. The calculated value is not a guarantee of possible selling price, which can only be determined by the good faith negotiation between a willing buyer and a willing seller within a reasonable time frame.

9. Financial statements, tax returns, and other related information provided by Promise Healthcare, Inc. & Affiliates or its representatives, in the course of this engagement, have been accepted without any verification as fully and correctly reflecting the enterprise's business conditions and operating results for the respective periods, except as specifically noted herein. Berkowitz Dick Pollack & Brant has not audited, reviewed, or compiled the financial information provided to us and, accordingly, we express no audit opinion or any other form of assurance on this information.

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[1]) Statement of Limiting Conditions is required under AICPA Statement on Standards for Valuation Services 1.

10. We have not examined or compiled the prospective financial information and therefore, do not express an audit opinion or any other form of assurance on the prospective financial information or the related assumptions.

11. We do not provide assurance on the achievability of the results projected by Promise Management and/or its retained professionals because events and circumstances frequently do not occur as expected; differences between actual and expected results may be material; and achievement of the projected results is dependent on unforeseeable external factors and the actions, plans, and assumptions of management.

12. An actual transaction in the shares may be concluded at a higher value or lower value, depending on the circumstances surrounding the company, the appraised business interest, and the motivations and knowledge of both the buyers and sellers at that time. Berkowitz Dick Pollack & Brant Certified Public Accountants & Consultants, LLP makes no guarantees about what values individual buyers and sellers may reach in an actual transaction.

13. The selection of the price to be accepted requires consideration of factors beyond the information provided to us and therefore beyond the information we will provide or have provided. An actual transaction involving the subject business might be concluded at a higher value or at a lower value, depending upon the circumstances of the transaction and the business, and the knowledge and motivations of the buyers and sellers at that time. Due to the economic and individual motivational influences which may affect the sale of a business interest, the appraiser assumes no responsibility for the actual price of any subject business interest if sold or transferred.

14. Information, estimates, and opinions contained in this report are obtained from sources considered reliable; however, Berkowitz Dick Pollack & Brant Certified Public Accountants & Consultants, LLP has not independently verified such information, and no liability for such sources is assumed by this valuation analyst.

15. Except as noted, we have relied on the representations of the owners, management, and other third parties concerning the value and useful condition of all equipment, real estate, investments used in the business, and any other assets or liabilities, except as specifically stated to the contrary in this report. We have not attempted to confirm whether or not all assets of the business are free and clear of liens and encumbrances or that the entity has good title to all assets. Other information, estimates, and opinions contained in this report were obtained from sources considered reliable; however, no liability for such sources is assumed by the valuation analyst.

16. The terms of this engagement did not provide for reporting on events and transactions that occur subsequent to the date of calculation as it assumes they have no effect on the calculated value.

17. It should be specifically noted that the calculated value assumes the business will be competently managed and maintained by financially sound owners, throughout the expected period of ownership. This calculation engagement does not entail an evaluation of management's effectiveness, nor are we responsible for future marketing efforts and other management or ownership actions upon which actual results will depend.

18. No opinion is intended to be expressed for matters that require legal or other specialized expertise, investigation, or knowledge beyond that customarily employed by valuation analysts valuing businesses.

19. It is assumed that the underlying assets will not operate in violation of any applicable government regulations, codes, ordinances, or statutes.

20. We assume that there are no hidden or unexpected conditions of the business that would adversely affect value, other than as indicated in this report.

21. The valuation analysts have no obligation to update the report or the opinion of value for information that comes to his or her attention after the date of the report.

FOCUS MANAGEMENT GROUP USA, INC.

WORK/PROJECT AUTHORIZATION NO. 2

DATED: December 1, 2011

In accordance with that certain Agreement for Consulting Services dated August 16, 2010, by and between the undersigned Patton Boggs LP ("Patton") and Focus Management Group USA, Inc. (the "Agreement"), Patton hereby authorizes Focus Management Group USA, Inc., ("Consultant") to perform the following services in accordance with the terms, conditions and covenants set forth in the Agreement and in this Authorization:

Services with respect to Sun Capital Healthcare, Inc. and Sun Capital, Inc. (collectively, "Company"):

Consultant to rely on its previous analyses included in its "Due Diligence Report of Company dated November 12, 2010 (the "11/12/10 Focus Report") and current financial information to be received from the Company to update and roll-forward a due diligence review of Company through October 31, 2011 (subject to Company having completed its close of fiscal periods through such date prior to Consultant commencing its on-site activities).

Overview:

1. Update the comprehensive cash analysis provided in Exhibits A, C and D of the 11/12/10 Focus Report to detail the dynamics of cash flow performance within Company's various entities

Specific services with respect to "Promise":

2. Update and validate recorded revenues versus cash received, as presented in Tables 9 – 12 of the 11/12/10 Focus Report;
3. Update Administrative Overhead Analysis, as presented in Table 6 of the 11/12/10 Focus Report
4. Ensure all taxes are current (payroll, property, etc) (Section IX);
5. Ensure amounts owed in connection with Medi-Cal and Medicare liabilities are current. (Section X)
6. Ensure amounts owed on Third Party Mortgages / Debt Agreements are current. (Section XI)
7. Update analysis of Accounts Payable Agings (Section XIII)
8. Update Budget Review (Section XXVIII), with specific attention paid to 2011 Cash Flow Budget
9. Updated Cash Needs Analysis (Section XXII) from 2011 to 2012
10. Update a review of historical and projected CapEx to determine whether cash needs on Day One have changed since the 11/12/10 Focus Report (Section XXVII);
11. Review and evaluate historical working capital to determine whether current working capital levels require additional cash investment on Day One (vs. what was projected in the 11/12/10 Focus Report);

Specific services with respect to "Success":

1. Same as services outlined for "Promise"
2. For St. Louis and Silver Lake, update to ensure that the plan, as set forth in the original FMG report, is in line with what the company had originally projected. Highlight any differences from such Plan

Specific services with respect to "SunCapital and SunCapital Healthcare":

1. Update a review and evaluation of net collectible value of recorded receivables (DSH, 3rd party factoring and workman's compensation);
2. Update net collectible value of notes receivable (Kanterman, other);
3. Update the net realizable value of other investments (Symbio, other);
4. Update a review of material related party transactions (including confirm that Principals have paid themselves what was projected).

Reports:

- Based on the analysis, findings and conclusions developed, prepare and document Company's Due Diligence Update Report, based on the above services.
- During the course of your services meet on-site periodically with the Receiver' Accountants and provide oral updates to your findings and access to Company documents as requested.
- The Due Diligence Update Report will be prepared for and addressed to Patton, Daniel S. Newman, as Receiver (the "Receiver"), the Receiver's counsel Broad and Cassel ("Broad"), various investors represented by Patton (individually and collectively, "Client") and Founding Partners Designee, LLC, a newly formed Delaware limited liability company ("Designee"), and each of Patton, Receiver, Broad, Client and Designee shall be entitled to rely on the 11/12/10 Focus Report and the Due Diligence Update Report.

Compensation:

- Retainer: Consultant shall receive a retainer of $136,000 prior to the commencement of any work described herein or in the Agreement. The retainer will be applied to the fees and expenses payable by Company to Consultant under the Agreement.

- Professional Fees: Professional fees for this Authorization will be charged at the following rates per hour plus reasonable expenses, as stated in Section 2 of the Agreement. Time traveling shall not be charged to Company.
  - Project Leader $425 per hour (discounted from standard rate of $500)
  - Team Leaders $325 per hour (discounted from standard rate of $450)
  - Support Staff $225 per hour (discounted from standard rate of $400)

- Notwithstanding the foregoing rate structure, Consultant agrees that Professional fees (exclusive of reasonable out of pocket expenses) are estimated to not exceed $136,000. This fee budget is subject to the following assumptions:
  - The majority of the work to be undertaken is comprised of compilation and analysis of data and testing of accounting records
  - The Company will provide Consultant with ready access to substantially clean books and records, and information will be provided to Consultant in a timely manner and will be substantially complete
  - Consultant to have the full cooperation of the Company, its management team and its advisors (including Tatum)

"Consultant"

FOCUS MANAGEMENT GROUP USA, INC.

J. Tim Pruban

By: _____

Name: J. Tim Pruban

Title: President

"Patton"

PATTON BOGGS LP

By: _____

Name: Alan Joskow

Title: Partner

Acknowledged and agreed:

SUN CAPITAL HEALTHCARE, INC.

By: Howard Kaslow

Name: Howard Kaslow

Title: President + C.O.O.

SUN CAPITAL, INC.

By: Howard Kaslow

Name: Howard Kaslow

Title: President + C.O.O.

Acknowledged and agreed

"Proskauer"

PROSKAUER ROSE, LLP

By: _____

Name: _____

Acknowledged

"Receiver"

Daniel S. Newman, not individually, but solely in his capacity as court-appointed receiver of, and on behalf of, Founding Partners Stable-Value Fund, L.P. Receiver

MTS Health Partners, L.P.
623 Fifth Avenue, 15th Floor
New York, NY 10022

December 7, 2011

Founding Partners Stable-Value Fund, L.P.
Founding Partners Global Fund, Ltd.
Founding Partners Stable-Value Fund II, L.P.
Founding Partners Hybrid-Value Fund, L.P.
Founding Partners Capital Management Company (collectively, "Founding Partners")

c/o Daniel S. Newman, Esq., as the court-appointed receiver of Founding Partners (the "Receiver")
One Biscayne Tower
2 South Biscayne Blvd.
21st Floor
Miami, FL 33131

Re: Limited Use and Indemnification Agreement

Dear Sirs/Madam:

In consideration of MTS Health Partners L.P. ("MTS") providing to you a copy of its report, titled "Discussion Materials for Founding Partners Receivership Entities regarding Promise" and dated as of December 15, 2010 (the "Prior Report"), as well as its to be prepared updated valuation report relating to Promise Healthcare, Inc. and Success Healthcare, LLC (the "New Report," and together with the Prior Report, collectively, the "Report"), the parties hereto agree as set forth below.

Founding Partners and Receiver agree not to bring any action, suit or proceeding against MTS or its affiliates, partners, directors, officers, employees, representatives and agents, and each of its and their affiliates, partners, directors, officers, employees, representatives and agents, and the successors and assigns of all of the foregoing persons (each such person, an "indemnified party") in connection with the Report, the receipt thereof or reliance thereon by Founding Partners or Receiver, or the contents thereof or MTS' services in connection therewith. Founding Partners or Receiver also agree that no indemnified party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to Founding Partners or Receiver or any person asserting claims on their behalf of or in their right, directly or indirectly, arising out of, or relating to, the Report, the receipt thereof or reliance thereon by Founding Partners or Receiver, or the contents thereof or MTS' services in connection therewith, unless it is finally judicially determined that such liability resulted solely from the bad faith or willful misconduct of such indemnified party. Moreover, in no event, regardless of the legal theory advanced, shall any indemnified party be liable to Founding Partners or Receiver for any punitive, consequential, indirect, incidental or special damages of any nature.

Founding Partners and Receiver agree not to disclose or disseminate the Report or any part thereof to any other person without the prior written consent of MTS, except that: (i) Founding Partners and Receiver may disclose the Report or portions thereof to their attorneys, accountants, consultants, and advisors (collectively, "Representatives"), in which event Founding Partners agrees to undertake all reasonable precautions to safeguard and protect the confidentiality of the Report and Founding Partners shall remain liable, jointly and severally, for any breach of the confidentiality of the Report by the Representatives or by the Receiver, (ii) Founding Partners and Receiver may disclose the Report or portions thereof to the various direct and indirect owners in any of Founding Partners, provided that prior to any such disclosure (a) such recipient shall have executed and delivered to Founding Partners an agreement containing (1) indemnification provisions substantially in the form of this letter agreement and (2) confidentiality provisions similar to those contained

in the Confidentiality Agreement for Settlement Discussions that was executed between MTS and Sun Capital Healthcare, Inc., Sun Capital, Inc., Promise Healthcare, Inc, and Success Healthcare, LLC, and (b) Founding Partners shall have provided a copy thereof to MTS, and (iii) Founding Partners and Receiver may disclose in filings with the court in the Founding Partners receivership action the fact that the Report and the valuation work contemplated thereby has or will be done by MTS, the value(s) reported in the Report, and the methodologies employed in obtaining such value(s) reported in the Report, provided that (i) any such disclosure shall also specifically identify the non-disclosure obligations and inability to rely upon the Report contemplated by this letter agreement and (ii) any such disclosure shall be subject to the prior written approval of MTS, which approval shall not be unreasonably withheld by MTS.

Founding Partners, but not Receiver, jointly and severally, agree as follows:

(a) (i) to indemnify, defend and hold harmless MTS and each other indemnified party, from and against any loss, damage, expense, liability or claim (including the reasonable cost of investigation) which MTS or any such other indemnified party may incur under any U.S federal or state or foreign law, rule or regulation, common law or otherwise, insofar as such loss, damage, expense, liability or claim (or actions in respect thereof) arises out of or relates to, or is in connection with, the Report, the receipt thereof or reliance thereon by Founding Partners or Receiver, or the contents thereof or MTS' services in connection therewith, any claim against an indemnified party with respect to the non-dissemination, non-reliance and other provisions hereof and any disclosure or dissemination of the Report or any part thereof by Founding Partners or Receiver to any other person, whether or not such person relies thereon, in violation of the terms of this letter agreement; and (ii) to reimburse MTS and each other indemnified party for any and all expenses (including the reasonable fees and disbursements of counsel chosen by MTS) as such expenses are incurred by MTS or such other indemnified party in connection with investigating, defending, settling, compromising or paying any such loss, damage, expense, liability or claim, or action in respect thereof.

(b) that, without MTS' prior written consent, they will not agree to any settlement of, compromise of or consent to the entry of any judgment in or other termination of (each and collectively, a "Settlement") any action in respect of which indemnification could be sought hereunder (whether or not MTS or any other indemnified party is an actual or potential party to such action), unless (x) such Settlement includes an unconditional release of each indemnified party from any liabilities arising out of such action and (y) the parties agree that the terms of such Settlement shall remain confidential.

(c) If the indemnification provided for in the subparagraph (a) above is unavailable or insufficient to hold harmless an indemnified party, then Founding Partners (and any other indemnifying party), jointly and severally, shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, damage, expense, liability or claim, or action in respect thereof, in such proportion as shall be appropriate to reflect the relative economic interests of Founding Partners and all other recipients of the Report on the one hand and MTS on the other, arising out of or in connection with the Report and the subject matter thereof, as well as the relative fault of Founding Partners and all other recipients of the Report and MTS with respect to such loss, damage, expense, liability or claim, or action in respect thereof, and any other equitable considerations. The amount paid or payable by an indemnified party as a result of the loss, damage, expense, liability or claim, or action in respect thereof, referred to above in this letter agreement shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions herein, MTS shall not be required to contribute any amount in excess of the fees actually received by MTS for preparing and delivering the Report. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act of 1933, as amended) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

MTS and Founding Partners further agree to reasonably cooperate with one another in connection with any proceedings which are subject to indemnification pursuant to this letter agreement, including providing testimony in connection therewith. Founding Partners further agree that the indemnified parties are entitled to retain separate counsel of their choice in connection with any of the matters that are the subject of this letter agreement, so long as such fees are reasonable; provided that Founding Partners shall not unreasonably withhold it consent to any such counsel's retention.

Any right to trial by jury with respect to any action or proceeding arising in connection with or as a result of any matter referred to in this letter agreement is hereby waived by the parties hereto. Founding Partners agrees that any suit or proceeding arising in respect to this letter agreement will be tried exclusively in the U.S. District Court for the Southern District of New York or, if that court does not have subject matter jurisdiction, in any state or federal court located in the City of New York, and Founding Partners agrees to submit to the jurisdiction of, and to venue in, such courts. This letter agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws.

The rights of the indemnified parties referred to above shall be in addition to any rights that any indemnified party may otherwise have, and this letter agreement shall be binding upon and inure to the benefit of any affiliates, successors, assigns, heirs, and personal representatives of Founding Partners, MTS, any affiliates thereof and any such person.

It is acknowledged that Founding Partners and Receiver intend to file this letter agreement with the court in the Founding Partners receivership action for the purpose of obtaining such court's approval of the indemnification provisions hereof, and notwithstanding anything to the contrary set forth herein, the indemnification provisions of this letter agreement shall take effect only upon such court's approval of such terms, but all of the other provisions of this letter agreement shall be fully effective upon the execution hereof and shall not require court approval; provided, that in the event that such court does not approve the indemnification provisions hereof, then MTS shall have no further obligations under this letter agreement thereafter and Founding Partners and Receiver may not thereafter use, disclose or refer to the Report pursuant to any of the exceptions referred to in the third paragraph of this letter agreement (unless the parties subsequently mutually agree to court-approved revisions pursuant to the following sentence). In the event such court does not approve the indemnification provisions of this letter agreement, then Founding Partners shall promptly advise MTS of that fact and the parties agree to reasonably cooperate with one another in good faith to negotiate and agree to mutually acceptable revisions to the indemnification provisions hereof for the purpose of obtaining such court's approval of such provisions. Notwithstanding any of the provisions of this paragraph to the contrary, the parties acknowledge that MTS, Promise Healthcare, Inc. ("Promise") and Success Healthcare, LLC ("Success") are parties to a letter agreement dated as of March 1, 2011 pursuant to which Promise and Success agreed to indemnify MTS for its activities related to Promise and Success (the "Existing Indemnity"), Founding Partners and Receiver agree that nothing in this letter agreement shall represent any derogation of the of the obligations of Promise and Success under the Existing Indemnity, whether or not the court in the Founding Partners receivership action approves the indemnification provisions of this letter agreement, and Founding Partners and Receiver agree that Founding Partners do not and will not object to MTS's rights under and to the Existing Indemnity with respect to its preparation and disclosure of the Report.

Sincerely,

MTS HEALTH PARTNERS, L.P.

By: _____
Jay Shiland

Accepted and agreed:

Daniel S. Newman, not individually, but
solely in his capacity as court-appointed
receiver of, and on behalf of, Founding Partners

Notice to Investors

This notice to investors is part of a Joint Motion For Expedited Approval of Proposed Procedure to Obtain Court Approval of the Proposed Settlement Transaction (the "Motion"). Capitalized terms used herein, but not otherwise defined herein, shall have the meanings given to such terms in the Motion and/or Settlement Agreement, which are enclosed herewith.

This notice to investors (the "Notice") has been prepared by Daniel S. Newman, Esq., as the court-appointed receiver (the "Receiver") for Founding Partners Capital Management Company ("FPCM") and the four investment funds, Founding Partners Stable-Value Fund, L.P. ("Stable-Value"), Founding Partners Global Fund, Ltd., Founding Partners Stable-Value Fund II, L.P., and Founding Partners Hybrid-Value Fund, L.P. (the four investment funds together comprise the "Receivership Funds"). This Notice is being sent to all known investors in the Receivership Funds ("Fund Investors") pursuant to the Motion, in order to advise such Fund Investors of a proposed settlement transaction that would resolve all pending and threatened claims against Sun Capital Healthcare, Inc., Sun Capital, Inc., and their principals, other shareholders, and affiliated entities.

The proposed settlement transaction is intended to benefit Fund Investors who agree to participate in the transaction. In essence, the proposed Settlement Agreement provides that, in exchange for the Sun-Related Parties being released from all claims of the Receiver and of Fund Investors who sign releases, the Sun Principals (and other shareholders) will transfer ownership of their factoring companies, their hospital companies, and their associated real estate holding companies to a newly formed entity wholly-owned by Stable-Value (the "FP Designee"), with the Sun Principals retaining certain interests and rights. Membership interests in the FP Designee will then be distributed only to Fund Investors who have executed and delivered releases of all potential claims against the Sun-Related Parties and demonstrate their eligibility in the Receiver's claims validation process to receive interests in the FP Designee.

The Motion discusses the proposed settlement and some of the material provisions of the Settlement Agreement, the exhibits thereto and the material documents to be executed in connection with the transactions contemplated thereby (collectively, the "Transaction Documents"). Copies of substantially all of the material Transaction Documents are attached as Exhibit 3 to the Motion. The Receiver encourages all Fund Investors to review the Motion and its exhibits, including the Transaction Documents annexed thereto, with their counsel and other appropriate advisors. The Receiver cautions Fund Investors that any summaries set forth in the Motion or in this Notice are not a substitute for a comprehensive assessment of all terms and issues raised in those documents. This Notice should be read in conjunction with the more detailed information appearing in the Motion and/or the Transaction Documents.

As a Fund Investor, you are being provided with these documents for the purpose of allowing you and your counsel and advisors the opportunity to review the proposed settlement and to submit any objections you may have relating to the proposed settlement. To the extent that you wish to submit any objections, such objections must be made in writing and filed with the Court, with copies to counsel for the Receiver and the Sun Entities at their addresses set forth below, in accordance with the following procedures:

[To be spelled out once Court enters an order relating to objection procedures, dates to file by, content of objection specifying case #, etc.]

Addresses for counsel for Receiver and Sun Entities are as follows:

Receiver's Counsel

Jonathan Etra, Esq. – jetra@broadandcassel.com
David J. Powers, Esq. – dpowers@broadandcassel.com
Broad and Cassel
One Biscayne Tower
2 South Biscayne Blvd.
21st Floor
Miami, FL 33131

Sun Entities' Counsel

Sarah Gold, Esq. – sgold@proskauer.com
Karen Clarke, Esq. – kclarke@proskauer.com
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036-8299

Fund Investor objections that are properly served and filed and timely received will be subject to response by each of the Receiver and the Sun Entities. Such responses will be filed with the Court by no later than **[date to be entered consistent with Court's order]**. The Court may thereafter hold a hearing to consider such objections, and any other matters pertinent to the proposed settlement, on **[date to be entered consistent with Court's order]**.

In the event that the Court approves the proposed settlement to go forward, the Receiver will then begin to solicit Investor Releases from Fund Investors that desire to participate in the settlement and ultimately share in the ownership of the FP Designee, subject to Court approval of the fairness of the distribution of the membership interests in the FP Designee to Releasing Investors. *See* Motion pp. 18-19, 26-27. A copy of the form of Investor Release is enclosed for your information, although the Court has not yet set a deadline for investors to deliver executed Investor Releases. To the extent approved by the Court, Fund Investors who do not provide Investor Releases by the deadline to be set by the Court will not be entitled to participate in any manner in the FP Designee or in any proceeds resulting from any ownership in that entity. The Receiver intends to file a motion with the Court hereafter to establish a claims process whereby Fund Investors' claims in the Receivership Funds will be submitted, which will also establish the deadline for the submission of Investor Releases. *See* Motion pp. 18-19, 26.

Certain of the Transaction Documents and certain other materials that the Receiver expects to receive relating to the proposed settlement will be provided only to those Fund Investors who execute and deliver to the parties' counsel (set forth above) the form of confidentiality agreement that is included in this package. *See* Motion p. 26.

INVESTOR CONFIDENTIALITY AGREEMENT

This agreement ("Agreement") is made between Sun Capital Healthcare, Inc., Sun Capital, Inc., Promise Healthcare, Inc. and Success Healthcare, LLC (collectively "the Sun-related parties") and Daniel S. Newman, Esq., solely in his capacity as the court-appointed receiver (the "Receiver") for Founding Partners Capital Management Company ("FPCM"), Founding Partners Stable-Value Fund, L.P., a Delaware limited partnership ("Stable-Value"), Founding Partners Global Fund, Ltd., a corporation organized under the laws of the Cayman Islands ("Global"), Founding Partners Stable-Value Fund II, L.P. ("Stable-Value II"); and Founding Partners Hybrid-Value Fund, L.P. ("Hybrid-Value")(these funds sometime collectively referred to as "Receivership Funds"), on the one hand, and the undersigned Investor ("Investor") in one or more of the Receivership Entities[1], on the other hand. The Sun-related parties, the Receiver and said Investor are collectively referred to as "the Parties" and each is referred to as a "Party."

WHEREAS, Investor desires to review certain confidential materials in connection with the proposed Settlement transaction ("Settlement Transaction") that is the subject of a joint motion filed by the Sun-related Parties and the Receiver on December 9, 2011 ("Joint Motion"). These confidential materials consist of: 1) the Peter Baronoff Employment Agreement; 2) the Redacted Disclosure Statement; 3) the Audited Financial Statements; 4) the FMG Update ("FMG Update"); 5) the MTS Valuation ("MTS Valuation") and 6) the Organizational Chart (collectively "Confidential Information")

NOW THEREFORE, in consideration of the following, the Parties agree as follows:

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[1] The Receivership Entities are Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P.

1. All Confidential Information shall be treated as confidential, and may not be disclosed to or discussed with third parties other than the Investor's counsel, financial advisors and accountants, provided such individuals agree in writing to be bound by the terms of this Agreement. In addition, Investor understands and agrees that the Confidential Information is being provided solely for the purposes of allowing Investor to determine whether to participate in the Settlement Transaction and may not be used for any other purpose at any time.

2. All Confidential Information shall be deemed part of settlement discussions and may not be used, referred to or admitted into evidence in any court proceeding. In addition, all such statements, communications, or discussions shall be governed by Rule 408 of the Federal Rules of Evidence and all comparable state law or foreign law provisions. However, this Agreement may be admitted into evidence to enforce its terms.

3. In the case of the MTS Valuation and the FMG Update, Investor acknowledges that, in addition to all restrictions in this Agreement, those materials may not be shared with the Sun-related Parties and that such Investor's ability to receive such information may be conditioned upon the execution of additional documentation which may include, among other things, indemnification obligations.

4. Nothing herein shall limit or prevent the Sun-related parties or the Receiver from disclosing or using their own Confidential Information as they deem appropriate.

5. In the event that a Party receives a request or demand for disclosure of any Confidential Information, that Party shall promptly, but in no event later than three (3) business days after such request, provide notice of such request to counsel to the other Party and shall take reasonable steps to protect the Confidential Information from disclosure.

6. The Sun-related parties agree that after the Agreement takes effect, as set forth in Paragraph 7 below, the Receiver may discuss any of the Confidential Information with the Investor and any of his/her/its counsel who has also executed this Agreement, so long as it is solely for the purpose contemplated by this Agreement.

7. The terms of this Agreement shall not take effect as respects the Investor (or any counsel or advisor who signs this Agreement) unless and until counsel to the Sun-related parties and the Receiver receive a signed copy of this Agreement, as validly executed by the Investor (or the advisor, as the case may be), which shall be delivered to counsel for the Receiver and the Sun-related parties at the following addresses:

Counsel for the Receiver
Jonathan Etra, Esq.
jetra@broadandcassel.com
David J. Powers, Esq.
dpowers@broadandcassel.com
Broad and Cassel
2 South Biscayne Blvd.
21st Floor
Miami, FL 33131

Counsel for the Sun-Related Parties
Sarah Gold, Esq.
sgold@proskauer.com
Karen Clarke, Esq.
kclarke@proskauer.com
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036-8299

AGREED TO:

_____

Jonathan Etra
Counsel to the Receiver

AGREED TO:

_____

Sarah S. Gold,
Counsel to the Sun-related parties

AGREED TO:
Investor representative/advisor

Date:_____

Name of Investor: _____

By (signature): _____

Print name: _____

Position: _____

Address: _____

_____

_____

Phone: _____

E-mail: _____

STATE OF _____)
)SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____ of _____ _____, on behalf of _____.

Said person is personally known to me or has produced a valid driver's license as identification.

_____
NOTARY PUBLIC - STATE OF
Print Name: _____
My Commission Expires: _____
My Commission No.: _____

CONFIDENTIALITY AGREEMENT

This agreement ("Agreement") is made between Sun Capital Healthcare, Inc., Sun Capital, Inc., Promise Healthcare, Inc., and Success Healthcare, LLC (collectively "the Sun-related parties"), on the one hand, and Daniel S. Newman, not individually, but solely in his capacity as duly appointed Receiver for the Receivership Entities[1] ("Receiver"), on the other hand. The Sun-related Parties and the Receiver are collectively referred to as "the Parties" and each is referred to as a "Party."

WHEREAS, the Sun-related Parties desire to review certain confidential materials of the Receivership Entities, in particular a list of all investors and their investment amounts in the four Receivership Funds, in connection with the proposed settlement transaction ("Settlement Transaction") that is the subject of a joint motion filed by the Sun-related Parties and the Receiver ("Joint Motion"),

NOW THEREFORE, in consideration of the following, the Parties agree as follows:

1. The current list of all investors in the Receivership Funds with name and outstanding amount(s) of investment in the Receivership Entities (as well as the total outstanding amounts) based upon the current books and records of the Receivership Entities available to the Receiver (the "Investor List") that the Receiver has agreed, upon Court approval, to provide to the Sun-related Parties in connection with the Settlement Transaction constitutes "Confidential Information."

2. This Confidential Information (and any other Confidential Information provided by the Receivership Entities to the Sun-related Parties pursuant to this Agreement) shall be treated as confidential, and may not be disclosed to or discussed with third parties other than: (1) the Sun-related Parties' counsel, financial advisors and accountants; and (2) the Court in the *Newman v. Sun Capital* case, provided that the Confidential Information is submitted under seal. In addition, the Confidential Information may be used only for the purposes described in the Joint Motion and the documents submitted to the Court in the *Newman v. Sun Capital* case in connection with the Settlement Transaction.

4. All Confidential Information shall be deemed part of settlement discussions and may not be used, referred to or admitted into evidence in any court proceeding other than in connection with the Settlement Transaction in the *Newman v. Sun Capital* case. In addition, all such statements, communications, or discussions shall be governed by Rule 408 of the Federal Rules of Civil Procedure. However, this Agreement may be admitted into evidence to enforce its terms, or the terms of any release given by any investor in the Receivership Funds.

5. Nothing herein shall prevent the Receiver from disclosing or using the Confidential Information as he deems appropriate.

6. Any party shall be free to move the Court in the *Newman v. Sun Capital* case, on notice and

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[1] The Receivership Entities are Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. The latter four entities are the "Receivership Funds."

upon good cause shown, for relief from the confidentiality restrictions or other terms of this Agreement. To the extent there is any dispute about confidential status, any material or information subject to such dispute shall be treated as confidential under this agreement (and any other agreement to which it may be subject) unless and until the Court rules to the contrary.

7. In the event that the Sun-related Parties receive a request or demand for disclosure of any Confidential Information, they shall promptly provide notice of such request to counsel to the Receiver and shall take reasonable steps to protect the Confidential Information from disclosure.

AGREED TO:

_____
Sarah Gold, Esq.
Counsel to the Sun-related Parties

_____
Jonathan Etra, Esq.,
Counsel to the Receiver