

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re: : Chapter 11  
: :  
NATIONAL CENTURY FINANCIAL : Jointly Administered  
ENTERPRISES, INC., an Ohio : Case No. 02-65235  
corporation, et al., : :  
: Judge Calhoun  
Debtors. :

FILED  
2004 APR 16 PM 2:40  
MICHAEL J. HERRICK, CLERK  
U.S. BANKRUPTCY COURT  
COLUMBUS, OHIO

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ORDER CONFIRMING THE FOURTH AMENDED JOINT  
PLAN OF LIQUIDATION OF NATIONAL CENTURY FINANCIAL  
ENTERPRISES, INC. AND ITS DEBTOR SUBSIDIARIES, AS MODIFIED

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ENTERED

APR 16 2004

BY

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## **TABLE OF EXHIBITS**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
A	Plan
B	Modifications
C	Confirmation Notice

## INTRODUCTION

The above-captioned debtors and debtors in possession (collectively, the "Debtors"), (a) having proposed the Fourth Amended Joint Plan of Liquidation of National Century Financial Enterprises, Inc. and Its Debtor Subsidiaries, dated January 13, 2004 (as such has been modified pursuant to this Confirmation Order, the "Plan"), a copy of which is attached hereto (without exhibits) as Exhibit A and incorporated herein by reference, and (b) having filed a motion for the approval of certain modifications to the January 13, 2004 version of the Plan, the approved version of which modifications are attached hereto as Exhibit B and incorporated herein by reference (collectively, the "Modifications");<sup>1</sup> the Court having entered its: (A) Order (A) Approving Proposed Disclosure Statement, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Proposed Joint Plan of Liquidation and (C) Scheduling a Hearing on Confirmation of Proposed Joint Plan of Liquidation and Approving Related Notice Procedures, dated January 7, 2004 (D.I. 2139) (the "Plan Solicitation and Voting Order"), by which the Court, among other things, approved the Debtors' disclosure statement (the "Disclosure Statement"), established procedures for the solicitation and tabulation of votes to accept or reject the Plan and scheduled a hearing on Confirmation of the Plan; (b) Order Adjourning Hearing on Confirmation of the Fourth Amended Joint Plan of Liquidation of

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<sup>1</sup> Unless otherwise specified, capitalized terms and phrases used herein have the meanings assigned to them in the Plan. The rules of interpretation set forth in Section I.B.1 of the Plan shall apply to this Order (this "Confirmation Order"). In addition, in accordance with Section I.A of the Plan, any term used in the Plan or this Confirmation Order that is not defined in the Plan or this Confirmation Order, but that is used in the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"), or the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. In addition, any reference to the Debtors, the Trusts or the Trustees herein shall be deemed to include those entities and their respective successors and assigns.

National Century Financial Enterprises, Inc. and Its Debtor Subsidiaries, dated February 23, 2004 (D.I. 2492) (the "Adjournment Order"), by which the Court adjourned until April 14-16, 2004 the hearing on Confirmation of the Plan; and (c) Order Approving (A) Notice of Amended Retained Actions Exhibit to Debtors' Proposed Joint Plan of Liquidation, (B) Procedures to Allow Creditors to Change Their Vote to Accept or Reject the Plan and (C) Certain Related Relief, dated February 27, 2004 (D.I. 2539) (the "Vote Change Order"), by which the Court, among other things, approved the form of a notice of an amended exhibit to the Plan disclosing the Retained Actions (the "Amended Retained Actions Exhibit") and established procedures to allow creditors the opportunity to change their vote to accept or reject the Plan in response to the Amended Retained Actions Exhibit; Jones Day, counsel to the Debtors and the tabulation agent appointed by the Court in respect of the Plan, having filed the Certification of Votes to Accept or Reject the Fourth Amended Joint Plan of Liquidation of National Century Financial Enterprises, Inc. and Its Debtor Subsidiaries (D.I. 2717) (the "Voting Declaration") on April 8, 2004; the Court having established, in the Adjournment Order, April 14, 2004 at 9:30 a.m. as the date and time for the commencement of the hearing pursuant to section 1129 of the Bankruptcy Code to consider Confirmation of the Plan (the "Confirmation Hearing"); Logan & Company, Inc. having filed, on or about January 20, 2004 and March 11, 2004, the affidavits of service of Kathleen M. Logan with respect to the mailing of the approved notice of the Confirmation Hearing, the Disclosure Statement, the Amended Retained Actions Exhibit and other solicitation materials in respect of the Plan in accordance with the Plan Solicitation and Voting Order and the Vote Change Order (D.I. 2267-2276, 2595-2597 and 2601-2605) (collectively, the "Logan Affidavits of Service"); the Debtors having filed, on February 6, 2004, a Notice of Proof of Publication by *The Columbus Dispatch* (D.I. 2365) and a Notice of Proof of Publication by *The Wall Street*

*Journal* (D.I. 2366) (collectively, the "Affidavits of Publication") establishing the timely publication of notice of the Confirmation Hearing and certain related matters in *The Columbus Dispatch* and the national edition of *The Wall Street Journal*, respectively, in accordance with the Plan Solicitation and Voting Order; approximately 20 parties having filed formal objections or asserted informal objections to Confirmation of the Plan (collectively, the "Objections"); the Debtors having filed, on April 7, 2004, a memorandum of law in support of Confirmation of the Plan and in response to the Objections (D.I. 2702) (the "Memorandum of Law"); the Debtors having filed, on April 7, 2004, the Declaration of David J. Coles (D.I. 2705) (the "Coles Declaration") in support of Confirmation of the Plan; the Court having reviewed the Plan, the Disclosure Statement, the Plan Solicitation and Voting Order, the Vote Change Order, the Voting Declaration, the Logan Affidavits of Service, the Affidavits of Publication, the Objections, the Memorandum of Law, the Coles Declaration and all other papers before the Court relating to the Confirmation of the Plan; the Court having heard the statements of counsel in support of and in opposition to Confirmation at the Confirmation Hearing and the testimony presented at the Confirmation Hearing, as reflected in the record made at the Confirmation Hearing; the Court having considered all evidence presented at the Confirmation Hearing; the Court having taken judicial notice of the papers and pleadings on file in these chapter 11 cases; and the Court finding that the legal and factual bases set forth in the applicable papers and at the Confirmation Hearing, and as set forth in this Confirmation Order, establish just cause for the relief granted herein;

ACCORDINGLY, THE COURT HEREBY ORDERS THAT:

**A. CONFIRMATION OF THE PLAN.**

1. The record of the Confirmation Hearing is hereby closed.

2. Separate findings of fact and conclusions of law (the "Findings of Fact and Conclusions of Law") shall be entered contemporaneously with this Confirmation Order.

3. The Plan is confirmed in each and every respect, pursuant to section 1129 of the Bankruptcy Code. The failure specifically to include or reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of any such provision, it being the intent of the Court that the Plan be confirmed in its entirety. If there is any direct conflict between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control. All of the Objections and other responses to, and statements and comments regarding, the Plan are either resolved on the terms set forth herein or on the record at the Confirmation Hearing or overruled.

**B. EFFECTS OF CONFIRMATION.**

Notwithstanding any otherwise applicable law, immediately upon the entry of this Confirmation Order, the terms of the Plan and this Confirmation Order are deemed binding upon all persons, including the Debtors, the Trusts, any and all holders of Claims or Interests (irrespective of whether such Claims or Interests are impaired under the Plan or whether the holders of such Claims or Interests accepted, rejected or abstained from voting on the Plan, or are deemed to have accepted or rejected the Plan), any and all nondebtor parties to Executory Contracts and Unexpired Leases with any of the Debtors and any and all entities who are parties to or are subject to the settlements, compromises, releases, waivers and injunctions set forth in the Plan and summarized in the Findings of Fact and Conclusions of Law and the respective heirs, executors, administrators, successors or assigns, if any, of any of the foregoing.

**C. CLAIMS BAR DATES AND OTHER CLAIMS MATTERS.**

**1. Bar Dates for Administrative Claims.**

**a. General Bar Date Provisions.**

Except as otherwise provided in Section III.A.1 of the Plan and Section C.1.b below, unless previously Filed, requests for payment of Administrative Claims must be Filed and served on the Debtors or the applicable Trust, pursuant to the procedures specified in this Confirmation Order and the notice of entry of this Confirmation Order, no later than 60 days after the Effective Date. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve a request by the applicable bar date shall be forever barred from asserting such Administrative Claims against the Debtors, the Estates, the Trusts or their respective property, and such Administrative Claims shall be deemed released as of the Effective Date. Objections to such requests must be Filed and served on the Debtors or the applicable Trust and the requesting party by the later of (i) 120 days after the Effective Date or (ii) 60 days after the Filing of the applicable request for payment of Administrative Claims.

**b. Bar Dates for Certain Administrative Claims.**

**i. Professional Compensation.**

Professionals or other entities asserting a Fee Claim for services rendered before the Effective Date must File and serve on the Debtors or the applicable Trust and any other entities that are designated by the Bankruptcy Rules, this Confirmation Order, the Fee Order or other order of the Court an application for final allowance of such Fee Claim no later than 60 days after the Effective Date; *provided, however*, that any Professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals

Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date, without further Court review or approval, pursuant to the Ordinary Course Professionals Order. Objections to any Fee Claim must be Filed and served on the Debtors or the applicable Trust and the requesting party no later than 30 days after the Filing of the applicable applications for final allowance of the Fee Claim. To the extent necessary, entry of this Confirmation Order shall amend and supersede any previously entered orders of the Court, including the Fee Order, regarding the payment of Fee Claims.

**ii. Ordinary Course Liabilities.**

Holders of Allowed Administrative Claims arising after the Petition Date and based on liabilities incurred by a Debtor in the ordinary course of its business, including Administrative Trade Claims and Administrative Claims of governmental units for Taxes (including Tax audit Claims arising after the Petition Date) and Administrative Claims arising from those contracts and leases of the kind described in Section V.F of the Plan, will not be required to File or serve any request for payment of such Administrative Claims. Such Administrative Claims shall be satisfied pursuant to Section III.A.1.c of the Plan.

**2. Bar Date for Rejection Damages Claims and Related Procedures.**

If the rejection of an Executory Contract or Unexpired Lease pursuant to Section V.C of the Plan gives rise to a Claim (including any Claims arising from those indemnification obligations described in Section V.E.1 of the Plan) by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtors, the Trusts, their respective successors or their respective properties unless a proof of Claim is filed and served on the Debtors and the Trustee, pursuant to the procedures specified in

this Confirmation Order and the notice of the entry of this Confirmation Order or another order of the Bankruptcy Court, no later than 60 days after the Effective Date.

**D. MATTERS RELATING TO IMPLEMENTATION OF THE PLAN.**

**1. Substantive Consolidation.**

The substantive consolidation of the NCFE Consolidated Debtors for the purpose of implementing the Plan, including for purposes of voting, Confirmation and distributions to be made under the Plan, is approved. As a result of this substantive consolidation: (a) all assets and liabilities of the NCFE Consolidated Debtors are deemed merged; (b) all guarantees by one NCFE Consolidated Debtor of the obligations of any other NCFE Consolidated Debtor are deemed eliminated so that any Claim against any NCFE Consolidated Debtor and any guarantee thereof executed by any other NCFE Consolidated Debtor and any joint or several liability of any of the NCFE Consolidated Debtors are deemed to be one obligation of the NCFE Consolidated Debtors; and (c) each and every Claim Filed or deemed Filed by or on behalf of a single creditor in a single Class of Claims against any of the NCFE Consolidated Debtors is deemed a single Claim Filed against the NCFE Consolidated Debtors. This substantive consolidation (other than for the purpose of implementing the Plan) shall not affect: (a) the legal and corporate structures of the NCFE Consolidated Debtors, subject to the right of the Debtors to effect the Restructuring Transactions as provided in Section IV.A of the Plan; or (b) any defenses to any cause of action or requirements for any third party to establish mutuality in order to assert a right of setoff.

**2. Restructuring Transactions.**

a. Pursuant to the Section 1701.75 of the Ohio Revised Code, Section 303 of the General Corporation Law of the State of Delaware and any comparable

provision of the business corporation laws of any other state (collectively, the "State Reorganization Effectuation Statutes"), state business corporation laws or other state laws and sections 1123(a) and 1142(b) of the Bankruptcy Code, the Debtors and the Trusts are authorized to effectuate the Restructuring Transactions, including without limitation the transfer of the Debtors' Assets to the Trusts and other distributions contemplated by the Plan, in accordance with the applicable terms of the Plan, the applicable Exhibits to the Plan and this Confirmation Order, and all without further action by the Court or the directors, stockholders or members of any of the Debtors. In the event that any transfer, assignment or other change of ownership (a "Restructuring Transfer") of any claim, interest, cause of action or other asset (a "Transferred Asset") effected or purported to be effected pursuant to the Restructuring Transactions has, had or may have the effect of extinguishing, impairing or otherwise adversely affecting such Transferred Asset or the enforceability or collectability thereof, then in any such event, such Restructuring Transfer shall be deemed null and void and of no force or effect, to the same extent as if such Restructuring Transfer had not occurred.

b. To the extent that any of the Debtors' Assets cannot be transferred to the Unencumbered Assets Trust because of a restriction on transferability under applicable nonbankruptcy law that is not superseded by section 1123 or any other provision of the Bankruptcy Code (collectively, the "Nontransferred Assets"), such Nontransferred Assets shall remain property of the Estates after the Effective Date, and the Unencumbered Assets Trustee shall be appointed as representative of the Estates, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, to enforce and pursue such Nontransferred Assets, for the benefit of the beneficiaries of the Unencumbered Assets Trust.

c. The Debtors and/or the Trusts, as appropriate, are authorized to take such actions as any appropriate director or officer of the Debtors or any of the Trustees (collectively, the "Responsible Officers") may determine to be necessary or appropriate to effect the transactions contemplated by Section D.2.a of this Confirmation Order, including without limitation the execution and delivery of appropriate contracts, instruments and other agreements or documents (collectively, the "Restructuring Documents") and the making of such filings in connection therewith as may be required under appropriate provisions of applicable state business corporation law or other applicable law.

d. Each of the Responsible Officers is authorized to execute, deliver, file and have recorded the Restructuring Documents and to take such other actions on behalf of such Debtor or Trust as such person may determine to be required under appropriate provisions of applicable state business corporation laws or any other applicable law in connection with transactions contemplated by Section D.2.a of this Confirmation Order, and the Secretary and any Assistant Secretary of each Debtor and the applicable representative of each Trust are authorized to certify or attest to any of the foregoing actions. The execution of any such Restructuring Document or the taking of any such action shall be deemed conclusive evidence of the authority of such person so to act.

e. Each federal, state and local governmental agency or department is authorized and directed to accept the filing of any Restructuring Document. This Confirmation Order is declared to be in recordable form and shall be accepted by any filing or recording officer or authority of any applicable governmental authority or department without any further orders, certificates or other supporting documents.

**3. Release of Liens.**

a. Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article III of the Plan and the transfers of Assets to the Trusts pursuant to Article IV of the Plan, all mortgages, deeds of trust, liens or other security interests against the property of any Estate will be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, liens or other security interests, including any rights to any collateral thereunder, will revert to the applicable Debtor and its successors and assigns.

b. All distributions made to holders of Allowed Claims pursuant to Article III of the Plan, the transfer of Assets to the Trusts pursuant to Article IV of the Plan and all other property dealt with or administered by the Plan shall be free and clear of any and all liens, claims, security interests and other encumbrances held by the Indenture Trustees.

**4. Termination of Indentures; Transfers of Restricted SPV Funds.**

Pursuant to Section IV.G of the Plan, as of the Effective Date, the NPF VI Indenture and the NPF XII Indenture shall be canceled and of no further force and effect. On the Effective Date, the Indenture Trustees shall transfer all of the Restricted SPV Funds in their possession to the Disbursing Agent designated by the Debtors to fund the distributions and other uses of those funds contemplated by the Plan. In connection with the cancellation of the NPF VI Indenture and the NPF XII Indenture, the Indenture Trustees and the other applicable financial institutions shall cooperate in terminating the lockbox and other bank account arrangements then in place under such indentures.

**5. Trustees**

a. The appointment of the initial Trustees, as set forth in the notices filed by the Creditors' Committee and the Subcommittees with this Court, is approved as of the Effective Date.

b. Each such Trustee shall serve from and after the Effective Date until the earlier of the Trustee's death, resignation or removal, in accordance with the terms and conditions of the Trust Agreements.

**6. Approval of Agreements Related to Plan Distributions.**

a. As of the Effective Date, pursuant to the State Reorganization Effectuation Statutes, as applicable, and other relevant provisions of applicable state business corporation laws and section 1142(b) of the Bankruptcy Code, without further action by the Court or the directors, stockholders or members of any Debtor, each Debtor or Trust, as applicable, is authorized and directed to execute, deliver and perform its obligations under the Trust Agreements on substantially the terms set forth in the final amended version of the applicable Exhibits to the Plan, with such further modifications and amendments thereto as are agreed upon by the parties (which modifications and amendments shall not be inconsistent with the terms of the Plan and Confirmation Order), and to take all such other actions and execute, deliver, record and file all such other contracts, instruments, certificates and other agreements or documents as any of the Responsible Officers may determine are necessary or appropriate in connection with the distribution of the interests in the Trusts and the other distributions provided for by the Plan.

b. The Intercompany Settlement Agreement shall be substantially in the form set forth in the final amended version of Exhibit IV.E.4.a to the Plan, with such further

modifications and amendments thereto as are agreed upon by the parties (which modifications and amendments shall not be inconsistent with the terms of the Plan and this Confirmation Order).

**7. Approval of Trust Agreements and Other Documents.**

a. Without further action by the Court or by the directors, stockholders or members of the Debtors, the Debtors are hereby authorized on the Effective Date to: (a) enter into the Trust Agreements and such other contracts, instruments or other agreements or documents contemplated thereunder or as any of the Responsible Officers may determine are necessary or appropriate in connection with the Trust Agreements (collectively, the "Trust Related Agreements"); (b) perform all of their obligations under the Trust Related Agreements; (c) execute and deliver all documents, agreements and instruments necessary or appropriate to enter into and perform all obligations under the Trust Related Agreements; and (d) take all other actions and execute, deliver, record and file all other such agreements, documents, instruments, financing statements, releases, applications, registration statements, reports and any changes, amendments, additions and modifications thereto in connection with the consummation of the transactions contemplated by the Trust Related Agreements, including, without limitation, the making of such filings or the recording of any security interests, as may be required by the Trust Related Agreements.

b. The CSFB Claims Trust Agreement, the VI/XII Collateral Trust Agreement and the Unencumbered Assets Trust Agreement shall be substantially in the forms set forth in the final amended versions of Exhibits IV.B.1, IV.C.1 and IV.D.1, respectively, to the Plan, with such further modifications and amendments thereto as are agreed upon by the parties

(which modifications and amendments shall not be inconsistent with the terms of the Plan and Confirmation Order).

**8. Preservation of Causes of Action.**

Except as provided in, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Plan, this Confirmation Order, any Final Order or any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, the Debtors or the Trusts, as applicable, will retain and may enforce, and the Debtors expressly reserve and preserve for these purposes, in accordance with sections 1123(a)(5)(B) and 1123(b)(3) of the Bankruptcy Code, any claims, demands, rights and Causes of Action that the Debtors or their respective Estates may hold against any person or entity, including, without limitation, the Retained Actions set forth in the final amended version of Exhibit IV.E.1 to the Plan. Accordingly, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), claim splitting or laches shall apply to such claims, demands, rights and Causes of Action by virtue of or in connection with the confirmation, consummation or effectiveness of the Plan. The Debtors, the Trustees exclusively may pursue such retained claims, demands, rights or Causes of Action, including, without limitation, the Retained Actions set forth in the final amended version of Exhibit IV.E.1 to the Plan, as appropriate, in accordance with the best interests of the Debtors, the Debtors' creditors, the Trusts or their respective successors; *provided, however*, that the Debtors may remain in existence so long as may be deemed reasonably necessary or appropriate by the Debtors or the applicable Trustees to maintain and enforce any claims or Causes of Action, in which case the Trusts may enforce such claims or causes of action as the designated representative of the Debtors' Estates. The Trustees shall have

the authority to waive the Debtors' attorney-client privilege for any claims or Causes of Action retained by the Debtors or the Estates or transferred to the Trusts.

**9. Approval of Executory Contract and Unexpired Lease Provisions.**

The Executory Contract and Unexpired Lease provisions of Article V of the Plan are approved. This Confirmation Order shall constitute an order of the Court approving, effective as of the Effective Date, the assumptions and assumptions and assignments described in Section V.A of the Plan of the Executory Contracts and Unexpired Leases listed on Exhibit V.A to the Plan. This Confirmation Order shall constitute an order of the Court approving the rejections of the Executory Contracts and Unexpired Leases described in Section V.C of the Plan, including, without limitation, the Executory Contracts and Unexpired Leases listed on Exhibit V.C. to the Plan, and the Debtors' rejection of Executory Contracts and Unexpired Leases pursuant to that section is hereby approved.

**10. Application of Section 525 of the Bankruptcy Code to the Debtors and the Trusts.**

Pursuant to section 525(a) of the Bankruptcy Code, no governmental unit may deny, revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to or discriminate with respect to such a grant against any of the Debtors, the Trusts or any of their respective affiliates, directors, managers, trustees, officers, employees, agents, Steering Committee members, successors and assigns because of the filing of the Bankruptcy Cases.

**E. ACTIONS IN FURTHERANCE OF THE PLAN.**

The approvals and authorizations specifically set forth in this Confirmation Order are nonexclusive and are not intended to limit the authority of any Debtor or Trust or any officer or representative thereof to take any and all actions necessary or appropriate to implement,

effectuate and consummate the Plan, this Confirmation Order or the transactions contemplated thereby or hereby. In addition to the authority to execute and deliver, adopt or amend, as the case may be, the contracts, instruments, releases and other agreements specifically granted in this Confirmation Order, each of the Debtors and the Trusts is authorized and empowered, without further action by the Court or by its respective directors, managers, trustees, members or stockholders, to take any and all such actions as any of its Responsible Officers may determine are necessary or appropriate to implement, effectuate and consummate the Plan, this Confirmation Order or the transactions contemplated thereby or hereby; *provided, however*, that the actions of the Trustees shall be subject to the approval of the steering committees pursuant to the terms and conditions set forth in the respective Trust Agreements. Pursuant to section 1142 of the Bankruptcy Code and the State Reorganization Effectuation Statutes, no action of the directors, managers, trustees, members, stockholders or Steering Committee members of any Debtor or Trust shall be required for such Debtor or Trust to enter into, execute and deliver, adopt or amend, as the case may be, any of the contracts, instruments, releases and other agreements or documents and plans to be entered into, executed and delivered, adopted or amended in connection with or contemplated under the Plan and, following the Effective Date, each of such contracts, instruments, releases and other agreements shall be a legal, valid and binding obligation of the applicable Debtor or Trust, enforceable against such Debtor or Trust in accordance with its terms subject only to bankruptcy, insolvency and other similar laws affecting creditors' rights generally and to general equitable principles. Each of the Responsible Officers of each Debtor and Trust is authorized to execute, deliver, file or record such contracts, instruments, financing statements, releases, mortgages, deeds, assignments, leases, applications, registration statements, reports or other agreements or documents and take such other actions as

such Responsible Officer may determine are necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, this Confirmation Order and the transactions contemplated thereby or hereby, all without further application to or order of the Court and whether or not such actions or documents are specifically referred to in the Plan, the Disclosure Statement, the Plan Solicitation and Voting Order, the Vote Change Order, this Confirmation Order or the exhibits to any of the foregoing, and the signature of a Responsible Officer on a document executed in accordance with this Section E shall be conclusive evidence of the Responsible Officer's determination that such document and any related actions are necessary and appropriate to effectuate and/or further evidence the terms and conditions of the Plan, this Confirmation Order or the transactions contemplated thereby or hereby. The Secretary or any Assistant Secretary of each Debtor and the Trustees are authorized to certify or attest to any of the foregoing actions. Pursuant to section 1142 of the Bankruptcy Code, to the extent that, under applicable nonbankruptcy law, any of the foregoing actions would otherwise require the consent or approval of the stockholders, members, managers, trustees, directors or Steering Committee members of any of the Debtors or Trusts, this Confirmation Order shall constitute such consent or approval, and such actions are deemed to have been taken by unanimous action of the directors, managers, trustees, members, stockholders and Steering Committee members of the appropriate Debtor or Trust.

**F. APPROVAL OF THE INTERCOMPANY SETTLEMENT AGREEMENT, THE ING RELEASE AND THE NOTEHOLDER DEFICIENCY CLAIMS SETTLEMENT.**

The Intercompany Settlement Agreement, the ING Release and the Noteholder Deficiency Claims Settlement are hereby approved. As of the Effective Date, without further action by the Court or the directors, officers, trustees, members or stockholders of any Debtor or

Trust, the Debtors and the Trusts are authorized and directed to execute, deliver and perform their obligations under the Intercompany Settlement Agreement, the ING Release and the Noteholder Deficiency Claims Settlement.

**G. RELEASES.**

The releases contained in Sections IV.E, IV.H and XIII.B of the Plan are approved in all respects, are incorporated herein in their entirety, are so ordered and shall be immediately effective on the Effective Date of the Plan without further act or order.

**H. IMPLEMENTATION OF THE AMEDISYS ESCROW AGREEMENT.**

As of the Effective Date, without further action by the Court or the directors, officers, trustee, members or stockholders of any Debtor or Trust, the Debtors and the VI/XII Collateral Trust are authorized and directed to execute, deliver and perform their obligations under the Amedisys Escrow Agreement. Amedisys is directed to execute, deliver and perform its obligations under the Amedisys Escrow Agreement.

**I. TRANSFER OF DEBTOR FUNDS HELD IN ESCROW TO THE TRUSTS.**

This Court has entered numerous orders requiring the Debtors to (a) hold in escrow certain funds received by the Debtors pending further order of this Court and (b) hold in escrow certain other funds, if and when received in the future, pending further order of this Court. Subject to the provisions of Section J hereof, the Court hereby amends such orders and authorizes the Debtors to transfer such funds, now held or hereafter received, in the appropriate distribution or to the appropriate Trust or Trusts, in accordance with the Plan.

2. The Unencumbered Assets Trustee shall hold \$3,000,000 of the funds transferred to the Unencumbered Assets Trust for distribution to the holders of Allowed Claims

in Class C-7 the amounts to which such holders are entitled under the Plan in respect of such Allowed Claims.

**J. OBJECTIONS TO CONFIRMATION.**

1. Certain of the Objections to Confirmation have been withdrawn or hereby are deemed withdrawn or, in certain instances, are resolved or overruled on the terms and subject to the conditions set forth below. The compromises and settlements included in each resolution to an Objection are fair, equitable and reasonable, are in the best interests of the Debtors and their respective Estates and creditors and are expressly approved pursuant to Bankruptcy Rule 9019. The remaining Objections are hereby overruled.

2. As of the Effective Date of the Plan, (a) the "CSFB NY Branch NPF XII Fee Claims" set forth in proof of claim number 823 ("Claim No. 823") filed against NPF XII by Credit Suisse First Boston, New York Branch are allowed in the reduced amount of \$500,000 and classified in Class C-7 under the Plan, and (b) the remaining amounts of such CSFB NY Branch NPF XII Fee Claims are disallowed. This paragraph shall not have any force or effect with respect to the other claims asserted in Claim No. 823.

3. Pursuant to an order entered on April 9, 2004 (D.I. 2724), this Court approved a settlement between the Debtors and Westdeutsche Landesbank Girozentrale, AG ("West LB"), pursuant to which West LB will pay certain monies to the Debtors (the "West LB Settlement Proceeds"). A dispute has arisen regarding the disposition of the West LB Settlement Proceeds. Certain NPF VI Class A Noteholders of Series 2002-1 assert a lien on, and the exclusive right to the payment of, all of the West LB Settlement Proceeds. The NPF XII Subcommittee asserts that the West LB Settlement Proceeds are Assets of the Debtors to be disposed of pursuant to the Intercompany Settlement Agreement and Sections IV.A.1.b.vi and

IV.C.4.a of the Plan, which is disputed by the Series 2002-1 NPF VI Class A Noteholders. This Confirmation Order does not, and shall not be deemed to, resolve the dispute regarding the disposition of the West LB Settlement Proceeds.

4. Notwithstanding any other provision of the Plan or this Confirmation Order, the respective rights of the Debtors, the Trusts and the Internal Revenue Service (the "IRS") regarding the appropriate classification and treatment under the Plan of any Allowed Unsecured Claim of the IRS that otherwise would be classified as a Class C-9 Claim (Penalty Claim) pursuant to the Plan are expressly preserved.

5. Nothing in the Plan or this Confirmation Order shall be deemed to affect or modify the provisions of that certain Order Approving Settlement Agreement With The Provident Bank (Re: Pleading No. 2665) (D.I. 2712) entered on April 9, 2004.

6. The Objections of Purcell & Scott, Co., L.P.A. and Epstein Becker & Green, P.C. are hereby overruled. Pursuant to section 1123(a)(5)(B) of the Bankruptcy Code, the transfer by the Debtors of all professional malpractice claims held by the Debtors to the Unencumbered Assets Trust in accordance with the Plan is hereby approved. The Unencumbered Assets Trust is hereby authorized to pursue such professional malpractice claims on behalf of the beneficiaries of the Trust.

7. Nothing in the Plan or this Confirmation Order shall affect the rights of Med Diversified, Inc. and its affiliates (collectively, the "Med Diversified Entities") to exercise their rights to set off any debt owing by any of the Med Diversified Entities to a Debtor (or its assignee or transferee) against a Claim of such Med Diversified Entity against such Debtor (or its assignee or transferee) that arose on or after the Petition Date and that has not been disallowed.

**K. RELEASES AND INJUNCTIONS.**

**1. General Releases by Holders of Claims or Interests.**

As of the Effective Date, in consideration for, among other things, the obligations of the Debtors under the Plan and other contracts, instruments, releases, agreements or documents to be entered into or delivered in connection with the Plan, (a) each holder of a Claim or Interest that votes in favor of the Plan and (b) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, each entity that has held, holds or may hold a Claim or Interest or at any time was a creditor or stockholder of any of the Debtors and that does not vote on the Plan or votes against the Plan, in each case will be deemed to forever release, waive and discharge all claims (including Derivative Claims), obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities (other than the right to enforce the Debtors' obligations under the Plan and the contracts, instruments, releases, agreements and documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence taking place on or prior to the Effective Date in any way relating to a Debtor, the Bankruptcy Cases or the Plan that such entity has, had or may have against any director, officer or employee of any Debtor who served after the Petition Date pursuant to the Court's Order Authorizing the Continued Use of Alvarez & Marsal, Inc. to Provide Crisis Management Services (D.I. 418) and at the time of such services was a managing director, director or employee of Alvarez & Marsal, Inc. solely for the performance of services by such director, officer or employee after the Petition Date; *provided, however*, that the releases provided by Section IV.E.3.a of the Plan or this Confirmation Order

shall not apply to the Retained Actions or any claims or causes of action by the United States Securities and Exchange Commission or any other agency of the United States of America. Except as otherwise expressly provided in the Plan, this Confirmation Order, the Intercompany Settlement Agreement or the ING Release, neither the foregoing release nor any other release or transfer set forth in the Plan or this Confirmation Order and no preclusion doctrine, including, without limitation, the doctrine of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial equitable or otherwise), claim splitting or laches, shall bar, preclude or otherwise impair any holder of a Claim from asserting or recovering on claims or causes of action against persons or entities other than the Debtors, including, without limitation, such claims or causes of action that have been or may be asserted in the sections identified as "Actions Commenced by or on Behalf of Noteholders" and "Actions Commenced by Equity Holders of NCFE" on pages 36 and 37 of the Disclosure Statement, regardless of whether those claims or causes of action relate to a Debtor.

**2. Injunctions.**

a. Unless otherwise provided herein or in the Plan, all injunctions or stays provided for in the Bankruptcy Cases pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence at the Confirmation Date prior to the entry of the Confirmation Order, shall remain in full force and effect until the closing of the Bankruptcy Cases.

b. Except as provided in the Plan or this Confirmation Order, as of the Effective Date, all entities that have held, currently hold or may hold a claim or other debt or liability that is released, waived, settled or deemed satisfied pursuant to the Plan or an Interest or other right of an equity security holder in the Debtors that is terminated pursuant to the terms of

the Plan will be permanently enjoined from taking any of the following actions on account of any such claims, debts, liabilities, Interests or rights against any entity released pursuant to the Plan (unless otherwise agreed by an entity released pursuant to the Plan) and against the Trusts, their respective property and/or the assets of the Estates retained and enforced by the Trusts as the representatives of the Estates appointed for that purpose pursuant to section 1123(b)(3)(B) of the Bankruptcy Code: (i) commencing or continuing in any manner any action or other proceeding, other than to enforce any right pursuant to the Plan to a distribution; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order, other than as permitted pursuant to clause (i) above; (iii) creating, perfecting or enforcing any lien or encumbrance; (iv) asserting a right of subrogation of any kind against any debt, liability or obligation due to the Trusts or any released entity; (v) asserting a setoff of any kind against any debt, liability or obligation due to any released entity; and (vi) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan. Nothing in Section XI.C.1 of the Plan or this Section K.2.b of this Confirmation Order shall be deemed, in and of itself, to enjoin or otherwise impair the right or ability of any party to assert any affirmative defense or Defensive Counterclaim to which it is otherwise entitled in any action or proceeding brought against such party by any of the Trusts. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, no party shall be enjoined from taking action to determine the amount, validity or priority of, or to recharacterize or subordinate, any claim or lien of any Debtor in the Providers' respective bankruptcy cases, and the court with jurisdiction over the Providers' bankruptcy cases shall retain full jurisdiction to determine such matters with respect to any such claim or lien of any Debtor.

### **3. Subordination Rights.**

Except as expressly set forth in the Plan, the classification and manner of satisfying Claims and Interests under the Plan does not take into consideration subordination rights, and nothing in the Plan or this Confirmation Order shall affect any subordination rights that a holder of a Claim may have with respect to any distribution to be made pursuant to the Plan, whether existing under general principles of equitable subordination, contract, section 510(c) of the Bankruptcy Code or otherwise.

### **4. Setoffs.**

Except (a) with respect to claims of a Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan or (b) as set forth in Section VII.D of the Plan, each Debtor or Trust or, as instructed by the applicable Debtor or Trust, a Third Party Disbursing Agent may, to the extent such right is available pursuant to section 553 of the Bankruptcy Code or other applicable law, exercise its right to set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim) the claims, rights and causes of action of any nature that the applicable Debtor or Trust may hold against the holder of such Allowed Claim; *provided, however*, that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the applicable Debtor or Trust of any claims, rights and causes of action that the applicable Debtor or Trust may possess against such a Claim holder. Nothing in the Plan (including, without limitation, Sections IV.B.4, IV.C.4, IV.D.4, IV.E.3, VI.I and XI.C.1 thereof) or this Confirmation Order shall be deemed to affect the right of any entity to exercise, on or after the Effective Date, by assertion of a counterclaim or otherwise, any right left unaffected by

section 553(a) of the Bankruptcy Code to set off a debt owing by such entity to a Debtor (or its assignee or transferee under the Plan) that arose prior to the Petition Date against a Claim of such entity against such Debtor that arose prior to the Petition Date and that has not been disallowed.

**5. Matters Relating to Votes to Accept the Plan.**

The Vote Change Deadline (as such term is defined in the Vote Change Order) shall be deemed to have been extended until April 7, 2004. Notwithstanding anything in the Plan or in this Confirmation Order to the contrary, a vote in favor of the Plan by the holder of a Claim or Interest, or the receipt of a distribution by any such holder pursuant to the Plan, shall not, in and of itself, be deemed to constitute a waiver of, or estoppel with respect to, any right of any such holder to assert, in any action brought by any Debtor or any successor thereto, that any defense or Defensive Counterclaim otherwise available to such holder under applicable law survived entry of this Confirmation Order and confirmation of the Plan.

**L. SUBSTANTIAL CONSUMMATION.**

The substantial consummation of the Plan, within the meaning of section 1127 of the Bankruptcy Code, is deemed to occur on the Effective Date.

**M. RETENTION OF JURISDICTION.**

Notwithstanding the entry of this Confirmation Order and the occurrence of the Effective Date, the Court shall retain such jurisdiction over the Bankruptcy Cases after the Effective Date as is legally permissible, including jurisdiction over the matters set forth in Article XII of the Plan, which provisions are incorporated herein by reference, and jurisdiction to authorize, supervise and enforce Bankruptcy Rule 2004 subpoenas for documents and examination by the Trusts or the Debtors in furtherance of their investigations of assets, claims and causes of action.

**N. NOTICE OF ENTRY OF CONFIRMATION ORDER.**

1. Pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c), the Debtors are directed to serve a notice of the entry of this Confirmation Order and the establishment of bar dates for certain Claims hereunder, substantially in the form of Exhibit C attached hereto and incorporated herein by reference (the "Confirmation Notice"), on all parties that received notice of the Confirmation Hearing, no later than 15 Business Days after the Confirmation Date; *provided, however*, that the Debtors shall be obligated to serve the Confirmation Notice only on the record holders of Claims or Interests as of the Confirmation Date.

2. As soon as practicable after the entry of this Confirmation Order, the Debtors shall post copies of this Confirmation Order and the Confirmation Notice on the Debtors' website.


3. The Debtors shall publish an appropriate version of the Confirmation Notice once in the national editions of *The Wall Street Journal* and *The Columbus Dispatch* no later than 15 Business Days after the Confirmation Date.

**O. MISCELLANEOUS PROVISIONS.**

1. Any document related to the Plan that refers to a plan of liquidation of the Debtors other than the Plan confirmed by this Confirmation Order shall be, and it hereby is, deemed to be modified such that the reference to a plan of liquidation of the Debtors in such document shall mean the Plan confirmed by this Confirmation Order, as appropriate.

2. This Confirmation Order is a final order and the period in which an appeal must be filed shall commence immediately upon the entry hereof.

Dated: APR 16 2004, 2004

  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**FOURTH AMENDED JOINT PLAN OF LIQUIDATION OF  
NATIONAL CENTURY FINANCIAL ENTERPRISES, INC.  
AND ITS DEBTOR SUBSIDIARIES, DATED JANUARY 13, 2004**



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## TABLE OF EXHIBITS<sup>1</sup>

Exhibit IV.A.4	Form of the Amedisys Escrow Agreement
Exhibit IV.B.1	Form of the CSFB Claims Trust Agreement
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Exhibit V.A.1	Assumed Contracts
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Except as otherwise indicated, all Exhibits will be Filed and made available for review during regular business hours at the Document Reviewing Centers no later than 10 days before the deadline to object to Confirmation of the Plan. The Debtors reserve the right to modify, amend, supplement, restate or withdraw any of the Exhibits after they are Filed. The Debtors will File all modified, amended, supplemented or restated Exhibits as promptly as possible and will make such Exhibits available for review at the Document Reviewing Centers.

## INTRODUCTION

National Century Financial Enterprises, Inc. (as more fully defined below, "NCFE") and the other above-captioned debtors and debtors in possession (as more fully defined below, collectively, the "Debtors"), propose the following joint plan of liquidation (the "Plan") for the resolution of the outstanding claims against and equity interests in the Debtors. The Debtors (the "Plan Proponents") are proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code, 11 U.S.C. § 1129. Reference is made to the Plan Proponents' disclosure statement filed contemporaneously with the Plan (the "Disclosure Statement"), for a discussion of the Debtors' history, businesses, results of operations, historical financial information and properties, and for a summary and analysis of the Plan. There also are other agreements and documents referenced in the Plan or the Disclosure Statement that are or will be Filed with the Bankruptcy Court and are or will be made available for review.

## ARTICLE I

### DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME

#### A. Defined Terms

As used in the Plan, capitalized terms have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

**1. "Administrative Claim"** means a Claim for costs and expenses of administration allowed under section 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the respective Estates and operating the businesses of the Debtors (such as wages, salaries, commissions for services and payments for inventories, leased equipment and premises); (b) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under section 330(a) or 331 of the Bankruptcy Code, including Fee Claims; (c) all fees and charges assessed against the Estates under chapter 123 of title 28, United States Code, 28 U.S.C. §§ 1911-1930; and (d) all Intercompany Claims accorded priority pursuant to section 364(c)(1) of the Bankruptcy Code or the Cash Management Order.

**2. "Administrative Trade Claim"** means an Administrative Claim arising from or with respect to the sale of goods or rendition of services on or after the Petition Date in the ordinary course of the applicable Debtor's business, including Administrative Claims of employees for ordinary course wages, expense reimbursement and health and welfare benefits.

**3. "Allied"** means Allied Medical, Inc., a Tennessee corporation and one of the Debtors.

**4. "Allowed Claim"** means:

**a.** a Claim that (i) has been listed by a particular Debtor on its Schedules in a nonzero amount as undisputed, noncontingent and liquidated and (ii) is not otherwise a Disputed Claim;

**b.** a Claim (i) for which a proof of Claim or request for payment of Administrative Claim has been Filed by the applicable Bar Date or otherwise been deemed timely Filed under applicable law and (ii) that is not otherwise a Disputed Claim;

**c.** a Claim that is allowed: (i) in any Stipulation of Amount and Nature of Claim executed by the applicable Debtor and Claim holder on or after the Effective Date; (ii) in any contract, instrument or other agreement entered into in connection with the Plan or, if prior to the Effective Date, approved by the Bankruptcy Court; (iii) in a Final Order; or (iv) pursuant to the terms of the Plan; or

**d.** solely for the purposes of the implementation of Section VII.D (including the calculation of Pro Rata shares, the NPF VI Percentage, the NPF XII Percentage and other amounts and proportions in connection with such implementation), a Disputed Claim, the holder of which is entitled to receive distributions without delay, deferral or setoff, or to have distributions deposited into escrow, in each case in accordance with Section VII.D.

**5. "Allowed . . . Claim"** means an Allowed Claim in the particular Class or category specified. Any reference herein to a particular Allowed Claim includes both the secured and unsecured portions of such Claim.

**6. "Amedisys"** means, collectively, Amedisys Inc. and those of its affiliates that were participants in one or more of the Debtors' health care financing programs.

**7. "Amedisys Adversary Proceeding"** means the adversary proceeding pending in the Bankruptcy Court captioned *Amedisys, Inc., et. al. v. JP Morgan Chase Bank, et. al.*, Adversary Proceeding No. 02-25576.

**8. "Amedisys Escrow"** means the escrow account to be funded on the Effective Date with \$7,339,583.78, plus the actual interest that has accrued thereon from the date such funds were allegedly transferred by Amedisys to the NPF VI Restricted SPV Funds, from the NPF VI September 15 Funds pending the resolution of the Amedisys Adversary Proceeding, pursuant to the Amedisys Escrow Agreement.

**9. "Amedisys Escrow Agreement"** means the escrow agreement governing the Amedisys Escrow, substantially in the form attached hereto as Exhibit IV.A.1.

**10. "Assets"** means all assets of the applicable Debtor or Trust of any nature whatsoever, including, without limitation, the property of the Estate pursuant to section 541 of the Bankruptcy Code, Cash, claims, Causes of Action, claims of right, interests and property, real and personal, tangible and intangible.

**11. "Avoidance Recovery Claim"** means, in accordance with section 502(h) of the Bankruptcy Code, an Allowed Claim in Class C-2A or Class C-3A, as the case may be, in an amount equal to the principal amount of the obligations the repayment of which gave rise to an Avoidance Recovery Payment.

**12. "Avoidance Recovery Payment"** means a payment to NPF VI, NPF XII or a Trust in respect of prepetition holdings of NPF VI Class A Notes or NPF XII Class A Notes pursuant to a judgment, settlement or other resolution of an avoidance cause of action under chapter 5 of the Bankruptcy Code or otherwise in respect of a prepetition payment of obligations evidenced by NPF VI Class A Notes or NPF XII Class A Notes.

**13. "Ballot"** means the form or forms distributed to each holder of an impaired Claim entitled to vote on the Plan on which the holder indicates acceptance or rejection of the Plan or any election for treatment of such Claim under the Plan.

**14. "Bank Loan Claim"** means a Claim arising under the Prepetition Credit Facility.

**15. "Bankruptcy Case"** means: (a) when used with reference to a particular Debtor, the chapter 11 case pending for that Debtor in the Bankruptcy Court; and (b) when used with reference to all Debtors, the chapter 11 cases pending for the Debtors in the Bankruptcy Court.

**16. "Bankruptcy Code"** means title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as now in effect or hereafter amended with retroactive applicability to these chapter 11 cases.

**17. "Bankruptcy Court"** means the United States Bankruptcy Court for the Southern District of Ohio.

**18. "Bankruptcy Rules"** means, collectively, the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended with retroactive applicability to these chapter 11 cases.

19. **"Bar Date"** means the applicable bar date by which a proof of Claim must be or must have been Filed, as established by an order of the Bankruptcy Court, including the Bar Date Order and the Confirmation Order.

20. **"Bar Date Order"** means an order of the Bankruptcy Court establishing Bar Dates for Filing proofs of Claims in the Bankruptcy Cases, as the same may be amended, modified or supplemented, including the Bankruptcy Court Order Fixing Proof of Claims Bar Date, dated December 26, 2002 and the Bankruptcy Court Order Establishing Amended Schedules Bar Date and Related Notice Procedures, dated June 5, 2003.

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

22. **"Cash"** means cash and cash equivalents, including, but not limited to, bank deposits, wire transfers, checks and readily marketable securities, instruments and obligations of the United States of America or instrumentalities thereof.

23. **"Cash Collateral Adjustment"** means the amount equal to (a) the NPF XII Percentage multiplied by (b) the amount, if any, of NPF VI Restricted SPV Funds that: (i) are not NPF VI September 15 Funds; and (ii) are used (A) to fund the use of cash collateral of the Indenture Trustee under the NPF VI Indenture by the Debtors from September 15, 2003 to the Effective Date, pursuant to the orders entered by the Bankruptcy Court from time to time authorizing the use of such cash collateral, or (b) to pay 50% of the Remaining 50/50 Cash Collateral Amount to the VI/XII Collateral Trust. For purposes of determining the amount of the Cash Collateral Adjustment, any amount of NPF VI Restricted SPV Funds withdrawn after September 15, 2003 from the purchase or collection account shall be deemed to constitute NPF VI September 15 Funds until all of the NPF VI September 15 Funds in such account have been withdrawn.

24. **"Cash Management Order"** means the Final Order: (A) Approving (I) Cash Management System, (II) Certain Intercompany Transactions and (III) Use of Existing Bank Accounts, Business Forms and Investment and Deposit Practices; and (B) According Administrative Expense Status to All Postpetition Intercompany Claims, entered by the Bankruptcy Court on or about January 9, 2003.

25. **"Cash Transfer Account"** means an account established for the benefit of NPF XII Class A Noteholders: (a) into which account the NPF VI Cash Transfer, the NPF VI Additional Cash Transfer and the Cash Collateral Adjustment shall be deposited; (b) which account and the funds therein shall be subject to the liens and security interests of the Indenture Trustee under the NPF XII Indenture for the benefit of the NPF XII Class A Noteholders; and (c) all of the funds in which shall be distributed Pro Rata to the NPF XII Class A Noteholders on the Effective Date.

26. **"Causes of Action"** means, with respect to each Debtor individually, all claims, demands, rights, actions, causes of action and suits of such Debtor's Estate, of any kind or character whatsoever, known or unknown, suspected or unsuspected, whether arising prior to, on or after the Petition Date, in contract or in tort, at law or in equity or under any theory of law, including without limitation the Causes of Action identified on Exhibit IV.D.1 hereto.

27. **"Claim"** means a "claim," as defined in section 101(5) of the Bankruptcy Code, against any Debtor.

28. **"Claims Objection Bar Date"** means, for all Claims other than those Claims allowed within the meaning of Section I.A.4, the latest of: (a) 120 days after the Effective Date; (b) 60 days after the Filing of a proof of Claim for such Claim; and (c) such other period of limitation as may be specifically fixed by the Plan, the Confirmation Order, the Bankruptcy Rules or a Final Order for objecting to such Claim.

29. **"Class"** means a class of Claims or Interests, as described in Article II.

30. **"Confirmation"** means the entry of the Confirmation Order on the docket of the Bankruptcy Court.

- 31. "Confirmation Date"** means the date on which the Bankruptcy Court enters the Confirmation Order on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.
- 32. "Confirmation Hearing"** means the hearing held by the Bankruptcy Court on Confirmation of the Plan, as such hearing may be continued from time to time.
- 33. "Confirmation Order"** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code and approving the Intercompany Settlement Agreement and the Noteholder Deficiency Claim Settlement.
- 34. "Creditors' Committee"** means the official committee of unsecured creditors of the Debtors appointed by the United States Trustee in the Bankruptcy Cases pursuant to section 1102 of the Bankruptcy Code.
- 35. "CSFB"** means Credit Suisse First Boston and its affiliates.
- 36. "CSFB Claims"** means any and all Causes of Action that the Debtors hold against CSFB under chapter 5 of the Bankruptcy Code and other applicable laws for the avoidance and recovery of the CSFB Payments.
- 37. "CSFB Payments"** means the \$75 million in principal payments and related payments of fees and interest made by NPF XII in September 2002 to CSFB.
- 38. "CSFB Claims Trust"** means the trust established to liquidate and recover the CSFB Claims. The CSFB Claims Trust shall be governed by a body constituted in accordance with the trust's constituent documents and applicable nonbankruptcy law, the representatives of which body shall be appointed by the NPF XII Subcommittee pursuant to the CSFB Claims Trust Agreement.
- 39. "CSFB Claims Trust Agreement"** means the agreement governing the management and operations of the CSFB Claims Trust, substantially in the form attached hereto as Exhibit IV.B.1.
- 40. "CSFB Claims Trust Restricted SPV Funds Holdback"** means the Cash amount of \$2,000,000 to be contributed to the CSFB Claims Trust from the NPF XII Restricted SPV Funds on the Effective Date.
- 41. "CSFB Claims Trustee"** means the person or entity designated to manage the CSFB Claims Trust pursuant to the CSFB Claims Trust Agreement.
- 42. "Cure Amount Claim"** means a Claim based upon a Debtor's defaults pursuant to an Executory Contract or Unexpired Lease at the time such contract or lease is assumed by that Debtor under section 365 of the Bankruptcy Code and pursuant to the Confirmation Order.
- 43. "Debtors"** means, collectively, the debtors and debtors in possession identified on the cover page to this Plan.
- 44. "Deficiency Claim"** means an Unsecured Claim (other than a Penalty Claim) for the difference between (a) the aggregate amount of an Allowed Claim and (b) the value received on account of the portion of such Allowed Claim that is a Secured Claim.
- 45. "Derivative Claim"** means a claim that is property of any of the Debtors' Estates pursuant to section 541 of the Bankruptcy Code and any state or federal fraudulent conveyance, fraudulent transfer, preference, avoidance and other similar claims and causes of action for the benefit of creditors that the Debtors are authorized to pursue in accordance with the Bankruptcy Code and other applicable law.
- 46. "Disbursing Agent"** means any of the Debtors or the Trusts, in its capacity as a disbursing agent pursuant to Section VI.B, or any Third Party Disbursing Agent.

**47. "Disclosure Statement"** means the disclosure statement (including all exhibits and schedules thereto or referenced therein) that relates to the Plan, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code, as the same may be amended, modified or supplemented.

**48. "Disputed Claim"** means:

**a.** if no proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law: (i) a Claim that is listed on a Debtor's Schedules as other than disputed, contingent or unliquidated, but as to which the applicable Debtor, Trust or, prior to the Confirmation Date, any other party in interest, has Filed an objection by the Claims Objection Bar Date and such objection has not been withdrawn or denied by a Final Order; or (ii) a Claim that is listed on a Debtor's Schedules as disputed, contingent or unliquidated; or

**b.** if a proof of Claim has been Filed by the Bar Date or has otherwise been deemed timely Filed under applicable law, a Claim for which an objection has been Filed by the applicable Debtor, Trust or, prior to the Confirmation Date, any other party in interest, by the Claims Objection Bar Date, and such objection has not been overruled or denied by a Final Order.

**49. "Distribution Record Date"** means the first Business Day that is at least 10 days after the Confirmation Date.

**50. "Document Reviewing Centers"** means, collectively: (a) the offices of Jones Day located at 77 West Wacker, Chicago, Illinois 60601 and 41 South High Street, Suite 1900, Columbus, Ohio 43215; and (b) any other locations designated by the Debtors at which any party in interest may review all of the exhibits and schedules to the Plan and the Disclosure Statement.

**51. "Effective Date"** means a day, as determined by the Debtors, that is the Business Day as soon as reasonably practicable after all conditions to the Effective Date in Section IX.B have been met or waived pursuant to Section IX.C.

**52. "Estate"** means, as to each Debtor, the estate created for that Debtor in its Bankruptcy Case pursuant to section 541 of the Bankruptcy Code and the Confirmation Order.

**53. "Executory Contract and Unexpired Lease"** means a contract or lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code and the Confirmation Order.

**54. "Face Amount"** means either: (a) the full stated amount claimed by the holder of a Claim in any proof of Claim Filed by the Bar Date, or otherwise deemed timely Filed under applicable law, if the proof of Claim specifies only a liquidated amount; (b) if no proof of Claim is Filed by the Bar Date or otherwise deemed timely filed under applicable law, that portion, if any, of such Claim listed on the Debtors' Schedules as undisputed, noncontingent and liquidated; or (c) the applicable deductible under the relevant insurance policy, minus any reimbursement obligations of the applicable Debtor to the insurance carrier for sums expended by the insurance carrier on account of a Claim (including defense costs), if such amount is less than the amount specified in clause (a) or (b) above with respect to such Claim or the applicable proof of Claim specifies an unliquidated amount; *provided, however*, that the Face Amount of a Claim shall in all events be any amount of such Claim, as determined by a Final Order or a Stipulation of Amount and Nature of Claim allowing or estimating such Claim, that is less than the amount determined under clause (a), (b) or (c) above.

**55. "Fee Claim"** means a Claim under section 330(a), 331, 503 or 1103 of the Bankruptcy Code for compensation of a Professional or other entity for services rendered or expenses incurred in the Bankruptcy Cases.

**56. "Fee Order"** means the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals entered by the Bankruptcy Court on or about January 31, 2003.

57. **"File," "Filed" or "Filing"** means file, filed or filing with the Bankruptcy Court or its authorized designee in the Bankruptcy Cases.

58. **"Final Order"** means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in any Bankruptcy Case or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing shall have been denied or resulted in no modification of such order.

59. **"Indenture Trustees"** means JPMorgan Chase Bank as indenture trustee under the NPF VI Indenture, Bank One, N.A. as indenture trustee under the NPF XII Indenture and any successors thereto.

60. **"ING"** means, collectively, ING Capital Markets, LLC, ING Bank N.V., Mont Blanc Capital Corporation and their respective affiliates.

61. **"ING Payment"** means the payment to be made by ING to NPF VI pursuant to Section III.A.1.b of this Plan in the amount of \$43,132,760.07 in repayment of the November 2002 principal amortization payment made by NPF VI to ING.

62. **"ING Release"** means the release agreement attached hereto as Exhibit IV.D.4.b.

63. **"Insured Claim"** means any Claim arising from an incident or occurrence alleged to have occurred prior to the Effective Date that is covered under an insurance policy applicable to the Debtors or their businesses.

64. **"Intercompany Claim"** means any claim by a Debtor against another Debtor.

65. **"Intercompany Settlement Agreement"** means the settlement agreement attached hereto as Exhibit IV.D.4.a.

66. **"Interest"** means the rights of the holder of the Old Stock of any Debtor and the rights of any entity to purchase or demand the issuance of any of the Old Stock of any Debtor, including: (a) redemption, conversion, exchange, voting, participation and dividend rights; (b) liquidation preferences; and (c) stock options and warrants.

67. **"Medshares Escrow Funds"** means the proceeds of the Debtors' settlement with Medshares, Inc., currently held in escrow.

68. **"MetLife and Lloyds"** means, collectively, Metropolitan Life Insurance Company and Lloyds TSB Bank, p.l.c.

69. **"NCFE"** means National Century Financial Enterprises, Inc., an Ohio corporation, one of the Debtors and the direct or indirect parent corporation of each of the NCFE Subsidiary Debtors.

70. **"NCFE Consolidated Debtors"** means, collectively, the Debtors other than NPF VI and NPF XII.

71. **"NCFE Subsidiary Debtors"** means, individually or collectively, a Debtor or Debtors other than NCFE.

72. **"Nominees"** means the brokers, dealers or other agents that are record holders of the Notes, and hold the Notes on behalf of beneficial Noteholders.

**73. "Noteholder Deficiency Claim"** means the aggregate Deficiency Claim of the Noteholders against the Debtors in respect of the Notes, including the NPF VI Class B Notes and the NPF XII Class B Notes, after taking into account the estimated value of the distributions to be received by the NPF VI Class A Noteholders and the NPF XII Class A Noteholders on account of their Secured Claims in Classes C-2A and C-3A, respectively. Subject to Section VI.K, the aggregate allowed amount of the Noteholder Deficiency Claim shall be deemed to be \$2,609,891,501, plus the amount of Avoidance Recovery Claims that are allowed from time to time.

**74. "Noteholder Deficiency Claim Settlement"** means the settlement of Claims by and among NPF VI, NPF XII, the NCFE Consolidated Debtors and their respective creditors pursuant to the terms and conditions set forth in the Plan, including the transfer of certain Assets of the Debtors to the Unencumbered Assets Trust, the distribution of the interests in the Unencumbered Assets Trust to the holders of Claims in Class C-6 and the allowance of the Noteholder Deficiency Claim.

**75. "Noteholders"** means, collectively, the NPF VI Noteholders and the NPF XII Noteholders.

**76. "Notes"** means the NPF VI Notes and the NPF XII Notes.

**77. "NPF VI"** means NPF VI, Inc., an Ohio corporation and one of the NCFE Subsidiary Debtors.

**78. "NPF VI Additional Cash Transfer"** means the transfer of \$6,500,000 of funds that would otherwise be distributed to NPF VI Class A Noteholders from a source to be designated by the NPF VI Subcommittee prior to commencement of the Confirmation Hearing to the Cash Transfer Account, free and clear of all liens, claims, encumbrances and interests, including, without limitation, the liens and security interests of JP Morgan Chase Bank or any successor Indenture Trustee under the NPF VI Indenture; *provided, however*, that the source of the NPF VI Additional Cash Transfer shall not be any of the NPF VI Reserve Accounts or the Medshares Escrow Funds; and *provided further* that to the extent that there are no available sources of the NPF VI Additional Cash Transfer as of the Effective Date, the NPF VI Additional Cash Transfer shall be paid from the VI/XII Collateral Trust Restricted SPV Funds Holdback, in which event the VI/XII Collateral Trust subsequently shall be reimbursed for such use of the holdback on a first priority basis from funds that otherwise would be available for distribution to the NPF VI Noteholders from the VI/XII Collateral Trust.

**79. "NPF VI Cash Transfer"** means the transfer of \$72,800,000 from the NPF VI Restricted SPV Funds held by JP Morgan Chase Bank on behalf of NPF VI to the Cash Transfer Account, free and clear of all liens, claims, encumbrances and interests, including, without limitation, the liens and security interests of JP Morgan Chase Bank or any successor Indenture Trustee under the NPF VI Indenture.

**80. "NPF VI Class A Noteholder"** means a holder of NPF VI Class A Notes.

**81. "NPF VI Class B Noteholder"** means a holder of NPF VI Class B Notes.

**82. "NPF VI Class A Notes"** means the Class A notes issued by NPF VI under the NPF VI Indenture.

**83. "NPF VI Class B Notes"** means the Class B notes issued by NPF VI under the NPF VI Indenture.

**84. "NPF VI Indenture"** means the Master Indenture, dated as of June 1, 1998, among NPF VI, Debtor National Premier Financial Services, Inc., as servicer, and The Chase Manhattan Bank n/k/a JPMorgan Chase Bank, as indenture trustee, together with each of its supplemental indentures and amendments.

**85. "NPF VI Initial Restricted SPV Funds Distribution"** means the Pro Rata distribution on the Effective Date to holders of Allowed Secured Claims in respect of NPF VI Class A Notes of (a) the amount of the NPF VI September 15 Funds, plus (b) the ING Payment, plus (c) the Medshares Escrow Funds, minus (d) the NPF VI Cash Transfer (which will be made prior to the initial distribution), minus (e) the NPF VI Additional Cash Transfer (to the extent that the source of such transfer is the NPF VI September 15 Funds), minus (f) the NPF VI Percentage of the VI/XII Collateral Trust Restricted SPV Funds Holdback, minus (g) the portion of the NPF VI

September 15 Funds withdrawn from the NPF VI Restricted SPV Funds after September 15, 2003 but prior to the Effective Date under the terms of the cash collateral orders entered from time to time by the Bankruptcy Court, minus (h) the amount, if any, of the Cash Collateral Adjustment, which shall be transferred from the NPF VI September 15 Funds to the Cash Transfer Account, minus (i) 50% of the Remaining 50/50 Cash Collateral Amount, minus (j) the amount being contributed to the Amedisys Escrow.

- 86.** "NPF VI Noteholder" means a holder of NPF VI Notes.
- 87.** "NPF VI Notes" means the NPF VI Class A Notes and the NPF VI Class B Notes.
- 88.** "NPF VI Percentage" means the percentage calculated by dividing the aggregate amount of NPF VI Class A Noteholder Claims by the aggregate amount of the NPF VI Class A Noteholder Claims and the NPF XII Class A Noteholder Claims, as determined in accordance with the Intercompany Settlement Agreement.
- 89.** "NPF VI Reserve Accounts" means, collectively, the equity reserve, offset reserve and credit reserve accounts maintained at JP Morgan Chase Bank in connection with NPF VI's health care accounts receivable financing program.
- 90.** "NPF VI Restricted SPV Funds" means the Restricted SPV Funds held by the JP Morgan Chase Bank under the NPF VI Indenture on behalf of the NPF VI Noteholders.
- 91.** "NPF VI September 15 Funds" means the amount of NPF VI Restricted SPV Funds held by the NPF VI Indenture Trustee as of September 15, 2003, and interest and income accrued thereon through the Effective Date.
- 92.** "NPF VI Subcommittee" means the Official Subcommittee of NPF VI Noteholders appointed by the United States Trustee in the Bankruptcy Case pursuant to section 1102 of the Bankruptcy Code.
- 93.** "NPF XII" means NPF XII, Inc., an Ohio corporation and one of the NCFE Subsidiary Debtors.
- 94.** "NPF XII Class A Noteholder" means a holder of NPF XII Class A Notes.
- 95.** "NPF XII Class B Noteholder" means a holder of NPF XII Class B Notes.
- 96.** "NPF XII Class A Notes" means the Class A notes issued by NPF XII under the NPF XII Indenture.
- 97.** "NPF XII Class B Notes" means the Class B notes issued by NPF XII under the NPF XII Indenture.
- 98.** "NPF XII Indenture" means the Master Indenture, dated as of March 10, 1999, among NPF XII, Debtor National Premier Financial Services, Inc., as servicer, and Bank One, N.A., as indenture trustee, together with each of its supplemental indentures and amendments.
- 99.** "NPF XII Initial Restricted SPV Funds Distribution" means the Pro Rata distribution on the Effective Date to holders of Allowed Secured Claims in respect of NPF XII Class A Notes of (a) the NPF XII September 15 Funds, plus (b) the NPF VI Cash Transfer (which will be made prior to the initial distribution), plus (c) the NPF VI Additional Cash Transfer (which will be made prior to the initial distribution), plus (d) the amount, if any, of the Cash Collateral Adjustment, minus (e) the NPF XII Percentage of the VI/XII Collateral Trust Restricted SPV Funds Holdback, minus (f) the CSFB Claims Trust Restricted SPV Funds Holdback, minus (g) 50% of the Remaining 50/50 Cash Collateral Amount.
- 100.** "NPF XII Noteholder" means a holder of NPF XII Notes.
- 101.** "NPF XII Notes" means NPF XII Class A Notes and the NPF XII Class B Notes.

**102. "NPF XII Percentage"** means the percentage calculated by dividing the aggregate amount of NPF XII Class A Noteholder Claims by the aggregate amount of the NPF VI Class A Noteholder Claims and the NPF XII Class A Noteholder Claims, as determined in accordance with the Intercompany Settlement.

**103. "NPF XII Restricted SPV Funds"** means the Restricted SPV Funds held by Bank One, N.A. under the NPF XII Indenture on behalf of the NPF XII Noteholders.

**104. "NPF XII September 15 Funds"** means the amount of NPF XII Restricted SPV Funds held by the NPF XII Indenture Trustee as of September 15, 2003, and interest and income accrued thereon through the Effective Date.

**105. "NPF XII Subcommittee"** means the Official Subcommittee of NPF XII Noteholders appointed by the United States Trustee in the Bankruptcy Case pursuant to section 1102 of the Bankruptcy Code.

**106. "Old Stock of . . ."** means, when used with reference to a particular Debtor or Debtors, the common stock, preferred stock, membership interests, partnership interests or similar ownership interests, including options, warrants or rights to acquire or convert any such interests, issued by such Debtor or Debtors and outstanding immediately prior to the Petition Date.

**107. "Ordinary Course Professionals Order"** means the Order Authorizing Debtors and Debtors in Possession to Retain, Employ and Pay Certain Professionals in the Ordinary Course of Their Businesses entered by the Bankruptcy Court on or about December 19, 2002.

**108. "Petition Date"** means November 18, 2002 with respect to all of the Debtors other than Allied and February 14, 2003 with respect to Allied.

**109. "Plan"** means this joint plan of liquidation for the Debtors, to the extent applicable to any Debtor, and all Exhibits attached hereto or referenced herein, as the same may be amended, modified or supplemented.

**110. "Plan Proponents"** means the Debtors as proponents of this Plan.

**111. "Prepetition Credit Facility"** means the Debtors' bank facility under the Second Amended and Restated Loan and Security Agreement, dated as of May 31, 2002, by and among The Provident Bank, as agent, and Debtors NCFE, NPF Capital, Inc., NPF-SPL, Inc. and NPF-LL, Inc., as amended.

**112. "Prior Distribution Amount"** means an amount equal to the aggregate amount of all distributions that an entity required to make an Avoidance Recovery Payment would have received on account of the resulting Avoidance Recovery Claim, had the Avoidance Recovery Payment been paid and the Avoidance Recovery Claim accordingly been allowed prior to the Effective Date.

**113. "Priority Claim"** means a Claim that is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code that is not an Administrative Claim or a Priority Tax Claim.

**114. "Priority Tax Claim"** means a Claim that is entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.

**115. "Professional"** means any professional employed in the Bankruptcy Cases pursuant to sections 327 or 1103 of the Bankruptcy Code or any professional or other entity seeking compensation or reimbursement of expenses in connection with the Bankruptcy Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

**116. "Pro Rata"** means, when used with reference to a distribution of property pursuant to Article III, proportionately so that with respect to a particular Allowed Claim, the ratio of (a)(i) the amount of property distributed on account of such Claim to (ii) the amount of such Claim, is the same as the ratio of (b)(i) the amount of

property distributed on account of all Allowed Claims of the Class in which such Claim is included to (ii) the amount of all Allowed Claims in that Class.

**117. "Provider"** means any healthcare company or practitioner that was a healthcare financing client or customer of one or more of the Debtors through (a) the participation in the Debtors' accounts receivable financing program, (b) the leasing of equipment or other items from the Debtors, (c) the borrowing of funds pursuant to promissory notes issued to the Debtors or (d) any other form of financing.

**118. "Real Property Executory Contract and Unexpired Lease"** means, collectively, an Executory Contract or Unexpired Lease relating to a Debtor's interest in real property and any Executory Contracts and Unexpired Leases granting rights or interests related to or appurtenant to the applicable real property, including all easements; licenses; permits; rights; privileges; immunities; options; rights of first refusal; powers; uses; usufructs; reciprocal easement or operating agreements; vault, tunnel or bridge agreements or franchises; development rights; and any other interests in real estate or rights *in rem* related to the applicable real property.

**119. "Reinstated" or "Reinstatement"** means rendering a Claim or Interest unimpaired within the meaning of section 1124 of the Bankruptcy Code. Unless the Plan specifies a particular method of Reinstatement, when the Plan provides that an Allowed Claim or Allowed Interest will be Reinstated, such Claim or Interest will be Reinstated, at the applicable Reorganized Debtor's sole discretion, in accordance with one of the following:

**a.** The legal, equitable and contractual rights to which such Claim or Interest entitles the holder will be unaltered; or

**b.** Notwithstanding any contractual provision or applicable law that entitles the holder of such Claim or Interest to demand or receive accelerated payment of such Claim or Interest after the occurrence of a default:

**i.** any such default that occurred before or after the commencement of the applicable Bankruptcy Case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code, will be cured;

**ii.** the maturity of such Claim or Interest as such maturity existed before such default will be reinstated;

**iii.** the holder of such Claim or Interest will be compensated for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and

**iv.** the legal, equitable or contractual rights to which such Claim or Interest entitles the holder of such Claim or Interest will not otherwise be altered.

**120. "Remaining 50/50 Cash Collateral Amount"** means, solely in the event that the amount of cash collateral of the Indenture Trustees used by the Debtors from and after December 1, 2003 through the Effective Date is less than \$16,453,845, the amount determined by subtracting \$16,453,845 minus the amount so used.

**121. "Remaining Restricted SPV Funds Distribution"** means the distribution on the Effective Date, pursuant to Sections III.B.2 and III.B.4, to holders of Allowed Secured Claims in respect of NPF VI Class A Notes and NPF XII Class A Notes of (a) the NPF VI Restricted SPV Funds remaining after the NPF VI Initial Restricted SPV Funds Distribution plus (b) the NPF XII Restricted SPV Funds remaining after the NPF XII Initial Restricted SPV Funds Distribution.

**122. "Restricted SPV Funds"** means, collectively, the funds held in the collection, purchase, equity reserve, offset reserve and credit reserve accounts maintained by the applicable Indenture Trustees on behalf of NPF VI and NPF XII in connection with the Debtors' healthcare receivables finance program.

**123. "Restructuring Transactions"** means, collectively, those mergers, consolidations, restructurings, dispositions, liquidations or dissolutions that the Debtors determine to be necessary or appropriate to effect a corporate restructuring of their respective businesses or otherwise to simplify the overall corporate structure of the Debtors.

**124. "Retained Actions"** means any claims or causes of action listed on Exhibit IV.E.1.

**125. "Schedules"** means the schedules of assets and liabilities and the statements of financial affairs Filed by a particular Debtor, as required by section 521 of the Bankruptcy Code and the Official Bankruptcy Forms, as the same may have been or may be amended, modified or supplemented.

**126. "Secondary Liability Claim"** means a Claim that arises from a Debtor being liable as a guarantor of, or otherwise being jointly, severally or secondarily liable for, any contractual, tort or other obligation of another Debtor, including any Claim based on: (a) guaranties of collection, payment or performance; (b) indemnity bonds, obligations to indemnify or obligations to hold harmless; (c) performance bonds; (d) contingent liabilities arising out of contractual obligations or out of undertakings (including any assignment or other transfer) with respect to leases, operating agreements or other similar obligations made or given by a Debtor relating to the obligations or performance of another Debtor; (e) vicarious liability; (f) liabilities arising out of piercing the corporate veil, alter ego liability or similar legal theories; (g) any other joint or several liability that any Debtor may have in respect of any obligation that is the basis of a Claim; or (h) any claim based upon or relating to the indebtedness evidenced by a NPF VI Note or NPF XII Note against any Debtor other than the Debtor that issued such note.

**127. "Secured Claim"** means a Claim that is secured by a lien on property in which an Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in the applicable Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to sections 506(a) and, if applicable, 1129(b) of the Bankruptcy Code.

**128. "Stipulation of Amount and Nature of Claim"** means a stipulation or other agreement between the applicable Debtor or Liquidating Entity and a holder of a Claim or Interest, or an agreed order of the Bankruptcy Court, establishing the amount and nature of a Claim or Interest.

**129. "Subcommittees"** means the NPF VI Subcommittee and the NPF XII Subcommittee.

**130. "Tax"** means (a) any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental or other tax, assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any federal, state, local or foreign taxing authority; or (b) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other entity.

**131. "Third Party Disbursing Agent"** means an entity designated by the Debtors or a Trustee to act as a Disbursing Agent pursuant to Section VI.B.

**132. "Trust Agreements"** means the CSFB Claims Trust Agreement, the VI/XII Collateral Trust Agreement and the Unencumbered Assets Trust Agreement.

**133. "Trusts"** means the CSFB Claims Trust, the VI/XII Collateral Trust and the Unencumbered Assets Trust.

**134. "Trustees"** means the CSFB Claims Trustee, the VI/XII Collateral Trustee and the Unencumbered Assets Trustee.

**135. "Unencumbered Assets Trust"** means the trust established to liquidate and monetize all remaining Assets of the Debtors not otherwise contributed to the CSFB Claims Trust or the VI/XII Collateral Trust.

The Unencumbered Assets Trust shall be governed by a body constituted in accordance with the trust's constituent documents and applicable nonbankruptcy law, the representatives of which body shall be appointed by the Creditors' Committee, the NPF VI Subcommittee and the NPF XII Subcommittee pursuant to the Unencumbered Assets Trust Agreement.

**136. "Unencumbered Assets Trust Agreement"** means the agreement governing the management and operations of the Unencumbered Assets Trust, substantially in the form attached hereto as Exhibit IV.E.1.

**137. "Unencumbered Assets Trustee"** means the person or entity designated to manage the Unencumbered Assets Trust pursuant to the Unencumbered Assets Trust Agreement.

**138. "Unsecured Claim"** means any Claim that is not an Administrative Claim, Cure Amount Claim, Priority Claim, Priority Tax Claim, Secured Claim or Intercompany Claim.

**139. "Unsecured Trade Claim"** means any Unsecured Claim arising from or with respect to the sale of goods or rendition of services prior to the Petition Date in the ordinary course of the applicable Debtor's business.

**140. "VI/XII Collateral Trust"** means the trust established to liquidate and monetize all remaining Assets of NPF VI and NPF XII, including without limitation claims against Providers, subject to the liens of the Indenture Trustees. The VI/XII Collateral Trust shall be governed by a body constituted in accordance with the trust's constituent documents and applicable nonbankruptcy law, the representatives of which body shall be appointed by the NPF VI Subcommittee and the NPF XII Subcommittee pursuant to the VI/XII Collateral Trust Agreement.

**141. "VI/XII Collateral Trust Agreement"** means the agreement governing the management and operations of the VI/XII Collateral Trust.

**142. "VI/XII Collateral Trust Restricted SPV Funds Holdback"** means the Cash amount of \$18,900,000 to be contributed to the VI/XII Collateral Trust from the Restricted SPV Funds on the Effective Date.

**143. "VI/XII Collateral Trustee"** means the person or entity designated to manage the VI/XII Collateral Trust pursuant to the VI/XII Collateral Trust Agreement.

**144. "Voting Deadline"** means the deadline for submitting Ballots to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code that is specified in the Disclosure Statement, the Ballots or related solicitation documents approved by the Bankruptcy Court.

## **B. Rules of Interpretation and Computation of Time**

### **1. Rules of Interpretation**

For purposes of the Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) any reference in the Plan to an existing document or Exhibit Filed or to be Filed means such document or Exhibit, as it may have been or may be amended, modified or supplemented pursuant to the Plan or Confirmation Order; (d) any reference to an entity as a holder of a Claim or Interest includes that entity's successors, assigns and affiliates; (e) all references in the Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to the Plan; (f) the words "herein," "hereunder" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (h) subject to the provisions of any contract, certificates of incorporation, by-laws, similar constituent documents, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the rights and obligations arising under the Plan will be governed by, and construed and enforced in

accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules; and (i) the rules of construction set forth in section 102 of the Bankruptcy Code will apply.

## **2. Computation of Time**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

## **ARTICLE II**

### **CLASSES OF CLAIMS AND INTERESTS**

All Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the following Classes. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described in Section III.A, have not been classified and thus are excluded from the following Classes. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other Classes.

#### **A. Classes of Claims Against the Debtors**

- 1. Class C-1 (Bank Loan Claims):** Bank Loan Claims against any Debtor.
- 2. Class C-2A (NPF VI Class A Noteholder Secured Claims Against NPF VI):** Secured Claims against NPF VI by NPF VI Class A Noteholders arising from the NPF VI Class A Notes.
- 3. Class C-2B (NPF VI Class B Noteholder Claims Against NPF VI):** Claims, including Secured Claims and Deficiency Claims, against NPF VI by NPF VI Class B Noteholders arising from the NPF VI Class B Notes.
- 4. Class C-3A (NPF XII Class A Noteholder Secured Claims Against NPF XII):** Secured Claims against NPF XII by NPF XII Class A Noteholders arising from the NPF XII Class A Notes.
- 5. Class C-3B (NPF XII Class B Noteholder Claims Against NPF XII):** Claims, including Secured Claims and Deficiency Claims, against NPF XII by NPF XII Class B Noteholders arising from the NPF XII Class B Notes.
- 6. Class C-4 (Other Secured Claims):** Secured Claims against any Debtor that are not otherwise classified in Class C-1, C-2A, C-2B, C-3A or C-3B.
- 7. Class C-5 (Unsecured Priority Claims):** Unsecured Claims against any Debtor that are entitled to priority under section 507(a)(3), 507(a)(4) or 507(a)(6) of the Bankruptcy Code.
- 8. Class C-6 (General Unsecured Claims):** Unsecured Claims, including the Noteholder Deficiency Claim, against any Debtor that are not otherwise classified in Class C-2A, C-2B, C-3A, C-3B, C-5, C-7, C-8 or C-9.
- 9. Class C-7 (Convenience Claims):** Unsecured Trade Claims against any Debtor in an allowed amount equal to or less than \$500,000.
- 10. Class C-8 (Intercompany Claims):** Intercompany Claims that are not Administrative Claims.

**11. Class C-9 (Penalty Claims):** Unsecured Claims against any Debtor for any fine, penalty or forfeiture, or for multiple, exemplary or punitive damages, to the extent that such Claims are not compensation for the Claim holder's actual pecuniary loss.

**B. Class of Interests in the Debtors**

**1. Class E-1 (Old Stock Interests in the Debtors):** Interests on account of the Old Stock of any of the Debtors.

**ARTICLE III**

**TREATMENT OF CLAIMS AND INTERESTS**

**A. Unclassified Claims**

**1. Payment of Administrative Claims**

**a. Administrative Claims in General**

Except as specified in this Section III.A.1, and subject to the bar date provisions herein, unless otherwise agreed by the holder of an Administrative Claim and the applicable Debtor, each holder of an Allowed Administrative Claim will receive, in full satisfaction of its Administrative Claim, cash equal to the allowed amount of such Administrative Claim either: (i) on the Effective Date; (ii) over time if the documents providing for the Allowed Administrative Claim provide for such payments; or (iii) if the Administrative Claim is not allowed as of the Effective Date, 30 days after the date on which an order allowing such Administrative Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the applicable Debtor or Trust and the holder of the Administrative Claim.

**b. Statutory Fees**

On or before the Effective Date, Administrative Claims for fees payable pursuant to 28 U.S.C. § 1930 will be paid in cash equal to the amount of such Administrative Claims. All fees payable pursuant to 28 U.S.C. § 1930 will be paid by the Debtors or the applicable Trust in accordance therewith until the closing of the Bankruptcy Cases pursuant to section 350(a) of the Bankruptcy Code.

**c. Ordinary Course Liabilities**

Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business (including Administrative Trade Claims, Administrative Claims of governmental units for Taxes (including Tax audit Claims related to Tax years commencing after the Petition Date) and Administrative Claims arising from those contracts and leases of the kind described in Section V.F) will be paid by the applicable Debtor or Trust pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claims, without any further action by the holders of such Administrative Claims.

**d. Bar Dates for Administrative Claims**

**i. General Bar Date Provisions**

Except as otherwise provided in Section III.A.1.d.ii, unless previously Filed, requests for payment of Administrative Claims must be Filed and served on the Debtors or the applicable Trust, pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order, no later than 60 days after the Effective Date. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the applicable Bar Date will be forever barred from asserting such Administrative Claims against the Debtors or the Trusts or their respective property and such Administrative Claims will be deemed discharged as of the Effective Date. Objections to such

requests must be Filed and served on the Debtors or the applicable Trust and the requesting party by the later of (A) 120 days after the Effective Date or (B) 60 days after the Filing of the applicable request for payment of Administrative Claims.

**ii. Bar Dates for Certain Administrative Claims**

**A. Professional Compensation**

Professionals or other entities asserting a Fee Claim for services rendered before the Effective Date must File and serve on the Debtors or the applicable Trust and such other entities as may be designated by the Bankruptcy Rules, the Confirmation Order, the Fee Order or other order of the Bankruptcy Court an application for final allowance of such Fee Claim no later than 60 days after the Effective Date; *provided, however*, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date, without further Bankruptcy Court review or approval, pursuant to the Ordinary Course Professionals Order. Objections to any Fee Claim must be Filed and served on the Debtors or the applicable Trust and the requesting party no later than 30 days after the Filing of the applicable request for payment of the Fee Claim. To the extent necessary, the Confirmation Order will amend and supersede any previously entered order of the Bankruptcy Court, including the Fee Order, regarding the payment of Fee Claims.

**B. Ordinary Course Liabilities**

Holders of Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business, including Administrative Trade Claims, Administrative Claims of governmental units for Taxes (including Tax audit Claims arising after the Petition Date) and Administrative Claims arising from those contracts and leases of the kind described in Section V.F, will not be required to File or serve any request for payment of such Administrative Claims. Such Administrative Claims will be satisfied pursuant to Section III.A.1.c.

**2. Payment of Priority Tax Claims**

**a. Priority Tax Claims**

Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim and the applicable Debtor or Trust, each holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its Allowed Priority Tax Claim, payment in full in Cash either (i) on the Effective Date or (ii) in deferred Cash payments over a period not exceeding six years from the date of assessment of such Priority Tax Claim. Deferred payments will be made in equal annual installments of principal, plus simple interest, accruing from the Effective Date at a rate equal to the effective yield on the three-month treasury bill sold at the auction immediately preceding the Effective Date, on the unpaid portion of each Allowed Priority Tax Claim (or upon such other terms determined by the Bankruptcy Court to provide the holders of Priority Tax Claims with deferred cash payments having a value, as of the Effective Date, equal to the allowed amount of such Priority Tax Claims). Unless otherwise agreed by the holder of a Priority Tax Claim and the applicable Debtor or Trust, the first payment on account of such Priority Tax Claim will be payable one year after the Effective Date or, if the Priority Tax Claim is not allowed within one year after the Effective Date, within 30 days after the date on which (i) an order allowing such Priority Tax Claim becomes a Final Order or (ii) a Stipulation of Amount and Nature of Claim is executed by the applicable Debtor or Trust and the holder of the Priority Tax Claim; *provided, however*, that the Debtors or the applicable Trust will have the right to pay any Allowed Priority Tax Claim, or any remaining balance of such Priority Tax Claim, in full at any time on or after the Effective Date, without premium or penalty.

**b. Other Provisions Concerning Treatment of Priority Tax Claims**

Notwithstanding the provisions of Section III.A.2.a, the holder of an Allowed Priority Tax Claim will not be entitled to receive any payment on account of any penalty arising with respect to or in connection with the Allowed Priority Tax Claim. Any such Claim or demand for any such penalty will be subject to treatment in

Class C-9, and the holder of an Allowed Priority Tax Claim may not assess or attempt to collect such penalty from the Debtors, the Trusts or their respective property.

## **B. Classified Claims**

**1. Class C-1 Claims (Bank Loan Claims) are unimpaired** (except for Claims as to which the Debtors elect Option D treatment). On the Effective Date, unless otherwise agreed by a holder of a Bank Loan Claim and the Debtors or the Unencumbered Assets Trust, each holder of an Allowed Claim in Class C-1 will receive treatment on account of such Allowed Claim in the manner set forth in Option A, B, C or D below, at the election of the Debtors. The Debtors will be deemed to have elected Option B except with respect to any Allowed Claim in Class C-1 as to which the Debtors elect Option A, C or D in a certification Filed prior to the conclusion of the Confirmation Hearing. Any amount paid to or on behalf of a holder of a Secured Claim as adequate protection shall be credited against the amount of such Secured Claim.

*Option A:* Allowed Claims in Class C-1 with respect to which the Debtors elect Option A will be paid in cash, in full, by the Debtors or the Unencumbered Assets Trust, unless the holder of such Claim agrees to less favorable treatment.

*Option B:* Allowed Claims in Class C-1 with respect to which the Debtors elect or are deemed to have elected Option B will be Reinstated.

*Option C:* Allowed Claims in Class C-1 with respect to which the Debtors elect Option C will be entitled to receive, and the applicable Debtors shall release and transfer to such holder, the collateral securing such Allowed Claims.

*Option D:* Allowed Claims in Class C-1 with respect to which the Debtors elect Option D will receive a promissory note, secured by a first priority security interest in the applicable collateral, in the aggregate principal amount of such Allowed Class C-1 Claim, payable in annual installments over the term of the useful life of such collateral and bearing interest at a rate established pursuant to an order of the Bankruptcy Court or agreement of the parties.

**2. Class C-2A Claims (NPF VI Class A Noteholder Secured Claims Against NPF VI) are impaired.** On the Effective Date, each holder of an Allowed Claim in Class C-2A will receive its Pro Rata share of (a) the NPF VI Initial Restricted SPV Funds Distribution, (b) the NPF VI Percentage of the Remaining Restricted SPV Funds Distribution, (c) the NPF VI Percentage of the interests in the VI/XII Collateral Trust and (d) any amounts that become available for distribution to NPF VI Class A Noteholders from the Amedisys Escrow under the terms of the Amedisys Escrow Agreement.

**3. Class C-2B Claims (NPF VI Class B Noteholder Claims Against NPF VI) are impaired.** No property will be distributed to or retained by holders of Allowed Claims in Class C-2B on account of such Claims.

**4. Class C-3A Claims (NPF XII Class A Noteholder Secured Claims Against NPF XII) are impaired.** On the Effective Date, each holder of an Allowed Claim in Class C-3A will receive its Pro Rata share of (a) the NPF XII Initial Restricted SPV Funds Distribution, (b) the NPF XII Percentage of the Remaining Restricted SPV Funds Distribution, (c) the NPF XII Percentage of the interests in the VI/XII Collateral Trust and (d) the interests in the CSFB Claims Trust.

**5. Class C-3B Claims (NPF XII Class B Noteholder Claims Against NPF XII) are impaired.** No property will be distributed to or retained by holders of Allowed Claims in Class C-3B on account of such Claims.

**6. Class C-4 Claims (Other Secured Claims) are unimpaired** (except for Claims as to which the Debtors elect Option D treatment). On the Effective Date, unless otherwise agreed by a Claim holder and the Debtors or the Unencumbered Assets Trust, each holder of an Allowed Claim in Class C-4 will receive treatment on account of such Allowed Claim in the manner set forth in Option A, B, C or D below, at the election of the Debtors. The Debtors will be deemed to have elected Option B except with respect to any Allowed Claim in Class C-4 as to

which the Debtors elect Option A, C or D in a certification Filed prior to the conclusion of the Confirmation Hearing. Any amount paid to or on behalf of a holder of a Secured Claim as adequate protection shall be credited against the amount of such Secured Claim.

**Option A:** Allowed Claims in Class C-4 with respect to which the Debtors elect Option A will be paid in cash, in full, by the Debtors or the Unencumbered Assets Trust, unless the holder of such Claim agrees to less favorable treatment.

**Option B:** Allowed Claims in Class C-4 with respect to which the Debtors elect or are deemed to have elected Option B will be Reinstated.

**Option C:** Allowed Claims in Class C-4 with respect to which the Debtors elect Option C will be entitled to receive, and the applicable Debtors shall release and transfer to such holder, the collateral securing such Allowed Claims.

**Option D:** Allowed Claims in Class C-4 with respect to which the Debtors elect Option D will receive a promissory note, secured by a first priority security interest in the applicable collateral, in the aggregate principal amount of such Allowed Class C-4 Claim, payable in annual installments over the term of the useful life of such collateral and bearing interest at a rate established pursuant to an order of the Bankruptcy Court or agreement of the parties.

**7. Class C-5 Claims (Unsecured Priority Claims) are unimpaired.** On the Effective Date, each holder of an Allowed Claim in Class C-5 will receive cash equal to the amount of such Claim.

**8. Class C-6 Claims (General Unsecured Claims) are impaired.** On the Effective Date, each holder of an Allowed Claim in Class C-6 will receive its Pro Rata share of the interests in the Unencumbered Assets Trust; *provided* that the beneficial interest in the Unencumbered Assets Trust on account of the Noteholder Deficiency Claim shall be divided among the NPF VI Class A Noteholders and the NPF XII Class A Noteholders in proportion to the respective amounts of such noteholders' Allowed Claims (including Secured Claims and Deficiency Claims) in respect of such NPF VI Class A Notes and NPF XII Class A Notes.

**9. Class C-7 Claims (Convenience Claims) are impaired.** Upon the resolution of all Disputed Claims in Class C-6 and Class C-7, each holder of an Allowed Claim in Class C-7 will receive, at the holder's option pursuant to an election by the holder of such Claim on a ballot provided for voting on the Plan: (a) cash equal to the lesser of (i) \$0.50 for each \$1.00 of the allowed amount of such Claim and (ii) its Pro Rata share of \$3,000,000; or (b) treatment as a Class C-6 Claim.

**10. Class C-8 Claims (Intercompany Claims) are impaired.** Except for Intercompany Claims between NPF VI and NPF XII, which are being compromised and settled pursuant to the Intercompany Settlement Agreement, as implemented by the Plan, no property will be distributed to or retained by the holders of Allowed Claims in Class C-8 on account of such Claims.

**11. Class C-9 Claims (Penalty Claims) are impaired.** No property will be distributed to or retained by the holders of Allowed Claims in Class C-9 on account of such Claims.

## **C. Classified Interests**

**1. Class E-1 Interests (Old Stock Interests in the Debtors) are impaired.** No property will be distributed to or retained by the holders of Allowed Interests in Class E-1, and such Interests will be terminated as of the Effective Date.

**D. Special Provisions Regarding the Treatment of Allowed Secondary Liability Claims**

The classification and treatment of Allowed Claims under the Plan take into consideration all Allowed Secondary Liability Claims. On the Effective Date, Allowed Secondary Liability Claims will be treated as follows:

1. The Allowed Secondary Liability Claims arising from or related to any Debtor's joint or several liability for the obligations under any (a) Allowed Claim that is being Reinstated under the Plan or (b) Executory Contract or Unexpired Lease that is being assumed or deemed assumed by another Debtor or under any Executory Contract or Unexpired Lease that is being assumed by and assigned to another Debtor or any other entity will be Reinstated.

2. Except as provided in Section III.D.1 or as otherwise specifically provided herein, holders of Allowed Secondary Liability Claims will be entitled to only one distribution in respect of the underlying Allowed Claim. No multiple recovery on account of any Allowed Secondary Liability Claim will be provided or permitted.

3. The treatment under the Plan of Claims in respect of the Notes, including the Noteholder Deficiency Claim, takes into account and satisfies any Secondary Liability Claims on account of such Notes.

**E. Special Provisions Regarding Fee and Expense Claims of MetLife and Lloyds**

In full satisfaction of the Claims of MetLife and Lloyds for the reasonable fees and expenses incurred by such entities, including reasonable attorneys' fees, MetLife and Lloyds shall receive from the Debtors or the VI/XII Collateral Trust on the Effective Date cash in such amount, not to exceed \$400,000, as is agreed upon by the Debtors and the Subcommittees.

**ARTICLE IV.**

**MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. Implementation of the Plan**

**1. Restructuring Transactions**

a. On or after the Effective Date, the Debtors and the Trusts may enter into such Restructuring Transactions and may take such actions in connection therewith, including one or more mergers, consolidations, restructurings, dispositions, liquidations or dissolutions as may be determined by the Debtors or the Trusts to be necessary or appropriate. The actions to effect these transactions may include: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable law and such other terms to which the applicable entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of property, rights, liabilities, duties or obligations on terms consistent with the terms of the Plan and having such other terms to which the applicable entities may agree; (iii) the filing of appropriate certificates or articles of merger, consolidation or dissolution pursuant to applicable state law; and (iv) all other actions that the applicable entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with such transactions.

b. Without limiting the foregoing, the following Restructuring Transactions in connection with the initial distributions of Cash and the transfer of Assets to the Trusts will proceed substantially contemporaneously, on or before the Effective Date:

i. ING shall transfer the ING Payment to NPF VI in accordance with the terms of the Intercompany Settlement and the Plan.

- ii. NPF VI shall make the NPF VI Cash Transfer from the NPF VI Restricted SPV Funds to the Cash Transfer Account in accordance with the terms of the Intercompany Settlement and the Plan.
- iii. NPF VI shall make the NPF VI Additional Cash Transfer to the Cash Transfer Account in accordance with the terms of the Intercompany Settlement and the Plan.
- iv. The NPF VI Initial Restricted SPV Funds Distribution, the NPF XII Initial Restricted SPV Funds Distribution and the Remaining Restricted SPV Funds Distribution shall be made in accordance with the terms of the Intercompany Settlement and the Plan.
- v. \$3,000,000 shall be transferred by one or more of the NCFE Consolidated Debtors to a Disbursing Agent to be held for distribution to the holders of Allowed Claims in Class C-7, in accordance with the terms and conditions of the Plan.
- vi. All remaining Assets of the Debtors will be transferred to the respective Trusts pursuant to the terms and conditions of the Plan and the Trust Agreements.

## **2. Obligations of Any Successor Corporation or Other Entity in a Restructuring Transaction**

The Restructuring Transactions may include one or more mergers, consolidations, restructurings, dispositions, liquidations or dissolutions, as may be determined by the Debtors to be necessary or appropriate to result in substantially all of the respective Assets, properties, rights, liabilities, duties and obligations of certain of the Debtors vesting in one or more surviving, resulting or acquiring corporations or other entities (including the Trusts). In each case in which the surviving, resulting or acquiring corporation or other entity in any such transaction is a successor to a Debtor, such surviving, resulting or acquiring corporation or other entity will perform the obligations of the applicable Debtor pursuant to the Plan to pay or otherwise satisfy the Allowed Claims against such Debtor, except as provided in any contract, instrument or other agreement or document effecting a disposition to such surviving, resulting or acquiring corporation, which may provide that another Debtor will perform such obligations.

## **3. Effectuating Documents; Further Transactions**

**a.** On or as soon as practicable after the Effective Date, subject to Article VI, the Disbursing Agent shall, at the direction of the Debtors or the applicable Trustees, make all Distributions required in accordance with the provisions of Article III of the Plan. The Debtors and the applicable Trustees shall be authorized and directed, following the completion of all disbursements, other transfers and other actions required of the Debtors by the Plan, to file within thirty days, or as soon thereafter as is practical, certificates of dissolution to cease the corporate existence of the Debtors, together with any other necessary documentation, to effect their dissolution under applicable state law; *provided, however*, that the Debtors may remain in existence so long as may be deemed reasonably necessary or appropriate by the Debtors or the applicable Trustees to enforce any rights or take any other actions. The filing of each Debtor's certificate of dissolution shall be authorized and approved hereunder in all respects without further action under applicable law, regulation, order, or rule, including, without express or implied limitation, any action by the stockholders, members, managers, partners or board of directors (as applicable) of the Debtors. Accordingly, the Debtors shall be dissolved on the Effective Date, or as soon as practicable thereafter.

**b.** If deemed necessary or appropriate by the Debtors or the applicable Trustees, as the context requires, the Debtors or the applicable Trustees may, notwithstanding any other transfers described in this Section IV.A.3, engage in any other transaction in furtherance, but not in contravention of, the Plan. Unless otherwise indicated, any such transaction shall be effective pursuant to the Confirmation Order without further action by the stockholders, members, agents, managers, partners, or board of directors (as applicable) of any of the Debtors. Each of the officers thereof is authorized and directed to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents

and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**4. Establishment of the Amedisys Escrow**

On the Effective Date, NPF VI shall establish and fund the Amedisys Escrow from the NPF VI September 15 Funds. The funds in the Amedisys Escrow shall be distributed in accordance with the terms of the Amedisys Escrow Agreement, as dictated by the terms of a Final Order in the Amedisys Adversary Proceeding or any appeal therefrom or in accordance with an agreement of the parties thereto. Any funds that are not ultimately paid to Amedisys from the Amedisys Escrow shall be distributed Pro Rata to the holders of Allowed Secured Claims in respect of the NPF VI Class A Notes.

**B. CSFB Claims Trust**

**1. Establishment of CSFB Claims Trust**

As of the Effective Date, NPF XII shall execute the CSFB Claims Trust Agreement, which shall designate and identify the CSFB Claims Trustee. The form of the CSFB Claims Trust Agreement is set forth in Exhibit IV.B.1. The CSFB Claims Trustee shall be authorized to take all other steps necessary to complete the formation of the CSFB Claims Trust. The CSFB Claims Trust shall have all duties, powers, standing and authority necessary to implement the Plan and to administer and liquidate the Assets of the CSFB Claims Trust for the benefit of the holders of beneficial interests in the CSFB Claims Trust.

**2. Purpose of CSFB Claims Trust**

The CSFB Claims Trust shall be established for the sole purpose of liquidating the CSFB Claims transferred to it in furtherance of the Plan for the sole benefit of the holders of beneficial interests in the CSFB Claims Trust, with no objective to continue or engage in the conduct of trade or business. The CSFB Claims Trust shall be deemed not to be the same legal entity as any of the Debtors, but only an assignee of the CSFB Claims and a representative of the NPF XII estate for the pursuit of CSFB Claims assigned to the CSFB Claims Trust, within the meaning of section 1123(b)(3) of the Bankruptcy Code.

**3. CSFB Claims Trustee**

**a.** No later than 10 days prior to the date of the Confirmation Hearing, the NPF XII Subcommittee shall, in accordance with the terms of the CSFB Claims Trust Agreement, designate and disclose the identity of the CSFB Claims Trustee in a writing filed with the Bankruptcy Court and served on the parties requesting notice in the Bankruptcy Cases pursuant to the notice procedures established in the Bankruptcy Cases. The CSFB Claims Trustee shall implement the CSFB Claims Trust Agreement and administer the CSFB Claims Trust. The CSFB Claims Trustee shall be entitled to reasonable compensation, as set forth in the CSFB Claims Trust Agreement. The duties and powers of the CSFB Claims Trustee shall include all powers necessary to implement the provisions of the CSFB Claims Trust Agreement and administer the CSFB Claims Trust, including, without limitation, the power to: (i) prosecute for the benefit of the CSFB Claims Trust the CSFB Claims; (ii) liquidate the Assets of the CSFB Claims Trust; and (iii) otherwise perform the functions and take actions provided for or permitted in the Plan or in any other agreement executed pursuant to the Plan.

**b.** In the event that the CSFB Claims Trustee is terminated or resigns for any reason, a successor shall be designated pursuant to the CSFB Claims Trust Agreement. Upon the designation of a CSFB Claims Trustee or its successor, its identities and connections, if any, with the Debtors or their creditors, any parties in interest in the Bankruptcy Cases or the United States Trustee shall be disclosed in a writing filed with the Bankruptcy Court.

#### **4. Transfer of Assets**

**a.** Upon the Effective Date, and in accordance with the Restructuring Transactions, NPF XII shall assign and transfer to the CSFB Claims Trust all of its rights, title and interest in and to the CSFB Claims relating to the CSFB Payments and the CSFB Claims Trust Restricted SPV Funds Holdback, for the benefit of holders of beneficial interests in the CSFB Claims Trust. Such transfers of Assets to the CSFB Claims Trust shall be free and clear of any liens, claims or encumbrances, and no other entity shall otherwise have any interest, legal, beneficial or otherwise, in any Assets upon their assignment and transfer to the CSFB Claims Trust; *provided, however*, that all such Assets will be transferred to the CSFB Claims Trust subject to the following liabilities and obligations, and the CSFB Claims Trust shall be responsible for satisfying all such liabilities and fulfilling all such obligations: (i) any pre- or post-Effective Date expenses incurred for the benefit or in connection with the operation of the CSFB Claims Trust and (ii) any other obligations of the CSFB Claims Trust expressly set forth in the Plan.

**b.** Without limiting the foregoing, from and after the Effective Date, the CSFB Claims Trustee may dispose of the Assets of the CSFB Claims Trust in accordance with the provisions of the Plan, the Confirmation Order and the CSFB Claims Trust Agreement.

#### **5. Funding Expenses of the CSFB Claims Trust**

The obligations and expenses of the CSFB Claims Trust shall be funded by the Assets of NPF XII contributed to it and any proceeds from the liquidation thereof, including the proceeds from the prosecution or settlement of the CSFB Claims.

#### **6. Professionals and Employees**

The CSFB Claims Trust may, from time to time, retain such counsel, financial advisors, accountants or other professionals, including any estate professionals retained during the Bankruptcy Cases, as may be appropriate under the circumstances. The CSFB Claims Trustee shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay on behalf of the CSFB Claims Trust the reasonable and necessary fees and expenses of such counsel, financial advisors, accountants and any other professionals retained by the CSFB Claims Trust. The CSFB Claims Trust also may retain such employees as may be appropriate under the circumstances. The CSFB Claims Trustee may enter into, amend or modify any employment contracts or other employment arrangements, including the Debtors' current key employee retention program.

#### **7. CSFB Claims Trust Distributions; Claimants**

All distributions from the CSFB Claims Trust to the holders of interests in the CSFB Claims Trust shall be made in accordance with such claimants' respective Pro Rata shares of the beneficial interests held therein at such times and in such amounts as shall be determined by the CSFB Claims Trustee pursuant to the CSFB Claims Trust Agreement. The CSFB Claims Trustee shall cause the CSFB Claims Trusts to retain sufficient funds as reasonably necessary for the CSFB Claims Trust to: (a) meet contingent liabilities and maintain the value of the Assets during liquidation; (b) pay reasonable expenses of administering the CSFB Claims Trust that have been incurred (including, but not limited to, any taxes imposed on the CSFB Claims Trust or fees and expenses in connection with the administration and liquidation of the Assets of the trust); and (c) satisfy other liabilities incurred by the CSFB Claims Trust in accordance with the Plan.

#### **8. Liquidation of Assets**

The CSFB Claims Trustee shall, in an expeditious but orderly manner and subject to the other provisions of the Plan, liquidate and convert to Cash the Assets of the CSFB Claims Trust, make timely distributions and not unduly prolong the existence of the CSFB Claims Trust. In so doing, the CSFB Claims Trustee shall exercise reasonable business judgment and liquidate the Assets of the CSFB Claims Trust to maximize recoveries. Such liquidations may be accomplished either through the sale of the Assets (in whole or in combination, and

including the sale of any Claims, rights or Causes of Action), or through the prosecution, compromise and settlement, abandonment or dismissal of any or all Claims, rights or Causes of Action or otherwise. The CSFB Claims Trustee may incur any reasonable and necessary expenses in connection with the liquidation and conversion of the Assets of the CSFB Claims Trust into Cash.

#### **9. Investment Powers**

The right and power of the CSFB Claims Trustee to invest (a) any Cash transferred to the CSFB Claims Trust, (b) the Cash proceeds from the realization or disposition of any rights, Claims or Causes of Action of the CSFB Claims Trust and (c) any income earned by the CSFB Claims Trust, shall be limited to the right and power to invest such cash in a manner consistent with the CSFB Claims Trust Agreement or applicable order of the Bankruptcy Court and may be further limited to avoid the CSFB Claims Trust from becoming subject to the Investment Company Act of 1940; *provided, however*, that the CSFB Claims Trust may expend the Cash of the CSFB Claims Trust: (i) as reasonably necessary to meet contingent liabilities and to maintain the value of the Assets of the CSFB Claims Trust during the liquidation; (ii) to pay reasonable administrative expenses of the CSFB Claims Trust that are incurred (including, but not limited to, any taxes imposed on the CSFB Claims Trust or fees and expenses in connection with the administration and liquidation of the Assets of the trusts); and (iii) to satisfy other liabilities incurred or assumed by the CSFB Claims Trust (or to which the Assets of the CSFB Claims Trust are otherwise subject) in accordance with the Plan or the CSFB Claims Trust.

#### **10. Reporting Duties; Income Tax and Related Information**

The CSFB Claims Trustee shall file (or cause to be filed) any statements, returns or disclosures relating to the CSFB Claims Trust that are required by any governmental unit or applicable law.

##### **a. Duty to Provide Tax Information by Beneficiaries of the CSFB Claims Trust**

The CSFB Claims Trustee shall be authorized to collect such tax information from the holders of beneficial interests in the CSFB Trust (including, without limitation, social security numbers and/or other tax identification numbers) as it in its sole discretion deem necessary to effectuate the Plan, and the Confirmation Order shall expressly provide this authority. Failure by any such holder of a beneficial interest in a CSFB Claims Trust to furnish such information in a timely fashion may cause a waiver of some or all of such holder's rights (if any) under the Plan and the Confirmation Order.

##### **b. Tax Treatment of the CSFB Claims Trust**

Under the terms provided for in the CSFB Claims Trust, the Debtors, the CSFB Claims Trustee and the holders of beneficial interests in the CSFB Claims Trust will treat the CSFB Claims Trust as a "liquidating trust" within the meaning of Treasury Regulation § 301.7701-4(d) and any comparable provision of state or local law. The CSFB Claims Trustee shall be authorized to take any action necessary to maintain compliance with this regulation or its successor that does not contradict the terms of the CSFB Claims Trust Agreement, this Plan or the Confirmation Order.

#### **11. Termination**

The CSFB Claims Trust shall terminate its existence upon the occurrence of the earlier of (a) the liquidation, administration and distribution of its Assets in accordance with the Plan and the full performance of all other duties and functions set forth in the Plan and the CSFB Claims Trust Agreement or (b) the fifth anniversary of the date of the formation of the CSFB Claims Trust, subject to one or more finite extensions approved by the Bankruptcy Court.

## **C. VI/XII Collateral Trust**

### **1. Establishment of the VI/XII Collateral Trust**

As of the Effective Date, NPF VI and NPF XII shall execute the VI/XII Collateral Trust Agreement, which shall designate and identify the VI/XII Collateral Trustee. The form of the VI/XII Collateral Trust Agreements is set forth in Exhibit IV.C.1. The VI/XII Collateral Trustee shall be authorized to take all other steps necessary to complete the formation of the VI/XII Collateral Trust. The VI/XII Collateral Trust shall have all duties, powers, standing and authority necessary to implement the Plan and to administer and liquidate the Assets of the VI/XII Collateral Trust for the benefit of the holders of beneficial interests in the VI/XII Collateral Trust.

### **2. Purpose of VI/XII Collateral Trust**

The VI/XII Collateral Trust shall be established for the sole purpose of liquidating the Assets transferred to it in furtherance of the Plan for the sole benefit of the holders of beneficial interests in the VI/XII Collateral Trust, with no objective to continue or engage in the conduct of trade or business. The VI/XII Collateral Trust shall be deemed not to be the same legal entity as any of the Debtors, but only an assignee of the Assets of the Debtors that are transferred to the VI/XII Collateral Trust and representative of their Estates for the pursuit of the Causes of Action assigned to the VI/XII Collateral Trust within the meaning of section 1123(b)(3) of the Bankruptcy Code.

### **3. VI/XII Collateral Trustee**

**a.** No later than 10 days prior to the date of the Confirmation Hearing, the Subcommittees shall, in accordance with the terms of the VI/XII Collateral Trust Agreement, jointly designate and disclose the identity of the VI/XII Collateral Trustee in a writing filed with the Bankruptcy Court and served on the parties requesting notice in the Bankruptcy Cases pursuant to the notice procedures established in the Bankruptcy Cases. The VI/XII Collateral Trustee shall implement the VI/XII Collateral Trust Agreement and administer the VI/XII Collateral Trust. The VI/XII Collateral Trustee shall be entitled to reasonable compensation, as set forth in the VI/XII Collateral Trust Agreement. The duties and powers of the VI/XII Collateral Trustee shall include all powers necessary to implement the provisions of the VI/XII Collateral Trust Agreement and administer the VI/XII Collateral Trust, including, without limitation, the power to: (i) prosecute for the benefit of the VI/XII Collateral Trust all Causes of Action transferred by the Debtors to the VI/XII Collateral Trust; (ii) liquidate the Assets of the VI/XII Collateral Trust; (iii) object to or prosecute an objection to, compromise and settle, abandon or dismiss any or all Disputed Claims relating to the collateral of the Indenture Trustees; and (iv) otherwise perform the functions and take actions provided for or permitted in the Plan or in any other agreement executed pursuant to the Plan.

**b.** In the event that the VI/XII Collateral Trustee is terminated or resigns for any reason, a successor shall be designated pursuant to the applicable VI/XII Collateral Trust Agreement. Upon the designation of the VI/XII Collateral Trustee or its successor, its identities and connections, if any, with the Debtors or their creditors, any parties in interest in the Bankruptcy Cases or the United States Trustee shall be disclosed in a writing filed with the Bankruptcy Court.

### **4. Transfer of Assets**

**a.** Upon the Effective Date, and in accordance with the Restructuring Transactions, the Debtors shall assign and transfer to the VI/XII Collateral Trust all of their rights, title and interest in and to the VI/XII Collateral Trust Restricted SPV Funds Holdback, the Remaining 50/50 Cash Collateral Amount and any and all other Assets of NPF VI and NPF XII encumbered by the liens of the Indenture Trustees, including without limitation all claims and causes of action relating to the transfer of funds by NPF VI or NPF XII to Providers. Such transfers of Assets to the VI/XII Collateral Trust shall be free and clear of any liens, claims or encumbrances, and no other entity shall otherwise have any interest, legal, beneficial or otherwise, in any Assets upon their assignment and transfer to the VI/XII Collateral Trust; *provided,*

*however*, that all such Assets will be transferred to the VI/XII Collateral Trust subject to the following liabilities and obligations, and the VI/XII Collateral Trust shall be responsible for satisfying all such liabilities and fulfilling all such obligations: (i) any Allowed Administrative Claims, Priority Claims or Priority Tax Claims that (A) were incurred for the benefit of the holders of Allowed Secured Claims in respect of the Notes and (B) have not been paid; (ii) any pre- or post-Effective Date expenses incurred for the benefit or in connection with the operation of the VI/XII Collateral Trust; and (iii) any other obligations of the VI/XII Collateral Trust expressly set forth in the Plan.

**b.** Without limiting the foregoing, from and after the Effective Date, the VI/XII Collateral Trustee may dispose of the Assets of the VI/XII Collateral Trust in accordance with the provisions of the Plan, the Confirmation Order and the VI/XII Collateral Trust Agreement.

#### **5. Funding Expenses of the VI/XII Collateral Trust**

The obligations and expenses of the VI/XII Collateral Trust shall be funded by the Assets of the Debtors contributed to them and any proceeds from the liquidation thereof.

#### **6. Professionals and Employees**

The VI/XII Collateral Trust may, from time to time, retain such counsel, financial advisors, accountants or other professionals, including any estate professionals retained during the Bankruptcy Cases, as may be appropriate under the circumstances. The VI/XII Collateral Trustee shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay on behalf of the VI/XII Collateral Trust the reasonable and necessary fees and expenses of such counsel, financial advisors, accountants and any other professionals retained by the VI/XII Collateral Trust. The VI/XII Collateral Trusts also may retain such employees as may be appropriate under the circumstances. The VI/XII Collateral Trustee may enter into, amend or modify any employment contracts or other employment arrangements, including the Debtors' current key employee retention program.

#### **7. VI/XII Collateral Trust Distributions; Claimants**

All distributions from the VI/XII Collateral Trust to the holders of interests in the VI/XII Collateral Trust shall be made in accordance with such claimants' respective Pro Rata shares of the beneficial interests held therein at such times and in such amounts as shall be determined by the VI/XII Collateral Trustee pursuant to the VI/XII Collateral Trust Agreement. The VI/XII Collateral Trustee shall cause the VI/XII Collateral Trust to retain sufficient funds as reasonably necessary for the VI/XII Collateral Trust to: (a) meet contingent liabilities and maintain the value of the Assets during liquidation; (b) pay reasonable expenses of administering the VI/XII Collateral Trust that have been incurred (including, but not limited to, any taxes imposed on the VI/XII Collateral Trust or fees and expenses in connection with the administration and liquidation of the Assets of the trusts); and (c) satisfy other liabilities incurred by the VI/XII Collateral Trust in accordance with the Plan.

#### **8. Liquidation of Assets**

The VI/XII Collateral Trustee shall, in an expeditious but orderly manner and subject to the other provisions of the Plan, liquidate and convert to Cash the Assets of the VI/XII Collateral Trust, make timely distributions and not unduly prolong the existence of the VI/XII Collateral Trust. In so doing, the VI/XII Collateral Trustee shall exercise reasonable business judgment and liquidate the Assets of the VI/XII Collateral Trust to maximize recoveries. Such liquidations may be accomplished either through the sale of the Assets (in whole or in combination, and including the sale of any Claims, rights or Causes of Action), or through the prosecution, compromise and settlement, abandonment or dismissal of any or all Claims, rights or Causes of Action or otherwise. The VI/XII Collateral Trustee may incur any reasonable and necessary expenses in connection with the liquidation and conversion of the Assets of the VI/XII Collateral Trust into Cash.

## **9. Investment Powers**

The right and power of the VI/XII Collateral Trustee to invest (a) any Cash transferred to the VI/XII Collateral Trust, (b) the Cash proceeds from the realization or disposition of any rights, Claims or Causes of Action of the VI/XII Collateral Trust and (c) any income earned by the VI/XII Collateral Trust, shall be limited to the right and power to invest such cash in a manner consistent with the VI/XII Collateral Trust Agreement or applicable order of the Bankruptcy Court and may be further limited to avoid the VI/XII Collateral Trust from becoming subject to the Investment Company Act of 1940; *provided, however*, that the VI/XII Collateral Trust may expend the Cash of the VI/XII Collateral Trust: (i) as reasonably necessary to meet contingent liabilities and to maintain the value of the Assets of the VI/XII Collateral Trust during the liquidation; (ii) to pay reasonable administrative expenses of the VI/XII Collateral Trust that are incurred (including, but not limited to, any taxes imposed on the VI/XII Collateral Trust or fees and expenses in connection with the administration and liquidation of the Assets of the trust); and (iii) to satisfy other liabilities incurred or assumed by the VI/XII Collateral Trust (or to which the Assets of the VI/XII Collateral Trust are otherwise subject) in accordance with the Plan or the VI/XII Collateral Trust Agreement.

## **10. Reporting Duties; Income Tax and Related Information**

The VI/XII Collateral Trustee shall file (or cause to be filed) any statements, returns or disclosures relating to the VI/XII Collateral Trust that are required by any governmental unit or applicable law.

### **a. Duty to Provide Tax Information by Beneficiaries of the VI/XII Collateral Trust**

The VI/XII Collateral Trustee shall be authorized to collect such tax information from the holders of beneficial interests in the VI/XII Collateral Trust (including, without limitation, social security numbers and/or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan, and the Confirmation Order shall expressly provide this authority. Failure by any such holder of a beneficial interest in the VI/XII Collateral Trust to furnish such information in a timely fashion may cause a waiver of some or all of such holder's rights (if any) under the Plan and the Confirmation Order.

### **b. Tax Treatment of the VI/XII Collateral Trust**

Under the terms provided for in the VI/XII Collateral Trust Agreement, the Debtors, the VI/XII Collateral Trustee and the holders of beneficial interests in the VI/XII Collateral Trust will treat the VI/XII Collateral Trust as a "liquidating trust" within the meaning of Treasury Regulation § 301.7701-4(d) and any comparable provision of state or local law. The VI/XII Collateral Trustee shall be authorized to take any action necessary to maintain compliance with this regulation or its successor that does not contradict the terms of the VI/XII Collateral Trust Agreement, this Plan or the Confirmation Order.

## **11. Termination**

The VI/XII Collateral Trust shall terminate its existence upon the occurrence of the earlier of (a) the liquidation, administration and distribution of its Assets in accordance with the Plan and the full performance of all other duties and functions set forth in the Plan and the VI/XII Collateral Trust Agreement or (b) the fifth anniversary of the date of the formation of the VI/XII Collateral Trust, subject to one or more finite extensions approved by the Bankruptcy Court.

## **D. Unencumbered Assets Trust**

### **1. Establishment of Unencumbered Assets Trust**

As of the Effective Date, the Debtors shall execute the Unencumbered Assets Trust Agreement, which shall designate and identify the Unencumbered Assets Trustee. The form of the Unencumbered Assets Trust Agreement is set forth in Exhibit IV.D.1. The Unencumbered Assets Trustee shall be authorized to take all other steps necessary to complete the formation of the Unencumbered Assets Trust. The Unencumbered Assets Trust

shall have all duties, powers, standing and authority necessary to implement the Plan and to administer and liquidate the Assets of the Unencumbered Assets Trust for the benefit of the holders of beneficial interests in the Unencumbered Assets Trust.

## **2. Purpose of the Unencumbered Assets Trust**

The Unencumbered Assets Trust shall be established for the sole purpose of liquidating the Assets transferred to it in furtherance of the Plan for the sole benefit of the holders of beneficial interests in the Unencumbered Assets Trust, with no objective to continue or engage in the conduct of trade or business. The Unencumbered Assets Trust shall be deemed not to be the same legal entity as any of the Debtors, but only an assignee of the Assets of the Debtors that are transferred to the Unencumbered Assets Trust and representative of their Estates for the pursuit of the Causes of Action assigned to the Unencumbered Assets Trust within the meaning of section 1123(b)(3) of the Bankruptcy Code.

## **3. Unencumbered Assets Trustee**

**a.** No later than 10 days prior to the date of the Confirmation Hearing, the Creditors' Committee and the Subcommittees shall, in accordance with the terms of the Unencumbered Assets Trust Agreement, jointly designate and disclose the identity of the Unencumbered Assets Trustee in a writing filed with the Bankruptcy Court and served on the parties requesting notice in the Bankruptcy Cases pursuant to the notice procedures established in the Bankruptcy Cases. The Unencumbered Assets Trustee shall implement the applicable Unencumbered Assets Trust Agreement and administer the Unencumbered Assets Trust. The Unencumbered Assets Trustee shall be entitled to reasonable compensation, as set forth in the Unencumbered Assets Trust Agreement. The duties and powers of the Unencumbered Assets Trustee shall include all powers necessary to implement the provisions of the Unencumbered Assets Trust Agreement and administer the Unencumbered Assets Trust, including, without limitation, the power to: (i) prosecute for the benefit of the Unencumbered Assets Trust all Causes of Action transferred by the Debtors to the Unencumbered Assets Trust; (ii) liquidate the Assets of the Unencumbered Assets Trust; (iii) object to or prosecute an objection to, compromise and settle, abandon or dismiss any or all Disputed Claims other than those Disputed Claims described in clause (iii) of Section IV.C.3.a; and (iv) otherwise perform the functions and take actions provided for or permitted in the Plan or in any other agreement executed pursuant to the Plan.

**b.** In the event that the Unencumbered Asset Trustee is terminated or resigns for any reason, a successor shall be designated pursuant to the Unencumbered Assets Trust Agreement. Upon the designation of the Unencumbered Assets Trustee or its successor, its identities and connections, if any, with the Debtors or their creditors, any parties in interest in the Bankruptcy Cases or the United States Trustee shall be disclosed in a writing filed with the Bankruptcy Court.

## **4. Transfer of Assets**

**a.** Upon the Effective Date, and in accordance with the Restructuring Transactions, the Debtors shall assign and transfer to the Unencumbered Assets Trust all of their rights, title and interest in and to all of their remaining Assets other than: (i) any Cash and other Assets otherwise designated for use or distribution under this Plan; (ii) the Assets to be transferred to the CSFB Claims Trust pursuant to Section IV.B.4; (iii) the Assets to be transferred to the VI/XII Collateral Trust pursuant to Section IV.C.4; and (iv) any Assets that have been sold or otherwise disposed of prior to the Effective Date; *provided, however,* that notwithstanding any other provision of this Plan, the Assets to be assigned and transferred to the Unencumbered Assets Trust shall include the Debtors' claims and causes of action relating to the litigation captioned *National Medical Care, Inc., et al. v. Home Medical of America, Inc., Homecare Concepts of America, Inc., NCFE, Kachina, Inc., Thor Capital Holdings, LLC, Chartwell Care Givers of New York, Lance K. Poulsen and Craig W. Porter*, Civ. Act. 00-1225-J (Sup. Ct. Mass., Middlesex County); *provided further, however,* that any such Assets that are the subject of a motion, notice or executed agreement for sale or other disposition pending as of the Effective Date will remain subject to such motion, notice or executed agreement and will be treated in accordance with such motion, notice or executed agreement unless and until the Bankruptcy Court disapproves of such pending disposition, at

which time such Assets will be transferred to the Unencumbered Assets Trust. Such transfers of Assets to the Unencumbered Assets Trust shall be free and clear of any liens, claims or encumbrances other than liens and security interests on and in such Assets securing Allowed Secured Claims or Disputed Claims that later become Allowed Secured Claims, and no other entity shall otherwise have any interest, legal, beneficial or otherwise, in any Assets upon their assignment and transfer to the Unencumbered Assets Trust; *provided, however*, that all such Assets will be transferred to the Unencumbered Assets Trust subject to the following liabilities and obligations, and the Unencumbered Assets Trust shall be responsible for satisfying all such liabilities and fulfilling all such obligations: (i) except for those Allowed Claims described in clause (i) of Section IV.C.4, any Allowed Administrative Claims, Priority Claims or Priority Tax Claims that have not been paid; (ii) except for expenses incurred in connection with the operation of the other trusts established by this Plan, any post-Effective Date expenses necessary or appropriate in respect of consummation of the Plan and winding up of the Debtors' Estates; (iii) any Allowed Secured Claims or Disputed Claims that later become Allowed Secured Claims that have not been paid to the extent such Claims are secured by liens and security interests on and in the Assets transferred to the Unencumbered Assets Trust; (iv) any pre- or post-Effective Date expenses incurred for the benefit or in connection with the operation of the Unencumbered Assets Trust; and (v) any other obligations of the Unencumbered Assets Trust expressly set forth in the Plan.

**b.** Without limiting the foregoing, from and after the Effective Date, the Unencumbered Assets Trustee may dispose of the Assets of the Unencumbered Assets Trust in accordance with the provisions of the Plan, the Confirmation Order and the Unencumbered Assets Trust Agreement.

#### **5. Funding Expenses of the Unencumbered Assets Trust**

The obligations and expenses of the Unencumbered Assets Trust shall be funded by the Assets of the Debtors contributed to them and any proceeds from the liquidation thereof, including the proceeds from the prosecution or settlement of the Causes of Action transferred to the Unencumbered Assets Trust. In addition, the Unencumbered Assets Trust may borrow up to \$10,000,000 on a secured basis and on market terms from the VI/XII Collateral Trust to fund its obligations and expenses, which borrowings and interest thereon shall be repaid to the VI/XII Collateral Trust prior to any distributions to holders of beneficial interests in the Unencumbered Assets Trust, subject to the requirements of Section IV.D.7 to provide the Unencumbered Assets Trust with sufficient liquidity.

#### **6. Professionals and Employees**

The Unencumbered Assets Trust may, from time to time, retain such counsel, financial advisors, accountants or other professionals, including any estate professionals retained during the Bankruptcy Cases, as may be appropriate under the circumstances. The Unencumbered Assets Trustee shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay on behalf of the Unencumbered Assets Trust the reasonable and necessary fees and expenses of such counsel, financial advisors, accountants and any other professionals retained by the Unencumbered Assets Trust. The Unencumbered Assets Trust also may retain such employees as may be appropriate under the circumstances. The Unencumbered Assets Trustee may enter into, amend or modify any employment contracts or other employment arrangements, including the Debtors' current key employee retention program.

#### **7. Unencumbered Assets Trust Distributions; Claimants**

Subject to Section VI.K, all distributions from the Unencumbered Assets Trust to the holders of interests in the Unencumbered Assets Trust shall be made in accordance with such claimants' respective Pro Rata shares of the beneficial interests held therein at such times and in such amounts as shall be determined by the Unencumbered Assets Trustee pursuant to the Unencumbered Assets Trust Agreement. The Unencumbered Assets Trustee shall cause the Unencumbered Assets Trust to retain sufficient funds as reasonably necessary for the Unencumbered Assets Trust to: (a) meet contingent liabilities and maintain the value of the Assets during liquidation; (b) pay reasonable expenses of administering the Unencumbered Assets Trust that have been incurred (including, but not limited to, any taxes imposed on the Unencumbered Assets Trust or fees and expenses in

connection with the administration and liquidation of the Assets of the trusts); and (c) satisfy other liabilities incurred by the Unencumbered Assets Trust in accordance with the Plan.

## **8. Liquidation of Assets**

The Unencumbered Assets Trustee shall, in an expeditious but orderly manner and subject to the other provisions of the Plan, liquidate and convert to Cash the Assets of the Unencumbered Assets Trust, make timely distributions and not unduly prolong the existence of the Unencumbered Assets Trust. In so doing, the Unencumbered Assets Trustee shall exercise reasonable business judgment and liquidate the Assets of the Unencumbered Assets Trust to maximize recoveries. Such liquidations may be accomplished either through the sale of the Assets (in whole or in combination, and including the sale of any Claims, rights or Causes of Action), or through the prosecution, compromise and settlement, abandonment or dismissal of any or all Claims, rights or Causes of Action or otherwise. The Unencumbered Assets Trustee may incur any reasonable and necessary expenses in connection with the liquidation and conversion of the Assets of the Unencumbered Assets Trust into Cash.

## **9. Investment Powers**

The right and power of the Unencumbered Assets Trustee to invest (a) any Cash transferred to the Unencumbered Assets Trust, (b) the Cash proceeds from the realization or disposition of any rights, Claims or Causes of Action of the Unencumbered Assets Trust and (c) any income earned by the Unencumbered Assets Trust, shall be limited to the right and power to invest such cash in a manner consistent with the Unencumbered Assets Trust Agreement or applicable order of the Bankruptcy Court and may be further limited to avoid the Unencumbered Assets Trust from becoming subject to the Investment Company Act of 1940; *provided, however*, that the Unencumbered Assets Trust may expend the Cash of the Unencumbered Assets Trust: (i) as reasonably necessary to meet contingent liabilities and to maintain the value of the Assets of the Unencumbered Assets Trust during the liquidation; (ii) to pay reasonable administrative expenses of the Unencumbered Assets Trust that are incurred (including, but not limited to, any taxes imposed on the Unencumbered Assets Trust or fees and expenses in connection with the administration and liquidation of the Assets of the trust); and (iii) to satisfy other liabilities incurred or assumed by the Unencumbered Assets Trust (or to which the Assets of the Unencumbered Assets Trust are otherwise subject) in accordance with the Plan or the Unencumbered Assets Trust Agreement.

## **10. Reporting Duties; Income Tax and Related Information**

The Unencumbered Assets Trustee shall file (or cause to be filed) any statements, returns or disclosures relating to the Unencumbered Assets Trust that are required by any governmental unit or applicable law.

### **a. Duty to Provide Tax Information by Beneficiaries of the Unencumbered Assets Trust**

The Unencumbered Assets Trustee shall be authorized to collect such tax information from the holders of beneficial interests in the Unencumbered Assets Trust (including, without limitation, social security numbers and/or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan, and the Confirmation Order shall expressly provide this authority. Failure by any such holder of a beneficial interest in the Unencumbered Assets Trust to furnish such information in a timely fashion may cause a waiver of some or all of such holder's rights (if any) under the Plan and the Confirmation Order.

### **b. Tax Treatment of the Unencumbered Assets Trust**

Under the terms provided for in the Unencumbered Assets Trust Agreement, the Debtors, the Unencumbered Assets Trustee and the holders of beneficial interests in the Unencumbered Assets Trust will treat the Unencumbered Assets Trust as a "liquidating trust" within the meaning of Treasury Regulation § 301.7701-4(d) and any comparable provision of state or local law. The Unencumbered Assets Trustee shall be authorized to take any action necessary to maintain compliance with this regulation or its successor that does not contradict the terms of the Unencumbered Assets Trust Agreement, this Plan or the Confirmation Order.

## **11. Termination**

The Unencumbered Assets Trust shall terminate its existence upon the occurrence of the earlier of (a) the liquidation, administration and distribution of its Assets in accordance with the Plan and the full performance of all other duties and functions set forth in the Plan and the Unencumbered Assets Trust Agreement or (b) the fifth anniversary of the date of the formation of the Unencumbered Assets Trust, subject to one or more finite extensions approved by the Bankruptcy Court.

### **E. Preservation of Causes of Action; Settlement of Claims and Releases**

#### **1. Preservation of Causes of Action by the Debtors**

Except as provided in, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Plan, the Confirmation Order, any Final Order or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, the Trusts will exclusively retain and may enforce, and the Debtors expressly reserve and preserve for these purposes, in accordance with sections 1123(a)(5)(B) and 1123(b)(3) of the Bankruptcy Code, any Claims, demands, rights and Causes of Action that the Debtors or their respective Estates may hold against any person or entity, including, without limitation, the Retained Actions set forth in Exhibit IV.E.1 hereto. Accordingly, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to them by virtue of or in connection with the confirmation, consummation or effectiveness of the Plan. The Trustees or their respective successors exclusively may pursue such retained Claims, demands, rights or Causes of Action, including, without limitation, the Retained Actions set forth in Exhibit IV.E. 1, as appropriate, in accordance with the best interests of the Debtors or their respective successors.

#### **2. Comprehensive Settlement of Claims and Controversies**

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan, including the releases set forth in Section IV.E.3, will constitute a good faith compromise and settlement of all claims or controversies relating to (a) the rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Allowed Interest or any distribution to be made pursuant to the Plan on account of any Allowed Claim or Allowed Interest and (b) the Intercompany Claims. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtors and their Estates and Claim and Interest holders and is fair, equitable and reasonable.

#### **3. Releases**

##### **a. General Releases by Holders of Claims or Interests**

As of the Effective Date, in consideration for, among other things, the obligations of the Debtors under the Plan and other contracts, instruments, releases, agreements or documents to be entered into or delivered in connection with the Plan, (i) each holder of a Claim or Interest that votes in favor of the Plan and (ii) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, each entity that has held, holds or may hold a Claim or Interest or at any time was a creditor or stockholder of any of the Debtors and that does not vote on the Plan or votes against the Plan, in each case will be deemed to forever release, waive and discharge all claims (including Derivative Claims), obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities (other than the right to enforce the Debtors' obligations under the Plan and the contracts, instruments, releases, agreements and documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence taking place on or prior to the Effective Date in any way relating to a Debtor, the Bankruptcy Cases or the Plan that such entity has, had or may have against any director, officer or employee of any Debtor who served after the Petition Date pursuant to the Bankruptcy Court's Order Authorizing

the Continued Use of Alvarez & Marsal, Inc. to Provide Crisis Management Services solely for the performance of services by such director, officer or employee after the Petition Date; *provided, however*, that the releases provided by this Section IV.E.3.a shall not apply to the Retained Actions or any claims or causes of action by the United States Securities and Exchange Commission or any other agency of the United States of America. Except as otherwise expressly provided in this Section IV.E.3.a or elsewhere in the Plan, the Intercompany Settlement Agreement or the ING Release, the foregoing release or any other release or transfer set forth in the Plan shall not affect or impair any claim of a creditor against any entity other than a Debtor.

**b. Injunction Related to Releases**

*As further provided in Section XI.C, the Confirmation Order will permanently enjoin the commencement or prosecution by any entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan.*

**4. Approval and Implementation of the Intercompany Settlement Agreement and the ING Release**

The Intercompany Settlement Agreement and the ING Release are hereby approved, pursuant to Bankruptcy Rule 9019. The Debtors shall enter into and take all actions necessary or appropriate to consummate the Intercompany Settlement Agreement and the ING Release.

**5. Approval and Implementation of the Noteholder Deficiency Claim Settlement**

The Noteholder Deficiency Claim Settlement, as implemented by the Plan, is hereby approved, pursuant to Bankruptcy Rule 9019. The Debtors shall take all actions necessary or appropriate to consummate the Noteholder Deficiency Claim Settlement.

**F. Limitations on Amounts to Be Distributed to Holders of Allowed Insured Claims**

Distributions under the Plan to each holder of an Allowed Insured Claim will be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. Nothing in this Section IV.F will constitute a waiver of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities that any entity may hold against any other entity, including the Debtors' insurance carriers.

**G. Cancellation and Surrender of Instruments, Securities and Other Documentation**

Except as provided in any contract, instrument or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date, the Prepetition Credit Facility (unless Reinstated), the NPF VI Indenture, the NPF XII Indenture and the notes issued under the respective indentures will be canceled and of no further force and effect, without any further action on the part of any Debtor. The Old Stock of the Debtors shall be deemed canceled and of no further force and effect on the Effective Date. The holders of or parties to such canceled instruments, securities and other documentation will have no rights arising from or relating to such instruments, securities and other documentation or the cancellation thereof, except the rights provided pursuant to the Plan; *provided, however*, that no distribution under the Plan will be made to or on behalf of any holder of an Allowed Claim evidenced by such canceled instruments or securities unless and until such instruments or securities are received by the applicable Disbursing Agent to the extent required in Section VI.H.

**H. Release of Liens**

**1.** Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article III and the transfers of Assets to the

Trusts pursuant to this Article IV, all mortgages, deeds of trust, liens or other security interests against the property of any Estate will be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, liens or other security interests, including any rights to any collateral thereunder, will revert to the applicable Debtor and its successors and assigns.

2. All distributions made to holders of Allowed Claims pursuant to Article III and the transfer of Assets to the Trusts pursuant to this Article IV shall be free and clear of any and all liens, claims, security interests and other encumbrances held by the Indenture Trustees.

#### **I. Effectuating Documents; Further Transactions; Exemption from Certain Transfer Taxes**

The President or any Vice President of each Debtor will be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan. The Secretary or any Assistant Secretary of each Debtor will be authorized to certify or attest to any of the foregoing actions. Pursuant to section 1146(c) of the Bankruptcy Code, the following will not be subject to any stamp tax, real estate transfer tax, sales and use tax or similar tax: (1) the issuance, transfer or exchange of interests in the Trusts; (2) the transfer of any Assets to the Trusts; (3) the creation of any mortgage, deed of trust, lien or other security interest; (4) the making or assignment of any lease or sublease; (5) any Restructuring Transaction; or (6) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements; agreements of consolidation, restructuring, disposition, liquidation or dissolution; deeds; bills of sale; or assignments executed in connection with any Restructuring Transaction pursuant to the Plan.

### **ARTICLE V.**

#### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **A. Executory Contracts and Unexpired Leases to Be Assumed or Assumed and Assigned**

##### **1. Assumption and Assignment Generally**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into in connection with the Plan, on the Effective Date, pursuant to section 365 of the Bankruptcy Code, the applicable Debtor will assume or assume and assign, as indicated, each of the Executory Contracts and Unexpired Leases listed on Exhibit V.A.1; *provided, however*, that the Debtors reserve the right, at any time prior to the Effective Date, to amend Exhibit V.A.1 to: (a) delete any Executory Contract or Unexpired Lease listed therein, thus providing for its rejection pursuant to Section V.C; or (b) add any Executory Contract or Unexpired Lease thereto, thus providing for its assumption or assumption and assignment pursuant to this Section V.A.1. The Debtors will provide notice of any amendments to Exhibit V.A.1 to the parties to the Executory Contracts or Unexpired Leases affected thereby and to the parties on the then-applicable service list in the Bankruptcy Cases. Each contract and lease listed on Exhibit V.A.1 will be assumed only to the extent that any such contract or lease constitutes an Executory Contract or Unexpired Lease. Listing a contract or lease on Exhibit V.A.1 will not constitute an admission by a Debtor or Debtors that such contract or lease (including any related agreements as described in Section I.A.53 or Section V.A.2) is an Executory Contract or Unexpired Lease or that a Debtor has any liability thereunder.

##### **2. Assumptions and Assignments of Real Property Executory Contracts and Unexpired Leases**

Each Real Property Executory Contract and Unexpired Lease listed on Exhibit V.A.1 will include any modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such contract or lease, irrespective of whether such agreement, instrument or other document is listed on Exhibit V.A.1, unless any such modification, amendment, supplement, restatement or other agreement is rejected pursuant to Section V.C and is listed on Exhibit V.C.

### **3. Assignments Related to the Restructuring Transactions**

As of the effective time of an applicable Restructuring Transaction, any Executory Contract or Unexpired Lease (including any related agreements as described in Sections I.A.53 and V.A.2) to be held by any Debtor or another surviving, resulting or acquiring corporation or a particular Trust in an applicable Restructuring Transaction, will be deemed assigned to the applicable entity, pursuant to section 365 of the Bankruptcy Code.

### **4. Approval of Assumptions and Assignments**

The Confirmation Order will constitute an order of the Bankruptcy Court approving the assumptions and assignments described in this Section V.A and Section V.F, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. An order of the Bankruptcy Court entered on or prior to the Confirmation Date will specify the procedures for providing to each party whose Executory Contract or Unexpired Lease is being assumed or assumed and assigned pursuant to the Plan notice of: (a) the contract or lease being assumed or assumed and assigned; (b) the Cure Amount Claim, if any, that the applicable Debtor believes it would be obligated to pay in connection with such assumption; and (c) the procedures for such party to object to the assumption or assumption and assignment of the applicable contract or lease or the amount of the proposed Cure Amount Claim.

### **B. Payments Related to the Assumption of Executory Contracts and Unexpired Leases**

To the extent that such Claims constitute monetary defaults, the Cure Amount Claims associated with each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan will be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, at the option of the Debtor assuming such contract or lease or the assignee of such Debtor, if any, (1) by payment of the Cure Amount Claim in cash on the Effective Date or (2) on such other terms as are agreed to by the parties to such Executory Contract or Unexpired Lease. Pursuant to section 365(b)(2)(D) of the Bankruptcy Code, no Cure Amount Claim shall be allowed for a penalty rate or other form of default rate of interest. If there is a dispute regarding (a) the amount of any Cure Amount Claim, (b) the ability of the applicable Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed or (c) any other matter pertaining to assumption or assumption and assignment of such contract or lease, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order resolving the dispute and approving the assumption. For assumptions of Executory Contracts or Unexpired Leases between Debtors, assuming such contract may cure any monetary default (i) by treating such amount as either a direct or indirect contribution to capital or distribution (as appropriate) or (ii) through an intercompany account balance in lieu of payment in cash.

### **C. Executory Contracts and Unexpired Leases to Be Rejected**

On the Effective Date, except for an Executory Contract or Unexpired Lease that was previously assumed, assumed and assigned or rejected by an order of the Bankruptcy Court or that is assumed pursuant to Section V.A (including any related agreements assumed pursuant to Sections I.A.53 and V.A.2), each Executory Contract and Unexpired Lease entered into by a Debtor prior to the Petition Date that has not previously expired or terminated pursuant to its own terms will be rejected pursuant to section 365 of the Bankruptcy Code. The Executory Contracts and Unexpired Leases to be rejected will include the Executory Contracts and Unexpired Leases listed on Exhibit V.C. Each contract and lease listed on Exhibit V.C will be rejected only to the extent that any such contract or lease constitutes an Executory Contract or Unexpired Lease. Listing a contract or lease on Exhibit V.C will not constitute an admission by a Debtor that such contract or lease (including related agreements as described in Section I.A.53) is an Executory Contract or Unexpired Lease or that a Debtor has any liability thereunder. Any Executory Contract and Unexpired Lease not listed on Exhibit V.A.1 and not previously assumed, assumed and assigned or rejected by an order of the Bankruptcy Court will be deemed rejected irrespective of whether such contract is listed on Exhibit V.C. The Confirmation Order will constitute an order of the Bankruptcy Court approving such rejections, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date.

**D. Bar Date for Rejection Damages**

Notwithstanding anything in the Bar Date Order to the contrary, if the rejection of an Executory Contract or Unexpired Lease gives rise to a Claim (including any Claims arising from those indemnification obligations described in Section V.E.1) by the other party or parties to such contract or lease, such Claim will be forever barred and will not be enforceable against the Debtors, their respective successors or their respective properties unless a proof of Claim is Filed and served on the Debtors, pursuant to the procedures specified in the Confirmation Order and the notice of the entry of the Confirmation Order or another order of the Bankruptcy Court, no later than 60 days after the Effective Date.

**E. Special Executory Contract and Unexpired Lease Issues**

**1. Obligations to Indemnify Directors, Officers and Employees**

The obligations of each Debtor to indemnify any person serving as one of its directors, officers or employees prior to the Petition Date by reason of such person's service prior to the Petition Date in such a capacity or as a director, officer or employee of another corporation, partnership or other legal entity, to the extent provided in the applicable certificates of incorporation, by-laws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with such Debtor, will be deemed and treated as executory contracts that are rejected by the applicable Debtor pursuant to the Plan and section 365 of the Bankruptcy Code as of the Effective Date.

**2. Reinstatement of Allowed Secondary Liability Claims Arising From or Related to Executory Contracts or Unexpired Leases Assumed by the Debtors**

On the Effective Date, in accordance with Section III.D.1, any Allowed Secondary Liability Claim arising from or relating to any Debtor's joint or several liability for the obligations under or with respect to (a) any Executory Contract or Unexpired Lease that is being assumed or deemed assumed pursuant to section 365 of the Bankruptcy Code by another Debtor, (b) any Executory Contract or Unexpired Lease that is being assumed by and assigned to another Debtor or (c) a Reinstated Claim will be Reinstated. Accordingly, such Allowed Secondary Liability Claims will survive and be unaffected by the entry of the Confirmation Order.

**F. Contracts and Leases Entered Into After the Petition Date**

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor, will be performed by the Debtor liable thereunder or its successor or assign in accordance with the terms and conditions of such contracts and leases in the ordinary course of its business. Accordingly, such contracts and leases and other obligations (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

**ARTICLE VI**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Distributions for Claims Allowed as of the Effective Date**

Except as otherwise provided in this Article VI, distributions to be made on the Effective Date to holders of Claims that are allowed as of the Effective Date will be deemed made on the Effective Date if made on the Effective Date or as promptly thereafter as practicable, but in any event no later than: (1) 60 days after the Effective Date; or (2) such later date when the applicable conditions of Section V.B (regarding cure payments for Executory Contracts and Unexpired Leases being assumed), Section VI.D.2 (regarding undeliverable distributions) or Section VI.H (regarding surrender of canceled instruments and securities) are satisfied. Distributions on account of Claims that become Allowed Claims after the Effective Date will be made pursuant to Sections VI.G and VII.C.

## **B. Method of Distributions to Holders of Claims**

The Debtors, the Trusts or such Third Party Disbursing Agents as the Debtors or the Trustees may employ in their sole discretion, will make all distributions of cash, interests in the Trusts and other instruments or documents required under the Plan. Each Disbursing Agent will serve without bond, and any Disbursing Agent may employ or contract with other entities to assist in or make the distributions required by the Plan.

## **C. Compensation and Reimbursement for Services Related to Distributions**

Each Third Party Disbursing Agent providing services related to distributions pursuant to the Plan, including the Nominees, will receive from the Debtors or the applicable Trust, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services, as may be agreed to by the Debtors or the applicable Trustee.

## **D. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

### **1. Delivery of Distributions**

Distributions to holders of Allowed Claims will be made by a Disbursing Agent (a) at the addresses set forth on the respective proofs of Claim Filed by holders of such Claims, (b) at the addresses set forth in any written certification of address change delivered to the Disbursing Agent (including pursuant to a letter of transmittal delivered to a Disbursing Agent) after the date of Filing of any related proof of Claim or (c) at the addresses reflected in the applicable Debtor's Schedules if no proof of Claim has been Filed and the Disbursing Agent has not received a written notice of a change of address. Distributions to Allowed Claims filed by the Indenture Trustees on behalf of the Noteholders shall be made to the record holders as of the Distribution Record Date, including, without limitation, the Nominees, who shall in turn distribute the distributions to the respective beneficial Noteholders for whom such Notes are held.

### **2. Undeliverable Distributions Held by Disbursing Agents**

#### **a. Holding and Investment of Undeliverable Distributions**

If any distribution to a holder of an Allowed Claim is returned to a Disbursing Agent as undeliverable, no further distributions will be made to such holder unless and until the applicable Disbursing Agent is notified by written certification of such holder's then-current address. Undeliverable distributions will remain in the possession of the applicable Disbursing Agent pursuant to this Section VI.D.2.a until such time as a distribution becomes deliverable. Undeliverable Cash will be held in segregated bank accounts in the name of the applicable Disbursing Agent for the benefit of the potential claimants of such funds. Any Disbursing Agent holding undeliverable cash will invest such cash in a manner consistent with the Cash Management Order.

#### **b. Failure to Claim Undeliverable Distributions**

Any holder of an Allowed Claim that does not assert a claim pursuant to the Plan for an undeliverable distribution to be made by a Disbursing Agent within two years after the later of (i) the Effective Date and (ii) the last date on which a distribution was deliverable to such holder, shall have forfeited its right to such distribution and the undeliverable distribution shall become available to be distributed to the other holders of Allowed Claims as part of a subsequent distribution.

## **E. Distribution Record Date**

1. As of the close of business on the Distribution Record Date, the respective transfer registers for the NPF VI Notes and the NPF XII Notes, as maintained by the Indenture Trustees, will be closed. The Disbursing Agent will have no obligation to recognize the transfer or sale of any Claims by NPF VI Noteholders or NPF XII Noteholders on account of their notes that occurs after the close of business on the Distribution Record

Date and will be entitled for all purposes herein to recognize and make distributions only to those holders who are holders as of the close of business on the Distribution Record Date.

2. Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date will be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date.

#### **F. Means of Cash Payments**

Except as otherwise specified herein, cash payments made pursuant to the Plan to holders of Claims will be in U.S. currency by checks drawn on a domestic bank selected by the Debtors or the Trustees or, at the option of the Debtors or the Trustees, by wire transfer from a domestic bank.

#### **G. Timing and Calculation of Amounts to Be Distributed**

##### **1. Allowed Claims**

Each holder of an Allowed Claim will receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class pursuant to the terms and conditions of the Plan.

##### **2. De Minimis Distributions**

No Disbursing Agent will distribute cash to the holder of an Allowed Claim in an impaired Class if the amount of cash to be distributed on account of such Claim is less than \$25. Any holder of an Allowed Claim on account of which the amount of cash to be distributed is less than \$25 will be forever barred from asserting its claim for such distribution against the Debtors, the Trusts or their respective property. Any cash not distributed pursuant to this Section VI.G.2 will be the property of the applicable Trusts free of any restrictions thereon, and any such cash held by a Third Party Disbursing Agent shall be transferred or returned to the appropriate Trust.

##### **3. Compliance with Tax Requirements**

**a.** In connection with the Plan, to the extent applicable, each Disbursing Agent will comply with all Tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan will be subject to such withholding and reporting requirements. Each Disbursing Agent will be authorized to take any actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

**b.** Notwithstanding any other provision of the Plan, each entity receiving a distribution of cash or interests in the Trusts pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on it by any governmental unit on account of such distribution, including income, withholding and other Tax obligations.

#### **H. Surrender of Canceled Instruments or Securities**

Except to the extent evidenced by electronic entry, as a condition precedent to receiving any distribution pursuant to the Plan on account of an Allowed Claim evidenced by the notes, instruments, securities or other documentation canceled pursuant to Section IV.F, the holder of such Claim must tender, as specified in this Section VI.H, the applicable notes, instruments, securities or other documentation evidencing such Claim to the applicable Disbursing Agent, together with any letter of transmittal required by such Disbursing Agent. Pending such surrender, in the absence of the execution and delivery of an affidavit of loss and/or indemnity satisfactory to the Disbursing Agent, any distributions pursuant to the Plan on account of any such Claim will be treated as an undeliverable distribution pursuant to Section VI.D.2.

## **I. Setoffs**

Except (1) with respect to claims of a Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan or (2) as set forth in Section VII.D of the Plan, each Debtor or Trust or, as instructed by the applicable Debtor or Trust, a Third Party Disbursing Agent may, to the extent such right is available pursuant to section 553 of the Bankruptcy Code or other applicable law, exercise its right to set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim) the claims, rights and causes of action of any nature that the applicable Debtor or Trust may hold against the holder of such Allowed Claim; *provided, however*, that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the applicable Debtor or Trust of any claims, rights and causes of action that the applicable Debtor or Trust may possess against such a Claim holder.

## **J. Distributions on Account of Claims Allowed Under Section 502(h) of the Bankruptcy Code**

Any entity that is required to make an Avoidance Recovery Payment shall have, in accordance with section 502(h) of the Bankruptcy Code, an Allowed Avoidance Recovery Claim in respect of NPF VI Class A Notes or NPF XII Class A Notes, as the case may be, in an amount equal to the principal amount of the obligations the repayment of which gave rise to such Avoidance Recovery Payment, and shall be deemed an NPF VI Class A Noteholder or NPF XII Class A Noteholder, as the case may be, to the extent of such Allowed Avoidance Recovery Claim. If an Avoidance Recovery Claim becomes an Allowed Claim after the Effective Date:

1. The NPF VI Percentage, the NPF XII Percentage and distributions to holders of Allowed Claims in respect of NPF VI Class A Notes and NPF XII Class A Notes (including, without limitation, the "Adjusting Distribution," as such term is defined in the Intercompany Settlement Agreement) shall be adjusted in accordance with the Intercompany Settlement Agreement.

2. The beneficial interests in the Trusts shall be recalculated and reallocated among holders of such interests to reflect the adjustments to the NPF VI Percentage and the NPF XII Percentage and the allowance of the Avoidance Recovery Claim, and such changes shall be given effect in respect of all distributions from the Trusts after the allowance of the Avoidance Recovery Claim and the effectuation of the Adjusting Distribution.

3. The allowed amount of the Noteholder Deficiency Claim shall be increased by the amount of the Avoidance Recovery Claim, the Noteholder Deficiency Claim (as so increased) shall be reallocated among the NPF VI Class A Noteholders and the NPF XII Class A Noteholders (including the holder of the Avoidance Recovery Claim) in proportion to the respective amounts of such noteholders' Allowed Claims (including Secured Claims and Deficiency Claims) in respect of such NPF VI Class A Notes and NPF XII Class A Notes.

4. The entity required to pay the Avoidance Recovery Payment shall be entitled to receive, simultaneously with its payment of the Avoidance Recovery Payment, the applicable Prior Distribution Amount. Payment of the Prior Distribution Amount to such entity shall be effected by (a) a reduction of the amount of the Avoidance Recovery Payment otherwise payable by such entity, (b) payment by each Estate or Trust to such entity of the portion of the Prior Distribution Amount attributable to prior distributions by such Estate or Trust and/or (c) such other method as may be agreed upon by the affected parties or ordered by the Court to place such entity and the affected Estates, Trusts and creditors in the same position they would have occupied, had the Avoidance Recovery Payment been paid and the Avoidance Recovery Claim accordingly been allowed prior to the Effective Date.

## **K. Adjustment to Final Distribution From the Unencumbered Assets Trust With Respect to the Amount of the Noteholder Deficiency Claim**

Immediately prior to the final distribution from the Unencumbered Assets Trust, the beneficial interests in the Unencumbered Assets Trust shall be recalculated and reallocated among the holders of such interests to reflect the amount of the Noteholder Deficiency Claim, based upon the actual value or then-estimated value of distributions made or anticipated to be made pursuant to the Plan and/or from the VI/XII Collateral Trust to the

NPF VI Class A Noteholders and the NPF XII Class A Noteholders on account of their Secured Claims, and such final distribution to the holders of such interests shall be adjusted such that all distributions from the Unencumbered Assets Trust (including the final distribution), when considered in the aggregate, will have been made Pro Rata, based on the revised amount of the Noteholder Deficiency Claim (as determined pursuant to this Section VI.K) and the allowed amounts of all other Allowed Claims in Class C-6, to the holders of such interests. Upon the earlier of (1) the termination of the VI/XII Collateral Trust or (2) immediately prior to the final distribution from the Unencumbered Assets Trust, the VI/XII Collateral Trustee shall determine the value or then-estimated value of distributions made or to be made from the VI/XII Collateral Trust for purposes of implementation of this Section VI.K. Notwithstanding the foregoing, nothing in this Section VI.K shall be construed to require any holder of a beneficial interest in the Unencumbered Assets Trust to disgorge any prior distributions received by such holder.

## **ARTICLE VII.**

### **PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

#### **A. Prosecution of Objections to Claims**

##### **1. Objections to Claims**

All objections to Claims must be Filed and served on the holders of such Claims by the Claims Objection Bar Date, and, if Filed prior to the Effective Date, such objections will be served on the parties on the then-applicable service list in the Bankruptcy Cases. If an objection has not been Filed to a proof of Claim or a scheduled Claim by the Claims Objection Bar Date, the Claim to which the proof of Claim or scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been allowed or disallowed earlier.

##### **2. Authority to Prosecute Objections**

After the Confirmation Date, only the Debtors or the Trusts will have the authority to File, settle, compromise, withdraw or litigate to judgment objections to Claims, including pursuant to any alternative dispute resolution or similar procedures approved by the Bankruptcy Court. After the Effective Date, the Debtors or the Trusts may settle or compromise any Disputed Claim without approval of the Bankruptcy Court.

#### **B. Treatment of Disputed Claims**

Notwithstanding any other provisions of the Plan other than Section VII.D, no payments or distributions will be made on account of a Disputed Claim until such Claim becomes an Allowed Claim.

#### **C. Distributions on Account of Disputed Claims Once Allowed**

Subject to the other provisions of the Plan, the applicable Disbursing Agent will make all distributions on account of any Disputed Claim that has become an Allowed Claim that have been payable on or since the Effective Date within 30 days of such allowance to the extent not theretofore paid or provided for pursuant to Section VII.D. Such distributions will be made pursuant to the provisions of the Plan governing the applicable Class. Subject to Section VII.D, (1) distributions from any Trust on account of any Disputed Claim that has become an Allowed Claim will be governed by the applicable Trust Agreement, and (2) the Unencumbered Assets Trust Agreement shall include reasonable and customary provisions for a reserve in respect of Disputed Claims.

#### **D. Distributions on Account of Disputed Claims in Respect of NPF VI Class A Notes and NPF XII Class A Notes**

No distribution to any holder of a Claim in respect of NPF VI Class A Notes or NPF XII Class A Notes pursuant to the Plan shall be delayed, deferred or reduced on account of the pendency of an objection to such Claim (including, without limitation, any objection on the basis of section 502(d) of the Bankruptcy Code or otherwise), the assertion of a right of setoff by a Debtor or such Claim otherwise qualifying as a Disputed Claim, to

the extent that such holder has established to the Debtors' reasonable satisfaction such holder's financial wherewithal to return the portion of the distribution relating to the portion of such Claim subject to objection, setoff or other dispute if such objection, setoff or other dispute were determined in favor of the relevant Debtor. If a distribution to a holder of a Claim in respect of NPF VI Class A Notes or NPF XII Class A Notes is delayed, deferred or reduced because such holder fails to establish its financial wherewithal as contemplated by the immediately preceding sentence, any portion of a distribution otherwise payable to such holder that is delayed, deferred or reduced shall be held in escrow pending resolution of the relevant objection, setoff or other dispute. NPF VI, NPF XII and each Trust reserve their rights, if such holder's Claim is subsequently disallowed, subordinated or otherwise encumbered, to (1) seek disgorgement of any distributions made pursuant to this Section VII.D or otherwise to such holder and (2) obtain any such other relief as may be appropriate to restore the affected Estates, Trusts and creditors to the positions they would have occupied had such Claim not been treated temporarily as an Allowed Claim.

## **ARTICLE VIII**

### **SUBSTANTIVE CONSOLIDATION OF THE NCFE CONSOLIDATED DEBTORS**

Pursuant to the Confirmation Order, the Bankruptcy Court shall approve the substantive consolidation of the NCFE Consolidated Debtors for the purpose of implementing the Plan, including for purposes of voting, Confirmation and distributions to be made under the Plan. Pursuant to such order: (a) all assets and liabilities of the NCFE Consolidated Debtors will be deemed merged; (b) all guarantees by one NCFE Consolidated Debtor of the obligations of any other NCFE Consolidated Debtor will be deemed eliminated so that any Claim against any NCFE Consolidated Debtor and any guarantee thereof executed by any other NCFE Consolidated Debtor and any joint or several liability of any of the NCFE Consolidated Debtors will be deemed to be one obligation of the consolidated NCFE Consolidated Debtors; and (c) each and every Claim Filed or deemed Filed by or on behalf of a single creditor in a single Class of Claims against any of the NCFE Consolidated Debtors will be deemed a single Claim Filed against the NCFE Consolidated Debtors. Such substantive consolidation (other than for the purpose of implementing the Plan) will not affect the legal and corporate structures of the NCFE Consolidated Debtors, subject to the right of the NCFE Consolidated Debtors to effect the Restructuring Transactions as provided in Section IV.A.

## **ARTICLE IX**

### **CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

#### **A. Conditions to Confirmation**

The Bankruptcy Court will not enter the Confirmation Order unless and until each of the following conditions has been satisfied or duly waived pursuant to Section IX.C:

1. The Confirmation Order is reasonably acceptable in form and substance to the Debtors.
2. All Exhibits to the Plan are in form and substance reasonably satisfactory to the Debtors.

#### **B. Conditions to the Effective Date**

The Effective Date will not occur and the Plan will not be consummated unless and until each of the following conditions has been satisfied or duly waived pursuant to Section IX.C:

1. The Bankruptcy Court shall have entered an order (contemplated to be part of the Confirmation Order) approving and authorizing the Debtors and the Trusts to take all actions necessary or appropriate to implement the Plan, including implementation of the Intercompany Settlement Agreement and completion of the Restructuring Transactions and other transactions contemplated by the Plan and the implementation and consummation of contracts, instruments, releases and other agreements or documents created in connection with the Plan.

2. The Confirmation Order shall be a Final Order.
3. The CSFB Claims Trust Agreement shall have been fully executed and delivered.
4. The VI/XII Collateral Trust Agreement shall have been fully executed and delivered.
5. The Unencumbered Assets Trust Agreement shall have been fully executed and delivered.
6. All transactions contemplated by the Intercompany Settlement Agreement and the Plan, all of which shall occur substantially contemporaneously, shall have been completed.

**C. Waiver of Conditions to Confirmation or Effective Date**

The conditions to Confirmation set forth in Section IX.A and the conditions to the Effective Date set forth in Section IX.B may be waived in whole or part by the Debtors with the consent of the members (with each member being entitled to vote) of the Creditors' Committee, the NPF VI Subcommittee and the NPF XII Subcommittee at any time without an order of the Bankruptcy Court. The failure to satisfy or waive a condition may be asserted by a Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied (including any action or inaction by the Debtors).

**D. Effect of Nonoccurrence of Conditions to the Effective Date**

If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Section IX.C, then upon motion by the Debtors made before the time that each of such conditions has been satisfied or duly waived and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order will be vacated by the Bankruptcy Court; *provided, however*, that, notwithstanding the Filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to this Section IX.D, the Plan will be null and void in all respects and nothing contained in the Plan will: (1) constitute a waiver or release of any Claims by or against, or any Interest in, the Debtors; (2) prejudice in any manner the rights of the Debtors or any other party in interest; or (3) constitute an admission, acknowledgment, offer or undertaking by any of the Debtors in any respect.

**ARTICLE X.**

**CRAMDOWN**

The Debtors request Confirmation under section 1129(b) of the Bankruptcy Code with respect to any impaired Class that does not accept the Plan pursuant to section 1126 of the Bankruptcy Code. The Debtors reserve the right to modify the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

**ARTICLE XI.**

**RELEASE AND INJUNCTION**

**A. Release of Assets**

Until the Effective Date, the Bankruptcy Court shall retain jurisdiction over each of the Debtors and their Assets. Thereafter, jurisdiction of the Bankruptcy Court shall be limited to the subject matter set forth in Article XII of the Plan, and the Trustees shall perform and wind up the affairs of the respective Trusts, as provided in the Plan and in the respective Trust Agreement.

## **B. Term of Injunctions or Stays**

Unless otherwise provided, all injunctions or stays provided for in the Bankruptcy Cases pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence at the Confirmation Date prior to the entry of the Confirmation Order, shall remain in full force and effect until the closing of the Bankruptcy Cases.

## **C. Injunctions**

1. *Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all entities that have held, currently hold or may hold a Claim or other debt or liability that would be discharged upon Confirmation but for the provision of section 1141(d)(3) of the Bankruptcy Code or an Interest or other right of an equity security holder that is terminated pursuant to the terms of the Plan will be permanently enjoined from taking any of the following actions on account of any such Claims, debts or liabilities or terminated Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against the Debtors, the Trusts or their respective property, other than to enforce any right pursuant to the Plan to a distribution; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtors, the Trusts or their respective property, other than as permitted pursuant to clause (a) above; (c) creating, perfecting or enforcing any lien or encumbrance against the Debtors, the Trusts or their respective property; (d) asserting a setoff or right of subrogation of any kind against any debt, liability or obligation due to the Debtors or the Trusts; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that nothing contained herein or elsewhere in the Plan (including, without limitation, Sections IV.B.4, IV.C.4 and IV.D.4) shall be deemed to affect the right of any entity to exercise, on or after the Effective Date, any right left unaffected by section 553(a) of the Bankruptcy Code to set off a debt owing by such entity to a Debtor (or its assignee under the Plan) that arose prior to the Petition Date against an Allowed Claim of such entity against such Debtor that arose prior to the Petition Date. Notwithstanding anything to the contrary in this Plan or the Confirmation Order, no party shall be enjoined from taking action, and the court with jurisdiction over the Providers' bankruptcy cases shall retain full jurisdiction, to determine the amount, validity or priority of, or to recharacterize or subordinate, any claim or lien of any Debtor in the Providers' respective bankruptcy cases.*

2. *As of the Effective Date, all entities that have held, currently hold or may hold any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities that are released pursuant to the Plan will be permanently enjoined from taking any of the following actions against any released entity or its property on account of such released claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities: (a) commencing or continuing in any manner any action or other proceeding; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (c) creating, perfecting or enforcing any lien or encumbrance; (d) asserting a setoff or right of subrogation of any kind against any debt, liability or obligation due to any released entity; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that nothing contained herein or elsewhere in the Plan (including, without limitation, Sections IV.B.4, IV.C.4 and IV.D.4) shall be deemed to affect the right of any entity to exercise, on or after the Effective Date, any right left unaffected by section 553(a) of the Bankruptcy Code to set off a debt owing by such entity to a Debtor (or its assignee under the Plan) that arose prior to the Petition Date against an Allowed Claim of such entity against such Debtor that arose prior to the Petition Date. Notwithstanding anything to the contrary in this Plan or the Confirmation Order, no party shall be enjoined from taking action, and the court with jurisdiction over the Providers' bankruptcy cases shall retain full jurisdiction, to determine the amount, validity or priority of, or to recharacterize or subordinate, any claim or lien of any Debtor in the Providers' respective bankruptcy cases.*

3. *By accepting distributions pursuant to the Plan, each holder of an Allowed Claim receiving distributions pursuant to the Plan will be deemed to have specifically consented to the injunctions set forth in this Section XI.C.*

#### **D. Subordination Rights**

The classification and manner of satisfying Claims and Interests under the Plan does not take into consideration subordination rights, and nothing in the Plan or Confirmation Order shall affect any subordination rights that a holder of a Claim may have with respect to any distribution to be made pursuant to the Plan, whether arising under general principles of equitable subordination, contract, section 510(c) of the Bankruptcy Code or otherwise.

### **ARTICLE XII RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain such jurisdiction over the Bankruptcy Cases after the Effective Date as is legally permissible, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim or the resolution of any objections to the allowance, priority or classification of Claims or Interests;
2. Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;
3. Resolve any matters, in accordance with Article V or otherwise, related to the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which any Debtor is a party or with respect to which any Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom, including any Cure Amount Claims;
4. Ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
5. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, and grant or deny any applications involving the Debtors or the Trusts that may be pending on the Effective Date or brought thereafter;
6. Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;
7. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;
8. Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code; modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into, delivered or created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;
9. Issue injunctions, enforce the injunctions contained in the Plan and the Confirmation Order, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;

10. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or distributions pursuant to the Plan are enjoined or stayed;

11. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;

12. Enter a final decree closing the Bankruptcy Cases; and

13. Determine matters concerning state, local and federal Taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code, including any Disputed Claims for Taxes.

### ARTICLE XIII.

#### MISCELLANEOUS PROVISIONS

##### A. Dissolution of the Creditors' Committee and Subcommittees

On the Effective Date, the Creditors' Committee and the Subcommittees will dissolve, and the members of the Creditors' Committee and the Subcommittees will be released and discharged from all duties and obligations arising from or related to the Bankruptcy Cases. The Professionals retained by the Creditors' Committee, the Subcommittees and the members thereof will not be entitled to assert any Fee Claim for any services rendered or expenses incurred after the Effective Date, except for services rendered and expenses incurred in connection with any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or Filed and served after the Effective Date pursuant to Section III.A.1.d.ii.A and in connection with any appeal of the Confirmation Order.

##### B. Limitation of Liability

The Debtors, the Trusts, the Trustees, the members of the Creditors' Committee, the members and ex officio members of the Subcommittees and their respective directors, officers, employees, predecessors, successors, members, attorneys, accountants, underwriters, investment bankers, financial advisors, appraisers, representatives and agents, acting in such capacity, will neither have nor incur, and are hereby forever released and discharged from, any claims, obligations, suits, judgments, damages, demands, rights, causes of action or liabilities asserted or held by any entity, including, but not limited to, one another or any holder of a Claim or Interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act taken or omitted to be taken in connection with, arising out of or related to their participation in the Debtors' Bankruptcy Cases and in the formulation, preparation, dissemination, implementation, Confirmation or consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection with the Plan; *provided, however*, that the foregoing provisions of this Section XIII.B will have no effect on: (1) the liability of any person or entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan; (2) the liability of any person or entity that would otherwise result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct; or (3) the liability of any person or entity resulting from any act or omission occurring prior to the Petition Date. Notwithstanding any other provision of the Plan, no holder of a Claim or Interest, or other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right of action against the parties identified in this Section XIII.B for any act or omission in connection with, relating to or arising out of the Debtors' Bankruptcy Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under this Plan, except for their gross negligence or willful misconduct.

**C. Modification of the Plan**

Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code, the Debtors reserve the right to alter, amend or modify the Plan before its substantial consummation.

**D. Revocation of the Plan**

The Debtors reserve the right to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan as to any or all of the Debtors, or if Confirmation as to any or all of the Debtors does not occur, then, with respect to such Debtors, the Plan will be null and void in all respects, and nothing contained in the Plan will: (1) constitute a waiver or release of any claims by or against, or any Interests in, such Debtors; (2) prejudice in any manner the rights of any Debtors or any other party; or (3) constitute an admission, acknowledgment, offer or undertaking by any of the Debtors in any respect.

**E. Severability of Plan Provisions**

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

**F. Successors and Assigns**

The rights, benefits and obligations of any entity named or referred to in the Plan will be binding on, and will inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

**G. Service of Certain Plan Exhibits and Disclosure Statement Exhibits**

Because the Exhibits to the Plan are voluminous, the Exhibits are not being served with copies of the Plan and the Disclosure Statement. Any party in interest may review the Plan Exhibits during normal business hours (9:00 a.m. to 4:30 p.m. local time) in the Document Reviewing Centers. In addition, the Plan Exhibits will be available on the Debtors' website at [www.ncfe.com](http://www.ncfe.com) or upon request from the Debtors' counsel.

**H. Service of Documents**

Any pleading, notice or other document required by the Plan or the Confirmation Order to be served on or delivered to the Debtors, the Creditors' Committee, the Subcommittees or the United States Trustee must be sent by overnight delivery service, facsimile transmission, courier service or messenger to:

1. The Debtors:

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Matthew A. Kairis, Esq.  
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Randall M. Walters, Esq.  
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(Counsel to the Debtors)

2. The Creditors' Committee:

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Leon Friedberg, Esq.  
H. Ritchey Hollenbaugh, Esq.  
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(Counsel to the Creditors' Committee)

3. The NPF VI Subcommittee:

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(Counsel to the NPF VI Subcommittee)

4. The NPF XII Subcommittee:

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Fred Neufeld, Esq.  
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601 S. Figueroa Street, 30<sup>th</sup> Floor  
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Kenneth R. Cookson, Esq.  
DINSMORE & SHOHL LLP  
175 South Third Street, 10<sup>th</sup> Floor  
Columbus, Ohio 43215  
Fax: (614) 628-6890

(Counsel to the NPF XII Subcommittee)

5. The United States Trustee:

Alexander Barkan, Esq.  
Office of the United States Trustee  
170 North High Street  
Columbus, Ohio 43215  
Fax: (614) 469-7448



**EXHIBIT B**

**MODIFICATIONS TO FOURTH AMENDED JOINT  
PLAN OF LIQUIDATION OF NATIONAL CENTURY  
FINANCIAL ENTERPRISES, INC. AND ITS DEBTOR SUBSIDIARIES**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re: : Chapter 11  
: :  
NATIONAL CENTURY FINANCIAL : Jointly Administered  
ENTERPRISES, INC., an Ohio : Case No. 02-65235  
corporation, et al., : :  
: Judge Calhoun  
Debtors. : :  
: :  
\_\_\_\_\_  
(National Century Financial Enterprises, Inc.) : (Case No. 02-65235)  
(NPF XII, Inc.) : (Case No. 02-65236)  
(National Premier Financial Services, Inc.) : (Case No. 02-65237)  
(NPF VI, Inc.) : (Case No. 02-65238)  
(Memorial Drive Office Complex, LLC) : (Case No. 02-65239)  
(National Physicians Funding II, Inc.) : (Case No. 02-65240)  
(Anesthesia Solutions, Inc.) : (Case No. 02-65241)  
(NPF-CSL, Inc.) : (Case No. 02-65242)  
(NPF-LL, Inc.) : (Case No. 02-65243)  
(NPF-SPL, Inc.) : (Case No. 02-65244)  
(NPF X, Inc.) : (Case No. 02-65245)  
(NPF Capital Partners, Inc.) : (Case No. 02-65246)  
(NPF Capital, Inc.) : (Case No. 02-65247)  
(NCFE.com, Inc.) : (Case No. 02-65248)  
(Allied Medical, Inc.) : (Case No. 03-52026)  
: :  
: MODIFICATIONS TO THE FOURTH  
: AMENDED JOINT PLAN OF LIQUIDATION  
: OF NATIONAL CENTURY FINANCIAL  
: ENTERPRISES, INC. AND ITS  
: DEBTOR SUBSIDIARIES  
\_\_\_\_\_

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MATTHEW A. KAIRIS  
CHARLES M. OELLERMANN  
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April 16, 2004

ATTORNEYS FOR DEBTORS AND  
DEBTORS IN POSSESSION

Subject to approval by the Bankruptcy Court and pursuant to these Modifications to the Fourth Amended Joint Plan of Liquidation of National Century Financial Enterprises, Inc. and Its Debtor Subsidiaries, the Debtors effect the following changes to the Fourth Amended Joint Plan of Reorganization of National Century Financial Enterprises, Inc. and Its Debtor Subsidiaries (the "Plan"):

Section I.A.36 of the Plan is amended in its entirety to read:

**36. "CSFB Claims"** means any and all Causes of Action that the Debtors or their Estates hold against CSFB under chapter 5 of the Bankruptcy Code and other applicable laws for the avoidance and recovery of the CSFB Payments.

A new section shall be inserted after Section I.A.43 of the Plan, which shall read:

**43A. "Defensive Counterclaim"** means a counterclaim or cross-claim asserted by a defendant against a Trust based upon pre-Petition Date acts or omissions of a Debtor that is asserted against a Trust and as to which the only relief sought by the defendant is a reduction in the amount of damages recoverable by the Trust from that defendant.

Section I.A.49 of the Plan is amended in its entirety to read:

**49. "Distribution Record Date"** means the first Business Day after the Confirmation Date.

Section I.A.99 of the Plan is amended in its entirety to read:

**99. "NPF XII Initial Restricted SPV Funds Distribution"** means the Pro Rata distribution on the Effective Date to holders of Allowed Secured Claims in respect of NPF XII Class A Notes of (a) the NPF XII September 15 Funds, plus (b) the NPF VI Cash Transfer (which will be made prior to the initial distribution), plus (c) the NPF VI Additional Cash Transfer (which will be made prior to the initial distribution), plus (d) the amount, if any, of the Cash Collateral Adjustment, minus (e) the NPF XII Percentage of the VI/XII Collateral Trust Restricted SPV Funds Holdback, minus (f) the portion of the NPF XII September 15 Funds withdrawn from the NPF XII Restricted SPV Funds after September 15, 2003 but prior to the Effective Date under the terms of the cash collateral orders entered from time to time by the Bankruptcy Court, minus (g) the CSFB Claims Trust Restricted SPV Funds Holdback, minus (h) 50% of the Remaining 50/50 Cash Collateral Amount.

Section III.A.1.d of the Plan is amended in its entirety to read:

Except as otherwise provided in Section III.A.1.d.ii, unless previously Filed, requests for payment of Administrative Claims must be Filed and served on the Debtors or the applicable Trust, pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order, no later than 60 days after the Effective Date. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the applicable Bar Date will be forever barred from asserting such Administrative Claims against the Debtors, the Estates or the Trusts or their respective property and such Administrative Claims will be deemed discharged as of the Effective Date. Objections to such requests must be Filed and served on the Debtors or the applicable Trust and the requesting party by the later of (A) 120 days after the Effective Date or (B) 60 days after the Filing of the applicable request for payment of Administrative Claims.

Section III.A.2.a of the Plan is amended in its entirety to read:

**a. Priority Tax Claims**

Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim and the applicable Debtor or Trust, each holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its Allowed Priority Tax Claim, payment in full in Cash either (i) on the Effective Date or (ii) in deferred Cash payments over a period not exceeding six years from the date of assessment of such Priority Tax

Claim. Deferred payments will be made in equal quarterly installments of principal, plus simple interest, accruing from the Effective Date at a rate equal to the statutory rate for unpaid taxes under applicable nonbankruptcy law on the unpaid portion of each Allowed Priority Tax Claim (or upon such other terms determined by the Bankruptcy Court to provide the holders of Priority Tax Claims with deferred cash payments having a value, as of the Effective Date, equal to the allowed amount of such Priority Tax Claims). Unless otherwise agreed by the holder of a Priority Tax Claim and the applicable Debtor or Trust, the first payment on account of such Priority Tax Claim will be payable no later than the last Business Day of the first calendar quarter that commences after the Effective Date or, if the Priority Tax Claim is not allowed on or prior to such date, within 30 days after the date on which (i) an order allowing such Priority Tax Claim becomes a Final Order or (ii) a Stipulation of Amount and Nature of Claim is executed by the applicable Debtor or Trust and the holder of the Priority Tax Claim; *provided, however*, that the Debtors or the applicable Trust will have the right to pay any Allowed Priority Tax Claim, or any remaining balance of such Priority Tax Claim, in full at any time on or after the Effective Date, without premium or penalty.

Section IV.A.1.b of the Plan is amended in its entirety to read:

**b.** Without limiting the foregoing, the following Restructuring Transactions in connection with the initial distributions of Cash and the transfer of Assets to the Trusts will proceed substantially contemporaneously, on or before the Effective Date:

- i. ING shall transfer the ING Payment to NPF VI in accordance with the terms of the Intercompany Settlement and the Plan.
- ii. NPF VI shall make the NPF VI Cash Transfer from the NPF VI Restricted SPV Funds to the Cash Transfer Account in accordance with the terms of the Intercompany Settlement and the Plan.
- iii. NPF VI shall make the NPF VI Additional Cash Transfer to the Cash Transfer Account in accordance with the terms of the Intercompany Settlement and the Plan.
- iv. The NPF VI Initial Restricted SPV Funds Distribution, the NPF XII Initial Restricted SPV Funds Distribution and the Remaining Restricted SPV Funds Distribution shall be made in accordance with the terms of the Intercompany Settlement and the Plan.
- v. \$3,000,000 shall be transferred by one or more of the NCFE Consolidated Debtors to a Disbursing Agent to be held for distribution to the holders of Allowed Claims in Class C-7, in accordance with the terms and conditions of the Plan.
- vi. All remaining Assets of the Debtors or the Estates, other than any Assets that remain property of the Estates after the Effective Date pursuant to Section IV.D.4 of the Plan, as modified, will be transferred to the respective Trusts pursuant to the terms and conditions of the Plan and the Trust Agreements.
- vii. The Old Stock of each of the Debtors shall be cancelled, and the new stock or membership interests, as applicable, in each of the Debtors shall be issued to the Unencumbered Assets Trust, or one or more Debtors designated by the Unencumbered Assets Trustee, as the sole new owner of such stock or membership interests.

Section IV.A.3.a of the Plan is amended in its entirety to read:

### **3. Effectuating Documents; Further Transactions**

**a.** On or as soon as practicable after the Effective Date, subject to Article VI, the Disbursing Agent shall, at the direction of the Debtors or the applicable Trustees, make all Distributions required in accordance with the provisions of Article III of the Plan. The Debtors and the applicable Trustees shall be authorized and directed, following the completion of all disbursements, other transfers and other actions

required of the Debtors or the Estates by the Plan, including any actions related to the liquidation of any Assets that remain property of the Estates after the Effective Date pursuant to Section IV.D.4 of the Plan, to file certificates of dissolution to cease the corporate existence of the Debtors, together with any other necessary documentation, to effect their dissolution under applicable state law; *provided, however*, that the Debtors may remain in existence so long as may be deemed reasonably necessary or appropriate by the Debtors or the applicable Trustees to enforce or pursue any rights, claims or Causes of Action or take any other actions. To the extent necessary or appropriate, a Trustee may be designated as a representative of one or more of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce or pursue any rights, claims or Causes of Action that remain property of the Estates after the Effective Date. The filing of each Debtor's certificate of dissolution shall be authorized and approved hereunder in all respects without further action under applicable law, regulation, order, or rule, including, without express or implied limitation, any action by the stockholders, members, managers, partners or board of directors (as applicable) of the Debtors. Accordingly, the Debtors shall be dissolved on the Effective Date, or as soon as practicable thereafter.

A new section shall be inserted after Section IV.A.4 of the Plan, which shall read:

**5. Constituent Documents and Directors and Officers of the Debtors After the Effective Date**

On the Effective Date, the Unencumbered Assets Trustee, in consultation with and at the direction of the Steering Committee of the Unencumbered Assets Trust, shall (a) adopt constituent documents for each of the Debtors, which constituent documents will prohibit the issuance of nonvoting equity securities to the extent required by section 1123(a)(6) of the Bankruptcy Code, and (b) appoint the initial director(s) and officer(s) for each of the Debtors, who shall serve for such period of time and on such terms as specified in the constituent documents, as they may be amended, of each Debtor.

Section IV.B.4.a of the Plan is amended in its entirety to read:

Upon the Effective Date, and in accordance with the Restructuring Transactions, NPF XII and the NPF XII Estate shall transfer, pursuant to section 1123(a)(5)(B) of the Bankruptcy Code, to the CSFB Claims Trust all of their rights, title and interest in and to the CSFB Claims relating to the CSFB Payments and the CSFB Claims Trust Restricted SPV Funds Holdback, for the benefit of holders of beneficial interests in the CSFB Claims Trust. To the maximum extent contemplated by and permissible under section 1141(c) of the Bankruptcy Code, such transfers of Assets to the CSFB Claims Trust shall be free and clear of any liens, claims or encumbrances, and no other entity shall otherwise have any interest, legal, beneficial or otherwise, in any Assets upon their assignment and transfer to the CSFB Claims Trust; *provided, however*, that all such Assets will be transferred to the CSFB Claims Trust subject to the following liabilities and obligations, and the CSFB Claims Trust shall be responsible for satisfying all such liabilities and fulfilling all such obligations: (i) any pre- or post-Effective Date expenses incurred for the benefit or in connection with the operation of the CSFB Claims Trust and (ii) any other obligations of the CSFB Claims Trust expressly set forth in the Plan.

Section IV.B.10.b of the Plan is amended in its entirety to read:

Under the terms provided for in the CSFB Claims Trust, the Debtors, the CSFB Claims Trustee and the holders of beneficial interests in the CSFB Claims Trust will treat the CSFB Claims Trust as a "liquidating trust" within the meaning of Treasury Regulation § 301.7701-4(d) and any comparable provision of state or local law. Consistent with this treatment, the transfer of assets to the CSFB Claims Trust will be characterized solely for tax purposes as a transfer of the assets to the holders of Allowed Claims followed by a transfer of the assets by the holders of Allowed Claims to the CSFB Claims Trust in exchange for beneficial interests in the trust; the holders of beneficial interests in the CSFB Claims Trust will be treated solely for tax purposes as the grantors and deemed owners of the trust; and the Debtors, the CSFB Claims Trustee and the holders of beneficial interests in the CSFB Claims Trust will use consistent valuations for the transferred assets for tax purposes. The CSFB Claims Trustee shall be authorized to take any action necessary to maintain compliance with this regulation or its successor that does not contradict the terms of the CSFB Claims Trust Agreement, this Plan or the Confirmation Order.

Section IV.C.2 of the Plan is amended in its entirety to read:

The VI/XII Collateral Trust shall be established for the sole purpose of liquidating the Assets transferred to it in furtherance of the Plan for the sole benefit of the holders of beneficial interests in the VI/XII Collateral Trust, with no objective to continue or engage in the conduct of trade or business. The VI/XII Collateral Trust shall be deemed not to be the same legal entity as any of the Debtors, but only an assignee or transferee of the Assets of the Debtors or their Estates that are transferred to the VI/XII Collateral Trust pursuant to section 1123(a)(5)(B) of the Bankruptcy Code and representative of the Estates for the pursuit of the Causes of Action assigned to the VI/XII Collateral Trust within the meaning of section 1123(b)(3) of the Bankruptcy Code.

Section IV.C.4.a of the Plan is amended in its entirety to read:

Upon the Effective Date, and in accordance with the Restructuring Transactions, the Debtors and the Estates shall transfer, pursuant to section 1123(a)(5)(B) of the Bankruptcy Code, to the VI/XII Collateral Trust all of their rights, title and interest in and to the VI/XII Collateral Trust Restricted SPV Funds Holdback, the Remaining 50/50 Cash Collateral Amount and any and all other Assets of NPF VI and NPF XII encumbered by the liens of the Indenture Trustees, including without limitation all claims and causes of action relating to the transfer of funds by NPF VI or NPF XII to Providers; provided, however, that any such Assets that the Debtors have agreed to transfer to any party other than the VI/XII Collateral Trust pursuant to any agreement other than this Plan that has not yet closed on the Effective Date, whether such agreement has or has not been approved by the Bankruptcy Court as of the date of the Confirmation Order, will be transferred to the VI/XII Collateral Trust on the Effective Date subject to such agreement and the terms and conditions thereof. To the maximum extent contemplated by and permissible under section 1141(c) of the Bankruptcy Code, such transfers of Assets to the VI/XII Collateral Trust shall be free and clear of any liens, claims or encumbrances, and no other entity shall otherwise have any interest, legal, beneficial or otherwise, in any Assets upon their assignment and transfer to the VI/XII Collateral Trust; *provided, however*, that all such Assets will be transferred to the VI/XII Collateral Trust subject to the following liabilities and obligations, and the VI/XII Collateral Trust shall be responsible for satisfying all such liabilities and fulfilling all such obligations: (i) any Allowed Administrative Claims, Priority Claims or Priority Tax Claims that (A) were incurred for the benefit of the holders of Allowed Secured Claims in respect of the Notes and (B) have not been paid; (ii) any pre- or post-Effective Date expenses incurred for the benefit or in connection with the operation of the VI/XII Collateral Trust; and (iii) any other obligations of the VI/XII Collateral Trust expressly set forth in the Plan.

Section IV.C.10.b of the Plan is amended in its entirety to read:

Under the terms provided for in the VI/XII Collateral Trust Agreement, the Debtors, the VI/XII Collateral Trustee and the holders of beneficial interests in the VI/XII Collateral Trust will treat the VI/XII Collateral Trust as a "liquidating trust" within the meaning of Treasury Regulation § 301.7701-4(d) and any comparable provision of state or local law. Consistent with this treatment, the transfer of assets to the VI/XII Collateral Trust will be characterized solely for tax purposes as a transfer of the assets to the holders of Allowed Claims followed by a transfer of the assets by the holders of Allowed Claims to the VI/XII Collateral Trust in exchange for beneficial interests in the trust; the holders of beneficial interests in the VI/XII Collateral Trust will be treated solely for tax purposes as the grantors and deemed owners of the trust; and the Debtors, the VI/XII Collateral Trustee and the holders of beneficial interests in the VI/XII Collateral Trust will use consistent valuations for the transferred assets for tax purposes. The VI/XII Collateral Trustee shall be authorized to take any action necessary to maintain compliance with this regulation or its successor that does not contradict the terms of the VI/XII Collateral Trust Agreement, this Plan or the Confirmation Order.

Section IV.D.4.a of the Plan is amended in its entirety to read:

#### **4. Transfer of Assets**

**a.** Upon the Effective Date, and in accordance with the Restructuring Transactions, the Debtors and their Estates shall transfer, pursuant to section 1123(a)(5)(B) of the Bankruptcy Code, to the Unencumbered Assets Trust all of their rights, title and interest in and to all of their remaining Assets other than: (i) any Cash and other Assets otherwise designated for use or distribution under this Plan; (ii) the Assets to be transferred to the CSFB Claims Trust pursuant to Section IV.B.4; (iii) the Assets to be

transferred to the VI/XII Collateral Trust pursuant to Section IV.C.4; (iv) any Assets that have been sold or otherwise disposed of prior to the Effective Date; and (v) any Assets that cannot be transferred to the Unencumbered Assets Trust because of a restriction on transferability under applicable nonbankruptcy law that is not superseded by section 1123 or any other provision of the Bankruptcy Code; *provided, however*, that notwithstanding any other provision of this Plan, the Assets to be assigned and transferred to the Unencumbered Assets Trust shall include the Debtors' claims and causes of action, and the proceeds of the pending settlement, relating to the litigation captioned *National Medical Care, Inc., et al. v. Home Medical of America, Inc., Homecare Concepts of America, Inc., NCFE, Kachina, Inc., Thor Capital Holdings, LLC, Chartwell Care Givers of New York, Lance K. Poulsen and Craig W. Porter*, Civ. Act. 00-1225-J (Sup. Ct. Mass., Middlesex County); and *provided further*, that any such Assets that the Debtors have agreed to transfer to any party other than the Unencumbered Assets Trust pursuant to any agreement other than this Plan that has not yet closed on the Effective Date, whether such agreement has or has not been approved by the Bankruptcy Court as of the date of the Confirmation Order, will be transferred to the Unencumbered Assets Trust on the Effective Date subject to such agreement and the terms and conditions thereof. To the maximum extent contemplated by and permissible under section 1141(c) of the Bankruptcy Code, such transfers of Assets to the Unencumbered Assets Trust shall be free and clear of any liens, claims or encumbrances other than liens and security interests on and in such Assets securing Allowed Secured Claims or Disputed Claims that later become Allowed Secured Claims, and no other entity shall otherwise have any interest, legal, beneficial or otherwise, in any Assets upon their assignment and transfer to the Unencumbered Assets Trust; *provided, however*, that all such Assets will be transferred to the Unencumbered Assets Trust subject to the following liabilities and obligations, and the Unencumbered Assets Trust shall be responsible for satisfying all such liabilities and fulfilling all such obligations: (i) except for those Allowed Claims described in clause (i) of Section IV.C.4, any Allowed Administrative Claims, Priority Claims or Priority Tax Claims that have not been paid; (ii) except for expenses incurred in connection with the operation of the other trusts established by this Plan, any post-Effective Date expenses necessary or appropriate in respect of consummation of the Plan and winding up of the Debtors' Estates; (iii) any Allowed Secured Claims or Disputed Claims that later become Allowed Secured Claims that have not been paid to the extent such Claims are secured by liens and security interests on and in the Assets transferred to the Unencumbered Assets Trust; (iv) any pre- or post-Effective Date expenses incurred for the benefit or in connection with the operation of the Unencumbered Assets Trust; and (v) any other obligations of the Unencumbered Assets Trust expressly set forth in the Plan.

Section IV.D.10.b of the Plan is amended in its entirety to read:

Under the terms provided for in the Unencumbered Assets Trust Agreement, the Debtors, the Unencumbered Assets Trustee and the holders of beneficial interests in the Unencumbered Assets Trust will treat the Unencumbered Assets Trust as a "liquidating trust" within the meaning of Treasury Regulation § 301.7701-4(d) and any comparable provision of state or local law. Consistent with this treatment, the transfer of assets to the Unencumbered Assets Trust will be characterized solely for tax purposes as a transfer of the assets to the holders of Allowed Claims followed by a transfer of the assets by the holders of Allowed Claims to the Unencumbered Assets Trust in exchange for beneficial interests in the trust; the holders of beneficial interests in the Unencumbered Assets Trust will be treated solely for tax purposes as the grantors and deemed owners of the trust; and the Debtors, the Unencumbered Assets Trustee and the holders of beneficial interests in the Unencumbered Assets Trust will use consistent valuations for the transferred assets for tax purposes. The Unencumbered Assets Trustee shall be authorized to take any action necessary to maintain compliance with this regulation or its successor that does not contradict the terms of the Unencumbered Assets Trust Agreement, this Plan or the Confirmation Order.

Section IV.E.1 of the Plan is amended in its entirety to read:

Except as provided in, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Plan, the Confirmation Order, any Final Order or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, the Trusts will exclusively retain and may enforce, and the Debtors expressly reserve and preserve for these purposes, in accordance with sections 1123(a)(5)(B) and 1123(b)(3) of the Bankruptcy Code, any Claims, demands, rights and Causes of Action that the Debtors or their respective Estates may hold against any person or entity, including, without limitation, the Retained Actions set forth in Exhibit IV.E.1 hereto. Accordingly, no preclusion doctrine, including, without limitation, the doctrines of

res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), claim splitting or laches shall apply to them by virtue of or in connection with the confirmation, consummation or effectiveness of the Plan. The Trustees or their respective successors exclusively may pursue such retained Claims, demands, rights or Causes of Action, including, without limitation, the Retained Actions set forth in Exhibit IV.E.1, as appropriate, in accordance with the best interests of the Debtors or their respective successors.

Section IV.E.3.a of the Plan is amended in its entirety to read:

As of the Effective Date, in consideration for, among other things, the obligations of the Debtors under the Plan and other contracts, instruments, releases, agreements or documents to be entered into or delivered in connection with the Plan, (i) each holder of a Claim or Interest that votes in favor of the Plan and (ii) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, each entity that has held, holds or may hold a Claim or Interest or at any time was a creditor or stockholder of any of the Debtors and that does not vote on the Plan or votes against the Plan, in each case will be deemed to forever release, waive and discharge all claims (including Derivative Claims), obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities (other than the right to enforce the Debtors' obligations under the Plan and the contracts, instruments, releases, agreements and documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence taking place on or prior to the Effective Date in any way relating to a Debtor, the Bankruptcy Cases or the Plan that such entity has, had or may have against any director, officer or employee of any Debtor who served after the Petition Date pursuant to the Bankruptcy Court's Order Authorizing the Continued Use of Alvarez & Marsal, Inc. to Provide Crisis Management Services and at the time of such service was a managing director, director or employee of Alvarez & Marsal, Inc. solely for the performance of services by such director, officer or employee after the Petition Date; *provided, however*, that the releases provided by this Section IV.E.3.a shall not apply to the Retained Actions or any claims or causes of action by the United States Securities and Exchange Commission or any other agency of the United States of America. Except as otherwise expressly provided in this Section IV.E.3.a or elsewhere in the Plan, the Intercompany Settlement Agreement or the ING Release, neither the foregoing release nor any other release or transfer set forth in the Plan or the Confirmation Order and no preclusion doctrine, including, without limitation, the doctrine of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial equitable or otherwise), claim splitting or laches, shall bar, preclude or otherwise impair any holder of a Claim from asserting or recovering on claims or causes of action against persons or entities other than the Debtors, including, without limitation, such claims or causes of action that have been or may be asserted in the sections identified as "Actions Commenced by or on Behalf of Noteholders" and "Actions Commenced by Equity Holders of NCFE" on pages 36 and 37 of the Disclosure Statement, regardless of whether those claims or causes of action relate to a Debtor.

Section VII.I of the Plan is amended in its entirety to read:

Except (1) with respect to claims of a Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan or (2) as set forth in Section VII.D of the Plan, each Debtor or Trust or, as instructed by the applicable Debtor or Trust, a Third Party Disbursing Agent may, to the extent such right is available pursuant to section 553 of the Bankruptcy Code or other applicable law, exercise its right to set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim) the claims, rights and causes of action of any nature that the applicable Debtor or Trust may hold against the holder of such Allowed Claim; *provided, however*, that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the applicable Debtor or Trust of any claims, rights and causes of action that the applicable Debtor or Trust may possess against such a Claim holder. Nothing contained herein or elsewhere in the Plan (including, without limitation, Sections IV.B.4, IV.C.4, IV.D.4, IV.E.3 and XI.C.1) shall be deemed to affect the right of any entity to exercise, on or after the Effective Date, by assertion of a counterclaim or otherwise, any right left unaffected by section 553(a) of the Bankruptcy Code to set off a debt owing by such entity to a Debtor (or its assignee or transferee under the Plan) that arose prior to the Petition Date against a Claim of such entity against such Debtor that arose prior to the Petition Date and that has not been disallowed.

Section XI.C.1 of the Plan is amended in its entirety to read:

**C. Injunctions**

1. *Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all entities that have held, currently hold or may hold a claim or other debt or liability that is released, waived, settled or deemed satisfied pursuant to the Plan or an Interest or other right of an equity security holder in the Debtors that is terminated pursuant to the terms of the Plan will be permanently enjoined from taking any of the following actions on account of any such claims, debts, liabilities, Interests or rights against any entity released pursuant to the Plan (unless otherwise agreed by an entity released pursuant to the Plan) and against the Trusts, their respective property and/or the assets of the Estates retained and enforced by the Trusts as the representatives of the Estates appointed for that purpose pursuant to section 1123(b)(3)(B) of the Bankruptcy Code: (a) commencing or continuing in any manner any action or other proceeding, other than to enforce any right pursuant to the Plan to a distribution; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order, other than as permitted pursuant to clause (a) above; (c) creating, perfecting or enforcing any lien or encumbrance; (d) asserting a right of subrogation of any kind against any debt, liability or obligation due to the Trusts or any released entity; (e) asserting a setoff of any kind against any debt, liability or obligation due to any released entity; and (f) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan. Nothing in this Section XI.C.1 shall be deemed, in and of itself, to enjoin or otherwise impair the right or ability of any party to assert any affirmative defense or Defensive Counterclaim to which it is otherwise entitled in any action or proceeding brought against such party by any of the Trusts. Notwithstanding anything to the contrary in this Plan or the Confirmation Order, no party shall be enjoined from taking action to determine the amount, validity or priority of, or to recharacterize or subordinate, any claim or lien of any Debtor in the Providers' respective bankruptcy cases, and the court with jurisdiction over the Providers' bankruptcy cases shall retain full jurisdiction to determine such matters with respect to any such claim or lien of any Debtor.*

Section XI.C.2 of the Plan is deleted in its entirety.

Section XIII.B of the Plan is amended in its entirety to read:

**B. Limitation of Liability**

Subject to the provisos set forth below, the Debtors, the Trusts, the Trustees, the members of the Creditors' Committee, the members and ex officio members of the Subcommittees and their respective directors, officers, employees, predecessors, successors, members, attorneys, accountants, underwriters, investment bankers, financial advisors, appraisers, representatives and agents, acting in such capacity, will neither have nor incur, and are hereby forever released and discharged from, any claims, obligations, suits, judgments, damages, demands, rights, causes of action or liabilities asserted or held by any entity, including, but not limited to, one another or any holder of a Claim or Interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act taken or omitted to be taken in connection with, arising out of or related to their participation in the Debtors' Bankruptcy Cases and in the formulation, preparation, dissemination, implementation, Confirmation or consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection with the Plan; *provided, however*, that this Section XIII.B shall not apply to any director, officer or employee of the Debtors other than any such director, officer or employee who served in such capacity after the Petition Date pursuant to the Bankruptcy Court's Order Authorizing the Continued Use of Alvarez & Marsal, Inc. to Provide Crisis Management Services and at the time of such service was a managing director, director or employee of Alvarez & Marsal, Inc; and *provided further*, that the foregoing provisions of this Section XIII.B will have no effect on: (1) the liability of any person or entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan; (2) the liability of any person or entity that would otherwise result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct; or (3) the liability of any person or entity resulting from any act or omission occurring prior to the Petition Date. Notwithstanding any other provision of the Plan, no holder of a Claim or Interest, or other party in interest, none of their respective agents, employees, representatives, financial

advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right of action against the parties identified in this Section XIII.B for any act or omission in connection with, relating to or arising out of the Debtors' Bankruptcy Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under this Plan, except for their gross negligence or willful misconduct.

Dated: April 16, 2004

Respectfully submitted,

NATIONAL CENTURY FINANCIAL ENTERPRISES,  
INC. (for itself and on behalf of its Debtor Subsidiaries)

By: \_\_\_\_\_  
Name: David J. Coles  
Title: President, Secretary and Treasurer

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ATTORNEYS FOR DEBTORS AND  
DEBTORS IN POSSESSION

**EXHIBIT C**

**CONFIRMATION NOTICE**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re: : Chapter 11  
: :  
NATIONAL CENTURY FINANCIAL : Jointly Administered  
ENTERPRISES, INC., an Ohio : Case No. 02-65235  
corporation, et al., : :  
: Judge Calhoun  
Debtors. :

**NOTICE OF ENTRY OF ORDER CONFIRMING THE FOURTH AMENDED  
JOINT PLAN OF LIQUIDATION OF NATIONAL CENTURY FINANCIAL  
ENTERPRISES, INC. AND ITS DEBTOR SUBSIDIARIES, AS MODIFIED**

PLEASE TAKE NOTICE THAT:

1. **Confirmation of the Plan.** On April [\_\_\_], 2004, the United States Bankruptcy Court for the Southern District of Ohio entered an order (the "Confirmation Order") confirming the Fourth Amended Joint Plan of Liquidation of National Century Financial Enterprises, Inc., and Its Debtor Subsidiaries, dated January 13, 2004, as modified (the "Plan"), in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the "Debtors"). Capitalized terms not otherwise defined in this Notice have the meanings given to them in the Plan or the Confirmation Order. Copies of the Confirmation Order and the Plan (including the Modifications thereto) are available on the Debtors' web site at [www.ncfe.com](http://www.ncfe.com).

2. **Injunctions.**

*a. Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all entities that have held, currently hold or may hold a claim or other debt or liability that is released, waived, settled or deemed satisfied pursuant to the Plan or an Interest or other right of an equity security holder in the Debtors that is terminated pursuant to the terms of the Plan will be permanently enjoined from taking any of the following actions on account of any such claims, debts, liabilities, Interests or rights against any entity released pursuant to the Plan (unless otherwise agreed by an entity released pursuant to the Plan) and against the Trusts, their respective property and/or the assets of the Estates retained and enforced by the Trusts as the representatives of the Estates appointed for that purpose pursuant to section 1123(b)(3)(B) of the Bankruptcy Code: (i) commencing or continuing in any manner any action or other proceeding, other than to enforce any right pursuant to the Plan to a distribution; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order, other than as permitted pursuant to clause (i) above; (iii) creating, perfecting or enforcing any lien or encumbrance; (iv) asserting a right of subrogation of any kind against any debt, liability or obligation due to the Trusts or any released entity; (v) asserting a setoff of any kind against any debt, liability or obligation due to any released entity; and (vi) commencing or continuing any action, in any manner, in any*

*place that does not comply with or is inconsistent with the provisions of the Plan. Nothing in Section XI.C.1 of the Plan or Section K.2.b of the Confirmation Order shall be deemed, in and of itself, to enjoin or otherwise impair the right or ability of any party to assert any affirmative defense or Defensive Counterclaim to which it is otherwise entitled in any action or proceeding brought against such party by any of the Trusts. Notwithstanding anything to the contrary in the Plan or the Confirmation Order, no party shall be enjoined from taking action to determine the amount, validity or priority of, or to recharacterize or subordinate, any claim or lien of any Debtor in the Providers' respective bankruptcy cases, and the court with jurisdiction over the Providers' bankruptcy cases shall retain full jurisdiction to determine such matters with respect to any such claim or lien of any Debtor.*

b. By accepting distributions pursuant to the Plan, each holder of an Allowed Claim receiving distributions pursuant to the Plan will be deemed to have specifically consented to the injunctions set forth in the Plan and the Confirmation Order.

**3. Termination of Subordination Rights.** Except as expressly set forth in the Plan, the classification and manner of satisfying all Claims and Interests under the Plan does not take into consideration subordination rights, and nothing in the Plan or Confirmation Order shall affect any subordination rights that a holder of a Claim may have with respect to any distribution to be made pursuant to the Plan, whether arising under general principles of equitable subordination, contract, section 510(c) of the Bankruptcy Code or otherwise.

#### **4. Bar Dates.**

a. Except as otherwise provided in Section III.A.1.d.ii of the Plan or Section C.1.b of the Confirmation Order, unless previously Filed, requests for payment of Administrative Claims must be Filed and served on the Debtors or the applicable Trust, no later than 60 days after the Effective Date. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the applicable Bar Date will be forever barred from asserting such Administrative Claims against the Debtors or the Trusts or their respective property and such Administrative Claims will be deemed discharged as of the Effective Date. Objections to such requests must be Filed and served on the Debtors or the applicable Trust and the requesting party by the later of (i) 120 days after the Effective Date or (ii) 60 days after the Filing of the applicable request for payment of Administrative Claims.

b. Professionals or other entities asserting a Fee Claim for services rendered before the Effective Date must File and serve on the Debtors or the applicable Trust and such other entities as may be designated by the Bankruptcy Rules, the Confirmation Order, the Fee Order or other order of the Bankruptcy Court an application for final allowance of such Fee Claim no later than 60 days after the Effective Date; *provided, however*, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date, without further Bankruptcy Court review or approval, pursuant to the Ordinary Course Professionals Order. Objections to any Fee Claim must be Filed and served on the Debtors or the applicable Trust and the requesting party no later than 30 days after the Filing of the applicable request for payment of the Fee Claim.

c. Holders of Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business, including Administrative Trade Claims, Administrative Claims of governmental units for Taxes (including Tax audit Claims arising after the Petition Date) and Administrative Claims arising from those contracts and leases of the kind described in Section V.F of the Plan, will not be required to File or serve any request for payment of such Administrative Claims. Such Administrative Claims will be satisfied pursuant to Section III.A.1.c of the Plan.

d. If the rejection of an Executory Contract or Unexpired Lease pursuant to Section V.C of the Plan gives rise to a Claim (including any Claims arising from those indemnification obligations described in Section V.E.1 of the Plan) by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtors, the Trusts, their respective successors or their respective properties unless a proof of Claim is filed and served on the Debtors and the Trustee, pursuant to the procedures specified in the Confirmation Order or another order of the Bankruptcy Court, no later than 60 days after the Effective Date.

e. For purposes of Filing requests for payment of Administrative Claims, applications for allowance of Fee Claims and Claims for rejection damages, the address of the Bankruptcy Court is 170 North High Street, Columbus, Ohio 43215.

**5. Effective Date.** The Effective Date of the Plan occurred on \_\_\_\_\_, 2004.

BY ORDER OF THE COURT

Dated: May \_\_, 2004

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