RETURN DATE: DECEMBER 15, 2020

WATERBURY HOSPITAL FOUNDATION, INC.	:	SUPERIOR COURT
	:	
	:	JUDICIAL DISTRICT OF WATERBURY
v.	:	
	:	
NAUGATUCK PROBATE COURT, ET AL		NOVEMBER 20, 2020

COMPLAINT

APPEAL FROM PROBATE

1. On December 27, 2019, Bank of America, N.A., in its capacity as Trustee of the trust established under Article SEVENTH of the Will of Abbie C. Hopkins dated April 20, 1938 (the "Trust" and the "Will", respectively), filed a Petition for Construction of Trust in the Naugatuck Probate Court, District No. 21 (the "Petition"). *See* Exhibit A.

2. Paragraph (b) of Section (C) of Article SEVENTH of the Will directs the Trustee to pay

> To The Waterbury Hospital, a corporation of said Waterbury, said remainder of the net income from said fund and from the increment thereto for the purpose of providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck aforesaid, with the understanding, however, that the surplus of said income, if any, may be used by the Waterbury Hospital aforesaid for its general use and purposes.

3. Specifically, the Trustee sought the Court's construction of said paragraph (b) of Section C of Article SEVENTH of the Will to determine whether it would be consistent with the Testatrix's intent as expressed in the Will to distribute the Trust's accumulated and future income to Legacy GWHN.

4. "Legacy GWHN" is the legal entity charged with winding down the affairs of Greater Waterbury Health Network, Inc. and its affiliates (collectively "GWHN") after the sale of substantially all of its assets (including those of Waterbury Hospital) to a for-profit hospital network, Prospect Medical Holdings, Inc., which sale closed on October 1, 2016. Accordingly, Legacy

GWHN does not operate as a hospital nor does it provide accommodations or medical care and attention.

5. Waterbury Hospital Foundation, Inc., is an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and was initially created to receive the charitable assets of Legacy GWHN at the end of its wind-down period pursuant to Connecticut General Statutes Sec. 19a-486c et. seq. To date, Waterbury Hospital Foundation, Inc., has already received over $11,000,000 in restricted charitable assets, and was subsequently certified to receive the final net proceeds of the sale of GWHN's assets to Prospect Medical Holdings, Inc. (including unrestricted charitable assets) following the wind-down period. The purpose of Waterbury Hospital Foundation, Inc., is to use those funds to continue the tax-exempt and non-profit mission of Waterbury Hospital by addressing the health care needs of the citizens residing in Waterbury Hospital's former service area (the "Community") by making grants to support or conduct community health needs and assessments, to educate and promote access to healthcare, and to encourage and support efforts to improve the overall health of the citizens residing in the Community.

6. Plaintiff relies upon and stipulates to the additional background information provided in Section I of the Petition and hereby incorporates the same herein by reference.

7. On February 10, 2020, Connecticut Community Foundation, Inc. and Waterbury Hospital Foundation, Inc. filed a joint position statement indicating that because Legacy GWHN was not operating to provide accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck, it was incapable of fulfilling the Testatrix's charitable intent. Without intervention by the Court under the doctrine of cy pres/approximation and a resulting distribution of the accumulated and future net income of the Trust to the Waterbury Hospital Foundation, Inc., the primary charitable purpose of the Testatrix would be frustrated and impossible to honor. See Exhibit B.

8. On February 10, 2020, William Tong, Attorney General of the State of Connecticut (the "Attorney General"), also submitted a position statement indicating that Legacy GWHN was incapable of fulfilling the Testatrix's charitable intent and that the Court should use the equitable doctrine of deviation to fix the current impossibility problem. Specifically, the Attorney General believes that it would be appropriate for the independent foundation that was established by Legacy GWHN, Waterbury Hospital Foundation, Inc., to receive and administer the income in lieu of Waterbury Hospital. See Exhibit C.

9. On February 11, 2020, a brief hearing was held at the Naugatuck Probate Court before Hon. Peter E. Mariano. The hearing was not conducted on the record in accordance with Conn. Gen. Stat. §§ 51-72 and 51-73.

10. On February 12, 2020, Legacy GWHN submitted a position statement in support of the position of the Attorney General. See Exhibit D.

11. On February 11, 2020, the Probate Court issued a decree (the "Decree"), which was mailed to the interested parties or delivered by eService on October 23, 2020. See Exhibit E.

12. As set forth in the Decree, the Probate Court concluded that the intent of the Testatrix permits the distribution of trust income during the wind down period to Legacy GWHN for payment of debts and expenses of GWHN, that were incurred while it continued to operate as a hospital.

13. Waterbury Hospital Foundation, Inc. is aggrieved by the Decree and appeals from the same, for the following reasons:

    a. The Probate Court failed to:

        i. Distinguish the Testatrix's primary charitable intent of providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck from the secondary charitable intent of allowing surplus income (if any) to be paid to the Waterbury Hospital for its general use and purposes;

        ii. Address the impossibility of fulfilling said primary charitable intent and apply the doctrines of construction, cy pres, approximation, and/or equitable deviation; and

        iii. Address the payment of future income at the end of Legacy GWHN's wind-down period.

WHEREFORE, pursuant to Conn. Gen. Stat. § 45a-186, the Plaintiff appeals to this Court from the Decree of the Probate Court, and seeks the following relief:

1. A hearing de novo on Defendant Bank of America, N.A.'s Petition for Construction, including a full opportunity to brief and argue the proper distribution of Waterbury Hospital's share of the Trust's income following the sale by GWHN of its assets to Prospect Medical Holdings, Inc.;

2. An order overturning the Decree and providing for the distribution and payment of the Trust's accumulated and future net income to the

Waterbury Hospital Foundation, Inc., by applying the doctrines of construction, cy pres, approximation, and/or equitable deviation in furtherance of the Testatrix's primary charitable intent as expressed in the Will; and

3. Such other or further relief as may properly be within the jurisdiction of this Court sitting as court of probate with respect to the Decree appealed from.

Pursuant to Conn. Gen. Stat. § 45a-186(i)(1) and Conn. Prac. Bk. § 19-3A, Plaintiff demands a hearing of this appeal by the Superior Court.

Respectfully submitted,

WATERBURY HOSPITAL FOUNDATION, INC.

By _____

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EXHIBIT A

MediaSec #0032 Page 06273

RECEIVED
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NAUGATUCK PROBATE COURT

TO: Naugatuck Probate Court, District No. 21

RE: Abbie C. Hopkins Trust u/w dtd 04/20/1938 f/b/o Waterbury Hospital, Bank of America, N.A., Trustee (the "Trust")

PETITION FOR CONSTRUCTION OF TRUST

This petition seeks the Court's direction on the interpretation of paragraph (b) of Section C of Article SEVENTH of the Last Will and Testament of Abbie C. Hopkins dated April 20, 1938 (the "**Will**"), to determine the proper distribution of Waterbury Hospital's share of the Trust's income following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("**GWHN**") of its assets to Prospect Medical Holdings, Inc. ("**PMH**").

I. Background

Bank of America, N.A., trustee of the Trust (the "**Trustee**"), represents that:

1. Following the death of Abbie C. Hopkins (the "**Testatrix**"), the Will was duly admitted to probate by this Court. (*See* Exhibit A for a copy of the Will.)

2. The Trust was established under Article SEVENTH of the Will, which disposed of the residue of the Testatrix's estate by setting apart "all the rest, residue and remainder" of the Testatrix's property to be held as "The Hopkins Memorial" fund. Section A of Article SEVENTH provided for a number of fixed annual payments to be made from the net income of the fund to certain named individuals for their respective lifetimes. Section B of Article SEVENTH provides for a number of fixed annual payments to certain charitable organizations in perpetuity. Finally, Section C of Article SEVENTH provides for the disposition of the balance of the net income of the Trust as follows:

> After the payment of the annuities as herein before provided for, I direct that the remainder of said net income be added to the principal of said fund, and invested and reinvested for a period of time not exceeding twenty years after my decease.
>
> (a) If during said period of twenty years, the Governing Board of the NAUGATUCK HOSPITAL CORPORATION, a corporation of said Naugatuck, (Hereinafter referred to as "Naugatuck Hospital"), concludes that the available funds of the Naugatuck Hospital, together with the total of the income thus added to the principal of this fund, are sufficient, in its opinion, to warrant the building and maintenance of a hospital in said Naugatuck, and notifies the Trustee to that effect, and requests, in writing, that a sum of money equal to the income thus added to the principal of this fund be paid to the Naugatuck Hospital for said purpose, the Trustee is hereby authorized and directed to pay the Naugatuck Hospital for all such income theretofore added to the principal of this fund, which shall be used

as said Governing Board may deem wise and for the best interests of the Naugatuck Hospital, and thereafter the Trustee shall pay quarterly, in perpetuity, to the Naugatuck Hospital said remainder of the net income upon said principal sum for the general uses and purposes of such hospital.

(b) If, however, at the termination of said twenty-year period, no hospital has been built by the Naugatuck Hospital in said Naugatuck, I direct the Trustee to continue to hold and invest and reinvest said fund and the increment thereto, as aforesaid, until a hospital has been erected in said Naugatuck by the Naugatuck Hospital, and meantime to pay to THE WATERBURY HOSPITAL, a corporation of said Waterbury, said remainder of the net income from said fund and from the increment thereto *for the purpose of providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck aforesaid, with the understanding, however, that the surplus of said income, if any, may be used by The Waterbury Hospital aforesaid for its general uses and purposes.*

(c) If, at some later period, a hospital is erected in said Naugatuck by the Naugatuck Hospital, I direct the Trustee to pay said remainder of the net income from said fund and from the increment thereto, in perpetuity, to the NAUGATUCK HOSPITAL, to be used for the general purposes of said institution.

(Emphasis added.)

3. Article SEVENTH of the Will names The Colonial Trust Company as original trustee. The Trustee is the successor to The Colonial Trust Company.

4. The following organizations are currently receiving annuities pursuant to Section B of Article SEVENTH of the Will (the "**Annuities**"): The Congregational Church of Naugatuck, the American National Red Cross, the Borough of Naugatuck, the Masonic Charity Foundation of Connecticut, St. Michael's Parish of the Protestant Episcopal Church, the Young Men's Christian Association, of Naugatuck, Connecticut, and Gaylord Hospital (collectively, the "**Charitable Organizations**").[1]

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[1] The Gaylord Hospital is successor to the New Haven County Anti-Tuberculosis Association. The last unnumbered paragraph of Section B of Article SEVENTH provides for the following contingency language with respect to the charitable organizations named under Section B to receive the Annuities:

> If the legal existence of any of the beneficiaries hereinbefore provided for shall be terminated, or if any of said beneficiaries shall fail to function for its present purposes to the satisfaction of the Trustee, or if for any reason any of the payments provided for cannot be made to any of such beneficiaries for the purposes and as hereinbefore provided, I direct the Trustee, upon the happening of any such contingency, to terminate said payment.

However, as previously noted, there is no comparable language in Section C of Article SEVENTH.

5. To the best of the Trustee's information and belief, neither the Naugatuck Hospital Corporation referenced in the Will nor any successor to such organization are in existence today. In addition, a hospital has not been built in Naugatuck, Connecticut, at any point during the twenty-year period after the Testatrix's decease or at any time thereafter. Therefore, there are no viable contingent beneficiaries identified in the Will.

6. The value of the Trust as of December 20, 2019 was $6,467,295.67.

7. GWHN is a non-stock, 501(c)(3) charitable corporation and is the parent company of the Waterbury Hospital.

8. Substantially all the assets of GWHN, including the Waterbury Hospital, have been sold to PMH, a for-profit entity headquartered in California, following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("**OHCA**") and the Office of the Attorney General ("**OAG**") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes § 19a-639a and § 19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "**Sale**"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "**OHCA Decision**"). (*See* Exhibit B for a copy of the OHCA Decision.)

9. In addition, the Nonprofit Hospital Conversion Act, Connecticut General Statutes § 19a-486 et seq., (the "**Conversion Act**") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes § 19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "**Final Decision**"). (*See* Exhibit C for a copy of the Final Decision.)

10. The Conversion Act requires that

> the net asset value of the nonprofit hospital be transferred to "one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care services." Conn. Gen. Stat. § 19a-486c(8)(A).

(*See* Exhibit C, p.40.)

In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "**Independent Foundation**"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act. (*See* Exhibit C, p. 41.)

11. The Sale closed on October 1, 2016 (the "**Closing**").

12. GWHN has ceased hospital operations and the provision of any hospital services as of the Closing, but continues to exist as a legal entity ("**Legacy GWHN**") charged with winding down its affairs following the Sale as provided in the Final Decision. In addition, Waterbury Hospital's license as a general hospital with the State of Connecticut became inactive as of the Sale, and a new license for the hospital acquired by PMH was issued following the Sale.

13. The Trust is classified as a private foundation under Internal Revenue Code ("**Code**") § 509, and is required by the Internal Revenue Service ("**IRS**") regulations to make a minimum distribution each year for charitable purposes. However, the Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "**Accumulated Income**"). The Accumulated Income on hand as of December 20, 2019 was $785,278.36.

14. On February 16, 2017, a Certificate of Incorporation for the Independent Foundation was filed with the Connecticut Secretary of State, naming Attorney Ann Zucker, of Carmody Torrance Sandak and Hennessey, as the registered agent for service of process. The name of the Independent Foundation is "Waterbury Hospital Foundation, Inc."

15. By letter dated April 5, 2019, the OAG approved certain changes to the Certificate of Incorporation and Bylaws of the Independent Foundation.

16. The Independent Foundation filed its Form 1023 exemption application with the Internal Revenue Service on April 22, 2019, and received a determination letter, dated December 4, 2019 (the "**Determination Letter**"), confirming its exemption from federal income taxation under Code §501(c)(3) as of the date of its incorporation. (*See* Exhibit D for a copy of the Determination Letter.)

17. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale. (*See* Exhibit B, p.9.)

18. The Final Decision provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation" in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully

expendable funds that still have money in them to the Independent Foundation (the "**Superior Court Action**"). (*See* Exhibit C, pp. 9-10.)

19. The Superior Court Action has not yet been filed, but third party trusts, such as the Trust, will not be the subject of the Superior Court Action, and the charitable funds that are to be the subject of the Superior Court Action are not at issue in the present matter.

20. The Final Decision identifies the Trust as a "third party trust with use restrictions." (*See* Exhibit C, p. 24.) As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." (*See* Exhibit C, pp. 10, 24, 48.)

21. The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust. To date, the Trustee has filed construction petitions for nine of these trusts to determine the appropriate recipient of each trust's income following the Sale.[2] In contrast to the terms of the Trust, the use of income was unrestricted in each of the nine trusts for which petitions have been filed.

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[2] Petitions were filed for the following nine trusts:

a. Jacob Keeling Trust u/w dated June 30, 1952 f/b/o Waterbury Hospital, filed with the Naugatuck Probate Court on December 30, 2016 (the "**J. Keeling**" matter);

b. Frank Keeling Trust u/w dated December 15, 1954 f/b/o Waterbury Hospital, filed with the Naugatuck Probate Court on December 30, 2016 (the "**F. Keeling**" matter);

c. Henry H. Peck Trust u/w dated June 12, 1918 f/b/o Waterbury Hospital, filed with the Waterbury Probate Court on December 30, 2017 (the "**Peck**" matter);

d. Edith F. Poole Trust u/w dated April 11, 1928 f/b/o Waterbury Hospital and First Congregational Church, filed with the Waterbury Probate Court on January 9, 2017 (the "**Poole**" matter);

e. Charles M. Hellmann Trust u/w dated June 13, 1955 f/b/o Waterbury Hospital and St. Mary's Hospital, filed with the Meriden Probate Court on January 25, 2017 (the "**C. Hellmann**" matter);

f. Rhoda M. Hellmann Trust u/w dated November 11, 1969, as amended on June 24, 1971, May 21, 1980 and May 23, 1980, f/b/o Waterbury Hospital and St. Mary's Hospital, filed with the Meriden Probate Court on January 25, 2017 (the "**R. Hellmann**" matter);

g. Almon B. Dayton Trust u/w dated August 23, 1940 f/b/o Waterbury Hospital et al., filed with the Waterbury Probate Court on November 28, 2017 (the "**Dayton**" matter);

h. John P. Elton Trust u/w dated November 29, 1946, as amended by Codicil dated June 26, 1947, f/b/o Waterbury Hospital and St. John's Parish, filed with the Waterbury Probate Court on November 28, 2017 (the "**Elton**" matter); and

i. I. Kent Fulton Trust u/w dated October 2, 1939, as amended by Codicil dated December 15, 1939, filed with the Litchfield Hills Probate Court on November 28, 2017 (the "**Fulton**" matter").

The J. Keeling and F. Keeling matters were originally scheduled for a hearing before this Court on January 26, 2017, which was continued to March 7, 2017. The continued hearing on the J. Keeling and F. Keeling matters was ultimately heard as part of the consolidated hearing described below.

22. The Trustee delayed filing its construction petition to enable the Independent Foundation to have an independent voice in the proceedings and to obtain its charitable status with the IRS.

23. Petitions for the remaining four of the thirteen third party trusts for which the Trustee serves as trustee, including the Trust, will be filed with this Court and the Waterbury Probate Court.[3] Three of these remaining trusts, including the Trust, involve testator intent to restrict the use of trust income for a particular purpose.[4] In addition, the value of two of the remaining trusts is such that the Trustee believes that continued administration of the trusts is unwarranted in view of their size, and intends to seek small charitable trust terminations.[5]

24. The Final Decision provides for the disposition of GWHN's charitable endowment funds (referred to in the Final Decision as the "charitable gift assets," "charitable assets" and "charitable gift funds")[6] during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "**Wind Down Period**") as follows: "The charitable assets of GWHN, which have been held in trust for the public, will continue to be held by GWHN after

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After a consolidated hearing on April 4, 2017 before Judge Brian T. Mahon of the Meriden Probate Court on the J. Keeling, F. Keeling, Peck, Poole, C. Hellmann and R. Hellmann matters, decrees were entered on July 26, 2017. (*See* Exhibits E, F, G, H, I and J for copies of the six decrees.)

On August 25, 2017, the Attorney General filed motions for articulation with respect to Judge Mahon's decrees in the J. Keeling, F. Keeling, Peck and Poole matters (*See* Exhibits K, L, M and N for copies of the four motions for articulation), and Judge Mahon entered findings with respect to the Attorney General's motions on September 6, 2017. (*See* Exhibits O, P, Q and R for copies of Judge Mahon's findings).

The Attorney General did not file motions for articulation with respect to the decrees in the R. Hellmann and C. Hellmann matters.

After a consolidated hearing on December 19, 2017 before Judge Mahon on the Dayton, Elton and Fulton matters, decrees were entered for the Elton and Dayton matters on December 19, 2017 and for the Fulton matter on January 29, 2018. On January 26, 2018 and February 13, 2018, with the consent of all interested parties, the Trustee filed petitions for modification of the Elton and Fulton decrees, respectively, to correct certain paragraphs therein, and corrected decrees for the Elton and Fulton matters were entered on January 29, 2018 and February 16, 2018, respectively. (*See* Exhibit S for a copy of the Dayton decree and Exhibits T and U for copies of the petitions for modification and corrected decrees for the Elton and Fulton matters, respectively.)

[3] Petitions remain to be filed for the following three third party trusts in addition to the Trust:

a. Oscar L. Warner Trust u/w dated February 29, 1932 f/b/o Waterbury Hospital, et al. (the "**Warner**" matter);

b. Harriet S. Anderson Trust u/a dated September 21, 1943 f/b/o Waterbury Hospital (the "**Anderson**" matter); and

c. W. Easton F. Smith Trust u/w dated May 31, 1944 f/b/o Waterbury Hospital (the "**Smith**" matter).

[4] In addition to the Trust, the Warner and Anderson trusts restrict the use of income.

[5] The Anderson and Smith matters will involve small charitable trust termination petitions.

6 These funds are to be the subject of the Superior Court Action.

the closing…, and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities." (*See* Exhibit C, p.7.)

25. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area." (*See* Exhibit C, p.7.)

26. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing." (*See* Exhibit C, p. 9): "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community." (*See* Exhibit C, p.7.)

27. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." (*See* Exhibit C, pp.8-9.)

28. The Trustee understands that Legacy GWHN has significant pre-closing liabilities, and that distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period may be largely or entirely applied to the payment of creditors. The Trustee also understands that if this Court determines that Legacy GWHN is the appropriate recipient of the Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "**Income**"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." The Trust's income following the conclusion of the Wind Down Period will hereinafter be referred to as the "**Future Income**."

29. The Trustee is uncertain as to whether Legacy GWHN is or is not the proper recipient of the Income following the Sale.

30. The Trustee has requested clarification regarding the historic breakdown of the use of funds received from the Trust for "providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck, Connecticut"

and surplus used for general hospital purposes. However, Counsel for Legacy GWHN was unable to obtain this information.

31. Legacy GWHN no longer offers hospital services, and is therefore unable to use the Income to provide accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck, Connecticut. Therefore, it is the Trustee's understanding that if the Court were to order the distribution of the Income to Legacy GWHN, all such funds would be considered "surplus."

32. The Trustee requests a construction of the Will to determine whether it would be consistent with the Testatrix's intent to distribute the Income to Legacy GWHN. If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will distribute the Income to Legacy GWHN and file a subsequent petition to address the Future Income following the conclusion of the Wind Down Period. If instead this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee requests the Court's application of the doctrine of cy pres to determine the proper recipient of the Income and the Future Income so as to most closely approximate the Testatrix's intent under the circumstances.

33. A list of interested parties is attached as Exhibit V.

II. Jurisdiction

This Court has the authority to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes § 45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes § 45a-98(a)(5). This Court's guidance is necessary to administer the Trust under the Will in accordance with the Testatrix's intent.

III. Issue

Paragraph (b) of Section C of Article SEVENTH of the Will directs the Trustee to pay

> to The Waterbury Hospital, a corporation of said Waterbury, said remainder of the net income from said fund and from the increment thereto for the purpose of providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck aforesaid, with the understanding, however, that the surplus of said income, if any, may be used by The Waterbury Hospital aforesaid for its general uses and purposes.

While Legacy GWHN continues to exist as a legal entity during the Wind Down Period, it has ceased its operations as a hospital as of the Sale. It would therefore be impossible for Legacy GWHN to use the Income to provide accommodations and medical care and attention for the poor and needy residents of Naugatuck consistent with the Testatrix's primary intent as expressed in the Will. If Income were to be distributed to Legacy GWHN, it would all be considered "surplus" to be used "by The Waterbury Hospital . . . for its general uses and

purposes." It is unclear to the Trustee whether the Testatrix would have intended for the Income to be distributed to Legacy GWHN under these circumstances.

Accordingly, the Trustee respectfully requests that the Court construe paragraph (b) of Section C of Article SEVENTH of the Testatrix's Will to determine whether the Testatrix intended for the Income to be distributed to Waterbury Hospital in the event that it ceased to operate as a hospital, but continued to maintain a legal existence.

If this Court determines that paying the Income to Legacy GWHN under these circumstances is consistent with the Testatrix's intent, the Trustee will distribute the Income to Legacy GWHN and will file a subsequent petition with this Court to address the appropriate recipient of the Future Income following the Wind Down Period.

If, however, this Court instead determines that distributing the Income to Legacy GWHN is inconsistent with the Testatrix's intent, the Trustee respectfully requests the Court's guidance and the application of the doctrine of cy pres or approximation to determine the appropriate recipient of the Income and Future Income.

IV. Discussion

a. Construction

Connecticut law governing the construction of wills is well established:

> "The cardinal rule to be followed in constructing a will is to find and effectuate the intent of the Testatrix. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written ... To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction.' (Citations omitted.) *Dei Cas v. Mayfield*, 199 Conn. 569, 572 (1986). The court must 'look first to the precise wording employed by the testat[or] in h[is] will ... for the meaning of the words as used by the testat[or] is the equivalent of h[is] legal intention-the intention that the law recognizes as dispositive.' (Citations omitted.) *Canaan National Bank v. Peters*. 217 Conn. 330, 335-36 (1991).

Blumenthal v. Sharon Hosp., Inc., No. CV0200885375S, 2003 WL 21384569, at *24 (Conn. Super. Ct. June 3, 2003).

Pursuant to paragraph (b) of Section C of Article SEVENTH of the Will, after the payment of certain Annuities, the balance of the Trust's income is to be paid to the Waterbury Hospital "for the purpose of providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck, Connecticut, with the understanding, however, that the surplus of said income, if any, may be used by The Waterbury Hospital aforesaid for its general uses and purposes." By restricting the use of the Waterbury Hospital's

share of the Trust's income to a specific purpose but providing that any surplus income may be used for general hospital purposes, the Testatrix set out her primary intent, but anticipated that there may be additional Trust income left over after meeting this intent, on which she did not place any further restrictions. However, it is unclear whether in naming Waterbury Hospital as an income beneficiary of the Trust, the Testatrix intended to benefit Waterbury Hospital regardless of whether it was actively engaged in the provision of hospital services or whether the Testatrix intended the ongoing provision of hospital services (and perhaps the use of some portion of the Trust's income to meet her primary intent) to be a prerequisite to Waterbury Hospital's receipt of the Trust's income.

The Will is also silent with respect to the appropriate recipient of the Waterbury Hospital's share of the Trust's income in the event that Waterbury Hospital were to be acquired by another organization or go out of existence. Paragraph (c) of Section C of Article SEVENTH provides that Waterbury Hospital's interest is subject to divestment if a hospital is built in Naugatuck by the Naugatuck Hospital Corporation, but this provision is unenforceable given that neither the Naugatuck Hospital Corporation nor any successor to such organization is in existence. In addition, no hospital has been built in Naugatuck, and there is not one there today. Therefore, should the Court determine that it would be inconsistent with the Testatrix's intent to distribute the Income to Legacy GWHN, the Court's application of cy pres would be necessary to identify a substitute beneficiary to which the Income and Future Income could be distributed so as to most closely approximate the Testatrix's intent.

The Trustee's records contain no additional evidence of the Testatrix's intent that supplements or informs the construction of the Will with respect to the disposition of the Income.

The conclusions reached with respect to the J. Keeling, F. Keeling, Peck, Poole, C, Hellmann, R. Hellmann, Dayton, Elton and Fulton matters (heard by Judge Mahon, of the Meriden Probate Court, as part of two consolidated hearings) may be informative. (*See* Exhibits E through U for copies of the decrees and related filings.) Similar construction issues were raised by the Trustee as trustee in said matters in the context of unrestricted income language and a beneficiary implicated by the Sale. In each case, it was held that the trust's income should be distributed to Legacy GWHN during the Wind Down Period. In some cases, the Trustee indicated it would file subsequent petitions following the conclusion of the Wind Down Period. Where a contingent beneficiary is identified, the Trustee indicated that it would distribute the income of the trust to that contingent beneficiary following the Wind Down Period. In contrast to the prior matters, the Trust contains very specific income language. Therefore, the Trustee seeks this Court's construction to determine the Testatrix's intent under the circumstances.

As noted in the context of the other matters referenced above, two recent Connecticut cases may also be informative: *In re Winsted Memorial Hospital*, 249 B.R. 588 (Bankr. D. Conn. 2000), a decision of the United States Bankruptcy Court for the District of Connecticut, and *Blumenthal v. Sharon Hospital, Inc.*, No. CV0200885375S, 2003 WL 21384569 (Conn. Super. Ct. June 3, 2003), an unreported Connecticut Superior Court case.

In the context of the matters referenced above, the OAG noted a factual distinction between the Sale and the hospital transaction involved in the *Blumenthal* case – specifically, that

the hospital in the *Blumenthal* case was able to pay off all of its existing liabilities with proceeds from its sale and had a surplus of funds remaining, whereas, here, the Sale did not yield sufficient proceeds for Legacy GWHN to extinguish its obligations. The impact of this distinction on the Testatrix's intent under the circumstances is unclear to the Trustee.

As with the other matters, here, the Trustee does not take a position as to the precedential implications of either the *Blumenthal* or the *Winsted* cases on the issue before this Court.

i. *In re Winsted Mem'l Hosp.*

In *In re Winsted Memorial Hospital*, the United States Bankruptcy Court for the District of Connecticut examined whether the hospital's interests in certain charitable gifts qualified as property of the hospital's Chapter 7 bankruptcy estate although the hospital had ceased to operate as a hospital prior to the filing of its bankruptcy petition. The court noted that "[t]he Hospital, while it has ceased operations and filed a bankruptcy petition, has neither dissolved its corporate existence nor finished winding down its affairs." 249 B.R. at 594. The bankruptcy court decided that "[w]hether the Trustee's use of the gifts at issue to pay debts incurred by the Hospital when it was still providing patient services is a valid charitable use depends on whether, in the absence of the bankruptcy filing, the Hospital would have been permitted to do so." *Id.* It concluded as follows:

> There is no Connecticut case law on this issue, but the court is persuaded by, and will follow, the decisions in several other states to the effect that a charitable organization which retains its corporate existence may, even though it has ceased operating, continue to receive and use charitable gifts, provided it applies such gifts in accordance with the intent of the donor.

Id.

The third-party trusts at issue in *Winsted* each "permit[ted] the Hospital to use the funds distributed to it for its general expenses or general charitable purposes, without further restriction." *Id.* at 592-93.

The court held that the hospital's income interests in the third-party trusts that vested prior to (or within 180 days following) the hospital's 1996 bankruptcy filing qualified as property of the hospital's bankruptcy estate and could be used to satisfy the hospital's pre-bankruptcy obligations incurred in furtherance of the relevant charitable purpose.

ii. *Blumenthal v. Sharon Hosp., Inc.*

Blumenthal v. Sharon Hospital, Inc. addressed the sale of the assets of a nonprofit hospital to a for-profit hospital and was "the first [case] to apply the [Conversion Act]." 2003 WL 21384569, at *1.

The court in *Blumenthal* addressed the payment of trust income to a hospital which had ceased to operate but continued to maintain a legal existence. The court in *Blumenthal* found

that "[w]ith the cessation of nonprofit healthcare services associated with the sale, the nonprofit Sharon Hospital has for all practical purposes ceased to exist." *Blumenthal*, 2003 WL 21384569, at *25.

The court's decision applied to Sharon Hospital's charitable endowment funds, but also addressed a number of third-party trusts that benefited Sharon Hospital. "Pursuant to the sale and the Attorney General's analysis of close to two hundred gift instruments held by the hospital, certain gifts were determined to require either construction or approximation by the court." *Id.*, at *21. These included the third-party trusts.

The court determined that a number of the third-party trusts at issue required the application of cy pres or approximation because they did not name alternative charitable beneficiaries in the event that Sharon Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist, but contained a reverter or giftover provision, which put the charitable nature of the trust at risk. The court held with respect to one such trust as follows:

> As a result of the sale of the nonprofit Sharon Hospital, Inc., to Essent CT, the nonprofit Sharon Hospital has ceased to exist, constituting a change of circumstances such that it has become impossible, impracticable or illegal for the trustee to continue to distribute the annual income to Sharon Hospital . . . In accordance with the doctrine of approximation, the court finds that the I. Kent Fulton Trust was intended to benefit Sharon Hospital and the community it serves. Accordingly, the net income shall be applied to [the independent community foundation] to be transferred to its general charitable purposes and to serve the residents of the affected community.

Blumenthal, 2003 WL 21384569, at *22.

Other third-party trusts at issue provided for an alternative disposition of trust income in the event that Sharon Hospital were to "cease to exist." The court was asked to construe the testator's intent in connection with these provisions by determining whether the fact that Sharon Hospital ceased its provision of hospital services but continued to maintain a corporate existence to wind down its affairs meant that Sharon Hospital had "cease[d] to exist" pursuant to the terms of the governing document. The court concluded as follows:

> Although the hospital technically still exists on the books of the Secretary of State as a corporation, it has ceased providing patient services and abandoned its original charter purposes. All that is left is a shell hospital corporation. With the cessation of its healthcare functions, Sharon Hospital has, in the most fundamental sense, "ceased to exist" as a charity because it has ceased to provide healthcare to the public.

Id., at *26.

For all third-party trusts, the court concluded that the income should be distributed to an entity other than the shell entity remaining after the sale of Sharon Hospital. In some trusts, the

alternative beneficiary was identified in the governing document and, for other trusts, the alternative beneficiary was the independent community foundation established to provide healthcare services to the community previously served by Sharon Hospital.

Therefore, if the Court determines that Legacy GWHN is not the appropriate recipient of Income, the Trustee respectfully requests that the Court apply the doctrine of cy pres or approximation.

b. The Doctrine of Cy Pres

If this Court determines that Legacy GWHN is not the appropriate recipient of the Income, the Trustee respectfully requests that the Court apply the doctrine of cy pres or approximation to determine the proper recipient of the Income and the Future Income.

Under Connecticut General Statutes § 45a-98a(a)(1), this Court has jurisdiction to apply cy pres only if "the matter in dispute is not pending in another court of competent jurisdiction...." While the Superior Court action will decide the fate of GWHN's endowment funds, that action will not address the recipient of distributions from the third party trusts, such as the Trust. Connecticut has adopted the doctrine of cy pres in order to permit the modification of a charitable trust when necessary to preserve and effectuate the testator's intent in light of changed circumstances. Under Connecticut General Statutes § 45a-514, "[a]ny charitable trust...shall forever remain to the uses and purposes to which it has been granted according to the true intent and meaning of the grantor and to no other use."

The court in *Blumenthal* summarized the doctrine of cy pres as follows:

> In determining the construction of a charitable trust upon the failure of its stated purpose, the court applies the common law doctrine of cy pres, or approximation to as near as possible reflect the donor's intent. When it becomes illegal or otherwise impossible to carry out the terms of a charitable trust, rather than allow it to fail, the court will apply the doctrine of cy pres or approximation in order to carry out the charitable intentions of the donor as near as possible. "The rule of cy pres is a rule for the construction of instruments in equity, by which the intention of the party is carried out *as near as may be,* when it would be impossible or illegal to give it literal effect ... The doctrine of cy pres may be applied without the consent of the donor."... *Carl J. Herzog Foundation, Inc. v. University of Bridgeport,* 243 Conn. 1, 10 n. 8 (1997). "The doctrine applies in situations where a testator has evidenced a dominant intent to devote his property to some charitable use but the circumstances are such that it becomes impossible to follow the particular method he directs, and the courts then sanction its use in some other way which will, as nearly as may be, approximate his general intent." *Duncan v. Higgins,* 129 Conn. 136, 140 (1942). The court has broad powers of interpretation under the doctrine and has final decision making authority. 'It is clear that once the authority of the court is invoked, the ultimate responsibility for the application of the doctrine of cy pres or approximation to a charitable trust

> lies with the court and not with the trustees or the attorney general ... Consequently, the plan finally adopted by the court need not necessarily be one proposed or consented to by any of the parties ... The court, in applying the doctrine, is required to consider not only the language used in creating the trust but, if necessary, extrinsic facts as well." ... *Belcher v. Conway,* 179 Conn. 198, 205 (1979).

Blumenthal, 2003 WL 21384569, at *4.

c. Application of the Doctrine of Cy Pres

To invoke the doctrine of cy pres, the court must find three elements. First, the purpose of the trust must be charitable in nature. *Shannon v. Eno*, 120 Conn. 77, 86 (1935). "A charitable trust is one which performs some governmental function, such as fostering education, relief of poverty, care of the sick or aged, burial of the dead, or performs some other public task which relieves the governmental burden of the state." *Lockwood v. Killian*, 172 Conn. 496, 512 (1977) (Bogdanski, J., dissenting). *See also Bannon v. Wise*, 41 Conn. Supp. 469, 474 (Super. Ct. 1990), *aff'd*, 217 Conn. 457 (1991). Second, the court must find that the testator's specified charitable purpose cannot be executed effectively due to illegality, impossibility, impracticality or changed circumstances. *Shannon*, 120 Conn. at 86. Finally, the Testatrix must have demonstrated "a general intent to devote the property to a charitable use, to which the intent that it go to the particular organization named is secondary." *Duncan v. Higgins*, 129 Conn. 136, 140 (1942). To determine whether the testator had a general charitable intent, the court will consider the amount donated, the designation of a remainder beneficiary in the event that the donation fails, the provision of individual bequests to family members, and the size of other charitable bequests, if any. *Lockwood v. Killian*, 179 Conn. 62, 67 (1979).

If this Court determines that it must apply the doctrine of cy pres to substitute Waterbury Hospital with another charitable organization to preserve the Testatrix's charitable intent, the Trustee anticipates that the Charitable Organizations and the Independent Foundation may each claim to be among the possible substitute beneficiaries. If the Court finds that one or more of these organizations is the appropriate recipient of Income and Future Income, the Trustee will distribute the Income and Future Income to such one or more organizations as directed by the Court.

V. Prayer for Relief

The Trustee respectfully requests that this Court construe paragraph (b) of Section C of Article SEVENTH of the Will and direct the Trustee on the distribution of the Income.

Furthermore, if this Court determines that it would be inconsistent with the Testatrix's intent to distribute the Income to Legacy GWHN, the Trustee respectfully requests the Court's application of the doctrine of cy pres or approximation to determine the appropriate recipient of the Income and Future Income.

Respectfully Submitted,

Bank of America, N.A., Trustee

By: _____
Date: 12-23-2019
Its Attorneys
Christiana N. Gianopulos, Esq., Juris No. 410887
Joanna M. Targonski, Esq., Juris No. 437386
Day Pitney LLP
75 Isham Road, Suite 300
West Hartford, CT 06107
Telephone: (860) 313-5708
Facsimile: (860) 956-5830

Exhibit A

Last Will and Testament of Abbie C. Hopkins, dated April 20, 1938

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT

LAST WILL AND TESTAMENT

I, Abbie C. Hopkins, of the Town of Naugatuck, New Haven County, Connecticut, make, publish and declare the following as and for my Last Will and Testament, hereby revoking any and all other wills by me heretofore made.

FIRST

I direct my Executor hereinafter named to pay all my just debts and funeral expenses.

SECOND

I give and bequeath to The Colonial Trust Company, a corporation of Waterbury, in said County and State, all my furniture, pictures, books, silver, jewelry, clothing and other household and personal effects, and request that it distribute them in accordance with such written directions as I may leave, sell any of said property concerning which I leave no such directions, and add the proceeds thereof to the residue of my estate which is disposed of in the Seventh Section hereof.

THIRD

I give and bequeath to each male person regularly employed by me at the time of my decease in or about my residence in Naugatuck, Connecticut, Two Hundred Dollars ($200.00), and to each female person thus employed by me One Hundred Dollars ($100.00) for each year and fraction of a year for which he or she shall have been so employed at the time of my decease.

To Theresa G. Pillar, of 270 Walnut Street, Waterbury, Connecticut, who is not thus employed, I give and bequeath the sum of Five Hundred Dollars ($500.00) in recognition of her many years of faithful service.

FOURTH

I give and bequeath to the Center Street Cemetery Association, of the Town of Wallingford, Connecticut, Five Hundred Dollars ($500.00) for the uses and purposes of said Association.

FIFTH

I give, devise and bequeath to The Grove Cemetery Association, of said Naugatuck, any unused lots or plots in any of the cemeteries owned or maintained by it in said Naugatuck of which I may die seized or possessed, and direct my Executor to have the date of my decease inscribed upon the tablet in the Hopkins lot in the Hillside Cemetery, in said Naugatuck.

SIXTH

I give and bequeath to the Trustee hereinafter named Five Thousand Dollars ($5,000.00) IN TRUST NEVERTHE LESS, in perpetuity, to invest and reinvest, and pay so much of the net income thereof to The Grove Cemetery Association aforesaid, for use by it as is reasonably necessary, in the opinion of the Trustee, for the preservation, care and maintenance of the cemetery lots and plot known as the "Hopkins" lots and the "Oliver and Harriet Evans" plot, and the monuments thereon, in the Hillside Cemetery, in said Naugatuck, and for the preservation, care and maintenance of the Guntown Cemetery, in said Naugatuck, and the monuments and headstones of the ancestors of my husband, Samuel E. Hopkins, late of said Naugatuck, deceased, which are located therein which care shall include and require that said lots and plot shall be filled with plants each year before the thirtieth of May, tended and cared for during the Summer, and that each year before December twenty-fifth proper Christmas wreaths shall be placed upon the monuments thereon. Any of said net income not reasonable necessary for the purposes aforesaid, in the opinion of the Trustee, shall be added by it to the $5,000.00 principal aforesaid, and whenever such principal shall amount of $10,000.00, in the opinion of the Trustee, so much of the net income of said principal as is not, in the opinion of the Trustee, reasonable necessary for the purposes aforesaid, shall be transferred, paid and delivered to said Grove Cemetery Association for use by it for the general preservation, care and maintenance of said Hillside, Guntown and Grove Cemeteries.

SEVENTH

I give, devise and bequeath all the rest, residue and remainder

of my property of every kind and description, including lapsed or void legacies and devises, which fund shall be known as and named "The Hopkins Memorial", to The Colonial Trust Company, of Waterbury, Connecticut, In Trust, nevertheless, to invest and reinvest, and from the net income thereof to pay the following annuities:

A.

To Lillian Hopkins, widow of George B. Hopkins. of Helena, Montana, during the remainder of her life, the sum of One Hundred Dollars ($100.00) annually.

To Jessie Perkins, of Wallingford, Connecticut, daughter of Helen Bartholomew Perkins, during the remainder of her life, the sum of Two Hundred Fifty Dollars ($250.00) annually.

To Emily Hopkins Turton, of Naugatuck, Connecticut, during the remainder of her life, the sum of One Hundred Dollars ($100.00) annually.

To Harriet Hopkins Flint, of Naugatuck, Connecticut, during the remainder of her life, the sum of One Hundred Dollars ($100.00) annually.

To William B. Hopkins, of Naugatuck, Connecticut during the remainder of his life, the sum of One Hundred Dollars ($100.00) annually.

To Samuel J. Cook, my nephew, of Southington, Connecticut, during the remainder of his life, the sum of Two Hundred and Fifty Dollars ($250.00) annually.

To Bertha Childs Baumann and Lena Childs Delius, daughters of Elizabeth Bartholomew Hamilton, late of Wallingford, Connecticut, deceased, and after the decease of either of them to the survivor, during the remainder of lives, the sum of Two Hundred Dollars ($200.00) annually, share and share alike. Upon the decease of both the said Bertha Childs Baumann and Lena Childs Delius, said annuity of Two Hundred Dollars ($200.00) shall be paid to the daughters of said Bertha Childs Baumann, to wit: Natalie Richardson and Madeline Eastop, share and share alike, and to the survivor of them, during the remainder of their lives, Upon the death of the last survivor

of said four named beneficiaries, I direct that the sum of Four Thousand Dollars ($4,000.00) be paid from the principal of said trust fund to Anne Elizabeth Richardson, daughter of Natalie Richardson, aforesaid, if she be then living to be hers absolutely.

Until said trust fund is established, I direct my Executor to pay from my general estate, quarterly or semi-annually, from the date of my death, the annuties payable to each of the aforesaid persons named in this paragraph, except to those whose annuity is not payable until after the death of another person, provided, however, that if any of the persons thus provided for dies before the expiration of twelve months after my death, said payments provided for him or her shall terminate upon his or her death.

B.

To The Congregational Church Society, of Naugatuck, Connecticut, the sum of Two Hundred Dollars ($200.00) annually, in perpetuity to be known as "The Hopkins Fund," for the general uses and purposes of said Society.

To St. Michael's Parish of the Protestant Episcopal Church, of Naugatuck, Connecticut, the sum of One Hundred Dollars ($100.00) annually, in perpetuity, to be known as "The Adams Fund," for the general uses and purposes of said Parish.

To The New Haven County Anti-Tuberculosis Assiciation, the sum of Two Hundred Dollars ($200.00) annually, in perpetuity, for the use of Gaylord Farm Sanitorium, of Wallingford, Connecticut.

To The Masonic Charity Foundation of Connecticut, now located in Wallingford, Connecticut, the sum of Two Hundred Dollars, ($200.00 annually, in perpetuity, in memory of my husband's father, Willard Hopkins, and his uncle Enos O. Adams, for the general uses and purposes of said Foundation.

To Naugatuck Day Nursery, of Naugatuck, Connecticut, the sum of One Hundred Dollars ($100.00) annually, in perpetuity, for the general uses and purposes of said Nursery.

To Naugatuck Chapter of The American Red Cross, the sum of Two Hundred Dollars ($200.00) annually, in perpetuity, for the

general uses and purposes of said Chapter.

To Borough of Naugatuck, Connecticut, the sum of Eighty Dollars ($80.00) annually, in perpetuity, for the use and maintenance of the Scott Street Playground, heretofore conveyed by my husband, Samuel E. Hopkins, to said Borough.

To The Young Men's Christian Association, of Naugatuck, Connecticut, the sum of Two Hundred Dollars ($200.00) annually, in perpetuity, for the general uses and purposes of said Association.

If the legal existance of any the beneficiaries hereinbefore provided for shall be terminated, or if any of said beneficiaries shall fail to function for tis present purposes to the satisfaction of the Trustee, or if for any reason any of the payments provided for cannot be made to any of such beneficiaries for the purposes and as hereinbefore provided, I direct the Trustee, upon the happening of any such contingency, to terminate said payment.

C.

After the payment of the annuties as hereinbefore provided for, I direct that the remainder of said net income be added to the principal of said fund, and invested and reinvested for a period of time not exceeding twenty years after my decease.

(a) If, during said period of twenty years, the Governing Board of the Naugatuck Hospital Corporation, a corporation of said Naugatuck, (Hereinafter referred to as "Naugatuck Hospital"), concluded that the available funds of the Naugatuck Hospital, together with the total of the income thus added to the principal of this fund, are sufficient, in its opinion, to warrant the building and maintenance of a hospital in said Naugatuck, and notifies the Trustee to that effect, and requests, in writing, that a sum of money equal to the income thus added to the principal of this fund be paid to the Naugatuck Hospital for said purpose, the Trustee is hereby authorized and directed to pay the Naugatuck Hospital all such income theretofore added to the principal of this fund, which shall be used as said Governing Board may deem wise and for the best interests of the Naugatuck Hospital, and thereafter the Trustee shall pay quarterly, in perpetuity, to the Naugatuck Hospital said

remainder of the net income upon said principal sum for the general uses and purposes of such hospital.

(b) If, however, at the termination of said twenty-year period no hospital has been built by the Naugatuck Hospital in said Naugatuck, I direct the Trustee to continue to hold and invest and reinvest said fund and the increment thereto, as aforesaid, until a hospital has been erected in said Naugatuck by the Naugatuck Hospital, and meantime to pay to The Waterbury Hospital, a corporation of said Waterbury, said remainder of the net income from said fund and from the increment thereto for the purpose of providing accomodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck aforesaid, with the understanding, however, that the surplus of said income, if any, be used by The Waterbury Hospital aforesaid for its general uses and purposes.

(c) If, at some later period, a hospital is erected in said Naugatuck by the Naugatuck Hospital, I direct the Trustee to pay said remainder of the net income from said fund and from the increment thereto, in perpetuity, to the Naugatuck Hospital, to be used for the general purposes of said institution.

EIGHTH

I direct the Executor to pay all inheritance, transfer and other taxes upon each devise and legacy herein made as an expense of the administration of my estate.

NINTH

I hereby appoint The Colonial Trust Company, of Waterbury, Connecticut, to be Executor of this Will and Trustee of all Trusts herein created, and direct that no bond be required of it in either capacity. I further hereby authorize and empower said The Colonial Trust Company as such Executor and Trustee in its discretion and without incurring any liability by so doing, to continue in the form in which it shall receive the same any investments of my property or to reinvest the same in such manner as it shall deem expedient, although such investments may not be of the character authorized by law for the investment of trust funds, and to sell, convey, transfer or lease any of my real or personal property upon such

terms as it shall deem expedient, and to execute and deliver valid deeds, transfers, leases and other instruments necessary or proper for such purpose, without an order of Court, requesting, however, that it refrain from making any sale or transfer of my Naugatuck residence aforesaid that may, in its opinion, injuriously affect the value of neighboring real property or unduly annoy the owners thereof, I further hereby authorize said The Colonial Trust Company, in its capacity both as Executor and as Trustee, in its discretion, to pay any of the legacies herein provided for by transferring to the legatee any such investments as it deems advisable at the market value thereof, as determined by it at the time of such payment; and, if it deems it expedient to do so, to borrow money for the purpose of making any or all of the payments herein provided for, and for that purpose to pledge any or all of the property of my estate as security for such loans, and I further authorize and direct it, so far as it may legally do so, to omit the making of any formal appraisal of the property of my estate.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 20th day of April, A. D. 1938.

Abbie C. Hopkins (SEAL)

Signed, and sealed by the within named Testatrix, Abbie C. Hopkins, and by her declared to be her Last Will and Testament in our presence who have hereunto subscribed our names as witnesses in her presence and in the presence of each other, and at her request, this 20th day of April, A. D. 1938.

Lucian D. Warner
Jean L. Archambault Witnesses.
Gustav A. Anderson

STATE OF CONNECTICUT
SS. Naugatuck, April 20th, A. D. 1938.
COUNTY OF NEW HAVEN

Then and there personally appeared the undersigned, who being duly sworn, depose and say that they witnessed the execution of the within will of the within named Testatrix, Abbie C. Hopkins;

that the said Abbie C. Hopkins subscribed said Will and declared the same to be her Last Will and Testament in their presence and in the presence of Gustav A. Anderson that they and the said Gustav A. Anderson, thereafter subscribed the same as witnesses in the presence of said Testatrix and in the presence of each other and at the request of said Testatrix; that the said Testatrix at the time of the execution of said will appeared to them to be of full age and of sound mind and memory and competent in every respect to make a will; and that they make this affidavit at the request of said Testatrix.

Lucian D. Warner	of	Naugatuck, Conn.
Jean L. Archambault	of	Middlebury, Conn.

(Seal) Subscribed and sworn to, before the and year above written.

G. A. Anderson
Notary Public

STATE OF CONNECTICUT
DISTRICT OF NAUGATUCK SS: PROBATE COURT, July 20th, 1959.

This certifies that the within and foregoing is a true and attested copy of the Last Will and Testament of Abbie C. Hopkins on file in the Probate Court for the District of Naugatuck.

Attest: Jennie C. Pomanski
Clerk

RECEIVED
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NAUGATUCK PROBATE COURT

Exhibit B

State of Connecticut
Department of Public Health
Office of Health Care Access
Final Decision

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH

Raul Pino, M.D., M.P.H.
Commissioner

Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

Office of Health Care Access

Final Decision

Applicants:	Greater Waterbury Health Network, Inc. 64 Robbins Street Waterbury, CT 06708 Prospect Medical Holdings, Inc. 10780 Santa Monica Boulevard Suite 400 Los Angeles, CA 90025
Docket Number:	15-32017-486
Project Title:	Transfer of assets of Greater Waterbury Health Network, Inc. to Prospect Medical Holdings, Inc.

Procedural History: On July 16, 2015, the Applicants filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") the Certificate of Need ("CON") Determination Letter proposing the transfer of assets of Greater Waterbury Health Network, Inc. and affiliates ("GWHN") to Prospect Medical Holdings, Inc. ("PMH"). The Applicants filed the application for the proposal on October 28, 2015. On March 4, 2016, OHCA and the OAG deemed the application complete.

On April 8, 2016, OHCA and the OAG notified the Applicants of the date, time and place of the public hearing. A notice to the public announcing the hearing was published in the *Republican American*. Thereafter, pursuant to Conn. Gen. Stat. §19a-639a and §19a-486, a public hearing regarding this application was held on May 3, 2016, jointly by OHCA and the OAG.

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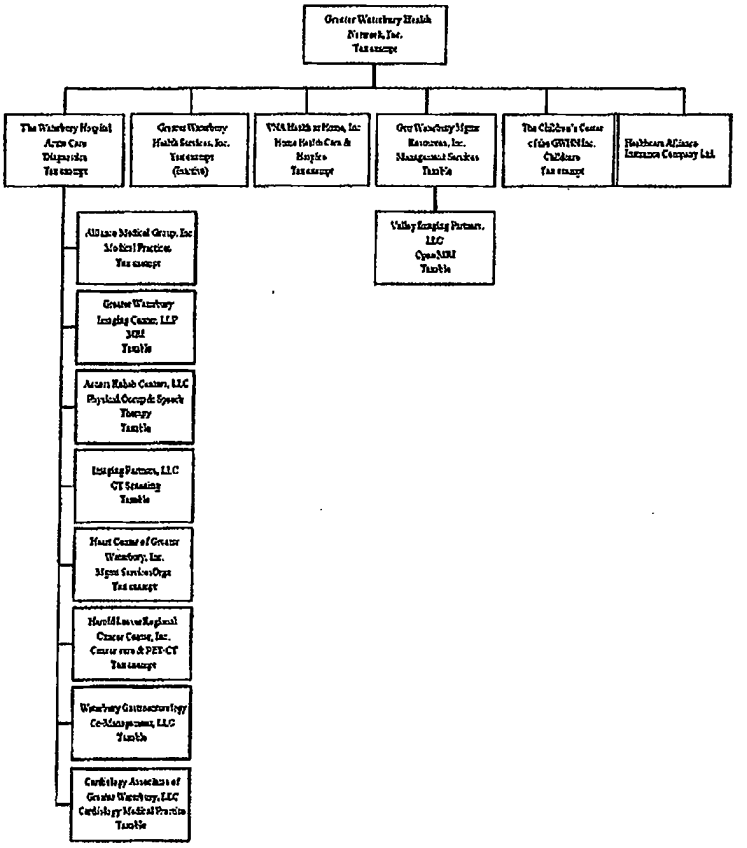
Hartford, Connecticut 06134-0308
www.ct.gov/dph
Affirmative Action/Equal Opportunity Employer

Attorney Kevin T. Hansted was designated as the hearing officer in this matter. The hearing was conducted in accordance with the provisions of the Uniform Administrative Procedures Act (Chapter 54 of the Conn. Gen. Stat.) and Conn. Gen. Stat. §19a-639a(f). The public hearing record was closed on July 11, 2016. Deputy Commissioner Brancifort reviewed the entire record in this matter, including the public comments received by OHCA after the issuance of the Proposed Final Decision.

To the extent the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H Computer Systems, Inc.*, 605 F. Supp. 816 (Md. Tenn. 1985).

Findings of Fact

1. GWHN is a non-stock, 501(c)(3) corporation that is the parent company to The Waterbury Hospital ("Hospital"), an acute care teaching hospital with 357 licensed beds plus 36 bassinets located in Waterbury, Connecticut. GWHN also holds interests in other entities, joint ventures, and affiliates. The chart below describes GWHN's current organizational structure:



Ex. E, p. 13

2. In addition to the Hospital, which is wholly owned by GWHN, GWHN is also an equity holder in the following entities: Healthcare Alliance Insurance Company, Ltd. ("HAIC," of which GWHN is a 50% owner), Greater Waterbury Health Services, Inc. ("GWHS," which is wholly-owned by GWHN), VNA Health at Home, Inc. (wholly-owned by GWHN), Greater Waterbury Management Resources, Inc. (wholly-owned by GWHN;

this company also has a 49% ownership in Valley Imaging, LLC), and Children's Center of Greater Waterbury Health Network, Inc. ("CCGWHN," which is wholly-owned by GWHN). Ex. E, pp. 15-16

3. The Hospital has ownership interests in the following entities: Alliance Medical Group, Inc. (wholly-owned by the Hospital), Greater Waterbury Imaging Center Limited Partnership (64% owned by the Hospital), Access Rehab Centers LLC (65% owned by the Hospital), Imaging Partners, LLC (85% owned by the Hospital), Waterbury Gastroenterological Co-Management Company, LLC (the Hospital is the sole Class H Member and has certain management rights), and Cardiology Associates of Greater Waterbury, LLC (wholly-owned by the Hospital). Ex. E, pp. 15-17

4. Additionally, the Hospital is a corporate member of two not-for-profit joint ventures with Saint Mary's Hospital ("SMH"): the Harold Leever Regional Cancer Center, Inc. and the Heart Center of Greater Waterbury, Inc. Ex. E, p. 17

5. The Hospital is GWHN's primary asset. It is a "safety net" hospital, treating a large number of Medicare, Medicaid and uninsured patients. Discharges for these three payers represent approximately 80% of the total patient days and 75.6% of emergency room outpatient visits. Ex. E, pp. 13, 15-16

6. The Hospital serves the following towns: Beacon Falls, Bethlehem, Cheshire, Middlebury, Morris, Naugatuck, Oakville, Oxford, Plantsville, Plymouth, Prospect, Seymour, Southbury, Southington, Terryville, Thomaston, Torrington, Waterbury, Watertown, Wolcott, and Woodbury (the "Service Area"). Ex. E, p. 51

7. The Hospital has experienced consecutive years of losses due to poor economic conditions in the Service Area, declining government and commercial reimbursement, the increasing complexity of health care treatment, and national health care reform. Additionally the recession in 2008 led to GWHN defaulting on its bond covenants in 2009. In 2010, a consulting firm, Kaufman Hall, identified over $50 million in capital improvements required over five years to keep the Hospital operational. Ex. E, pp. 22-24, 333-434; Ex. R, Prefiled Testimony of Carl Contadini, Chairman of the Board, GWHN, p. 1509

8. In 2010, the Executive Committee of the GWHN Board of Directors (the "Board") recommended that the Hospital seek a capital partner and a task force was formed (the "Task Force"). Ex. E, p. 24

9. In 2011, the GWHN Board voted to authorize the negotiation of an agreement with LHP Hospital Group ("LHP") and SMH, but LHP ultimately terminated the proposed venture, citing the costs of building a replacement hospital and issues related to the Ethical and Religious Directives for Catholic Health Care Services. Ex. E, pp. 24-25

10. On September 4, 2012, the Board authorized the Task Force to pursue other opportunities, ultimately leading to the submission of proposals by Vanguard Health Systems, Inc. ("Vanguard") and PMH. PMH proposed an asset purchase transaction, while Vanguard proposed both an asset purchase transaction and a joint venture arrangement. Preferring a joint venture, GWHN pursued a relationship with Vanguard, and a Conversion Application and a CON Application were submitted. The OAG and OHCA issued decisions placing a number of conditions on the transaction, and Tenet Health Corporation (which had acquired Vanguard) withdrew the application. Ex. E, pp. 25-26, 29-30, 88-119

11. In early 2015, the Task Force requested that Cain Brothers, an investment advisory firm, look for new prospective partners. PMH was one of two candidates to indicate interest and, despite GWHN's declining financial performance, agreed to a deal similar to the proposed Tenet transaction. The Task Force approved PMH's proposed letter of intent and the Board authorized its execution, which occurred on May 1, 2015. After conducting due diligence, the Board adopted resolutions approving the transaction and the filing of the CON, as well as recommending to the various members of GWHN that they approve the transaction. On October 2, 2015, the GWHN members approved the transaction and authorized the Board to take all action to consummate the transaction. Ex. E, pp. 31-33, 88-119

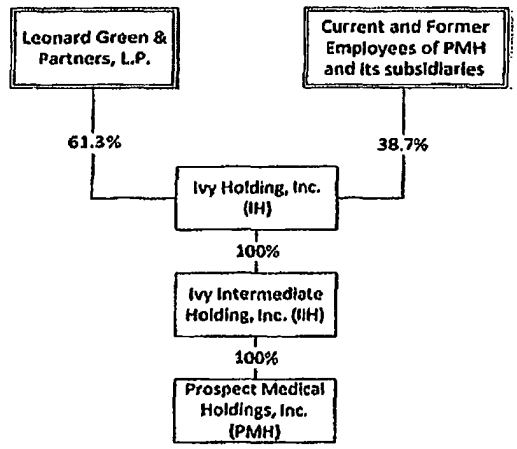
12. The Applicants are requesting approval of the proposed asset purchase (the "Asset Purchase") as a solution to GWHN's long-standing challenges that offers the Service Area continued access to its services and facilities. Ex. R, Prefiled Testimony of Carl Contadini, p. 1510

13. PMH is a for-profit, privately owned national healthcare services company with its principal place of business in Los Angeles, California. PMH owns fourteen acute care and behavioral hospitals in California, New Jersey, Rhode Island and Texas. It also owns a network of specialty and primary care clinics in each of these regions. Ex. E, pp. 18, 171-72

14. Through PMH's medical group segment, PMH also manages the provision of physician services in each of its markets through a network of approximately 8,900 physicians. The physician networks operate as independent practice associations ("IPAs") that contract with PMH-owned management service organizations ("MSOs"). The IPAs are comprised of both PMH-employed and independent community physicians. Ex. E, p. 18; Ex. R, Prefiled Testimony of Mitchell Lew, President, PMH, pp. 1605, 1607-08; Testimony of Mitchell Lew on 5/3/2016, pp. 37-38

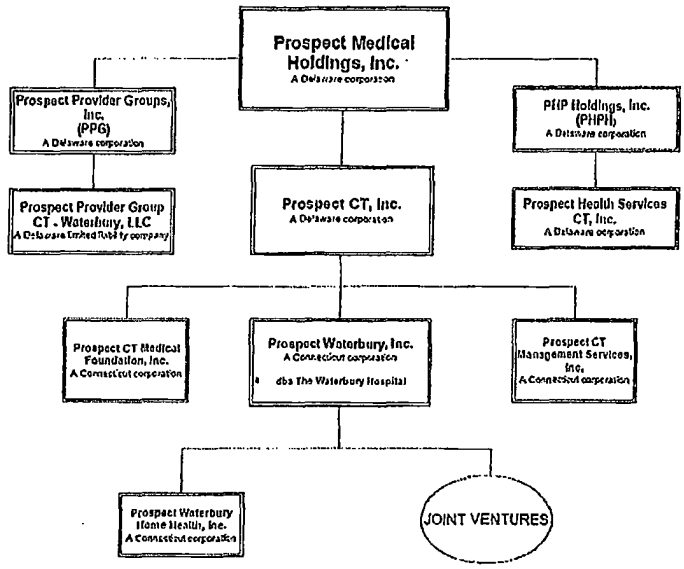
15. PMH aligns its hospitals and physicians under a model called Coordinated Regional Care ("CRC"). CRC provides for clinical integration of hospitals, physicians and community providers with health plans and other payers through value driven and risk-based reimbursement systems. PMH believes that the CRC model improves quality, efficiency and financial performance while providing its patients with quality, affordable healthcare. Ex. E, pp. 89

16. The chart below shows PMH's current ownership structure:



Ex. H, p. 1413

17. The chart below shows PMH's proposed organizational structure below the holding company level after the proposed transaction:



Ex. E, p. 68

18. GWHN selected PMH as the proposed purchaser because its financial resources and access to capital are anticipated to maintain GWHN's assets as economically viable and vibrant parts of the healthcare system in the Service Area by permitting capital investments, better preparing the Hospital to participate in new value-based delivery models, offering enhanced practice options for physicians, strengthening its network of providers and allowing for other improvements in operations. Ex. R, Prefiled Testimony of Mitchell Lew, p. 1606; of Ex. R, Prefiled Testimony of Darlene Stromstad, President & CEO, GWHN, pp. 1516-20; Ex. R, Prefiled Testimony of Von Crockett, Senior Vice President of Corporate Development, PMH, pp. 1537-39

19. In its audited financial statements for FY 2015, PMH reported total revenues of over $1.3 billion from its operations on a consolidated basis. As of fiscal year end 2015, PMH reported free cash flow of over $112 million and close to $75 million in cash from operations. The company also received credit upgrades by both Moody's and S&P in 2015, with Moody's rating PMH's bonds as B1 and S&P rating PMH's bonds as B. These ratings still stand as of May 3, 2016. Ex. R, Prefiled Testimony of Steven Aleman, Chief Financial Officer, PMH, p. 1620; Testimony of Steven Aleman, Tr. on 5/3/2016, p. 113; Docket#15-32016-486, Ex. N, pp. 3245, 3249-59; Ex. K, pp. 1445-46

20. Under the proposed Asset Purchase Agreement ("APA"), PMH will pay a total purchase price of approximately $43.3 million for the assets of GWHN, which includes a purchase price of $31.8 million plus a net working capital adjustment of $18.3 million, as of April 30, 2016, minus capital lease obligations in excess of $6.5 million, unfunded pension liabilities, asbestos abatement liability, the amounts of certain GWHN liabilities assumed by PMH, and for the value of any joint venture interest that GWHN is unable to assign or transfer. Ex. E, pp. 12, 20, 71, 147; Ex. F, p.1419; Late File 3, pp. 1848-49

21. PMH will commit to spend within seven years no less than $55 million, less (a) the amount not to exceed $3.5 million of capital lease obligations assumed by PMH at Closing in excess of $3 million, (b) the cash shortfall at closing (defined in the APA as the "Negative Amount"), (c) the Purchase Price Adjustment Shortfall, provided that the aggregate of the amounts in (b) and (c) are not to exceed $5.0 million in aggregate, and (d) unpaid indemnification losses of PMH (defined in the APA as the "Unpaid Losses") of up to $4.5 million, (the "Commitment Amount"). (Revised APA draft dated June 10, 2016, pages 1861and 1977).

22. There is no financing contingency with respect to this transaction. PMH anticipates funding this acquisition using its existing cash. PMH also has access to a preapproved $40 million revolving line of credit with Morgan Stanley and, as shown below, PMH has provided data showing that its debt leverage ratio is lower than other for-profit hospital systems.

Industry Debt Leverage Ratio Comparison	
Entity	**Ratio**
Prospect	2.71X
Hospital Corporation of America	3.7X
Community Health Systems	5.4X
Tenet	6.3X

Ex. R, Prefiled Testimony of Steven Aleman, p. 1621; Ex. E, p. 69, Ex, K, p.1445; Docket#15-32016-486, Ex. K, p. 2191

23. Closing the transaction is estimated to require only $27 million in cash from PMH. By the closing date (the "Closing" or "Closing Date"), PMH anticipates it will have close to $100 million in cash on hand as a result of its growth in revenues, which are generating $10-15 million of free cash flow on a monthly basis. The $40 million revolving line of credit, which PMH recently drew down to $10 million to finance its purchase of East Orange General Hospital in New Jersey, is also expected to be restored to $30 million by the Closing. Ex. F, p. 1419; Late File 3, p. 1849; Testimony of Steven Aleman, Tr. on 3/29/16, pp. 151-53

24. The following GWHN assets will be excluded from the transaction:

- All cash and cash equivalents;
- All short-term and long-term investments other than GWHN's investments in the joint ventures;
- Board-designated, restricted, and trustee-held or escrowed funds (such as funded depreciation, debt service reserves, working capital trust assets, and assets and investments restricted as to use), beneficial interests in charitable trusts, and accrued earnings on all of the foregoing;
- Prepaid expenses not assumed by PMH;
- All insurance proceeds arising in connection with the operation of the assets or the facilities for periods prior to Closing to the extent that all damage to the assets has been repaired;
- All amounts due or to become due to GWHN from the Medicare, Medicaid or other payor programs in respect of cost report periods ended on or prior to Closing; and
- Interests in and assets of GWHS, CCGWHN and HAIC.
  Ex. E, pp. 19, 142

25. GWHN's debt and pension obligations will also be addressed as a result of the transaction. At the time of the Closing and as permitted thereafter, the purchase price (less adjustments) together with GWHN's cash, investments and debt service reserve funds (but excluding charitable funds) will be used to satisfy GWHN's obligations. GWHN's unfunded pension liabilities with respect to its multi-employer defined benefit health plan are estimated to be at least $27 million and, with respect to its cash balance plan, are approximately $12 million. Ex. F, pp. 76, 1419; Prefiled Testimony, Steven Aleman, p. 1620

26. Table 1 summarizes the net proceeds and flow of funds associated with the Asset Purchase as of April 30, 2016 compared to September 30, 2015, including GWHN's anticipated plan for payment of debt and pension obligations as well as payment of other liabilities. The amounts are subject to adjustment at Closing.

TABLE 1
APA PROJECTED NET PROCEEDS AND FLOW OF FUNDS

Proceeds Calculation	As of 9/30/2015	As of 4/30/2016*
Proceeds		
Enterprise Value	$31,800,000	$25,000,000
Working Capital Adjustment	$4,601,512	$18,258,911
Total Gross Proceeds	**$36,401,512**	**$43,258,911**

PM Assumed Liabilities		
Asbestos Abatement	($2,896,529)	($2,898,529)
Nurses Pension	($27,000,000)	($27,000,000)
Hospital Cash Balance Plan	($11,613,917)	($12,363,507)
Total Assumed Liabilities	**($41,512,446)**	**($42,262,036)**
Net Proceeds	**($5,110,934)**	**($996,875)**
Unrestricted Cash	$35,767,106	$35,174,646
Total Unrestricted Cash and Net Proceeds	**$30,656,172**	**$36,171,521**
Cash Needs at Closing		
Estimated Transaction Costs	($1,450,000)	($1,450,000)
Bank Debt	($24,094,638)	($23,783,297)
Debt Swap	($1,512,596)	($1,851,544)
Total Cash Needs at Closing	**($27,057,234)**	**($27,084,841)**
Net Cash Post Closing Liabilities & Expenses	**$3,598,937**	**$9,086,680**

*All figures are current through April 30, 2016, with the exception of the Children's Center, which is current through March 31, 2016.
Ex. E. pp 1419 and Ex. AA, Late File 3.

27. After Closing, the assets of GWHN will be transferred to Prospect Connecticut, Inc. ("New GWHN") or one or more of its affiliates. New GWHN will serve as the health system parent company and sole shareholder of Prospect Waterbury, Inc., which will hold the Hospital's license after Closing (the post-closing hospital will be referred to as "New Hospital"). Ex. E, p. 21

28. The Commitment Amount will be funded through GWHN's operating income, and any shortfall will be funded by PMH's existing cash or through PMH's corporate level credit facility. Ex. E, p. 69

29. The Commitment Amount will be dedicated to continued improvement in quality and safety, expansion of services, new services, physician and service integration, and improvements in access to service. Ex. E, p. 57

30. PMH does not currently plan to change any service lines or locations as a result of the Asset Purchase. Ex. E, p. 48

31. There is currently no capital plan related to the transaction. After Closing, PMH, in consultation with the Local Board (defined in paragraph 38 below), will develop a strategic capital plan with respect to the New Hospital and associated affiliates and joint ventures. Ex. E, p.70; Ex. R., p. 1641

32. The capital projects in Table 2 below have been identified by GWHN management as priority capital projects to be addressed within the first three years after Closing. Ex. E, p. 72

TABLE 2
CAPITAL PRIORITY PROJECTS IDENTIFIED BY GWHN

Description	Estimated Cost (In Millions)	Estimated Timeframe (In Months)
Facility – Main Campus		
Expansion of ED/Development of urgent care*	$3.75	24-36
Upgrade OB/Women's health	$2.0	6-18
Upgrade outpatient surgery**	$2.0	6-18
Equipment		
Replace interventional radiology equipment	$1.7	12-18
Upgrade surgical/anesthesia equipment	$1.5	12-18
Outpatient Centers (Southbury, Naugatuck and Waterbury)* **	N/A	N/A
Physician Recruitment	N/A	N/A
Information Technology		
Continue IT Plan	N/A	N/A
Implement outpatient/physician practice strategy	N/A	N/A
Patient Safety****	$3.24	12-36
Total Estimated Cost	**$14.2**	

No dollars have yet been assigned to outpatient centers, physician recruitment and information technology.

* The Hospital's emergency department was built to accommodate 35,000 patients annually, while actual utilization is about 50,000, resulting in lengthy patient wait times and higher than average "Left Without Being Seen" rates. Additionally, hallways are consistently used as patient rooms. Expanding the emergency department will improve access to care, decrease LWOS, and improve patient privacy. Ex. Ex. H, pp. 1416-17

** There is no separate area for outpatient surgery. Accordingly, patients are currently being redirected to outpatient surgery centers in the community. Ex. H, p. 1417

*** The Hospital currently provides several health care services in Southbury, Naugatuck, and Waterbury. PMH intends to co-locate services by developing outpatient centers in each of these towns, creating a central environment with adequate parking and convenient access for patients. Ex. H, p. 1417

**** Immediate capital needs required over the first two to three years following Closing are: monitors in the ER ($600,000), ER architects/plan ($200,000), nuclear med ($450,000), fetal monitors ($145,000), EKG ($550,000), defibrillators ($240,000), two Jackson tables ($200,000), nurse call/ED ($220,000), bed replacements ($360,000), med cart replacements ($150,000), and beginning anesthesia update ($120,000). Ex. R, p. 1640

33. Because of GWHN's poor financial condition, the projects identified in Table 2 cannot be accomplished without this transaction. Ex. R., Prefiled Testimony of Carl Contadini, p. 1510; Testimony of Darlene Stromstrad, Tr. on 5/3/2016, p. 30; Ex. R, Prefiled Testimony, Jonathan Spees, Vice President of Mergers and Acquisitions, PMH, pp. 1626-27

34. With the proposed Asset Purchase, the parties expect that PMH will provide sufficient capital to meet deferred, current and future capital needs for the Hospital's physical plant to ensure state of the art health care delivery services through an upgrade of facilities, equipment and technology. With PMH's access to capital, New Hospital will have the financial resources to purchase new technology, upgrade its facilities, attract skilled providers, and upgrade electronic health records, in addition to investing in service line development, physician alignment and recruitment and development of increasing ambulatory access. Ex. R, Prefiled Testimony, Jonathan Spees, p. 1627

35. Table 3 below represents GWHN's projected incremental operating revenues, earnings before interest, taxes, depreciation and amortization (EBITDA) and gain/losses from operations and provisions for income taxes with this proposal.

TABLE 3
GWHN PROJECTED INCREMENTAL OPERATING REVENUE, EBITDA, INCOME FROM OPERATIONS, AND PROVISION FOR INCOME TAXES WITH THE PROPOSAL

	FY 2016	FY 2017	FY 2018
Operating Revenue	$324,151	$3,702,750	$6,827,192
Earnings Before Interest, Taxes, Depreciation & Amortization (EBITDA)	$1,408,798	$3,620,294	$4,425,395
Gain/Loss from Operations	$962,989	$1,868,015	$2,256,121
Provision for Income Taxes	$785,217	$2,172,366	$2,050,340

Ex. E, p.1167

36. PMH has restored the financial position of other health systems by applying its data-driven operating strategies, leveraging its corporate capabilities and investing in system growth. Ex. R, Prefiled Testimony, Jonathan Spees, p. 1627

37. Table 4 below illustrates the financial performance of the Texas and Rhode Island hospitals after they were acquired by PMH:

TABLE 4
PMH'S RECENT ACQUISITIONS FINANCIAL PERFORMANCE (in Thousands)

Entity	EBITDA			Working Capital			Stockholder's Equity		
	Year prior to acquisition	FY 2014	FY 2015	Year prior to acquisition	FY 2014	FY 2015	Year prior to acquisition	FY 2014	FY 2015
Nix Health System (a)	$14,905	$18,411	$8,043	$5,937	$36,785	$35,449	$13,122	$20,468	$63,789
Roger Williams Medical Center (b)	$3,942	$1,582	$9,080	($1,860)	$1,114	$6,230	$37,184	$34,099	$38,256
Our Lady of Fatima Hospital(c)	($893)	$509	$6,485	$1,904	$2,040	$3,432	($57,150)	$27,513	$28,107

(a) Nix is a Health System based in Texas. Nix's Earnings Before Interest, Taxes, Depreciation and amortization (EBITDA) is based on reported trailing twelve months ended on 1/31/2011. Declines in EBITDA between 2014 and 2015 were due to the fluctuation in net reimbursement related to payments made to the Service Organization of San Antonio "SOSA". Funding to SOSA is voluntary but it is projected to average approximately $12M a year based on budgeted spending initiatives of the service organization. In 2014 the funding requirements were $5.7M (lower by approximately $6.3M) and in 2015 funding requirements returned to $12M. The remaining difference was comprised of lower volume at the facility as services were reconfigured and medical staff turnover. Working Capital of Nix prior to acquisition is as of 1/31/2011 and includes cash which was not part of assets acquired by PMH.

(b) EBITDA for Roger Williams Medical Center ("RWMC"), located in Providence, Rhode Island, for year prior to acquisition is only for 8 months ending on May 31, 2014 and EBITDA for FY2014 is only for three months post acquisition for FYE 9/30/2014. Working capital is for prior to acquisition as of 5/31/2014 and includes cash which was not part of the assets acquired by PMH as prior to the acquisition RWMC was a non-profit organization. Therefore, net assets were used as a substitute for stockholder's equity.

(c) EBITDA for Our Lady of Fatima Hospital ("OLFH") in Rhode Island is for year prior to acquisition and is only for 8 months ending on May 31, 2014 and for FY2014 is only for three months post acquisition. Working capital prior to acquisition is as of 5/31/2014 and includes cash which was not part of the assets acquired by PMH as prior to the acquisition OLFH was a non-profit organization. Therefore, net assets were used as a substitute for stockholder's equity.

Docket#15-32016-486, Late File 19, dated Apr. 20, 2016; Docket#15-32016-486, Ex. QQ, dated May 9, 2016

38. After Closing, the New Hospital will be governed by a board of directors controlled by PMH (the "New Hospital Board"). The New Hospital Board will have oversight and ultimate authority over the affairs of the New Hospital and the purchased assets. The New Hospital Board will be composed of executives of PMH and local employed executives of GWHN. There are currently no actual or proposed bylaws for the New Hospital Board. Ex. E, p. 20; Ex. H, p. 1422

39. The New Hospital Board will be advised by a local advisory board, anticipated to be comprised of five current members of the GWHN Board, five physicians, and the CEO of the New Hospital (the "Local Board"). The Local Board will serve as a resource for PMH with respect to development and review of strategic plans, assist with maintenance and implementation of a strategic business plan for the New Hospital, and assist with medical staff credentialing, quality assurance programs and accreditation at the New Hospital. There are currently no actual or proposed Bylaws for the Local Board. Ex. E, pp. 20-21, 190; Ex. H, pp. 1422-23

40. As of the Closing Date, PMH or an affiliate will offer employment to substantially all GWHN employees who are in good standing, in positions and at salaries at least equal to those then being provided by GWHN and with benefits packages comparable to those offered to similarly-situated employees at other hospitals operated by PMH. Ex. E, pp. 86, 90, 176

41. PMH plans to establish a strong physician network by recruiting high quality physicians to GWHN's medical staff. PMH has developed significant experience in other markets regarding methods of attracting more primary care providers and improving access to care. Recently, PMH succeeded in establishing an IPA in Rhode Island with 105 primary care practitioners and 270 specialist physicians. Of the 105 primary care practitioners participating in PMH's Rhode Island physician network at the end of 2015, only 18 were employed by the CharterCare System when PMH acquired its two hospitals (RWMC and OLFH) in mid-2014. Ex. E, p. 89; Docket#15-32016-486, Ex. G, p. 75; Ex. K, p. 2177-78

42. In order to implement the CRC strategy, PMH has established an IPA entity in Connecticut (Prospect Provider Group CT-Waterbury, LLC, or "PPGCTW") and a preferred provider network/health system risk taking entity, Prospect Health Services CT, Inc., that will contract with payers on behalf of PPGCTW physicians. These two organizations, through management services agreements with PMH, will manage physician participation, risk contracting and care management activities for participating members. Ex. E, p. 87; Ex. H, p. 1430; Ex. R, Prefiled Testimony of Mitchell Lew, p. 1605; Testimony of Mitchell Lew, Tr. on 5/3/2016, pp. 37-38

43. The goal of the CRC model is to reduce the overall cost of health care by increasing preventive care and reducing readmissions, inpatient utilization and emergency room visits. PMH will achieve these goals by developing a healthcare delivery network encompassing the entire continuum of patient care, including inpatient services, home health, clinics, independent physicians, nursing homes, ambulatory surgical centers, out-patient diagnostic services and other health related services. Ex. E, pp. 62, 89; Ex. R, Prefiled Testimony of Mitchell Lew, pp. 1607, 1609, 1611-12

44. PMH has demonstrated the efficacy of the CRC model in Southern California, Texas and Rhode Island. In these regions, PMH has improved clinical outcomes, increased quality scores, increased patient satisfaction, reduced readmission rates, reduced average lengths of stay, and reduced medical-cost ratios. For example, from 2012 to 2014 in California and Texas, where PMH participates in HMO contracts for seniors, PMH reduced hospital bed days per thousand patients from 1,260 to 720. Additionally, length of hospital stay for this population has been reduced from 5.1 to 3.9 days, admissions per thousand have dropped from 245 per thousand to 182 per thousand and hospital readmissions within thirty days has dropped from 19% to 13%. The CRC model has also enabled PMH to attract more primary care providers and has improved access to care. Ex. E, p. 65-66; Ex. R, Prefiled Testimony of Mitchell Lew, pp. 1608, 1610, 1615

45. PMH has agreed to adhere to GWHN's charity care policies for at least the first five years after Closing. For the first five years, PMH has also agreed to participate in the Medicare and Medicaid programs and accept all Medicare and Medicaid patients, provide public health programs of educational benefit to the community, and to generally promote public health, wellness, and welfare to the community by operating the New Hospital with quality standards consistent with other hospitals owned by PMH. Ex. E, pp. 61-63, 81, 1226-28; Ex. H, p. 1437; Testimony of Von Crockett, Tr. on 5/3/2016, p. 98; Tr., Testimony of Tom Reardon, President, PMH East on 5/3/16, pp. 103-04

46. PMH will continue to provide financial support for community benefit and community building activities in the Waterbury area to the same degree as GWHN did in FY 2014. The spending by PMH for community building activities post-closing is projected to increase 1% each year through FY 2019, and the spending for both community benefit and community building activities post-closing assumes no change in the Medicaid population served or the complement of community benefit programs offered by the New Hospital. Ex. E, pp. 83-84; Testimony of Jonathon Spees, Tr. on 5/3/2016, p. 104

47. Table 5 below describes the socioeconomic condition of the Service Area towns in comparison to the state of Connecticut as a whole and shows the areas most in need of such programs.

TABLE 5
SOCIOECONOMIC STATUS OF THE SERVICE AREA

Data

Town	Poverty Rate	Medium Household Income	Unemployment Rate	Medium Age
Primary Service Area				
Beacon Falls	3.8%	$ 79,207	7.0%	39
Bethlehem	4.4%	$ 80,884	5.8%	50
Cheshire	2.8%	$ 110,587	6.2%	41
Middlebury	2.6%	$ 97,996	5.9%	45
Naugatuck	8.6%	$ 62,574	9.4%	39
Prospect	3.2%	$ 95,325	6.7%	44
Southbury	6.4%	$ 67,195	6.6%	50
Thomaston	2.7%	$ 67,426	7.8%	43
Waterbury	21.9%	$ 40,867	12.5%	35
Watertown	3.4%	$ 80,899	7.7%	44
Wolcott	3.4%	$ 80,655	7.8%	44
Woodbury	4.6%	$ 80,167	5.9%	48
Secondary Service Area				
Harwinton	4.6%	$ 89,429	6.1%	47
Morris	5.6%	$ 89,688	6.4%	45
Oxford	4.5%	$ 107,308	6.0%	43
Plymouth	6.7%	$ 73,603	8.9%	41
Seymour	6.8%	$ 73,099	7.7%	42

Southington	3.6%	$ 78,668	6.4%	44
Torrington	11.2%	$ 50,548	8.5%	43
State	**10.0%**	**$ 69,519**	**7.8%**	**40**

Ex. E, p. 54

48. Central Waterbury is designated as a Medically Underserved Area and a Health Professionals Shortage Area. The Hospital currently provides safety net services in this area. The Applicants anticipate that the proposed Asset Purchase will support the availability of health care services to vulnerable populations in the Service Area. Ex. E, p. 54

49. In 2013, the Hospital conducted a Community Health Needs Assessment ("CHNA"), which identified current and future health care needs of the community. The priority areas identified for the greater Waterbury community were access to care, mental health/substance abuse, overweight/obesity, and smoking/tobacco use. An implementation plan was developed to respond to the identified health needs, which PMH has agreed to support. Additionally, the Hospital has traditionally taken a lead role in developing the CHNA, and PMH has agreed to maintain GWHN's current level of involvement in developing and implementing the CHNA for five years from Closing. Ex. E, pp. 60, 62, 1075-1129, 1130-49; Ex. H, p. 1439; Testimony of Von Crockett, Tr. on 5/3/2016, pp. 90-91

50. PMH has also stated that the New Hospital will be in compliance with the following general community benefit standards for at least the first three years after the Closing: (a) the New Hospital will have an open medical staff and not restrict the use of facilities to a particular group of physicians and surgeons to the exclusion of other qualified doctors and (b) the New Hospital will operate a 24/7 emergency department and provide emergency services to patients regardless of their ability to pay. Testimony of Tom Reardon, Tr. on 5/3/16, pp. 103-04

51. PMH and GWHN representatives have already met with leadership for Connecticut's Medicaid Program at the Department of Social Services ("DSS") and expressed their desire to work under a risk-based arrangement to provide care to Medicaid recipients. PMH is currently working with officials in Rhode Island to pilot a Medicaid risk-based program in that state. In addition, PMH will actively work with other providers in the community such as federally qualified health centers or community health centers to meet the needs of uninsured and underinsured individuals in the Service Area, including Medicaid recipients. Ex. E, pp. 63-65

52. The patient population currently served by the Hospital is not expected to change as a result of the Asset Purchase. PMH will accept all existing contracts with payers and will complete a change of ownership process with commercial payers, as well as Medicare and the Connecticut Medical Assistance Program (Medicaid). Table 6 below describes the current and projected patient population and payer mix for the Hospital with respect to discharges.

TABLE 6
PATIENT POPULATION/PAYER MIX

Hospital	YTD 8/31/15	Projected 2015	Projected FY 2016	Project FY 2017	Projected FY 2018
Medicare	5,002	5,457	5,312	5,312	5,312
Medicaid	3,021	3,296	3,196	3,196	3,196
CHAMPUS or TriCare	18	19	18	18	18
Total Government Payers	8,041	8,771	8,526	8,526	8,526
Commercial Insurers	2,527	2,757	2,681	2,681	2,681
Self-Pay	113	123	64	64	64
Workers Compensation	61	67	73	73	73
Total Non-Government Payers	2,701	2,947	2,818	2,818	2,818
Total Payer Mix	**10,742**	**11,718**	**11,344**	**11,344**	**11,344**

Ex. E, pp. 74, 76

53. Financial benefits associated with this proposal include: operational efficiencies and economies of scale, the New Hospital's participation in PMH's purchasing power, supply chain benefits, employee benefits savings and streamlined revenue collection. PMH also makes available to its hospitals subject matter consultants who are employed by PMH, saving its hospitals the cost of hiring consultants in those areas. Ex. R, Prefiled Testimony of Von Crockett, p. 1535; Docket#15-32016-486, Ex. N., p. 3236

54. PMH has agreed to maintain GWHN's quality program for at least two years following the transaction. Ex. T, p. 1826; Ex. R., Prefiled Testimony of Von Crockett, p. 1533

55. PMH has had to significantly modify its own Quality Assurance and Performance Improvement ("QAPI") as a result of recent surveys of two PMH hospitals in California, Los Angeles Community Hospital and Southern California Hospital, resulting in the California Department of Health imposing Immediate Jeopardy citations. Ex. K, p. 1459-61; Ex. R, Prefiled Testimony of Von Crockett, pp. 1530-33

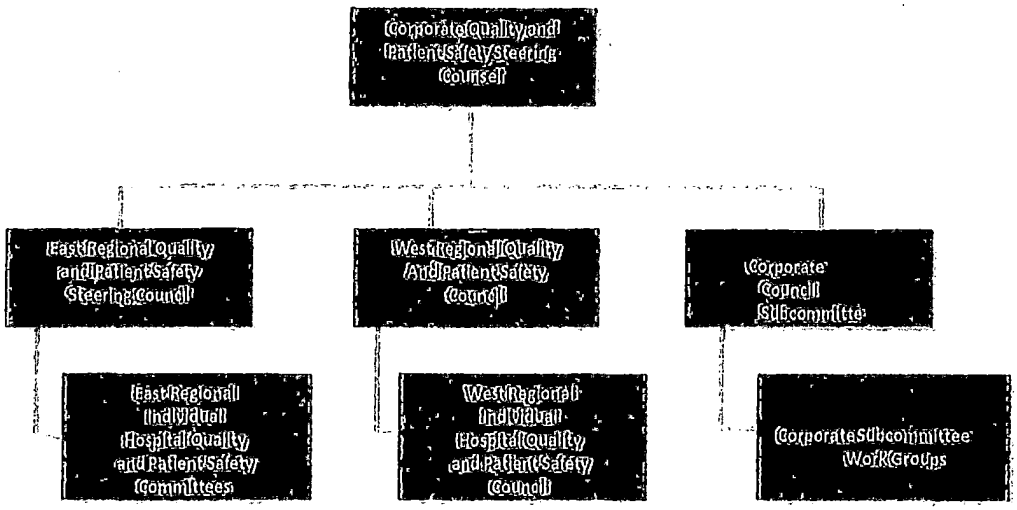
56. GWHN representatives learned of the Immediate Jeopardy citations on February 11, 2016. In response, the GWHN Board appointed a task force to review the citations and corrective actions taken and to recommend whether or not to proceed with the transaction. The task force reviewed the deficiencies and corrective action plans, conducted interviews, and made site visits to PMH-owned hospitals in both California and Rhode Island. The task force determined that PMH was committed to quality and proposed that GWHN obtain certain assurances from PMH and move forward with the transaction. Ex. R, pp. 1635-36; Testimony, Susan Cordeau, Director of Performance Improvement, GWHN, Tr. on 5/3/2016, pp. 25-31

57. Accordingly, on April 27, 2016 the parties entered into a Quality Assurance Commitment Letter pursuant to which PMH agreed to maintain certain GWHN quality programs for the first two years after the Closing Date and to not modify them without approval of the Local Board. The Quality Assurance Commitment Letter also requires that PMH maintain QAPI programs consistent with best practices and those currently implemented in PMH's Rhode Island facilities while also acknowledging that the Local Board shall oversee quality programs at the New Hospital. Ex. T, p. 1826

58. Based on the information learned and protections gained, the task force recommended, and the Board confirmed, GWHN's commitment to proceed with the transaction. Ex. R, pp. 1635-36; Testimony, Susan Cordeau, Tr. on 5/3/2016, pp. 30-31

59. Additionally, as a result of the Immediate Jeopardy citations, PMH has hired a corporate level Chief Quality Officer, Chief Clinical Officer, Chief Nursing Officer and an Associate Vice President of Regulatory and Patient Safety to assist in providing necessary resources to implement all quality programs at its local hospitals and share best practices among the hospitals. Ex. K, p. 1459; Ex. R, Prefiled Testimony of Von Crockett, pp. 1530-32

60. Other PMH initiatives include retaining a national consulting firm and legal counsel to assist in preparedness and responses to Centers for Medicare and Medicaid Services ("CMS") surveys. Under PMH's draft QAPI program, a Hospital Quality & Patient Safety Committee will be developed at the New Hospital, with oversight over subcommittees and workgroups that address the New Hospital's unique needs. These committees will report to a Regional Quality and Patient Safety Steering Council, which will report to the Corporate Quality and Patient Safety Steering Council, as described below:



Testimony of Debbie Berry, Chief Quality Officer, PMH, pp. 57-59; Ex. R, pp. 1692, 1696; Docket#15-32016-486, Tr., Testimony of Von Crockett on 3/29/15, pp. 93-94; Docket#15-32016-486, Ex. Z, Prefiled Testimony of Von Crockett, pp. 3356-57; Docket#15-32016-486, Ex. Z, pp. 3402-03; Docket#15-32016-486, Late File 1, dated Apr. 20, 2016; Docket#15-32016-486, Late File 10, dated Apr. 20, 2016

61. OHCA is currently in the process of establishing its policies and standards as regulations. Therefore, OHCA has not made any findings as to this proposal's relationship to any regulations not yet adopted by OHCA. Conn. Gen. Stat. § 19a-639(a)(1)

62. The application is consistent with the overall goals of the Statewide Health Care Facilities and Services Plan. Conn. Gen. Stat. § 19a-639(a)(2)

63. The Applicants have established that there is a clear public need for the proposal. Conn. Gen. Stat. §19a-639(a)(3)

64. The Applicants have demonstrated that the proposal will improve the overall financial strength of the health care system and that it is financially feasible. Conn. Gen. Stat. §19a-639(a)(4)

65. Subject to the conditions below, the Applicants have satisfactorily demonstrated that the proposal will maintain quality, accessibility and cost effectiveness of health care delivery in the region. Conn. Gen. Stat. §19a-639(a)(5)

66. Subject to the conditions below, the Applicants have shown that there would be no adverse change in the provision of health care services to the relevant populations and payer mix, including access to services by Medicaid recipients and indigent persons. Conn. Gen. Stat. §19a-639(a)(6)

67. The Applicants have satisfactorily identified the population to be affected by this proposal. Conn. Gen. Stat. §19a-639(a)(7)

68. The historical utilization of GWHN's services in the Service Area support this proposal. Conn. Gen. Stat. §19a-639(a)(8)

69. The Applicants have satisfactorily demonstrated that this proposal would not result in an unnecessary duplication of existing services in the area. Conn. Gen. Stat. §19a-639(a)(9)

70. Subject to the conditions below, the Applicants have demonstrated that there will be no reduction in access to services by Medicaid recipients or indigent persons. Conn. Gen. Stat. §19a-639(a)(10)

71. The Applicants have satisfactorily demonstrated that the proposal will not have a negative impact on the diversity of health care providers in the area. Conn. Gen. Stat. §19a-639(a)(11)

72. The Applicants have satisfactorily demonstrated that the proposal will not result in any consolidation that would affect health care costs or accessibility to care. Conn. Gen. Stat. §19a-639(a)(12)

Discussion

CON applications are decided on a case-by-case basis and do not lend themselves to general applicability due to the uniqueness of the facts in each case. In rendering its decision, OHCA considered the factors set forth in Connecticut General Statutes § 19a-639(a) and 19a-486d. The Applicants bear the burden of proof in this matter by a preponderance of the evidence. *Jones v. Connecticut Medical Examining Board,* 309 Conn. 727 (2013).

GWHN is a non-stock, 501(c)(3) corporation that is the parent company to The Waterbury Hospital ("Hospital"), an acute care teaching hospital with 357 licensed beds plus 36 bassinets located in Waterbury, Connecticut. GWHN also holds interests in other entities, joint ventures, and affiliates. *FF1* GWHN serves the following towns: Beacon Falls, Bethlehem, Cheshire, Middlebury, Morris, Naugatuck, Oakville, Oxford, Plantsville, Plymouth, Prospect, Seymour, Southbury, Southington, Terryville, Thomaston, Torrington, Waterbury, Watertown, Wolcott, and Woodbury. *FF6* PMH is a for-profit, privately owned national healthcare services company with its principal place of business in Los Angeles, California. PMH owns fourteen acute care and behavioral hospitals in California, New Jersey, Rhode Island and Texas. It also owns a network of specialty and primary care clinics in each of these regions. *FF13* The Hospital has experienced consecutive years of losses due to poor economic conditions in the Service Area, declining government and commercial reimbursement, the increasing complexity of health care treatment, and national health care reform. Additionally the recession in 2008 led to GWHN defaulting on its bond covenants in 2009. In 2010, a consulting firm, Kaufman Hall, identified over $50 million in capital improvements required over five years to keep the Hospital operational. *FF7* The Applicants are requesting approval of the proposed asset purchase (the "Asset Purchase") as a solution to GWHN's long-standing challenges that offers the Service Area continued access to its services and facilities. *FF12*

Under the proposed Asset Purchase Agreement ("APA"), PMH will pay a total purchase price of approximately $43.3 million for the assets of GWHN, which includes a purchase price of $31.8 million plus a net working capital adjustment of $18.3 million, as of April 30, 2016, minus capital lease obligations in excess of $6.5 million, unfunded pension liabilities, asbestos abatement liability, the amounts of certain GWHN liabilities assumed by PMH, and for the value of any joint venture interest that GWHN is unable to assign or transfer. *FF20* PMH will commit to spend within seven years no less than $55 million, less (a) the amount not to exceed $3.5 million of capital lease obligations assumed by PMH at Closing in excess of $3 million, (b) the cash shortfall at closing (defined in the APA as the "Negative Amount"), (c) the Purchase Price Adjustment Shortfall, provided that the aggregate of the amounts in (b) and (c) are not to exceed $5.0 million in aggregate, and (d) unpaid indemnification losses of PMH (defined in the APA as the "Unpaid Losses") of up to $4.5 million, (the "Commitment Amount"). *FF21* GWHN's debt and pension obligations will also be addressed as a result of the transaction. At the time of the Closing and as permitted thereafter, the purchase price (less adjustments) together with GWHN's cash, investments and debt service reserve funds (but excluding charitable funds) will be used to satisfy GWHN's obligations. GWHN's unfunded pension liabilities with respect to its multi-

employer defined benefit health plan are estimated to be at least $27 million and, with respect to its cash balance plan, are approximately $12 million. *FF25*

With the proposed Asset Purchase, the parties expect that PMH will provide sufficient capital to meet deferred, current and future capital needs for the Hospital's physical plant to ensure state of the art health care delivery services through an upgrade of facilities, equipment and technology. With PMH's access to capital, the post-closing New Hospital will have the financial resources to purchase new technology, upgrade its facilities, attract skilled providers, and upgrade electronic health records, in addition to investing in service line development, physician alignment and recruitment and development of increasing ambulatory access. *FF34* On the Closing Date, the assets of GWHN will be transferred to Prospect Connecticut, Inc. ("New GWHN") or one or more of its affiliates. New GWHN will serve as the health system parent company and sole shareholder of Prospect Waterbury, Inc., which will hold the Hospital's license after Closing (the post-closing hospital will be referred to as "New Hospital"). *FF27*

Following Closing, the New Hospital will be governed by a board of directors controlled by PMH (the "New Hospital Board"). The New Hospital Board will have oversight and ultimate authority over the affairs of the New Hospital and the purchased assets. The New Hospital Board will be composed of executives of PMH and local employed executives of GWHN. *FF38* The New Hospital Board will be advised by a local advisory board, anticipated to be comprised of five current members of the GWHN Board, five physicians, and the CEO of the New Hospital (the "Local Board"). The Local Board will serve as a resource for PMH with respect to development and review of strategic plans, assist with maintenance and implementation of a strategic business plan for the New Hospital, and assist with medical staff credentialing, quality assurance programs and accreditation at the New Hospital. *FF39*

The capital projects in the table below have been identified by GWHN management as priority capital projects to be addressed within the first three years after Closing. *FF32*

CAPITAL PRIORITY PROJECTS IDENTIFIED BY GWHN

Description	Estimated Cost (In Millions)	Estimated Timeframe (In Months)
Facility – Main Campus		
Expansion of ED/Development of urgent care*	$3.75	24-36
Upgrade OB/Women's health	$2.0	6-18
Upgrade outpatient surgery**	$2.0	6-18
Equipment		
Replace interventional radiology equipment	$1.7	12-18
Upgrade surgical/anesthesia equipment	$1.5	12-18
Outpatient Centers (Southbury, Naugatuck and Waterbury)* **	N/A	N/A
Physician Recruitment	N/A	N/A
Information Technology		
Continue IT Plan	N/A	N/A

Implement outpatient/physician practice strategy	N/A	N/A
Patient Safety****	$3.24	12-36
Total Estimated Cost	**$14.2**	

PMH plans to establish a strong physician network by recruiting high quality physicians to GWHN's medical staff. PMH has developed significant experience in other markets regarding methods of attracting more primary care providers and improving access to care. Recently, PMH succeeded in establishing an IPA in Rhode Island with 105 primary care practitioners and 270 specialist physicians. Of the 105 primary care practitioners participating in PMH's Rhode Island physician network at the end of 2015, only 18 were employed by the CharterCare System when PMH acquired its two hospitals (RWMC and OLFH) in mid-2014. *FF41*

With respect to its quality of health care services, PMH has had to significantly modify its Quality Assurance and Performance Improvement ("QAPI") as a result of recent surveys of two PMH hospitals in California, Los Angeles Community Hospital and Southern California Hospital, resulting in the California Department of Health imposing Immediate Jeopardy citations. *FF55* GWHN representatives learned of the Immediate Jeopardy citations on February 11, 2016. In response, the GWHN Board appointed a task force to review the citations and corrective actions taken and to recommend whether or not to proceed with the transaction. The task force reviewed the deficiencies and corrective action plans, conducted interviews, and made site visits to PMH-owned hospitals in both California and Rhode Island. The task force determined that PMH was committed to quality and proposed that GWHN obtain certain assurances from PMH and move forward with the transaction. *FF56* Accordingly, on April 27, 2016 the parties entered into a Quality Assurance Commitment Letter pursuant to which PMH agreed to maintain certain GWHN quality programs for the first two years after the Closing and to not modify them without approval of the Local Board. The Quality Assurance Commitment Letter also requires that PMH maintain QAPI programs consistent with best practices and those currently implemented in PMH's Rhode Island facilities while also acknowledging that the Local Board shall oversee quality programs at the New Hospital. *FF57*

PMH aligns its hospitals and physicians under a model called Coordinated Regional Care ("CRC"). CRC provides for clinical integration of hospitals, physicians and community providers with health plans and other payers through value driven and risk-based reimbursement systems. PMH believes that the CRC model improves quality, efficiency and financial performance while providing its patients with quality, affordable healthcare. *FF15* The goal of the CRC model is to reduce the overall cost of health care by increasing preventive care and reducing readmissions, inpatient utilization and emergency room visits. PMH will achieve these goals by developing a healthcare delivery network encompassing the entire continuum of patient care, including inpatient services, home health, clinics, independent physicians, nursing homes, ambulatory surgical centers, out-patient diagnostic services and other health related services. *FF43* PMH has demonstrated the efficacy of the CRC model in Southern California, Texas and Rhode Island. In these regions, PMH has improved clinical outcomes, increased quality scores, increased patient satisfaction, reduced readmission rates, reduced average lengths of stay, and reduced medical-cost ratios. For example, from 2012 to 2014 in California and Texas, where

PMH participates in HMO contracts for seniors, PMH reduced hospital bed days per thousand patients from 1,260 to 720. Additionally, length of hospital stay for this population has been reduced from 5.1 to 3.9 days, admissions per thousand have dropped from 245 per thousand to 182 per thousand and hospital readmissions within thirty days has dropped from 19% to 13%. The CRC model has also enabled PMH to attract more primary care providers and has improved access to care. *FF44*

In addition to addressing any quality issues, PMH has also agreed to adhere to GWHN's charity care policies for at least the first five years after Closing. For the first five years, PMH has also agreed to participate in the Medicare and Medicaid programs and accept all Medicare and Medicaid patients, provide public health programs of educational benefit to the community, and to generally promote public health, wellness, and welfare to the community by operating the New Hospital with quality standards consistent with other hospitals owned by PMH. *FF45* PMH will continue to provide financial support for community benefit and community building activities in the Waterbury area to the same degree as GWHN did in FY 2014. The spending by PMH for community building activities post-closing is projected to increase 1% each year through FY 2019, and the spending for both community benefit and community building activities post-closing assumes no change in the Medicaid population served or the complement of community benefit programs offered by the New Hospital. *FF46*

In 2013, the Hospital conducted a Community Health Needs Assessment ("CHNA"), which identified current and future health care needs of the community. The priority areas identified for the greater Waterbury community were access to care, mental health/substance abuse, overweight/obesity, and smoking/tobacco use. An implementation plan was developed to respond to the identified health needs, which PMH has agreed to support. Additionally, the Hospital has traditionally taken a lead role in developing the CHNA, and PMH has agreed to maintain GWHN's current level of involvement in developing and implementing the CHNA for five years from the Closing. *FF49* PMH has also stated that the New Hospital will be in compliance with the following general community benefit standards for at least the first three years after the Closing: (a) the New Hospital will have an open medical staff and not restrict the use of facilities to a particular group of physicians and surgeons to the exclusion of other qualified doctors and (b) the New Hospital will operate a 24/7 emergency department and provide emergency services to patients regardless of their ability to pay. *FF50* PMH and GWHN representatives have already met with leadership for Connecticut's Medicaid Program at the Department of Social Services ("DSS") and expressed their desire to work under a risk-based arrangement to provide care to Medicaid recipients. PMH is currently working with officials in Rhode Island to pilot a Medicaid risk-based program in that state. In addition, PMH will actively work with other providers in the community such as federally qualified health centers or community health centers to meet the needs of uninsured and underinsured individuals in the Service Area, including Medicaid recipients. *FF51*

Financial benefits associated with this proposal include: operational efficiencies and economies of scale, the New Hospital's participation in PMH's purchasing power, supply chain benefits, employee benefits savings and streamlined revenue collection. PMH also makes available to its

hospitals subject matter consultants who are employed by PMH, saving its hospitals the cost of hiring consultants in those areas. *FF53*

In its audited financial statements for FY 2015, PMH reported total revenues of over $1.3 billion from its operations on a consolidated basis. As of fiscal year end 2015, PMH reported free cash flow of over $112 million and close to $75 million in cash from operations. The company also received credit upgrades by both Moody's and S&P in 2015, with Moody's rating PMH's bonds as B1 and S&P rating PMH's bonds as B. These ratings still stand as of May 3, 2016. *FF19*

Based upon the aforementioned discussion of the evidence provided by the Applicants in this matter, the Applicants have satisfactorily demonstrated that PMH has made a commitment to provide health care to the uninsured and the underinsured; safeguard procedures are in place to avoid a conflict of interest in patient referral; and certificate of need authorization is justified in accordance with the principles and guidelines set forth in Connecticut General Statutes § 19a-639; those being, access to healthcare services, quality of the healthcare services, public need for the proposed project, and the financial feasibility of the proposed project.

Order

Based upon the foregoing Findings of Fact and Discussion, the Applicants' request for the sale of the assets of GWHN and its controlled affiliates to PMH or one or more affiliates of PMH is hereby **Approved** under Conn. Gen. Stat. §§ 19a-486 and 19a-639 subject to the enumerated conditions (the "Conditions") set forth below.

Unless expressly provided otherwise, all Conditions of this Order shall, to the extent applicable, be binding on the Applicants, their affiliates, successors and assigns, regardless of whether New GWHN remains the parent company and sole shareholder of the New Hospital. OHCA and any successor agency shall have the right to enforce the Conditions by all means and remedies available to it under law and equity, including, but not limited to, Conn. Gen. Stat. § 19a-486g and the right to impose and collect a civil penalty under Conn. Gen. Stat. § 19a-653 against any person or health care facility or institution that fails to file required data or information within the prescribed time periods set forth in this Order. All references to days in these Conditions shall mean calendar days.

1. Within twenty (20) days following the Closing of the Asset Purchase authorized by this Order, Applicants shall submit a schedule to OHCA setting forth Waterbury Hospital's inpatient bed allocation and the location and hours of operation for all outpatient services, by department, as of the Decision Date and publish this same information on the website of the Hospital. OHCA is imposing this Condition to ensure continued access to health care services for the patient population. *Legal and Factual Basis: Conn. Gen. Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(8) & (11); FF 18, 30*

2. Within twenty (20) days following the Closing of the Asset Purchase authorized by this Order, Applicants shall identify and provide the Certificate of Incorporation for the PMH affiliated entity that shall directly own, operate and hold the hospital license of the New Hospital post-closing. This entity shall be duly organized and validly existing under the laws of Connecticut and New GWHN shall be its parent company and sole shareholder as proposed in the CON application. OHCA is imposing this Condition to verify that safeguard procedures are in place to avoid a conflict of interest in patient referral. *Legal and Factual Basis: Conn. Gen. Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(8) & (11); FF 27*

3. Applicants shall notify OHCA in writing of the Closing of the Asset Purchase authorized by this Order within twenty (20) days of such closing and shall supply final execution copies of all agreements related to same, including but not limited to:

    a. the APA, including any and all schedules and exhibits; and

    b. Bylaws or similar governance documents for New GWHN, as well as for the New Hospital.

The Applicants may redact from the APA any information that is exempt from disclosure under Conn. Gen. Stat. § 1-210. If the Applicants redact materials in accordance with the previous sentence, the Applicants shall provide a list to OHCA which identifies in general terms the nature of the redacted material and why it is claimed to be exempt for public record purposes.

OHCA is imposing this Condition to verify that safeguard procedures are in place to avoid a conflict of interest in patient referral. *Legal and Factual Basis: Conn. Gen. Stat. §§ 19a-486d(a) & 19a-613(b); FF 20, 21, 38, 39*

4. Within one hundred and eighty (180) days following the Closing Date, PMH shall submit a plan (the "Health Needs Plan") for continuing to support and implement GWHN's 2016 CHNA and for conducting the New Hospital's next comprehensive study of community health needs in the Service Area (the "Community Health Needs Study" or "Study"). The Health Needs Plan shall describe in detail at least the following:

   (i) the data that will be collected and analyzed to systematically assess health status indicators of the Service Area;
   (ii) the identity of key community stakeholders and health organizations, unaffiliated with PMH, including without limitation, representatives of medically underserved populations, that will be enlisted to participate in the Study and the manner and extent of such participation by stakeholders in both the development of health priorities and planned implementation;
   (iii) the qualifications of consultants experienced in performing community health needs assessments who will be retained by PMH to ensure that the priority health needs of the community are accurately determined;
   (iv) the frequency with which the Study will be repeated;
   (v) the manner in which results of the Study and the implementation strategy to address the priority health needs identified therein (the "Implementation Strategy") will be distributed to the community; and
   (vi) the manner in which the Study will complement the population health management objectives of PMH and the New Hospital.

OHCA is imposing this Condition to ensure continued access to health care services for the patient population. *Legal and Factual Basis: Conn. Gen. Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(3) & (7); FF 49*

5. Within three (3) years following the Closing, PMH shall participate with New GWHN and the New Hospital, and the key community stakeholders and health organizations identified pursuant to Condition 4, in conducting a Community Health Needs Study and shall provide a copy of such Study and its Implementation Strategy to OHCA within thirty (30) days of completion. PMH and the participants shall utilize Healthy Connecticut State Health Improvement Plan data and priorities as the starting point for the Study (available at http://www.ct.gov/dph/lib/dph/state_health_planning/sha-ship/hct2020/hct2020_state_hlth_impv_032514.pdf), as well as any applicable community health improvement plan issued by any local health department in the Service Area.[1] The Implementation Strategy shall also adopt the evidence-based interventions identified in the Centers for Disease Control 6/18 initiative (available at http://www.cdc.gov/sixeighteen) to the extent the health priorities identified in the Study correlate to the health conditions identified by the CDC and provide information on how any patient outcomes related to the Implementation Strategy will be measured and reported to the community. PMH shall publish the Community Health Needs Study and the Implementation Strategy on New Hospital's website. Until such time as the Community Health Needs Study and Implementation Strategy are submitted to OHCA, PMH shall continue to support and implement GWHN's current CHNA for the Hospital. OHCA is imposing this Condition to ensure continued access to health care services for the patient population. *Legal and Factual Basis: Stat. §§ 19a-486d(a) 19a-613(b), 19a-639(a)(3) & (7); FF 49*

6. Within one hundred and eighty (180) days following the Closing Date, PMH shall submit a plan demonstrating how health care services will be provided by the New Hospital for the first three years following the Asset Purchase, including any consolidation, reduction, or elimination of existing services or introduction of new services (the "Services Plan"). The Services Plan will be provided in a format mutually agreed upon by OHCA and the Applicants. OHCA is imposing this Condition to ensure continued access to health care services for the patient population. *Legal and Factual Basis: Conn. Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(5),(6) (7),(8),(9),(11) & (12); FF 18, 30, 34, 43, 46*

7. Until such time as the Services Plan is submitted, PMH shall provide OHCA with notice of any reallocation of inpatient beds and relocation of outpatient services for the New Hospital specific to those services that existed at the Hospital as of the Decision Date. Such notice shall be provided within ten (10) days of any such reallocation or relocation and published on the website of the New Hospital. OHCA is imposing this Condition to ensure continued access to health care services for the patient population. *Legal and Factual Basis: Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(5),(6) (7),(8),(9),(11) & (12); FF 18, 30*

[1] Other tools and resources which the Applicants are encouraged to consider include County Health Rankings and CDC Community Health Improvement Navigator in order to assist with the Study process in terms of enhancing the understanding of social, behavioral, and environmental conditions that affect health, identifying priorities, and using evidence-based interventions.

8. Within one hundred and eighty (180) days following the Closing Date and thereafter on the same semi-annual schedule as set forth in Conditions 9 and 10 below until the capital commitment is satisfied, PMH shall submit to OHCA a report on the capital investments ("Capital Investment Report") it has made in the New Hospital and its affiliates from the Commitment Amount. The Capital Investment Report shall include the following in a format to be agreed upon:

    a. A list of the capital expenditures that have been made in the prior one hundred and eighty (180) days with descriptions of each associated project;

    b. An explanation of why each expenditure was made and a timeframe for the roll out of the associated capital project (including estimated beginning, ending and startup/operation dates); and

    c. The dates and amounts of withdrawals from the New Hospital's operating account and/or any other sources of funding used to fulfill the Capital Commitment.

    The reports shall be signed by the New GWHN's Chief Financial Officer. OHCA is imposing this Condition to ensure continued access to health care services for the patient population and to verify the continued financial feasibility of the project. *Legal and Factual Basis: Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(3),(4) & (5); FF 29, 31-34*

9. For three (3) years following the Closing Date, PMH shall file the following information with OHCA on a semi-annual basis for New GWHN and the New Hospital, respectively:

    a. The cost saving totals achieved in the following Operating Expense Categories for New GWHN and New Hospital: Salaries and Wages, Fringe Benefits, Contractual Labor Fees, Medical Supplies and Pharmaceutical Costs, Depreciation and Amortization, Interest Expense, Malpractice Expense, Utilities, Business Expenses and Other Operating Expenses. The categories shall be consistent with the major operating expense categories (Categories A, B, C, D, E, G, H, I, J, and K) which are in use at the time of reporting in the OHCA Hospital Reporting System ("HRS") Report 175 or successor report. The semi-annual submission shall also contain narratives describing:

        1. the major cost savings achieved for each expense category for the semi-annual period; and

        2. the effect of these cost savings on the clinical quality of care.

    b. A consolidated Balance Sheet, Statement of Operations, and Statement of Cash Flows for New GWHN and New Hospital. The format shall be consistent with that which is in use at the time of reporting in OHCA's HRS Reports 100/150, 300/350 or successor reports.

For purposes of this Order, semi-annual periods are October 1-March 31 and April 1 – September 30. The required information is due no later than two (2) months after the end of each semi-annual period. Due dates are May 31st and November 30th, beginning November 30, 2016. OHCA is imposing this Condition to ensure continued access to health care services for the patient population and to verify the continued financial feasibility of the project. *Legal and Factual Basis: Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(4) & (5); FF 29, 31-34*

10. For three (3) years following the Closing Date, PMH shall submit to OHCA a financial measurement report. This report shall be submitted on a semi-annual basis and show current month and year-to-date data and comparable prior year period data for New GWHN and New Hospital, respectively. The required information is due no later than two (2) months after the end of each semi-annual period. Due dates are May 31st and November 30th, beginning November 30, 2016. The following financial measurements/indicators should be addressed in the report:

Financial Measurement/Indicators

A. Operating Performance
1. Operating Margin
2. Non-Operating Margin
3. Total Margin
B. Liquidity
1. Current Ratio
2. Days Cash on Hand
3. Days in Net Accounts Receivables
4. Average Payment Period
C. Leverage and Capital Structure
1. Long-term Debt to Equity
2. Long-term Debt to Capitalization
3. Unrestricted Cash to Debt
4. Times Interest Earned Ratio
5. Debt Service Coverage Ratio
6. Equity Financing Ratio
D. Additional Statistics
1. Income from Operations
2. Revenue Over/(Under) Expense

3. Cash from Operations
4. Cash and Cash Equivalents
5. Net Working Capital
6. Free Cash Flow (and the elements used in the calculation)
7. Unrestricted Assets/Retained Earnings
8. Bad Debt as % of Gross Revenue
9. Credit Ratings (S&P, FITCH or Moody's)

OHCA is imposing this Condition to ensure continued access to health care services for the patient population and to verify the continued financial feasibility of the project. *Legal and Factual Basis: Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(4) & (5); FF 18, 36*

11. PMH shall ensure that the New Hospital maintains and adheres to GWHN's current policies regarding charity care, indigent care and community volunteer services after the Closing Date, or adopt other policies that are at least as generous and benevolent to the community as GWHN's current policies consistent with state and federal law. These policies shall be posted on the website of the New Hospital and as additionally required by applicable law. OHCA is imposing this Condition to ensure continued access to health care services for the patient population. *Legal and Factual Basis: Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(5),(6) & (11); FF 45, 46*

12. For three (3) years following the Closing Date, PMH shall provide written notice to OHCA of any modification, amendment or revision to the charity care, indigent care and community volunteer services of the New Hospital within thirty (30) days of such change. The notice of these changes shall be accompanied by copies of any revised policies and the notice and revised policies shall be posted on the website of the New Hospital simultaneously with its submission to OHCA. OHCA is imposing this Condition to ensure continued access to health care services for the patient population. *Legal and Factual Basis: Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(5),(6) & (11); FF 45, 46*

13. PMH shall maintain community benefit programs and community building activities for the New Hospital for three (3) years after the Closing Date consistent with the Hospital's most recent Schedule H of IRS Form 990 or shall provide such other community benefit programs and community building activities that are at least as generous and benevolent to the community as GWHN's current programs, and PMH shall apply a 1% increase per year for the next three (3) years toward community building activities in terms of dollars spent.

In determining the New Hospital's participation and investment in both community benefits and community building activities, PMH shall address the health needs identified by the applicable CHNA or Study in effect at the time and the population health management objectives, including social determinants of health, contained in the related Implementation Strategy.

a. On an annual basis, the Applicants shall identify the amounts and uses related to community benefits and community building and shall discuss how such investments and support are being applied toward the health needs identified in the CHNA or Study and population health management objectives. Such reporting shall be filed within thirty days of the anniversary date of the Closing for three years and shall be posted on New Hospital's website. OHCA is imposing this Condition to ensure continued access to health care services for the patient population. *Legal and Factual Basis: Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(5),(6) & (11); FF 46*

14. The New Hospital agrees to comply with the following general community benefit standards for at least the first three years following the Closing: (a) the New Hospital shall provide public health programs to the community and generally promote the welfare of the community; (b) the New Hospital shall have an open medical staff and not restrict the use of facilities to a particular group of physicians and surgeons to the exclusion of other qualified doctors; (c) the New Hospital shall participate in the Medicare and Medicaid programs; and (d) the New Hospital shall operate a 24/7 emergency department and provide emergency services to patients regardless of their ability to pay. OHCA is imposing this Condition to ensure continued access to health care services for the patient population. *Legal and Factual Basis: Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(5),(6) & (11); FF 45, 50*

15. The New Hospital shall work toward making culturally and linguistically appropriate services available and integrated throughout its hospital operations. Specifically, the New Hospital shall take reasonable steps to provide meaningful access to each individual with limited English proficiency eligible to be served or likely to be encountered in its health programs and activities, in accordance with the implementing regulations of Section 1557 of the Patient Protection and Affordable Care Act. Additionally, the New Hospital shall provide appropriate insurance navigator services for patients and, where appropriate, English as a second language and cultural competency training for employees. In complying with this Condition, the New Hospital shall be guided by the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care published by the U.S. Department of Health and Human Services' Office of Minority Health. For three (3) years following the Closing, PMH shall submit a written report on its activities directed at meeting this Condition. Such reporting shall be filed within thirty days of the anniversary date of the Closing for three years and shall be posted on the New Hospital's website. OHCA is imposing this Condition so as to ensure continued access to health care services for the patient population. *Legal and Factual Basis: 45 C.F.R. §92.201; Stat. §§ 19a-486d(a), 19a-613(b), 19a-639(a)(5),(6) & (11); FF 45-50*

16. Within sixty (60) days after the Closing Date, the Applicants shall contract with an Independent Monitor who has experience in hospital administration and regulation, including maintaining quality control in an HRO. The Independent Monitor shall be retained at the sole expense of PMH, at a cost which shall not exceed $300,000 in the aggregate. Representatives of OHCA and the Facility Licensing and Investigations ("FLIS") section of the Department of Public Health ("DPH") will approve the Independent Monitor's appointment. The Independent Monitor shall be engaged for a minimum period of two (2) years following the Closing, which may be extended for another year at OHCA's and/or FLIS's discretion. The Independent Monitor will be responsible for monitoring the Applicants' compliance with the Conditions set forth in this Order. PMH shall provide the Independent Monitor with appropriate access to the New Hospital and its applicable records in order to enable the Independent Monitor to fulfill its functions hereunder. OHCA is imposing this Condition to ensure continued access to health care services for the patient population and to verify and monitor compliance with the Conditions set forth herein. *Legal and Factual Basis: Conn. Gen. §§ Stat. 19a-486d(a), 19a-613(b), 19a-639(a)(1),(2),(4),(5),(6),(7),(11) & (12); FF 18, 34, 45-50, 57*

17. The Independent Monitor will report to both OHCA and FLIS. The Independent Monitor shall conduct on-site visits of the New Hospital on no less than a semi-annual basis to assess PMH's modified QAPI program and compliance with the Quality Assurance Commitment Letter. The Independent Monitor shall furnish a written report of his or her assessment to OHCA and FLIS within thirty (30) days of the completion of each on-site review. PMH will have the opportunity to review and provide written responses to the report. As OHCA deems necessary, the Independent Monitor shall meet with OHCA and FLIS personnel to discuss the written report and will perform additional periodic reviews and reviews of other PMH affiliated sites of service. OHCA is imposing this Condition to ensure continued access to health care services for the patient population and to verify and monitor compliance with the Conditions set forth herein. *Legal and Factual Basis: Conn. Gen. §§ Stat. 19a-486d(a), 19a-613(b), 19a-639(a)(1),(2),(4),(5),(6),(7),(11) & (12); FF 18, 34, 45-50, 57*

18. If at any time within three (3) years following the Closing Date, the New Hospital's Local Board agrees with PMH to change any of GWHN's Post Closing Quality Practices described in the Quality Assurance Commitment Letter other than to make any changes necessary to address (i) an immediate issue of patient safety; (ii) changes in federal, state, and local laws; or (iii) as mandated or recommended in guidance by a governmental agency, PMH shall notify OHCA and FLIS in writing within thirty (30) days of any such change going into effect. If the Independent Monitor disagrees with the change, OHCA may require that a request for modification be submitted and approved as required by C.G.S. §4-18la to make the change. OHCA is imposing this Condition to ensure continued access to health care services for the patient population and to verify and monitor compliance with the Conditions set forth herein. *Legal and Factual Basis: Stat. §§ 19a-486d, 19a-613(b), 19a-639(a)(1),(2),(5) & (6); FF 57*

19. For three (3) years following the Closing Date, PMH shall hold a meeting of the New Hospital Board and the Local Board ("Joint Board Meetings") at least twice annually. Such Joint Board Meetings shall be followed by a meeting to which the public is invited in advance and at which the public is informed of the New Hospital's activities and afforded an opportunity to ask questions and make comments. OHCA is imposing this Condition to ensure continued access to health care services for the patient population. *Legal and Factual Basis: Stat. §§ 19a-486d, 19a-613(b), 19a-639(a)(2),(3),(5),(7),(8),(11) & (12); FF 38, 39*

20. For three (3) years following the Closing Date, PMH shall allow for one (1) community representative to serve as a voting member of the Local Board with rights and obligations consistent with other voting members under the Local Board Bylaws. The community representative shall be selected in consultation with the Mayor of Waterbury in order to ensure the appointment of an unbiased person who will fairly represent the interests of the community served by the Hospital. OHCA is imposing this Condition to ensure continued access to health care services for the patient population. *Legal and Factual Basis: Stat. §§ 19a-486d, 19a-613(b), 19a-639(a)(2),(3),(5),(7),(8),(11) & (12); FF 38, 39*

21. PMH, New GWHN and the New Hospital shall abide by all requirements of licensure that may be imposed by FLIS in any Pre-Licensing Consent Order or similar agreement that FLIS may enter with these parties. OHCA is imposing this Condition to ensure that quality health care services are provided to the patient population. *Legal and Factual Basis: Stat. §§ 19a-486d, 19a-490, 19a-493, 19a-639(a)(1),(2),(5) & (6); FF 54, 57*

All of the foregoing constitutes the final order of the Office of Health Care Access in this matter.

By Order of the
Department of Public Health
Office of Health Care Access

July 15, 2016
Date

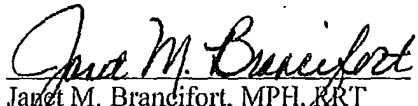
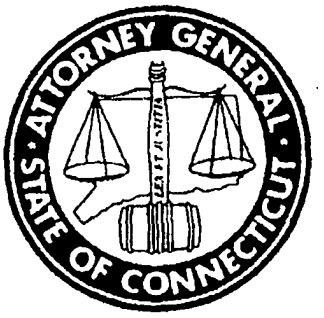

Janet M. Brancifort, MPH, RRT
Deputy Commissioner

Exhibit C

State of Connecticut
Office of the Attorney General
Final Decision

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT



DOCKET NO. : OAG 15-486-02

IN RE APPLICATION FOR ASSET	:	OFFICE OF THE ATTORNEY
PURCHASE BY PROSPECT MEDICAL	:	GENERAL
HOLDINGS, INC., OF GREATER	:	
WATERBURY HEALTH SYSTEMS, INC.	:	JULY 15, 2016

FINAL DECISION

TABLE OF CONTENTS

I. INTRODUCTION 1

II. EXECUTIVE SUMMARY 3

A. The Conversion Act – An Overview 3

B. The Proposed Transaction 5

C. The Proposed Transaction Meets the Requirements of the Conversion Act Provided the Applicants Comply with the Attorney General's Conditions and Modifications.. 6

1. Findings and Conclusions 6
2. Conditions and Modifications 7

III. PROCEDURAL HISTORY 11

IV. FINDINGS OF FACT 12

A. Parties and other relevant corporate entities 13

B. GWHN's Fiscal Condition 15

C. The Search for Solutions and Partners 16

D. The Proposed Transaction 18

E. The Charitable Assets of The Waterbury Hospital 21

1. Unrestricted Endowments 21
2. Restricted Endowments 22
3. Restricted, Fully Expendable Gifts 23
4. Unrestricted, Fully Expendable Gifts 23
5. Third Party Trusts 24
6. Future Interests 24

V. LEGAL ANALYSIS AND REQUIRED MODIFICATIONS 25

A. The transaction is not prohibited by Connecticut statutory or common law governing nonprofit entities, trusts or charities. 25

B. GWHN exercised due diligence. 26

1. GWHN exercised due diligence in deciding to participate in the APA. 27
2. GWHN exercised due diligence in selecting PMH to Purchase Substantially All of Its Assets. 27
3. GWHN exercised due diligence in obtaining a fairness evaluation. 29
4. GWHN exercised due diligence in negotiating the terms and conditions of the APA. 30

C. No GWHN Board Member, Officer, Key Employee, or Expert Has a Conflict of Interest With Respect to the APA. 31

D. GWHN will receive fair market value for its assets. 32

E. The fair market value of the assets has not been manipulated by any person in a manner that causes the value of the assets to decrease. 34

F. The financing of the transaction will not place The Waterbury Hospital's assets at an unreasonable risk. 35

G. The management contract contemplated under the transaction is for reasonable fair value. 36

H. Assuming compliance with the modifications imposed below, a sum equal to the fair market value of GWHN's assets is being transferred to the Independent Foundation to provide only for charitable health care services in the affected community. 37

1. A Sum Equal to the Fair Market Value of The Waterbury Hospital Is Being Transferred to the Independent Foundation. 38
2. The Nature of the Independent Foundation Complies with the Conversion Act. 40
3. The Transferred Sum Will Be Used Only For The Statutorily Identified Charitable Purposes. 42
4. Description and Quantification of the Nonprofit Hospital's Charitable Assets to be Held by the Independent Foundation. 43
   a. Purpose of Attorney General's Review of Charitable Gifts 43
   b. Documents Reviewed and Legal Standards 44
   c. Amount Stated by Hospital in Application 44
   d. GWHN's Charitable Gifts and Trusts. 45
      i. Unrestricted Endowments. 46
      ii. Restricted Endowments 46
      iii. Restricted, Fully Expendable Gifts 47
      iv. Trust Held by Outside Trustees. 48
      v. Future Interests 48

I. GWHN and PMH Have Provided The Attorney General With Information And Data Sufficient To Evaluate The Proposed APA. 49

VII. CONCLUSION 49

I. INTRODUCTION

The proposed asset purchase agreement between Greater Waterbury Health Network, Inc. ("GWHN"), and Prospect Medical Holdings, Inc. ("PMH")(collectively, the "Applicants"), is the third Application filed by GWHN with the Office of the Attorney General (the "OAG") for its review pursuant to the Nonprofit Hospital Conversion Act, Conn. Gen. Stat. § 19a-486 et seq. (the "Conversion Act").

On April 23, 2012, GWHN submitted a proposed transaction with LHP that was withdrawn by the purchaser in late August of the same year. On January 22, 2013, GWHN submitted a proposed transaction with Vanguard Health Systems, Inc., that was withdrawn prior to the completion of the OAG's review under the Conversion Act.[1] This Application comes approximately two and a half years later.

This is PMH's second Application with the OAG. The first application proposed an asset purchase agreement with the Eastern Connecticut Health Network, Inc. ("ECHN"), OAG Docket No. 15-486-01. The Final Decision in the ECHN Conversion Application was issued on June 10, 2016. Because PMH is the same purchaser for both transactions and because both transactions are asset purchases, many of the issues addressed by the OAG in this decision are similar to those addressed in the ECHN Final Decision.

The difficulties faced by hospitals in delivering quality healthcare services in a changing and increasingly challenging fiscal landscape have become, appropriately, a subject of national concern and debate. A number of forces in recent years have contributed to the financial challenges to local hospitals, including those in Connecticut. Against the

[1] Between the submission of the letter of intent by GWHN and Vanguard and the withdrawal of the application, Tenet Healthcare Corporation purchased Vanguard.

backdrop of a changing regulatory and fiscal landscape at the federal and state level, the delivery of healthcare services remains a local issue of extreme importance to the communities in which nonprofit hospitals operate. These issues are no less true for GWHN than for any other community hospital or hospital system in Connecticut. It is in this context that GWHN has decided to sell substantially all of its assets to PMH. Its stated goal in making this decision is to ensure and enhance access to GWHN's services and facilities and to improve the financial health of GWHN. (Application of GWHN and PMH re a Proposed Asset Purchase Agreement, OAG Docket 15-486-02, p. 12; hereinafter, "App., p. __.")

Pursuant to the Conversion Act, the legislature has authorized the Attorney General to review and investigate proposed nonprofit to for-profit hospital transactions, to disapprove them if he finds that any of the criteria set forth in Conn. Gen. Stat. § 19a-486c(a) are not met, or to approve the transaction subject to any modifications or conditions that the Attorney General deems appropriate. Conn. Gen. Stat. § 19a-486b. Under the law, the Attorney General is required to assess both the procedural and financial fairness of the transaction and to protect and preserve the charitable assets of GWHN.

Contemporaneously with the OAG's review of the proposed Asset Purchase Agreement (the "APA"), the Office of Health Care Access, Department of Public Health ("OHCA"), has been reviewing the transaction to determine whether a certificate of need should be issued in this case and also whether OHCA's criteria in the Conversion Act have been fulfilled by the Applicants. In contrast to the Attorney General's focus, OHCA's review encompasses issues involving the impact of the proposed transaction on access to, and the quality of, health care in the GWHN service area.

As explained in detail below, we grant the Application with conditions necessary to conform the proposed transaction to the requirements of the Conversion Act. I would like to thank GWHN and PMH for their cooperation throughout this process. I would also like to thank the many witnesses, public officials, and members of the public who testified or commented on the proposed transaction in our proceedings. Last, I would like to thank my staff, Assistant Attorney General Henry Salton, head of the Health and Education Department, Assistant Attorney General Gary W. Hawes, and Paralegal Specialist Cheryl A. Turner for their diligent efforts on this matter.

II. EXECUTIVE SUMMARY

A. The Conversion Act – An Overview

Pursuant to the requirements of the Conversion Act, the OAG is required to review a proposed transaction for compliance with specifically articulated standards that were established by the legislature. § 19a-486c(a). In sum, these criteria require the OAG to make certain determinations: whether the nonprofit hospital's decision to sell its assets was reasonable, whether it chose the ultimate purchaser in an open and fair process, whether it received fair market value for its assets, whether the funds generated by the sale will be held by an independent charitable foundation that will use them for the promotion of healthcare in the nonprofit hospital's community, and whether use restrictions on any charitable asset held by GWHN will be preserved.[2]

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[2] Conn. Gen. Stat. § 19a-486c(a) provides in full:

The Attorney General shall deny an application as not in the public interest if the Attorney General determines that one or more of the following conditions exist:

The Conversion Act authorizes the Attorney General to review and investigate proposed nonprofit to for-profit hospital transactions, to disapprove them if he finds that any of the criteria set forth in the Conversion Act are not met, or to approve the transactions subject to modifications that the Attorney General deems appropriate. Under the law, the Attorney General is required to assess the fairness of the transaction, both

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(1) the transaction is prohibited by Connecticut statutory or common law governing nonprofit entities, trusts or charities;

(2) the nonprofit hospital failed to exercise due diligence in (A) deciding to transfer, (B) selecting the purchaser, (C) obtaining a fairness evaluation from an independent person expert in such agreements, or (D) negotiating the terms and conditions of the transfer;

(3) the nonprofit hospital failed to disclose any conflict of interest, including, but not limited to, conflicts of interest pertaining to board members, officers, key employees and experts of The Waterbury Hospital, the purchaser or any other party to the transaction;

(4) the nonprofit hospital will not receive fair market value for its assets, which, for purposes of this subsection, means the most likely price that the assets would bring in a sale in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably and in their own best interest, and with a reasonable time being allowed for exposure in the open market;

(5) the fair market value of the assets has been manipulated by any person in a manner that causes the value of the assets to decrease;

(6) the financing of the transaction by the nonprofit hospital will place the nonprofit hospital's assets at an unreasonable risk;

(7) any management contract contemplated under the transaction is not for reasonable fair value;

(8) a sum equal to the fair market value of the nonprofit hospital's assets (A) is not being transferred to one or more persons to be selected by the superior court for the judicial district where the nonprofit hospital is located who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to operate on a nonprofit basis after the transaction and such sum is transferred to the nonprofit hospital to provide health care services, and (B) is not being used for one of the following purposes: (i) For appropriate charitable health care purposes consistent with the nonprofit hospital's original purpose, (ii) for the support and promotion of health care generally in the affected community, or (iii) with respect to any assets held by the nonprofit hospital that are subject to a use restriction imposed by a donor, for a purpose consistent with the intent of said donor; or

(9) the nonprofit hospital or the purchaser has failed to provide the Attorney General with information and data sufficient to evaluate the proposed agreement adequately, provided the Attorney General has notified the nonprofit hospital or the purchaser of the inadequacy of the information or data and has provided a reasonable opportunity to remedy such inadequacy.

procedural and financial, and to protect and preserve the charitable assets of The Waterbury Hospital.

B. The Proposed Transaction

GWHN and PMH propose an asset purchase whereby GWHN will sell substantially all of its assets to PMH or one or more affiliates of PMH (hereinafter, "PMH"). Substantially all of the assets of GWHN will be transferred to PMH in exchange for approximately $31,800,000, subject to adjustments regarding net working capital at the time of closing. Additional adjustments to the purchase price will be made for the value of GWHN liabilities assumed by PMH. Pursuant to the APA, PMH will commit to spend not less than $55,000,000 on capital items over seven years, less certain amounts such as capital leases in excess of $3,000,000, the cash shortfall of GWHN at closing, and certain post-closing losses, all as more particularly described in the APA. (App., pp. 1977.)

After the closing, PMH will be advised by a local community advisory board regarding the hospital's mission, medical staff credentialing, and the development of strategic plans, among other things. PMH will offer employment to all active employees in good standing as of the closing. (App., p. 176.) In addition, PMH will maintain GWHN's current policies on charity care and indigent care for a minimum of five years. (App., p.189.)

After the closing, GWHN will establish a new charitable entity (the "Independent Foundation") that will receive the net proceeds of the transaction and the appropriate charitable gift assets held by GWHN.

C. The Proposed Transaction Meets the Requirements of the Conversion Act Provided the Applicants Comply with the Attorney General's Conditions and Modifications.

1. Findings and Conclusions

Based on our review of the record and the standards set forth in § 19a-486c(a), we conclude that the proposed transaction meets the requirements of the Conversion Act, provided that GWHN and PMH comply with the modifications and conditions that are imposed herein.

First, we conclude that the process employed by GWHN in deciding to transfer substantially all of its assets to a for-profit hospital reflects reasonable and prudent due diligence by GWHN's Board of Directors. The GWHN Board reworked its management team to better equip it to conduct due diligence, sought out the advice of experts, and administered several RFP processes to evaluate and select a transaction partner—all in an effort to serve the best interests of The Waterbury Hospital and the provision of healthcare in the Waterbury community. The Board's efforts have been diligent, without conflicts of interests, and, in our opinion, have complied with its fiduciary obligations to GWHN.

Second, we conclude that GWHN will receive fair market value for its assets as a result of the proposed transaction. Based primarily on the opinions of two independent financial valuation experts, the price negotiated for the sale of GWHN's assets equals or exceeds the price those assets would command in an open and competitive market.[3] This

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[3] The nonprofit hospital conversion review process provides the Attorney General with the opportunity to have two separate, independent financial experts review the proposed transaction for compliance with the provisions of § 19a-486c(a). The first expert opinion is required by § 19a-486c(a)(2)(C), which provides that the nonprofit hospital obtain a fairness evaluation from an independent person expert in such agreement. GWHN hired Principle Valuation, LLC, for these

conclusion is buttressed by the fact that the process followed by the GWHN Board to select a capital partner was itself open and competitive.

Third, assuming compliance with the modifications and conditions set forth below, we conclude that the charitable assets of GWHN will be adequately protected and preserved after the proposed transaction closes. The charitable assets of GWHN, which have been held in trust for the public, will continue to be held by GWHN after the closing (GWHN after the closing is referred to herein as "Legacy GWHN"), and with respect to unrestricted funds, will be used in the interim to pay off GWHN's pre-closing liabilities. Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area.

We also conclude that a sum equal to the fair market value of GWHN's assets (the "net proceeds" from the sale) will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community.[4]

2. Conditions and Modifications

The General Assembly has assigned the OAG significant responsibility and flexibility to modify the terms of the proposed transaction, if necessary, to fulfill the statutory purposes of the Conversion Act (§ 19a-486b), and—in particular—to fulfill the

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purposes, and its opinion is included in the record. In addition, § 19a-486c(c) allows the Attorney General to contract with a financial expert to assist in the review of the nonprofit hospital's compliance with the provisions in § 19a-486c(a). Through an RFP process, the Attorney General retained the services of Navigant Consulting, Inc. ("Navigant Consulting"), to provide an additional independent analysis of the APA.

[4] As discussed further below, the current projected value of the net proceeds at closing is negative due to the liabilities Legacy GWHN will carry after closing.

Attorney General's statutory charge to serve the public interest in the protection of gifts, legacies or devises for public or charitable purposes. Conn. Gen. Stat. § 3-125.

Consequently, although we approve the APA, that approval is contingent on a number of conditions and modifications to the terms of the APA that must be made or met to ensure that the interests of the public and the requirements of the Conversion Act are met. These modifications and conditions, which are more fully described in Section V of this decision, are as follows:

1. The Applicants must delete the last sentence of section 6.10 from the APA.

2. The Applicants shall notify the OAG in writing of the closing date of the Asset Purchase as soon as reasonably possible after the date has been set. If the closing date changes, the Applicants shall notify the OAG in writing of the change as soon as reasonably possible.

3. The Applicants must submit to the OAG, within 30 days of closing, fully executed copies of the Asset Purchase Agreement, without schedules.

4. As soon as reasonably possible after the Applicants have agreed to a Final Closing Statement of the transaction, the Applicants must provide the OAG a final accounting of the transaction that sets forth the balance sheets of GWHN immediately prior to and after the closing and that provides a net proceeds analysis. Legacy GWHN shall also provide a financial outlook for Legacy GWHN and its expected liability payment schedule going forward.

5. After the closing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the Asset Purchase in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a

court of competent jurisdiction. Notwithstanding the above condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation.

6. Legacy GWHN shall report quarterly for the first two years to the OAG regarding (1) any and all income received by Legacy GWHN post-closing, including, but not limited to, Medicare and Medicaid reimbursements, income from charitable assets held by Legacy GWHN prior to transfer to the Independent Foundation, and any additional charitable funds received, and (2) all expenditures for Legacy GWHN.

7. From two years after the closing until all liabilities of Legacy GWHN have been paid, Legacy GWHN shall annually report to the OAG regarding (1) any and all income received by Legacy GWHN post-closing, and (2) all expenditures for Legacy GWHN.

8. Any income or unrestricted gifts received by Legacy GWHN post-closing shall be considered net proceeds.

9. The Independent Foundation shall include paragraph 11, as set forth in the draft Certificate of Incorporation, in the final Certificate of Incorporation of the Independent Foundation, requiring Attorney General approval for changes to paragraphs 3, 5(c), 9, or 11 of the Certificate of Incorporation.

10. Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation to transfer the unrestricted endowments to the Independent Foundation and to change the charitable purpose of the unrestricted endowments to the charitable purpose of the Independent Foundation.

11. Legacy GWHN must, in coordination with the OAG, include the restricted endowments in the Superior Court petition for an equitable deviation order. With respect to the restricted endowments that are not bed funds, Legacy GWHN must seek an order of approximation, in addition to one for equitable deviation, to adjust the funds' charitable purposes, if necessary, to avoid the for-profit hospital status as beneficiary.

12. Legacy GWHN must, in coordination with the OAG, include any restricted, fully expendable funds that still have money in them in the Superior Court petition for an equitable deviation and approximation order.

13. Legacy GWHN must, in coordination with the OAG and the third-party trustees, bring any third-party trusts in need of construction or approximation before a court of competent jurisdiction for appropriate orders.

14. After Legacy GWHN's liabilities have been paid off, any remaining or accumulated net proceeds from this transaction shall be transferred to and then held by the Independent Foundation and used only for the support and promotion of healthcare in the GWHN community. The net proceeds shall never inure to the benefit of the for-profit hospital. The net proceeds shall forever be held by the Independent Foundation for the purposes articulated in the Independent Foundation's Draft Certificate of Incorporation, unless and until a court of competent jurisdiction orders otherwise.

15. Subject to subsequent Court order, the net proceeds held by the Independent Foundation shall be considered an endowment fund, as that term is defined in the Connecticut Uniform Prudent Management of Institutional Funds Act, Conn. Gen. Stat. § 45a-535 et seq. ("CUPMIFA").

III. PROCEDURAL HISTORY

On July 16, 2015, OHCA and the OAG received GWHN's certificate of need determination letter that set forth in summary fashion the terms of the APA between the Applicants.[5] Because the OAG determined that the APA required approval pursuant to § 19a-486 et seq., the OAG and OHCA on August 6, 2015, jointly sent the Applicants an Application Form regarding the APA.

The Applicants requested an extension of time to submit their Application, which both agencies granted. On October 28, 2015, the Applicants filed their Application for an Asset Purchase, which included 37 exhibits. Upon review of the Application, the OAG and OHCA determined that the Applicants' Application was not complete, and on November 17, 2015, it requested additional information from the Applicants. On December 24, 2015, the Applicants filed responses to the requests set forth by the OAG and OHCA. On January 12, 2016, OHCA issued one last set of completeness questions, to which the Applicants responded on February 16, 2016. On March 4, 2016, the OAG and OHCA determined that the Application was complete. In order to ensure the completeness of the record, the OAG and OHCA took administrative notice of the record in the Proposed Asset Purchase of Eastern Connecticut Health Network, Inc., by Prospect Medical Holdings, Inc., OHCA Docket No. 15-32016-486, OAG Docket No. 15-486-01 (the "ECHN/PMH APA").

Pursuant to Conn. Gen. Stat. § 19a-486e, the OAG and OHCA conducted a public hearing regarding the proposed Asset Purchase in the primary service area of The

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[5] All docket documents referenced in this opinion can be found on the Attorney General's website: www.ct.gov/ag.

Waterbury Hospital on May 3rd, 2016, at 1:00 p.m. at the Courtyard by Marriot Waterbury in Waterbury, Connecticut. No person sought intervenor status for the hearing. Conn. Gen. Stat. § 19a-486a(g). All parties submitted pre-filed testimony for the hearing.

The hearing was presided over by representatives from both the OAG and OHCA. Deputy Attorney General Perry Zinn Rowthorn served as the hearing office for the OAG. Also on the panel for the OAG were Assistant Attorney General Henry A. Salton and Assistant Attorney General Gary W. Hawes. Kevin Hansted served as the hearing officer for OHCA. Also on the panel for OHCA were Kimberly Martone, Director for OHCA, Steven W. Lazarus, Associate Health Care Analyst, and Carmen Cotto, Health Care Analyst.

At the hearing, all parties adopted their pre-filed testimony, and all exhibits on the table of record were entered into the record. The Applicants presented full testimony and were subject to cross-examination by OHCA and the OAG. In addition, the hearing panel heard approximately 40 public comments and accepted any written public comments offered during the hearing. Subsequent to the hearing, the OAG received one additional public comment.

The Applicants filed late-filed exhibits with OHCA and the OAG on May 24, 2016, May 27, 2016, and June 23, 2016.

IV. FINDINGS OF FACT

Based upon the entire record of this Application, including all statements, testimony, and exhibits submitted by the Applicants and intervenors, all public comments made at the hearing or submitted to the OAG in writing, and the summary reports and exhibits submitted by the independent financial experts, we find the following.

A. Parties and other relevant corporate entities

GWHN is a Connecticut non-stock, 501(c)(3) corporation and is the parent company and sole member of The Waterbury Hospital. GWHN's goal in pursuing this transaction is to provide service area patients continued access to The Waterbury Hospital's services and facilities while enhancing, through capital investment and operating efficiencies, those services and facilities. (App., p. 12.)

The Waterbury Hospital, in operation since 1890, is a 357-licensed bed (excluding bassinets) acute care teaching hospital, which provides a full range of inpatient, outpatient and ancillary services in the city of Waterbury near the junctions of Route 8 and Interstate 84. In fiscal year 2015, The Waterbury Hospital, Inc., admitted 10,7299 inpatients, delivered 917 newborns, had 48,500 Emergency Department visits, and performed 1,950 inpatient surgeries and 4,288 outpatient surgeries.

The Waterbury Hospital has interests in several affiliated entities: Alliance Medical Group, Inc. ("AMG"); the Greater Waterbury Imaging Center Limited Partnership; Access Rehab Centers LLC; Imaging Partners, LLC; Waterbury Gastroenterological Co-Management Company, LLC; and Cardiology Associates of Greater Waterbury, LLC.

In addition to the above entities, The Waterbury Hospital has two joint ventures with Saint Mary's Health Systems, Inc. ("SMHS"): the Harold Leever Regional Cancer Center, Inc., and the Heart Center of Greater Waterbury, Inc.

GWHN also has numerous subsidiaries: Greater Waterbury Health Services, Inc.; VNA Health at Home, Inc.; Greater Waterbury Management Resources, Inc.; Valley Imaging, LLC; the Children's Center of Greater Waterbury Health Network, Inc.; Healthcare Alliance Insurance Company, Ltd. GWHN's interest in the Children's Center of

Greater Waterbury Health Network, Inc. and the Healthcare Alliance Insurance Company, Ltd., will not be transferred to PMH as a part of the APA.

PMH is a Delaware corporation with its principal place of business located in Los Angeles, California. PMH is a healthcare services company that owns and operates thirteen acute care and behavioral hospitals located in Rhode Island, Texas, and California. PMH also owns a network of specialty and primary care clinics in each of its regions. Through PMH's medical group segment, PMH manages the provision of physician services to approximately 260,000 patients in Southern California, South Central Texas, and Rhode Island through a network of approximately 8,900 physicians.

PMH currently owns the following hospitals: Los Angeles Community Hospital; Los Angeles Community Hospital at Bellflower; Los Angeles Community Hospital at Norwalk; Southern California Hospital at Hollywood; Southern California Hospital at Van Nuys; Southern California Hospital at Culver City; Foothill Regional Medical Center; Nix Health (four campuses); Roger Williams Medical Center (RI); and Our Lady of Fatima Hospital (RI).

PMH aligns its hospitals and physicians under a model referred to as Coordinated Regional Care ("CRC"). CRC provides for clinical integration among hospitals, physicians and other medical, social and community providers working closely with strategic partner health plans and other payers under a value-based, global risk reimbursement payment system to achieve the triple aim of improved patient care and experience, better patient health, and lower costs.

B. GWHN's Fiscal Condition

The evidence in the record reveals that GWHN has faced serious financial difficulties since the turn of the century. From 2006 through 2011, GWHN experienced five consecutive years of losses, ranging from $2.5 million to $17.8 million. In an effort to address its fiscal concerns, GWHN engaged Kaufman Hall in 2005 to evaluate the economics of consolidating The Waterbury Hospital and Saint Mary's Hospital ("SMH"). Kaufman Hall concluded that even a consolidated institution would struggle financially. Despite this assessment, however, in 2006, GWHN and SMHS discussed the possibility of an affiliation between the hospitals. The collaboration never materialized.

In 2007, in response to the growing challenges facing the hospitals in Waterbury, OHCA conducted a special study of the status of healthcare services in the city. OHCA concluded that both hospitals located in Waterbury were "in financial distress, had aged facilities, and lacked access to capital." (App., p. 23.) The options identified by the report were either to consolidate the two hospitals or to close Saint Mary's Hospital. Accordingly, discussions between the two hospitals resumed in 2007 and continued into 2008. However, the hospitals were not able to reach an agreement on terms or to secure sufficient capital to fund a possible merger.

Then, in 2008, a deep recession hit the United States. GWHN experienced lower healthcare utilization and, therefore, significant financial difficulty, which led to a default on its bond covenants in 2009. As part of the subsequent negotiations with its bondholders, GWHN hired Price Waterhouse Coopers, LLC ("PWC") to identify the challenges and risks for GWHN, to define operational improvements for GWHN, to define revenue cycle

improvements, and to set physician initiatives. PWC recommended strategies for improving GWHN's performance, but GWHN achieved only limited success in doing so.

In 2010 Kaufman Hall was once again retained, but this time with the purpose to identify near-term capital needs. Kaufman Hall identified over $50 million in necessary capital improvements over the next five years to keep The Waterbury Hospital operational. GWHN simply did not have access to such capital and could not secure it in the open market.

In late 2010, The Waterbury Hospital refinanced its CHEFA debt in a private offering, but was nevertheless unable to stave off GWHN's fiscal decline. GWHN's financial difficulties and its serious capital needs resulted in its reconsidering its goal of remaining independent.

C. The Search for Solutions and Partners

GWHN engaged a health care investment banker, Cain Brothers, to help assess the options available to address GWHN's capital needs. Cain Brothers has extensive experience advising nonprofit hospitals on strategic alternatives and knowledge of the Connecticut healthcare market. GWHN formed a task force specifically assigned to work with Cain Brothers to pursue a capital partner and formally explore strategic options.

In its first attempt to join forces with a capital partner, GWHN agreed to form a joint venture with LHP Hospital Group, Inc. ("LHP"), and SMHS that would have created a united health system in Waterbury with one new state-of-the-art hospital. The LHP joint venture agreement was the product of a process pursuant to which 14 prospective partners were approached and four written proposals were received. On August 23, 2012, the joint venture was submitted to both the OAG and OHCA for review pursuant to the Conversion

Act, but it became clear as the review proceeded that there were significant impediments to the proposed joint venture. As a result, LHP terminated the proposed joint venture in August of 2012.

Immediately thereafter, the GWHN Board reconvened and directed Cain Brothers to seek new additional proposals from other prospective capital partners. Eleven parties were contacted for possible partnership. Two submitted proposals. This second process resulted in GWHN's selection of Vanguard as its capital partner and a joint venture as the preferred transaction.

In the fall of 2013, Vanguard was acquired by Tenet. Upon learning of the acquisition, GWHN met with Cain Brothers to learn about Tenet and to discuss the implications of the purchase. In addition, GWHN's CEO, the Board Chair, and the VP of medical affairs visited two of Tenet's hospitals that are similar in size to The Waterbury Hospital to examine the company's approach to operating its hospitals.

In the spring of 2014, Tenet announced its intention to acquire the assets of SMHS. At that time, GWHN sought the advice of Cain Brothers and Principle Valuation LLC regarding the effect the SMHS transaction would have on the governance of the JV Hospital, the purchase price for GWHN's assets, and the other terms and conditions of the transaction. GWHN concluded that it continued to be satisfied with the proposed transaction.

On December 11, 2014, Tenet informed GWHN that it was withdrawing its application for the joint venture with GWHN, citing the proposed regulatory conditions that had been placed on its Application to form a joint venture with GWHN.[6]

GWHN quickly regrouped and asked Cain Brothers to re-canvass the market for capital partners. Although Tenet's withdrawal of its Applications to acquire the five hospitals in Connecticut had lessened for-profits' interests in investing in the state, Cain Brothers was able to identify several out-of-state candidates for partnership, two of which submitted proposals to GWHN. The PMH proposal was superior to the other proposal, and so, the GWHN Board authorized executing the letter of intent with PMH. Both GWHN and PMH performed their due diligence, and both the GWHN Board and the GWHN members approved the proposed transaction.

D. The Proposed Transaction

PMH will purchase substantially all of the assets of GWHN, including the properties, assets and businesses, or ownership interests, of GWHN affiliates. PMH will also purchase GWHN's interests in its or its affiliates' joint ventures, including the Harold Leever Cancer Center.[7]

PMH will acquire real property, leased property, tangible personal property, and net working capital (*i.e.*, non-cash current assets less the value of all current liabilities) of GWHN and the GWHN affiliates. PMH will assume several key liabilities, including

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[6] On December 11, 2014, Tenet withdrew its applications with respect to the Greater Waterbury Health Network, Inc., Saint Mary's Health System, Inc., Eastern Connecticut Health Network, Inc., and Bristol Hospital and Health Care Group, Inc.

[7] The assets of the Children's Center of Greater Waterbury Health Network, Inc. and the Healthcare Alliance Insurance Company, Ltd., will not be included in the assets purchased by PMH.

GWHN's capital lease obligations, unfunded pension obligations, and asbestos abatement liability.

GWHN will retain several liabilities that will become the responsibility of GWHN's residual corporation following the transaction, Legacy GWHN. For example, GWHN will retain its outstanding workers compensation liabilities. GWHN will also maintain ownership of certain designated assets post-closing, including cash and cash equivalents, beneficial interests in charitable trusts, and donor-restricted assets.

PMH will pay GWHN $31,800,000 for the assets of GWHN, subject to an adjustment for actual Net Working Capital transferred at closing. This amount will be reduced by a value equal to the value of the unfunded pension liabilities, the asbestos abatement liability, and the other acquired liabilities. GWHN has committed to make complete payment of its bonds obligations at the time of closing so that all the liens and mortgages on GWHN assets are released at the time of closing.

PMH has committed to spend within seven years of the closing not less than $55,000,000 (the "Commitment Amount") on capital projects, including, but not limited to capital projects, including routine and non-routine capital expenditures, for the benefit of The Waterbury Hospital and the acquisition, development, and improvement of hospital, ambulatory or other health care services in the greater Waterbury, Connecticut, community. Subject to the limitations set forth in the APA, the Commitment Amount may be reduced as a result of capital lease obligations greater than $3,000,000, a GWHN cash shortfall at closing, and/or for unpaid losses.

As of the closing, PMH will offer employment to all active employees in good standing who satisfy customary pre-employment screening procedures in positions similar

to those then being provided by GWHN. PMH will provide such employees with regionally competitive wages and employees benefits comparable to the wages and benefits generally offered to employees of other hospitals owned and operated by PMH. PMH will assume and honor GWHN's (and its affiliates') collective bargaining agreements.

Following the closing, the for-profit Waterbury Hospital will maintain a local community advisory board ("Local Board"), which, among other things, will:

- make recommendations and suggestions to PMH regarding the mission, vision and value statements with respect to the for-profit Waterbury Hospital;
- make recommendations and suggestions with respect to medical staff credentialing, disciplinary action of staff physicians, and compliance with accreditation requirements;
- provide input on policies and clinical programs;
- provide input in the development and review of strategic plans;
- provide input on operating and capital budgets;
- provide input and support physician recruitment efforts;
- provide input on succession plans for executive leadership at the for-profit Waterbury Hospital;
- promote community health initiatives, foster community relationships, and identify service and education opportunities; and
- monitor the commitment to maintain and improve quality indicators.

(App., p. 190.)

E. The Charitable Assets of The Waterbury Hospital

Throughout its history, The Waterbury Hospital has received numerous charitable gifts, legacies, and devises from generous individual donors and community fundraising efforts.[8] As part of its Application, GWHN provided information and documentation of the charitable trusts and gifts of which it is the beneficiary or in which it claims an interest. Specifically, it provided copies of the gift documents themselves and a spreadsheet (the "Gift Analysis") that included a narrative description of each charitable gift, succession language where applicable, the name of the trustee of each gift, and a designation of whether each gift was use restricted and spending restricted. The value of all the charitable gifts as of March 31, 2016, was $53,831,077.

The OAG has reviewed the Gift Analysis provided by GWHN for accuracy and completeness. In addition, the OAG questioned GWHN on the due diligence undertaken to identify all of the underlying gift documents for the charitable funds. The OAG is satisfied that GWHN has identified all the charitable funds in its possession and has met its burden to produce the underlying gift documents for each fund.

1. Unrestricted Endowments

Unrestricted endowments are charitable funds, the original gift instrument of which specifies that the sum donated is to be held and preserved as "principal," as a "fund," as an "endowment," or directs that the sum be held and invested, or added to an existing endowment fund, and further specifies that the annual income earned on said principal be applied to the hospital's "general purposes," "general expenses," "general fund," or used "at

[8] The Waterbury Hospital, and not GWHN, holds all of GWHN's charitable funds.

the discretion of the board."

The following gifts are unrestricted endowments: Brooker, Forester, and Karl & Margaret Hallden Memorial Fund, and the George B. Lambe and Harriet Welton Lambe Endowment Fund. As of March 31, 2016, the total value of these unrestricted endowments was $600,755.

2. Restricted Endowments

Restricted endowments are charitable funds, the original gift instrument of which specifies that the sum donated is to be held and preserved as "principal," as a "fund," as an "endowment," or directs that the sum be held and invested, or added to an existing endowment fund, and further specifies that the annual income earned on said principal be applied to a specific purpose such as free beds, indigent care, a building fund, or a particular program of the hospital.

The following gifts are restricted endowments: Anderson, At Risk Kids, Chase, Crozier, Fulling, Hayden, Heminway, Junior League Fund, Kazanjian Memorial Fund, Kazanjian Student Nurse Scholarship Fund, Kingsbury, Meigs, Nursing School Alumnae, Permanent Bed Fund,[9] Flora S. Page and George W. Smith, Sperry, Terry, Various Gifts, and the Richard Vincent Warner Memorial Fund. As of March 31, 2016, the total value of these restricted endowments was $8,787,054.

One of the restricted endowments, the Permanent Bed Fund, is comprised of 61 individual funds, created either through trusts or will bequests. Based on the responses to

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[9] Although the Gift Analysis provided by GWHN does not provide a separate review of each bed fund, it did provide a list of the individual funds, with accompanying gift documents, from which it derived the value of the Permanent Bed Fund.

our discovery requests, we were able to determine that the Permanent Bed Fund contains the following funds: Adt, Benedict, Bristol, Bronson, Burdsall and Burritt Bed Fund, Edith & Melrose Burritt Bed Fund, Castle, Coffin, Curtis, Driggs, First Church Guild, Fitzsimons, Goss, Graves, Greenberg, Gross, Hart, Hill, Judson, Kazanjian, Kellogg, Kimble, Beth Kirk Memorial Fund, Henry and Bethia Kirk Fund, Margaret Kirk Bed Fund, Leavenworth, Lewis, Lott, Merchant, Helen Merriman Bed Fund, William Buckingham Merriman and Sarah Kingsbury Parsons Merriman Bed Fund, William Buckingham Merriman, Jr. Bed Fund, Charlotte B. Merriman, Minor and Northrop, Mitchell, Montague, Peck, Pomeroy and Hill, Poole, Powell, Rosemary, Scovill, Shipley, Skilton, C. Sanford Bull Memorial Fund, J. Richard Smith Memorial Bed Fund, Elizabeth L. Spencer, Julia V. Warner Spencer Fund, Julia V. Warner Spencer Memorial for Miss Emaline D. Warner Fund, Stiles, Stone, Swenson, Terry, Tuttle, Second Congregational Church, Wade, Oscar Warner, Welton, Whiton and Upson, J.H. Whittemore Endowed Room, and Julia S. Whittemore Memorial Room. The Permanent Bed Fund is valued at $4,801,340 as of March 31, 2016.

3. Restricted, Fully Expendable Gifts

The third category of funds includes restricted, fully expendable Gifts. These are funds not structured as endowments, and therefore fully expendable to be administered and used by the hospital for restricted purposes specified by the donor.

The following gifts are restricted, fully expendable gifts: Bevans and Mayo. As of March 31, 2016, the total value of these unrestricted endowments was $22,157.

4. Unrestricted, Fully Expendable Gifts

The fourth category of gift assets held by The Waterbury Hospital is Unrestricted Fully Expendable Gifts, which are not structured as endowments, and therefore fully

expendable, to be administered and used by the hospital for its general purposes. The only fund that falls into this category is the Gift Annuity, which as of March 31, 2016, had a total value of $127,798.

5. Third Party Trusts

The fifth category of gift assets is Trusts held by third party trustees—trusts created and held by a third party, a portion of the annual income of which is designated for donation to The Waterbury Hospital to be used for one or more of its charitable purposes. Within this category, there are two subsets of trusts: those with use restrictions and those without.

The following gifts are third party trusts with use restrictions: the Harriet S. Anderson Trust, the Hopkins Memorial Fund, the Mary Kingsbury Bull Fund, and the Warner Memorial Fund.

The following are third party trusts without use restrictions: the Almon B. Dayton Trust, the John Elton Trust, the I. Kent Fulton Trust, the Sibillia Hellmann Fund, the Frank Keeling Fund, the Jacob Keeling Fund, the Harriet Kirk Trust, the Henry H. Peck Trust, the Francis A. and Florence A. Poole Fund, and the Howard Easton Smith Fund.

6. Future Interests

A final category of charitable assets is Future Interests, where gifts are either held in charitable remainder trusts (including charitable remainder unitrusts or annuity trusts, held by outside banks or trustees, in which The Waterbury Hospital has no current income or principal interest) or provided as contingent remainders in wills. The future interests held by third party trustees are as follows: the Natalie M. Dodd Trust, the Fenn Trust, the Gibson Trust, the Snowden Trust, and the Stoughton Trust. In addition, the Estate of

Molly Patricia Lenners was identified as a future interest that is not held by a third party trustee.

V. LEGAL ANALYSIS AND REQUIRED MODIFICATIONS

As explained above, the Conversion Act directs that any nonprofit hospital that enters into an agreement to transfer a material amount of its assets or operations with an entity operated for profit must first obtain the approval of OHCA and the OAG. Any agreement made without these approvals is deemed void. With particular respect to the Attorney General's review, the Conversion Act requires that he shall disapprove a proposed sale of a nonprofit hospital to a for-profit entity as not in the public interest if he determines the existence of one or more of nine criteria specified in § 19a-486c.[10] The Conversion Act, however, allows the Attorney General to approve an application while setting forth modifications and/or conditions that would bring the proposed transaction into compliance with the conditions in § 19a-486c. What follows, therefore, is the OAG's analysis and discussion of the statutory criteria in § 19a-486c and the modifications and conditions to the Asset Purchase Agreement that are necessary to satisfy those criteria.

A. The transaction is not prohibited by Connecticut statutory or common law governing nonprofit entities, trusts or charities.

Pursuant to Conn. Gen. Stat. § 19a-486c(a)(1), the Attorney General shall disapprove a proposed agreement if he determines that the transaction is prohibited by Connecticut statutory or common law governing nonprofit entities, trusts, or charities. Subject to the modifications and conditions set forth in Section II(C)(2) of this decision, we

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[10] See footnote 1.

conclude that the Asset Purchase is not prohibited by statutory or common law governing nonprofit entities, trusts, or charities.

B. GWHN exercised due diligence.

Pursuant to Conn. Gen. Stat. § 19a-486c(a)(2), the Attorney General is required to determine whether the nonprofit hospital exercised due diligence in four distinct areas. The phrase "due diligence" is not defined by the Conversion Act, but Black's Law Dictionary (6th ed. 1990) defines it as: "Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case." In short, therefore, we review the level of care and prudence that the GWHN Board exercised in deciding to enter into the APA with PMH.

Based upon our and our expert's review of the materials presented as a part of the GWHN and PMH Application and the testimony given at the public hearings, it is clear that GWHN undertook an extensive and diligent process to explore strategic options and to identify a capital alternative that would enable it to address its dire financial position and continue its mission of providing quality healthcare to the Waterbury community. GWHN's efforts extended over a ten-year period, from 2005 to 2016, and included consultation with two experienced healthcare investment banking firms in Kaufman Hall & Associates and Cain Brothers, as well as the nationally recognized healthcare consulting firm of PricewaterhouseCoopers. GWHN pursued discussions with multiple strategic partners, evaluated a range of transaction structures, and explored multiple strategies to access capital. Our specific due diligence findings follow.

1. GWHN exercised due diligence in deciding to participate in the APA.

Pursuant to Conn. Gen. Stat. § 19a-486c(a)(2)(A), the Attorney General shall disapprove a proposed agreement if he determines that the nonprofit hospital failed to exercise due diligence in deciding to transfer the assets of GWHN. The record supports the reasonableness of the decision by GWHN to transfer substantially all of its assets as a means to assure the long-term viability of The Waterbury Hospital.

GWHN engaged in a decision-making process that was reasonable, thoughtful, and thorough. In making the ultimate decision to transfer its assets, GWHN demonstrated due diligence under the circumstances. As noted in the findings of fact, GWHN pursued a broad range of strategic initiatives to address the hospital's operating losses, aging facilities, and limited access to capital. It sought a range of options including a merger with SMHS, an operational restructuring and realignment, and a private placement in the bond market. When these options did not cure GWHN's financial distress, the Board reasonably sought a capital partner. GWHN sought to enter into a joint venture with Vanguard, but for reasons beyond its control, that partnership was not completed. GWHN's immediate action afterwards resulted in the APA with PMH. We conclude that GWHN exercised due diligence in deciding to transfer substantially all of its assets as a part of the proposed APA.

2. GWHN exercised due diligence in selecting PMH to Purchase Substantially All of Its Assets.

Pursuant to Conn. Gen. Stat. § 19a-486c(a)(2)(B), the Attorney General shall disapprove a proposed agreement if he determines that the nonprofit hospital failed to exercise due diligence in selecting the purchaser. Based on the record in this case, GWHN has established that it exercised due diligence in selecting PMH to purchase substantially all of its assets.

The full history of GWHN's difficult search for a capital partner is described in the findings of fact. With respect to the initiative that resulted in the APA with PMH, however, GWHN took appropriate and deliberate steps to identify the best situation for The Waterbury Hospital. GWHN retained Cain Brothers to re-canvass the market for possible capital partners. PMH's proposal was the superior proposal of the two received, and after due consideration, the Board authorized the execution of the letter of intent.

On or about the beginning of February 2016, after the hospital conversion application process had begun with the OAG and OHCA, GWHN learned that recent Medicare and Medicaid surveys at two of PMH's California hospitals (Los Angeles Community Hospital and Southern California Hospital at Culver City) had resulted in findings of Immediate Jeopardy by regulatory authorities at both hospitals.

In response, GWHN formed a Task Force comprised of GWHN physicians, The Waterbury Hospital Chief Nursing Officer, and GWHN's Director of Performance Improvement, all of whom had significant expertise in the areas of regulatory surveys, CMS conditions of participation, and hospital quality standards. The Task Force reviewed extensive amounts of information relating to PMH's history of regulatory surveys, quality metrics, and quality improvement programs. The Task Force interviewed members of PMH's management on the root causes of the Immediate Jeopardy findings and the efforts underway to address the identified problems. Some members of the Task Force also made site visits to the Los Angeles Community Hospital, Culver City and the CharterCARE hospitals in Rhode Island.

On April 14, 2016, the Task Force reported its findings to the Board and recommended that GWHN seek written assurances from PMH regarding the maintenance

and improvement of quality care at GWHN. GWHN received this written assurance, and GWHN committed to proceed with the transaction.

Based on the evidence presented to the OAG, we conclude that GWHN exercised due diligence in selecting PMH for the APA and in confirming that selection after learning of PMH's Immediate Jeopardy findings.

3. GWHN exercised due diligence in obtaining a fairness evaluation.

Pursuant to Conn. Gen. Stat. § 19a-486c(a)(2)(C), the Attorney General shall disapprove a proposed agreement if he determines that the nonprofit hospital failed to exercise due diligence in obtaining a fairness evaluation (also known as a "fairness opinion") from an independent person expert in such agreements.

GWHN hired Principle Valuation, LLC ("Principle Valuation"), to perform its independent fairness evaluation. Principle Valuation has extensive hospital valuation experience regarding valuations to meet regulatory compliance needs. Principle Valuation has also had recent experience in the local market, having provided fairness opinions for GWHN's proposed transactions with LHP and Vanguard/Tenet, SMHS's proposed transaction with Vanguard/Tenet, and Bristol Hospital Health Care Group, Inc.'s proposed transaction with Vanguard/Tenet. Neither Principle Valuation nor its staff members have any known conflicts of interest with the parties to the transaction or to the transaction itself. And, Principle Valuation's compensation was a flat non-contingent fee, i.e., was not dependent on the opinion it rendered.

Therefore, we conclude that the GWHN Board exercised due diligence in obtaining a fairness evaluation regarding the terms of the proposed transaction from an independent entity expert in such agreements.

4. GWHN exercised due diligence in negotiating the terms and conditions of the APA.

Our review of the transaction leads us to conclude that GWHN exercised due diligence in negotiating most of the terms and conditions of the APA. As discussed below, we believe GWHN will receive at least the fair market value for its assets. In addition, GWHN negotiated a capital commitment of $51.5 million for the for-profit GWHN hospital system ("PMH/GWHN") over the next seven years. Other highlights include PMH's retention of GWHN employees, the assumption by PMH of the unfunded pension liabilities, the formation of a local advisory board for the hospital, and PMH's commitment to maintain GWHN's current policies regarding charity care, indigent care, and community benefits for five years.

One provision in the APA, however, stands out as unreasonable in light of the details of the transaction as a whole. Section 6.10 of the APA concerns PMH's $51.5 million capital commitment, and provides in relevant part:

> *Notwithstanding the above capital commitment, in the event that any Legal Requirement is enacted or imposed after Closing that (i) discriminates against, or adversely or disproportionately affects for-stock or for-profit hospitals or other for-profit health care entities or (ii) causes Buyer to suffer a material decline in EBIDTA on a consolidated basis, then, in either event, Buyer shall be relieved of its obligation to provide the above capital commitment and shall be required to consult with the Local Board to determine an alternate mutually agreeable capital commitment of Buyer that is reasonable and appropriate in light of the changed circumstances caused by the new Legal Requirement.*

(Exhibit Q3-2, Draft Asset Purchase Agreement; App., 189.)

Although PMH may wish to hedge against future changes in the legal landscape, it cannot hold the GWHN capital investment hostage by such a provision. To do so would render the $51.5 million capital commitment – a key term of the deal – subject to delay

upon the future actions of legislators. Put differently, we believe that PMH must bear the risk of future legislation and not PMH/GWHN. The $51.5 million capital commitment is indeed a commitment, and the deadline by which it must be spent must be honored. Accordingly, as a condition to approval of the proposed transaction, the OAG requires that the Applicants modify the APA by deleting the above-quoted language from section 6.10 from the APA.

C. No GWHN Board Member, Officer, Key Employee, or Expert Has a Conflict of Interest With Respect to the APA.

Pursuant to Conn. Gen. Stat. § 19a-486c(a)(3), the Attorney General shall disapprove the proposed transaction as not in the public interest if he determines that the nonprofit hospital failed to disclose any conflict of interest, including but not limited to, conflicts of interest pertaining to board members, officers, key employees, or experts of GWHN, the purchaser, or any other party to the transaction.

The Applicants provided the OAG with individual conflict of interest statements for each relevant individual (board member, officer, etc.) employed by GWHN, its experts, and PMH. Each individual was required to respond to individual questions regarding possible financial, beneficial, and/or employment related conflicts of interest. If any of the questions were answered with anything other than an unqualified "No," the individual was required to attach an explanation to the statement. These statements were reviewed by the OAG and Navigant Consulting, Inc. ("Navigant Consulting").

Section 5.03(a) of the APA requires PMH to "offer employment to all active employees in good standing as of the Closing Date . . . ." (Exhibit Q3-2, Asset Purchase Agreement; App., 176.) Therefore, employees of GWHN, including GWHN's officers and key employees, have been offered employment with PMH as a part of the transaction. This

general provision, however, does not create a conflict of interest for the purposes of this statutory element.

After a careful review of all the conflict of interest responses, there do not appear to be any conflicts of interest with this proposed transaction that exist outside of the APA itself. In addition, no intervenor or other participant in the proceeding has offered any credible evidence that any conflict existed at any time during the negotiation of the APA. Accordingly, we conclude that no conflicts of interest exist that would require disapproval of the APA.

D. GWHN will receive fair market value for its assets.

Pursuant to Conn. Gen. Stat. § 19a-486c(a)(4), the Attorney General shall disapprove the proposed transaction as not in the public interest if he determines that the nonprofit hospital will not receive fair market value for its assets. For purposes of the Conversion Act, "fair market value" is defined as

> the most likely price that the assets would bring in a sale in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably and in their own best interest, and with a reasonable time being allowed for exposure in the open market.

Conn. Gen. Stat. § 19a-486c(a)(4).

PMH has agreed to pay $31.8 million as compensation for substantially all of GWHN's assets. Two independent financial experts have reviewed the transaction to determine whether GWHN will receive fair market value for its assets, and both have concluded that the purchase price of $31.8 million equals or exceeds the fair market value of GWHN's assets to be transferred.

As discussed above, GWHN retained Principle Valuation to provide it with an independent fairness opinion regarding the transaction.[11] Principle Valuation considered the three principal methods of valuation: the Cost Approach (Adjusted Book Value Approach), the Market Approach, and the Income Approach. With respect to the market based value approach to valuation, Principle Valuation used both a Guideline Company Approach and a Guideline Transaction Approach. After considering the strengths and weaknesses of each approach, and assigning a representative weight to each of the approaches, Principle Valuation derived an overall weighted value for GWHN's assets of $25.4 million. As such, Principle Valuation was able conclude in its fairness opinion that the purchase price for GWHN's assets is fair from a financial point of view to GWHN.[12]

Navigant Consulting was hired though an RFP process to be the OAG's financial expert for the purposes of reviewing certain aspects of the proposed transaction. Navigant Consulting has also concluded that GWHN will receive fair market value for the transfer of its assets.[13] In performing its fair market value analysis, Navigant Consulting also considered the three generally accepted approaches to value: income, market, and cost, but

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[11] The OAG has previously concluded that GWHN exercised due diligence in selecting Principle Valuation to perform the independent fairness evaluation on its behalf.

[12] Principle Valuation performed its analysis when the purchase price was $45 million. Subsequent to the valuation, however, GWHN's liquidity and financial performance deteriorated and the size of the pension liabilities was found to be greater than anticipated. The purchase price was therefore revised to $31.8 million. Principle Valuation's conclusion, however, is not affected by the reduction in purchase price because it estimated the value of GWHN's assets to be transferred at $25.4 million.

[13] Navigant Consulting's report is attached hereto as Exhibit A.

Navigant Consulting concluded that GWHN and its assets should be valued under the premise of "value-in-place" and not as a "going concern."[14]

The value-in-place premise of value was also consistent with the premise of value assumed in Principle Valuation's fairness opinion analysis of GWHN on a standalone basis as evidenced by the absence of positive projected cash flow in its discounted cash flow method.

Navigant Consulting performed an independent fair market valuation of GWHN's real and personal property, as well as GWHN's 50% joint venture equity interest in the Harold Leever Regional Cancer Center, and added this total to GWHN's net working capital target of $6.8 million per the proposed asset purchase agreement. Navigant Consulting concluded that GWHN will contribute assets valued at $30.2 million in exchange for the purchase price of $31.8 million. Navigant Consulting's analysis supports the conclusion that GWHN will receive fair market value for the transfer of its assets.

Based on the independent financial assessments of two respected firms who specialize in healthcare and hospital valuation analysis, and the lack of evidence to the contrary in the record, we conclude that GWHN will receive fair market value for its assets.

E. The fair market value of the assets has not been manipulated by any person in a manner that causes the value of the assets to decrease.

Pursuant to Conn. Gen. Stat. § 19a-486c(a)(5), the Attorney General shall disapprove the proposed transaction as not in the public interest if he determines that the

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[14] The premise of value-in-place assumes that the Hospital's assets are in place, but not as part of a going-concern business enterprise. Furthermore, this premise of value assumes that all assets will continue to be used in the manner for which they were originally intended, which assumption is consistent with PMH's stated intent to operate The Waterbury Hospital as a general acute care hospital with similar levels and types of services.

fair market value of the nonprofit hospital's assets has been manipulated by any person in a manner that causes the value of the assets to decrease.

Both independent financial experts have concluded that the fair market value of the nonprofit hospital's assets has not been manipulated. Principle Valuation performed reviews of GWHN's financials and assets and found no indication that the fair market value of GWHN's assets had been manipulated. Navigant Consulting also conducted a thorough review of GWHN's assets and financials and concluded that the fair market value of GWHN's assets had not been manipulated.

No participant in the proceeding has offered any evidence that the fair market value of GWHN's assets has been manipulated to artificially lower the payment price. Based on these factors, we conclude that the fair market value of GWHN's assets has not been manipulated.

F. The financing of the transaction will not place The Waterbury Hospital's assets at an unreasonable risk.

Pursuant to Conn. Gen. Stat. § 19a-486c(a)(6), the Attorney General shall disapprove the proposed transaction as not in the public interest if he determines that the financing of the transaction by the nonprofit hospital will place the nonprofit hospital's assets at an unreasonable risk. Consistent with the OAG's interpretation of this provision in *Sharon*, we interpret this statutory provision to require our examination of the proposed financing of the transaction to ensure that the APA does not "burden the for-profit entity with so much debt that the transferred assets of the former nonprofit hospital, albeit now operated for profit, will be placed at an unreasonable financial risk of closure or bankruptcy—an event that would result in a loss of healthcare for the affected community." *In re Sharon Hospital*, Docket No. 01-486-01, p. 64 (2001).

Based upon the record, we conclude that the financing of this transaction will not place GWHN's assets at risk. PMH confirmed on the record that the purchase price for GWHN's assets will be financed with operating cash from PMH. More specifically, PMH represented that it has the financial capacity to provide the necessary capital to purchase GWHN's assets without transaction-specific financing arrangements. After its review of the transaction, Navigant Consulting concluded that PMH will not incur any debt financing to consummate the transaction, and so, GWHN's assets would not be put at an unreasonable risk. Similarly, Principle Valuation found that the transaction "does not encumber GWHN with any financing for the completion of this transaction; consequently, these is no financing of the transaction that would place the nonprofit hospital's assets at an unreasonable risk." (Exhibit Q7-5, Fairness Evaluation prepared by Principle Valuation, App., p. 831.)

As such, we conclude that the assets of GWHN will not be placed at an unreasonable risk due to the financing of the transaction.

G. The management contract contemplated under the transaction is for reasonable fair value.

Pursuant to Conn. Gen. Stat. § 19a-486c(a)(7), the Attorney General shall disapprove the proposed transaction as not in the public interest if he determines that any management contract contemplated under the transaction is not for reasonable fair value. No management contract is contemplated under the APA. Accordingly, we conclude that this element of the analysis has been met.

H. Assuming compliance with the modifications imposed below, a sum equal to the fair market value of GWHN's assets is being transferred to the Independent Foundation to provide only for charitable health care services in the affected community.

Pursuant to Conn. Gen. Stat. § 19a-486c(a)(8), the Attorney General shall disapprove the proposed transaction as not in the public interest if he determines that:

> a sum equal to the fair market value of the nonprofit hospital's assets (A) is not being transferred to one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to operate on a nonprofit basis after the transaction and such sum is transferred to the nonprofit hospital to provide health care services, and (B) is not being used for one of the following purposes: (i) For appropriate charitable health care purposes consistent with the nonprofit hospital's original purpose, (ii) for the support and promotion of health care generally in the affected community, or (iii) with respect to any assets held by the nonprofit hospital that are subject to a use restriction imposed by a donor, for a purpose consistent with the intent of said donor.

This provision in the Conversion Act advances the important policy that the value of the nonprofit hospital be preserved for charitable healthcare purposes in the service area that the nonprofit hospital previously served. In addition, it restates the OAG's statutory responsibility to protect the public interest in the protection of gifts made for charitable or public purposes codified at Conn. Gen. Stat. § 3-125.

The language of Conn. Gen. Stat. § 19a-486c(a)(8) requires the OAG to assess several different issues in connection with the APA. We must first analyze, determine, and approve a value that is the "sum equal to the fair market value of the nonprofit hospital's assets." Second, we must analyze the nature and purpose of the entity to which that sum is being transferred. Third, we must determine and require that the transferred sum is used only for the statutorily identified charitable purposes. Last, we are required to inventory

all gift documents and restricted charitable assets currently held by GWHN and identify any approximation and/or equitable deviation needs in connection with these assets.

1. A Sum Equal to the Fair Market Value of The Waterbury Hospital is Being Transferred to the Independent Foundation.

The term "fair market value" is used in several places in subsection (a) of § 19a-486c. As discussed in the OAG's *Sharon* decision, and more fully below, fair market value has two distinct meanings depending on which section of the Conversion Act the term is used.

Subsection (4) of § 19a-486c requires us to ensure that the nonprofit hospital receives fair market value for its assets. As discussed earlier, subsection (4) defines "fair market value" as the likely price that the assets would bring in a sale in a competitive and open market. Subsection (4) is looking for the gross asset value.

If fair market value were computed for purposes of subsection (8) as it is for subsection (4), though, the nonprofit hospital might be left transferring to a conversion foundation the proceeds of its sale, but leaving the nonprofit hospital no ability to pay off its liabilities post-closing with some portion of those proceeds. Such a result is nonsensical, because a primary goal of a nonprofit hospital's sale of assets is the extinguishment of corporate liabilities. For example, in the case of GWHN, its long-term bond debt will be paid off with proceeds from the sale of its assets.

The definition we use for fair market value for purposes of subsection (8), therefore, is more appropriately the price paid for the nonprofit hospital's asset minus the amount of its debt obligations and other liabilities that it will resolve using the proceeds of the proposed transaction. In other words, fair market value equals the net proceeds of the nonprofit hospital. *In re Sharon Hospital*, OAG Docket No. 01-486-01, p. 69 (2001). With respect to GWHN, the net proceeds value calculation must take into account all retained

assets and liabilities, including, for example, cash, accounts receivable, any adjustment to the net working capital figure, its long-term debt, workers' compensation and medical malpractice liability relating to events occurring prior to closing, and any payor liabilities and obligations from reporting periods prior to closing.

Late Filed Exhibit 3 (App., 1847-49) sets forth the most current numbers on what proceeds will remain after netted with GWHN's closing liabilities and expenses. In short, because GWHN will have insufficient assets to cover its liabilities at closing, it will retain liabilities post-closing that will need to be paid off over time by Legacy GWHN. Given GWHN's difficult financial situation, we conclude that the sum that is equal to the fair market value of GWHN is currently zero.

Similar to the situation in the ECHN/PMH asset purchase transaction, Legacy GWHN may receive funds after the close while it is paying down its outstanding liabilities. For example, Legacy GWHN may receive reimbursements due from Medicare and Medicaid for the years prior to the closing. Also, Legacy GWHN will receive income from the unrestricted endowments during the time period between the close of the transaction and the Superior Court order that will transfer all charitable assets from Legacy GWHN to the Independent Foundation. Any unrestricted income received will be used to pay off Legacy GWHN's liabilities and wind down costs. After these obligations are paid off, however, any funds remaining will constitute net proceeds for the purposes of this decision.

Because the value of the final net proceeds of the nonprofit hospital cannot be precisely identified at this time, the determination of a sum equal to the fair market value for the purposes of subsection (8) must await a post-closing accounting and the payment of liabilities. Accordingly, as soon as reasonably possible after the Applicants have agreed to a

Final Closing Statement of the asset purchase, the Applicants must provide the OAG a final accounting of the transaction that sets forth the balance sheets of GWHN immediately prior to, and Legacy GWHN immediately after, the closing and that provides a net proceeds analysis, substantially similar to Late Filed Exhibit 3 with explanations of any changes to the figures. Legacy GWHN shall also provide a financial outlook for Legacy GWHN and its expected liability payment schedule going forward. These requirements are a condition of approval for the proposed transaction.

Additionally, because Legacy GWHN may receive income post-closing that will constitute net proceeds, Legacy GWHN shall, as a condition to the OAG's approval of the transaction, initially report quarterly and then annually to the OAG regarding (1) any and all post-closing income received by Legacy GWHN, and (2) all post-closing expenditures for Legacy GWHN.

Last, if the transaction ultimately produces net proceeds, that amount will be transferred to the Independent Foundation for use consistent with the charitable purpose of the Independent Foundation.

2. The Nature of the Independent Foundation Complies with the Conversion Act.

The Conversion Act requires that the net asset value of the nonprofit hospital be transferred to "one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to operate on a nonprofit basis after the transaction and such sum is transferred to the nonprofit hospital to provide health care services." Conn. Gen. Stat. § 19a-486c(8)(A). This provision prohibits improper affiliation with the new for-profit hospital.

GWHN has submitted a draft certificate of incorporation ("COI") and draft bylaws for the Independent Foundation. By these submissions, GWHN is proposing to create an "independent conversion foundation." This particular type of foundation is completely independent from both the nonprofit hospital and the for-profit purchaser and must be approved by the Superior Court. There can be no affiliation by corporate structure, governance, or membership.

The draft documents comply with the requirements of the statute. The Independent Foundation will have no corporate relationship with PMH/GWHN, and the governing members of the Independent Foundation will not contemporaneously serve in any governing position at PMH/GWHN or at any of its affiliates. In addition, any individual who serves as member of a governing board at PMH/GWHN must wait one year before serving on the governing board of the Independent Foundation. We conclude that the Independent Foundation meets the affiliation requirements of § 19a-486c(8)(A).

The Independent Foundation will also be operated for the proper purposes, as required by the Conversion Act. Section 19a-486c(a)(8)(B) provides that the Independent Foundation must be operated:

> (i) For appropriate charitable health care purposes consistent with the nonprofit hospital's original purpose, (ii) for the support and promotion of health care generally in the affected community, or (iii) with respect to any assets held by the nonprofit hospital that are subject to a use restriction imposed by a donor, for a purpose consistent with the intent of said donor . . . ."

§ 19a-486c(a)(8)(B).

In its draft COI, the Independent Foundation lists its purposes as follows:

> (a) To provide for the healthcare needs of the greater Waterbury area, including the towns of Beacon Falls, Bethlehem, Cheshire,

> Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Watertown, Wolcott and Woodbury (the "Communities");
>
> (b) To support or conduct community health needs assessments and encourage and support efforts to improve the health of the Communities;
>
> (c) To support and engage in community projects, grants, activities and programs that will improve access to healthcare and enhance the health of the Communities, including the provision of preventive health programs and health education, education and training of healthcare providers and educators in the Communities; and
>
> (d) In furtherance of the foregoing activities and purposes, but subject to the restrictions of this Certificate of Incorporation, the Foundation may engage in any lawful act or activity for which nonstock corporations may be formed under the Nonstock Act.

(Exhibit Q10-1, Independent Foundation Certificate of Incorporation (Draft); App., 924.) These purposes are consistent with the requirements in the Conversion Act.

3. The Transferred Sum Will Be Used Only For The Statutorily Identified Charitable Purposes.

GWHN currently predicts that it will have no net proceeds to transfer to the Independent Foundation after the closing. Should a subsequent accounting of the transaction reveal net proceeds, however, we must ensure that they will forever be used for their proper charitable purpose. The draft COI established the proper charitable purposes, but the primary mechanism to ensure that they will be used as such forever is the requirement that the Independent Foundation Board receive the consent of the Attorney General for the amendment of specific sections of the COI, specifically, paragraphs 3, 5(c), 9, and 11. In this way, the purposes of the Independent Foundation (paragraph 3 of the COI) cannot change unless the Attorney General agrees. Accordingly, as a condition to the Attorney General's approval of the Application, the Independent Foundation must include paragraph 11 of the draft COI in the final COI of the Independent Foundation, requiring

Attorney General approval for changes to paragraphs 3, 5(c), 9, and 11 of the Certificate of Incorporation.

4. Description and Quantification of the Nonprofit Hospital's Charitable Assets to be Held by the Independent Foundation.

Our final area of concern is to ensure that the charitable assets of The Waterbury Hospital, which have been held in trust for the public, are safeguarded and used for the promotion of healthcare in the area served by The Waterbury Hospital after the sale of GWHN's assets to PMH. We must also ensure that any restrictions contained in these charitable gifts and trusts are protected.

a. Purpose of Attorney General's Review of Charitable Gifts

A full analysis and review of GWHN's charitable gifts and trusts at this time is essential for several reasons. First, it permits us to fulfill our statutory obligation to ensure that all of GWHN's charitable gifts and trusts are used for a purpose consistent with the intent of the donor. In other words, this review ensures that GWHN's analysis and treatment of charitable funds in the Application correctly interprets the donors' charitable use restrictions. Second, it ensures that, with respect to the charitable gifts, no aspect of the transaction is "prohibited by Connecticut statutory or common law governing nonprofit entities, trusts or charities." Conn. Gen. Stat. § 19a-486c(a)(1). Finally, it provides subsequent holders of the funds, i.e., the Independent Foundation, with accurate information about whether and how the gifts are restricted under Connecticut law so that it can administer them in accordance with donor restrictions, charities law, the terms of the contractual agreements, and modifications required in this decision.

b. Documents Reviewed and Legal Standards

As part of the Application, GWHN provided a review and analysis of its charitable gifts and endowments. (Exhibit Q11-1, Charitable Gift Analysis, App., p. 938-58.) GWHN was required to provide copies of the gift instruments (including wills, inter vivos trust agreements, and documentation of inter vivos gifts), to document the current values of the funds, and to describe the donor's restrictions or directives reflecting how the gift was to be used by GWHN. The purpose of the OAG's request was to obtain the information necessary to: (1) review the gift instrument for each of GWHN's gifts to determine whether its language would permit the gift to be transferred to another nonprofit, or whether a reverter clause or gift-over provision would be triggered by the sale of assets that would require the donation to revert to a different person, and (2) determine whether the donor restricted the use of a fully expendable gift, or the income earned on an endowment fund, to a particular charitable purpose set out in the gift instrument, for example, free beds, charity care, maintenance, a building fund, or research.

The OAG reviewed each charitable gift and its supporting documentation to confirm the accuracy of GWHN's conclusions regarding the proper charitable purpose of the fund and any spending restrictions on the fund.

c. Amount Stated by Hospital in Application

GWHN has stated, that as of March 31, 2016, the Independent Foundation would receive approximately $9,409,966 in charitable assets, $600,755 of unrestricted endowments; $8,787,054 from restricted endowments; and $22,157 from restricted gifts that are fully expendable. (App., p. 1852-54.)

d. GWHN's Charitable Gifts and Trusts.

The law on approximation, or cy pres, is well-developed in Connecticut. Indeed, the OAG brought an approximation action in the *Sharon* matter to address those charitable purposes that could no longer be fulfilled due to the sale of Sharon Hospital's assets. In that case, the court set forth the standards for approximation.

> In determining the construction of a charitable trust upon the failure of its stated purpose, the court applies the common law doctrine of cy pres, or approximation to as near as possible reflect the donor's intent. When it becomes illegal or otherwise impossible to carry out the terms of a charitable trust, rather than allow it to fail, the court will apply the doctrine of cy pres or approximation in order to carry out the charitable intentions of the donor as near as possible. "The rule of cy pres is a rule for the construction of instruments in equity, by which the intention of the party is carried out *as near as may be,* when it would be impossible or illegal to give it literal effect. . . The doctrine of cy pres may be applied without the consent of the donor." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Carl J. Herzog Foundation, Inc. v. University of Bridgeport, 243 Conn. 1, 10 n.8, 699 A.2d 995 (1997).*

Blumenthal v. Sharon Hosp., Inc., 2003 Conn. Super. LEXIS 1657, 11-12 (Sup. Ct. 2003).

Also relevant to the conversion of a nonprofit hospital is the law on equitable deviation, which is similar to that of approximation but concerns the administration of a gift fund and not its charitable purpose. The equitable doctrine of deviation has been applied to preserve the "dominant [charitable] purpose by modifying what is described as [a] secondary purpose, often the method or means for carrying out the dominant purpose." 8 G. Bogart, Trusts and Trustees (2d Ed. Rev.Repl.1991) § 396, p. 330. Courts use this legal doctrine to order a change in the administration of a charitable fund from one charitable entity to another. Equitable deviation will be necessary in this case to move the charitable funds from GWHN to the Independent Foundation or another appropriate entity.

The Attorney General's office inventoried the gift documents in Section IV(E) in the Findings of Facts. Based upon this inventory and GWHN's and our analyses of these charitable gifts, we have determined that as a condition of approval, the following actions must be taken with respect to these funds.

i. Unrestricted Endowments.

An endowment fund is defined as "an institutional fund or any part thereof not wholly expendable by the institution on a current basis under the terms of a gift instrument." Conn. Gen. Stat. § 45a-535a(2). The institution that holds an endowment fund cannot fully expend such fund, but may only appropriate so much of an endowment's funds for expenditure or accumulation as the institution determines to be prudent for the uses, benefits, purposes for which the endowment fund is established. Unless stated otherwise in a gift document, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. Conn. Gen. Stat. § 45a-535c(a).

As a condition to the OAG's approval of the Application, Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation to transfer these funds to the Independent Foundation or another appropriate entity and to change the charitable purpose of the unrestricted endowments to the charitable purpose of the Independent Foundation. This condition applies to all unrestricted endowments.

ii. Restricted Endowments

The Conversion Act requires the recipient of the hospital's gift funds to use assets that are subject to a use restriction imposed by a donor for purposes that are consistent with the intent of the donor. Conn. Gen. Stat. § 19a-486c(a)(8)(B)(iii).

With respect to GWHN's restricted endowments, most of the charitable purposes can be fulfilled even though the funds will not be held by a hospital. For example, a free bed fund, which is used to provide charity care at a hospital, can still be used to pay for hospital bills for indigent individuals. These funds will simply need to be transferred to the Independent Foundation; no change in charitable purpose is needed. There are, however, a number of restricted endowments that will need their charitable purposes adjusted by the Superior Court as a result of the sale of GWHN's assets to a for-profit entity.

Accordingly, as a condition to the OAG's approval of the Application, Legacy GWHN must, in coordination with the OAG, include the restricted endowments in the petition for equitable deviation and approximation that will be presented to the Superior Court.

iii. Restricted, Fully Expendable Gifts

GWHN has categorized two funds as restricted and fully expendable. Similar to restricted endowments, these funds have a specific purpose for which they are used. Unlike the restricted endowments, however, these funds can be completely used up; they are fully expendable. Therefore, to the extent that there is any money remaining in a special fund at the time the transaction closes, that fund will need to be a part of the equitable deviation and approximation action in order to transfer it and adjust its charitable purpose, if necessary.

Accordingly, as a condition to the OAG's approval of the Application, Legacy GWHN must, in coordination with the OAG, include any restricted, fully expendable fund, for which any funds remain, in the petition for deviation and approximation that will be presented to the Superior Court.

iv. Trust Held by Outside Trustees.

The last category of funds that the OAG must address as part of its hospital conversion review responsibilities are those charitable assets held by third party trustees for which GWHN holds the beneficial interest. GWHN has identified two groups of third party trusts for which it holds the beneficial interest: third party trusts with use restrictions and those without.

In each of the cases identified by GWHN, the sale of GWHN's assets will not affect the structure of the trust, i.e., will not require the transfer of the trust to another entity. What may be necessary, among other things, is a switch of the charitable beneficiary and an adjustment to the trust's charitable purpose. If the trusts themselves do not address disposition under these circumstances, then the trusts must be presented to a Court for legal disposition. Consultation with the third-party trustees is necessary in these cases.

Accordingly, as a condition to the OAG's approval of the Application, Legacy GWHN must, in coordination with the OAG and the third-party trustees, bring any third-party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders.

v. Future Interests

According to the Gift Analysis provided to the OAG, there is one open estate pursuant to which The Waterbury Hospital might receive charitable gifts: Lenners. GWHN's portion of the distribution in the Lenners estate (and any other unrestricted gift to GWHN), if distributed prior to the Superior Court order transferring GWHN's charitable assets to the Independent Foundation or other charitable organization, shall be included in the net proceeds of the transaction and treated as such.

To the extent there are unknown future charitable interests for the benefit of GWHN, the disposition of those interests will be addressed on a case-by-case basis by a court under the doctrine of approximation. Only when a future interest becomes a present interest can a probate or superior court determine to whom the remainder will pass or whether the gift will fail and revert to the donors' heirs-at-law. Therefore, any future interests that have not yet vested cannot be included in the Superior Court action to address the identified charitable funds.

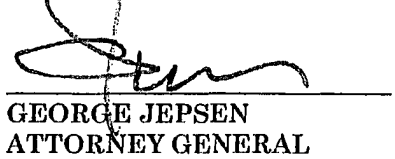
I. GWHN and PMH Have Provided The Attorney General With Information And Data Sufficient To Evaluate The Proposed APA.

Pursuant to Conn. Gen. Stat. § 19a-486c(a)(9), the Attorney General shall disapprove the proposed transaction as not in the public interest if he determines that the nonprofit hospital or the purchaser has failed to provide the Attorney General with information and data sufficient to evaluate the proposed agreement adequately, provided the Attorney General has notified the nonprofit hospital or the purchaser of the inadequacy of the information or data and has provided a reasonable opportunity to remedy such inadequacy. The Applicants have provided all relevant information and sufficient data to evaluate adequately the proposed Asset Purchase Agreement.

VII. CONCLUSION

The OAG therefore concludes that the Application for the purchase of substantially all of the assets of Greater Waterbury Health Network, Inc., by Prospect Medical Holdings, Inc., is hereby approved subject to the modifications and conditions listed herein.

Date: 7/15/16



GEORGE JEPSEN
ATTORNEY GENERAL

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT

Exhibit D

IRS Determination Letter for the Independent Foundation

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: DEC 04 2019

WATERBURY HOSPITAL FOUNDATION INC
C/O ANN H ZUCKER
707 SUMMER STREET
STAMFORD, CT 06901-1026

Employer Identification Number:

DLN:
17053115301049
Contact Person:
MS. GAISER ID# 31609
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
509(a)(3) Type 1
Form 990/990-EZ/990-N Required:
Yes
Effective Date of Exemption:
February 16, 2017
Contribution Deductibility:
Yes
Addendum Applies:
No

Dear Applicant:

We're pleased to tell you we determined you're exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Donors can deduct contributions they make to you under IRC Section 170. You're also qualified to receive tax deductible bequests, devises, transfers or gifts under Section 2055, 2106, or 2522. This letter could help resolve questions on your exempt status. Please keep it for your records.

Organizations exempt under IRC Section 501(c)(3) are further classified as either public charities or private foundations. We determined you're a public charity under the IRC Section listed at the top of this letter.

Specifically, we determined you're a Type I supporting organization under IRC Section 509(a)(3). A Type I supporting organization is operated, supervised, or controlled by one or more publicly supported charities.

If we indicated at the top of this letter that you're required to file Form 990/990-EZ/990-N, our records show you're required to file an annual information return (Form 990 or Form 990-EZ) or electronic notice (Form 990-N, the e-Postcard). If you don't file a required return or notice for three consecutive years, your exempt status will be automatically revoked.

If we indicated at the top of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

For important information about your responsibilities as a tax-exempt organization, go to www.irs.gov/charities. Enter "4221-PC" in the search bar to view Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities,

WATERBURY HOSPITAL FOUNDATION INC

which describes your recordkeeping, reporting, and disclosure requirements.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin

Director, Exempt Organizations
Rulings and Agreements

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT

Exhibit E

Decree by Judge Mahon
July 26, 2017
Jacob Keeling Trust u/w dated June 30, 1952 f/b/o Waterbury Hospital

STATE OF CONNECTICUT
DISTRICT OF NAUGATUCK - #21

NAUGATUCK PROBATE COURT

JULY 26, 2017

IN RE: Jacob Keeling Trust u/w dtd 6/30/52 f/b/o Waterbury Hospital, Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Article 10 of the Last Will and Testament of Jacob Keeling dated June 30, 1952 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH") and to determine if giving notice to the proposed Independent Foundation or the reservation agent thereof is a requirement of Rule 32.2 of the Probate Court Rules of Procedure, as in said application on file more fully appears.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of Jacob Keeling (the "Testator"), the Will was duly admitted to probate by this Court.

2. Under Article 10 of the Will, the Testator created the Trust to hold the residue of his estate, and provided for net income to be paid, in equal shares, to his brother, sister and two nieces. Upon the death of the survivor of them, the remaining property was to be delivered to The Colonial Trust Company, of Waterbury, Connecticut [,] the same to be held in trust as a perpetual trust fund to be known as 'The Jacob Keeling Fund', the income only thereof to be paid to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be used for the general purposes of said Hospital

3. There are no contingent beneficiaries named in the Will in the event that Waterbury Hospital ceases to operate as a hospital, be acquired by another organization or cease to exist, nor does the Will contain a giftover or reverter provision.

4. The Trustee identifies Waterbury Hospital as the sole current income beneficiary of one-half of the net income of the Trust.

5. The Trustee is the successor to The Colonial Trust Company who is named as Trustee of the Trust pursuant to the Will.

6. GWHN is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

7. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

8. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

9. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

10. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

11. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

12. The Sale closed on October 1, 2016 (the "Closing").

13. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

14. The Trustee has been accumulating the Trust's income as of the Closing (the "Accumulated Income").

15. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

16. The Final Decision provides for the disposition of GWEN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

17. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWEN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

18. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," (See Exhibit C, p.9): "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

19. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent

Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

20. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

21. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

22. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income").

23. Along with its petition, the trustee has provided the Court a list of interested parties.

24. Counsel to Legacy GWHN has reserved a name for the Independent Foundation (the "Waterbury Hospital Foundation, Inc."), but the Independent Foundation has not yet been formed.

25. Rule 32.2 of the Probate Court Rules of Procedure provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

26. As of the date of the filing of the petition, the Independent Foundation had not been formed.

27. Counsel to the Trustee sent notice of the petition to counsel for Legacy GWHN as the reservation agent for the Independent Foundation.

28. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

29. The Court finds that the proposed "Independent Foundation", is not a current beneficiary of presumptive remainder beneficiary of this Trust, as those terms are defined in the Connecticut Probate Practice Book, and notice is not required to the Independent Foundation under Rule 32.2.

30. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testator. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention--the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

31. The relevant language of Article 10 provides upon the death of the survivor of the Testator's brother, sister and two nieces, the remaining property was to be "delivered to The Colonial Trust Company, of Waterbury, Connecticut[,] the same to be held in trust as a perpetual trust fund to be known as 'The Jacob Keeling Fund', the income only thereof to be paid to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be used for the general purposes of said Hospital. "There are no further limitations on the use of the income, nor are there any reverter provisions, giftover provisions or contingent beneficiaries.

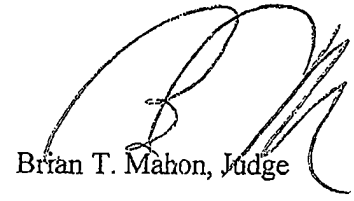
32. The will provides quite broadly for the use of the funds for the "general purposes" of the hospital. It is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

33. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

34. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

35. The court concludes that the intent of the testator, as expressed in the language of Article 10, permits the distribution of trust income during the wind down period to Legacy GWHN to be used for the payment debts and expenses of GWHN that were incurred while it continued to operate as a hospital.

36. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period.



Brian T. Mahon, Judge

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Naugatuck Probate Court **DISTRICT NO. PD21**

ESTATE OF/IN THE MATTER OF

Jacob Keeling (09-000015)
FBO Waterbury Hospital

PETITION FOR:	DATE OF DECREE:
Continued Construe Trust	4/4/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on07/31/17 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Attorney Christiana N. Gianopulos (attorney for Bank of America, N.A.), Day Pitney LLP, 75 Isham Road, Suite 300, West Hartford, CT 06107-2237

Bank of America, N.A., Mail Stop CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108-3208

Legacy of Waterbury Hospital, Inc., c/o James Moylan, 50 Leavenworth Street, Waterbury, CT 06721-1110

Waterbury Hospital Foundation, Inc, c/o Ann Zucker, Esq, 50 Leavenworth Street, Waterbury, CT 06721-1110

Attorney Anne Zucker (attorney for Waterbury Hospital Foundation, Inc), Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Peter Weston, Trustee, Bank of America, N.A., Mail Stop CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108-3208

Attorney Joanne M. Targonski, Day Pitney LLP, 75 Isham Road, Suite 300, West Hartford, CT 06107-2237

Attorney Gary W. Hawes (attorney for Attorney George Jepsen), Office of the Attorney General, George Jepsen, 55 Elm Street, PO Box 120, Hartford, CT 06141-0120

Attorney George Jepsen, Attorney General's Office, 55 Elm Street, 4th floor, Hartford, CT 06141

Waterbury Hospital, Attn: Barbara Hallinan, 64 Robbins Street, Waterbury, CT 06708-2613

Attorney Michael J. Reardon (attorney for Legacy of Waterbury Hospital, Inc.), Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Attorney Brian T. Henebry, Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Special Litigation Department - Charities, Attorney General's Office, 55 Elm Street, 4th floor, Hartford, CT 06141

Wendy E. Murphy, Assistant Clerk

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT

Exhibit F

Decree by Judge Mahon
July 26, 2017
Frank Keeling Trust u/w dated December 15, 1954 f/b/o Waterbury Hospital

STATE OF CONNECTICUT
DISTRICT OF NAUGATUCK - #21

NAUGATUCK PROBATE COURT

JULY 26, 2017

IN RE: Frank Keeling Trust u/w dtd 12/15/1954 f/b/o Waterbury Hospital, Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Paragraph B of Article 12 of the Last Will and Testament of Frank Keeling dated December 15, 1954 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH") and to determine if giving notice to the proposed Independent Foundation or the reservation agent thereof is a requirement of Rule 32.2 of the Probate Court Rules of Procedure, as in said application on file more fully appears.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of Frank Keeling (the "Testator"), the Will was duly admitted to probate by this Court.

2. Under Article 11 of the Will, the Testator created a trust for the benefit of his sister and nieces for their lives. Under Article 12 of the Will, the Testator provided for the disposition of the remaining principal of the trust created under Article 11 upon termination. Article 12 provided for a bequest to St. Michael's Parish of the Protestant Episcopal Church, of Naugatuck, Connecticut, and created the Trust to hold the balance of the principal. Paragraph B of Article 12 provides as follows:

> The balance of said principal shall be retained by said Trustee and shall constitute and become a trust fund to be known as 'The Frank Keeling Fund', the principal thereof to be held in trust in perpetuity and the income only thereof to be paid over to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be used for the general purposes of said Hospital

3. There are no contingent beneficiaries named in the Will in the event that Waterbury Hospital ceases to operate as a hospital, be acquired by another organization or cease to exist, nor does the Will contain a giftover or reverter provision.

4. The Trustee identifies Waterbury Hospital as the sole current income beneficiary of the Trust.

5. The Trustee is the successor to The Colonial Trust Company who is named as Trustee of the Trust pursuant to the Will.

6. GWHN is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

7. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

8. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

9. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws

for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

10. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

11. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

12. The Sale closed on October 1, 2016 (the "Closing").

13. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

14. The Trustee has been accumulating the Trust's income as of the Closing (the "Accumulated Income").

15. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

16. The Final Decision provides for the disposition of GWEN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing,.., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

17. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWEN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

18. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," (See Exhibit C, p.9): "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

19. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

20. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

21. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

22. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income").

23. Along with its petition, the trustee has provided the Court a list of interested parties.

24. Counsel to Legacy GWHN has reserved a name for the Independent Foundation (the "Waterbury Hospital Foundation, Inc."), but the Independent Foundation has not yet been formed.

25. Rule 32.2 of the Probate Court Rules of Procedure provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

26. As of the date of the filing of the petition, the Independent Foundation had not been formed.

27. Counsel to the Trustee sent notice of the petition to counsel for Legacy GWHN as the reservation agent for the Independent Foundation.

28. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

29. The Court finds that the proposed "Independent Foundation", is not a current beneficiary of presumptive remainder beneficiary of this Trust, as those terms are defined in the

Connecticut Probate Practice Book, and notice is not required to the Independent Foundation under Rule 32.2.

30. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testator. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention--the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

31. The relevant language of Paragraph B of Article 12 provides as follows:

"The balance of said principal shall be retained by said Trustee and shall constitute and become a trust fund to be known as 'The Frank Keeling Fund', the principal thereof to be held in trust in perpetuity and the income only thereof to be paid over to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be used for the general purposes of said Hospital. "There are no further limitations on the use of the income, nor are there any reverter provisions, giftover provisions or contingent beneficiaries.

32. The will provides quite broadly for the use of the funds for the "general purposes" of the hospital. It is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

33. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

34. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

35. The court concludes that the intent of the testator, as expressed in the language of Paragraph B of Article 12, permits the distribution of trust income during the wind down period to Legacy GWHN to be used for the payment debts and expenses of GWHN that were incurred while it continued to operate as a hospital.

36. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period.

Brian T. Mahon, Judge

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Naugatuck Probate Court **DISTRICT NO. PD21**

ESTATE OF/IN THE MATTER OF

Frank Keeling (09-000052)
FBO Waterbury Hospital

PETITION FOR:	DATE OF DECREE:
Continued Construe Trust	4/4/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 07/31/17 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Bank of America, N.A., Mail Stop: CT2-547-05-19, 99 Flounders Plaza, East Hartford, CT 06108-3208

Attorney Christiana N. Gianopulos (attorney for Bank of America, N.A.), Day Pitney LLP, 75 Isham Road, Suite 300, West Hartford, CT 06107-2237

Legacy Waterbury Hospital, c/o James Moylan, 50 Leavenworth Street, Waterbury, CT 06721-1110

Peter Weston, Mail Stop: CT2-547-05-19, 99 Flounders Plaza, East Hartford, CT 06108-3208

Attorney Anne Zucker (attorney for Waterbury Hospital Foundation, Inc), Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Attorney Joanne M. Targonski, Day Pitney LLP, 75 Isham Road, Suite 300, West Hartford, CT 06107-2237

Waterbury Hospital Foundation, Inc, c/o Ann Zucker, Esq., 50 Leavenworth Street, Waterbury, CT 06721-1110

Attorney George Jepsen, Attorney General's Office, 55 Elm Street, 4th floor, Hartford, CT 06141

Attorney Gary W. Hawes (attorney for Attorney George Jepsen), Office of the Attorney General, George Jepsen, 55 Elm Street, PO Box 120, Hartford, CT 06141-0120

Attorney Brian T. Henebry, Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Waterbury Hospital, Attn: Barbara Hallinan, 64 Robbins Street, Waterbury, CT 06708

Attorney Michael J. Reardon (attorney for Legacy Waterbury Hospital), Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Special Litigation Department - Charities, Attorney General's Office, 55 Elm Street, 4th floor, Hartford, CT 06141

Wendy E. Murphy, Assistant Clerk

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT

Exhibit G

Decree by Judge Mahon
July 26, 2017
Henry H. Peck Trust u/w dated June 12, 1918 f/b/o Waterbury Hospital

STATE OF CONNECTICUT
DISTRICT OF WATERBURY - #20

WATERBURY PROBATE COURT

JULY 26, 2017

IN RE: Henry H. Peck Trust u/w dtd 6/12/1918 f/b/o Waterbury Hospital, Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Article 18 of the Last Will and Testament of Henry H. Peck dated June 12, 1918 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH") and to determine if giving notice to the proposed Independent Foundation or the reservation agent thereof is a requirement of Rule 32.2 of the Probate Court Rules of Procedure, as in said application on file more fully appears.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of Henry H. Peck (the "Testator"), the Will was duly admitted to probate by this Court.

2. The Testator created a certain Trust under Article 18, which provides:

> The remainder of the principal of said trust shall continue to be held in trust by the said The Colonial Trust Company, with like powers, and the net income thereof shall be divided equally, semi-annually, between the Second Congregational Church of Waterbury, Connecticut and Waterbury Hospital, of Waterbury, Connecticut, the same to be used for the general purposes of said organizations.

3. There are no contingent beneficiaries named in the Will in the event that Waterbury Hospital ceases to operate as a hospital, be acquired by another organization or cease to exist, nor does the Will contain a giftover or reverter provision.

4. The Trust identifies Waterbury Hospital as the sole current income beneficiary of one-half of the net income of the Trust.

5. The Trustee is the successor to The Colonial Trust Company who is named as Trustee of the Trust pursuant to the Will.

6. GWHN is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

7. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

8. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

9. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

10. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

11. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

12. The Sale closed on October 1, 2016 (the "Closing").

13. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

14. The Trustee has been accumulating the Trust's income as of the Closing (the "Accumulated Income").

15. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

16. The Final Decision provides for the disposition of GWEN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

17. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWEN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

18. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," (See Exhibit C, p.9): "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

19. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

20. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

21. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

22. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income").

23. Along with its petition, the trustee has provided the Court a list of interested parties.

24. Counsel to Legacy GWHN has reserved a name for the Independent Foundation (the "Waterbury Hospital Foundation, Inc."), but the Independent Foundation has not yet been formed.

25. Rule 32.2 of the Probate Court Rules of Procedure provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

26. As of the date of the filing of the petition, the Independent Foundation had not been formed.

27. Counsel to the Trustee sent notice of the petition to counsel for Legacy GWHN as the reservation agent for the Independent Foundation.

28. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

29. The Court finds that the proposed "Independent Foundation", is not a current beneficiary of presumptive remainder beneficiary of this Trust, as those terms are defined in the Connecticut Probate Practice Book, and notice is not required to the Independent Foundation under Rule 32.2.

30. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testator. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we

look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention--the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

31. The relevant language of Article 18 provides that "...I give, devise and bequeath one of said shares to The Colonial Trust Company, of said Waterbury, in trust, nevertheless, for the following purposes, to wit: to hold, possess, invest and reinvest the same at pleasure, and to pay over the net income semi-annually to the Waterbury Hopsital, of said Waterbury, for the general uses of said institution". There are no further limitations on the use of the income, nor are there any reverter provisions, giftover provisions or contingent beneficiaries.

32. The will provides quite broadly for the use of the funds for the "general purposes" of the hospital. It is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

33. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

34. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

35. The court concludes that the intent of the testator, as expressed in the language of Article 18, permits the distribution of trust income during the wind down period to Legacy GWHN to be used for the payment debts and expenses of GWHN that were incurred while it continued to operate as a hospital.

36. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period.

Brian T. Mahon, Judge

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Waterbury Probate Court **DISTRICT NO. PD20**

ESTATE OF/IN THE MATTER OF

HENRY H. PECK (20-0255C)
FBO WATERBURY HOSPITAL,

PETITION FOR:	DATE OF DECREE:
Construction of Trust	07/26/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 08/14/17 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Atty. Christiana N. Gianopulos (attorney for Bank of America), Day Pitney, LLP, Blue Back Square, 75 Isham Road, Ste 300, West Hartford, CT 06107

AG's Office, Atty General's Office, 55 Elm St., 4th Fl., Hartford, CT 06106-1773

Atty Michael J. Reardon, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

AG-Charity Unit, Atty General's Office, Public Charities Unit, 55 Elm St., Hartford, CT 06101

Bank of America, 99 Founders Plaza, Mail Stop CT2-547-05-19, East Hartford, CT 06108

Legacy Waterbury Hospital, (aka Legacy GWHN), Attn: James Moylan, 50 Leavenworth St., Waterbury, CT 06702

Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06702

Atty. Brian Henebry, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

Maryann Ingala, Chief Clerk

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT

Exhibit H

Decree by Judge Mahon
July 26, 2017
Edith F. Poole Trust u/w dated April 11, 1928 f/b/o Waterbury Hospital and First Congregational Church

JUL 31 2017

STATE OF CONNECTICUT
DISTRICT OF WATERBURY - #20

WATERBURY PROBATE COURT

JULY 26, 2017

IN RE: Edith F. Poole Trust u/w dtd 4/11/1928 f/b/o Waterbury Hospital and First Congregation Church, Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Article 9 of the Last Will and Testament of Edith F. Poole dated April 11, 1928 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH") and to determine if giving notice to the proposed Independent Foundation or the reservation agent thereof is a requirement of Rule 32.2 of the Probate Court Rules of Procedure, as in said application on file more fully appears.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of Edith F. Poole (the "Testatrix"), the Will was duly admitted to probate by this Court.

2. The Testatrix created a certain Trust under Article 9, which provides:

> The remainder of the principal of said trust shall continue to be held in trust by the said The Colonial Trust Company, with like powers, and the net income thereof shall be divided equally, semi-annually, between the Second Congregational Church of Waterbury, Connecticut and Waterbury Hospital, of Waterbury, Connecticut, the same to be used for the general purposes of said organizations.

3. There are no contingent beneficiaries named in the Will in the event that Waterbury Hospital ceases to operate as a hospital, be acquired by another organization or cease to exist, nor does the Will contain a giftover or reverter provision.

4. The Trust identifies Waterbury Hospital as the current income beneficiary of one-half of the net income of the Trust.

5. The Trustee is the successor to The Colonial Trust Company who is named as Trustee of the Trust pursuant to the Will.

6. GWHN is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

7. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

8. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

9. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

10. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

11. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

12. The Sale closed on October 1, 2016 (the "Closing").

13. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

14. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "Accumulated Income").

15. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

16. The Final Decision provides for the disposition of GWEN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

17. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWEN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

18. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," (See Exhibit C, p.9): "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

19. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

20. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

21. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

22. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income").

23. Along with its petition, the trustee has provided the Court a list of interested parties.

24. Counsel to Legacy GWHN has reserved a name for the Independent Foundation (the "Waterbury Hospital Foundation, Inc."), but the Independent Foundation has not yet been formed.

25. Rule 32.2 of the Probate Court Rules of Procedure provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

26. As of the date of the filing of the petition, the Independent Foundation had not been formed.

27. Counsel to the Trustee sent notice of the petition to counsel for Legacy GWHN as the reservation agent for the Independent Foundation.

28. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

29. The Court finds that the proposed "Independent Foundation", is not a current beneficiary of presumptive remainder beneficiary of this Trust, as those terms are defined in the Connecticut Probate Practice Book, and notice is not required to the Independent Foundation under Rule 32.2.

30. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testatrix. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testatrix' intent we

look first to the precise wording employed by the testatrix in her will, for the meaning of the words as used by the testatrix is the equivalent of her legal intention--the intention that the law recognizes as dispositive. The words used by the testatrix are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

31. The relevant language of Article 9 provides that "one half of the net income thereof shall be divided equally, semi-annually, between the Second Congregational Church of Waterbury, Connecticut and Waterbury Hospital, of Waterbury, Connecticut, the same to be used for the general purposes of said organizations." There are no further limitations on the use of the income, nor are there any reverter provisions, giftover provisions or contingent beneficiaries.

32. The will provides quite broadly for the use of the funds for the "general purposes" of the hospital. It is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

33. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

34. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

35. The court concludes that the intent of the testator, as expressed in the language of Article 9, permits the distribution of trust income during the wind down period to Legacy GWHN to be used for the payment debts and expenses of GWHN that were incurred while it continued to operate as a hospital.

36. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period.

Brian T. Mahon, Judge

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Waterbury Probate Court **DISTRICT NO. PD20**

ESTATE OF/IN THE MATTER OF

EDITH F. POOLE (00-0259)
FBO WATERBURY HOSPITAL, FIRST CONGREGATIONAL CHURCH OF WATERBURY,

PETITION FOR:	DATE OF DECREE:
Construction of Trust	07/26/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 08/14/17 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

First Congregational Church, 222 West Main St., Waterbury, CT 06702-1220
Atty Charles W. Henry (attorney for Bank of America), Henry & Federer, PO Box 5013, Woodbury, CT 06798
Atty. Christiana N. Gianopulos, Day Pitney, LLP, Blue Back Square, 75 Isham Road, Ste 300, West Hartford, CT 06107
Atty Michael J. Reardon, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-
Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06702
Legacy Waterbury Hospital, (aka Legacy GWHN), 50 Leavenworth Street, Waterbury, CT 06721
Bank of America, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108
AG-Charity Unit, Atty General's Office, Public Charities Unit, 55 Elm St., Hartford, CT 06101 Atty: Caitlin M. Calder
Atty. Brian Henebry, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-
AG's Office, Atty General's Office, 55 Elm St., 4th Fl., Hartford, CT 06106-1773 Attn: Gary W. Hawes

Maryann Ingala
Maryann Ingala, Chief Clerk

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT

Exhibit I

Decree by Judge Mahon
July 26, 2017
Charles M. Hellmann Trust u/w dated June 13, 1955 f/b/o Waterbury Hospital and St. Mary's Hospital

STATE OF CONNECTICUT
DISTRICT OF MERIDEN - #16

MERIDEN PROBATE COURT

JULY 26, 2017

IN RE: Charles M. Hellmann Trust u/w dtd 6/13/1955 f/b/o Waterbury Hospital and St. Mary's Hospital, Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Section E of Article Fourth of the Last Will and Testament of Charles M. Hellmann dated June 13, 1955 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. as in said application on file more fully appears.

Present, Hon. Brian T. Mahon.

After due hearing, the Court finds that:

1. Following the death of Charles M. Hellmann (the "Testator"), the Will was duly admitted to probate by this Court.

2. Article Fourth of the Will disposes of the residue of the Testator's estate. The Testator created the Trust under Section E of Article Fourth as follows:

> Upon the death of all the beneficiaries named in the preceding Paragraph I direct that the then remaining principal shall remain IN TRUST as aforesaid and shall be known as the "SIBILLA HELLMANN FUND" in memory of my mother; after the payments required in Article Fourth Sections A and C [to named individual beneficiaries], the remaining yearly income shall be divided equally between THE WATERBURY HOSPITAL, INC. and THE ST. MARY'S HOSPITAL CORPORATION, both of said Waterbury, payable in semi-annual payments, the said income to be used by each hospital as it may deem for the best interests of each hospital..

3. Section E of Article Fourth further provides as follows:

In the event that either hospital goes out of existence, the entire income shall be paid to the remaining hospital. If either hospital shall merge with another hospital and

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my Trustees believe that the corporation so formed carries out the purposes of the hospital so merged, then my Trustees shall pay one-half of the income to such amalgamated corporation, but, if my Trustees believe that the amalgamated corporation does not carry out the purposes of the hospital so merged and mentioned herein, then the entire income shall be paid to the remaining hospital.

Should both hospitals mentioned herein cease to exist and there shall be no corporation or corporations formed as aforesaid to that there will be no charitable or eleemosynary corporation or corporations to which the income from the trust shall be paid, then my Trustees shall give the net income to the MERIDEN HOSPITAL, and, in the event that said hospital has ceased to exist or has not been amalgamated with any other charitable institution carrying out the ideals and principals of such institution, then my Trustees shall pay the net income in such proportion as they may deem advisable to other charitable, religious and eleemosynary corporations and shall be located in said Waterbury which carry out the principals and teachings of THE WATERBURY HOSPITAL, INC., and THE ST. MARY'S CORPORATION, and my Trustees shall have full discretion to designate the appropriate corporation or corporations and shall have full discretion as to the proportion of the net income which shall be paid to each corporation designated. .

4. Under Article Eighth of the Will, the Testator appointed Gustav A. Anderson, of Middlebury, Connecticut, and the Colonial Trust Company, of Waterbury, Connecticut, as co-trustees of the Trust. Article Eighth provides that upon the death, resignation or inability of the individual co-trustee, the corporate Trustee shall continue as sole Trustee. The Trustee is successor to The Colonial Trust Company, and is the sole Trustee of the Trust.

5. The Trust identifies Waterbury Hospital, Inc. and St. Mary's Hospital Corporation as the current income beneficiaries.

6. St. Mary's Health System, Inc. is a non-stock 501(c)(3) charitable corporation and is the parent company of St. Mary's Hospital, one of the named income beneficiaries of the Trust. Trinity Health Corporation is a nonprofit hospital chain with headquarters in Livonia, Michigan. St. Mary's Health System, Inc., including St. Mary's Hospital and St. Mary's Hospital Foundation, was acquired by Trinity Health-New England, a nonprofit subsidiary of Trinity Health Corporation. The transaction closed on August 1, 2016. St. Mary's Health System, Inc. has been dissolved and Trinity Health-New England is now the sole member of St. Mary's Hospital. The assets of St. Mary's Hospital Foundation were specifically included in the transaction. While the parent company of St. Mary's Hospital has changed, the hospital has continued to operate without disruption and its license as a general hospital with the State of Connecticut remains unchanged.

7. GWHN is a non-stock, 501(c)(3) charitable corporation and is the parent company of Waterbury Hospital.

8. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care

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Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

9. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

10. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

11. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

12. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

13. The Sale closed on October 1, 2016 (the "Closing").

14. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

15. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "Accumulated Income").

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16. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

17. The Final Decision provides for the disposition of GWHN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWHN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

18. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

19. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

20. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

21. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

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22. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

23. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income"), and the Trustee intends to distribute the future income to St. Mary's Hospital pursuant to the terms of the Trust.

24. Along with its petition, the trustee has provided the Court a list of interested parties.

25. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

26. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testator. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention--the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

27. The relevant language of Article Fourth provides that "the remaining yearly income shall be divided equally between THE WATERBURY HOSPITAL, INC. and THE ST. MARY'S HOSPITAL CORPORATION, both of said Waterbury, payable in semi-annual payments, the said income to be used by each hospital as it may deem for the best interest of each hospital.

28. The will provides quite broadly for the use of the funds for the "best interests" of the hospital. It is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

29. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

30. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

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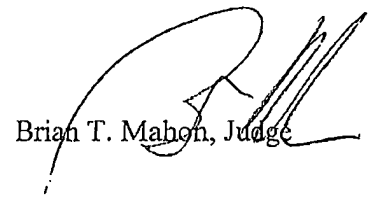
Dana M Fabe
SUPERIOR COURT CLERK

31. The court concludes that the intent of the testator, as expressed in the language of Article Fourth, permits the distribution of trust income during the wind down period to Legacy GWHN to be used for the payment debts and expenses of GWHN that were incurred while it continued to operate as a hospital.

32. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period.



Brian T. Mahon, Judge

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CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Meriden Probate Court **DISTRICT NO. PD16**

ESTATE OF/IN THE MATTER OF

Charles M. Hellmann (03-0060)

PETITION FOR:	DATE OF DECREE:
Construe Trust	7/26/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on07/27/17 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Christiana N. Gianopulos, Esq., Day Pitney LLP, 75 Isham Road, Suite 300, West Hartford, CT 06107-2237

Midstate Medical Center, 435 Lewis Avenue, Meriden, CT 06451

Jeffrey J. Mirman, Esq., Hinckley, Allen & Snyder LLP, 20 Church Street, Hartford, CT 06103

Waterbury Hospital Foundation, Inc. c/o Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Michael J. Reardon, Esq. (attorney for Legacy Waterbury Hospital, Inc.), Carmody, Torrance, Sandak & Hennessey, P.O. Box 1110, 50 Leavenworth Street, Waterbury, CT 06702

Brian T. Henebry, Esq., Carmody, Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Bank of America, N. A., Attn: Regina J. Collins, SVP, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108

Legacy Waterbury Hospital, Inc., c/o James Moylan, 50 Leavenworth Street, Waterbury, CT 07210-1110

St. Mary's Hospital, Attn: Jeneanne C. Lubin-Szafranski, 56 Franklin Street, Waterbury, CT 06706

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Office of the Attorney General, Attn: Gary Hawes, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120

Caitlyn M. Calder, Esq., Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120

Dina M. Falis, Clerk

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Exhibit J

Decree by Judge Mahon
July 26, 2017
Rhoda M. Hellmann Trust u/w dated November 11, 1969, as amended on June 24, 1971, May 21, 1980 and May 23, 1980, f/b/o Waterbury Hospital and St. Mary's Hospital

STATE OF CONNECTICUT
DISTRICT OF MERIDEN - #16

MERIDEN PROBATE COURT

JULY 26, 2017

IN RE: **Rhoda M. Hellmann Trust u/w dtd 11/11/1969 as amended 6/24/1971, 5/21/1980 and 5/23/1980 f/b/o Waterbury Hospital and St. Mary's Hospital, Bank of America, N.A. Trustee (The "Trust")**

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Section H of Article Sixth of the Last Will and Testament of Rhoda M. Hellmann dated November 11, 1969, as amended June 24, 1971, May 21, 1980 and May 23, 1980 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. as in said application on file more fully appears.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of Rhoda M. Hellmann (the "Testator"), the Will was duly admitted to probate by this Court.

2. In Article Sixth of the Will, the Testatrix exercised her power of appointment over property passing under her late husband's will. The Testatrix created the Trust under Section H of Article Sixth as follows:

> ... I hereby appoint all of the rest, residue and remainder of the property over which I have a power to appoint under the said Will of my late husband to COLONIAL BANK, as Trustee to be held in trust, under the designation "SIBELLA HELLMANN FUND" in memory of my husband's mother, for the following purposes, viz:
>
> The trust shall continue in perpetuity. During the continuation of this trust the net income arising therefrom shall be divided equally between the WATERBURY HOSPITAL and ST. MARY'S HOSPITAL, such payments to

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Dina M Falls
JUDGE PROB. CLERK

be made quarter-yearly or at such more frequent intervals as the Trustee shall deem wise.

3. Section H of Article Sixth further provides as follows:

If either of the hospitals listed above is not an organization described in Sections 170(c), 2055(a) of the Internal Revenue Code or has ceased to exist when income of the trust is to be distributed to it, the Trustee shall distribute all such income to the remaining hospital. If neither hospital shall qualify under such sections the Trustee shall distribute the income to such other organizations in the health care field as are described in said Sections 170(c), 2055(a) and 2522(a) as the Trustee shall select.

Any other provisions of this will notwithstanding, the trust created pursuant to this Article Sixth is organized and shall be operated exclusively for charitable purposes; no part of the net earnings thereof shall inure to the benefit of any private shareholder or individual; and the trust shall not attempt to influence legislature or participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office.

4. Under Article Eleventh of the Will, the Testatrix appointed "THE COLONIAL BANK AND TRUST COMPANY, [...] or its successor by consolidation, merger or otherwise" as trustee of the Trust. The Trustee is successor to The Colonial Bank and Trust Comp any, and is the sole trustee of the Trust.

5. The Trust identifies Waterbury Hospital, Inc. and St. Mary's Hospital Corporation as the current income beneficiaries.

6. St. Mary's Health System, Inc. is a non-stock 501(c)(3) charitable corporation and is the parent company of St. Mary's Hospital, one of the named income beneficiaries of the Trust. Trinity Health Corporation is a nonprofit hospital chain with headquarters in Livonia, Michigan. St. Mary's Health System, Inc., including St. Mary's Hospital and St. Mary's Hospital Foundation, was acquired by Trinity Health-New England, a nonprofit subsidiary of Trinity Health Corporation. The transaction closed on August 1, 2016. St. Mary's Health System, Inc. has been dissolved and Trinity Health-New England is now the sole member of St. Mary's Hospital. The assets of St. Mary's Hospital Foundation were specifically included in the transaction. While the parent company of St. Mary's Hospital has changed, the hospital has continued to operate without disruption and its license as a general hospital with the State of Connecticut remains unchanged.

7. GWHN is a non-stock, 501(c)(3) charitable corporation and is the parent company of Waterbury Hospital.

8. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the

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application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision"). (See Exhibit B for a copy of the OHCA Decision).

9. In addition, The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

10. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

11. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

12. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

13. The Sale closed on October 1, 2016 (the "Closing").

14. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision. In addition, Waterbury Hospital's license as a general hospital with the State of Connecticut became inactive as of the Sale, and a new license for the hospital acquired by PMH was issued following the Sale.

15. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "Accumulated Income").

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16. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

17. The Final Decision provides for the disposition of GWHN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWHN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

18. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

19. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

20. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

21. The Trustee understands that Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. The Trustee also understands that if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

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22. Legacy GWHN' s has communicated to the Trustee its belief that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

23. The Trustee is uncertain as to whether Legacy GWHN is or is not the proper recipient of the Income.

24. Legacy GWHN has made no claim to the income following the conclusion of the Wind Down Period (the "Future Income"), and the Trustee intends to distribute the Future Income to St. Mary's Hospital pursuant to the terms of the Trust.

25. Along with its petition, the trustee has provided the Court a list of interested parties.

26. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

27. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testatrix. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testatrix' intent we look first to the precise wording employed by the testatrix in her will, for the meaning of the words as used by the testatrix is the equivalent of her legal intention--the intention that the law recognizes as dispositive. The words used by the testatrix are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

28. The relevant language of Article Sixth provides "Any other provisions of this Will notwithstanding, the Trust created pursuant to this Article Sixth is organized and shall be operated exclusively for charitable purposes."

29. During the term of this Trust and until the sale, Waterbury Hospital, or its parent company GWHN had existed as a 501(c)(3) charitable corporation and all designated income of the Trust was paid without restriction to said charitable corporation. At no time was the income allocated to specific functions or departments of Waterbury Hospital.

30. The Court finds that all functions of Waterbury Hospital were so integrated that they all contributed to the charitable purpose of the hospital. It is beyond question that this enabled the hospital to use the trust funds to pay its debts and administrative expenses while it was operating.

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31. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

32. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

33. The court concludes that the intent of the testatrix, as expressed in the language of Article Sixth, permits the distribution of trust income during the wind down period to Legacy GWHN to be used for the payment debts and expenses of GWHN that were incurred while it continued to operate as a hospital.

34. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period.

Brian T. Mahon, Judge

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STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Meriden Probate Court **DISTRICT NO. PD16**

ESTATE OF/IN THE MATTER OF

Rhoda M. Hellmann (03-0052)
FBO Sibilla Hellmann Fund

PETITION FOR:	DATE OF DECREE:
Construe Trust	July 26, 2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on07/27/17 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Brian T. Henebry, Esq., Carmody, Torrance, Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Christiana N. Gianopulos, Esq., Day Pitney LLP, 75 Isham Road, Suite 300, West Hartford, CT 06107-2237

Midstate Medical Center, 435 Lewis Avenue, Meriden, CT 06451

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Waterbury Hospital Foundation, Inc. c/o Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Legacy Waterbury Hospital, Inc., c/o James Moylan, 50 Leavenworth Street, Waterbury, CT 07210-1110

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Office of the Attorney General, Attn: Gary Hawes, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120

Michael J. Reardon, Esq. (attorney for Legacy Waterbury Hospital, Inc.), Carmody, Torrance, Sandak & Hennessey, P.O. Box 1110, 50 Leavenworth Street, Waterbury, CT 06702

Bank of America, Regina J. Collins, SVP, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108

Caitlyn M. Calder, Esq., Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120

Dina M. Falis, Clerk

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Exhibit K

Motion For Articulation
August 25, 2017
In re Jacob Keeling Trust f/b/o Waterbury Hospital

("Exhibit A" omitted from Motion for Articulation, see Exhibit E for a copy of the J. Keeling Decree)

IN RE JACOB KEELING TRUST f/b/o THE WATERBURY HOSPITAL	:	**PROBATE COURT #21**
BANK OF AMERICA, N.A., TRUSTEE	:	**AUGUST 25, 2017**

MOTION FOR ARTICULATION

George Jepsen, Attorney General of the State of Connecticut (the "Attorney General"), hereby moves this Court for an articulation of its July 26, 2017, decree issued *In re Jacob Keeling Trust u/w dtd 6/30/52 f/b/o The Waterbury Hospital* (the "Decree"). This matter began with the Petition for Construction of Trust filed on or about December 30, 2016, by the Bank of America, N.A., Trustee (the "Trustee"). The primary issue of consideration in the Petition was whether the Trustee should distribute income from the Jacob Keeling Trust (the "Trust") to Legacy GWHN (f/k/a Greater Waterbury Health Network, Inc.) now that Greater Waterbury Health Network, Inc. ("GWHN") sold substantially all of its assets to Prospect Medical Holdings, Inc. ("Prospect"), including The Waterbury Hospital, and is no longer offering healthcare services.

Background

The Attorney General files this Motion for Articulation to clarify the purposes for which the income from the Trust may be used by Legacy GWHN.

> It is well settled that [a]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification.... [P]roper utilization of the motion for articulation serves to dispel any ... ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal.

Chyung v. Chyung, 86 Conn. App. 665, 676, 862 A.2d 374, 381 (2004), overruled on other grounds by *Tanzman v. Meurer*, 309 Conn. 105, 70 A.3d 13 (2013).

ARTICLE TEN of Mr. Keeling's will provides in relevant part:

> Upon the death of the last survivor of the aforesaid named beneficiaries, or should none of them be living at my decease, this trust shall cease and determine and the then principal thereof shall be paid over and delivered to The Colonial Trust Company, of Waterbury, Connecticut the same to be held in trust as a perpetual trust fund to be known as "The Jacob Keeling Fund", the income only thereof to be paid to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be used for the general purposes of said Hospital.

(Exhibit A of the Petition for Construction of Trust.) This gift of income from Mr. Keeling to The Waterbury Hospital is given without restriction. "Where a gift is made to a charitable corporation in absolute terms, courts presume that the donor intended the gift to be devoted to the general purposes of the donee as authorized in its corporate charter." *New York East Annual Conference v. Seymour,* 151 Conn. 517, 521 (1964). In this case, there has been no argument that the charitable income was use-restricted, other than that it should be used for a charitable purpose. As such, The Waterbury Hospital has been able to use the income from the Trust for any of its general purposes.

Also relevant to this Motion is a portion of the Attorney General's Final Decision approving the sale of substantially all of the assets of GWHN to Prospect pursuant to his role of reviewing such transactions for financial and procedural fairness. Conn. Gen. Stat. § 19a-486 et seq. In that decision, which is quoted in the Decree, the Attorney General stated: ". . . Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." (Exhibit C of the Petition for Construction of Trust, p. 9.)

Discussion

In the Decree, the Court concluded: "[T]he intent of the testator, as expressed in the language of Article 10, permits the distribution of trust income during the wind down period to Legacy GWHN to be used for the payment [of] debts and expenses of GWHN that were incurred while it continued to operate as a hospital." (Decree, Naugatuck Probate Court, July 26, 2017, *In re Jacob Keeling Trust u/w dtd 6/30/52 f/b/o The Waterbury Hospital,* ¶ 35; attached as Exhibit A.) As an initial matter, therefore, the Court held that Legacy GWHN is the proper recipient of income from the Trust even though it has stopped offering health care services.

The Court appears to modify this general proposition, however, when it adds "to be used for the payment [of] debts and expenses of GWHN that were incurred while it continued to operate as a hospital." This language could be interpreted to limit the purposes for which the income can be used by Legacy GWHN despite its unrestricted nature.

This possible interpretation, however, appears to be at odds with the language in paragraph 20 of the Decree, when the Court describes the potential ramifications of its decision:

> Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be use, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

Here, the Court acknowledges three proper uses for Trust income: "any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." When compared to the language in paragraph 35, which only lists one use, the Court's Decree might be interpreted to exclude the administrative costs of Legacy GWHN and the costs incurred in setting up the Independent Foundation from those purposes to which Legacy GWHN can put the income to use. Yet, the language in paragraph 20 acknowledges that the income will be used for these two additional purposes if the Court determines that Legacy GWHN is the proper recipient of The Waterbury Hospital's share of the income during Legacy GWHN's wind down period, which it ultimately does in paragraph 35.

Request for Articulation

Wherefore, the Attorney General seeks the following articulation from the Court:

Whether the administrative costs of Legacy GWHN and the cost incurred in setting up the Independent Foundation are proper expenses for the Trust income given that these obligations were imposed on GWHN as a condition of the transaction with Prospect pursuant to the Attorney General's Final Decision, which was issued while GWHN continued to operate as a hospital.

Dated at Hartford, Connecticut, this 25th day of August, 2017.

GEORGE JEPSEN
ATTORNEY GENERAL

/s/ Gary W. Hawes
Gary W. Hawes
Juris No. 415091
Assistant Attorney General
Office of the Attorney General
55 Elm Street, P.O. Box 120
Hartford, Connecticut 06141-0120
Tel: 860-808-5020
Fax: 860-808-5347

CERTIFICATION

I hereby certify that a copy of the foregoing Motion has been sent to each party and/or counsel of record via electronic or U.S. Mail First Class, postage prepaid, on this 25th day of August, 2017:

Bank of America, N.A.
Peter Weston, SVP
Mail Stop: CT2-547-05-19
99 Founders Plaza
East Hartford, Connecticut 06108-3208

Christiana N. Gianopulos, Esq.
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c/o Stephanie DiClementi
50 Leavenworth Street
Waterbury, Connecticut 06721-1110

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Waterbury Hospital Foundation, Inc.
c/o Ann Zucker, Esq.
Carmody Torrance Sandak & Hennessey
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Hartford, CT 06141-0120

/s/ Gary W. Hawes
Gary W. Hawes, AAG

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Exhibit L

Motion for Articulation
August 25, 2017
In re Frank Keeling Trust f/b/o Waterbury Hospital

("Exhibit A" omitted from Motion for Articulation, see Exhibit F for a copy of the F. Keeling Decree)

IN RE FRANK KEELING TRUST f/b/o THE WATERBURY HOSPITAL	:	**PROBATE COURT #21**
	:	
BANK OF AMERICA, N.A., TRUSTEE	:	**AUGUST 25, 2017**

MOTION FOR ARTICULATION

George Jepsen, Attorney General of the State of Connecticut (the "Attorney General"), hereby moves this Court for an articulation of its July 26, 2017, decree issued *In re Frank Keeling Trust u/w dtd 12/15/1954 f/b/o The Waterbury Hospital* (the "Decree"). This matter began with the Petition for Construction of Trust filed on or about December 30, 2016, by the Bank of America, N.A., Trustee (the "Trustee"). The primary issue of consideration in the Petition was whether the Trustee should distribute income from the Frank Keeling Trust (the "Trust") to Legacy GWHN (f/k/a Greater Waterbury Health Network, Inc.) now that Greater Waterbury Health Network, Inc. ("GWHN") sold substantially all of its assets to Prospect Medical Holdings, Inc. ("Prospect"), including The Waterbury Hospital, and is no longer offering healthcare services.

Background

The Attorney General files this Motion for Articulation to clarify the purposes for which the income from the Trust may be used by Legacy GWHN.

> It is well settled that [a]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification.... [P]roper utilization of the motion for articulation serves to dispel any ... ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal.

Chyung v. Chyung, 86 Conn. App. 665, 676, 862 A.2d 374, 381 (2004), overruled on other grounds by *Tanzman v. Meurer*, 309 Conn. 105, 70 A.3d 13 (2013).

ARTICLE TWELVE, section B, of Mr. Keeling's will provides in relevant part:

> The balance of said principal shall be retained by said Trustee and shall constitute and become a trust fund to be known as the "The Frank Keeling Fund", the principal thereof to be held in trust in perpetuity and the income only thereof to be paid over to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be used for the general purposes of said Hospital.

(Exhibit A of the Petition for Construction of Trust.) This gift of income from Mr. Keeling to The Waterbury Hospital is given without restriction. "Where a gift is made to a charitable corporation in absolute terms, courts presume that the donor intended the gift to be devoted to the general purposes of the donee as authorized in its corporate charter." *New York East Annual Conference v. Seymour,* 151 Conn. 517, 521 (1964). In this case, there has been no argument that the charitable income was use-restricted, other than that it should be used for a charitable purpose. As such, The Waterbury Hospital has been able to use the income from the Trust for any of its general purposes.

Also relevant to this Motion is a portion of the Attorney General's Final Decision approving the sale of substantially all of the assets of GWHN to Prospect pursuant to his role of reviewing such transactions for financial and procedural fairness. Conn. Gen. Stat. § 19a-486 et seq. In that decision, which is quoted in the Decree, the Attorney General stated: ". . . Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." (Exhibit C of the Petition for Construction of Trust, p. 9.)

Discussion

In the Decree, the Court concluded: "[T]he intent of the testator, as expressed in the language of Paragraph B of Article 12, permits the distribution of trust income during the wind down period to Legacy GWHN to be used for the payment [of] debts and expenses of GWHN that were incurred while it continued to operate as a hospital." (Decree, Naugatuck Probate Court, July 26, 2017, *In re Frank Keeling Trust u/w dtd 12/15/1954 f/b/o The Waterbury Hospital,* ¶ 35; attached as Exhibit A.) As an initial matter, therefore, the Court held that Legacy GWHN is the proper recipient of income from the Trust even though it has stopped offering health care services.

The Court appears to modify this general proposition, however, when it adds "to be used for the payment [of] debts and expenses of GWHN that were incurred while it continued to operate as a hospital." This language could be interpreted to limit the purposes for which the income can be used by Legacy GWHN despite its unrestricted nature.

This possible interpretation, however, appears to be at odds with the language in paragraph 20 of the Decree, when the Court describes the potential ramifications of its decision:

> Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be use, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

Here, the Court acknowledges three proper uses for Trust income: "any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." When compared to the language in paragraph 35, which only lists one use, the Court's Decree might be interpreted to exclude the administrative costs of Legacy GWHN and the costs incurred in setting up the Independent Foundation from those purposes to which Legacy GWHN can put the income to use. Yet, the language in paragraph 20 acknowledges that the income will be used for these two additional purposes if the Court determines that Legacy GWHN is the proper recipient of The Waterbury Hospital's share of the income during Legacy GWHN's wind down period, which it ultimately does in paragraph 35.

Request for Articulation

Wherefore, the Attorney General seeks the following articulation from the Court:

Whether the administrative costs of Legacy GWHN and the cost incurred in setting up the Independent Foundation are proper expenses for the Trust income given that these obligations were imposed on GWHN as a condition of the transaction with Prospect pursuant to the Attorney General's Final Decision, which was issued while GWHN continued to operate as a hospital.

Dated at Hartford, Connecticut, this 25th day of August, 2017.

GEORGE JEPSEN
ATTORNEY GENERAL

/s/ Gary W. Hawes
Gary W. Hawes
Juris No. 415091
Assistant Attorney General
Office of the Attorney General
55 Elm Street, P.O. Box 120
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CERTIFICATION

I hereby certify that a copy of the foregoing Motion has been sent to each party and/or counsel of record via electronic or U.S. Mail First Class, postage prepaid, on this 25th day of August, 2017:

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Michael J. Reardon, Esq.
Brian T. Henebry, Esq.
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Waterbury Hospital Foundation, Inc.
c/o Ann Zucker, Esq.
Carmody Torrance Sandak & Hennessey
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Hartford, CT 06141-0120

/s/ Gary W. Hawes
Gary W. Hawes, AAG

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Exhibit M

Motion for Articulation
August 25, 2017
In re Henry H. Peck Trust f/b/o Waterbury Hospital

("Exhibit A" omitted from Motion for Articulation, see Exhibit G for a copy of the Peck Decree)

IN RE HENRY H. PECK TRUST	:	**PROBATE COURT #20**
f/b/o THE WATERBURY HOSPITAL	:	
	:	
BANK OF AMERICA, N.A., TRUSTEE	:	**AUGUST 25, 2017**

MOTION FOR ARTICULATION

George Jepsen, Attorney General of the State of Connecticut (the "Attorney General"), hereby moves this Court for an articulation of its July 26, 2017, decree issued *In re Henry H. Peck Trust u/w dtd 6/12/1918 f/b/o The Waterbury Hospital* (the "Decree"). This matter began with the Petition for Construction of Trust filed on or about December 30, 2016, by the Bank of America, N.A., Trustee (the "Trustee"). The primary issue of consideration in the Petition was whether the Trustee should distribute income from the Henry H. Peck Trust (the "Trust") to Legacy GWHN (f/k/a Greater Waterbury Health Network, Inc.) now that Greater Waterbury Health Network, Inc. ("GWHN") sold substantially all of its assets to Prospect Medical Holdings, Inc. ("Prospect"), including The Waterbury Hospital, and is no longer offering healthcare services.

Background

The Attorney General files this Motion for Articulation to clarify the purposes for which the income from the Trust may be used by Legacy GWHN.

> It is well settled that [a]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification.... [P]roper utilization of the motion for articulation serves to dispel any ... ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal.

Chyung v. Chyung, 86 Conn. App. 665, 676, 862 A.2d 374, 381 (2004), overruled on other grounds by *Tanzman v. Meurer*, 309 Conn. 105, 70 A.3d 13 (2013).

ARTICLE 18 of Mr. Peck's will provides in relevant part:

> I give, devise and bequeath one of said shares to The Colonial Trust Company, of said Waterbury, in trust, nevertheless, for the following purposes, to wit: to hold, possess, invest and reinvest the same at pleasure, and to pay over the net income semi-annually to the Waterbury Hospital, of said Waterbury, for the general uses of said institution.

(First Exhibit of the Petition for Construction of Trust.) This gift of income from Mr. Peck to The Waterbury Hospital is given without restriction. "Where a gift is made to a charitable corporation in absolute terms, courts presume that the donor intended the gift to be devoted to the general purposes of the donee as authorized in its corporate charter." *New York East Annual Conference v. Seymour,* 151 Conn. 517, 521 (1964). In this case, there has been no argument that the charitable income was use-restricted, other than that it should be used for a charitable purpose. As such, The Waterbury Hospital has been able to use the income from the Trust for any of its general purposes.

Also relevant to this Motion is a portion of the Attorney General's Final Decision approving the sale of substantially all of the assets of GWHN to Prospect pursuant to his role of reviewing such transactions for financial and procedural fairness. Conn. Gen. Stat. § 19a-486 et seq. In that decision, which is quoted in the Decree, the Attorney General stated: ". . . Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." (Second Exhibit of the Petition for Construction of Trust, p. 9.)

Discussion

In the Decree, the Court concluded: "[T]he intent of the testator, as expressed in the language of Article 18, permits the distribution of trust income during the wind down period to Legacy GWHN to be used for the payment [of] debts and expenses of GWHN that were incurred while it continued to operate as a hospital." (Decree, Waterbury Probate Court, July 26, 2017, *In re Henry H. Peck Trust u/w dtd 6/12/1918 f/b/o The Waterbury Hospital,* ¶ 35; attached as Exhibit A.) As an initial matter, therefore, the Court held that Legacy GWHN is the proper recipient of income from the Trust even though it has stopped offering health care services.

The Court appears to modify this general proposition, however, when it adds "to be used for the payment [of] debts and expenses of GWHN that were incurred while it continued to operate as a hospital." This language could be interpreted to limit the purposes for which the income can be used by Legacy GWHN despite its unrestricted nature.

This possible interpretation, however, appears to be at odds with the language in paragraph 20 of the Decree, when the Court describes the potential ramifications of its decision:

> Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be use, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

Here, the Court acknowledges three proper uses for Trust income: "any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." When compared to the language in paragraph 35, which only lists one use, the Court's Decree might be interpreted to exclude the administrative costs of Legacy GWHN and the costs incurred in setting up the Independent Foundation from those purposes to which Legacy GWHN can put the income to use. Yet, the language in paragraph 20 acknowledges that the income will be used for these two additional purposes if the Court determines that Legacy GWHN is the proper recipient of The Waterbury Hospital's share of the income during Legacy GWHN's wind down period, which it ultimately does in paragraph 35.

Request for Articulation

Wherefore, the Attorney General seeks the following articulation from the Court:

Whether the administrative costs of Legacy GWHN and the cost incurred in setting up the Independent Foundation are proper expenses for the Trust income given that these obligations were imposed on GWHN as a condition of the transaction with Prospect pursuant to the Attorney General's Final Decision, which was issued while GWHN continued to operate as a hospital.

Dated at Hartford, Connecticut, this 25th day of August, 2017.

GEORGE JEPSEN
ATTORNEY GENERAL

/s/ Gary W. Hawes
Gary W. Hawes
Juris No. 415091
Assistant Attorney General
Office of the Attorney General
55 Elm Street, P.O. Box 120
Hartford, Connecticut 06141-0120
Tel: 860-808-5020
Fax: 860-808-5347

CERTIFICATION

I hereby certify that a copy of the foregoing Motion has been sent to each party and/or counsel of record via electronic or U.S. Mail First Class, postage prepaid, on this 25th day of August, 2017:

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Regina J. Collins, SVP
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East Hartford, Connecticut 06108-3208

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Caitlin M. Calder, Assistant Attorney General
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Hartford, CT 06141-0120

/s/ Gary W. Hawes
Gary W. Hawes, AAG

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Exhibit N

Motion for Articulation
August 25, 2017
In re Edith F. Poole f/b/o Waterbury Hospital

("Exhibit A" omitted from Motion for Articulation, see Exhibit H for a copy of the Poole Decree)

IN RE EDITH F. POOLE TRUST f/b/o THE WATERBURY HOSPITAL	:	**PROBATE COURT #20**
	:	
BANK OF AMERICA, N.A., TRUSTEE	:	**AUGUST 25, 2017**

MOTION FOR ARTICULATION

George Jepsen, Attorney General of the State of Connecticut (the "Attorney General"), hereby moves this Court for an articulation of its July 26, 2017, decree issued *In re Edith F. Poole Trust u/w dtd 4/11/1928 f/b/o The Waterbury Hospital* (the "Decree"). This matter began with the Petition for Construction of Trust filed on or about January 9, 2017, by the Bank of America, N.A., Trustee (the "Trustee"). The primary issue of consideration in the Petition was whether the Trustee should distribute income from the Edith F. Poole Trust (the "Trust") to Legacy GWHN (f/k/a Greater Waterbury Health Network, Inc.) now that Greater Waterbury Health Network, Inc. ("GWHN") sold substantially all of its assets to Prospect Medical Holdings, Inc. ("Prospect"), including The Waterbury Hospital, and is no longer offering healthcare services.

Background

The Attorney General files this Motion for Articulation to clarify the purposes for which the income from the Trust may be used by Legacy GWHN.

> It is well settled that [a]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification.... [P]roper utilization of the motion for articulation serves to dispel any ... ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal.

Chyung v. Chyung, 86 Conn. App. 665, 676, 862 A.2d 374, 381 (2004), overruled on other grounds by *Tanzman v. Meurer*, 309 Conn. 105, 70 A.3d 13 (2013).

ARTICLE 9 of Ms. Poole's will provides in relevant part:

> The remainder of the principal of said trust fund shall continue to be held in trust by the said The Colonial Trust Company, with like powers, and the net income thereof shall be divided equally, semi-annually, between the Second Congregational Church, of Waterbury, Connecticut, the same to be used for the general purposes of said organizations.

(Exhibit A of the Petition for Construction of Trust.) This gift of income from Ms. Poole to The Waterbury Hospital is given without restriction. "Where a gift is made to a charitable corporation in absolute terms, courts presume that the donor intended the gift to be devoted to the general purposes of the donee as authorized in its corporate charter." *New York East Annual Conference v. Seymour,* 151 Conn. 517, 521 (1964). In this case, there has been no argument that the charitable income was use-restricted, other than that it should be used for a charitable purpose. As such, The Waterbury Hospital has been able to use the income from the Trust for any of its general purposes.

Also relevant to this Motion is a portion of the Attorney General's Final Decision approving the sale of substantially all of the assets of GWHN to Prospect pursuant to his role of reviewing such transactions for financial and procedural fairness. Conn. Gen. Stat. § 19a-486 et seq. In that decision, which is quoted in the Decree, the Attorney General stated: ". . . Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." (Exhibit C of the Petition for Construction of Trust, p. 9.)

Discussion

In the Decree, the Court concluded: "[T]he intent of the testator, as expressed in the language of Article 9, permits the distribution of trust income during the wind down period to Legacy GWHN to be used for the payment [of] debts and expenses of GWHN that were incurred while it continued to operate as a hospital." (Decree, Waterbury Probate Court, July 26, 2017, *In re Edith F. Poole Trust u/w dtd 4/11/1928 f/b/o The Waterbury Hospital,* ¶ 35; attached as Exhibit A.) As an initial matter, therefore, the Court held that Legacy GWHN is the proper recipient of income from the Trust even though it has stopped offering health care services.

The Court appears to modify this general proposition, however, when it adds "to be used for the payment [of] debts and expenses of GWHN that were incurred while it continued to operate as a hospital." This language could be interpreted to limit the purposes for which the income can be used by Legacy GWHN despite its unrestricted nature.

This possible interpretation, however, appears to be at odds with the language in paragraph 20 of the Decree, when the Court describes the potential ramifications of its decision:

> Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be use, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

Here, the Court acknowledges three proper uses for Trust income: "any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." When compared to the language in paragraph 35, which only lists one use, the Court's Decree might be interpreted to exclude the administrative costs of Legacy GWHN and the costs incurred in setting up the Independent Foundation from those purposes to which Legacy GWHN can put the income to use. Yet, the language in paragraph 20 acknowledges that the income will be used for these two additional purposes if the Court determines that Legacy GWHN is the proper recipient of The Waterbury Hospital's share of the income during Legacy GWHN's wind down period, which it ultimately does in paragraph 35.

Request for Articulation

Wherefore, the Attorney General seeks the following articulation from the Court:

Whether the administrative costs of Legacy GWHN and the cost incurred in setting up the Independent Foundation are proper expenses for the Trust income given that these obligations were imposed on GWHN as a condition of the transaction with Prospect pursuant to the Attorney General's Final Decision, which was issued while GWHN continued to operate as a hospital.

Dated at Hartford, Connecticut, this 25th day of August, 2017.

GEORGE JEPSEN
ATTORNEY GENERAL

/s/ Gary W. Hawes
Gary W. Hawes
Juris No. 415091
Assistant Attorney General
Office of the Attorney General
55 Elm Street, P.O. Box 120
Hartford, Connecticut 06141-0120
Tel: 860-808-5020
Fax: 860-808-5347

CERTIFICATION

I hereby certify that a copy of the foregoing Motion has been sent to each party and/or counsel of record via electronic or U.S. Mail First Class, postage prepaid, on this 25th day of August, 2017:

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/s/ Gary W. Hawes
Gary W. Hawes, AAG

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Exhibit O

Finding Re: Attorney General's Motion for Articulation
September 6, 2017
Jacob Keeling Trust f/b/o Waterbury Hospital

STATE OF CONNECTICUT

DISTRICT OF NAUGATUCK - #21

NAUGATUCK PROBATE COURT

SEPTEMBER 6, 2017

IN RE: **Jacob Keeling Trust u/w dtd 6/30/1952 f/b/o Waterbury Hospital, Bank of America, N.A. Trustee (The "Trust")**

FINDING RE: ATTORNEY GENERAL'S MOTION FOR ARTICULATION

The following articulation is issued in response to the Attorney General's request dated August 25, 2017.

1. The Court did not intend to limit the purposes for which the income could be used by GWHN and thus the conclusion in Paragraph 35 of its July 26, 2017, decision should read:

"The Court concludes that the intent of the testator, as expressed in the language of Article 10, permits the distribution of trust income during the wind down period to Legacy GWHN to be used to pay any and all obligations of the pre-closing GWHN, the administrative cost of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

Brian T. Mahon, Judge

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Naugatuck Probate Court **DISTRICT NO. PD21**

ESTATE OF/IN THE MATTER OF

Jacob Keeling (09-000015)
FBO Waterbury Hospital

PETITION FOR:	DATE OF ORDER:
Articulation of Trust	9/6/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 09/11/17 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Bank of America, N.A., Mail Stop: CT2-547-05-19, 99 Flounders Plaza, East Hartford, CT 06108-3208

Attorney Christiana N. Gianopulos (attorney for Bank of America, N.A.), Day Pitney LLP, 75 Isham Road, Suite 300, West Hartford, CT 06107-2237

Legacy Waterbury Hospital, c/o James Moylan, 50 Leavenworth Street, Waterbury, CT 06721-1110

Peter Weston, Mail Stop: CT2-547-05-19, 99 Flounders Plaza, East Hartford, CT 06108-3208

Attorney Anne Zucker (attorney for Waterbury Hospital Foundation, Inc), Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Attorney Joanne M. Targonski, Day Pitney LLP, 75 Isham Road, Suite 300, West Hartford, CT 06107-2237

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Attorney George Jepsen, Attorney General's Office, 55 Elm Street, 4th floor, Hartford, CT 06141

Attorney Gary W. Hawes (attorney for Attorney George Jepsen), Attorney General's Office, Charities, 55 Elms Street, 4th Floor, Hartford, CT 06106

Attorney Brian T. Henebry, Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Waterbury Hospital, Attn: Barbara Hallinan, 64 Robbins Street, Waterbury, CT 06708

Attorney Michael J. Reardon (attorney for Legacy Waterbury Hospital), Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Special Litigation Department - Charities, Attorney General's Office, 55 Elm Street, 4th floor, Hartford, CT 06141

Wendy E. Murphy, Assistant Clerk

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NAUGATUCK PROBATE COURT

Exhibit P

Finding Re: Attorney General's Motion for Articulation
September 6, 2017
Frank Keeling Trust f/b/o Waterbury Hospital

STATE OF CONNECTICUT

NAUGATUCK PROBATE COURT

DISTRICT OF NAUGATUCK - #21

SEPTEMBER 6, 2017

IN RE: **Frank Keeling Trust u/w dtd 12/15/1954 f/b/o Waterbury Hospital, Bank of America, N.A. Trustee (The "Trust")**

FINDING RE: ATTORNEY GENERAL'S MOTION FOR ARTICULATION

The following articulation is issued in response to the Attorney General's request dated August 25, 2017.

1. The Court did not intend to limit the purposes for which the income could be used by GWHN and thus the conclusion in Paragraph 35 of its July 26, 2017, decision should read:

"The Court concludes that the intent of the testator, as expressed in the language of Paragraph B of Article 12, permits the distribution of trust income during the wind down period to Legacy GWHN to be used to pay any and all obligations of the pre-closing GWHN, the administrative cost of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

Brian T. Mahon, Judge

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Naugatuck Probate Court **DISTRICT NO. PD21**

ESTATE OF/IN THE MATTER OF

Frank Keeling (09-000052)
FBO Waterbury Hospital

PETITION FOR:	DATE OF ORDER:
Articulation of Trust	9/6/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 09/11/17 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Bank of America, N.A., Mail Stop: CT2-547-05-19, 99 Flounders Plaza, East Hartford, CT 06108-3208

Attorney Christiana N. Gianopulos (attorney for Bank of America, N.A.), Day Pitney LLP, 75 Isham Road, Suite 300, West Hartford, CT 06107-2237

Legacy Waterbury Hospital, c/o James Moylan, 50 Leavenworth Street, Waterbury, CT 06721-1110

Peter Weston, Mail Stop: CT2-547-05-19, 99 Flounders Plaza, East Hartford, CT 06108-3208

Attorney Anne Zucker (attorney for Waterbury Hospital Foundation, Inc), Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Attorney Joanne M. Targonski, Day Pitney LLP, 75 Isham Road, Suite 300, West Hartford, CT 06107-2237

Waterbury Hospital Foundation, Inc, c/o Ann Zucker, Esq., 50 Leavenworth Street, Waterbury, CT 06721-1110

Attorney George Jepsen, Attorney General's Office, 55 Elm Street, 4th floor, Hartford, CT 06141

Attorney Gary W. Hawes (attorney for Attorney George Jepsen), Attorney General's Office, Charities, 55 Elms Street, 4th Floor, Hartford, CT 06106

Attorney Brian T. Henebry, Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Waterbury Hospital, Attn: Barbara Hallinan, 64 Robbins Street, Waterbury, CT 06708

Attorney Michael J. Reardon (attorney for Legacy Waterbury Hospital), Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Special Litigation Department - Charities, Attorney General's Office, 55 Elm Street, 4th floor, Hartford, CT 06141

Wendy E. Murphy, Assistant Clerk

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT

Exhibit Q

Finding Re: Attorney General's Motion for Articulation
September 6, 2017
Henry H. Peck Trust f/b/o Waterbury Hospital

STATE OF CONNECTICUT

WATERBURY PROBATE COURT

DISTRICT OF WATERBURY - #20

SEPTEMBER 6, 2017

IN RE: **Henry H. Peck Trust u/w dtd 6/12/1918 f/b/o Waterbury Hospital, Bank of America, N.A. Trustee (The "Trust")**

FINDING RE: ATTORNEY GENERAL'S MOTION FOR ARTICULATION

The following articulation is issued in response to the Attorney General's request dated August 25, 2017.

1. The Court did not intend to limit the purposes for which the income could be used by GWHN and thus the conclusion in Paragraph 35 of its July 26, 2017, decision should read:

"The Court concludes that the intent of the testator, as expressed in the language of Article 18, permits the distribution of trust income during the wind down period to Legacy GWHN to be used to pay any and all obligations of the pre-closing GWHN, the administrative cost of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

Brian T. Mahon, Judge

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Waterbury Probate Court **DISTRICT NO. PD20**

ESTATE OF/IN THE MATTER OF

HENRY H. PECK (20-0255C)
FBO WATERBURY HOSPITAL,

PETITION FOR:	DATE OF DECREE:
-Articulation -Finding re: Attorney General's Motion For Articulation	September 6, 2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 09/13/17 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Atty. Christiana N. Gianopulos (attorney for Bank of America), Day Pitney, LLP, Blue Back Square, 75 Isham Road, Ste 300, West Hartford, CT 06107

AG's Office, Atty General's Office, 55 Elm St., 4th Fl., Hartford, CT 06106-1773

Atty Michael J. Reardon, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

AG-Charity Unit, Atty General's Office, Public Charities Unit, 55 Elm St., Hartford, CT 06101

Bank of America, 99 Founders Plaza, Mail Stop CT2-547-05-19, East Hartford, CT 06108

Legacy Waterbury Hospital, (aka Legacy GWHN), Attn: James Moylan, 50 Leavenworth St., Waterbury, CT 06702

Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06702

Atty. Brian Henebry, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721

Maryann Ingala, Chief Clerk

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT

Exhibit R

Finding Re: Attorney General's Motion for Articulation
September 6, 2017
Edith F. Poole Trust f/b/o Waterbury Hospital, First Congregational Church

STATE OF CONNECTICUT

WATERBURY PROBATE COURT

DISTRICT OF WATERBURY - #20

SEPTEMBER 6, 2017

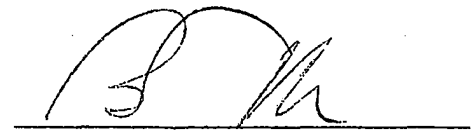
IN RE: **Edith F. Poole Trust u/w dtd 4/11/1928 f/b/o Waterbury Hospital, First Congregational Church, and Bank of America, N.A. Trustee (The "Trust")**

FINDING RE: ATTORNEY GENERAL'S MOTION FOR ARTICULATION

The following articulation is issued in response to the Attorney General's request dated August 25, 2017.

1. The Court did not intend to limit the purposes for which the income could be used by GWHN and thus the conclusion in Paragraph 35 of its July 26, 2017, decision should read:

"The Court concludes that the intent of the testator, as expressed in the language of Article 9, permits the distribution of trust income during the wind down period to Legacy GWHN to be used to pay any and all obligations of the pre-closing GWHN, the administrative cost of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."



Brian T. Mahon, Judge

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Waterbury Probate Court **DISTRICT NO. PD20**

ESTATE OF/IN THE MATTER OF

EDITH F. POOLE (00-0259)
FBO WATERBURY HOSPITAL, FIRST CONGREGATIONAL CHURCH OF WATERBURY,

PETITION FOR:	DATE OF DECREE:
-Articulation -Finding Re: Attorney General's Motion for Articulation	September 6, 2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 09/13/17 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

First Congregational Church, 222 West Main St., Waterbury, CT 06702-1220
Atty Charles W. Henry (attorney for Bank of America), Henry & Federer, PO Box 5013, Woodbury, CT 06798
Atty. Christiana N. Gianopulos, Day Pitney, LLP, Blue Back Square, 75 Isham Road, Ste 300, West Hartford, CT 06107
Atty Michael J. Reardon, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-
Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06702
Legacy Waterbury Hospital, (aka Legacy GWHN), 50 Leavenworth Street, Waterbury, CT 06721
Bank of America, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108
AG-Charity Unit, Atty General's Office, Public Charities Unit, 55 Elm St., Hartford, CT 06101
Atty. Brian Henebry, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-
AG's Office, Atty General's Office, 55 Elm St., 4th Fl., Hartford, CT 06106-1773

Maryann Ingala
Maryann Ingala, Chief Clerk

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NAUGATUCK PROBATE COURT

Exhibit S

Decree by Judge Mahon
December 19, 2017
Almon B. Dayton Trust u/w dated August 23, 1940 f/b/o Waterbury Hospital et al.

STATE OF CONNECTICUT
DISTRICT OF WATERBURY - #20

WATERBURY PROBATE COURT

JANUARY 3, 2018

IN RE: Almon B. Dayton Trust u/w dtd 8/23/1940 f/b/o Waterbury Hospital, et al, Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Article Eleventh of the Last Will and Testament of Almon B. Dayton dated August 23, 1940 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH").

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of Almon B. Dayton (the "Testator"), the Will was duly admitted to probate by this Court.

2. Article Eleventh of the Will disposes of the residue of the Testator's estate. The Testator created the Trust under Article Eleventh which reads in part:

> All of the rest, residue and remainder of my estate, real and personal, wheresoever situated, I give, devise and bequeath unto my trustee hereinafter named, in trust nevertheless, to hold, manage, control, invest and reinvest in the manner by law provided, to collect the income and increment thereof, and to disburse the income and principal of said trust estate in the manner and form following, to-wit:
>
> [...]
>
> C. Upon the death of my said wife or if she shall have predeceased me, the net income of said trust shall thereafter be distributed as follows:
>
> 1) One-fifth of the net annual income of said trust shall be paid unto my niece [...] and upon her death, or if she shall have deceased, said share of the said net

income shall be paid annually in equal shares unto The Waterbury Hospital of Waterbury, Connecticut, The Waterbury Anti-Tuberculosis League of Waterbury, Incorporated, of said Waterbury and the Gaylord Farm Sanitorium of Wallingford, Connecticut, in perpetuity.

3. Article Eleventh further provides as follows:

> If any one or more of the aforesaid religious and philanthropic organizations named as beneficiaries herein shall cease to exist or shall relinquish its corporate charter, or shall fail for any reason to function in the territory in which it is now located, its share of the income as hereinbefore determined shall be paid by my said trustee to the Waterbury Foundation Incorporated of Waterbury, Connecticut, to be used by the directors of said Foundation for religious or charitable purposes, preferably for some use similar to that performed by the corporation previously receiving said income.

4. The Waterbury Foundation Incorporated of Waterbury, Connecticut, is now known as The Connecticut Community Foundation.

5. Under Article Twelfth of the Will, the Testator appointed The Citizens and Manufacturers National Bank of Waterbury as trustee of the Trust. The Trustee is successor to The Citizens and Manufacturers National Bank of Waterbury.

6. The value of the Trust as of October 31, 2017 was $1,765,747.90.

7. The Trust identifies Waterbury Hospital, Inc. as a current income beneficiary, entitled to one-third of one-fifth of the net annual income of the Trust.

8. GWHN is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

9. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

10. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a

transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was ~~issued by the OAG~~ on July 15, 2016 (the "Final Decision").

11. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

12. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

13. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

14. The Sale closed on October 1, 2016 (the "Closing").

15. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

16. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "Accumulated Income"). The accumulated income on hand as of December 15, 2017 is $5,722.23.

17. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

18. The Final Decision provides for the disposition of GWEN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain

its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

19. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWEN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

20. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

21. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

22. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

23. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

24. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income"), and the Trustee intends to distribute the Future Income to the Connecticut Community Foundation pursuant to the terms of the Trust.

25. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN, and will pay the Future Income to the Connecticut Community

Foundation. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee will pay the Income and the Future Income to the Connecticut Community Foundation. .

26. Along with its petition, the trustee has provided the Court a list of interested parties.

27. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

28. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testatrix. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention--the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

29. The relevant language of Article Eleventh provides that a one-fifth share of the net income be paid to the testator's niece or upon the death of the testator's niece or if she predeceased the testator, "said share of said net income shall be paid annually in equal shares unto The Waterbury Hospital of Waterbury, Connecticut, the Waterbury Anti-Tuberculosis League of Waterbury, Incorporated, of said Waterbury, and the Gaylord Farm Sanitorium of Wallingford, Connecticut in perpetuity. There are no limitations on the use of the income.

30. Since the Will does not restrict the use of the funds by the hospital, it is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

31. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

32. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

33. The court concludes that the intent of the testator, as expressed in the language of Article Eleventh, permits the distribution of trust income during the wind down period to Legacy GWHN to be used pay any and all obligations of the preclosing GWHN, and the administrative cost of GWHN. The Court finds that the "failed to function in the territory" language does not

prohibit the use of trust income during the wind down period to Legacy GWHN to used as described above. Since there is a contingent beneficiary, The Connecticut Community Foundation, no funds are to be used to set up The Independent Foundation.

34. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period, and then distribute all future income to the Connecticut Community Foundation pursuant to the terms of the Trust.

Brian T. Mahon, Judge

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT

Exhibit T

Trustee Petition for Modification of Decree
and
Corrected Decree dated January 29, 2018
for the
John P. Elton Trust u/w dated November 29, 1946, as amended
by Codicil dated June 26, 1947, f/b/o Waterbury Hospital and St. John's Parish

DAY PITNEY LLP

BOSTON CONNECTICUT FLORIDA NEW JERSEY NEW YORK WASHINGTON, DC

CHRISTIANA N. GIANOPULOS
Attorney at Law

Blue Back Square, 75 Isham Road, Suite 300
West Hartford, CT 06107-2237
T: (860) 313-5708 F: (860) 956-5830
cngianopulos@daypitney.com

January 26, 2018

Via Facsimile 203-597-0824 and Overnight Mail
Honorable Thomas P. Brunnock
Waterbury Probate Court
49 Leavenworth Street
Waterbury, CT 06702

Re: John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 06/26/1947, f/b/o Waterbury Hospital and St. John's Parish (the "Elton Trust") (53-0108A): Decree Dated December 19, 2017 (mailed January 12, 2018) (the "Elton Decree")

Dear Judge Brunnock:

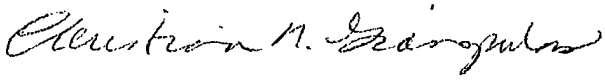
We represent Bank of America, N.A., Trustee of the Elton Trust.

Enclosed is an Application for Modification of Order Pursuant to Connecticut General Statutes §45a-128(b)(1) and (3). The Application respectfully requests the Court's modification of paragraphs 25, 26 and 40 of the Elton Decree. All interested parties have consented to the Application.

Also enclosed is a Certification/Mailing of Document by Party in connection with the Application. This matter was heard by Judge Mahon and he has received a complete copy of this filing as indicated below.

We would be pleased to provide any additional information that would be helpful to the Court.

Very truly yours,



Christiana N. Gianopulos

CNG/JMT
cc: Hon. Brian T. Mahon (*via facsimile and overnight mail*)
See attached Certification

99061485.1

CERTIFICATION/ MAILING
OF DOCUMENT BY PARTY
PC-151 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

[*Type or print in ink.*]

TO: COURT OF PROBATE, Waterbury Probate Court | **DISTRICT NO.** PD20

ESTATE OF/IN THE MATTER OF
John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 06/26/1947,
f/b/o Waterbury Hospital and St. John's Parish, Bank of America, N.A., Trustee (FILE #53-0108A)

Document(s) mailed:

☐ Inventory dated _____ ☐ Financial Report dated _____ ☐ Account dated _____

☑ Other petition(s), motion(s) or document(s) [*Specify document and date of document.*] Application for Modification of Decree

CERTIFICATION

I certify that a copy of the above referenced document(s) was sent to the following persons:

Name and Address

Hon. Brian T. Mahon, Meriden Probate Court, City Hall, Room 113, 142 East Main Street, Meriden, CT 06450
Bank of America, N.A., Regina Collins, SVP, 99 Founders Plaza, CT2-547-05-10, East Hartford, CT 06108
Office of the Attorney General, Attn: Gary Hawes, 55 Elm Street, 4th Floor, Hartford, CT 06106
Legacy Waterbury Hospital, Inc., c/o Stefanie DiClemente, 50 Leavenworth Street, Waterbury, CT 06721
Brian T. Henebry, Esq., Michael J. Reardon, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721
St. John's Episcopal Church, Attn: Lorraine Barker, Treasurer, 16 Church Street, Waterbury, CT 06702
Connecticut Community Foundation, Attn. Julie Loughran, 43 Field Street, Waterbury, CT 06702
Waterbury Hospital Foundation, Inc., c/o Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721
Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721

Signature of party Christiana N. Gianopulos

Christiana N. Gianopulos, Esq.
[*Type or print name*]

January 26, 2018
Date

TO: The Probate Court for the District of Waterbury, District No. 20

RE: John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 06/26/1947, f/b/o Waterbury Hospital and St. John's Parish, Bank of America, N.A., Trustee (the " Elton Trust") (FILE #53-0108A)

APPLICATION FOR MODIFICATION OF DECREE PURSUANT TO CONNECTICUT GENERAL STATUTES §45a-128(b)(1) and (3)

Pursuant to Connecticut General Statutes §45a-128(b)(1) and (3), Bank of America, N.A., Trustee (the "**Trustee**") of the Elton Trust, hereby seeks the Court's action (i) to correct clerical errors contained in paragraphs 25 and 26 of the Court's decree, dated December 19, 2017 and mailed on January 12, 2018 (the "**Elton Decree**"), and (ii) to modify the order contained in paragraph 40 of the Elton Decree. The Trustee has obtained the consent of all interested parties (defined in paragraph 2 of Part I below) to this Application.

I. Background

1. On November 28, 2017, the Trustee filed three construction petitions to determine the proper distribution of Waterbury Hospital's share of the following trusts' income following the sale by Greater Waterbury Health Network, Inc. and its affiliates of its assets to Prospect Medical Holdings, Inc.:

   (a) The **Elton Petition** regarding the Elton Trust created under Article 6 of the Last Will and Testament of John P. Elton dated November 29, 1946, as amended by codicil dated June 26, 1947 (the "**Elton Will**"), filed with the Waterbury Probate Court;

   (b) The **Dayton Petition** regarding the **Dayton Trust** created under ARTICLE ELEVENTH of the Last Will and Testament of Almon B. Dayton dated August 23, 1940 (the "**Dayton Will**"), filed with the Waterbury Probate Court; and

   (c) The **Fulton Petition** regarding the **Fulton Trust** created under Paragraph Tenth of the Last Will and Testament of I. Kent Fulton dated October 2, 1939, as amended by Codicil dated December 15, 1939, (the "**Fulton Will**"), filed with the Litchfield Hills Probate Court.

Copies of the Elton and Dayton Petitions are attached as Exhibits A and B, respectively.

2. The interested parties for the Elton Petition in addition to the Trustee and the attorney for the Trustee, are:

   a. The Office of the Attorney General;

b. Legacy Waterbury Hospital, Inc. ("**Legacy GWHN**");

c. Brian T. Henebry and Michael J. Reardon, of Carmody Torrance Sandak & Hennessey, attorneys for Legacy GWHN;

d. St. John's Episcopal Church;

e. The Connecticut Community Foundation (formerly known as the Waterbury Foundation);

f. Waterbury Hospital Foundation, Inc. (the "**Independent Foundation**"); and

g. Ann Zucker, of Carmody Torrance Sandak & Hennessey, attorney for the Independent Foundation

(the "**Interested Parties**").

3. No contingent beneficiaries are named in the Elton and Fulton Trusts, but both the Elton and Fulton Wills contain residue clauses. The Connecticut Community Foundation is among the residuary beneficiaries under the Elton Will.

4. The Dayton Trust identifies the Connecticut Community Foundation as a contingent beneficiary in the event that Waterbury Hospital "shall cease to exist or shall relinquish its corporate charter, or shall fail for any reason to function in the territory in which it is now located[...]."

5. A consolidated hearing on the Elton, Dayton and Fulton Petitions was held at the Meriden Probate Court before Judge Brian T. Mahon on December 19, 2017.

6. In addition to the Elton Decree, Judge Mahon issued a decree for the Dayton Trust (the "**Dayton Decree**"), dated December 19, 2017 and mailed on January 12, 2018. The Trustee has not received a decree for the Fulton Petition. Copies of the Elton and Dayton Decrees are attached as Exhibits C and D, respectively.

7. Paragraph 39 of the Elton Decree states that the Court "finds that the residue clause under Article 10 is not and/or would not be applicable to a failed income interest under [the Elton Trust]."

8. Paragraph 25 of the Elton Decree states as follows: "Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income"), ***and the Trustee intends to distribute the Future Income to the Connecticut Community Foundation pursuant to the terms of the Trust.***" (Emphasis added.)

9. Paragraph 26 of the Elton Decree further states as follows:

> In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN, ***and will pay the Future Income to the Connecticut Community Foundation. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee will pay the Income and the Future Income to the Connecticut Community Foundation.***
>
> (Emphasis added.)

10. Paragraph 24 of the Dayton Decree is identical to paragraph 25 of the Elton Decree, and paragraph 25 of the Dayton Decree is identical to paragraph 26 of the Elton Decree.

11. Paragraph 40 of the Elton Decree states as follows: "It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period, ***and then distribute all future income to the Independent Foundation.***" (Emphasis added.)

12. The third paragraph of paragraph (a) of Part III of the Elton Petition states that "[i]f this Court determines that paying the Income to Legacy GWHN under these circumstances is consistent with the Testator's intent, the Trustee will distribute the Income to Legacy GWHN, ***and will file a subsequent petition with this Court to address the appropriate recipient of the Future Income.***" (Emphasis added.)

13. The third paragraph of Part III of the Dayton Petition states that "[i]f this Court determines that paying the Income to Legacy GWHN under these circumstances is consistent with the Testator's intent, ***the Trustee will distribute the Income to Legacy GWHN and will distribute Future Income to the contingent beneficiary, the Connecticut Community Foundation, pursuant to the terms of the Trust.***" (Emphasis added.)

14. The first paragraph of paragraph (c) of PART IV of the Elton Petition states that "***[i]f this Court determines that Legacy GWHN is <u>not</u> the appropriate recipient of the Income,*** the Trustee respectfully requests that the Court apply the doctrine of cy pres or approximation to determine the proper recipient of the Income and the Future Income." (Emphasis added.)

15. The second paragraph of paragraph (d) of Part IV of the Elton Petition further states that if this Court "determines that it must apply the doctrine of cy pres to substitute Waterbury Hospital with another charitable organization to preserve the Testator's charitable intent, the Trustee anticipates that St. John's Parish, the Independent

Foundation and the Connecticut Community Foundation will claim to be among the possible substitute beneficiaries."

II. Jurisdiction

This Court has the authority to modify paragraphs 25, 26 and 40 of the Elton Decree under Connecticut General Statutes § 45a-128(b)(1) and (3), which empower this Court to "reconsider and modify or revoke any such order or decree for any of the following reasons: (1) For any reason, if all parties in interest consent to reconsideration, modification or revocation, or [...] (3) to correct a scrivener's or clerical error [...]."

III. Issues

a. Paragraphs 25 and 26 of the Elton Decree

Paragraphs 25 and 26 of the Elton Decree appear to have been mistakenly copied from paragraphs 24 and 25 of the Dayton Decree.

These paragraphs are correct in the Dayton Decree because the Connecticut Community Foundation is named as a contingent beneficiary under the Dayton Will (see paragraphs 4 and 13 of Part I above). However, the bolded and italicized portions of paragraphs 25 and 26 of the Elton Petition, quoted in paragraphs 8 and 9 of Part I above, are incorrect because (i) there are no contingent beneficiaries identified in the Elton Will, (ii) the residue clause of the Elton Will was held not to apply to a failed income interest under the Elton Trust and (iii) because this language is inconsistent with the Elton Petition (see paragraphs 3, 7 and 12 of Part I above).

The Trustee respectfully requests that this Court modify paragraph 25 of the Elton Decree by deleting the following: ", and the Trustee intends to distribute the Future Income to the Connecticut Community Foundation pursuant to the terms of the Trust."

The Trustee also respectfully requests that this Court delete the following two sentences from paragraph 26 of the Elton Decree:

> If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN, and will pay the Future Income to the Connecticut Community Foundation. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee will pay the Income and the Future Income to the Connecticut Community Foundation.

b. Paragraph 40 of the Elton Decree

In paragraph 40 of the Elton Decree, this Court ordered the distribution of Income to Waterbury Hospital, *and* the distribution of Future Income to the Independent Foundation (see paragraph 11 of Part I above). Cy pres and a determination regarding the Future Income are not necessary at this time (see paragraphs 12, 14 and 15 of Part I above). The Trustee requests that

the Court modify the order in paragraph 40 of the Elton Decree by deleting the following: ", and then distribute all future income to the Independent Foundation."

IV. Prayer for Relief

WHEREFORE, the Trustee, having obtained the consent of all Interested Parties, respectfully requests that this Court modify the Elton Decree as follows:

a. By deleting the following from paragraph 25: ", and the Trustee intends to distribute the Future Income to the Connecticut Community Foundation pursuant to the terms of the Trust."

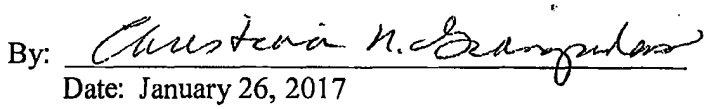
b. By deleting the following two sentences from paragraph 26:

> If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN, and will pay the Future Income to the Connecticut Community Foundation. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee will pay the Income and the Future Income to the Connecticut Community Foundation.

c. By deleting the following from paragraph 40: ", and then distribute all future income to the Independent Foundation."

Respectfully Submitted,

Bank of America, N.A., Trustee

By: 

Date: January 26, 2017
Its Attorneys
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Joanna M. Targonski, Esq., Juris No. 437386
Day Pitney LLP
75 Isham Road, Suite 300
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Telephone: (860) 313-5708
Facsimile: (860) 956-5830

Index to Exhibits

Exhibit A: Petition for the Construction of the John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 06/26/1947, f/b/o Waterbury Hospital and St. John's Parish, Bank of America, N.A., Trustee (without exhibits)

Exhibit B: Petition for the Construction of the Almon B. Dayton Trust u/w dtd 08/23/1940 f/b/o Waterbury Hospital et al., Bank of America, N.A., Trustee (without exhibits)

Exhibit C: Decree in the matter of the John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 06/26/1947, f/b/o Waterbury Hospital and St. John's Parish, Bank of America, N.A., Trustee, dated December 19, 2017 and mailed on January 12, 2018

Exhibit D: Decree in the matter of the Almon B. Dayton Trust u/w dtd 08/23/1940 f/b/o Waterbury Hospital et al., Bank of America, N.A., Trustee, dated December 19, 2017 and mailed on January 12, 2018

Exhibit A

Petition for the Construction of the
John P. Elton Trust u/w dtd 11/29/1946,
as amended by Codicil dtd 06/26/1947,
f/b/o Waterbury Hospital and St. John's Parish,
Bank of America, N.A., Trustee
(without exhibits)

DAY PITNEY LLP

BOSTON CONNECTICUT FLORIDA NEW JERSEY NEW YORK WASHINGTON, DC

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cngianopulos@daypitney.com

November 28, 2017

Honorable Thomas P. Brunnock
Waterbury Probate Court
49 Leavenworth Street
Waterbury, CT 06702

Re: John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 06/26/1947, f/b/o Waterbury Hospital and St. John's Parish (the "Trust")

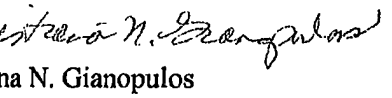
Dear Judge Brunnock:

Our firm represents Bank of America, N.A., trustee of the Trust. Enclosed are a Petition for Construction of Trust and a Certification/Mailing of Document by Party in connection with this matter.

Bank of America is trustee of thirteen trusts that benefit Waterbury Hospital, including the Trust. Similar petitions were filed for six of these trusts in December, 2016 and January, 2017, and all were heard by Judge Mahon on a consolidated basis. Judge Mahon requested that he receive copies of the remaining petitions and we have done so.

We would be pleased to provide any additional information that would be helpful to the Court.

Very truly yours,



Christiana N. Gianopulos

CNG/JEK
Enclosures

cc: Judge Brian T. Mahon (w/enclosures)
See Certification (w/enclosures)

98603072.1

CERTIFICATION/ MAILING
OF DOCUMENT BY PARTY
PC-151 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

[*Type or print in ink.*]

TO: COURT OF PROBATE, Waterbury Probate Court | **DISTRICT NO.** PD20

ESTATE OF/IN THE MATTER OF

John P. Elton Trust u/w 11/29/1946, as amended by Codicil dtd 06/26/1947, f/b/o Waterbury Hospital and St. John's Parish

Document(s) mailed:

☐ Inventory dated _____ ☐ Financial Report dated _____ ☐ Account dated _____

☑ Other petition(s), motion(s) or document(s) [*Specify document and date of document.*] Petition for Construction of Trusts

CERTIFICATION

I certify that a copy of the above referenced document(s) was sent to the following persons:

Name and Address
See attached list

Signature of party Christiana N. Gianopulos

Christiana N. Gianopulos

[*Type or print name*]

November 28, 2017

Date

John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 06/26/1947, f/b/o Waterbury Hospital and St. John's Parish
Bank of America, N.A., Trustee

Interested Parties List

INTERESTED PARTIES

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East Hartford, Connecticut 06108-3208

ATTORNEY GENERAL
Office of the Attorney General
Attn. Gary Hawes
55 Elm Street, 4th Floor
Hartford, Connecticut 06106-1773

OTHER INTERESTED PARTIES
Legacy Waterbury Hospital, Inc.
c/o Stefanie DiClemente
50 Leavenworth Street
Waterbury, Connecticut 06721-1110

St. John's Episcopal Church
Attn. Lorraine Barker, Treasurer
16 Church Street
Waterbury, Connecticut 06702-2103

Connecticut Community Foundation
Attn. Julie Loughran, Director of Development and Communications
43 Field Street
Waterbury, Connecticut 06702

Waterbury Hospital Foundation, Inc.
c/o Ann Zucker, Esq.
Carmody Torrance Sandak & Hennessey
50 Leavenworth Street
Waterbury, Connecticut 06721-1110

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Ann Zucker, Esq.
Carmody Torrance Sandak & Hennessey
50 Leavenworth Street
Waterbury, Connecticut 06721-1110

TO: Waterbury Probate Court, District No. 20

RE: John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 06/26/1947, f/b/o Waterbury Hospital and St. John's Parish, Bank of America, N.A., Trustee (the "Trust")

PETITION FOR CONSTRUCTION OF TRUST

This petition seeks the Court's direction on the interpretation of Article 6 of the Last Will and Testament of John P. Elton dated November 29, 1946, as amended by codicil dated June 26, 1947 (the "**Will**"), to determine the proper distribution of Waterbury Hospital's share of the income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("**GWHN**") of its assets to Prospect Medical Holdings, Inc. ("**PMH**").

I. Background

Bank of America, N.A., trustee of the Trust (the "**Trustee**"), represents that:

1. Following the death of John P. Elton (the "**Testator**"), the Will was duly admitted to probate by this Court. (*See* Exhibit A for a copy of the Will.)

2. Under Article 6 of the Will, the Testator bequeathed one hundred thousand dollars ($100,000) to the Trustee to create the Trust, which provided for distribution of the annual income to several individuals and to the Testator's widow, all of whom are deceased. Article 6 provides that after the deaths of the individuals and the Testator's widow:

   > "[...] the entire net income [...] shall be paid over, quarterly or at such other period as may be mutually agreed upon, in equal shares, to ST. JOHN'S PARISH OF THE PROTESTANT EPISCOPAL CHURCH, of Waterbury, Connecticut, and to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be to each of them absolutely."

3. No contingent beneficiaries are named in the Will in the event that Waterbury Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist. However, the Will contains a residue clause under Article 10, which states, in relevant part:

   > All of the rest and residue of my estate, both real and personal, and wheresoever situated, including any lapsed or void legacies or devises, I give, devise and bequeath to THE COLONIAL TRUST COMPANY, of Waterbury, Connecticut, in trust, however, for the following purposes:
   >
   > [Net income shall be paid to the Testator's widow for her lifetime and at her death, the remaining trust property shall be allocated and distributed as follows:]

Upon the death of my said wife [...], said Trustee shall distribute the principal of said trust fund then remaining as follows:

The sum of Twenty-five Thousand Dollars ($25,000.00) shall be held in a separate trust by said Trustee for the benefit of my son, SAMUEL ELTON, and the sum of Twenty-five Thousand Dollars ($25,000.00) shall be held in a separate trust by my said Trustee for the benefit of my son, JOHN BUELL ELTON.

[...]

Upon the death of either son or should either son be not living at the time appointed for setting up the trust fund as to him, the trust fund as to such son shall cease and determine and the principal thereof then remaining shall be paid over to his issue then living, taking per stirpes, or if there be no issue then living shall be divided per stirpes among the other of my children then living and the then living issue of any children who may then be deceased, in each case to be added to any then existing trust fund of the taker created hereunder, or, if none, to become theirs absolutely.

The sum of Fifty Thousand Dollars ($50,000.00) shall be held in a separate trust by said Trustee in perpetuity, the net income thereof to be paid over quarterly, or at such other periods as may be mutually agreed upon, to THE WATERBURY FOUNDATION, a charitable corporation of Waterbury, Connecticut, to be used by it for such public, charitable or educational uses and purposes within its corporate powers as may from time to time be determined by its Board of Trustees.

The remainder of said principal shall be divided into two equal parts, one of said equal parts to be held in a separate trust by said Trustee for the benefit of my daughter, DEBORAH RICHMOND ELTON ALLEN, and one of said equal parts to be held in a separate trust by said Trustee for the benefit of my daughter, CHARLOTTE ELTON CROSS, on terms as follows: [...].

Upon the death of either daughter or should either daughter not be living at the time appointed for setting up the trust fund as to her, the trust fund as to such daughter shall cease and determine, and the principal thereof then remaining shall be paid over and divided as follows:

Should there be no issue of my said daughter then living, the principal of the trust fund then remaining shall be added to and become a part of the trust fund of my other daughter, to be held and disposed of as a part thereof.

> Should there be issue of my said daughter then living, the Trustee shall divide the trust fund then in its hands among the then living issue of such daughter in shares per stirpes, and the Trustee shall hold in trust or pay over such shares as follows: [...].

4. The Testator did not expressly reserve a reversionary interest in the Trust.

5. The Trust is classified as a private foundation under Internal Revenue Code ("**Code**") § 509.

6. Under Article 6, the Testator appointed The Colonial Trust Company, of Waterbury, Connecticut, as trustee. The Trustee is successor to The Colonial Trust Company.

7. The value of the Trust as of October 31, 2017 was $1,765,747.90.

8. GWHN is a non-stock, 501(c)(3) charitable corporation and is the parent company of Waterbury Hospital.

9. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California, following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("**OHCA**") and the Office of the Attorney General ("**OAG**") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes § 19a-639a and § 19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "**Sale**"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "**OHCA Decision**"). (*See* Exhibit B for a copy of the OHCA Decision.)

10. In addition, the Nonprofit Hospital Conversion Act, Connecticut General Statutes § 19a-486 et seq., (the "**Conversion Act**") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes § 19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "**Final Decision**"). (*See* Exhibit C for a copy of the Final Decision.)

11. The Conversion Act requires that

> the net asset value of the nonprofit hospital be transferred to "one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care services." Conn. Gen. Stat. § 19a-486c(8)(A).

(*See* Exhibit C, p.40.)

In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "**Independent Foundation**"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act. (*See* Exhibit C, p. 41.)

12. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation" in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "**Superior Court Action**"). (*See* Exhibit C, pp. 9-10.)

13. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale. (*See* Exhibit B, p.9.)

14. The Sale closed on October 1, 2016 (the "**Closing**").

15. GWHN has ceased hospital operations and the provision of any hospital services as of the Closing, but continues to exist as a legal entity ("**Legacy GWHN**") charged with winding down its affairs following the Sale as provided in the Final Decision. In addition, Waterbury Hospital's license as a general hospital with the State of Connecticut became inactive as of the Sale, and a new license for the hospital acquired by PMH was issued following the Sale.

16. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "**Accumulated Income**"). The Accumulated Income on hand as of October 31, 2017 was $5,713.60.

17. The Final Decision identifies the Trust as a "third party trust without use restrictions." (*See* Exhibit C, p. 24.) As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." (*See* Exhibit C, pp. 10, 24, 48.)

18. The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust. The Trustee filed construction petitions for six of these trusts to determine the appropriate recipient of each trust's income following the Sale,[1] and a consolidated hearing on these six matters was held before Judge Brian T. Mahon at the Meriden Probate Court on April 4, 2017. Petitions for the remaining seven of the thirteen third party trusts, including the Trust, will be filed with this Court and the Naugatuck and Litchfield Hills Probate Courts, and copies of the filed petitions, including this petition, will be sent to Judge Mahon at the Meriden Probate Court.

19. The Final Decision provides for the disposition of GWHN's charitable endowment funds (referred to in the Final Decision as the "charitable gift assets," "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "**Wind Down Period**") as follows: "The charitable assets of GWHN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities." (*See* Exhibit C, p.7.)

20. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN:

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[1] Petitions were filed for the following six trusts:

a. Jacob Keeling Trust u/w dated June 30, 1952 f/b/o Waterbury Hospital, filed with the Naugatuck Probate Court on December 30, 2016;

b. Frank Keeling Trust u/w dated December 15, 1954 f/b/o Waterbury Hospital, filed with the Naugatuck Probate Court on December 30, 2016;

c. Henry H. Peck Trust u/w dated June 12, 1918 f/b/o Waterbury Hospital, filed with the Waterbury Probate Court on December 30, 2017;

d. Edith F. Poole Trust u/w dated April 11, 1928 f/b/o Waterbury Hospital and First Congregational Church, filed with the Waterbury Probate Court on January 9, 2017;

e. Charles M. Hellmann Trust u/w dated June 13, 1955 f/b/o Waterbury Hospital and St. Mary's Hospital, filed with the Meriden Probate Court on January 25, 2017; and

f. Rhoda M. Hellmann Trust u/w dated November 11, 1969, as amended on June 24, 1971, May 21, 1980 and May 23, 1980, f/b/o Waterbury Hospital and St. Mary's Hospital, filed with the Meriden Probate Court on January 25, 2017.

After a consolidated hearing, decrees for these six matters were entered by Judge Mahon on July 26, 2017. (*See* Exhibits D, E, F, G, H and I for copies of the six decrees.)

On August 25, 2017, the Attorney General filed motions for articulation with respect to Judge Mahon's decrees in four of the six matters (See Exhibits J, K, L and M for copies of the four motions for articulation), and Judge Mahon entered findings with respect to the Attorney General's motions on September 6, 2017. (*See* Exhibits N, O, P and Q for copies of Judge Mahon's findings).

The Attorney General did not file motions for articulation with respect to the decrees in the Rhoda Hellmann and Charles Hellmann matters.

"Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area." (*See* Exhibit C, p.7.)

21. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," (*See* Exhibit C, p. 9): "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community." (*See* Exhibit C, p.7.)

22. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." (*See* Exhibit C, pp.8-9.)

23. The Trustee understands that Legacy GWHN has significant pre-closing liabilities, and that distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period may be largely or entirely applied to the payment of creditors. The Trustee also understands that if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "**Income**"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

24. Legacy GWHN has communicated to the Trustee its belief that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

25. The Trustee is uncertain as to whether Legacy GWHN is or is not the proper recipient of the Income.

26. Legacy GWHN has made no claim to the income following the conclusion of the Wind Down Period (the "**Future Income**").

27. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the

Trustee will file a subsequent petition to address the Future Income following the conclusion of the Superior Court Action. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee requests that the Court determine the proper recipient of the Income and the Future Income.

28. A list of interested parties is attached as Exhibit R.

29. The Trustee has provided notice to The Connecticut Community Foundation (formerly known as the Waterbury Foundation), the charity named in the residue clause, but has not provided notice to any of the individuals named therein.[2]

30. Rule 32.2 of the Connecticut Probate Practice Book provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

31. On February 16, 2017, a Certificate of Incorporation for the Independent Foundation was filed with the Connecticut Secretary of State, naming Attorney Ann Zucker, of Carmody Torrance Sandak and Hennessey, as the registered agent for service of process. The name of the Independent Foundation is "Waterbury Hospital Foundation, Inc." Although incorporated, the Independent Foundation has no board of directors, officers, or independent counsel to represent its interests.

32. The Trustee has sent notice for the Independent Foundation to Attorney Ann Zucker, the registered agent for service of process, but is uncertain whether, under the circumstances described in Paragraph 31, such notice satisfies the requirements of Rule 32.2.

II. Jurisdiction

This Court has the authority to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes § 45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes § 45a-98(a)(5). This Court's guidance is necessary to administer the Trust under the Will in accordance with the Testator's intent.

---

[2] As explained in Section III(b) of this Petition, the Trustee believes that the residue clause under Article 10 is irrelevant in the current proceeding. However, should the Court determine otherwise, the Trustee has provided notice to The Connecticut Community Foundation, one of the charities named in the residue clause.

The Trustee has not provided notice to the individuals named in the residue clause. If the Court determines that the individuals identified therein have an interest in the proceeding and are entitled to notice, the Trustee respectfully requests that, if necessary, the Court appoint one or more guardian ad litem to protect the potential interests in this proceeding of the following individuals named in Article 10:

a. Samuel Elton or, if he is not living, the issue of Samuel Elton;
b. John Buell Elton or, if he is not living, the issue of John Buell Elton;
c. Deborah Richmond Elton Allen or, if she is not living, the issue of Deborah Richmond Elton Allen; and
d. Charlotte Elton Cross or, if she is not living, the issue of Charlotte Elton Cross.

III. Issues

a. Construction

The terms of the Will do not direct how Waterbury Hospital's share of the income should be distributed in the current circumstances in which the named beneficiary has ceased its operations as a hospital but continues to exist as a legal entity during the Wind Down Period.

Accordingly, the Trustee respectfully requests that the Court construe Article 6 to determine the appropriate recipient of Income by determining whether the Testator intended for the Income to be distributed to Waterbury Hospital in the event that it ceased to operate as a hospital, but continued to maintain a legal existence.

If this Court determines that paying the Income to Legacy GWHN under these circumstances is consistent with the Testator's intent, the Trustee will distribute the Income to Legacy GWHN, and will file a subsequent petition with this Court to address the appropriate recipient of the Future Income.

If, however, this Court determines that distributing the Income to Legacy GWHN is inconsistent with the Testator's intent, the Trustee (1) respectfully requests that the Court construe the Will to determine whether the Testator intended for a failed income interest in the Trust created under Article 6 to pass pursuant to the residue clause under Article 10, and (2) requests the Court's guidance and, if necessary, the application of the doctrine of cy pres or approximation to determine the appropriate recipient of the Income and Future Income.

b. Notice

The Trustee is uncertain as to whether notice to the agent for service of process for the Independent Foundation satisfies the requirements of Rule 32.2 of the Connecticut Probate Practice Book for purposes of this petition. The Independent Foundation does not have a board of directors, officers, or independent counsel. The registered agent for service of process is the same attorney who represented Legacy GWHN in the Sale and an attorney of the firm that currently represents Legacy GWHN.

c. Applicability of Residue Clause

The Trustee does not believe that the residue clause under Article 10 of the Will is relevant in the current proceeding, nor does the Trustee believe that the individuals identified therein could be eligible takers even if the residue clause were determined by the Court to apply. The Trustee believes that the Trust does not qualify as a "lapsed legacy" or "devise," which would trigger the applicability of the residue clause. If, however, the Court were to disagree, the Trustee also believes that it could not comply with the residue clause as written because the Trust is a private foundation and, pursuant to Connecticut law regarding the administration of charitable trusts and private foundations, it would be prohibited from making a distribution to the

individuals.[3] The Trustee respectfully requests that the Court confirm that the residue clause under Article 10 is inapplicable to a failed income interest under Article 6.

IV. Discussion

a. Construction

Connecticut law governing the construction of wills is well established:

> "The cardinal rule to be followed in constructing a will is to find and effectuate the intent of the testator. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written ... To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction.' (Citations omitted.) *Dei Cas v. Mayfield*, 199 Conn. 569, 572 (1986). The court must 'look first to the precise wording employed by the testat[or] in h[is] will ... for the meaning of the words as used by the testat[or] is the equivalent of h[is] legal intention-the intention that the law recognizes as dispositive.' (Citations omitted.) *Canaan National Bank v. Peters*. 217 Conn. 330, 335-36 (1991).

Blumenthal v. Sharon Hosp., Inc., No. CV0200885375S, 2003 WL 21384569, at *24 (Conn. Super. Ct. June 3, 2003).

Pursuant to Article 6 of the Will, the Trust income is to be paid, in equal shares, "to ST. JOHN'S PARISH OF THE PROTESTANT EPISCOPAL CHURCH, of Waterbury, Connecticut, and to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to each of them absolutely." The Testator did not place any restrictions on the use of income. However, it is unclear whether in naming Waterbury Hospital as an income beneficiary of the Trust, the Testator intended to benefit Waterbury Hospital regardless of whether it was actively engaged in the provision of hospital services or whether the Testator intended the ongoing provision of hospital services to be a prerequisite to Waterbury Hospital's receipt of the Trust's income. The Will is also silent with respect to the appropriate recipient of Waterbury Hospital's share of the income in the event that Waterbury Hospital were to be acquired by another organization or go out of existence.

The Trustee's records contain no additional evidence of the Testator's intent that supplements or informs the construction of the Will with respect to the disposition of Income.

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[3] The Trustee has provided notice to the organizations identified in the residue clause but does not believe that these organizations have an interest in the current proceeding based on the relevance of the residue clause itself. It is the Trustee's expectation that these organizations may claim an interest in the current proceeding because, should cy pres be necessary, they are organizations identified in the Will and their mention in the governing document may serve as evidence of the Testator's intent in the event of the failure of the specified charitable purpose of the Trust.

Two recent Connecticut cases may be informative: *In re Winsted Memorial Hospital*, 249 B.R. 588 (Bankr. D. Conn. 2000), a decision of the United States Bankruptcy Court for the District of Connecticut, and *Blumenthal v. Sharon Hospital, Inc.*, No. CV0200885375S, 2003 WL 21384569 (Conn. Super. Ct. June 3, 2003), an unreported Connecticut Superior Court case. The Trustee does not take a position as to the precedential implications of either of these cases on the issue presented here.

i. *In re Winsted Mem'l Hosp.*

In *In re Winsted Memorial Hospital*, the United States Bankruptcy Court for the District of Connecticut examined whether the hospital's interests in certain charitable gifts qualified as property of the hospital's Chapter 7 bankruptcy estate although the hospital had ceased to operate as a hospital prior to the filing of its bankruptcy petition. The court noted that "[t]he Hospital, while it has ceased operations and filed a bankruptcy petition, has neither dissolved its corporate existence nor finished winding down its affairs." 249 B.R. at 594. The bankruptcy court decided that "[w]hether the Trustee's use of the gifts at issue to pay debts incurred by the Hospital when it was still providing patient services is a valid charitable use depends on whether, in the absence of the bankruptcy filing, the Hospital would have been permitted to do so." *Id.* It concluded as follows:

> There is no Connecticut case law on this issue, but the court is persuaded by, and will follow, the decisions in several other states to the effect that a charitable organization which retains its corporate existence may, even though it has ceased operating, continue to receive and use charitable gifts, provided it applies such gifts in accordance with the intent of the donor.

Id.

The third party trusts at issue in *Winsted* each "permit[ted] the Hospital to use the funds distributed to it for its general expenses or general charitable purposes, without further restriction." *Id.* at 592-93.

The court held that the hospital's income interests in the third party trusts that vested prior to (or within 180 days following) the hospital's 1996 bankruptcy filing qualified as property of the hospital's bankruptcy estate and could be used to satisfy the hospital's pre-bankruptcy obligations incurred in furtherance of the relevant charitable purpose.

ii. *Blumenthal v. Sharon Hosp., Inc.*

Blumenthal v. Sharon Hospital, Inc. addressed the sale of the assets of a nonprofit hospital to a for-profit hospital and was "the first [case] to apply the [Conversion Act]." 2003 WL 21384569, at *1.

The court in *Blumenthal* addressed the payment of trust income to a hospital which had ceased to operate but continued to maintain a legal existence. The court in *Blumenthal* found that "[w]ith the cessation of nonprofit healthcare services associated with the sale, the nonprofit

Sharon Hospital has for all practical purposes ceased to exist." *Blumenthal*, 2003 WL 21384569, at *25.

The court's decision applied to Sharon Hospital's charitable endowment funds, but also addressed a number of third party trusts that benefited Sharon Hospital. "Pursuant to the sale and the Attorney General's analysis of close to two hundred gift instruments held by the hospital, certain gifts were determined to require either construction or approximation by the court." *Id.*, at *21. These included the third party trusts.

The court determined that a number of the third party trusts at issue required the application of cy pres or approximation because they did not name alternative charitable beneficiaries in the event that Sharon Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist, but contained a reverter or giftover provision, which put the charitable nature of the trust at risk. The court held with respect to one such trust as follows:

> As a result of the sale of the nonprofit Sharon Hospital, Inc., to Essent CT, the nonprofit Sharon Hospital has ceased to exist, constituting a change of circumstances such that it has become impossible, impracticable or illegal for the trustee to continue to distribute the annual income to Sharon Hospital . . . In accordance with the doctrine of approximation, the court finds that the I. Kent Fulton Trust was intended to benefit Sharon Hospital and the community it serves. Accordingly, the net income shall be applied to [the independent community foundation] to be transferred to its general charitable purposes and to serve the residents of the affected community.

Blumenthal, 2003 WL 21384569, at *22.

Other third party trusts at issue provided for an alternative disposition of trust income in the event that Sharon Hospital were to "cease to exist." The court was asked to construe the testator's intent in connection with these provisions by determining whether the fact that Sharon Hospital ceased its provision of hospital services but continued to maintain a corporate existence to wind down its affairs meant that Sharon Hospital had "cease[d] to exist" pursuant to the terms of the governing document. The court concluded as follows:

> Although the hospital technically still exists on the books of the Secretary of State as a corporation, it has ceased providing patient services and abandoned its original charter purposes. All that is left is a shell hospital corporation. With the cessation of its healthcare functions, Sharon Hospital has, in the most fundamental sense, "ceased to exist" as a charity because it has ceased to provide healthcare to the public.

Id., at *26.

For all third party trusts, the court concluded that the income should be distributed to an entity other than the shell entity remaining after the sale of Sharon Hospital. In some trusts, the alternative beneficiary was identified in the governing document and, for other trusts, the

alternative beneficiary was the independent community foundation established to provide healthcare services to the community previously served by Sharon Hospital.

b. The Residue Clause

The residue clause under Article 10 provides that "[a]ll of the rest and residue of [the Testator's] estate, both real and personal, and wheresoever situated, including any lapsed or void legacies or devises" will pass in accordance with its terms. However, the residue clause should not apply here, as no "lapsed legacy" or "devise" exists. Moreover, even if the residue clause were applicable to the failed income interest at issue, the Trustee would be prohibited from complying with those of its terms that provide for distributions to the individuals identified therein.

At issue here is a failed income interest (should the Court determine that the income interest has failed), which differs from a lapsed legacy. "A lapsed legacy is one, which, at the time of making the will, is inchoate and good, but is subsequently frustrated." *Brewster v. McCall's Devisees*, 15 Conn. 274 (1842). A common example of a lapsed legacy is when a beneficiary dies before the testator. (*See, e.g.*, *First Nat'l Bank & Trust Co. v. Baker*, 124 Conn. 577, 583–84 (1938); *Huntington v. Camp*, 11 Conn. Super. 170, 175 (1942)). In such a case, the legacy or devise was never good. Conversely, the Trust has operated satisfactorily for many years following the Testator's death.

In *Blumenthal v. State St. Bank & Trust*, a nonprofit hospital beneficiary ceased operations and went into bankruptcy, leaving charitable gifts in the bankruptcy estate in need of distribution. 2006 WL 574176 (Conn. Super. Ct. Feb. 24, 2006). The court noted that Connecticut follows the Restatement (Second) of Trusts §399, "which provides that if property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible or impracticable or illegal to carry out the particular purpose, and if the settlor manifested a more general intention to devote the property to charitable purposes, the trust will not fail[.]" *Id.* at 10 (internal quotation marks omitted). In such a situation, "a court must seek a method or result which as nearly as possible effectuates the intent of the testator[.]" *Id.* at 11. Here, the Testator's charitable intent is clear, and therefore the trust should not fail. ("All of the gifts that are subject to this proceeding are clearly charitable in nature because they were given to the Hospital, a charitable institution." *Id.* at 10.)

Although not expressly stated in the Will, there are at least two reasons why a failed income interest under the Trust created under Article 6 should not and could not pass pursuant to the terms of Article 10.

First, the Testator provided for the Trust's income to pass to Waterbury Hospital without any restrictions or contingent beneficiaries identified. This suggests that the Testator did not anticipate that his gift of an income interest in the Trust would fail at any time in the future, but rather that it would continue forever.

Second, it would be inconsistent with Connecticut law and the Testator's apparent charitable intent to have a failed charitable interest under Article 6 pass pursuant to the terms of

Article 10. The Trust is classified as a private foundation under Internal Revenue Code § 509. Connecticut General Statutes Section 33-281c(a)(1) states the following with respect to the administration of a trust that is a private foundation:

> In the administration of any trust which is a "private foundation", as defined in Section 509 of the Internal Revenue Code [...], a "charitable trust", as defined in Section 4947(a)(1) of said code, [...], the following acts shall be prohibited during the period while it is such a private foundation, [...]: (A) Engaging in any act of "self-dealing", as defined in Section 4941(d) of said code; (B) retaining any "excess business holdings", as defined in Section 4943(c) of said code; (C) making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of Section 4944 of said code, so as to give rise to any liability for tax imposed on such trust by Section 4944 of said code; or (D) making any "taxable expenditures", as defined in Section 4945(d) of said code; [...].

A distribution to an individual pursuant to Article 10 would be a "taxable expenditure" and therefore prohibited.[4]

If the Trustee were to terminate the private foundation status of the Trust in order to attempt to comply with the Testator's intent under Article 10 (assuming the Court determined that the residue clause did apply), the Trustee would nevertheless be frustrating the Testator's intent because Internal Revenue Code § 507 imposes a termination tax on private foundations that voluntarily or involuntarily terminate their status as private foundations. The termination tax equals the lesser of (i) the "aggregate tax benefit" received as a result of the organization's exempt status and (ii) all of the assets of the foundation upon termination of private foundation status. The aggregate tax benefit, in turn, is the sum of the total benefits received by substantial contributors to the private foundation, the total benefits received by the private foundation and the total interest on the increases in tax that would have resulted without these benefits.

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[4] Internal Revenue Code Section 4941(d) defines a "taxable expenditure" as follows:

> For purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation
> (1) to carry on propaganda, or otherwise attempt, to influence legislation, within the meaning of subsection (e),
> (2) except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive,
> (3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g),
> (4) as a grant to an organization unless
> (A) such organization
> (i) is described in paragraph (1) or (2) of section 509(a).
> (ii) is an organization described in Section 509(a)(3) (other than an organization described in clause (i) or (ii) of section 4942(g)(4)(A)), or
> (iii) is an exempt operating foundation (as defined in section 4940(d)(2)), or
> (B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or
> (5) for any purpose other than the one specified in section 170(c)(2)(B).

Therefore, if the Trustee were to terminate the Trust's private foundation status in order to distribute income from the Trust to an individual identified in Article 10, it would subject the Trust to a termination tax under Code § 507 equal to the lesser of the sum of the tax benefits it has received, plus interest, and the current total value of the Trust property. In other words, a significant portion, if not all, of the Trust property would, in essence, escheat to the federal government—a result the Testator would never have intended.

Finally, under Connecticut General Statutes § 45a-514, "[a]ny charitable trust...shall forever remain to the uses and purposes to which it has been granted according to the true intent and meaning of the grantor and to no other use." As noted in *Blumenthal*, "Trusts created for the benefit of a nonprofit hospital as is the case here, are charitable in nature," 2003 WL 21384569, at 22; and "'[s]uch gifts are highly favored and courts, while remaining within legal limitations, go to great lengths in sustaining legacies to charitable uses.' *Ministers Benefit Board v. Meriden Trust Co.*, 139 Conn. 435, 448 (1953)." *Id.*

Therefore, if the Court determines that Legacy GWHN is not the appropriate recipient of Income, the Trustee respectfully requests that the Court apply the doctrine of cy pres or approximation.

c. The Doctrine of Cy Pres

If this Court determines that Legacy GWHN is not the appropriate recipient of the Income, the Trustee respectfully requests that the Court apply the doctrine of cy pres or approximation to determine the proper recipient of the Income and the Future Income.

Under Connecticut General Statutes § 45a-98a(a)(1), this Court has jurisdiction to apply cy pres only if "the matter in dispute is not pending in another court of competent jurisdiction...." While the Superior Court action will decide the fate of GWHN's endowment funds, that action will not address the recipient of distributions from the third party trusts, such as the Trust. Connecticut has adopted the doctrine of cy pres in order to permit the modification of a charitable trust when necessary to preserve and effectuate the testator's intent in light of changed circumstances. Under Connecticut General Statutes § 45a-514, "[a]ny charitable trust...shall forever remain to the uses and purposes to which it has been granted according to the true intent and meaning of the grantor and to no other use."

The court in *Blumenthal* summarized the doctrine of cy pres as follows:

> In determining the construction of a charitable trust upon the failure of its stated purpose, the court applies the common law doctrine of cy pres, or approximation to as near as possible reflect the donor's intent. When it becomes illegal or otherwise impossible to carry out the terms of a charitable trust, rather than allow it to fail, the court will apply the doctrine of cy pres or approximation in order to carry out the charitable intentions of the donor as near as possible. "The rule of cy pres is a rule for the construction of instruments in equity, by which the intention of the party is carried out *as near as may be,* when it would be impossible or illegal to

> give it literal effect ... The doctrine of cy pres may be applied without the consent of the donor."... *Carl J. Herzog Foundation, Inc. v. University of Bridgeport,* 243 Conn. 1, 10 n. 8 (1997). "The doctrine applies in situations where a testator has evidenced a dominant intent to devote his property to some charitable use but the circumstances are such that it becomes impossible to follow the particular method he directs, and the courts then sanction its use in some other way which will, as nearly as may be, approximate his general intent." *Duncan v. Higgins,* 129 Conn. 136, 140 (1942). The court has broad powers of interpretation under the doctrine and has final decision making authority. 'It is clear that once the authority of the court is invoked, the ultimate responsibility for the application of the doctrine of cy pres or approximation to a charitable trust lies with the court and not with the trustees or the attorney general ... Consequently, the plan finally adopted by the court need not necessarily be one proposed or consented to by any of the parties ... The court, in applying the doctrine, is required to consider not only the language used in creating the trust but, if necessary, extrinsic facts as well." ... *Belcher v. Conway,* 179 Conn. 198, 205 (1979).

Blumenthal, 2003 WL 21384569, at *4.

d. Application of the Doctrine of Cy Pres

To invoke the doctrine of cy pres, the court must find three elements. First, the purpose of the trust must be charitable in nature. *Shannon v. Eno*, 120 Conn. 77, 86 (1935). "A charitable trust is one which performs some governmental function, such as fostering education, relief of poverty, care of the sick or aged, burial of the dead, or performs some other public task which relieves the governmental burden of the state." *Lockwood v. Killian*, 172 Conn. 496, 512 (1977) (Bogdanski, J., dissenting). *See also Bannon v. Wise*, 41 Conn. Supp. 469, 474 (Super. Ct. 1990), *aff'd*, 217 Conn. 457 (1991). Second, the court must find that the testator's specified charitable purpose cannot be executed effectively due to illegality, impossibility, impracticality or changed circumstances. *Shannon*, 120 Conn. at 86. Finally, the testator must have demonstrated "a general intent to devote the property to a charitable use, to which the intent that it go to the particular organization named is secondary." *Duncan v. Higgins*, 129 Conn. 136, 140 (1942). To determine whether the testator had a general charitable intent, the court will consider the amount donated, the designation of a remainder beneficiary in the event that the donation fails, the provision of individual bequests to family members, and the size of other charitable bequests, if any. *Lockwood v. Killian*, 179 Conn. 62, 67 (1979).

If this Court determines that it must apply the doctrine of cy pres to substitute Waterbury Hospital with another charitable organization to preserve the Testator's charitable intent, the Trustee anticipates that St. John's Parish, the Independent Foundation and the Connecticut Community Foundation will claim to be among the possible substitute beneficiaries. If the Court finds that the Independent Foundation is the appropriate recipient of Income and Future Income, the Trustee will continue to accumulate income pending receipt by the Independent Foundation of its tax-exempt status from the Internal Revenue Service.

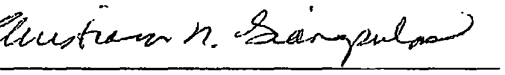
Alternatively, if the Court wishes to defer its decision until the conclusion of the Superior Court Action addressing the disposition of GWHN's endowment funds, the Trustee will continue to accumulate income until it files a subsequent petition that takes into consideration the outcome of the Superior Court Action.

V. Prayer for Relief

The Trustee respectfully requests that this Court (1) construe Article 6 of the Will and direct the Trustee on the distribution of the Income, (2) determine, for purposes of this petition, whether the notice requirements of Rule 32.2 of the Connecticut Probate Practice Book have been satisfied with respect to (a) the Independent Foundation and (b) the parties identified in the residue clause, and (3) confirm that the residue clause under Article 10 is not and/or would not be applicable to a failed income interest under Article 6.

Respectfully Submitted,

Bank of America, N.A., Trustee

By: 

Date: November 28, 2017

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CERTIFICATION/ MAILING
OF DOCUMENT BY PARTY
PC-151 NEW 7/13

STATE OF CONNECTICUT
COURT OF PROBATE
[Type or print in ink.]

TO: COURT OF PROBATE, Waterbury Probate Court | **DISTRICT NO.** PD20

ESTATE OF/IN THE MATTER OF
Almon B. Dayton Trust u/w dtd 08/23/1940 f/b/o Waterbury Hospital et al

Document(s) mailed:

☐ Inventory dated _____ ☐ Financial Report dated _____ ☐ Account dated _____
☑ Other petition(s), motion(s) or document(s) [*Specify document and date of document.*] Petition for Construction of Trust

CERTIFICATION

I certify that a copy of the above referenced document(s) was sent to the following persons:

Name and Address
See attached list

Signature of party Christiana N. Gianopulos

Christiana N. Gianopulos
[*Type or print name*]
November 28, 2017
Date

Almon B. Dayton Trust u/w dtd 08/23/1940 f/b/o Waterbury Hospital et al.
Bank of America, N.A., Trustee

Interested Parties

INTERESTED PARTIES	ATTORNEYS FOR PARTIES
TRUSTEE Bank of America, N.A. Regina Collins, SVP Mail Stop: CT2-547-05-19 99 Founders Plaza East Hartford, Connecticut 06108-3208	ATTORNEY FOR TRUSTEE Christiana N. Gianopulos, Esq. Day Pitney LLP 75 Isham Road, Suite 300 West Hartford, Connecticut 06107-2237
ATTORNEY GENERAL Office of the Attorney General Attn. Gary Hawes 55 Elm Street, 4th Floor Hartford, Connecticut 06106-1773	
OTHER INTERESTED PARTIES Legacy Waterbury Hospital, Inc. c/o Stefanie DiClemente 50 Leavenworth Street Waterbury, Connecticut 06721-1110	Brian T. Henebry, Esq. Michael J. Reardon, Esq. Carmody Torrance Sandak & Hennessey 50 Leavenworth Street P.O. Box 1110 Waterbury, Connecticut 06721-1110
Waterbury Hospital Foundation, Inc. c/o Ann Zucker, Esq. Carmody Torrance Sandak & Hennessey 50 Leavenworth Street Waterbury, Connecticut 06721-1110	Ann Zucker, Esq. Carmody Torrance Sandak & Hennessey 50 Leavenworth Street Waterbury, Connecticut 06721-1110
Connecticut Community Foundation Attn. Julie Loughran, Director of Development and Communications 43 Field Street Waterbury, Connecticut 06702	
American Lung Association of the NE Adam Shuster, CFO 45 Ash Street East Hartford, Connecticut 06108-3294	

Boys & Girls Club of Greater Waterbury
Formerly the Anderson Boys' Club
Attn: Executive Director
1037 East Main Street
Waterbury, Connecticut 06705-1040

Connecticut Rivers Council, Inc.
Boy Scouts of America
Attn: Controller
60 Darlin Street
East Hartford, Connecticut 06108-3201

Evergreen Cemetery Association
183 North Street
Watertown, Connecticut 06795-1915

First Congregational Church of Waterbury
Harold Elwell, Treasurer
222 W. Main Street
Waterbury, Connecticut 06702-1220

Gaylord Hospital
Attn: Tara Knapp
P.O. Box 400
Wallingford, Connecticut 06492-7048

Girl Scouts of Connecticut Inc.
Formerly CT Trails Council of Girl Scouts
Tasha Jackson, CFO
340 Washington Street
North Haven, Connecticut 06106-3317

Hartford HealthCare at Home, Inc.
Formerly Visiting Nurse & Home Care, Inc.
Attn. Michael Soccio, Executive Director
1290 Silas Deane Hwy, Suite 4B
Wethersfield, Connecticut 06109-4337

The Salvation Army
Attn: Legal Department
440 W. Nyack Road
West Nyack, New York 10994-1715

Young Men's Christian Association
Susan Talbott
136 W. Main Street
Waterbury, Connecticut 06702-2005

TO: Waterbury Probate Court, District No. 20

RE: Almon B. Dayton Trust u/w dtd 08/23/1940 f/b/o Waterbury Hospital et al., Bank of America, N.A., Trustee (the "Trust")

PETITION FOR CONSTRUCTION OF TRUST

This petition seeks the Court's direction on the interpretation of ARTICLE ELEVENTH of the Last Will and Testament of Almon B. Dayton dated August 23, 1940 (the "**Will**") to determine the proper distribution of Waterbury Hospital's share of the income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("**GWHN**") of its assets to Prospect Medical Holdings, Inc. ("**PMH**").

I. Background

Bank of America, N.A., trustee of the Trust (the "**Trustee**"), represents that:

1. Following the death of Almon B. Dayton (the "**Testator**"), the Will was duly admitted to probate by this Court. (*See* Exhibit A for a copy of the Will.)

2. ARTICLE ELEVENTH of the Will disposes of the residue of the Testator's estate. The Testator created the Trust under ARTICLE ELEVENTH as follows:

> All of the rest, residue and remainder of my estate, real and personal, wheresoever situated, I give, devise and bequeath unto my trustee hereinafter named, in trust nevertheless, to hold, manage, control, invest and reinvest in the manner by law provided, to collect the income and increment thereof, and to disburse the income and principal of said trust estate in the manner and form following, to-wit:
>
> [...]
>
> C. Upon the death of my said wife or if she shall have predeceased me, the net income of said trust shall thereafter be distributed as follows:
>
> 1) One-fifth of the net annual income of said trust shall be paid unto my niece [...] and upon her death, or if she shall have deceased, said share of said net income shall be paid annually in equal shares unto THE WATERBURY HOSPITAL of Waterbury, Connecticut, THE WATERBURY ANTI-TUBERCULOSIS LEAGUE OF WATERBURY, INCORPORATED, of said Waterbury and THE GAYLORD FARM SANITORIUM of Wallingford, Connecticut, in perpetuity.[[1]]

[1] To the best of the Trustee's information and belief, The American Lung Association of the Northeast (ALAN) is successor to The Waterbury Anti-Tuberculosis League of Waterbury, Incorporated, and the Gaylord Hospital is successor to The Gaylord Farm Sanatorium.

2) One-fifth of the net annual income of said trust estate shall be paid unto my nephew [...] and upon his death, or if he shall have deceased, said share of said income shall be paid equally unto THE WATERBURY VISITING NURSE ASSOCIATION, THE LINCOLN HOUSE ASSOCIATION and THE SALVATION ARMY CORPS OF WATERBURY, in perpetuity.[2]

3) One-fifth of the net annual income of said trust estate shall be paid unto my niece [...] and upon her decease or if she shall have predeceased me, said share of said income shall be paid equally unto THE WATERBURY BOYS' CLUB, THE WATERBURY COUNCIL OF BOY SCOUTS, THE WATERBURY COUNCIL OF GIRL SCOUTS and THE EVERGREEN CEMETERY ASSOCIATION, INCORPORATED OF WATERTOWN, CONNECTICUT, all in perpetuity.[3]

4) One-fifth of the net annual income of said trust estate shall be paid unto THE YOUNG MEN'S CHRISTIAN ASSOCIATION, INCORPORATED OF WATERBURY, in perpetuity.

5) One-fifth of the net annual income of said trust estate shall be paid unto THE SECOND ECCLESIASTICAL SOCIETY OF WATERBURY, in perpetuity, to be used for the needy poor of the SECOND CONGREGATIONAL CHURCH OF WATERBURY.[4]

3. ARTICLE ELEVENTH further provides as follows:

If any one or more of the aforesaid religious and philanthropic organizations named as beneficiaries herein shall cease to exist or shall relinquish its corporate charter, or shall fail for any reason to function in the territory in which it is now located, its share of the income as hereinbefore determined shall be paid by my said trustee to THE WATERBURY FOUNDATION INCORPORATED OF WATERBURY, CONNECTICUT, to be used by the directors of said Foundation for

[2] To the best of the Trustee's information and belief, Hartford HealthCare at Home (HHH) is successor to The Waterbury Visiting Nurse Association, Family Services of Greater Waterbury was the successor to The Lincoln House Association, and the Waterbury Corps branch of The Salvation Army is successor to The Salvation Army Corps of Waterbury. Family Services of Greater Waterbury, Inc. dissolved on September 8, 2016, and the Trustee has been accumulating its share of the Trust's income and will distribute this accumulated income to The Connecticut Community Foundation (formerly known as The Waterbury Foundation of Waterbury, Connecticut) pursuant to ARTICLE ELEVENTH of the Will.

[3] To the best of the Trustee's information and belief, the Boys and Girls Club of Greater Waterbury is successor to The Waterbury Boys' Club, and the Girl Scouts of Connecticut is successor to the Waterbury Council of Girl Scouts.

[4] To the best of the Trustee's information and belief, the First Congregational Church (FCC) is successor to the Second Congregational Church of Waterbury.

religious or charitable purposes, preferably for some use similar to that performed by the corporation previously receiving said income.

4. THE WATERBURY FOUNDATION INCORPORATED of Waterbury, Connecticut, is now known as The Connecticut Community Foundation.

5. Under ARTICLE TWELFTH of the Will, the Testator appointed The Citizens and Manufacturers National Bank of Waterbury as trustee of the Trust. The Trustee is successor to The Citizens and Manufacturers National Bank of Waterbury.

6. The value of the Trust as of October 31, 2017 was $635,976.34.

7. The Trust identifies Waterbury Hospital, Inc. as a current income beneficiary, entitled to one-third of one-fifth of the net annual income of the Trust.

8. GWHN is a non-stock, 501(c)(3) charitable corporation and is the parent company of Waterbury Hospital.

9. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California, following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("**OHCA**") and the Office of the Attorney General ("**OAG**") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes § 19a-639a and § 19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "**Sale**"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "**OHCA Decision**"). (*See* Exhibit B for a copy of the OHCA Decision.)

10. In addition, the Nonprofit Hospital Conversion Act, Connecticut General Statutes § 19a-486 et seq., (the "**Conversion Act**") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes § 19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "**Final Decision**"). (*See* Exhibit C for a copy of the Final Decision.)

11. The Conversion Act requires that

> the net asset value of the nonprofit hospital be transferred to "one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care services." Conn. Gen. Stat. § 19a-486c(8)(A).

(*See* Exhibit C, p.40.)

In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "**Independent Foundation**") following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act. (*See* Exhibit C, p. 41.)

12. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation" in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "**Superior Court Action**"). (*See* Exhibit C, pp. 9-10.)

13. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale. (*See* Exhibit B, p.9.)

14. The Sale closed on October 1, 2016 (the "**Closing**").

15. GWHN has ceased hospital operations and the provision of any hospital services as of the Closing, but continues to exist as a legal entity ("**Legacy GWHN**") charged with winding down its affairs following the Sale as provided in the Final Decision. In addition, Waterbury Hospital's license as a general hospital with the State of Connecticut became inactive as of the Sale, and a new license for the hospital acquired by PMH was issued following the Sale.

16. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "**Accumulated Income**"). The Accumulated Income on hand as of October 31, 2017 was $13,339.77.

17. The Final Decision identifies the Trust as a "third party trust without use restrictions." (*See* Exhibit C, p. 24.) As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." (*See* Exhibit C, pp. 10, 24, 48.)

18. The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust. The Trustee filed construction petitions to determine the appropriate recipient of each trust's income following the Sale,[5] and a consolidated hearing on these six matters was held before Judge Brian T. Mahon at the Meriden Probate Court on April 4, 2017. Petitions for the remaining seven of the thirteen third party trusts, including the Trust, will be filed with this Court and the Naugatuck and Litchfield Hills Probate Courts, and copies of the filed petitions, including this petition, will be sent to Judge Mahon at the Meriden Probate Court.

19. The Final Decision provides for the disposition of GWHN's charitable endowment funds (referred to in the Final Decision as the "charitable gift assets," "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "**Wind Down Period**") as follows: "The charitable assets of GWHN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities." (*See* Exhibit C, p.7.)

20. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area." (*See* Exhibit C, p.7.)

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[5] Petitions were filed for the following six trusts:

a. Jacob Keeling Trust u/w dated June 30, 1952 f/b/o Waterbury Hospital, filed with the Naugatuck Probate Court on December 30, 2016;

b. Frank Keeling Trust u/w dated December 15, 1954 f/b/o Waterbury Hospital, filed with the Naugatuck Probate Court on December 30, 2016;

c. Henry H. Peck Trust u/w dated June 12, 1918 f/b/o Waterbury Hospital, filed with the Waterbury Probate Court on December 30, 2017;

d. Edith F. Poole Trust u/w dated April 11, 1928 f/b/o Waterbury Hospital and First Congregational Church, filed with the Waterbury Probate Court on January 9, 2017;

e. Charles M. Hellmann Trust u/w dated June 13, 1955 f/b/o Waterbury Hospital and St. Mary's Hospital, filed with the Meriden Probate Court on January 25, 2017; and

f. Rhoda M. Hellmann Trust u/w dated November 11, 1969, as amended on June 24, 1971, May 21, 1980 and May 23, 1980, f/b/o Waterbury Hospital and St. Mary's Hospital, filed with the Meriden Probate Court on January 25, 2017.

After a consolidated hearing, decrees for these six matters were entered by Judge Mahon on July 26, 2017. (*See* Exhibits D, E, F, G, H and I for copies of the six decrees.)

On August 25, 2017, the Attorney General filed motions for articulation with respect to Judge Mahon's decrees in four of the six matters (See Exhibits J, K, L and M for copies of the four motions for articulation), and Judge Mahon entered findings with respect to the Attorney General's motions on September 6, 2017. (*See* Exhibits N, O, P and Q for copies of Judge Mahon's findings).

The Attorney General did not file motions for articulation with respect to the decrees in the Rhoda Hellmann and Charles Hellmann matters.

21. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," (*See* Exhibit C, p. 9): "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community." (*See* Exhibit C, p.7.)

22. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." (*See* Exhibit C, pp.8-9.)

23. The Trustee understands that Legacy GWHN has significant pre-closing liabilities, and that distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period may be largely or entirely applied to the payment of creditors. The Trustee also understands that if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "**Income**"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

24. Legacy GWHN has communicated to the Trustee its belief that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

25. The Trustee is uncertain as to whether Legacy GWHN is or is not the proper recipient of the Income.

26. Legacy GWHN has made no claim to Waterbury Hospital's share of the income following the conclusion of the Wind Down Period (the "**Future Income**"), and the Trustee intends to distribute the Future Income to the Connecticut Community Foundation pursuant to the terms of the Trust.

27. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the

Trustee will pay the Income to Legacy GWHN, and will pay the Future Income to the Connecticut Community Foundation. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee will pay the Income and the Future Income to the Connecticut Community Foundation.

28. A list of interested parties is attached as Exhibit R.[6]

II. Jurisdiction

This Court has the authority to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes § 45a-98(a)(4). This Court's guidance is necessary to administer the Trust under the Will in accordance with the Testator's intent.

III. Issue

The terms of the Will do not direct how Waterbury Hospital's share of the income of the Trust should be distributed in the current circumstances in which a named beneficiary has ceased its operations as a hospital but continues to exist as a legal entity during the Wind Down Period.

Accordingly, the Trustee respectfully requests that the Court construe ARTICLE ELEVENTH to determine the appropriate recipient of the Income by determining whether the Testator intended for the Income to be distributed to Waterbury Hospital in the event that it ceased to operate as a hospital, but continued to maintain a legal existence.

If this Court determines that paying the Income to Legacy GWHN under these circumstances is consistent with the Testator's intent, the Trustee will distribute the Income to Legacy GWHN and will distribute Future Income to the contingent beneficiary, the Connecticut Community Foundation, pursuant to the terms of the Trust.

If, however, this Court determines that distributing the Income to Legacy GWHN is inconsistent with the Testator's intent, the Trustee will distribute both the Income and the Future Income to the Connecticut Community Foundation as the successor to the named contingent beneficiary under the Trust.

IV. Discussion

Connecticut law governing the construction of wills is well established:

> "The cardinal rule to be followed in constructing a will is to find and effectuate the intent of the testator. In seeking that intent, the court looks

[6] The Trustee does not believe that the Independent Foundation has an interest in the current proceeding because the Trust identifies The Waterbury Foundation Incorporated, of Waterbury, Connecticut, as a contingent beneficiary in the event that Waterbury Hospital should cease to exist, relinquish its corporate charter or fail for any reason to function in the territory in which it was located at the time of the execution of the Will. However, should the Court determine that the Independent Foundation should have the opportunity to be heard, the Trustee has provided notice to the registered agent of the Independent Foundation.

> first to the will itself and examines the words and language used in the light of the circumstances under which the will was written ... To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction." (Citations omitted.) *Dei Cas v. Mayfield*, 199 Conn. 569, 572 (1986). The court must "look first to the precise wording employed by the testat[or] in h[is] will ... for the meaning of the words as used by the testat[or] is the equivalent of h[is] legal intention-the intention that the law recognizes as dispositive." (Citations omitted.) *Canaan National Bank v. Peters*, 217 Conn. 330, 335-36 (1991).

Blumenthal v. Sharon Hosp., Inc., No. CV0200885375S, 2003 WL 21384569, at *24 (Conn. Super. Ct. June 3, 2003).

Pursuant to paragraph 1 of Section C of ARTICLE ELEVENTH, one-third of one-fifth of the Trust income is to be "paid annually [...] unto THE WATERBURY HOSPITAL of Waterbury, Connecticut, [...] in perpetuity." The Testator did not place any restrictions on the use of income. It is unclear whether in naming Waterbury Hospital as an income beneficiary of the Trust, the Testator intended to benefit Waterbury Hospital regardless of whether it was actively engaged in the provision of hospital services or whether the Testator intended the ongoing provision of hospital services to be a prerequisite to Waterbury Hospital's receipt of the Trust's income. In other words, by ceasing its hospital operations, did Waterbury Hospital effectively "cease to exist" under the terms of the Will?

Also relevant is whether, by ceasing its hospital operations, Waterbury Hospital has "relinquish[ed] its corporate charter" or "fail[ed] for any reason to function in the territory in which it [was located at the time of the execution of the Will]." If the Court were to determine that Waterbury Hospital has "ceased to exist," has relinquished its corporate charter or that it has failed to function in the territory in which it was located at the time of the execution of the Will, then it is the Testator's stated intent that the Income and Future Income be distributed to the Waterbury Foundation Incorporated, of Waterbury (i.e., to its successor, the Connecticut Community Foundation) as the contingent beneficiary in accordance with ARTICLE ELEVENTH.

The Trustee's records contain no further evidence of the Testator's intent that supplements or informs the construction of the Will with respect to the disposition of the Income.

Two recent Connecticut cases may be informative: *In re Winsted Memorial Hospital*, 249 B.R. 588 (Bankr. D. Conn. 2000), a decision of the United States Bankruptcy Court for the District of Connecticut, and *Blumenthal v. Sharon Hospital, Inc.*, No. CV0200885375S, 2003 WL 21384569 (Conn. Super. Ct. June 3, 2003), an unreported Connecticut Superior Court case. The Trustee does not take a position as to the precedential implications of either of these cases on the issue presented here.

i. *In re Winsted Mem'l Hosp.*

In *In re Winsted Memorial Hospital*, the United States Bankruptcy Court for the District of Connecticut examined whether the hospital's interests in certain charitable gifts qualified as property of the hospital's Chapter 7 bankruptcy estate although the hospital had ceased to operate as a hospital prior to the filing of its bankruptcy petition. The court noted that "[t]he Hospital, while it has ceased operations and filed a bankruptcy petition, has neither dissolved its corporate existence nor finished winding down its affairs." 249 B.R. at 594. The bankruptcy court decided that "[w]hether the Trustee's use of the gifts at issue to pay debts incurred by the Hospital when it was still providing patient services is a valid charitable use depends on whether, in the absence of the bankruptcy filing, the Hospital would have been permitted to do so." *Id.* It concluded as follows:

> There is no Connecticut case law on this issue, but the court is persuaded by, and will follow, the decisions in several other states to the effect that a charitable organization which retains its corporate existence may, even though it has ceased operating, continue to receive and use charitable gifts, provided it applies such gifts in accordance with the intent of the donor.

Id.

The third party trusts at issue in *Winsted* each "permit[ted] the Hospital to use the funds distributed to it for its general expenses or general charitable purposes, without further restriction." *Id.* at 592-93.

The court held that the hospital's income interests in the third party trusts that vested prior to (or within 180 days following) the hospital's 1996 bankruptcy filing qualified as property of the hospital's bankruptcy estate and could be used to satisfy the hospital's pre-bankruptcy obligations incurred in furtherance of the relevant charitable purpose.

ii. *Blumenthal v. Sharon Hosp., Inc.*

Blumenthal v. Sharon Hospital, Inc. addressed the sale of the assets of a nonprofit hospital to a for-profit hospital and was "the first [case] to apply the [Conversion Act]." 2003 WL 21384569, at *1.

The court in *Blumenthal* addressed the payment of trust income to a hospital which had ceased to operate but continued to maintain a legal existence. The court in *Blumenthal* found that "[w]ith the cessation of nonprofit healthcare services associated with the sale, the nonprofit Sharon Hospital has for all practical purposes ceased to exist." *Blumenthal*, 2003 WL 21384569, at *25.

The court's decision applied to Sharon Hospital's charitable endowment funds, but also addressed a number of third party trusts that benefited Sharon Hospital. "Pursuant to the sale and the Attorney General's analysis of close to two hundred gift instruments held by the hospital, certain gifts were determined to require either construction or approximation by the court." *Id.* at *21. These included the third party trusts.

The court determined that a number of the third party trusts at issue required the application of cy pres or approximation because they did not name alternative charitable beneficiaries in the event that Sharon Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist, but contained a reverter or giftover provision, which put the charitable nature of the trust at risk. The court held with respect to one such trust as follows:

> As a result of the sale of the nonprofit Sharon Hospital, Inc., to Essent CT, the nonprofit Sharon Hospital has ceased to exist, constituting a change of circumstances such that it has become impossible, impracticable or illegal for the trustee to continue to distribute the annual income to Sharon Hospital. . . In accordance with the doctrine of approximation, the court finds that the I. Kent Fulton Trust was intended to benefit Sharon Hospital and the community it serves. Accordingly, the net income shall be applied to [the independent community foundation] to be transferred to its general charitable purposes and to serve the residents of the affected community.

Blumenthal, 2003 WL 21384569, at *22.

Other third party trusts at issue provided for an alternative disposition of trust income in the event that Sharon Hospital were to "cease to exist." The court was asked to construe the testator's intent in connection with these provisions by determining whether the fact that Sharon Hospital ceased its provision of hospital services but continued to maintain a corporate existence to wind down its affairs meant that Sharon Hospital had "cease[d] to exist" pursuant to the terms of the governing document. The court concluded as follows:

> Although the hospital technically still exists on the books of the Secretary of State as a corporation, it has ceased providing patient services and abandoned its original charter purposes. All that is left is a shell hospital corporation. With the cessation of its healthcare functions, Sharon Hospital has, in the most fundamental sense, "ceased to exist" as a charity because it has ceased to provide healthcare to the public.

Id., at *26.

For all third party trusts, the court concluded that the income should be distributed to an entity other than the shell entity remaining after the sale of Sharon Hospital. In some trusts, the alternative beneficiary was identified in the governing document and, for other trusts, the alternative beneficiary was the independent community foundation established to provide healthcare services to the community previously served by Sharon Hospital.

V. Prayer for Relief

The Trustee respectfully requests that this Court construe ARTICLE ELEVENTH of the Will and direct the Trustee on the distribution of the Trust's Income.

Respectfully Submitted,

Bank of America, N.A., Trustee

By: _____

Date: November 28, 2017

Its Attorneys
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Exhibit C

Decree in the matter of the John P. Elton Trust u/w dtd 11/29/1946,
as amended by Codicil dtd 06/26/1947,
f/b/o Waterbury Hospital and St. John's Parish,
Bank of America, N.A., Trustee,
dated December 19, 2017 and mailed on January 12, 2018

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Waterbury Probate Court **DISTRICT NO. PD20**

ESTATE OF/IN THE MATTER OF

JOHN P. ELTON TR fbo St. John's Parish & Waterbury Hospit (53-0108A)
FBO ST. JOHN'S PARISH, WATERBURY HOSPITAL,

PETITION FOR:	DATE OF DECREE:
Construe Trust	12/19/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on01/12/18 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Atty Michael J. Reardon, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

Brian T. Henebry, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, P.O.Box 1110, Waterbury, CT 06721-1110

AG-Charity Unit, Atty General's Office, Public Charities Unit, 55 Elm St., Hartford, CT 06101

Atty. Christiana N. Glanopulos (attorney for Bank of America), Day Pitney, LLP, Blue Back Square, 75 Isham Road, Ste 300, West Hartford, CT 06107

Legacy Waterbury Hospital Inc., c/o Stefanie DiClemente, 50 Leavenworth Street, Waterbury, CT 06721-1110

Bank of America, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108-3208

St. John's Episcopal Church, Attn: Lorraine Barker, Treasurer, 16 Church St., Waterbury, CT 06702-2103

Connecticut Community Foundation, Attn: Julie Loughran, Director of Development & Communications, 43 Field Street, Waterbury, CT 06702

Waterbury Hospital Foundation Inc., c/o Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Tracy Biolo, Deputy Chief Clerk

STATE OF CONNECTICUT
DISTRICT OF WATERBURY - #20

WATERBURY PROBATE COURT

JANUARY 3, 2018

IN RE: John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 6/26/1947 f/b/o Waterbury Hospital, St. John's Parish, and Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Article 6 and Article 10 of the Last Will and Testament of John P. Elton dated November 29, 1946, as amended by Codicil dated June 26, 1947 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH"), and to determine if giving notice to the registered agent for service of the Independent Foundation satisfies the requirement of Rule 32.2 of the Probate Court Rules of Practice.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of John P. Elton (the "Testator"), the Will was duly admitted to probate by this Court.

2. Article 6 of the Will, the Testator bequeathed one hundred thousand dollars ($100,000.00) to the Trustee to create the Trust, which provided for distribution of the annual income to several individuals and to the Testator's widow, all of whom are deceased. Article 6 provides that after the deaths of the individuals and the Testator's widow:

> "[...] the entire net income [...] shall be paid over, quarterly or at such other period as may be mutually agreed upon, in equal shares, to ST. JOHN'S PARISH OF THE PROTESTANT EPISCOPAL CHURCH, of Waterbury, Connecticut, and to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be to each of them absolutely."

3. No contingent beneficiary are named in the Will in the event that Waterbury Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist. However, the Will contains a residue clause under Article 10, which states, in relevant part:

All of the rest and residue of my estate, both real and personal, and wheresoever situated, including any lapsed or void legacies or devises, I give, devise and bequeath to THE COLONIAL TRUST COMPANY, of Waterbury, Connecticut, in trust, however, for the following purposes:

> [Net income shall be paid to the Testator's widow for her lifetime and at her death, the remaining trust property shall be allocated and distributed as follows:]
>
> Upon the death of my said wife [...], said Trustee shall distribute the principal of said trust fund then remaining as follows:
>
> The sum of Twenty-five Thousand Dollars ($25,000.00) shall be held in a separate trust by said Trustee for the benefit of my son, SAMUEL ELTON, and the sum of Twenty-five Thousand Dollars ($25,000.00) shall be held in a separate trust by my said Trustee for the benefit of my son, JOHN BUELL ELTON.
>
> [...]
>
> Upon the death of either son or should either son be not living at the time appointed for setting up the trust fund as to him, the trust fund as to such son shall cease and determine and the principal thereof then remaining shall be paid over to his issue then living, taking per stirpes, or if there are no issue then living shall be divided per stirpes among the other of my children then living and the then living issue of any children who may then be deceased, in each case to be added to any then existing trust fund of the taker created hereunder, or, if none, to become theirs absolutely.
>
> The sum of Fifty Thousand Dollars ($50,000.00) shall be held in a separate trust by said Trustee in perpetuity, the net income thereof to be paid over quarterly, or at such other periods as may be mutually agreed upon, to THE WATERBURY FOUNDATION, a charitable corporation of Waterbury, Connecticut, to be used by it for such public, charitable or educational uses and purposes within its corporate powers as may from time to time be determined by its Board of Trustees.
>
> The remainder of said principal shall be divided into two equal parts, one of said equal parts to be held in a separate trust by said Trustee for the benefit of my daughter, DEBORAH RICHMOND

> ELTON ALLEN, and one of said equal parts to be held in a separate trust by said Trustee for the benefit of my daughter, CHARLOTTE ELTON CROSS, on terms as follows: [...]
>
> Upon the death of either daughter or should either daughter not be living at the time appointed for setting up the trust fund as to her, the trust fund as to such daughter shall cease and determine, and the principal thereof then remaining shall be paid over and divided as follows:
>
> Should there be no issue of my said daughter then living, the principal of the trust fund then remaining shall be added to and become a part of the trust fund of my other daughter, to be held and disposed of as a part thereof.
>
> Should there be issue of my said daughter then living, the Trustee shall divide the trust fund then in its hands among the then living issue of such daughter in shares per stirpes, and the Trustee shall hold in trust or pay over such shares as follows: [...].

4. The Testator did not expressly reserve a reversionary interest in the Trust.

5. The Trust is classified as a private foundation under Internal Revenue Code ("Code") §509.

6. Under Article 6, the Testator appointed The Colonial Trust Company, of Waterbury, Connecticut, as trustee. The Trustee is successor to The Colonial Trust Company.

7. The value of the Trust as of October 31, 2017, was $635,976.34.

8. The Trust identifies Waterbury Hospital, Inc. as a current income beneficiary, entitled to one-half of the net annual income of the Trust, to be paid quarterly.

9. GWNH is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

10. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

11. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

12. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

13. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

14. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

15. The Sale closed on October 1, 2016 (the "Closing").

16. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

17. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "Accumulated Income"). The accumulated income on hand as of December 15, 2017 is $15,905.86.

18. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for

appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

19. The Final Decision provides for the disposition of GWHN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

20. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

21. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

22. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

23. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

24. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

25. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income"), and the Trustee intends to distribute the Future Income to the Connecticut Community Foundation pursuant to the terms of the Trust.

26. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN, and will pay the Future Income to the Connecticut Community Foundation. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee will pay the Income and the Future Income to the Connecticut Community Foundation.

27. Along with its petition, the trustee has provided the Court a list of interested parties.

28. Rule 32.2 of the Connecticut Probate Practice Book provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

29. On February 16, 2017, a Certificate of Incorporation for the Independent Foundation was filed with the Connecticut Secretary of State, naming Attorney Ann Zucker, of Carmody, Torrance, Sandak and Hennessey, as the registered agent for service of process. The name of the Independent Foundation is "Waterbury Hospital Foundation, Inc." Although incorporated, the Independent foundation has no board of directors, officers, or independent counsel to represent its interests.

30. The Trustee has sent notice for the Independent Foundation to Attorney Ann Zucker, the registered agent for service of process, but is uncertain whether, under the circumstances described in Paragraph 29, such notice satisfies the requirements of Rule 32.2.

31. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

32. The Court finds that the notice to the registered agent for service of the Independent Foundation satisfies the requirement of Rule 32.2 of the Connecticut Probate Court Rules of Practice.

33. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testatrix. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention—the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of*

Boston Connecticut v. Brewster, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

34. The relevant language of Article 6 provides that after the deaths of certain individuals and the Testator's wife, "...the entire net income... shall be paid over quarterly or at such other period as may be mutually agreed upon, in equal shares, to ST. JOHN'S PARISH OF THE PROTESTANT EPISCOPAL CHURCH, of Waterbury, Connecticut, and to THE WATERBURY HOSPITAL of Waterbury, Connecticut, to be each of them absolutely."

35. Since the Will does not restrict the use of the funds by the hospital, it is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

36. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of the hospital, including paying its remaining pre-closing obligations.

37. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

38. The court concludes that the intent of the testator, as expressed in the language of Article 6, permits the distribution of trust income during the wind down period to Legacy GWHN, to be used to pay any and all obligations of the preclosing GWHN, the administrative cost of GWHN, and the costs incurred in setting up the Independent Foundation.

39. The Court further finds that the residue clause under Article 10 is not and/or would not be applicable to a failed income interest under Article 6.

40. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period, and then distribute all future income to the Independent Foundation.

Brian T. Mahon, Judge

Exhibit D

Decree in the matter of the Almon B. Dayton Trust u/w dtd 08/23/1940
f/b/o Waterbury Hospital et al.,
Bank of America, N.A., Trustee,
dated December 19, 2017 and mailed on January 12, 2018

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Waterbury Probate Court **DISTRICT NO. PD20**

ESTATE OF/IN THE MATTER OF

ALMON B. DAYTON (53-0089TR)
FBO GREGORY D.HITCHCOCK ET AL,

PETITION FOR:	DATE OF DECREE:
Construe Trust	12/19/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 01/12/18 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Family Service Assoc. of Wtby, Office of the Treasurer, 34 Murray Street, Waterbury, CT 06710

Evergreen Cemetary Assoc., 183 North St., Watertown, CT 06795-1915

Legacy Waterbury Hospital Inc., c/o Stefanie DiClemente, 50 Leavenworth Street, Waterbury, CT 06721-1110

YMCA, Attn: Susan Talbott, 136 West Main St., Waterbury, CT 06702-2005

Girl Scouts of Connecticut Inc., Formerly CT Trails Council of Girl Scouts, Attn: Tasha Jackson, 340 Washington Ave., North Haven, CT 06106-3317

Gaylord Hospital, Attn: Tara Knapp, Dir. of Dvlpmt, P. O. Box 400, Wallingford, CT 06492-7048

First Cong. Church of Wtby, Harold Elwell, Treasurer, 222 West Main St., Waterbury, CT 06702-1220

AG-Charity Unit, Atty General's Office, Public Charities Unit, 55 Elm St., Hartford, CT 06101

Atty. Christiana N. Gianopulos (attorney for Bank of America), Day Pitney, LLP, Blue Back Square, 75 Isham Road, Ste 300, West Hartford, CT 06107

Bank of America, Regina Collins, SVP, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108

Salvation Army, Attn: Legal Department, 440 West Nyack Rd., West Nyack, NY 10994-1715

CT Rivers Council, Inc., Boy Scouts of America, Attn: Controller, 60 Darlin St., East Hartford, CT 06108-3201

American Lung Assoc. of CT, Inc., Adam Shuster, CFO, 45 Ash St., East Hartford, CT 06108-3294

Boys & Girls Club of Waterbury, Attn: Executive Director, 1037 East Main St., Waterbury, CT 06705-1040

Hartford Healthcare at Homes, Inc., Formerly Visiting Nurse & Home Care, Inc., Attn: Michael Soccio, Executive Director, 1290 Silas Dean Highway, Suite 4B, Wethersfield, CT 06109-4337

Waterbury Hospital Foundation, Inc., c/o Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Connecticut Community Foundation, Attn: Julie Loughran, Dir of Development & Communications, 43 Field Street, Waterbury, CT 06702

Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Brian T. Henebry, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Atty Michael J. Reardon, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

Tracy Biolo, Deputy Chief Clerk

STATE OF CONNECTICUT
DISTRICT OF WATERBURY - #20

WATERBURY PROBATE COURT

JANUARY 3, 2018

IN RE: Almon B. Dayton Trust u/w dtd 8/23/1940 f/b/o Waterbury Hospital, et al, Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Article Eleventh of the Last Will and Testament of Almon B. Dayton dated August 23, 1940 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH").

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of Almon B. Dayton (the "Testator"), the Will was duly admitted to probate by this Court.

2. Article Eleventh of the Will disposes of the residue of the Testator's estate. The Testator created the Trust under Article Eleventh which reads in part:

> All of the rest, residue and remainder of my estate, real and personal, wheresoever situated, I give, devise and bequeath unto my trustee hereinafter named, in trust nevertheless, to hold, manage, control, invest and reinvest in the manner by law provided, to collect the income and increment thereof, and to disburse the income and principal of said trust estate in the manner and form following, to-wit:
>
> [...]
>
> C. Upon the death of my said wife or if she shall have predeceased me, the net income of said trust shall thereafter be distributed as follows:
>
> 1) One-fifth of the net annual income of said trust shall be paid unto my niece [...] and upon her death, or if she shall have deceased, said share of the said net

income shall be paid annually in equal shares unto The Waterbury Hospital of Waterbury, Connecticut, The Waterbury Anti-Tuberculosis League of Waterbury, Incorporated, of said Waterbury and the Gaylord Farm Sanitorium of Wallingford, Connecticut, in perpetuity.

3. Article Eleventh further provides as follows:

> If any one or more of the aforesaid religious and philanthropic organizations named as beneficiaries herein shall cease to exist or shall relinquish its corporate charter, or shall fail for any reason to function in the territory in which it is now located, its share of the income as hereinbefore determined shall be paid by my said trustee to the Waterbury Foundation Incorporated of Waterbury, Connecticut, to be used by the directors of said Foundation for religious or charitable purposes, preferably for some use similar to that performed by the corporation previously receiving said income.

4. The Waterbury Foundation Incorporated of Waterbury, Connecticut, is now known as The Connecticut Community Foundation.

5. Under Article Twelfth of the Will, the Testator appointed The Citizens and Manufacturers National Bank of Waterbury as trustee of the Trust. The Trustee is successor to The Citizens and Manufacturers National Bank of Waterbury.

6. The value of the Trust as of October 31, 2017 was $1,765,747.90.

7. The Trust identifies Waterbury Hospital, Inc. as a current income beneficiary, entitled to one-third of one-fifth of the net annual income of the Trust.

8. GWHN is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

9. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

10. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a

transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was ~~issued by the OAG~~ on July 15, 2016 (the "Final Decision").

11. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

12. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

13. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

14. The Sale closed on October 1, 2016 (the "Closing").

15. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

16. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "Accumulated Income"). The accumulated income on hand as of December 15, 2017 is $5,722.23.

17. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

18. The Final Decision provides for the disposition of GWEN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain

its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

19. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWEN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

20. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

21. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

22. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

23. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

24. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income"), and the Trustee intends to distribute the Future Income to the Connecticut Community Foundation pursuant to the terms of the Trust.

25. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN, and will pay the Future Income to the Connecticut Community

Foundation. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee will pay the Income and the Future Income to the Connecticut Community Foundation.

26. Along with its petition, the trustee has provided the Court a list of interested parties.

27. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

28. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testatrix. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention--the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

29. The relevant language of Article Eleventh provides that a one-fifth share of the net income be paid to the testator's niece or upon the death of the testator's niece or if she predeceased the testator, "said share of said net income shall be paid annually in equal shares unto The Waterbury Hospital of Waterbury, Connecticut, the Waterbury Anti-Tuberculosis League of Waterbury, Incorporated, of said Waterbury, and the Gaylord Farm Sanitorium of Wallingford, Connecticut in perpetuity. There are no limitations on the use of the income.

30. Since the Will does not restrict the use of the funds by the hospital, it is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

31. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

32. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

33. The court concludes that the intent of the testator, as expressed in the language of Article Eleventh, permits the distribution of trust income during the wind down period to Legacy GWHN to be used pay any and all obligations of the preclosing GWHN, and the administrative cost of GWHN. The Court finds that the "failed to function in the territory" language does not

prohibit the use of trust income during the wind down period to Legacy GWHN to used as described above. Since there is a contingent beneficiary, The Connecticut Community Foundation, no funds are to be used to set up The Independent Foundation.

34. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period, and then distribute all future income to the Connecticut Community Foundation pursuant to the terms of the Trust.

Brian T. Mahon, Judge

STATE OF CONNECTICUT
DISTRICT OF WATERBURY - #20

WATERBURY PROBATE COURT

JANUARY 29, 2018

CORRECTED DECREE

IN RE: John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 6/26/1947 f/b/o Waterbury Hospital, St. John's Parish, and Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Article 6 and Article 10 of the Last Will and Testament of John P. Elton dated November 29, 1946, as amended by Codicil dated June 26, 1947 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH"), and to determine if giving notice to the registered agent for service of the Independent Foundation satisfies the requirement of Rule 32.2 of the Probate Court Rules of Practice.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of John P. Elton (the "Testator"), the Will was duly admitted to probate by this Court.

2. Article 6 of the Will, the Testator bequeathed one hundred thousand dollars ($100,000.00) to the Trustee to create the Trust, which provided for distribution of the annual income to several individuals and to the Testator's widow, all of whom are deceased. Article 6 provides that after the deaths of the individuals and the Testator's widow:

> "[...] the entire net income [...] shall be paid over, quarterly or at such other period as may be mutually agreed upon, in equal shares, to ST. JOHN'S PARISH OF THE PROTESTANT EPISCOPAL CHURCH, of Waterbury, Connecticut, and to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be to each of them absolutely."

3. No contingent beneficiary are named in the Will in the event that Waterbury Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist. However, the Will contains a residue clause under Article 10, which states, in relevant part:

All of the rest and residue of my estate, both real and personal, and wheresoever situated, including any lapsed or void legacies or devises, I give, devise and bequeath to THE COLONIAL TRUST COMPANY, of Waterbury, Connecticut, in trust, however, for the following purposes:

> [Net income shall be paid to the Testator's widow for her lifetime and at her death, the remaining trust property shall be allocated and distributed as follows:]
>
> Upon the death of my said wife [...], said Trustee shall distribute the principal of said trust fund then remaining as follows:
>
> The sum of Twenty-five Thousand Dollars ($25,000.00) shall be held in a separate trust by said Trustee for the benefit of my son, SAMUEL ELTON, and the sum of Twenty-five Thousand Dollars ($25,000.00) shall be held in a separate trust by my said Trustee for the benefit of my son, JOHN BUELL ELTON.
>
> [...]
>
> Upon the death of either son or should either son be not living at the time appointed for setting up the trust fund as to him, the trust fund as to such son shall cease and determine and the principal thereof then remaining shall be paid over to his issue then living, taking per stirpes, or if there are no issue then living shall be divided per stirpes among the other of my children then living and the then living issue of any children who may then be deceased, in each case to be added to any then existing trust fund of the taker created hereunder, or, if none, to become theirs absolutely.
>
> The sum of Fifty Thousand Dollars ($50,000.00) shall be held in a separate trust by said Trustee in perpetuity, the net income thereof to be paid over quarterly, or at such other periods as may be mutually agreed upon, to THE WATERBURY FOUNDATION, a charitable corporation of Waterbury, Connecticut, to be used by it for such public, charitable or educational uses and purposes within its corporate powers as may from time to time be determined by its Board of Trustees.
>
> The remainder of said principal shall be divided into two equal parts, one of said equal parts to be held in a separate trust by said Trustee for the benefit of my daughter, DEBORAH RICHMOND

> ELTON ALLEN, and one of said equal parts to be held in a separate trust by said Trustee for the benefit of my daughter, CHARLOTTE ELTON CROSS, on terms as follows: [...]
>
> Upon the death of either daughter or should either daughter not be living at the time appointed for setting up the trust fund as to her, the trust fund as to such daughter shall cease and determine, and the principal thereof then remaining shall be paid over and divided as follows:
>
> Should there be no issue of my said daughter then living, the principal of the trust fund then remaining shall be added to and become a part of the trust fund of my other daughter, to be held and disposed of as a part thereof.
>
> Should there be issue of my said daughter then living, the Trustee shall divide the trust fund then in its hands among the then living issue of such daughter in shares per stirpes, and the Trustee shall hold in trust or pay over such shares as follows: [...].

4. The Testator did not expressly reserve a reversionary interest in the Trust.

5. The Trust is classified as a private foundation under Internal Revenue Code ("Code") §509.

6. Under Article 6, the Testator appointed The Colonial Trust Company, of Waterbury, Connecticut, as trustee. The Trustee is successor to The Colonial Trust Company.

7. The value of the Trust as of October 31, 2017, was $635,976.34.

8. The Trust identifies Waterbury Hospital, Inc. as a current income beneficiary, entitled to one-half of the net annual income of the Trust, to be paid quarterly.

9. GWNH is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

10. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

11. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

12. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

13. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

14. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

15. The Sale closed on October 1, 2016 (the "Closing").

16. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

17. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "Accumulated Income"). The accumulated income on hand as of December 15, 2017 is $15,905.86.

18. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for

appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

19. The Final Decision provides for the disposition of GWHN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

20. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

21. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

22. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

23. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

24. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

25. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income").

26. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income.

27. Along with its petition, the trustee has provided the Court a list of interested parties.

28. Rule 32.2 of the Connecticut Probate Practice Book provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

29. On February 16, 2017, a Certificate of Incorporation for the Independent Foundation was filed with the Connecticut Secretary of State, naming Attorney Ann Zucker, of Carmody, Torrance, Sandak and Hennessey, as the registered agent for service of process. The name of the Independent Foundation is "Waterbury Hospital Foundation, Inc." Although incorporated, the Independent foundation has no board of directors, officers, or independent counsel to represent its interests.

30. The Trustee has sent notice for the Independent Foundation to Attorney Ann Zucker, the registered agent for service of process, but is uncertain whether, under the circumstances described in Paragraph 29, such notice satisfies the requirements of Rule 32.2.

31. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

32. The Court finds that the notice to the registered agent for service of the Independent Foundation satisfies the requirement of Rule 32.2 of the Connecticut Probate Court Rules of Practice.

33. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testatrix. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention—the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

34. The relevant language of Article 6 provides that after the deaths of certain individuals and the Testator's wife, "...the entire net income... shall be paid over quarterly or at such other period as may be mutually agreed upon, in equal shares, to ST. JOHN'S PARISH OF THE PROTESTANT EPISCOPAL CHURCH, of Waterbury, Connecticut, and to THE WATERBURY HOSPITAL of Waterbury, Connecticut, to be each of them absolutely."

35. Since the Will does not restrict the use of the funds by the hospital, it is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

36. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of the hospital, including paying its remaining pre-closing obligations.

37. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

38. The court concludes that the intent of the testator, as expressed in the language of Article 6, permits the distribution of trust income during the wind down period to Legacy GWHN, to be used to pay any and all obligations of the preclosing GWHN, the administrative cost of GWHN, and the costs incurred in setting up the Independent Foundation.

39. The Court further finds that the residue clause under Article 10 is not and/or would not be applicable to a failed income interest under Article 6.

40. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period.

Briaff T. Mahon, Judge

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Waterbury Probate Court **DISTRICT NO. PD20**

ESTATE OF/IN THE MATTER OF

JOHN P. ELTON TR fbo St. John's Parish & Waterbury Hospit (53-0108A)
FBO ST. JOHN'S PARISH, WATERBURY HOSPITAL,

PETITION FOR:	DATE OF DECREE:
Construe Trust - Corrected Decree	1/29/2018

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on02/09/18 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Atty. Brian T. Henebry, Esq. (attorney for Legacy Waterbury Hospital Inc.), Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Atty Michael J. Reardon, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

Brian T. Henebry, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, P.O.Box 1110, Waterbury, CT 06721-1110

AG-Charity Unit, Atty General's Office, Public Charities Unit, 55 Elm St., Hartford, CT 06101

Atty. Christiana N. Gianopulos (attorney for Bank of America), Day Pitney, LLP, Blue Back Square, 75 Isham Road, Ste 300, West Hartford, CT 06107

Legacy Waterbury Hospital Inc., c/o Stefanie DiClemente, 50 Leavenworth Street, Waterbury, CT 06721-1110

Bank of America, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108-3208

St. John's Episcopal Church, Attn: Lorraine Barker, Treasurer, 16 Church St., Waterbury, CT 06702-2103

Atty. Gary W. Hawes, Assistant Atty. General (attorney for AG-Charity Unit), Office of the Attorney General, 55 Elm Street, P.O.Box 120, Hartford, CT 06141-0120

Connecticut Community Foundation, Attn: Julie Loughran, Director of Development & Communications, 43 Field Street, Waterbury, CT 06702

Waterbury Hospital Foundation Inc., c/o Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Tracy Biolo, Chief Clerk

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Waterbury Probate Court **DISTRICT NO. PD20**

ESTATE OF/IN THE MATTER OF

ALMON B. DAYTON (53-0089TR)
FBO GREGORY D.HITCHCOCK ET AL,

PETITION FOR:	DATE OF DECREE:
Construe Trust	12/19/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 01/12/18 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Family Service Assoc. of Wtby, Office of the Treasurer, 34 Murray Street, Waterbury, CT 06710

Evergreen Cemetary Assoc., 183 North St., Watertown, CT 06795-1915

Legacy Waterbury Hospital Inc., c/o Stefanie DiClemente, 50 Leavenworth Street, Waterbury, CT 06721-1110

YMCA, Attn: Susan Talbott, 136 West Main St., Waterbury, CT 06702-2005

Girl Scouts of Connecticut Inc., Formerly CT Trails Council of Girl Scouts, Attn: Tasha Jackson, 340 Washington Ave., North Haven, CT 06106-3317

Gaylord Hospital, Attn: Tara Knapp, Dir. of Dvlpmt, P. O. Box 400, Wallingford, CT 06492-7048

First Cong. Church of Wtby, Harold Elwell, Treasurer, 222 West Main St., Waterbury, CT 06702-1220

AG-Charity Unit, Atty General's Office, Public Charities Unit, 55 Elm St., Hartford, CT 06101

Atty. Christiana N. Gianopulos (attorney for Bank of America), Day Pitney, LLP, Blue Back Square, 75 Isham Road, Ste 300, West Hartford, CT 06107

Bank of America, Regina Collins, SVP, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108

Salvation Army, Attn: Legal Department, 440 West Nyack Rd., West Nyack, NY 10994-1715

CT Rivers Council, Inc., Boy Scouts of America, Attn: Controller, 60 Darlin St., East Hartford, CT 06108-3201

American Lung Assoc. of CT, Inc., Adam Shuster, CFO, 45 Ash St., East Hartford, CT 06108-3294

Boys & Girls Club of Waterbury, Attn: Executive Director, 1037 East Main St., Waterbury, CT 06705-1040

Hartford Healthcare at Homes, Inc., Formerly Visiting Nurse & Home Care, Inc., Attn: Michael Soccio, Executive Director, 1290 Silas Dean Highway, Suite 4B, Wethersfield, CT 06109-4337

Waterbury Hospital Foundation, Inc., c/o Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Connecticut Community Foundation, Attn: Julie Loughran, Dir of Development & Communications, 43 Field Street, Waterbury, CT 06702

Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Brian T. Henebry, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Atty Michael J. Reardon, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

Tracy Biolo, Deputy Chief Clerk

Exhibit B

Petition for the Construction of the
Almon B. Dayton Trust u/w dtd 08/23/1940
f/b/o Waterbury Hospital et al.,
Bank of America, N.A., Trustee
(without exhibits)

DAY PITNEY LLP

BOSTON CONNECTICUT FLORIDA NEW JERSEY NEW YORK WASHINGTON, DC

CHRISTIANA N. GIANOPULOS
Attorney at Law

Blue Back Square, 75 Isham Road, Suite 300
West Hartford, CT 06107-2237
T: (860) 313-5708 F: (860) 956-5830
cngianopulos@daypitney.com

November 28, 2017

Honorable Thomas P. Brunnock
Waterbury Probate Court
49 Leavenworth Street
Waterbury, CT 06702

Re: Almon B. Dayton Trust u/w dtd 08/23/1940 f/b/o Waterbury Hospital, et al. (the "Trust")

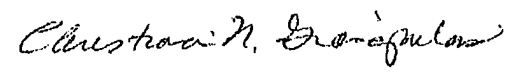
Dear Judge Brunnock:

Our firm represents Bank of America, N.A., trustee of the Trust. Enclosed are a Petition for Construction of Trust and a Certification/Mailing of Document by Party in connection with this matter.

Bank of America is trustee of thirteen trusts that benefit Waterbury Hospital, including the Trust. Similar petitions were filed for six of these trusts in December, 2016 and January, 2017, and all were heard by Judge Mahon on a consolidated basis. Judge Mahon requested that he receive copies of the remaining petitions and we have done so.

We would be pleased to provide any additional information that would be helpful to the Court.

Very truly yours,



Christiana N. Gianopulos

CNG/JEK
Enclosures

cc: Judge Brian T. Mahon (w/enclosures)
See Certification (w/enclosures)

98603121.1

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT

Exhibit U

Trustee Petition for Modification of Decree
and
Corrected Decree dated February 16, 2018
for the
I. Kent Fulton Trust u/w dated October 2, 1939, as amended
by Codicil dated December 15, 1939

DAY PITNEY LLP

BOSTON CONNECTICUT FLORIDA NEW JERSEY NEW YORK WASHINGTON, DC

CHRISTIANA N. GIANOPULOS
Attorney at Law

Blue Back Square, 75 Isham Road, Suite 300
West Hartford, CT 06107-2237
T: (860) 313-5708 F: (860) 956-5830
cngianopulos@daypitney.com

February 13, 2018

Via Facsimile and Overnight Mail
The Honorable Diane S. Blick
Litchfield Hills Probate Court
74 West Street, P.O. Box 505
Litchfield, Connecticut 06759

Re: I. Kent Fulton Trust u/w dtd 10/02/1939, as amended by Codicil dtd 12/15/1939, f/b/o Waterbury Hospital (the "Fulton Trust"): Application for Modification of Decree Dated January 29, 2018 (mailed February 2, 2018) (the "Fulton Decree")

Dear Judge Blick:

We represent Bank of America, N.A., Trustee of the Fulton Trust.

Enclosed is an Application for Modification of Decree pursuant to Connecticut General Statutes §45a-128(b)(1) and (3). The Application respectfully requests the Court's modification of paragraphs 17, 26 and 38. All interested parties have consented to the Application.

Also enclosed is a Certification/Mailing of Document by Party in connection with the Application. This matter was heard by Judge Mahon and he has received a complete copy of this filing as indicated below.

We would be pleased to provide any additional information that would be helpful to the Court.

Very truly yours,

Christiana N. Gianopulos

CNG/JMT

cc: Hon. Brian T. Mahon (*via facsimile and overnight mail*)
See attached Certification

99202591.1

CERTIFICATION/ MAILING
OF DOCUMENT BY PARTY
PC-151 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE
[*Type or print in ink.*]

TO: COURT OF PROBATE, Litchfield Hills Probate Court | **DISTRICT NO.** PD-24

ESTATE OF/IN THE MATTER OF
I. Kent Fulton Trust u/w dtd 10/02/1939, as amended by Codicil dtd 12/15/1939, f/b/o Waterbury Hospital (the "Fulton Trust")

Document(s) mailed:

☐ Inventory dated _____ ☐ Financial Report dated _____ ☐ Account dated _____

☑ Other petition(s), motion(s) or document(s) [*Specify document and date of document.*] Application for Modification of Decre dated 01/29/2018

CERTIFICATION

I certify that a copy of the above referenced document(s) was sent to the following persons:

Name and Address

Office of the Attorney General, Attn. Gary Hawes, 55 Elm Street, 4th Floor, Hartford, CT 06106
Brian T. Henebry, Esq., Michael Reardon, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110
Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110
Hartford Hospital, Julie Drouin, Director of Finance and Budget, P.O. Box 5037, Hartford, CT 06102
The Sharon Area Community Health Foundation, c/o Berkshire Taconic Community Foundation, P.O. Box 400, Sheffield, MA 01257

Signature of party _____

Christiana N. Gianopulos
[*Type or print name*]

February 13, 2018
Date

FTO: The Probate Court for the District of Litchfield Hills, District No. 24

RE: I. Kent Fulton Trust u/w dtd 10/02/1939, as amended by Codicil dated 12/15/1939, f/b/o Waterbury Hospital, Bank of America, N.A., Trustee (the "Fulton Trust")

APPLICATION FOR MODIFICATION OF DECREE
PURSUANT TO
CONNECTICUT GENERAL STATUTES §45a-128(b)(1) and (3)

Pursuant to Connecticut General Statutes §45a-128(b)(1) and (3), Bank of America, N.A., Trustee (the "**Trustee**") of the Fulton Trust, hereby seeks the Court's action (i) to correct clerical errors contained in paragraphs 17, 26 and 38 of the Court's decree, dated January 29, 2018 and mailed on February 2, 2018 (the "**Fulton Decree**"), and (ii) to modify the order contained in paragraph 38 of the Fulton Decree. The Trustee has obtained the consent of all interested parties (defined in paragraph 2 of Part I below) to this Application.

I. Background

1. On November 28, 2017, the Trustee filed three construction petitions to determine the proper distribution of Waterbury Hospital's share of the following trusts' income following the sale by Greater Waterbury Health Network, Inc. and its affiliates of its assets to Prospect Medical Holdings, Inc.:

   (a) The **Fulton Petition** regarding the Fulton Trust created under Paragraph Tenth of the Last Will and Testament of I. Kent Fulton dated October 2, 1939, as amended by Codicil dated December 15, 1939, (the "**Fulton Will**"), filed with this Court.

   (b) The **Elton Petition** regarding the **Elton Trust** created under Article 6 of the Last Will and Testament of John P. Elton dated November 29, 1946, as amended by codicil dated June 26, 1947 (the "**Elton Will**"), filed with the Waterbury Probate Court;

   (c) The **Dayton Petition** regarding the **Dayton Trust** created under ARTICLE ELEVENTH of the Last Will and Testament of Almon B. Dayton dated August 23, 1940 (the "**Dayton Will**"), filed with the Waterbury Probate Court; and

Copies of the Fulton, Elton and Dayton Fulton Petitions are attached as Exhibits A, B and C, respectively.

2. The interested parties for the Fulton Petition in addition to the Trustee and the attorney for the Trustee, are:

a. The Office of the Attorney General;

b. Legacy Waterbury Hospital, Inc. ("**Legacy GWHN**");

c. Brian T. Henebry and Michael J. Reardon, of Carmody Torrance Sandak & Hennessey, attorneys for Legacy GWHN;

d. Hartford Hospital;

e. The Sharon Area Community Health Foundation (c/o Berkshire Taconic Community Foundation);

f. Waterbury Hospital Foundation, Inc. (the "**Independent Foundation**"); and

g. Ann Zucker, of Carmody Torrance Sandak & Hennessey, attorney for the Independent Foundation

(the "**Interested Parties**").

3. No contingent beneficiaries are named in the Elton and Fulton Trusts, but both the Elton and Fulton Wills contain residue clauses.

4. The Dayton Trust identifies the Connecticut Community Foundation as a contingent beneficiary in the event that Waterbury Hospital "shall cease to exist or shall relinquish its corporate charter, or shall fail for any reason to function in the territory in which it is now located[...]."

5. A consolidated hearing on the Elton, Dayton and Fulton Petitions was held at the Meriden Probate Court before Judge Brian T. Mahon on December 19, 2017.

6. Prior to issuing the Fulton Decree, Judge Mahon issued decrees for the Elton and Dayton Petitions (the "**Elton Decree**" and the "**Dayton Decree,**" respectively), dated December 19, 2017 and mailed on January 12, 2018. Copies of the Elton, Dayton and Fulton Decrees are attached as Exhibits D, E and F, respectively. The Trustee has filed an application for modification of decree for the Elton Decree, and has received a copy of the corrected decree, dated January 29, 2018 and mailed on February 9, 2018. The corrected Elton Decree is attached as Exhibit G.

7. Paragraph 17 of the Elton Decree properly states as follows: "The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the 'Accumulated Income'). ***The accumulated income on hand as of December 15, 2017 is $15,905.86.***" (Emphasis added.)

8. The accumulated income on hand for the Fulton Trust as of December 15, 2017 was $409,188.78, not $15,905.86, but paragraph 17 of the Fulton Decree is identical to paragraph 17 of the Elton Decree.

9. Paragraph 25 of the Dayton Decree includes the following sentence: "... If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN, ***and will pay the Future Income to the Connecticut Community Foundation***." (Emphasis added.)

10. Paragraph 26 of the Fulton Decree states, in part, as follows: "... If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN, ***and will pay the Future Income to the Connecticut Community Foundation***..." (Emphasis added.)

11. The Connecticut Community Foundation was not an interested party to the Fulton Petition.

12. The third paragraph of paragraph (a) of Part III of the Fulton Petition states that "[i]f this Court determines that paying the Income to Legacy GWHN under these circumstances is consistent with the Testator's intent, the Trustee will distribute the income to Legacy GWHN, ***and will file a subsequent petition with this Court to address the appropriate recipient of the Future Income***." (Emphasis added.)

13. Paragraph 38 of the Elton Decree states as follows:

> The court concludes that the intent of the testator, as expressed in the language of ***Article 6***, permits the distribution of trust income during the wind down period to Legacy GWHN, to be used to pay any and all obligations of the preclosing GWHN, the administrative cost of GWHN, ***and the costs incurred in setting up the Independent Foundation***. (Emphasis added.)

14. Paragraph 38 of the Fulton Decree states as follows:

> The court concludes that the intent of the testator, as expressed in the language of ***Article 6***, permits the distribution of trust income during the wind down period to Legacy GWHN to be used [sic] pay any and all obligations of the preclosing GWHN, the administrative cost of GWHN. (Emphasis added.)

II. Jurisdiction

This Court has the authority to modify paragraphs 17, 26 and 38 of the Fulton Decree under Connecticut General Statutes § 45a-128(b)(1) and (3), which empower this Court to "reconsider and modify or revoke any such order or decree for any of the following reasons: (1) For any reason, if all parties in interest consent to reconsideration, modification or revocation, or [...] (3) to correct a scrivener's or clerical error [...]."

III. Issues

a. Paragraph 17 of the Fulton Decree

Paragraph 17 of the Fulton Decree appears to have been mistakenly copied from paragraph 17 of the Elton Decree. This paragraph is correct in the Elton Decree because $15,905.86 is the value of the accumulated income of the Elton Trust as of December 15, 2017. However, the correct value of the accumulated income for the Fulton Trust as of December 15, 2017 was $409,188.78. (See paragraphs 7 and 8 of Part I above.)

The Trustee respectfully requests that this Court modify paragraph 17 of the Fulton Decree by deleting "15,905.86" and replacing it with the correct value of "$409,188.78."

b. Paragraph 26 of the Fulton Decree

The following part of paragraph 26 of the Fulton Decree appears to have been mistakenly copied from paragraph 25 of the Dayton Decree: "... If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN, and will pay the Future Income to the Connecticut Community Foundation." (See 9, 10 and 11 of Part I above.)

This sentence is correct in the Dayton Decree because the Connecticut Community Foundation is named as a contingent beneficiary under the Dayton Will. However, the bolded and italicized portion of paragraph 26 of the Fulton Petition, quoted in paragraph 10 of Part I above, is incorrect because (i) there are no contingent beneficiaries identified in the Fulton Will and (ii) this language is inconsistent with the Fulton Petition (see paragraphs 3 and 12 of Part I above).

The Trustee respectfully requests that this Court modify paragraph 26 of the Fulton Decree by deleting the following: "and will pay the Future Income to the Connecticut Community Foundation."

c. Paragraph 38 of the Fulton Decree

The reference to "Article 6" in paragraph 38 of the Fulton Decree appears to have been mistakenly copied from paragraph 38 of the Elton Decree. (See paragraphs 13 and 14 of Part I above.) The proper reference in paragraph 38 of the Fulton Decree should have been to "Paragraph Tenth."

In addition, given the similarity of the Elton Petition and the Fulton Petition and of the Elton Decree and the Fulton Decree, it appears that the following was mistakenly omitted from the end of paragraph 38 of the Fulton Decree: "...and the costs incurred in setting up the Independent Foundation."

The Trustee respectfully requests that the Court modify paragraph 38 of the Fulton Decree by (i) replacing the reference to "Article 6" with "Paragraph Tenth," and (ii) adding the

following to the end of paragraph 38: "...and the costs incurred in setting up the Independent Foundation."

IV. Prayer for Relief

WHEREFORE, the Trustee, having obtained the consent of all Interested Parties, respectfully requests that this Court modify the Fulton Decree as follows:

a. By deleting "15,905.86" and replacing it with the correct value of "$409,188.78" in paragraph 17.

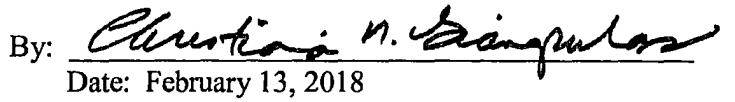
b. By deleting the following from paragraph 26: "..., and will pay the Future Income to the Connecticut Community Foundation."

c. By deleting the reference to "Article 6" in paragraph 38 and replacing it with "Paragraph Tenth."

d. By adding the following to the end of paragraph 38: "...and the costs incurred in setting up the Independent Foundation."

Respectfully Submitted,

Bank of America, N.A., Trustee

By: 

Date: February 13, 2018
Its Attorneys
Christiana N. Gianopulos, Esq., Juris No. 410887
Joanna M. Targonski, Esq., Juris No. 437386
Day Pitney LLP
75 Isham Road, Suite 300
West Hartford, CT 06107
Telephone: (860) 313-5708
Facsimile: (860) 956-5830

Index to Exhibits

Exhibit A:	Petition for the Construction of the I. Kent Fulton Trust u/w dtd 10/02/1939, as amended by Codicil dtd 12/15/1939, f/b/o Waterbury Hospital, Bank of America, N.A., Trustee (without exhibits)
Exhibit B:	Petition for the Construction of the John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 06/26/1947, f/b/o Waterbury Hospital and St. John's Parish, Bank of America, N.A., Trustee (without exhibits)
Exhibit C:	Petition for the Construction of the Almon B. Dayton Trust u/w dtd 08/23/1940 f/b/o Waterbury Hospital et al., Bank of America, N.A., Trustee (without exhibits)
Exhibit D:	Decree in the matter of the John P. Elton Trust u/w, dated December 19, 2017 and mailed on January 12, 2018
Exhibit E:	Decree in the matter of the Almon B. Dayton Trust u/w, dated December 19, 2017 and mailed on January 12, 2018
Exhibit F:	Decree in the matter of the I. Kent Fulton Trust u/w, dated January 29, 2018 and mailed on February 2, 2018
Exhibit D:	Corrected Decree in the matter of the John P. Elton Trust u/w, dated January 29, 2018 and mailed on February 9, 2018

Exhibit A

Petition for the Construction of the
I. Kent Fulton Trust u/w dtd 10/02/1939,
as amended by Codicil dtd 12/15/1939,
f/b/o Waterbury Hospital,
Bank of America, N.A., Trustee
(without exhibits)

TO: Litchfield Hills Probate Court, District No. 24

RE: I. Kent Fulton Trust u/w dtd 10/02/1939, as amended by Codicil dated 12/15/1939, f/b/o Waterbury Hospital, Bank of America, N.A., Trustee (the "Trust")

PETITION FOR CONSTRUCTION OF TRUST

This petition seeks the Court's direction on the interpretation of Paragraph Tenth of the Last Will and Testament of I. Kent Fulton dated October 2, 1939, as amended by Codicil dated December 15, 1939, (the "**Will**") to determine the proper distribution of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("**GWHN**") of its assets to Prospect Medical Holdings, Inc. ("**PMH**").

I. Background

Bank of America, N.A., trustee of the Trust (the "**Trustee**"), represents that:

1. Following the death of I. Kent Fulton (the "**Testator**"), the Will was duly admitted to probate by this Court. (*See* Exhibit A for a copy of the Will.)

2. Under Paragraph Tenth of the Will, Testator created the Trust:

   > To my trustee hereinafter named I give and bequeath the sum of Twenty-five Thousand Dollars ($25,000), to be held by it in trust and the net income thereof to be paid over annually to the Waterbury Hospital, of Waterbury, Connecticut, to be used by said Hospital for its general uses and purposes.

3. Paragraphs Seventh, Eighth, Ninth, Eleventh, Twelfth and Thirteenth of the Will provide for the creation of trusts for the benefit of the following charitable organizations:
   a. Seventh - Board of Park Commissioners of the City of Waterbury (use of income restricted for specific purpose);
   b. Eighth - Regional High School District No. 1 of Litchfield County (use of income restricted for specific purpose);
   c. Ninth - Hartford Hospital (income for general uses and purposes of hospital);
   d. Eleventh - The Sharon Hospital Association (income for general uses and purposes of hospital);
   e. Twelfth - St. John's Protestant Episcopal Church of Salisbury (income for general purposes); and
   f. Thirteenth - The Salisbury Cemetery Association (use of income restricted for specific purpose).

4. No contingent beneficiaries are named in the Will in the event that Waterbury Hospital should cease to operate as a hospital, cease to provide patient services, be

acquired by another organization or cease to exist. However, the Will does contain a residue clause under Paragraph Fourteenth, which states:

> All the rest, residue and remainder of my property and estate, of whatever nature, real and personal, and wherever situated, including lapsed legacies and devises, I give, devise and bequeath IN TRUST to my trustee hereinafter named, to be held by it in trust [... for the benefit of my wife during her lifetime and then for my son for his lifetime], and upon the death of the survivor of my said wife, my said son and myself, I direct my trustee to divide the property then constituting the principal of this trust fund into two equal parts or trusts to be held and disposed by my trustee as hereinafter provided:
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> (a) One of said two equal parts shall be transferred paid over and distributed to and among the issue of my son living at the time of the death of the survivor of my said wife, my said son and myself, in equal shares, per stirpes [...]. Should no issue of my said son be living at the time of the death of the survivor of my said wife, my said son and myself, all of the property then constituting the principal of this trust fund shall be added by my trustee in equal shares to the trusts provided for in subdivision (b) of this Paragraph hereinafter contained.
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> (b) The other of said two equal parts, after the death of my said wife and son, shall be held by my trustee IN TRUST for the following purposes:
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> One-third thereof shall be added by my trustee to the trust fund for the benefit of the Hartford Hospital, provided for in Paragraph Ninth of my last will and testament;
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> One-third thereof shall be added by my trustee to the trust fund for the benefit of the Waterbury Hospital, provided for in Paragraph Tenth of my last will and testament;
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> One-third thereof shall be added by my trustee to the trust fund for the benefit of The Sharon Hospital Association, provided for in Paragraph Eleventh of my last will and testament.

5. The Testator did not expressly reserve a reversionary interest in the Trust.

6. The Trust is classified as a private foundation under Internal Revenue Code (**"Code"**) § 509.

7. Under Paragraph Fifteenth, the Testator appointed the Hartford National Bank and Trust Company, of Hartford, Connecticut, and its successors, as trustee of all trusts

under the Will. The Trustee is successor to the Hartford National Bank and Trust Company.

8. The value of the Trust as of October 31, 2017 was $_____.

9. GWHN is a non-stock, 501(c)(3) charitable corporation and is the parent company of Waterbury Hospital.

10. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California, following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("**OHCA**") and the Office of the Attorney General ("**OAG**") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes § 19a-639a and § 19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "**Sale**"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "**OHCA Decision**"). (*See* Exhibit B for a copy of the OHCA Decision.)

11. In addition, the Nonprofit Hospital Conversion Act, Connecticut General Statutes § 19a-486 et seq., (the "**Conversion Act**") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes § 19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "**Final Decision**"). (*See* Exhibit C for a copy of the Final Decision.)

12. The Conversion Act requires that

> the net asset value of the nonprofit hospital be transferred to "one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care services." Conn. Gen. Stat. § 19a-486c(8)(A).

(*See* Exhibit C, p.40.)

In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "**Independent Foundation**"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act. (*See* Exhibit C, p. 41.)

13. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation" in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "**Superior Court Action**"). (*See* Exhibit C, pp. 9-10.)

14. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale. (*See* Exhibit B, p.9.)

15. The Sale closed on October 1, 2016 (the "**Closing**").

16. GWHN has ceased hospital operations and the provision of any hospital services as of the Closing, but continues to exist as a legal entity ("**Legacy GWHN**") charged with winding down its affairs following the Sale as provided in the Final Decision. In addition, Waterbury Hospital's license as a general hospital with the State of Connecticut became inactive as of the Sale, and a new license for the hospital acquired by PMH was issued following the Sale.

17. The Trustee has been accumulating the Trust's income as of the Closing (the "**Accumulated Income**"). The Accumulated Income on hand as of October 31, 2017 was $_____.

18. The Final Decision identifies the Trust as a "third party trust without use restrictions." (*See* Exhibit C, p. 24.) As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." (*See* Exhibit C, pp. 10, 24, 48.)

19. The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust. The Trustee filed construction petitions for six of these trusts to determine the appropriate recipient of each trust's income following the Sale,[1] and a consolidated hearing on these six matters was held before Judge Brian T. Mahon at the Meriden Probate Court on April 4, 2017. Petitions for the remaining seven of the thirteen third party trusts, including the Trust, will be filed with this Court and the Naugatuck and Waterbury Probate Courts, and copies of the filed petitions, including this petition, will be sent to Judge Mahon at the Meriden Probate Court.

20. The Final Decision provides for the disposition of GWHN's charitable endowment funds (referred to in the Final Decision as the "charitable gift assets," "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "**Wind Down Period**") as follows: "The charitable assets of GWHN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities." (*See* Exhibit C, p.7.)

21. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN:

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[1] Petitions were filed for the following six trusts:

a. Jacob Keeling Trust u/w dated June 30, 1952 f/b/o Waterbury Hospital, filed with the Naugatuck Probate Court on December 30, 2016;

b. Frank Keeling Trust u/w dated December 15, 1954 f/b/o Waterbury Hospital, filed with the Naugatuck Probate Court on December 30, 2016;

c. Henry H. Peck Trust u/w dated June 12, 1918 f/b/o Waterbury Hospital, filed with the Waterbury Probate Court on December 30, 2017;

d. Edith F. Poole Trust u/w dated April 11, 1928 f/b/o Waterbury Hospital and First Congregational Church, filed with the Waterbury Probate Court on January 9, 2017;

e. Charles M. Hellmann Trust u/w dated June 13, 1955 f/b/o Waterbury Hospital and St. Mary's Hospital, filed with the Meriden Probate Court on January 25, 2017; and

f. Rhoda M. Hellmann Trust u/w dated November 11, 1969, as amended on June 24, 1971, May 21, 1980 and May 23, 1980, f/b/o Waterbury Hospital and St. Mary's Hospital, filed with the Meriden Probate Court on January 25, 2017.

After a consolidated hearing, decrees for these six matters were entered by Judge Mahon on July 26, 2017. (*See* Exhibits D, E, F, G, H and I for copies of the six decrees.)

On August 25, 2017, the Attorney General filed motions for articulation with respect to Judge Mahon's decrees in four of the six matters (See Exhibits J, K, L and M for copies of the four motions for articulation), and Judge Mahon entered findings with respect to the Attorney General's motions on September 6, 2017. (*See* Exhibits N, O, P and Q for copies of Judge Mahon's findings).

The Attorney General did not file motions for articulation with respect to the decrees in the Rhoda Hellmann and Charles Hellmann matters.

"Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area." (*See* Exhibit C, p.7.)

22. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," (*See* Exhibit C, p. 9): "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community." (*See* Exhibit C, p.7.)

23. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." (*See* Exhibit C, pp.8-9.)

24. The Trustee understands that Legacy GWHN has significant pre-closing liabilities, and that distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period may be largely or entirely applied to the payment of creditors. The Trustee also understands that if this Court determines that Legacy GWHN is the appropriate recipient of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "**Income**"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

25. Legacy GWHN has communicated to the Trustee its belief that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

26. The Trustee is uncertain as to whether Legacy GWHN is or is not the proper recipient of the Income.

27. Legacy GWHN has made no claim to the income following the conclusion of the Wind Down Period (the "**Future Income**").

28. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will file a subsequent petition to address the Future Income following the

conclusion of the Superior Court Action. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee requests that the Court determine the proper recipient of the Income and the Future Income.

29. A list of interested parties is attached as Exhibit R.[2]

30. Rule 32.2 of the Connecticut Probate Practice Book provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

31. On February 16, 2017, a Certificate of Incorporation for the Independent Foundation was filed with the Connecticut Secretary of State, naming Attorney Ann Zucker, of Carmody Torrance Sandak and Hennessey, as the registered agent for service of process. The name of the Independent Foundation is "Waterbury Hospital Foundation, Inc." Although incorporated, the Independent Foundation has no board of directors, officers, or independent counsel to represent its interests.

32. The Trustee has sent notice for the Independent Foundation to Attorney Ann Zucker, the registered agent for service of process, but is uncertain whether, under the circumstances described in Paragraph 31, such notice satisfies the requirements of Rule 32.2.

II. Jurisdiction

This Court has the authority to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes § 45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes § 45a-98(a)(5). This Court's

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[2] As explained in Section III(b) of this Petition, the Trustee believes that the residue clause under Paragraph Fourteenth is irrelevant in the current proceeding. However, should the Court determine otherwise, the Trustee has provided notice to Hartford Hospital, one of the charities named in the residue clause. The other two charities named in the residue clause are Waterbury Hospital and The Sharon Hospital Association. Legacy GWHN has received notice for Waterbury Hospital and The Sharon Hospital Association has ceased to exist, making notice impossible. The Sharon Area Community Health Foundation (SACHF), a supporting organization of the Berkshire Taconic Community Foundation, Inc. (BTCF) and a public charity whose purposes are to address the healthcare needs of the community previously served by the Sharon Hospital Association, received Sharon Hospital Association's share of the income under the Will following the decision of the court in *Blumenthal v. Sharon Hospital, Inc.*, No. CV0200885375S, 2003 WL 21384569 (Conn. Super. Ct. June 3, 2003). Therefore, the Trustee has provided notice to SACHF.

The Trustee has not provided notice to the individuals named in the residue clause. If the Court determines that the that the individuals identified therein have an interest in the proceeding and are entitled to notice, the Trustee respectfully requests that, if necessary, the Court appoint one or more guardian ad litem to protect the potential interests in this proceeding of the following individuals named in Paragraph Fourteenth:

a. Elizabeth Warner Fulton, if living;

b. Wells Fulton, if living; and

c. The living issue of Wells Fulton, if Wells Fulton and Elizabeth Warner Fulton are not living.

guidance is necessary to administer the Trust under the Will in accordance with the Testator's intent.

III. Issues

a. Construction

The terms of the Will do not direct how income should be distributed in the current circumstances in which the named beneficiary has ceased its operations as a hospital but continues to exist as a legal entity during the Wind Down Period.

Accordingly, the Trustee respectfully requests that the Court construe Paragraph Tenth to determine the appropriate recipient of Income by determining whether the Testator intended for the Income to be distributed to Waterbury Hospital in the event that it ceased to operate as a hospital, but continued to maintain a legal existence.

If this Court determines that paying the Income to Legacy GWHN under these circumstances is consistent with the Testator's intent, the Trustee will distribute the Income to Legacy GWHN, and will file a subsequent petition with this Court to address the appropriate recipient of the Future Income.

If, however, this Court determines that distributing the Income to Legacy GWHN is inconsistent with the Testator's intent, the Trustee (1) respectfully requests that the Court construe the Will to determine whether the Testator intended for a failed income interest in the Trust created under Paragraph Tenth to pass pursuant to the residue clause under Paragraph Fourteenth, and (2) requests the Court's guidance and, if necessary, the application of the doctrine of cy pres or approximation to determine the appropriate recipient of the Income and Future Income.

b. Notice

The Trustee is uncertain as to whether notice to the agent for service of process for the Independent Foundation satisfies the requirements of Rule 32.2 of the Connecticut Probate Practice Book for purposes of this petition. The Independent Foundation does not have a board of directors, officers, or independent counsel. The registered agent for service of process is the same attorney who represented Legacy GWHN in the Sale and an attorney of the firm that currently represents Legacy GWHN.

c. Applicability of Residue Clause

The Trustee does not believe that the residue clause under Paragraph Fourteenth of the Will is relevant in the current proceeding nor does the Trustee believe that the individuals identified therein could be eligible takers even if the residue clause were determined by the Court to apply. The Trustee believes that the Trust does not qualify as a "lapsed legacy" or "devise," which would trigger the applicability of the residue clause. If, however, the Court were to disagree, the Trustee also believes that it could not comply with the residue clause as written because the Trust is a private foundation and, pursuant to Connecticut law regarding the administration of charitable trusts and private foundations, it would be prohibited from making a distribution to the individuals.[3] The Trustee respectfully requests that the Court confirm that the residue clause under Paragraph Fourteenth is inapplicable to a failed income interest under Paragraph Tenth.

IV. Discussion

a. Construction

Connecticut law governing the construction of wills is well established:

> "The cardinal rule to be followed in constructing a will is to find and effectuate the intent of the testator. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written ... To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction.' (Citations omitted.) *Dei Cas v. Mayfield*, 199 Conn. 569, 572 (1986). The court must 'look first to the precise wording employed by the testat[or] in h[is] will ... for the meaning of the words as used by the testat[or] is the equivalent of h[is] legal intention-the intention that the law recognizes as dispositive.' (Citations omitted.) *Canaan National Bank v. Peters.* 217 Conn. 330, 335-36 (1991).

Blumenthal v. Sharon Hosp., Inc., No. CV0200885375S, 2003 WL 21384569, at *24 (Conn. Super. Ct. June 3, 2003).

Pursuant to Paragraph Tenth of the Will, the Trust income is to be paid "to the Waterbury Hospital, of Waterbury, Connecticut, to be used by said Hospital for its general uses and purposes." The Testator did not place any restrictions on the use of income. However, it is

[3] The Trustee has provided notice to the organizations identified in the residue clause but does not believe that the these organizations have an interest in the current proceeding based on the relevance of the residue clause itself. It is the Trustee's expectation that these organizations may claim an interest in the current proceeding because, should cy pres be necessary, they are organizations identified in the Will and their mention in the governing document may serve as evidence of the Testator's intent in the event of the failure of the specified charitable purpose of the Trust.

unclear whether in naming Waterbury Hospital as an income beneficiary of the Trust, the Testator intended to benefit Waterbury Hospital regardless of whether it was actively engaged in the provision of hospital services or whether the Testator intended the ongoing provision of hospital services to be a prerequisite to Waterbury Hospital's receipt of the Trust's income. The Will is also silent with respect to the appropriate recipient of income in the event that Waterbury Hospital were to be acquired by another organization or go out of existence.

The Trustee's records contain no additional evidence of the Testator's intent that supplements or informs the construction of the Will with respect to the disposition of the Income.

Two recent Connecticut cases may be informative: *In re Winsted Memorial Hospital*, 249 B.R. 588 (Bankr. D. Conn. 2000), a decision of the United States Bankruptcy Court for the District of Connecticut, and *Blumenthal v. Sharon Hospital, Inc.*, No. CV0200885375S, 2003 WL 21384569 (Conn. Super. Ct. June 3, 2003), an unreported Connecticut Superior Court case. The trust created under Paragraph Eleventh of the Will was reviewed by the Attorney General and addressed by the court in *Blumenthal* with respect to the interest of The Sharon Hospital Association, which was similarly sold to a for-profit entity. However, the Trustee does not take a position as to the precedential implications of either of these cases on the issue presented here.

i. *In re Winsted Mem'l Hosp.*

In *In re Winsted Memorial Hospital*, the United States Bankruptcy Court for the District of Connecticut examined whether the hospital's interests in certain charitable gifts qualified as property of the hospital's Chapter 7 bankruptcy estate although the hospital had ceased to operate as a hospital prior to the filing of its bankruptcy petition. The court noted that "[t]he Hospital, while it has ceased operations and filed a bankruptcy petition, has neither dissolved its corporate existence nor finished winding down its affairs." 249 B.R. at 594. The bankruptcy court decided that "[w]hether the Trustee's use of the gifts at issue to pay debts incurred by the Hospital when it was still providing patient services is a valid charitable use depends on whether, in the absence of the bankruptcy filing, the Hospital would have been permitted to do so." *Id.* It concluded as follows:

> There is no Connecticut case law on this issue, but the court is persuaded by, and will follow, the decisions in several other states to the effect that a charitable organization which retains its corporate existence may, even though it has ceased operating, continue to receive and use charitable gifts, provided it applies such gifts in accordance with the intent of the donor.

Id.

The third party trusts at issue in *Winsted* each "permit[ted] the Hospital to use the funds distributed to it for its general expenses or general charitable purposes, without further restriction." *Id.* at 592-93.

The court held that the hospital's income interests in the third party trusts that vested prior to (or within 180 days following) the hospital's 1996 bankruptcy filing qualified as

property of the hospital's bankruptcy estate and could be used to satisfy the hospital's pre-bankruptcy obligations incurred in furtherance of the relevant charitable purpose.

ii. *Blumenthal v. Sharon Hosp., Inc.*

Blumenthal v. Sharon Hospital, Inc. addressed the sale of the assets of a nonprofit hospital to a for-profit hospital and was "the first [case] to apply the [Conversion Act]." 2003 WL 21384569, at *1.

The court in *Blumenthal* addressed the payment of trust income to a hospital which had ceased to operate but continued to maintain a legal existence. The court in *Blumenthal* found that "[w]ith the cessation of nonprofit healthcare services associated with the sale, the nonprofit Sharon Hospital has for all practical purposes ceased to exist." *Blumenthal*, 2003 WL 21384569, at *25.

The court's decision applied to Sharon Hospital's charitable endowment funds, but also addressed a number of third party trusts that benefited Sharon Hospital. "Pursuant to the sale and the Attorney General's analysis of close to two hundred gift instruments held by the hospital, certain gifts were determined to require either construction or approximation by the court." *Id.*, at *21. These included the third party trusts.

The court determined that a number of the third party trusts at issue required the application of cy pres or approximation because they did not name alternative charitable beneficiaries in the event that Sharon Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist, but contained a reverter or giftover provision, which put the charitable nature of the trust at risk. The court held with respect to a trust created under Paragraph Eleventh of the Will as follows:

> As a result of the sale of the nonprofit Sharon Hospital, Inc., to Essent CT, the nonprofit Sharon Hospital has ceased to exist, constituting a change of circumstances such that it has become impossible, impracticable or illegal for the trustee to continue to distribute the annual income to Sharon Hospital . . . In accordance with the doctrine of approximation, the court finds that the I. Kent Fulton Trust was intended to benefit Sharon Hospital and the community it serves. Accordingly, the net income shall be applied to [the independent community foundation] to be transferred to its general charitable purposes and to serve the residents of the affected community.

Blumenthal, 2003 WL 21384569, at *22.

Other third party trusts at issue provided for an alternative disposition of trust income in the event that Sharon Hospital were to "cease to exist." The court was asked to construe the testator's intent in connection with these provisions by determining whether the fact that Sharon Hospital ceased its provision of hospital services but continued to maintain a corporate existence to wind down its affairs meant that Sharon Hospital had "cease[d] to exist" pursuant to the terms of the governing document. The court concluded as follows:

> Although the hospital technically still exists on the books of the Secretary of State as a corporation, it has ceased providing patient services and abandoned its original charter purposes. All that is left is a shell hospital corporation. With the cessation of its healthcare functions, Sharon Hospital has, in the most fundamental sense, "ceased to exist" as a charity because it has ceased to provide healthcare to the public.

Id., at *26.

For all third party trusts, the court concluded that the income should be distributed to an entity other than the shell entity remaining after the sale of Sharon Hospital. In some trusts, the alternative beneficiary was identified in the governing document and, for other trusts, the alternative beneficiary was the independent community foundation established to provide healthcare services to the community previously served by Sharon Hospital.

b. The Residue Clause

The residue clause provides that "[a]ll the rest, residue and remainder of [the Testator's] property and estate, of whatever nature, real and personal, and wherever situated, including lapsed legacies and devises" will pass in accordance with its terms. However, the residue clause does not apply here, as no "lapsed legacy" or "devise" exists. Moreover, even if the residue clause were applicable to the failed income interest at issue, the Trustee would be prohibited from complying with those of its terms that provide for distributions to the individuals identified therein.

At issue here is a failed income interest (should the Court determine that the income interest has failed), which differs from a lapsed legacy. "A lapsed legacy is one, which, at the time of making the will, is inchoate and good, but is subsequently frustrated." *Brewster v. McCall's Devisees*, 15 Conn. 274 (1842). A common example of a lapsed legacy is when a beneficiary dies before the testator. (*See, e.g.*, *First Nat'l Bank & Trust Co. v. Baker*, 124 Conn. 577, 583–84 (1938); *Huntington v. Camp*, 11 Conn. Super. 170, 175 (1942)). In such a case, the legacy or devise was never good. Conversely, this Trust has operated satisfactorily for many years following the Testator's death.

In *Blumenthal v. State St. Bank & Trust*, a nonprofit hospital beneficiary ceased operations and went into bankruptcy, leaving charitable gifts in the bankruptcy estate in need of distribution. 2006 WL 574176 (Conn. Super. Ct. Feb. 24, 2006). The court noted that Connecticut follows the Restatement (Second) of Trusts §399, "which provides that if property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible or impracticable or illegal to carry out the particular purpose, and if the settlor manifested a more general intention to devote the property to charitable purposes, the trust will not fail[.]" *Id.* at 10 (internal quotation marks omitted). In such a situation, "a court must seek a method or result which as nearly as possible effectuates the intent of the testator[.]" *Id.* at 11. Here, the Testator's charitable intent is clear, and therefore the trust should not fail. ("All of the gifts that are subject to this proceeding are clearly charitable in nature because they were given to the Hospital, a charitable institution." *Id.* at 10.)

Although not expressly stated in the Will, there are at least two reasons why a failed income interest under the Trust created under Paragraph Tenth should not and could not pass pursuant to the terms of Paragraph Fourteenth.

First, the Testator provided for the Trust's income to pass to Waterbury Hospital without any restrictions or contingent beneficiaries identified. This suggests that the Testator did not anticipate that his gift of an income interest in the Trust would fail at any time in the future, but rather that it would continue forever.

Second, it would be inconsistent with Connecticut law and the Testator's apparent charitable intent to have a failed charitable interest under Paragraph Tenth pass pursuant to the terms of Paragraph Fourteenth. The Trust is classified as a private foundation under Internal Revenue Code § 509. Connecticut General Statutes Section 33-281c(a)(1) states the following with respect to the administration of a trust that is a private foundation:

> In the administration of any trust which is a "private foundation", as defined in Section 509 of the Internal Revenue Code [...], a "charitable trust", as defined in Section 4947(a)(1) of said code, [...], the following acts shall be prohibited during the period while it is such a private foundation, [...]: (A) Engaging in any act of "self-dealing", as defined in Section 4941(d) of said code; (B) retaining any "excess business holdings", as defined in Section 4943(c) of said code; (C) making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of Section 4944 of said code, so as to give rise to any liability for tax imposed on such trust by Section 4944 of said code; or (D) making any "taxable expenditures", as defined in Section 4945(d) of said code; [...].

A distribution to an individual pursuant to Paragraph Fourteenth would be a "taxable expenditure" and therefore prohibited.[4]

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[4] Internal Revenue Code Section 4941(d) defines a "taxable expenditure" as follows:

> For purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation—
> (1) to carry on propaganda, or otherwise to attempt, to influence legislation, within the meaning of subsection (e),
> (2) except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive,
> (3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g),
> (4) as a grant to an organization unless—
> (A) such organization—
> (i) is described in paragraph (1) or (2) of section 509(a),
> (ii) is an organization described in section 509(a)(3) (other than an organization described in clause (i) or (ii) of section 4942(g)(4)(A)), or
> (iii) is an exempt operating foundation (as defined in section 4940(d)(2)), or
> (B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or
>
> (5) for any purpose other than one specified in section 170(c)(2)(B).

If the Trustee were to terminate the private foundation status of the Trust in order to attempt to comply with the Testator's intent under Paragraph Fourteenth (assuming the Court determined that the residue clause did apply), the Trustee would nevertheless be frustrating the Testator's intent because Internal Revenue Code § 507 imposes a termination tax on private foundations that voluntarily or involuntarily terminate their status as private foundations. The termination tax equals the lesser of (i) the "aggregate tax benefit" received as a result of the organization's exempt status and (ii) all of the assets of the foundation upon termination of private foundation status. The aggregate tax benefit, in turn, is the sum of the total benefits received by substantial contributors to the private foundation, the total benefits received by the private foundation and the total interest on the increases in tax that would have resulted without these benefits. Therefore, if the Trustee were to terminate the Trust's private foundation status in order to distribute income from the Trust to an individual identified in Paragraph Fourteenth, it would subject the Trust to a termination tax under Code § 507 equal to the lesser of the sum of the tax benefits it has received, plus interest, and the current total value of the Trust property. In other words, a significant portion, if not all, of the Trust property would, in essence, escheat to the federal government – a result the Testator would never have intended.

Finally, under Connecticut General Statutes § 45a-514, "[a]ny charitable trust...shall forever remain to the uses and purposes to which it has been granted according to the true intent and meaning of the grantor and to no other use." As noted in *Blumenthal*, "Trusts created for the benefit of a nonprofit hospital as is the case here, are charitable in nature," 2003 WL 21384569, at 22; and "'[s]uch gifts are highly favored and courts, while remaining within legal limitations, go to great lengths in sustaining legacies to charitable uses.' *Ministers Benefit Board v. Meriden Trust Co.*, 139 Conn. 435, 448 (1953)." *Id.*

Therefore, if the Court determines that Legacy GWHN is not the appropriate recipient of Income, the Trustee respectfully requests that the Court apply the doctrine of cy pres or approximation.

c. The Doctrine of Cy Pres

If this Court determines that Legacy GWHN is not the appropriate recipient of the Income, the Trustee respectfully requests that the Court apply the doctrine of cy pres or approximation to determine the proper recipient of the Income and the Future Income.

Under Connecticut General Statutes § 45a-98a(a)(1), this Court has jurisdiction to apply cy pres only if "the matter in dispute is not pending in another court of competent jurisdiction...." While the Superior Court action will decide the fate of GWHN's endowment funds, that action will not address the recipient of distributions from the third party trusts, such as the Trust. Connecticut has adopted the doctrine of cy pres in order to permit the modification of a charitable trust when necessary to preserve and effectuate the testator's intent in light of changed circumstances. Under Connecticut General Statutes § 45a-514, "[a]ny charitable trust...shall forever remain to the uses and purposes to which it has been granted according to the true intent and meaning of the grantor and to no other use."

The court in *Blumenthal* summarized the doctrine of cy pres as follows:

> In determining the construction of a charitable trust upon the failure of its stated purpose, the court applies the common law doctrine of cy pres, or approximation to as near as possible reflect the donor's intent. When it becomes illegal or otherwise impossible to carry out the terms of a charitable trust, rather than allow it to fail, the court will apply the doctrine of cy pres or approximation in order to carry out the charitable intentions of the donor as near as possible. "The rule of cy pres is a rule for the construction of instruments in equity, by which the intention of the party is carried out *as near as may be,* when it would be impossible or illegal to give it literal effect ... The doctrine of cy pres may be applied without the consent of the donor."... *Carl J. Herzog Foundation, Inc. v. University of Bridgeport,* 243 Conn. 1, 10 n. 8 (1997). "The doctrine applies in situations where a testator has evidenced a dominant intent to devote his property to some charitable use but the circumstances are such that it becomes impossible to follow the particular method he directs, and the courts then sanction its use in some other way which will, as nearly as may be, approximate his general intent." *Duncan v. Higgins,* 129 Conn. 136, 140 (1942). The court has broad powers of interpretation under the doctrine and has final decision making authority. 'It is clear that once the authority of the court is invoked, the ultimate responsibility for the application of the doctrine of cy pres or approximation to a charitable trust lies with the court and not with the trustees or the attorney general ... Consequently, the plan finally adopted by the court need not necessarily be one proposed or consented to by any of the parties ... The court, in applying the doctrine, is required to consider not only the language used in creating the trust but, if necessary, extrinsic facts as well." ... *Belcher v. Conway,* 179 Conn. 198, 205 (1979).

Blumenthal, 2003 WL 21384569, at *4.

d. Application of the Doctrine of Cy Pres

To invoke the doctrine of cy pres, the court must find three elements. First, the purpose of the trust must be charitable in nature. *Shannon v. Eno,* 120 Conn. 77, 86 (1935). "A charitable trust is one which performs some governmental function, such as fostering education, relief of poverty, care of the sick or aged, burial of the dead, or performs some other public task which relieves the governmental burden of the state." *Lockwood v. Killian,* 172 Conn. 496, 512 (1977) (Bogdanski, J., dissenting). *See also Bannon v. Wise,* 41 Conn. Supp. 469, 474 (Super. Ct. 1990), *aff'd,* 217 Conn. 457 (1991). Second, the court must find that the testator's specified charitable purpose cannot be executed effectively due to illegality, impossibility, impracticality or changed circumstances. *Shannon,* 120 Conn. at 86. Finally, the testator must have demonstrated "a general intent to devote the property to a charitable use, to which the intent that it go to the particular organization named is secondary." *Duncan v. Higgins,* 129 Conn. 136, 140 (1942). To determine whether the testator had a general charitable intent, the court will consider the amount donated, the designation of a remainder beneficiary in the event that the donation

fails, the provision of individual bequests to family members, and the size of other charitable bequests, if any. *Lockwood v. Killian*, 179 Conn. 62, 67 (1979).

If this Court determines that it must apply the doctrine of cy pres to substitute Waterbury Hospital with another charitable organization to preserve the Testator's charitable intent, the Trustee anticipates that the other named charitable beneficiaries and the Independent Foundation will claim to be among the possible substitute beneficiaries. If the Court finds that the Independent Foundation is the appropriate recipient of Income and Future Income, the Trustee will continue to accumulate income pending receipt by the Independent Foundation of its tax-exempt status from the Internal Revenue Service.

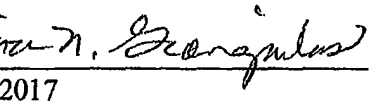
Alternatively, if the Court wishes to defer its decision until the conclusion of the Superior Court Action addressing the disposition of GWHN's endowment funds, the Trustee will continue to accumulate income until it files a subsequent petition that takes into consideration the outcome of the Superior Court Action.

V. Prayer for Relief

The Trustee respectfully requests that this Court (1) construe Paragraph Tenth of the Will and direct the Trustee on the distribution of the Income, (2) determine, for purposes of this petition, whether the notice requirements of Rule 32.2 of the Connecticut Probate Practice Book have been satisfied with respect to (a) the Independent Foundation and (b) the parties identified in the residue clause, and (3) confirm that the residue clause under Paragraph Fourteenth is not and/or would not be applicable to a failed income interest under Paragraph Tenth.

Respectfully Submitted,

Bank of America, N.A., Trustee

By: 

Date: November 28, 2017

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Exhibit B

Petition for the Construction of the
John P. Elton Trust u/w dtd 11/29/1946,
as amended by Codicil dtd 06/26/1947,
f/b/o Waterbury Hospital and St. John's Parish,
Bank of America, N.A., Trustee
(without exhibits)

TO: Waterbury Probate Court, District No. 20

RE: John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 06/26/1947, f/b/o Waterbury Hospital and St. John's Parish, Bank of America, N.A., Trustee (the "Trust")

PETITION FOR CONSTRUCTION OF TRUST

This petition seeks the Court's direction on the interpretation of Article 6 of the Last Will and Testament of John P. Elton dated November 29, 1946, as amended by codicil dated June 26, 1947 (the "**Will**"), to determine the proper distribution of Waterbury Hospital's share of the income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("**GWHN**") of its assets to Prospect Medical Holdings, Inc. ("**PMH**").

I. Background

Bank of America, N.A., trustee of the Trust (the "**Trustee**"), represents that:

1. Following the death of John P. Elton (the "**Testator**"), the Will was duly admitted to probate by this Court. (*See* Exhibit A for a copy of the Will.)

2. Under Article 6 of the Will, the Testator bequeathed one hundred thousand dollars ($100,000) to the Trustee to create the Trust, which provided for distribution of the annual income to several individuals and to the Testator's widow, all of whom are deceased. Article 6 provides that after the deaths of the individuals and the Testator's widow:

   > "[...] the entire net income [...] shall be paid over, quarterly or at such other period as may be mutually agreed upon, in equal shares, to ST. JOHN'S PARISH OF THE PROTESTANT EPISCOPAL CHURCH, of Waterbury, Connecticut, and to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be to each of them absolutely."

3. No contingent beneficiaries are named in the Will in the event that Waterbury Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist. However, the Will contains a residue clause under Article 10, which states, in relevant part:

   > All of the rest and residue of my estate, both real and personal, and wheresoever situated, including any lapsed or void legacies or devises, I give, devise and bequeath to THE COLONIAL TRUST COMPANY, of Waterbury, Connecticut, in trust, however, for the following purposes:
   >
   > [Net income shall be paid to the Testator's widow for her lifetime and at her death, the remaining trust property shall be allocated and distributed as follows:]

Upon the death of my said wife [...], said Trustee shall distribute the principal of said trust fund then remaining as follows:

The sum of Twenty-five Thousand Dollars ($25,000.00) shall be held in a separate trust by said Trustee for the benefit of my son, SAMUEL ELTON, and the sum of Twenty-five Thousand Dollars ($25,000.00) shall be held in a separate trust by my said Trustee for the benefit of my son, JOHN BUELL ELTON.

[...]

Upon the death of either son or should either son be not living at the time appointed for setting up the trust fund as to him, the trust fund as to such son shall cease and determine and the principal thereof then remaining shall be paid over to his issue then living, taking per stirpes, or if there be no issue then living shall be divided per stirpes among the other of my children then living and the then living issue of any children who may then be deceased, in each case to be added to any then existing trust fund of the taker created hereunder, or, if none, to become theirs absolutely.

The sum of Fifty Thousand Dollars ($50,000.00) shall be held in a separate trust by said Trustee in perpetuity, the net income thereof to be paid over quarterly, or at such other periods as may be mutually agreed upon, to THE WATERBURY FOUNDATION, a charitable corporation of Waterbury, Connecticut, to be used by it for such public, charitable or educational uses and purposes within its corporate powers as may from time to time be determined by its Board of Trustees.

The remainder of said principal shall be divided into two equal parts, one of said equal parts to be held in a separate trust by said Trustee for the benefit of my daughter, DEBORAH RICHMOND ELTON ALLEN, and one of said equal parts to be held in a separate trust by said Trustee for the benefit of my daughter, CHARLOTTE ELTON CROSS, on terms as follows: [...].

Upon the death of either daughter or should either daughter not be living at the time appointed for setting up the trust fund as to her, the trust fund as to such daughter shall cease and determine, and the principal thereof then remaining shall be paid over and divided as follows:

Should there be no issue of my said daughter then living, the principal of the trust fund then remaining shall be added to and become a part of the trust fund of my other daughter, to be held and disposed of as a part thereof.

> Should there be issue of my said daughter then living, the Trustee shall divide the trust fund then in its hands among the then living issue of such daughter in shares per stirpes, and the Trustee shall hold in trust or pay over such shares as follows: [...].

4. The Testator did not expressly reserve a reversionary interest in the Trust.

5. The Trust is classified as a private foundation under Internal Revenue Code ("**Code**") § 509.

6. Under Article 6, the Testator appointed The Colonial Trust Company, of Waterbury, Connecticut, as trustee. The Trustee is successor to The Colonial Trust Company.

7. The value of the Trust as of October 31, 2017 was $1,765,747.90.

8. GWHN is a non-stock, 501(c)(3) charitable corporation and is the parent company of Waterbury Hospital.

9. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California, following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("**OHCA**") and the Office of the Attorney General ("**OAG**") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes § 19a-639a and § 19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "**Sale**"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "**OHCA Decision**"). (*See* Exhibit B for a copy of the OHCA Decision.)

10. In addition, the Nonprofit Hospital Conversion Act, Connecticut General Statutes § 19a-486 et seq., (the "**Conversion Act**") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes § 19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "**Final Decision**"). (*See* Exhibit C for a copy of the Final Decision.)

11. The Conversion Act requires that

> the net asset value of the nonprofit hospital be transferred to "one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care services." Conn. Gen. Stat. § 19a-486c(8)(A).

(*See* Exhibit C, p.40.)

In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "**Independent Foundation**"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act. (*See* Exhibit C, p. 41.)

12. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation" in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "**Superior Court Action**"). (*See* Exhibit C, pp. 9-10.)

13. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale. (*See* Exhibit B, p.9.)

14. The Sale closed on October 1, 2016 (the "**Closing**").

15. GWHN has ceased hospital operations and the provision of any hospital services as of the Closing, but continues to exist as a legal entity ("**Legacy GWHN**") charged with winding down its affairs following the Sale as provided in the Final Decision. In addition, Waterbury Hospital's license as a general hospital with the State of Connecticut became inactive as of the Sale, and a new license for the hospital acquired by PMH was issued following the Sale.

16. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "**Accumulated Income**"). The Accumulated Income on hand as of October 31, 2017 was $5,713.60.

17. The Final Decision identifies the Trust as a "third party trust without use restrictions." (*See* Exhibit C, p. 24.) As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." (*See* Exhibit C, pp. 10, 24, 48.)

18. The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust. The Trustee filed construction petitions for six of these trusts to determine the appropriate recipient of each trust's income following the Sale,[1] and a consolidated hearing on these six matters was held before Judge Brian T. Mahon at the Meriden Probate Court on April 4, 2017. Petitions for the remaining seven of the thirteen third party trusts, including the Trust, will be filed with this Court and the Naugatuck and Litchfield Hills Probate Courts, and copies of the filed petitions, including this petition, will be sent to Judge Mahon at the Meriden Probate Court.

19. The Final Decision provides for the disposition of GWHN's charitable endowment funds (referred to in the Final Decision as the "charitable gift assets," "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "**Wind Down Period**") as follows: "The charitable assets of GWHN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities." (*See* Exhibit C, p.7.)

20. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN:

---

[1] Petitions were filed for the following six trusts:

a. Jacob Keeling Trust u/w dated June 30, 1952 f/b/o Waterbury Hospital, filed with the Naugatuck Probate Court on December 30, 2016;

b. Frank Keeling Trust u/w dated December 15, 1954 f/b/o Waterbury Hospital, filed with the Naugatuck Probate Court on December 30, 2016;

c. Henry H. Peck Trust u/w dated June 12, 1918 f/b/o Waterbury Hospital, filed with the Waterbury Probate Court on December 30, 2017;

d. Edith F. Poole Trust u/w dated April 11, 1928 f/b/o Waterbury Hospital and First Congregational Church, filed with the Waterbury Probate Court on January 9, 2017;

e. Charles M. Hellmann Trust u/w dated June 13, 1955 f/b/o Waterbury Hospital and St. Mary's Hospital, filed with the Meriden Probate Court on January 25, 2017; and

f. Rhoda M. Hellmann Trust u/w dated November 11, 1969, as amended on June 24, 1971, May 21, 1980 and May 23, 1980, f/b/o Waterbury Hospital and St. Mary's Hospital, filed with the Meriden Probate Court on January 25, 2017.

After a consolidated hearing, decrees for these six matters were entered by Judge Mahon on July 26, 2017. (*See* Exhibits D, E, F, G, H and I for copies of the six decrees.)

On August 25, 2017, the Attorney General filed motions for articulation with respect to Judge Mahon's decrees in four of the six matters (See Exhibits J, K, L and M for copies of the four motions for articulation), and Judge Mahon entered findings with respect to the Attorney General's motions on September 6, 2017. (*See* Exhibits N, O, P and Q for copies of Judge Mahon's findings).

The Attorney General did not file motions for articulation with respect to the decrees in the Rhoda Hellmann and Charles Hellmann matters.

"Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area." (*See* Exhibit C, p.7.)

21. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," (*See* Exhibit C, p. 9): "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community." (*See* Exhibit C, p.7.)

22. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." (*See* Exhibit C, pp.8-9.)

23. The Trustee understands that Legacy GWHN has significant pre-closing liabilities, and that distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period may be largely or entirely applied to the payment of creditors. The Trustee also understands that if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "**Income**"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

24. Legacy GWHN has communicated to the Trustee its belief that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

25. The Trustee is uncertain as to whether Legacy GWHN is or is not the proper recipient of the Income.

26. Legacy GWHN has made no claim to the income following the conclusion of the Wind Down Period (the "**Future Income**").

27. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the

Trustee will file a subsequent petition to address the Future Income following the conclusion of the Superior Court Action. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee requests that the Court determine the proper recipient of the Income and the Future Income.

28. A list of interested parties is attached as Exhibit R.

29. The Trustee has provided notice to The Connecticut Community Foundation (formerly known as the Waterbury Foundation), the charity named in the residue clause, but has not provided notice to any of the individuals named therein.[2]

30. Rule 32.2 of the Connecticut Probate Practice Book provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

31. On February 16, 2017, a Certificate of Incorporation for the Independent Foundation was filed with the Connecticut Secretary of State, naming Attorney Ann Zucker, of Carmody Torrance Sandak and Hennessey, as the registered agent for service of process. The name of the Independent Foundation is "Waterbury Hospital Foundation, Inc." Although incorporated, the Independent Foundation has no board of directors, officers, or independent counsel to represent its interests.

32. The Trustee has sent notice for the Independent Foundation to Attorney Ann Zucker, the registered agent for service of process, but is uncertain whether, under the circumstances described in Paragraph 31, such notice satisfies the requirements of Rule 32.2.

II. Jurisdiction

This Court has the authority to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes § 45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes § 45a-98(a)(5). This Court's guidance is necessary to administer the Trust under the Will in accordance with the Testator's intent.

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[2] As explained in Section III(b) of this Petition, the Trustee believes that the residue clause under Article 10 is irrelevant in the current proceeding. However, should the Court determine otherwise, the Trustee has provided notice to The Connecticut Community Foundation, one of the charities named in the residue clause.

The Trustee has not provided notice to the individuals named in the residue clause. If the Court determines that the individuals identified therein have an interest in the proceeding and are entitled to notice, the Trustee respectfully requests that, if necessary, the Court appoint one or more guardian ad litem to protect the potential interests in this proceeding of the following individuals named in Article 10:

a. Samuel Elton or, if he is not living, the issue of Samuel Elton;
b. John Buell Elton or, if he is not living, the issue of John Buell Elton;
c. Deborah Richmond Elton Allen or, if she is not living, the issue of Deborah Richmond Elton Allen; and
d. Charlotte Elton Cross or, if she is not living, the issue of Charlotte Elton Cross.

III. Issues

a. Construction

The terms of the Will do not direct how Waterbury Hospital's share of the income should be distributed in the current circumstances in which the named beneficiary has ceased its operations as a hospital but continues to exist as a legal entity during the Wind Down Period.

Accordingly, the Trustee respectfully requests that the Court construe Article 6 to determine the appropriate recipient of Income by determining whether the Testator intended for the Income to be distributed to Waterbury Hospital in the event that it ceased to operate as a hospital, but continued to maintain a legal existence.

If this Court determines that paying the Income to Legacy GWHN under these circumstances is consistent with the Testator's intent, the Trustee will distribute the Income to Legacy GWHN, and will file a subsequent petition with this Court to address the appropriate recipient of the Future Income.

If, however, this Court determines that distributing the Income to Legacy GWHN is inconsistent with the Testator's intent, the Trustee (1) respectfully requests that the Court construe the Will to determine whether the Testator intended for a failed income interest in the Trust created under Article 6 to pass pursuant to the residue clause under Article 10, and (2) requests the Court's guidance and, if necessary, the application of the doctrine of cy pres or approximation to determine the appropriate recipient of the Income and Future Income.

b. Notice

The Trustee is uncertain as to whether notice to the agent for service of process for the Independent Foundation satisfies the requirements of Rule 32.2 of the Connecticut Probate Practice Book for purposes of this petition. The Independent Foundation does not have a board of directors, officers, or independent counsel. The registered agent for service of process is the same attorney who represented Legacy GWHN in the Sale and an attorney of the firm that currently represents Legacy GWHN.

c. Applicability of Residue Clause

The Trustee does not believe that the residue clause under Article 10 of the Will is relevant in the current proceeding, nor does the Trustee believe that the individuals identified therein could be eligible takers even if the residue clause were determined by the Court to apply. The Trustee believes that the Trust does not qualify as a "lapsed legacy" or "devise," which would trigger the applicability of the residue clause. If, however, the Court were to disagree, the Trustee also believes that it could not comply with the residue clause as written because the Trust is a private foundation and, pursuant to Connecticut law regarding the administration of charitable trusts and private foundations, it would be prohibited from making a distribution to the

individuals.[3] The Trustee respectfully requests that the Court confirm that the residue clause under Article 10 is inapplicable to a failed income interest under Article 6.

IV. Discussion

a. Construction

Connecticut law governing the construction of wills is well established:

> "The cardinal rule to be followed in constructing a will is to find and effectuate the intent of the testator. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written ... To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction.' (Citations omitted.) *Dei Cas v. Mayfield*, 199 Conn. 569, 572 (1986). The court must 'look first to the precise wording employed by the testat[or] in h[is] will ... for the meaning of the words as used by the testat[or] is the equivalent of h[is] legal intention-the intention that the law recognizes as dispositive.' (Citations omitted.) *Canaan National Bank v. Peters*. 217 Conn. 330, 335-36 (1991).

Blumenthal v. Sharon Hosp., Inc., No. CV0200885375S, 2003 WL 21384569, at *24 (Conn. Super. Ct. June 3, 2003).

Pursuant to Article 6 of the Will, the Trust income is to be paid, in equal shares, "to ST. JOHN'S PARISH OF THE PROTESTANT EPISCOPAL CHURCH, of Waterbury, Connecticut, and to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to each of them absolutely." The Testator did not place any restrictions on the use of income. However, it is unclear whether in naming Waterbury Hospital as an income beneficiary of the Trust, the Testator intended to benefit Waterbury Hospital regardless of whether it was actively engaged in the provision of hospital services or whether the Testator intended the ongoing provision of hospital services to be a prerequisite to Waterbury Hospital's receipt of the Trust's income. The Will is also silent with respect to the appropriate recipient of Waterbury Hospital's share of the income in the event that Waterbury Hospital were to be acquired by another organization or go out of existence.

The Trustee's records contain no additional evidence of the Testator's intent that supplements or informs the construction of the Will with respect to the disposition of Income.

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[3] The Trustee has provided notice to the organizations identified in the residue clause but does not believe that these organizations have an interest in the current proceeding based on the relevance of the residue clause itself. It is the Trustee's expectation that these organizations may claim an interest in the current proceeding because, should cy pres be necessary, they are organizations identified in the Will and their mention in the governing document may serve as evidence of the Testator's intent in the event of the failure of the specified charitable purpose of the Trust.

Two recent Connecticut cases may be informative: *In re Winsted Memorial Hospital*, 249 B.R. 588 (Bankr. D. Conn. 2000), a decision of the United States Bankruptcy Court for the District of Connecticut, and *Blumenthal v. Sharon Hospital, Inc.*, No. CV0200885375S, 2003 WL 21384569 (Conn. Super. Ct. June 3, 2003), an unreported Connecticut Superior Court case. The Trustee does not take a position as to the precedential implications of either of these cases on the issue presented here.

i. *In re Winsted Mem'l Hosp.*

In *In re Winsted Memorial Hospital*, the United States Bankruptcy Court for the District of Connecticut examined whether the hospital's interests in certain charitable gifts qualified as property of the hospital's Chapter 7 bankruptcy estate although the hospital had ceased to operate as a hospital prior to the filing of its bankruptcy petition. The court noted that "[t]he Hospital, while it has ceased operations and filed a bankruptcy petition, has neither dissolved its corporate existence nor finished winding down its affairs." 249 B.R. at 594. The bankruptcy court decided that "[w]hether the Trustee's use of the gifts at issue to pay debts incurred by the Hospital when it was still providing patient services is a valid charitable use depends on whether, in the absence of the bankruptcy filing, the Hospital would have been permitted to do so." *Id.* It concluded as follows:

> There is no Connecticut case law on this issue, but the court is persuaded by, and will follow, the decisions in several other states to the effect that a charitable organization which retains its corporate existence may, even though it has ceased operating, continue to receive and use charitable gifts, provided it applies such gifts in accordance with the intent of the donor.

Id.

The third party trusts at issue in *Winsted* each "permit[ted] the Hospital to use the funds distributed to it for its general expenses or general charitable purposes, without further restriction." *Id.* at 592-93.

The court held that the hospital's income interests in the third party trusts that vested prior to (or within 180 days following) the hospital's 1996 bankruptcy filing qualified as property of the hospital's bankruptcy estate and could be used to satisfy the hospital's pre-bankruptcy obligations incurred in furtherance of the relevant charitable purpose.

ii. *Blumenthal v. Sharon Hosp., Inc.*

Blumenthal v. Sharon Hospital, Inc. addressed the sale of the assets of a nonprofit hospital to a for-profit hospital and was "the first [case] to apply the [Conversion Act]." 2003 WL 21384569, at *1.

The court in *Blumenthal* addressed the payment of trust income to a hospital which had ceased to operate but continued to maintain a legal existence. The court in *Blumenthal* found that "[w]ith the cessation of nonprofit healthcare services associated with the sale, the nonprofit

Sharon Hospital has for all practical purposes ceased to exist." *Blumenthal*, 2003 WL 21384569, at *25.

The court's decision applied to Sharon Hospital's charitable endowment funds, but also addressed a number of third party trusts that benefited Sharon Hospital. "Pursuant to the sale and the Attorney General's analysis of close to two hundred gift instruments held by the hospital, certain gifts were determined to require either construction or approximation by the court." *Id.*, at *21. These included the third party trusts.

The court determined that a number of the third party trusts at issue required the application of cy pres or approximation because they did not name alternative charitable beneficiaries in the event that Sharon Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist, but contained a reverter or giftover provision, which put the charitable nature of the trust at risk. The court held with respect to one such trust as follows:

> As a result of the sale of the nonprofit Sharon Hospital, Inc., to Essent CT, the nonprofit Sharon Hospital has ceased to exist, constituting a change of circumstances such that it has become impossible, impracticable or illegal for the trustee to continue to distribute the annual income to Sharon Hospital . . . In accordance with the doctrine of approximation, the court finds that the I. Kent Fulton Trust was intended to benefit Sharon Hospital and the community it serves. Accordingly, the net income shall be applied to [the independent community foundation] to be transferred to its general charitable purposes and to serve the residents of the affected community.

Blumenthal, 2003 WL 21384569, at *22.

Other third party trusts at issue provided for an alternative disposition of trust income in the event that Sharon Hospital were to "cease to exist." The court was asked to construe the testator's intent in connection with these provisions by determining whether the fact that Sharon Hospital ceased its provision of hospital services but continued to maintain a corporate existence to wind down its affairs meant that Sharon Hospital had "cease[d] to exist" pursuant to the terms of the governing document. The court concluded as follows:

> Although the hospital technically still exists on the books of the Secretary of State as a corporation, it has ceased providing patient services and abandoned its original charter purposes. All that is left is a shell hospital corporation. With the cessation of its healthcare functions, Sharon Hospital has, in the most fundamental sense, "ceased to exist" as a charity because it has ceased to provide healthcare to the public.

Id., at *26.

For all third party trusts, the court concluded that the income should be distributed to an entity other than the shell entity remaining after the sale of Sharon Hospital. In some trusts, the alternative beneficiary was identified in the governing document and, for other trusts, the

alternative beneficiary was the independent community foundation established to provide healthcare services to the community previously served by Sharon Hospital.

b. The Residue Clause

The residue clause under Article 10 provides that "[a]ll of the rest and residue of [the Testator's] estate, both real and personal, and wheresoever situated, including any lapsed or void legacies or devises" will pass in accordance with its terms. However, the residue clause should not apply here, as no "lapsed legacy" or "devise" exists. Moreover, even if the residue clause were applicable to the failed income interest at issue, the Trustee would be prohibited from complying with those of its terms that provide for distributions to the individuals identified therein.

At issue here is a failed income interest (should the Court determine that the income interest has failed), which differs from a lapsed legacy. "A lapsed legacy is one, which, at the time of making the will, is inchoate and good, but is subsequently frustrated." *Brewster v. McCall's Devisees*, 15 Conn. 274 (1842). A common example of a lapsed legacy is when a beneficiary dies before the testator. (*See, e.g.*, *First Nat'l Bank & Trust Co. v. Baker*, 124 Conn. 577, 583–84 (1938); *Huntington v. Camp*, 11 Conn. Super. 170, 175 (1942)). In such a case, the legacy or devise was never good. Conversely, the Trust has operated satisfactorily for many years following the Testator's death.

In *Blumenthal v. State St. Bank & Trust*, a nonprofit hospital beneficiary ceased operations and went into bankruptcy, leaving charitable gifts in the bankruptcy estate in need of distribution. 2006 WL 574176 (Conn. Super. Ct. Feb. 24, 2006). The court noted that Connecticut follows the Restatement (Second) of Trusts §399, "which provides that if property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible or impracticable or illegal to carry out the particular purpose, and if the settlor manifested a more general intention to devote the property to charitable purposes, the trust will not fail[.]" *Id.* at 10 (internal quotation marks omitted). In such a situation, "a court must seek a method or result which as nearly as possible effectuates the intent of the testator[.]" *Id.* at 11. Here, the Testator's charitable intent is clear, and therefore the trust should not fail. ("All of the gifts that are subject to this proceeding are clearly charitable in nature because they were given to the Hospital, a charitable institution." *Id.* at 10.)

Although not expressly stated in the Will, there are at least two reasons why a failed income interest under the Trust created under Article 6 should not and could not pass pursuant to the terms of Article 10.

First, the Testator provided for the Trust's income to pass to Waterbury Hospital without any restrictions or contingent beneficiaries identified. This suggests that the Testator did not anticipate that his gift of an income interest in the Trust would fail at any time in the future, but rather that it would continue forever.

Second, it would be inconsistent with Connecticut law and the Testator's apparent charitable intent to have a failed charitable interest under Article 6 pass pursuant to the terms of

Article 10. The Trust is classified as a private foundation under Internal Revenue Code § 509. Connecticut General Statutes Section 33-281c(a)(1) states the following with respect to the administration of a trust that is a private foundation:

> In the administration of any trust which is a "private foundation", as defined in Section 509 of the Internal Revenue Code [...], a "charitable trust", as defined in Section 4947(a)(1) of said code, [...], the following acts shall be prohibited during the period while it is such a private foundation, [...]: (A) Engaging in any act of "self-dealing", as defined in Section 4941(d) of said code; (B) retaining any "excess business holdings", as defined in Section 4943(c) of said code; (C) making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of Section 4944 of said code, so as to give rise to any liability for tax imposed on such trust by Section 4944 of said code; or (D) making any "taxable expenditures", as defined in Section 4945(d) of said code; [...].

A distribution to an individual pursuant to Article 10 would be a "taxable expenditure" and therefore prohibited.[4]

If the Trustee were to terminate the private foundation status of the Trust in order to attempt to comply with the Testator's intent under Article 10 (assuming the Court determined that the residue clause did apply), the Trustee would nevertheless be frustrating the Testator's intent because Internal Revenue Code § 507 imposes a termination tax on private foundations that voluntarily or involuntarily terminate their status as private foundations. The termination tax equals the lesser of (i) the "aggregate tax benefit" received as a result of the organization's exempt status and (ii) all of the assets of the foundation upon termination of private foundation status. The aggregate tax benefit, in turn, is the sum of the total benefits received by substantial contributors to the private foundation, the total benefits received by the private foundation and the total interest on the increases in tax that would have resulted without these benefits.

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[4] Internal Revenue Code Section 4941(d) defines a "taxable expenditure" as follows:

> For purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation
> (1) to carry on propaganda, or otherwise attempt, to influence legislation, within the meaning of subsection (e),
> (2) except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive,
> (3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g),
> (4) as a grant to an organization unless
> (A) such organization
> (i) is described in paragraph (1) or (2) of section 509(a).
> (ii) is an organization described in Section 509(a)(3) (other than an organization described in clause (i) or (ii) of section 4942(g)(4)(A)), or
> (iii) is an exempt operating foundation (as defined in section 4940(d)(2)), or
> (B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or
> (5) for any purpose other than the one specified in section 170(c)(2)(B).

Therefore, if the Trustee were to terminate the Trust's private foundation status in order to distribute income from the Trust to an individual identified in Article 10, it would subject the Trust to a termination tax under Code § 507 equal to the lesser of the sum of the tax benefits it has received, plus interest, and the current total value of the Trust property. In other words, a significant portion, if not all, of the Trust property would, in essence, escheat to the federal government—a result the Testator would never have intended.

Finally, under Connecticut General Statutes § 45a-514, "[a]ny charitable trust...shall forever remain to the uses and purposes to which it has been granted according to the true intent and meaning of the grantor and to no other use." As noted in *Blumenthal*, "Trusts created for the benefit of a nonprofit hospital as is the case here, are charitable in nature," 2003 WL 21384569, at 22; and "'[s]uch gifts are highly favored and courts, while remaining within legal limitations, go to great lengths in sustaining legacies to charitable uses.' *Ministers Benefit Board v. Meriden Trust Co.*, 139 Conn. 435, 448 (1953)." *Id.*

Therefore, if the Court determines that Legacy GWHN is not the appropriate recipient of Income, the Trustee respectfully requests that the Court apply the doctrine of cy pres or approximation.

c. The Doctrine of Cy Pres

If this Court determines that Legacy GWHN is not the appropriate recipient of the Income, the Trustee respectfully requests that the Court apply the doctrine of cy pres or approximation to determine the proper recipient of the Income and the Future Income.

Under Connecticut General Statutes § 45a-98a(a)(1), this Court has jurisdiction to apply cy pres only if "the matter in dispute is not pending in another court of competent jurisdiction...." While the Superior Court action will decide the fate of GWHN's endowment funds, that action will not address the recipient of distributions from the third party trusts, such as the Trust. Connecticut has adopted the doctrine of cy pres in order to permit the modification of a charitable trust when necessary to preserve and effectuate the testator's intent in light of changed circumstances. Under Connecticut General Statutes § 45a-514, "[a]ny charitable trust...shall forever remain to the uses and purposes to which it has been granted according to the true intent and meaning of the grantor and to no other use."

The court in *Blumenthal* summarized the doctrine of cy pres as follows:

> In determining the construction of a charitable trust upon the failure of its stated purpose, the court applies the common law doctrine of cy pres, or approximation to as near as possible reflect the donor's intent. When it becomes illegal or otherwise impossible to carry out the terms of a charitable trust, rather than allow it to fail, the court will apply the doctrine of cy pres or approximation in order to carry out the charitable intentions of the donor as near as possible. "The rule of cy pres is a rule for the construction of instruments in equity, by which the intention of the party is carried out *as near as may be,* when it would be impossible or illegal to

> give it literal effect ... The doctrine of cy pres may be applied without the consent of the donor."... *Carl J. Herzog Foundation, Inc. v. University of Bridgeport,* 243 Conn. 1, 10 n. 8 (1997). "The doctrine applies in situations where a testator has evidenced a dominant intent to devote his property to some charitable use but the circumstances are such that it becomes impossible to follow the particular method he directs, and the courts then sanction its use in some other way which will, as nearly as may be, approximate his general intent." *Duncan v. Higgins,* 129 Conn. 136, 140 (1942). The court has broad powers of interpretation under the doctrine and has final decision making authority. 'It is clear that once the authority of the court is invoked, the ultimate responsibility for the application of the doctrine of cy pres or approximation to a charitable trust lies with the court and not with the trustees or the attorney general ... Consequently, the plan finally adopted by the court need not necessarily be one proposed or consented to by any of the parties ... The court, in applying the doctrine, is required to consider not only the language used in creating the trust but, if necessary, extrinsic facts as well." ... *Belcher v. Conway,* 179 Conn. 198, 205 (1979).

Blumenthal, 2003 WL 21384569, at *4.

d. Application of the Doctrine of Cy Pres

To invoke the doctrine of cy pres, the court must find three elements. First, the purpose of the trust must be charitable in nature. *Shannon v. Eno*, 120 Conn. 77, 86 (1935). "A charitable trust is one which performs some governmental function, such as fostering education, relief of poverty, care of the sick or aged, burial of the dead, or performs some other public task which relieves the governmental burden of the state." *Lockwood v. Killian*, 172 Conn. 496, 512 (1977) (Bogdanski, J., dissenting). *See also Bannon v. Wise*, 41 Conn. Supp. 469, 474 (Super. Ct. 1990), *aff'd*, 217 Conn. 457 (1991). Second, the court must find that the testator's specified charitable purpose cannot be executed effectively due to illegality, impossibility, impracticality or changed circumstances. *Shannon*, 120 Conn. at 86. Finally, the testator must have demonstrated "a general intent to devote the property to a charitable use, to which the intent that it go to the particular organization named is secondary." *Duncan v. Higgins*, 129 Conn. 136, 140 (1942). To determine whether the testator had a general charitable intent, the court will consider the amount donated, the designation of a remainder beneficiary in the event that the donation fails, the provision of individual bequests to family members, and the size of other charitable bequests, if any. *Lockwood v. Killian*, 179 Conn. 62, 67 (1979).

If this Court determines that it must apply the doctrine of cy pres to substitute Waterbury Hospital with another charitable organization to preserve the Testator's charitable intent, the Trustee anticipates that St. John's Parish, the Independent Foundation and the Connecticut Community Foundation will claim to be among the possible substitute beneficiaries. If the Court finds that the Independent Foundation is the appropriate recipient of Income and Future Income, the Trustee will continue to accumulate income pending receipt by the Independent Foundation of its tax-exempt status from the Internal Revenue Service.

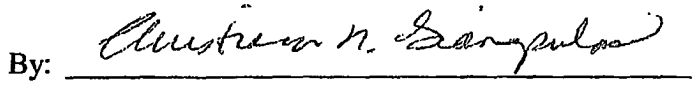
Alternatively, if the Court wishes to defer its decision until the conclusion of the Superior Court Action addressing the disposition of GWHN's endowment funds, the Trustee will continue to accumulate income until it files a subsequent petition that takes into consideration the outcome of the Superior Court Action.

V. Prayer for Relief

The Trustee respectfully requests that this Court (1) construe Article 6 of the Will and direct the Trustee on the distribution of the Income, (2) determine, for purposes of this petition, whether the notice requirements of Rule 32.2 of the Connecticut Probate Practice Book have been satisfied with respect to (a) the Independent Foundation and (b) the parties identified in the residue clause, and (3) confirm that the residue clause under Article 10 is not and/or would not be applicable to a failed income interest under Article 6.

Respectfully Submitted,

Bank of America, N.A., Trustee

By: 

Date: November 28, 2017

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Exhibit C

Petition for the Construction of the
Almon B. Dayton Trust u/w dtd 08/23/1940
f/b/o Waterbury Hospital et al.,
Bank of America, N.A., Trustee
(without exhibits)

TO: Waterbury Probate Court, District No. 20

RE: Almon B. Dayton Trust u/w dtd 08/23/1940 f/b/o Waterbury Hospital et al., Bank of America, N.A., Trustee (the "Trust")

PETITION FOR CONSTRUCTION OF TRUST

This petition seeks the Court's direction on the interpretation of ARTICLE ELEVENTH of the Last Will and Testament of Almon B. Dayton dated August 23, 1940 (the "**Will**") to determine the proper distribution of Waterbury Hospital's share of the income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("**GWHN**") of its assets to Prospect Medical Holdings, Inc. ("**PMH**").

I. Background

Bank of America, N.A., trustee of the Trust (the "**Trustee**"), represents that:

1. Following the death of Almon B. Dayton (the "**Testator**"), the Will was duly admitted to probate by this Court. (*See* Exhibit A for a copy of the Will.)

2. ARTICLE ELEVENTH of the Will disposes of the residue of the Testator's estate. The Testator created the Trust under ARTICLE ELEVENTH as follows:

> All of the rest, residue and remainder of my estate, real and personal, wheresoever situated, I give, devise and bequeath unto my trustee hereinafter named, in trust nevertheless, to hold, manage, control, invest and reinvest in the manner by law provided, to collect the income and increment thereof, and to disburse the income and principal of said trust estate in the manner and form following, to-wit:
>
> [...]
>
> C. Upon the death of my said wife or if she shall have predeceased me, the net income of said trust shall thereafter be distributed as follows:
>
> 1) One-fifth of the net annual income of said trust shall be paid unto my niece [...] and upon her death, or if she shall have deceased, said share of said net income shall be paid annually in equal shares unto THE WATERBURY HOSPITAL of Waterbury, Connecticut, THE WATERBURY ANTI-TUBERCULOSIS LEAGUE OF WATERBURY, INCORPORATED, of said Waterbury and THE GAYLORD FARM SANITORIUM of Wallingford, Connecticut, in perpetuity.[1]

[1] To the best of the Trustee's information and belief, The American Lung Association of the Northeast (ALAN) is successor to The Waterbury Anti-Tuberculosis League of Waterbury, Incorporated, and the Gaylord Hospital is successor to The Gaylord Farm Sanatorium.

2) One-fifth of the net annual income of said trust estate shall be paid unto my nephew [...] and upon his death, or if he shall have deceased, said share of said income shall be paid equally unto THE WATERBURY VISITING NURSE ASSOCIATION, THE LINCOLN HOUSE ASSOCIATION and THE SALVATION ARMY CORPS OF WATERBURY, in perpetuity.[2]

3) One-fifth of the net annual income of said trust estate shall be paid unto my niece [...] and upon her decease or if she shall have predeceased me, said share of said income shall be paid equally unto THE WATERBURY BOYS' CLUB, THE WATERBURY COUNCIL OF BOY SCOUTS, THE WATERBURY COUNCIL OF GIRL SCOUTS and THE EVERGREEN CEMETERY ASSOCIATION, INCORPORATED OF WATERTOWN, CONNECTICUT, all in perpetuity.[3]

4) One-fifth of the net annual income of said trust estate shall be paid unto THE YOUNG MEN'S CHRISTIAN ASSOCIATION, INCORPORATED OF WATERBURY, in perpetuity.

5) One-fifth of the net annual income of said trust estate shall be paid unto THE SECOND ECCLESIASTICAL SOCIETY OF WATERBURY, in perpetuity, to be used for the needy poor of the SECOND CONGREGATIONAL CHURCH OF WATERBURY.[4]

3. ARTICLE ELEVENTH further provides as follows:

If any one or more of the aforesaid religious and philanthropic organizations named as beneficiaries herein shall cease to exist or shall relinquish its corporate charter, or shall fail for any reason to function in the territory in which it is now located, its share of the income as hereinbefore determined shall be paid by my said trustee to THE WATERBURY FOUNDATION INCORPORATED OF WATERBURY, CONNECTICUT, to be used by the directors of said Foundation for

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[2] To the best of the Trustee's information and belief, Hartford HealthCare at Home (HHH) is successor to The Waterbury Visiting Nurse Association, Family Services of Greater Waterbury was the successor to The Lincoln House Association, and the Waterbury Corps branch of The Salvation Army is successor to The Salvation Army Corps of Waterbury. Family Services of Greater Waterbury, Inc. dissolved on September 8, 2016, and the Trustee has been accumulating its share of the Trust's income and will distribute this accumulated income to The Connecticut Community Foundation (formerly known as The Waterbury Foundation of Waterbury, Connecticut) pursuant to ARTICLE ELEVENTH of the Will.

[3] To the best of the Trustee's information and belief, the Boys and Girls Club of Greater Waterbury is successor to The Waterbury Boys' Club, and the Girl Scouts of Connecticut is successor to the Waterbury Council of Girl Scouts.

[4] To the best of the Trustee's information and belief, the First Congregational Church (FCC) is successor to the Second Congregational Church of Waterbury.

religious or charitable purposes, preferably for some use similar to that performed by the corporation previously receiving said income.

4. THE WATERBURY FOUNDATION INCORPORATED of Waterbury, Connecticut, is now known as The Connecticut Community Foundation.

5. Under ARTICLE TWELFTH of the Will, the Testator appointed The Citizens and Manufacturers National Bank of Waterbury as trustee of the Trust. The Trustee is successor to The Citizens and Manufacturers National Bank of Waterbury.

6. The value of the Trust as of October 31, 2017 was $635,976.34.

7. The Trust identifies Waterbury Hospital, Inc. as a current income beneficiary, entitled to one-third of one-fifth of the net annual income of the Trust.

8. GWHN is a non-stock, 501(c)(3) charitable corporation and is the parent company of Waterbury Hospital.

9. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California, following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("**OHCA**") and the Office of the Attorney General ("**OAG**") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes § 19a-639a and § 19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "**Sale**"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "**OHCA Decision**"). (*See* Exhibit B for a copy of the OHCA Decision.)

10. In addition, the Nonprofit Hospital Conversion Act, Connecticut General Statutes § 19a-486 et seq., (the "**Conversion Act**") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes § 19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "**Final Decision**"). (*See* Exhibit C for a copy of the Final Decision.)

11. The Conversion Act requires that

> the net asset value of the nonprofit hospital be transferred to "one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care services." Conn. Gen. Stat. § 19a-486c(8)(A).

(*See* Exhibit C, p.40.)

In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "**Independent Foundation**") following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act. (*See* Exhibit C, p. 41.)

12. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation" in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "**Superior Court Action**"). (*See* Exhibit C, pp. 9-10.)

13. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale. (*See* Exhibit B, p.9.)

14. The Sale closed on October 1, 2016 (the "**Closing**").

15. GWHN has ceased hospital operations and the provision of any hospital services as of the Closing, but continues to exist as a legal entity ("**Legacy GWHN**") charged with winding down its affairs following the Sale as provided in the Final Decision. In addition, Waterbury Hospital's license as a general hospital with the State of Connecticut became inactive as of the Sale, and a new license for the hospital acquired by PMH was issued following the Sale.

16. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "**Accumulated Income**"). The Accumulated Income on hand as of October 31, 2017 was $13,339.77.

17. The Final Decision identifies the Trust as a "third party trust without use restrictions." (*See* Exhibit C, p. 24.) As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." (*See* Exhibit C, pp. 10, 24, 48.)

18. The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust. The Trustee filed construction petitions to determine the appropriate recipient of each trust's income following the Sale,[5] and a consolidated hearing on these six matters was held before Judge Brian T. Mahon at the Meriden Probate Court on April 4, 2017. Petitions for the remaining seven of the thirteen third party trusts, including the Trust, will be filed with this Court and the Naugatuck and Litchfield Hills Probate Courts, and copies of the filed petitions, including this petition, will be sent to Judge Mahon at the Meriden Probate Court.

19. The Final Decision provides for the disposition of GWHN's charitable endowment funds (referred to in the Final Decision as the "charitable gift assets," "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "**Wind Down Period**") as follows: "The charitable assets of GWHN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities." (*See* Exhibit C, p.7.)

20. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area." (*See* Exhibit C, p.7.)

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[5] Petitions were filed for the following six trusts:

a. Jacob Keeling Trust u/w dated June 30, 1952 f/b/o Waterbury Hospital, filed with the Naugatuck Probate Court on December 30, 2016;

b. Frank Keeling Trust u/w dated December 15, 1954 f/b/o Waterbury Hospital, filed with the Naugatuck Probate Court on December 30, 2016;

c. Henry H. Peck Trust u/w dated June 12, 1918 f/b/o Waterbury Hospital, filed with the Waterbury Probate Court on December 30, 2017;

d. Edith F. Poole Trust u/w dated April 11, 1928 f/b/o Waterbury Hospital and First Congregational Church, filed with the Waterbury Probate Court on January 9, 2017;

e. Charles M. Hellmann Trust u/w dated June 13, 1955 f/b/o Waterbury Hospital and St. Mary's Hospital, filed with the Meriden Probate Court on January 25, 2017; and

f. Rhoda M. Hellmann Trust u/w dated November 11, 1969, as amended on June 24, 1971, May 21, 1980 and May 23, 1980, f/b/o Waterbury Hospital and St. Mary's Hospital, filed with the Meriden Probate Court on January 25, 2017.

After a consolidated hearing, decrees for these six matters were entered by Judge Mahon on July 26, 2017. (*See* Exhibits D, E, F, G, H and I for copies of the six decrees.)

On August 25, 2017, the Attorney General filed motions for articulation with respect to Judge Mahon's decrees in four of the six matters (See Exhibits J, K, L and M for copies of the four motions for articulation), and Judge Mahon entered findings with respect to the Attorney General's motions on September 6, 2017. (*See* Exhibits N, O, P and Q for copies of Judge Mahon's findings).

The Attorney General did not file motions for articulation with respect to the decrees in the Rhoda Hellmann and Charles Hellmann matters.

21. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," (*See* Exhibit C, p. 9): "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community." (*See* Exhibit C, p.7.)

22. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation." (*See* Exhibit C, pp.8-9.)

23. The Trustee understands that Legacy GWHN has significant pre-closing liabilities, and that distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period may be largely or entirely applied to the payment of creditors. The Trustee also understands that if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "**Income**"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

24. Legacy GWHN has communicated to the Trustee its belief that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

25. The Trustee is uncertain as to whether Legacy GWHN is or is not the proper recipient of the Income.

26. Legacy GWHN has made no claim to Waterbury Hospital's share of the income following the conclusion of the Wind Down Period (the "**Future Income**"), and the Trustee intends to distribute the Future Income to the Connecticut Community Foundation pursuant to the terms of the Trust.

27. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the

Trustee will pay the Income to Legacy GWHN, and will pay the Future Income to the Connecticut Community Foundation. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee will pay the Income and the Future Income to the Connecticut Community Foundation.

28. A list of interested parties is attached as Exhibit R.[6]

II. Jurisdiction

This Court has the authority to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes § 45a-98(a)(4). This Court's guidance is necessary to administer the Trust under the Will in accordance with the Testator's intent.

III. Issue

The terms of the Will do not direct how Waterbury Hospital's share of the income of the Trust should be distributed in the current circumstances in which a named beneficiary has ceased its operations as a hospital but continues to exist as a legal entity during the Wind Down Period.

Accordingly, the Trustee respectfully requests that the Court construe ARTICLE ELEVENTH to determine the appropriate recipient of the Income by determining whether the Testator intended for the Income to be distributed to Waterbury Hospital in the event that it ceased to operate as a hospital, but continued to maintain a legal existence.

If this Court determines that paying the Income to Legacy GWHN under these circumstances is consistent with the Testator's intent, the Trustee will distribute the Income to Legacy GWHN and will distribute Future Income to the contingent beneficiary, the Connecticut Community Foundation, pursuant to the terms of the Trust.

If, however, this Court determines that distributing the Income to Legacy GWHN is inconsistent with the Testator's intent, the Trustee will distribute both the Income and the Future Income to the Connecticut Community Foundation as the successor to the named contingent beneficiary under the Trust.

IV. Discussion

Connecticut law governing the construction of wills is well established:

> "The cardinal rule to be followed in constructing a will is to find and effectuate the intent of the testator. In seeking that intent, the court looks

[6] The Trustee does not believe that the Independent Foundation has an interest in the current proceeding because the Trust identifies The Waterbury Foundation Incorporated, of Waterbury, Connecticut, as a contingent beneficiary in the event that Waterbury Hospital should cease to exist, relinquish its corporate charter or fail for any reason to function in the territory in which it was located at the time of the execution of the Will. However, should the Court determine that the Independent Foundation should have the opportunity to be heard, the Trustee has provided notice to the registered agent of the Independent Foundation.

> first to the will itself and examines the words and language used in the light of the circumstances under which the will was written ... To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction." (Citations omitted.) *Dei Cas v. Mayfield*, 199 Conn. 569, 572 (1986). The court must "look first to the precise wording employed by the testat[or] in h[is] will ... for the meaning of the words as used by the testat[or] is the equivalent of h[is] legal intention-the intention that the law recognizes as dispositive." (Citations omitted.) *Canaan National Bank v. Peters*, 217 Conn. 330, 335-36 (1991).

Blumenthal v. Sharon Hosp., Inc., No. CV0200885375S, 2003 WL 21384569, at *24 (Conn. Super. Ct. June 3, 2003).

Pursuant to paragraph 1 of Section C of ARTICLE ELEVENTH, one-third of one-fifth of the Trust income is to be "paid annually [...] unto THE WATERBURY HOSPITAL of Waterbury, Connecticut, [...] in perpetuity." The Testator did not place any restrictions on the use of income. It is unclear whether in naming Waterbury Hospital as an income beneficiary of the Trust, the Testator intended to benefit Waterbury Hospital regardless of whether it was actively engaged in the provision of hospital services or whether the Testator intended the ongoing provision of hospital services to be a prerequisite to Waterbury Hospital's receipt of the Trust's income. In other words, by ceasing its hospital operations, did Waterbury Hospital effectively "cease to exist" under the terms of the Will?

Also relevant is whether, by ceasing its hospital operations, Waterbury Hospital has "relinquish[ed] its corporate charter" or "fail[ed] for any reason to function in the territory in which it [was located at the time of the execution of the Will]." If the Court were to determine that Waterbury Hospital has "ceased to exist," has relinquished its corporate charter or that it has failed to function in the territory in which it was located at the time of the execution of the Will, then it is the Testator's stated intent that the Income and Future Income be distributed to the Waterbury Foundation Incorporated, of Waterbury (i.e., to its successor, the Connecticut Community Foundation) as the contingent beneficiary in accordance with ARTICLE ELEVENTH.

The Trustee's records contain no further evidence of the Testator's intent that supplements or informs the construction of the Will with respect to the disposition of the Income.

Two recent Connecticut cases may be informative: *In re Winsted Memorial Hospital*, 249 B.R. 588 (Bankr. D. Conn. 2000), a decision of the United States Bankruptcy Court for the District of Connecticut, and *Blumenthal v. Sharon Hospital, Inc.*, No. CV0200885375S, 2003 WL 21384569 (Conn. Super. Ct. June 3, 2003), an unreported Connecticut Superior Court case. The Trustee does not take a position as to the precedential implications of either of these cases on the issue presented here.

i. *In re Winsted Mem'l Hosp.*

In *In re Winsted Memorial Hospital*, the United States Bankruptcy Court for the District of Connecticut examined whether the hospital's interests in certain charitable gifts qualified as property of the hospital's Chapter 7 bankruptcy estate although the hospital had ceased to operate as a hospital prior to the filing of its bankruptcy petition. The court noted that "[t]he Hospital, while it has ceased operations and filed a bankruptcy petition, has neither dissolved its corporate existence nor finished winding down its affairs." 249 B.R. at 594. The bankruptcy court decided that "[w]hether the Trustee's use of the gifts at issue to pay debts incurred by the Hospital when it was still providing patient services is a valid charitable use depends on whether, in the absence of the bankruptcy filing, the Hospital would have been permitted to do so." *Id.* It concluded as follows:

> There is no Connecticut case law on this issue, but the court is persuaded by, and will follow, the decisions in several other states to the effect that a charitable organization which retains its corporate existence may, even though it has ceased operating, continue to receive and use charitable gifts, provided it applies such gifts in accordance with the intent of the donor.

Id.

The third party trusts at issue in *Winsted* each "permit[ted] the Hospital to use the funds distributed to it for its general expenses or general charitable purposes, without further restriction." *Id.* at 592-93.

The court held that the hospital's income interests in the third party trusts that vested prior to (or within 180 days following) the hospital's 1996 bankruptcy filing qualified as property of the hospital's bankruptcy estate and could be used to satisfy the hospital's pre-bankruptcy obligations incurred in furtherance of the relevant charitable purpose.

ii. *Blumenthal v. Sharon Hosp., Inc.*

Blumenthal v. Sharon Hospital, Inc. addressed the sale of the assets of a nonprofit hospital to a for-profit hospital and was "the first [case] to apply the [Conversion Act]." 2003 WL 21384569, at *1.

The court in *Blumenthal* addressed the payment of trust income to a hospital which had ceased to operate but continued to maintain a legal existence. The court in *Blumenthal* found that "[w]ith the cessation of nonprofit healthcare services associated with the sale, the nonprofit Sharon Hospital has for all practical purposes ceased to exist." *Blumenthal*, 2003 WL 21384569, at *25.

The court's decision applied to Sharon Hospital's charitable endowment funds, but also addressed a number of third party trusts that benefited Sharon Hospital. "Pursuant to the sale and the Attorney General's analysis of close to two hundred gift instruments held by the hospital, certain gifts were determined to require either construction or approximation by the court." *Id.* at *21. These included the third party trusts.

The court determined that a number of the third party trusts at issue required the application of cy pres or approximation because they did not name alternative charitable beneficiaries in the event that Sharon Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist, but contained a reverter or giftover provision, which put the charitable nature of the trust at risk. The court held with respect to one such trust as follows:

> As a result of the sale of the nonprofit Sharon Hospital, Inc., to Essent CT, the nonprofit Sharon Hospital has ceased to exist, constituting a change of circumstances such that it has become impossible, impracticable or illegal for the trustee to continue to distribute the annual income to Sharon Hospital. . . In accordance with the doctrine of approximation, the court finds that the I. Kent Fulton Trust was intended to benefit Sharon Hospital and the community it serves. Accordingly, the net income shall be applied to [the independent community foundation] to be transferred to its general charitable purposes and to serve the residents of the affected community.

Blumenthal, 2003 WL 21384569, at *22.

Other third party trusts at issue provided for an alternative disposition of trust income in the event that Sharon Hospital were to "cease to exist." The court was asked to construe the testator's intent in connection with these provisions by determining whether the fact that Sharon Hospital ceased its provision of hospital services but continued to maintain a corporate existence to wind down its affairs meant that Sharon Hospital had "cease[d] to exist" pursuant to the terms of the governing document. The court concluded as follows:

> Although the hospital technically still exists on the books of the Secretary of State as a corporation, it has ceased providing patient services and abandoned its original charter purposes. All that is left is a shell hospital corporation. With the cessation of its healthcare functions, Sharon Hospital has, in the most fundamental sense, "ceased to exist" as a charity because it has ceased to provide healthcare to the public.

Id., at *26.

For all third party trusts, the court concluded that the income should be distributed to an entity other than the shell entity remaining after the sale of Sharon Hospital. In some trusts, the alternative beneficiary was identified in the governing document and, for other trusts, the alternative beneficiary was the independent community foundation established to provide healthcare services to the community previously served by Sharon Hospital.

V. Prayer for Relief

The Trustee respectfully requests that this Court construe ARTICLE ELEVENTH of the Will and direct the Trustee on the distribution of the Trust's Income.

Respectfully Submitted,

Bank of America, N.A., Trustee

By: _____

Date: November 28, 2017

Its Attorneys
Christiana N. Gianopulos, Esq., Juris No. 410887
Joanna M. Targonski, Esq., Juris No. 437386
Day Pitney LLP
75 Isham Road, Suite 300
West Hartford, CT 06107
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Facsimile: (860) 956-5830

Exhibit D

Decree in the matter of the John P. Elton Trust u/w dtd 11/29/1946,
as amended by Codicil dtd 06/26/1947,
f/b/o Waterbury Hospital and St. John's Parish,
Bank of America, N.A., Trustee,
dated December 19, 2017 and mailed on January 12, 2018

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Waterbury Probate Court **DISTRICT NO. PD20**

ESTATE OF/IN THE MATTER OF

JOHN P. ELTON TR fbo St. John's Parish & Waterbury Hospit (53-0108A)
FBO ST. JOHN'S PARISH, WATERBURY HOSPITAL,

PETITION FOR:	DATE OF DECREE:
Construe Trust	12/19/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on01/12/18 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Atty Michael J. Reardon, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

Brian T. Henebry, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, P.O.Box 1110, Waterbury, CT 06721-1110

AG-Charity Unit, Atty General's Office, Public Charities Unit, 55 Elm St., Hartford, CT 06101

Atty. Christiana N. Gianopulos (attorney for Bank of America), Day Pitney, LLP, Blue Back Square, 75 Isham Road, Ste 300, West Hartford, CT 06107

Legacy Waterbury Hospital Inc., c/o Stefanie DiClemente, 50 Leavenworth Street, Waterbury, CT 06721-1110

Bank of America, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108-3208

St. John's Episcopal Church, Attn: Lorraine Barker, Treasurer, 16 Church St., Waterbury, CT 06702-2103

Connecticut Community Foundation, Attn: Julie Loughran, Director of Development & Communications, 43 Field Street, Waterbury, CT 06702

Waterbury Hospital Foundation Inc., c/o Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Tracy Biolo, Deputy Chief Clerk

STATE OF CONNECTICUT
DISTRICT OF WATERBURY - #20

WATERBURY PROBATE COURT

JANUARY 3, 2018

IN RE: John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 6/26/1947 f/b/o Waterbury Hospital, St. John's Parish, and Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Article 6 and Article 10 of the Last Will and Testament of John P. Elton dated November 29, 1946, as amended by Codicil dated June 26, 1947 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH"), and to determine if giving notice to the registered agent for service of the Independent Foundation satisfies the requirement of Rule 32.2 of the Probate Court Rules of Practice.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of John P. Elton (the "Testator"), the Will was duly admitted to probate by this Court.

2. Article 6 of the Will, the Testator bequeathed one hundred thousand dollars ($100,000.00) to the Trustee to create the Trust, which provided for distribution of the annual income to several individuals and to the Testator's widow, all of whom are deceased. Article 6 provides that after the deaths of the individuals and the Testator's widow:

> "[...] the entire net income [...] shall be paid over, quarterly or at such other period as may be mutually agreed upon, in equal shares, to ST. JOHN'S PARISH OF THE PROTESTANT EPISCOPAL CHURCH, of Waterbury, Connecticut, and to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be to each of them absolutely."

3. No contingent beneficiary are named in the Will in the event that Waterbury Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist. However, the Will contains a residue clause under Article 10, which states, in relevant part:

All of the rest and residue of my estate, both real and personal, and wheresoever situated, including any lapsed or void legacies or devises, I give, devise and bequeath to THE COLONIAL TRUST COMPANY, of Waterbury, Connecticut, in trust, however, for the following purposes:

> [Net income shall be paid to the Testator's widow for her lifetime and at her death, the remaining trust property shall be allocated and distributed as follows:]
>
> Upon the death of my said wife [...], said Trustee shall distribute the principal of said trust fund then remaining as follows:
>
> The sum of Twenty-five Thousand Dollars ($25,000.00) shall be held in a separate trust by said Trustee for the benefit of my son, SAMUEL ELTON, and the sum of Twenty-five Thousand Dollars ($25,000.00) shall be held in a separate trust by my said Trustee for the benefit of my son, JOHN BUELL ELTON.
>
> [...]
>
> Upon the death of either son or should either son be not living at the time appointed for setting up the trust fund as to him, the trust fund as to such son shall cease and determine and the principal thereof then remaining shall be paid over to his issue then living, taking per stirpes, or if there are no issue then living shall be divided per stirpes among the other of my children then living and the then living issue of any children who may then be deceased, in each case to be added to any then existing trust fund of the taker created hereunder, or, if none, to become theirs absolutely.
>
> The sum of Fifty Thousand Dollars ($50,000.00) shall be held in a separate trust by said Trustee in perpetuity, the net income thereof to be paid over quarterly, or at such other periods as may be mutually agreed upon, to THE WATERBURY FOUNDATION, a charitable corporation of Waterbury, Connecticut, to be used by it for such public, charitable or educational uses and purposes within its corporate powers as may from time to time be determined by its Board of Trustees.
>
> The remainder of said principal shall be divided into two equal parts, one of said equal parts to be held in a separate trust by said Trustee for the benefit of my daughter, DEBORAH RICHMOND

> ELTON ALLEN, and one of said equal parts to be held in a separate trust by said Trustee for the benefit of my daughter, CHARLOTTE ELTON CROSS, on terms as follows: [...]
>
> Upon the death of either daughter or should either daughter not be living at the time appointed for setting up the trust fund as to her, the trust fund as to such daughter shall cease and determine, and the principal thereof then remaining shall be paid over and divided as follows:
>
> Should there be no issue of my said daughter then living, the principal of the trust fund then remaining shall be added to and become a part of the trust fund of my other daughter, to be held and disposed of as a part thereof.
>
> Should there be issue of my said daughter then living, the Trustee shall divide the trust fund then in its hands among the then living issue of such daughter in shares per stirpes, and the Trustee shall hold in trust or pay over such shares as follows: [...].

4. The Testator did not expressly reserve a reversionary interest in the Trust.

5. The Trust is classified as a private foundation under Internal Revenue Code ("Code") §509.

6. Under Article 6, the Testator appointed The Colonial Trust Company, of Waterbury, Connecticut, as trustee. The Trustee is successor to The Colonial Trust Company.

7. The value of the Trust as of October 31, 2017, was $635,976.34.

8. The Trust identifies Waterbury Hospital, Inc. as a current income beneficiary, entitled to one-half of the net annual income of the Trust, to be paid quarterly.

9. GWNH is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

10. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

11. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

12. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

13. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

14. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

15. The Sale closed on October 1, 2016 (the "Closing").

16. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

17. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "Accumulated Income"). The accumulated income on hand as of December 15, 2017 is $15,905.86.

18. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for

appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

19. The Final Decision provides for the disposition of GWHN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

20. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

21. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

22. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

23. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

24. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

25. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income"), and the Trustee intends to distribute the Future Income to the Connecticut Community Foundation pursuant to the terms of the Trust.

26. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN, and will pay the Future Income to the Connecticut Community Foundation. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee will pay the Income and the Future Income to the Connecticut Community Foundation.

27. Along with its petition, the trustee has provided the Court a list of interested parties.

28. Rule 32.2 of the Connecticut Probate Practice Book provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

29. On February 16, 2017, a Certificate of Incorporation for the Independent Foundation was filed with the Connecticut Secretary of State, naming Attorney Ann Zucker, of Carmody, Torrance, Sandak and Hennessey, as the registered agent for service of process. The name of the Independent Foundation is "Waterbury Hospital Foundation, Inc." Although incorporated, the Independent foundation has no board of directors, officers, or independent counsel to represent its interests.

30. The Trustee has sent notice for the Independent Foundation to Attorney Ann Zucker, the registered agent for service of process, but is uncertain whether, under the circumstances described in Paragraph 29, such notice satisfies the requirements of Rule 32.2.

31. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

32. The Court finds that the notice to the registered agent for service of the Independent Foundation satisfies the requirement of Rule 32.2 of the Connecticut Probate Court Rules of Practice.

33. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testatrix. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention—the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of*

Boston Connecticut v. Brewster, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

34. The relevant language of Article 6 provides that after the deaths of certain individuals and the Testator's wife, "...the entire net income... shall be paid over quarterly or at such other period as may be mutually agreed upon, in equal shares, to ST. JOHN'S PARISH OF THE PROTESTANT EPISCOPAL CHURCH, of Waterbury, Connecticut, and to THE WATERBURY HOSPITAL of Waterbury, Connecticut, to be each of them absolutely."

35. Since the Will does not restrict the use of the funds by the hospital, it is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

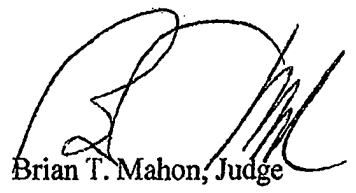
36. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of the hospital, including paying its remaining pre-closing obligations.

37. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

38. The court concludes that the intent of the testator, as expressed in the language of Article 6, permits the distribution of trust income during the wind down period to Legacy GWHN, to be used to pay any and all obligations of the preclosing GWHN, the administrative cost of GWHN, and the costs incurred in setting up the Independent Foundation.

39. The Court further finds that the residue clause under Article 10 is not and/or would not be applicable to a failed income interest under Article 6.

40. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period, and then distribute all future income to the Independent Foundation.



Brian T. Mahon, Judge

Exhibit E

Decree in the matter of the Almon B. Dayton Trust u/w dtd 08/23/1940
f/b/o Waterbury Hospital et al.,
Bank of America, N.A., Trustee,
dated December 19, 2017 and mailed on January 12, 2018

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Waterbury Probate Court **DISTRICT NO. PD20**

ESTATE OF/IN THE MATTER OF

ALMON B. DAYTON (53-0089TR)
FBO GREGORY D.HITCHCOCK ET AL,

PETITION FOR:	DATE OF DECREE:
Construe Trust	12/19/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 01/12/18 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Family Service Assoc. of Wtby, Office of the Treasurer, 34 Murray Street, Waterbury, CT 06710

Evergreen Cemetary Assoc., 183 North St., Watertown, CT 06795-1915

Legacy Waterbury Hospital Inc., c/o Stefanie DiClemente, 50 Leavenworth Street, Waterbury, CT 06721-1110

YMCA, Attn: Susan Talbott, 136 West Main St., Waterbury, CT 06702-2005

Girl Scouts of Connecticut Inc., Formerly CT Trails Council of Girl Scouts, Attn: Tasha Jackson, 340 Washington Ave., North Haven, CT 06106-3317

Gaylord Hospital, Attn: Tara Knapp, Dir. of Dvlpmt, P. O. Box 400, Wallingford, CT 06492-7048

First Cong. Church of Wtby, Harold Elwell, Treasurer, 222 West Main St., Waterbury, CT 06702-1220

AG-Charity Unit, Atty General's Office, Public Charities Unit, 55 Elm St., Hartford, CT 06101

Atty. Christiana N. Gianopulos (attorney for Bank of America), Day Pitney, LLP, Blue Back Square, 75 Isham Road, Ste 300, West Hartford, CT 06107

Bank of America, Regina Collins, SVP, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108

Salvation Army, Attn: Legal Department, 440 West Nyack Rd., West Nyack, NY 10994-1715

CT Rivers Council, Inc., Boy Scouts of America, Attn: Controller, 60 Darlin St., East Hartford, CT 06108-3201

American Lung Assoc. of CT, Inc., Adam Shuster, CFO, 45 Ash St., East Hartford, CT 06108-3294

Boys & Girls Club of Waterbury, Attn: Executive Director, 1037 East Main St., Waterbury, CT 06705-1040

Hartford Healthcare at Homes, Inc., Formerly Visiting Nurse & Home Care, Inc., Attn: Michael Soccio, Executive Director, 1290 Silas Dean Highway, Suite 4B, Wethersfield, CT 06109-4337

Waterbury Hospital Foundation, Inc., c/o Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Connecticut Community Foundation, Attn: Julie Loughran, Dir of Development & Communications, 43 Field Street, Waterbury, CT 06702

Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Brian T. Henebry, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721-1110

Atty Michael J. Reardon, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

Tracy L. Biolo

Tracy Biolo, Deputy Chief Clerk

STATE OF CONNECTICUT
DISTRICT OF WATERBURY - #20

WATERBURY PROBATE COURT

JANUARY 3, 2018

IN RE: Almon B. Dayton Trust u/w dtd 8/23/1940 f/b/o Waterbury Hospital, et al, Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Article Eleventh of the Last Will and Testament of Almon B. Dayton dated August 23, 1940 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH").

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of Almon B. Dayton (the "Testator"), the Will was duly admitted to probate by this Court.

2. Article Eleventh of the Will disposes of the residue of the Testator's estate. The Testator created the Trust under Article Eleventh which reads in part:

> All of the rest, residue and remainder of my estate, real and personal, wheresoever situated, I give, devise and bequeath unto my trustee hereinafter named, in trust nevertheless, to hold, manage, control, invest and reinvest in the manner by law provided, to collect the income and increment thereof, and to disburse the income and principal of said trust estate in the manner and form following, to-wit:
>
> [...]
>
> C. Upon the death of my said wife or if she shall have predeceased me, the net income of said trust shall thereafter be distributed as follows:
>
> 1) One-fifth of the net annual income of said trust shall be paid unto my niece [...] and upon her death, or if she shall have deceased, said share of the said net

income shall be paid annually in equal shares unto The Waterbury Hospital of Waterbury, Connecticut, The Waterbury Anti-Tuberculosis League of Waterbury, Incorporated, of said Waterbury and the Gaylord Farm Sanitorium of Wallingford, Connecticut, in perpetuity.

3. Article Eleventh further provides as follows:

> If any one or more of the aforesaid religious and philanthropic organizations named as beneficiaries herein shall cease to exist or shall relinquish its corporate charter, or shall fail for any reason to function in the territory in which it is now located, its share of the income as hereinbefore determined shall be paid by my said trustee to the Waterbury Foundation Incorporated of Waterbury, Connecticut, to be used by the directors of said Foundation for religious or charitable purposes, preferably for some use similar to that performed by the corporation previously receiving said income.

4. The Waterbury Foundation Incorporated of Waterbury, Connecticut, is now known as The Connecticut Community Foundation.

5. Under Article Twelfth of the Will, the Testator appointed The Citizens and Manufacturers National Bank of Waterbury as trustee of the Trust. The Trustee is successor to The Citizens and Manufacturers National Bank of Waterbury.

6. The value of the Trust as of October 31, 2017 was $1,765,747.90.

7. The Trust identifies Waterbury Hospital, Inc. as a current income beneficiary, entitled to one-third of one-fifth of the net annual income of the Trust.

8. GWHN is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

9. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

10. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a

transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was ~~issued by the OAG~~ on July 15, 2016 (the "Final Decision").

11. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

12. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

13. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

14. The Sale closed on October 1, 2016 (the "Closing").

15. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

16. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "Accumulated Income"). The accumulated income on hand as of December 15, 2017 is $5,722.23.

17. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

18. The Final Decision provides for the disposition of GWEN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain

its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

19. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWEN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

20. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

21. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

22. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

23. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

24. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income"), and the Trustee intends to distribute the Future Income to the Connecticut Community Foundation pursuant to the terms of the Trust.

25. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN, and will pay the Future Income to the Connecticut Community

Foundation. If this Court determines that Legacy GWHN is not the proper recipient of the Income, the Trustee will pay the Income and the Future Income to the Connecticut Community Foundation. .

26. Along with its petition, the trustee has provided the Court a list of interested parties.

27. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

28. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testatrix. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention--the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

29. The relevant language of Article Eleventh provides that a one-fifth share of the net income be paid to the testator's niece or upon the death of the testator's niece or if she predeceased the testator, "said share of said net income shall be paid annually in equal shares unto The Waterbury Hospital of Waterbury, Connecticut, the Waterbury Anti-Tuberculosis League of Waterbury, Incorporated, of said Waterbury, and the Gaylord Farm Sanitorium of Wallingford, Connecticut in perpetuity. There are no limitations on the use of the income.

30. Since the Will does not restrict the use of the funds by the hospital, it is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

31. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

32. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

33. The court concludes that the intent of the testator, as expressed in the language of Article Eleventh, permits the distribution of trust income during the wind down period to Legacy GWHN to be used pay any and all obligations of the preclosing GWHN, and the administrative cost of GWHN. The Court finds that the "failed to function in the territory" language does not

prohibit the use of trust income during the wind down period to Legacy GWHN to used as described above. Since there is a contingent beneficiary, The Connecticut Community Foundation, no funds are to be used to set up The Independent Foundation.

34. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period, and then distribute all future income to the Connecticut Community Foundation pursuant to the terms of the Trust.

Brian T. Mahon, Judge

Exhibit F

Decree in the matter of the I. Kent Fulton Trust u/w dtd 10/02/1939,
as amended by Codicil dtd 12/15/1939
f/b/o Waterbury Hospital,
Bank of America, N.A., Trustee,
dated January 29, 2018 and mailed on February 2, 2018

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Litchfield Hills Probate Court **DISTRICT NO. PD24**

ESTATE OF/IN THE MATTER OF

I. KENT FULTON (waterbury hosp) (92-0003SA)
FBO Waterbury Hospital

PETITION FOR:	DATE OF DECREE:
Construe Trust	01/29/2018

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 02/02/18 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Waterbury Hospital, ATTN: Scott Bowman, Asst. Director, Corporate Finance, 64 Robbins Street, Waterbury, CT 06708-2613

Legacy Waterbury Hospital, Inc., c/o Stefanie DeClemente, 50 Leavenworth Street, P O Box 1110, Waterbury, CT 06721-1110

Hartford Hospital, ATTN: Julie Drouin, Dir. of Finance and Budget, PO Box 5037, Hartford, CT 06102

The Sharon Area Community Health Foundation, c/o Berkshire Taconic Community Foundation, PO Box 400, Sheffield, MA 01257-0400

Kelley Galica Peck, Esq. (attorney for Bank of America), Cummings & Lockwood LLC, 75 Isham Road, Suite 400, West Hartford, CT 06107

Michael J. Reardon, Esq. (attorney for Waterbury Hospital), Carmody & Torrance, 50 Leavenworth Street, PO Box 1110, Waterbury, CT 06721-1110

Christiana N. Gianopulos, Esq., Day Pitney LLP, 75 Isham Road, Suite 300, West Hartford, CT 06107-2237

Bank of America, ATTN: Regina J. Collins, SVP, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108-3208

George Jepsen, Attorney General's Office, ATTN: Special Litigation Department, (Charitable Trusts), 55 Elm Street, 4th Floor, Hartford, CT 06106

Beth L. McGuire

Beth L. McGuire, Clerk

STATE OF CONNECTICUT
DISTRICT OF LITCHFIELD HILLS - #24

LITCHFIELD HILLS PROBATE COURT

JANUARY 29, 2018

IN RE: I. Kent Fulton Trust u/w dtd 10/2/1939, as amended by Codicil dtd 12/15/1939 f/b/o Waterbury Hospital, and Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Paragraph Tenth and Paragraph Fourteenth of the Last Will and Testament of I. Kent Fulton dated October 2, 1939, as amended by Codicil dated December 15, 1939 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH"), and to determine if giving notice to the registered agent for service of the Independent Foundation satisfies the requirements of Rule 32.2 of the Probate Court Rules of Practice.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of I. Kent Fulton (the "Testator"), the Will was duly admitted to probate by this Court.

2. Under Paragraph Tenth of the Will, Testator Created the Trust:

> To my trustee hereinafter named I give and bequeath the sum of Twenty-Five Thousand Dollars ($25,000.00), to be held by it in trust and the net income thereof to be paid over annually to the Waterbury Hospital, of Waterbury, Connecticut, to be used by said Hospital for its general uses and purposes.

3. No contingent beneficiary are named in the Will in the event that Waterbury Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist. However, the Will contains a residue clause under Paragraph Fourteenth, which states, in relevant part:

All of the rest and residue of my property and estate, of whatever nature, real and personal, and wherever situated, including lapsed legacies and devises, I give, devise and bequeath IN TRUST to my trustee hereinafter named, to be held by it in trust [... for the benefit of my wife during her lifetime and then for my son for his lifetime], and upon the death of the survivor of my said wife, my said son and myself, I direct my trustee to divide the property then constituting the principal of this trust fund into two equal parts or trusts to be held and disposed by my trustee as hereinafter provided:

> (a) One of said two equal parts shall be transferred paid over and distributed to and among the issue of my son living at the time of the death of the survivor of my said wife, my said son and myself in equal shares, per stirpes [...]. Should no issue of my said son be living at the time of the death of the survivor of my said wife, my said son and myself, all of the property then constituting the principal of this trust fund shall be added by my trustee in equal shares to the trusts provided for in subdivision (b) of this Paragraph hereinafter contained.
>
> (b) The other of said two equal parts, after the death of my said wife and son, shall be held by my trustee IN TRUST for the following purposes:
>
> One-third thereof shall be added by my trustee to the trust fund for the benefit of the Hartford Hospital, provided for in Paragraph Ninth of my last will and testament;
>
> One-third thereof shall be added by my trustee to the trust fund for the benefit of the Waterbury Hospital, provided for in Paragraph Tenth of my last will and testament;
>
> One-third thereof shall be added by my trustee to the trust fund for the benefit of The Sharon Hospital Association, provided for in Paragraph Eleventh of my last will and testament.

4. The Testator did not expressly reserve a reversionary interest in the Trust.

5. The Trust is classified as a private foundation under Internal Revenue Code ("Code") §509.

6. Under Paragraph Fifteenth, the Testator appointed the Hartford National Bank and Trust Company, of Hartford, Connecticut, and its successors, as trustee of all trusts under the Will. The Trustee is successor to the Hartford National Bank and Trust Company.

7. The value of the Trust as of October 31, 2017, was $7,068,306.15.

8. The Trust identifies Waterbury Hospital, Inc. as a current income beneficiary, of the Trust.

9. GWNH is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

10. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

11. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

12. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

13. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

14. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

15. The Sale closed on October 1, 2016 (the "Closing").

16. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision. In addition, Waterbury Hospital's license as a general hospital with the State of Connecticut became inactive as of the Sale, and a new license for the hospital acquired by PMH was issued following the Sale.

17. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "Accumulated Income"). The accumulated income on hand as of December 15, 2017 is $15,905.86.

18. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

19. The Final Decision provides for the disposition of GWHN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

20. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

21. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

22. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the

administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

23. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

24. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

25. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income").

26. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN, and will pay the Future Income to the Connecticut Community Foundation. If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will file a subsequent petition to address the Future Income following the conclusion of the Superior Court Action.

27. Along with its petition, the trustee has provided the Court a list of interested parties.

28. Rule 32.2 of the Connecticut Probate Practice Book provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

29. On February 16, 2017, a Certificate of Incorporation for the Independent Foundation was filed with the Connecticut Secretary of State, naming Attorney Ann Zucker, of Carmody, Torrance, Sandak and Hennessey, as the registered agent for service of process. The name of the Independent Foundation is "Waterbury Hospital Foundation, Inc." Although incorporated, the Independent foundation has no board of directors, officers, or independent counsel to represent its interests.

30. The Trustee has sent notice for the Independent Foundation to Attorney Ann Zucker, the registered agent for service of process, but is uncertain whether, under the circumstances described in Paragraph 29, such notice satisfies the requirements of Rule 32.2.

31. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

32. The Court finds that the notice to the registered agent for service of the Independent Foundation, as well as the parties in the residue clause, satisfies the requirement of Rule 32.2 of the Connecticut Probate Court Rules of Practice.

33. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testatrix. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention—the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

34. The relevant language of Paragraph Tenth states: "To my trustee hereinafter named, I give and bequeath the sum of Twenty Five Thousand Dollars ($25,000.00), to be held by it in trust and the net income thereof to be paid over annually to the Waterbury Hospital, of Waterbury, Connecticut, to be used by said Hospital for its general uses and purposes."

35. Since the Will does not restrict the use of the funds by the hospital, it is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

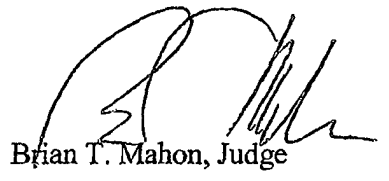
36. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

37. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

38. The court concludes that the intent of the testator, as expressed in the language of Article 6, permits the distribution of trust income during the wind down period to Legacy GWHN to be used pay any and all obligations of the preclosing GWHN, the administrative cost of GWHN.

39. The Court further finds that the residue clause under Paragraph Fourteenth is not and/or would not be applicable to a failed income interest under Paragraph Tenth.

40. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the Wind Down Period.



Brian T. Mahon, Judge

Exhibit G

Corrected Decree in the matter of the John P. Elton Trust u/w dtd 11/29/1946,
as amended by Codicil dtd 06/26/1947,
f/b/o Waterbury Hospital and St. John's Parish,
Bank of America, N.A., Trustee,
dated January 29, 2018 and mailed on February 9, 2018

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Waterbury Probate Court **DISTRICT NO. PD20**

ESTATE OF/IN THE MATTER OF

JOHN P. ELTON TR fbo St. John's Parish & Waterbury Hospit (53-0108A)
FBO ST. JOHN'S PARISH, WATERBURY HOSPITAL,

PETITION FOR:	DATE OF DECREE:
Construe Trust - Corrected Decree	1/29/2018

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on02/09/18 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Atty. Brian T. Henebry, Esq. (attorney for Legacy Waterbury Hospital Inc.), Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Atty Michael J. Reardon, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

Brian T. Henebry, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, P.O.Box 1110, Waterbury, CT 06721-1110

AG-Charity Unit, Atty General's Office, Public Charities Unit, 55 Elm St., Hartford, CT 06101

Atty. Christiana N. Gianopulos (attorney for Bank of America), Day Pitney, LLP, Blue Back Square, 75 Isham Road, Ste 300, West Hartford, CT 06107

Legacy Waterbury Hospital Inc., c/o Stefanie DiClemente, 50 Leavenworth Street, Waterbury, CT 06721-1110

Bank of America, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108-3208

St. John's Episcopal Church, Attn: Lorraine Barker, Treasurer, 16 Church St., Waterbury, CT 06702-2103

Atty. Gary W. Hawes, Assistant Atty. General (attorney for AG-Charity Unit), Office of the Attorney General, 55 Elm Street, P.O.Box 120, Hartford, CT 06141-0120

Connecticut Community Foundation, Attn: Julie Loughran, Director of Development & Communications, 43 Field Street, Waterbury, CT 06702

Waterbury Hospital Foundation Inc., c/o Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Tracy Biolo, Chief Clerk

STATE OF CONNECTICUT
DISTRICT OF WATERBURY - #20

WATERBURY PROBATE COURT

JANUARY 29, 2018

CORRECTED DECREE

IN RE: John P. Elton Trust u/w dtd 11/29/1946, as amended by Codicil dtd 6/26/1947 f/b/o Waterbury Hospital, St. John's Parish, and Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Article 6 and Article 10 of the Last Will and Testament of John P. Elton dated November 29, 1946, as amended by Codicil dated June 26, 1947 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH"), and to determine if giving notice to the registered agent for service of the Independent Foundation satisfies the requirement of Rule 32.2 of the Probate Court Rules of Practice.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of John P. Elton (the "Testator"), the Will was duly admitted to probate by this Court.

2. Article 6 of the Will, the Testator bequeathed one hundred thousand dollars ($100,000.00) to the Trustee to create the Trust, which provided for distribution of the annual income to several individuals and to the Testator's widow, all of whom are deceased. Article 6 provides that after the deaths of the individuals and the Testator's widow:

> "[...] the entire net income [...] shall be paid over, quarterly or at such other period as may be mutually agreed upon, in equal shares, to ST. JOHN'S PARISH OF THE PROTESTANT EPISCOPAL CHURCH, of Waterbury, Connecticut, and to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be to each of them absolutely."

3. No contingent beneficiary are named in the Will in the event that Waterbury Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist. However, the Will contains a residue clause under Article 10, which states, in relevant part:

All of the rest and residue of my estate, both real and personal, and wheresoever situated, including any lapsed or void legacies or devises, I give, devise and bequeath to THE COLONIAL TRUST COMPANY, of Waterbury, Connecticut, in trust, however, for the following purposes:

> [Net income shall be paid to the Testator's widow for her lifetime and at her death, the remaining trust property shall be allocated and distributed as follows:]
>
> Upon the death of my said wife [...], said Trustee shall distribute the principal of said trust fund then remaining as follows:
>
> The sum of Twenty-five Thousand Dollars ($25,000.00) shall be held in a separate trust by said Trustee for the benefit of my son, SAMUEL ELTON, and the sum of Twenty-five Thousand Dollars ($25,000.00) shall be held in a separate trust by my said Trustee for the benefit of my son, JOHN BUELL ELTON.
>
> [...]
>
> Upon the death of either son or should either son be not living at the time appointed for setting up the trust fund as to him, the trust fund as to such son shall cease and determine and the principal thereof then remaining shall be paid over to his issue then living, taking per stirpes, or if there are no issue then living shall be divided per stirpes among the other of my children then living and the then living issue of any children who may then be deceased, in each case to be added to any then existing trust fund of the taker created hereunder, or, if none, to become theirs absolutely.
>
> The sum of Fifty Thousand Dollars ($50,000.00) shall be held in a separate trust by said Trustee in perpetuity, the net income thereof to be paid over quarterly, or at such other periods as may be mutually agreed upon, to THE WATERBURY FOUNDATION, a charitable corporation of Waterbury, Connecticut, to be used by it for such public, charitable or educational uses and purposes within its corporate powers as may from time to time be determined by its Board of Trustees.
>
> The remainder of said principal shall be divided into two equal parts, one of said equal parts to be held in a separate trust by said Trustee for the benefit of my daughter, DEBORAH RICHMOND

> ELTON ALLEN, and one of said equal parts to be held in a separate trust by said Trustee for the benefit of my daughter, CHARLOTTE ELTON CROSS, on terms as follows: [...]
>
> Upon the death of either daughter or should either daughter not be living at the time appointed for setting up the trust fund as to her, the trust fund as to such daughter shall cease and determine, and the principal thereof then remaining shall be paid over and divided as follows:
>
> Should there be no issue of my said daughter then living, the principal of the trust fund then remaining shall be added to and become a part of the trust fund of my other daughter, to be held and disposed of as a part thereof.
>
> Should there be issue of my said daughter then living, the Trustee shall divide the trust fund then in its hands among the then living issue of such daughter in shares per stirpes, and the Trustee shall hold in trust or pay over such shares as follows: [...].

4. The Testator did not expressly reserve a reversionary interest in the Trust.

5. The Trust is classified as a private foundation under Internal Revenue Code ("Code") §509.

6. Under Article 6, the Testator appointed The Colonial Trust Company, of Waterbury, Connecticut, as trustee. The Trustee is successor to The Colonial Trust Company.

7. The value of the Trust as of October 31, 2017, was $635,976.34.

8. The Trust identifies Waterbury Hospital, Inc. as a current income beneficiary, entitled to one-half of the net annual income of the Trust, to be paid quarterly.

9. GWNH is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

10. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

11. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

12. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

13. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

14. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

15. The Sale closed on October 1, 2016 (the "Closing").

16. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

17. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "Accumulated Income"). The accumulated income on hand as of December 15, 2017 is $15,905.86.

18. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for

appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

19. The Final Decision provides for the disposition of GWHN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

20. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

21. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

22. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

23. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

24. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

25. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income").

26. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income.

27. Along with its petition, the trustee has provided the Court a list of interested parties.

28. Rule 32.2 of the Connecticut Probate Practice Book provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

29. On February 16, 2017, a Certificate of Incorporation for the Independent Foundation was filed with the Connecticut Secretary of State, naming Attorney Ann Zucker, of Carmody, Torrance, Sandak and Hennessey, as the registered agent for service of process. The name of the Independent Foundation is "Waterbury Hospital Foundation, Inc." Although incorporated, the Independent foundation has no board of directors, officers, or independent counsel to represent its interests.

30. The Trustee has sent notice for the Independent Foundation to Attorney Ann Zucker, the registered agent for service of process, but is uncertain whether, under the circumstances described in Paragraph 29, such notice satisfies the requirements of Rule 32.2.

31. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

32. The Court finds that the notice to the registered agent for service of the Independent Foundation satisfies the requirement of Rule 32.2 of the Connecticut Probate Court Rules of Practice.

33. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testatrix. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention—the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

34. The relevant language of Article 6 provides that after the deaths of certain individuals and the Testator's wife, "...the entire net income... shall be paid over quarterly or at such other period as may be mutually agreed upon, in equal shares, to ST. JOHN'S PARISH OF THE PROTESTANT EPISCOPAL CHURCH, of Waterbury, Connecticut, and to THE WATERBURY HOSPITAL of Waterbury, Connecticut, to be each of them absolutely."

35. Since the Will does not restrict the use of the funds by the hospital, it is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

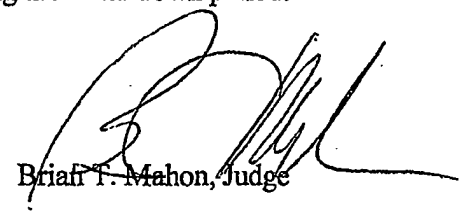
36. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of the hospital, including paying its remaining pre-closing obligations.

37. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

38. The court concludes that the intent of the testator, as expressed in the language of Article 6, permits the distribution of trust income during the wind down period to Legacy GWHN, to be used to pay any and all obligations of the preclosing GWHN, the administrative cost of GWHN, and the costs incurred in setting up the Independent Foundation.

39. The Court further finds that the residue clause under Article 10 is not and/or would not be applicable to a failed income interest under Article 6.

40. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period.



Brian F. Mahon, Judge

STATE OF CONNECTICUT
COURT
DISTRICT OF LITCHFIELD HILLS - #24

LITCHFIELD HILLS PROBATE

FEBRUARY 16, 2018

CORRECTED DECREE

IN RE: I. Kent Fulton Trust u/w dtd 10/2/1939, as amended by Codicil dtd 12/15/1939 f/b/o Waterbury Hospital, and Bank of America, N.A. Trustee (The "Trust")

At a Court of Probate held at the time and place of hearing set by the Court, together with any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Paragraph Tenth and Paragraph Fourteenth of the Last Will and Testament of I. Kent Fulton dated October 2, 1939, as amended by Codicil dated December l 5, 1939 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH"), and to determine if giving notice to the registered agent for service of the Independent Foundation satisfies the requirements of Rule 32.2 of the Probate Court Rules of Practice.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of I. Kent Fulton (the "Testator"), the Will was duly admitted to probate by this Court.

2. Under Paragraph Tenth of the Will, Testator Created the Trust:

> To my trustee hereinafter named I give and bequeath the sum of Twenty-Five Thousand Dollars ($25,000.00), to be held by it in trust and the net income thereof to be paid over annually to the Waterbury Hospital, of Waterbury, Connecticut, to be used by said Hospital for its general uses and purposes.

3. No contingent beneficiary is named in the Will in the event that Waterbury Hospital should cease to operate as a hospital, be acquired by another organization or cease to exist. However, the Will contains a residue clause under Paragraph Fourteenth, which states, in relevant part:

All of the rest and residue of my property and estate, of whatever nature, real and personal, and wherever situated, including lapsed legacies and devises, I give, devise and bequeath IN TRUST to my trustee hereinafter named, to be held by it in trust [... for the benefit of my wife during her lifetime and then for my son for his lifetime], and upon the death of the survivor of my said wife, my said son and myself, I direct my trustee to divide the property then constituting the principal of this trust fund into two equal parts or trusts to be held and disposed by my trustee as hereinafter provided:

> (a) One of said two equal parts shall be transferred paid over and distributed to and among the issue of my son living at the time of the death of the survivor of my said wife, my said son and myself in equal shares, per stirpes [...] . Should no issue of my said son be living at the time of the death of the survivor of my said wife, my said son and myself, all of the property then constituting the principal of this trust fund shall be added by my trustee in equal shares to the trusts provided for in subdivision (b) of this Paragraph hereinafter contained.
>
> (b) The other of said two equal parts, after the death of my said wife and son, shall be held by my trustee IN TRUST for the following purposes:
>
> One-third thereof shall be added by my trustee to the trust fund for the benefit of the Hartford Hospital, provided for in Paragraph Ninth of my last will and testament;
>
> One-third thereof shall be added by my trustee to the trust fund for the benefit of the Waterbury Hospital, provided for in Paragraph Tenth of my last will and testament;
>
> One-third thereof shall be added by my trustee to the trust fund for the benefit of The Sharon Hospital Association, provided for in Paragraph Eleventh of my last will and testament.

4. The Testator did not expressly reserve a reversionary interest in the Trust.

5. The Trust is classified as a private foundation under Internal Revenue Code ("Code") §509.

6. Under Paragraph Fifteenth, the Testator appointed the Hartford National Bank and Trust Company, of Hartford, Connecticut, and its successors, as trustee of all trusts under the Will. The Trustee is successor to the Hartford National Bank and Trust Company.

7. The value of the Trust as of October 31, 2017, was $7,068,306.15.

8. The Trust identifies Waterbury Hospital, Inc. as a current income beneficiary, of the Trust.

9. GWNH is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

10. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

11. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

12. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(a)(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

13. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

14. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

15. The Sale closed on October 1, 2016 (the "Closing").

16. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision. In addition, Waterbury Hospital's license as a general hospital with the State of Connecticut became inactive as of the Sale, and a new license for the hospital acquired by PMH was issued following the Sale.

17. The Trustee has been accumulating Waterbury Hospital's share of the Trust's income as of the Closing (the "Accumulated Income"). The accumulated income on hand as of December 15, 2017 is $409,188.78.

18. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

19. The Final Decision provides for the disposition of GWHN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWHN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

20. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

21. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

22. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale) in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n)otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the Administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

23. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

24. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

25. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income").

26. In consideration of Legacy GWHN's position, the Trustee requests a construction of the Will to determine whether Legacy GWHN is the proper recipient of the Income. If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will pay the Income to Legacy GWHN. If this Court determines that Legacy GWHN is the proper recipient of the Income, the Trustee will file a subsequent petition to address the Future Income following the conclusion of the Superior Court Action.

27. Along with its petition, the trustee has provided the Court a list of interested parties.

28. Rule 32.2 of the Connecticut Probate Practice Book provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

29. On February 16, 2017, a Certificate of Incorporation for the Independent Foundation was filed with the Connecticut Secretary of State, naming Attorney Ann Zucker, of Carmody, Torrance, Sandak and Hennessey, as the registered agent for service of process. The name of the Independent Foundation is "Waterbury Hospital Foundation, Inc." Although incorporated, the Independent foundation has no board of directors, officers, or independent counsel to represent its interests.

30. The Trustee has sent notice for the Independent Foundation to Attorney Ann Zucker, the registered agent for service of process, but is uncertain whether, under the circumstances described in Paragraph 29, such notice satisfies the requirements of Rule 32.2.

31. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

32. The Court finds that the notice to the registered agent for service of the Independent Foundation, as well as the parties in the residue clause, satisfies the requirement of Rule 32.2 of the Connecticut Probate Court Rules of Practice.

33. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testatrix. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention—the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

34. The relevant language of Paragraph Tenth states: "To my trustee hereinafter named, I give and bequeath the sum of Twenty Five Thousand Dollars ($25,000.00), to be held by it in trust and the net income thereof to be paid over annually to the Waterbury Hospital, of Waterbury, Connecticut, to be used by said Hospital for its general uses and purposes."

35. Since the Will does not restrict the use of the funds by the hospital, it is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

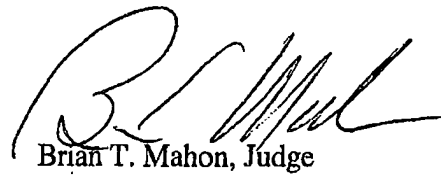
36. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

37. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

38. The court concludes that the intent of the testator, as expressed in the language of Paragraph Tenth, permits the distribution of trust income during the wind down period to Legacy GWHN to be used pay any and all obligations of the preclosing GWHN, the administrative cost of GWHN, and the costs incurred in setting up the Independent Foundation.

39. The Court further finds that the residue clause under Paragraph Fourteenth is not and/or would not be applicable to a failed income interest under Paragraph Tenth.

40. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the Wind Down Period.



Brian T. Mahon, Judge

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Litchfield Hills Probate Court **DISTRICT NO. PD24**

ESTATE OF/IN THE MATTER OF

I. KENT FULTON (waterbury hosp) (92-0003SA)
FBO Waterbury Hospital

PETITION FOR:	DATE OF DECREE:
Construe Trust	12/16/2018

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 02/22/18 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Waterbury Hospital, ATTN: Scott Bowman, Asst. Director, Corporate Finance, 64 Robbins Street, Waterbury, CT 06708-2613

Legacy Waterbury Hospital, Inc., c/o Stefanie DeClemente, 50 Leavenworth Street, P O Box 1110, Waterbury, CT 06721-1110

Hartford Hospital, ATTN: Julie Drouin, Dir. of Finance and Budget, PO Box 5037, Hartford, CT 06102

The Sharon Area Community Health Foundation, c/o Berkshire Taconic Community Foundation, PO Box 400, Sheffield, MA 01257-0400

Gary W. Hawes, Assistant Attorney General (attorney for George Jepsen, Attorney General's Office), Office of the Attorney General, 55 Elm Street, P O Box 120, Hartford, CT 06141-0120

Brian T. Henebry, Esq. (attorney for Legacy Waterbury Hospital, Inc.), Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, P.O. Box 1110, Waterbury, CT 06721

Kelley Galica Peck, Esq. (attorney for Bank of America), Cummings & Lockwood LLC, 75 Isham Road, Suite 400, West Hartford, CT 06107

Michael J. Reardon, Esq. (attorney for Waterbury Hospital), Carmody & Torrance, 50 Leavenworth Street, PO Box 1110, Waterbury, CT 06721-1110

Christiana N. Gianopulos, Esq., Day Pitney LLP, 75 Isham Road, Suite 300, West Hartford, CT 06107-2237

Bank of America, ATTN: Regina J. Collins, SVP, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108-3208

George Jepsen, Attorney General's Office, ATTN: Special Litigation Department, (Charitable Trusts), 55 Elm Street, 4th Floor, Hartford, CT 06106

Beth L. McGuire

Beth L. McGuire, Clerk

CERTIFICATION/
MAILING OF DECREE
PC-152 NEW 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Waterbury Probate Court **DISTRICT NO. PD20**

ESTATE OF/IN THE MATTER OF

JOHN P. ELTON TR fbo St. John's Parish & Waterbury Hospit (53-0108A)
FBO ST. JOHN'S PARISH, WATERBURY HOSPITAL,

PETITION FOR:	DATE OF DECREE:
Construe Trust	12/19/2017

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on01/12/18 to the following as provided in the Probate Court Rules of Procedure, section 8.2:

Name and Address

Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Atty Michael J. Reardon, Carmody Torrance Sandak & Hennessey, LLP, 50 Leavenworth St., P.O. Box 1110, Waterbury, CT 06721-

Brian T. Henebry, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, P.O.Box 1110, Waterbury, CT 06721-1110

AG-Charity Unit, Atty General's Office, Public Charities Unit, 55 Elm St., Hartford, CT 06101

Atty. Christiana N. Gianopulos (attorney for Bank of America), Day Pitney, LLP, Blue Back Square, 75 Isham Road, Ste 300, West Hartford, CT 06107

Legacy Waterbury Hospital Inc., c/o Stefanie DiClemente, 50 Leavenworth Street, Waterbury, CT 06721-1110

Bank of America, Mail Stop: CT2-547-05-19, 99 Founders Plaza, East Hartford, CT 06108-3208

St. John's Episcopal Church, Attn: Lorraine Barker, Treasurer, 16 Church St., Waterbury, CT 06702-2103

Connecticut Community Foundation, Attn: Julie Loughran, Director of Development & Communications, 43 Field Street, Waterbury, CT 06702

Waterbury Hospital Foundation Inc., c/o Ann Zucker, Esq., Carmody Torrance Sandak & Hennessey, 50 Leavenworth Street, Waterbury, CT 06721-1110

Tracy Biolo, Deputy Chief Clerk

Exhibit V

List of Interested Parties

RECEIVED
DEC 27 2019
NAUGATUCK PROBATE COURT

Abbie C. Hopkins Trust u/w dtd 04/20/1938 f/b/o Waterbury Hospital, et al.
Bank of America, N.A., Trustee

Interested Parties

TRUSTEE
Bank of America, N.A.
Regina J. Collins
Mail Stop: CT2-550-04-01
101 East River Drive
East Hartford, Connecticut 06108

ATTORNEY FOR TRUSTEE
Christiana N. Gianopulos, Esq.
Day Pitney LLP
75 Isham Road, Suite 300
West Hartford, Connecticut 06107-2237

PRIOR ATTORNEY FOR TRUSTEE
Michael J. Reardon, Esq.
Carmody Torrance Sandak & Hennessey
50 Leavenworth Street
P.O. Box 1110
Waterbury, Connecticut 06721-1110

ATTORNEY GENERAL
Office of the Attorney General
Attn. Gary Hawes
55 Elm Street, 4th Floor
Hartford, Connecticut 06106-1773

OTHER INTERESTED PARTIES

Legacy Waterbury Hospital, Inc.
c/o Stefanie DiClemente
50 Leavenworth Street
Waterbury, Connecticut 06721-1110

Brian T. Henebry, Esq.
Michael J. Reardon, Esq.
Carmody Torrance Sandak & Hennessey
50 Leavenworth Street
P.O. Box 1110
Waterbury, Connecticut 06721-1110

Waterbury Hospital Foundation, Inc.
c/o Ann Zucker, Esq.
Carmody Torrance Sandak & Hennessey
50 Leavenworth Street
Waterbury, Connecticut 06721-1110

Ann Zucker, Esq.
Carmody Torrance Sandak & Hennessey
50 Leavenworth Street
Waterbury, Connecticut 06721-1110

Connecticut Community Foundation
43 Field Street
Waterbury, Connecticut 06702

Edward B. Spinella, Esq.
Murtha Cullina LLP
CityPlace
185 Asylum Street
Hartford, Connecticut 06103-3469

American National Red Cross
Office of the General Counsel
Attn. Trusts and Estates
2025 East Street NW
Washington DC 20006-5009

Borough of Naugatuck
Attn. Patricia Porciello
220 Church Street
Naugatuck, Connecticut 06770-4145

Congregational Church of Naugatuck
Attn. Robert Pelletier, Treasurer
1 Division Street
Naugatuck, Connecticut 06770

Gaylord Hospital
Attn. Tara Knapp
Director of Development
P.O. Box 400
Wallingford, Connecticut 06492-7048

St. Michael's Parish of the Protestant
Episcopal Church
210 Church Street
Naugatuck, Connecticut 06770-4120

The Masonic Charity Fdn. Of CT
Attn: Ms. Jennifer King, Exec. Dir.
P.O. Box 70
Wallingford, Connecticut 06492-7001

Young Men's Christian Association
284 Church Street
Naugatuck, Connecticut 06770-2807

EXHIBIT B

IN RE:	:	STATE OF CONNECTICUT
ABBIE C. HOPKINS F/B/O WATERBURY HOSPITAL (09-000055)	:	NAUGATUCK PROBATE COURT
	:	FEBRUARY 10, 2020

JOINT POSITION STATEMENT
BY CONNECTICUT COMMUNITY FOUNDATION, INC. AND
WATERBURY HOSPITAL FOUNDATION, INC.

RE:

PETITION FOR CONSTRUCTION OF TRUST

I. Background:

Connecticut Community Foundation, Inc. ("CCF"), is a community foundation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (the "Code") that serves twenty-one (21) towns in the greater Waterbury area. Established in 1923, CCF provides leadership in addressing the aforementioned community's critical issues; works to support other tax-exempt / nonprofit organizations through grant making and capacity building; and works with families and businesses to steward charitable assets. CCF has a broad knowledge of community issues and awards grants in the health care, education, and social service arenas. It also provides grant making assistance, assists in governance, and manages the investment of charitable assets. CCF is the sole supported organization of Waterbury Hospital Foundation, Inc. ("WHF") and is the sole corporate member of WHF such that CCF and WHF are corporate affiliates.

WHF is an organization exempt from taxation under Section 501(c)(3) of the

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Code and was created to receive the charitable assets of The Waterbury Hospital (now known as Legacy Waterbury Hospital, Inc., hereafter "Legacy Hospital") as a result of the 2016 sale of Legacy Hospital's assets by its parent company, Greater Waterbury Health Network, Inc. (now known as Legacy Network, Inc.) to Prospect Medical Holdings, Inc., a for-profit entity ("Prospect"), pursuant to the requirements of Connecticut General Statutes Section 19a-486c et. seq.. As a result of the aforementioned sale: (1) Legacy Hospital no longer provides health care services; (2) Legacy Hospital continues to exist solely to satisfy its outstanding obligations relating to its former general operations; and (3) Prospect and/or its for-profit affiliates now provide(s) health care services under the "Waterbury Hospital" banner.

WHF's purpose is to continue the tax-exempt / non-profit mission of Legacy Hospital by addressing health care needs in Legacy Hospital's former service area consisting of Beacon Falls, Bethlehem, Cheshire, Middlebury, Naugatuck, Plymouth, Prospect, Southbury, Thomaston, Waterbury, Watertown, Wolcott and Woodbury (the "Communities"). More specifically, WHF will make grants to support or conduct community health needs and assessments, and to encourage and support efforts to improve the health of the citizens residing in the Communities. Additionally, WHF will support and engage in community projects, grants, activities, and programs that will improve access to health care and enhance the health of citizens in the Communities, including the provision of preventive health programs and health education, education and training of health care providers and educators in the Communities.[1]

[1] Exhibit A, Addendum to Form 1023, Application for Tax Exempt Status for Waterbury Hospital Foundation, Inc., Part IV, Narrative Description of Activities.

II. Jurisdiction; Law:

This Court has jurisdiction to construe the meaning and effect of the Trust provisions created under the Will of Abbie C. Hopkins (the "Trust") pursuant to Connecticut General Statutes Section 45a-98(a)(4) and to apply the doctrine of *cy pres* or approximation pursuant to Connecticut General Statutes Section 45a-98(a)(5).

The cardinal rule to be followed in construing a Will is to find and effectuate the intent of the testator. In seeking that intent, the court must look first to the Will itself and examine the words and language used in light of the circumstances under which the Will was written. To ascertain the intent of a particular provision, the Will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent, the court looks first to the precise wording employed by the testator in his or her Will, for the meaning of the words as used by the testator is the equivalent of his legal intention – the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning.[2]

The doctrine of *cy pres*, or of approximation, arises out of and is limited by the necessities of the particular case, and exists only when and insofar as, the specific method adopted by the testator for carrying his or her general intent into effect can no longer be executed. In such cases, the necessity of preserving and effectuating the general charitable or donative purpose of the testator justifies the substitution of the

[2] *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct. 1992), affirmed 32 Conn. App. 215 (1993).

method which seems to be as nearly approximate as existing conditions will permit.[3]

III. Argument:

The specific provisions of Trust that are at issue before this Court direct the Trustee to pay:

> to The Waterbury Hospital, a corporation of said Waterbury, said remainder of the net income from said fund and from the increment thereto for the purpose of providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck aforesaid, with the understanding, however, that the surplus of said income, if any, may be used by The Waterbury Hospital aforesaid for its general uses and purposes.[4]

When examining the specific words chosen by Ms. Hopkins in her Will, her primary charitable purpose is clear and unambiguous: for Waterbury Hospital to use the income to provide accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck, Connecticut. The income is therefore restricted in use. Only to the extent that there is any surplus income shall that income be paid over to Waterbury Hospital for its general purposes.

Due to the fact that Legacy Hospital no longer operates to provide accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck, neither Legacy Hospital nor any of its tax-exempt / nonprofit affiliates can properly receive the income generated by the Trust. According to the explicit terms of Ms. Hopkins' Will, "Waterbury Hospital" is only entitled to receive the <u>surplus</u> income for its general purposes. The term "surplus", in the ordinary sense of

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[3] *Smith Memorial Home, Inc., v. Riddle*, 2 Conn. L. Rptr. 797, 1990 WL 275833, at page 4.

[4] Paragraph b of Section (C) of the Will of Abbie C. Hopkins; for a complete copy of the Will, see Exhibit A to Petition for Construction of Trust dated December 23, 2019.

the word, is defined as "the amount that remains when use or need is satisfied."[5] "Surplus" can also be thought of as the amount of something left over when particular requirements have been met. In this case, because Legacy Hospital no longer provides health care services, the restricted use of the Trust's income cannot logistically be met. It follows, therefore, that no surplus can exist.

There continues to be considerable and demonstrable need for access to health care services in Naugatuck.[6] Consistent with its purposes set forth above, CCF has longstanding experience managing a sizable charitable fund for a purpose very similar to the Trust's charitable purposes initially intended by Ms. Hopkins (the "Initial Purposes").[7] CCF and WHF are actively preparing to utilize the Trust's income for purposes as close as is practicable to the Initial Purposes. Accordingly, WHF would be an appropriate recipient of the Trust's income in order to effectuate Ms. Hopkins' dominant initial intent.

Without intervention by this Court, Ms. Hopkins' restricted gift cannot be given effect and her charitable intentions will be completely frustrated. To resolve this issue and facilitate use of the income, this Court should exercise its power to apply the doctrine of *cy pres* and direct that the income be payable to WHF while maintaining the existing restrictions on its use (to provide accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck). Any surplus income not utilized for said restricted purpose would arguably be properly payable to

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[5] Merriam-Webster Dictionary.

[6] See Exhibit B, Health and Population Statistics for Naugatuck, Connecticut.

[7] See Exhibit C, overview of Saunder's Fund for the Sick & Infirm of the Borough of Naugatuck, including information relating to grants paid in 2019.

Legacy Hospital towards satisfying its outstanding obligations, pursuant to the terms of Ms. Hopkins' Will.

IV. Conclusion.

Paying all of the net income of the Trust (accumulated, current, and future) to WHF while maintaining the existing restrictions on use would nearly approximate Ms. Hopkins' charitable purpose as existing conditions will permit. This Court should therefore exercise its power to apply the doctrine of *cy pres* accordingly.

Respectfully submitted,

CONNECTICUT COMMUNITY
FOUNDATION, INC. AND WATERBURY
HOSPITAL FOUNDATION, INC.

By _____

Lisa P. Staron - #427782
lstaron@murthalaw.com
Edward B. Spinella - #429491
espinella@murthalaw.com

Murtha Cullina LLP
185 Asylum Street
Hartford, Connecticut 06103
Telephone: 860.240.6000
Facsimile: 860.240.6150

EXHIBIT A

ADDENDUM TO FORM 1023, APPLICATION FOR TAX EXEMPT STATUS FOR Waterbury Hospital Foundation, Inc.

Part I

7. See attached Form 2848, Power of Attorney and Declaration of Representative.
   Wesley D Cain, Esq.
   Carmody Torrance Sandak & Hennessey LLP
   195 Church Street
   New Haven, Connecticut 06509

Part II

1. See attached Certificate of Incorporation. **(EXHIBIT A)**

5. See attached Bylaws. **(EXHIBIT B)**

Part IV

Narrative Description of Activities:

Background. In 2016, substantially all of the assets of the tax exempt organization known as "The Waterbury Hospital" (the "Legacy Hospital") were sold to a for profit purchaser, Prospect Medical Holdings, Inc. This transaction was undertaken pursuant to Connecticut General Statutes Section 19a-486c et. seq. (the "Conversion Statute"). The record for this conversion is archived at https://portal.ct.gov/AG/General/Hospital-Conversions. A copy of the decision of the Office of the Attorney General is attached as **EXHIBIT C.** The conversion was conducted and approved under the purview of the State of Connecticut Office of the Attorney General and the Department of Public Health's Office of Health Care Access. The Conversion Statute requires that an independent foundation be formed to receive the fair market value of the net assets after the closing. Waterbury Hospital Foundation, Inc. (the "Applicant") is this new independent foundation. The Conversion Statute also requires the state level court to approve the independent foundation after it is formed. The Applicant will likely seek guidance from the court by a *cy pres* action with respect to the some of the charitable assets of the Legacy Hospital.

The Applicant seeks a determination as a tax exempt Type I supporting organization to the Connecticut Community Foundation, Inc. ("CCF"). The Applicant plans to enter into a Services Agreement with CCF pursuant to which CCF will provide administrative, financial management and program services to the Applicant.

Activities. The Applicant has undertaken no activities to date.

Future Activities. After a determination of tax exempt status is made and court approval for the transfer of charitable assets of the Legacy Hospital is obtained, the Applicant will commence its activities. The purpose of the Applicant is to address health care needs in the Legacy Hospital's former service area of Beacon Falls, Bethlehem, Cheshire, Middlebury, Naugatuck, Plymouth, Prospect, Southbury, Thomaston, Waterbury, Watertown, Wolcott and Woodbury ("Communities"). More specifically, the Applicant would make grants to support or conduct community health needs, assessments and encourage and support efforts to improve the health of the Communities and to support and engage in community projects, grants, activities and programs that will improve access to healthcare and enhance the health of the Communities, including the provision of preventive health programs and health education, education and training of healthcare providers and educators in the Communities.

CCF has been a part of the Greater Waterbury community for nearly 100 years; it has participated in the local community needs assessments for many years and is knowledgeable about the Communities and their healthcare needs.

Part V

1.a. No directors have been elected at this time. The individuals listed have agreed to serve as directors. The Connecticut Community Foundation, the Applicant's supported organization, will appoint a majority of the Applicant's directors. These directors have not yet been selected.

5a. See attached Conflict of Interest Policy. **(EXHIBIT D).** It was adopted by a resolution of the Applicant's sole incorporator.

9.b. The Applicant intends to enter into a services agreement in substantially in the form attached will be executed by CCF and the Applicant. **(EXHIBIT E)** ("Services Agreement") with CCF for administrative, financial management and program services.

9.c. A majority of the Directors of the Applicant are elected/appointed by CCF; CCF is the sole member of the Applicant.

9.d. Before CCF became the Sole Member of the Applicant, the terms were negotiated; each party had separate legal counsel.

9.e. Prior to its relationship with CCF, the Applicant sought proposals for these services from other providers and compared them in order to assure that the compensation was "fair market value".

9.f. The Applicant plans to enter into the Services Agreement **(EXHIBIT E)** with CCF pursuant to which CCF will provide administrative, financial management and program services to the Applicant.

SCHEDULE D

Section I

3. The Applicant's only supported organization is CCF. A copy of CCF's determination letter is attached. (**EXHIBIT G**).

Section II

2. The majority of the board of directors of the Applicant will be elected by CCF, the Applicant's sole member and supported organization. See Section 4.2 of the Bylaws.

SCHEDULE G

2.a, b, c and e. The Applicant is the independent foundation created by the conversion of the 501(c)(3) entity known as "The Waterbury Hospital"; the determination letter for "The Waterbury Hospital" is attached as **EXHIBIT H.** In 2016, substantially all of the assets of "The Waterbury Hospital" were sold to a for profit purchaser, Prospect Medical Holdings, Inc. This transaction was undertaken pursuant to Connecticut General Statutes Section 19a-486c et. seq. (the "Conversion Statute"). The record for this conversion is archived at https://portal.ct.gov/AG/General/Hospital-Conversions. A copy of the decision of the Office of the Attorney General is attached as **EXHIBIT C.** The conversion was conducted and approved under the purview of the State of Connecticut Office of the Attorney General and the Department of Public Health's Office of Health Care Access. The Conversion Statute requires that an independent foundation be formed to receive the fair market value of the net assets after the closing. The Applicant is this new independent foundation. The Conversion Statute also requires the state level court to approve the independent foundation after it is formed.

6.c. The assets to be transferred are various charitable funds which are the subject of the Conversion described above. It is neither a gift or sale but a transfer pursuant to the Conversion Statute. To the extent necessary, a *cy pres* action will be commenced to determine the appropriate use of certain funds.

# # # #

EXHIBIT B

Health and Population Statistics for Naugatuck, CT

Health Insurance Coverage (ACS Statistics): 2017 Estimates

Town	Total Population	Estimated # of Individuals-No Health Insurance Coverage in 2017	% of Total Population	% without Coverage that are Male	% without coverage that are Female
Naugatuck	31,403	2,007	6%	5%	7%

Poverty Statistics

Geographic Region	% Asset Limited Income Constrained Employed (ALICE) Population	% in Poverty[i]	% Low Income[ii]
Naugatuck	48%	10%	25%
Waterbury	65%	24%	47%
Connecticut		10%	23%

Community Health & Well-Being Statistics

Well-Being Indicator	Naugatuck 2018	Connecticut 2018
% of adults, In excellent or very good health	57%	59%
% of adults, Obese	36%	29%
% of adults, Currently smoke	24%	14%
Food Insecurity Rate	17%	13%
Housing Insecurity Rate	12%	8%
Transportation Insecurity Rate	20%	12%
% of adults, Without a bank account	13%	9%
% of working adults, Underemployed		15%

Maximum MoE on above estimates: +/- 6.6% for Naugatuck; +/- 1.0% for CT statewide

(Source: https://www.ctdatahaven.org/profiles/naugatuck)

Household Information

Title	Naugatuck 2018 5-year	Connecticut 2018 5-year
Total Households	11,659	1,367,374

Owner-Occupied Households	7,772	907,134
Homeownership Rate[iii]	*66.7%*	*66.3%*
Cost-Burdened Households[iv]	3,609	484,571
% of Households, Cost-Burdened	*32.0%*	*36.3%*
Households with a car	11,056	1,246,133
% of Households, with a car	*94.8%*	*91.1%*

(Source: https://www.ctdatahaven.org/profiles/naugatuck)

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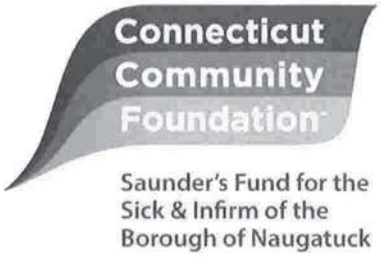
[i] **'Population in Poverty'** includes any persons whose annual household income is below the poverty threshold. The federal government determines the poverty threshold based on the size of the family and the ages of its members.

[ii] **'Population Low-Income'** counts all whose annual household income is less than 200 percent of the poverty threshold, including the population in poverty.

[iii] **'Homeownership Rate'** is owner-occupied households divided by total households.

[iv] **'Cost-Burdened Households'** includes all households in which 30% or more of household income is spent on housing costs associated with owning or renting a home.

EXHIBIT C



About the Fund

Establishing Gift: $1.97 million **Current Fund Balance:** $3.23 million

The Saunders Fund for the Sick and Infirm of the Borough of Naugatuck was established in 2008 for the following purpose:

"...to be used by it [the Borough] for the care of the sick and infirm of the Borough according to the discretion of the proper Borough Officials and as these officials shall be properly directed by proper authority. Nevertheless the donors of this trust hope and recommend that the Borough will use the fund to build or to help build and equip and maintain a public hospital in that Borough, or if in their opinion this is not the best, to place the principal sum of this trust received by them, in trust forever, and to then use only the income thereof for the care of the sick and infirm of their community."

At the time, Attorney General Richard Blumenthal referred the fund to the Community Foundation for management. Since 2009 there have been 80 grants totaling over $1 million dollars to support the sick and infirmed of Naugatuck. Grants have been made in the following areas:

- Medical Transportation
- Direct Care (behavioral health, physical and occupational therapy)
- Chronic Disease Prevention
- Cancer Screening and Recovery Programs
- Connecting patients to wrap around services, insurance and donated care

To honor the donor's original intent, in 2016 the Fund made a grant of $49,000 to StayWell Health Center, Inc. to open a satellite federally qualified health center in Naugatuck. The office increased access to medical services (prevention, dental, and behavioral health) for low-income patients in Naugatuck. Staff has also researched the need for school-based health clinics to support increased access to preventative and behavioral health care for high-need students and their families.

Spending Policy and Current Grants Available:

Annually, the Board of Trustees establishes a spending rate. The Foundation's spending rate for 2019 is 5.25 percent. A 12-quarter moving average (ending one year prior to the beginning of each current year) of ending endowment market values is used to determine spending for grants and scholarships.

For permanent endowment funds, a portion of the payout is assessed for action grants, an administrative fee and a Foundation investment management fee. This assessment is calculated quarterly based on the prior quarter's ending market value For non-permanent donor advised funds, action grants, the administrative fee, and the Foundation management fee are calculated quarterly based on the highest market value in the prior quarter.

The Board of Trustees has historically approved a prudent rate of spending, taking into consideration historic rates of return and inflation. Studies of endowment funds consistently show that spending rates significantly greater than five percent have the potential to erode the value of the endowment after inflation.

2020 Calculation:

5.25	Spending rate
-1.55	Management and Administrative Fee
3.70	**Available to grant ($108,427)**

Advisory Committee Members

The Mayor and Board of Burgesses of the Borough of Naugatuck appoint a committee comprised of five to nine individuals that are authorized to review grants and submit recommendations for funding to the Community Foundation. The committee currently is made of up to five Naugatuck residents, including a medical practitioner, LCSW, and faith based provider.

2018-2017 Grants

2018

Hidden Acres Therapeutic Riding: *Participant Scholarships* - $15,000 to support 200 participants with over 20 medical diagnosis through equine assisted and therapeutic riding.

Human Resource Development Agency (HRD): *Medical Transportation*- $30,000 to continue afternoon medical transportation to Naugatuck residents, with the ultimate goal of ensuring that Naugatuck's older adults can remain independent and in the home for as long as possible.

FoodCorps: *Growing Health Kids*- $15,000 to connect Naugatuck students with healthy foods in school, by providing gardening and cooking lessons, taste testing, improving school meals, and promoting a school-wide culture of health. This is an evidence-based health prevention program.

Wellmore Behavioral Health: *Substance Abuse Prevention and Intervention Partnership*- $37,500 to group counseling services to high risk students at Naugatuck High and City Middle Schools during the 2018-2019 school year and to provide professional development to teaching staff on best practices to support students.

2017

Hidden Acres Therapeutic Riding: *Participant Scholarships* - $15,000 to support Naugatuck residents with a variety of diagnoses to participate in therapeutic horseback riding activities throughout the year.

Human Resource Development Agency (HRD): *Medical Transportation*- $20,835 to provide afternoon medical transportation to Naugatuck residents, with the ultimate goal of ensuring that Naugatuck's older adults can maintain independence and dignity at home for as long as possible.

Naugatuck High School: ***Substance Abuse Prevention and Intervention*****- $14,400** to continue funding to pay for a Wellmore clinician to provide counseling services to City Middle School and Naugatuck High School for a total of 16 weeks during the 2017-2018 school year.

Naugatuck YMCA: ***Adaptive Playground*****- $25,000** to build an adaptive playground behind the YMCA which will be accessible to Naugatuck children and youth.

Naugatuck Youth Services: ***Substance Abuse and Intervention Program*** **-$29,966** to start the Step Up to Naugy Coalition, which will build effective and sustainable strategies to prevent the use and abuse of alcohol and drugs by Naugatuck's youth.

2019 grants from Saunders Fund for the Sick & Infirm of Naugatuck ($139,026 in requests/$106,585 available)

a. **Connecticut Food Bank: Naugatuck Mobile Pantry**- $7,500 (of $10,000 request) to distribute fruit, vegetables, whole grain and dairy products to food insecure households in Naugatuck.

b. **FoodCorps, Inc.: Naugatuck Healthy Kids, Healthy Futures**- $10,000 (of $10,000 request) to connect Naugatuck students with healthy foods in school using evidence-based methods, including gardening, cooking lessons, taste testing, improving school meals and promoting a school-wide culture of health. Note: This project is also receiving funding from Healthy Communities for a total grant of $25,000.

c. **Hidden Acres Therapeutic Riding: Participant Scholarships**- $20,000 (of $50,000 request) to continue to provide equine assisted therapies to the sick and infirm of Naugatuck and increase participation in new programming to reach new Naugatuck residents.

d. **Human Resources Development Agency: Medical Transportation**- $26,835 (of $26,835 request) to continue to provide afternoon medical transportation to Naugatuck residents, with the ultimate goal of ensuring that Naugatuck's older adults can remain independent and in the home for as long as possible.

e. **Naugatuck YMCA: LiveStrong**- $5,000 (of $5,000 request) to provide Livestrong, an evidence-based program for adult cancer survivors in Naugatuck.

f. **Wellmore Behavioral Health: Substance Abuse Prevention & Intervention Program**- $37,500 (of $37,500 request) to continue to support students at City Hill and Naugatuck High to receive mental health services during school hours. Anticipated outcomes include improving school performance and increasing teachers' capacity to work with students that have severe emotional issues.

EXHIBIT C

IN RE ABBIE C. HOPKINS, IN TRUST f/b/o WATERBURY HOSPITAL (09-000055)	:	**NAUGATUCK PROBATE COURT**
	:	
	:	**DISTRICT NO. PD21**
	:	
	:	**FEBRUARY 10, 2020**

ATTORNEY GENERAL'S POSITION STATEMENT ON PETITION FOR CONSTRUCTION OF TRUST

Pursuant to Conn. Gen. Stat. § 3-125, William Tong, Attorney General of the State of Connecticut (the "Attorney General"), hereby submits his Position Statement in response to the Petition for Construction of Trust (the "Petition") filed on or about December 23, 2019, by the Bank of America, N.A., Trustee (the "Trustee") in the above-captioned matter. The case concerns a trust under the will of Abbie C. Hopkins, dated April 20, 1938 (the "Trust"). The Trustee has asked the Court to determine the proper recipient of the Income from the Trust now that the intended recipient Legacy GWHN f/k/a The Waterbury Hospital sold substantially all of its assets to a for-profit hospital network and no longer offers health care services. The Attorney recommends that the Court exercise its equitable powers to direct the distributions to the Waterbury Hospital Foundation, Inc. (the "WH Foundation"), for use consistent with Ms. Hopkins's charitable intent.

I. Factual and Procedural Background

The Attorney General relies on the background information provided in section I of the Petition. The relevant language in the Hopkins will provides:

> I direct the Trustee to continue to hold and invest and reinvest said fund and the increment thereto, as aforesaid, until a hospital has been erected in said Naugatuck by the Naugatuck Hospital, and meantime to pay to

> THE WATERBURY HOSPITAL, a corporation of said Waterbury, said remainder on the net income from said fund and from the increment thereto for the purpose of providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck aforesaid, with the understanding, however, that the surplus of said income, if any, may be used by The Waterbury Hospital aforesaid for its general uses and purposes.

(Hopkins Will, Article Seventh, Section C; Exhibit A of the Petition.) The gift to The Waterbury Hospital has a primary purpose and a secondary contingent purpose. Initially, The Waterbury Hospital was to use the charitable funds for "accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck." Only if and when those funds were not fully expended was The Waterbury Hospital allowed to use the remaining funds for its general purposes.

II. Discussion

As noted in the Petition, the Attorney General participated in the State's hospital conversion review process along with the Office of Health Strategy, f/k/a the Office of Health Care Access, when Greater Waterbury Health Network, Inc. ("GWHN") agreed to sell substantially all of its assets to Prospect Medical Holdings, Inc. ("Prospect"). Pursuant to Conn. Gen. Stat. § 19a-486 et seq., the Attorney General reviewed the proposed transaction for both procedural and financial fairness and for the appropriate disposition of GWHN's charitable assets. At this time, the Trustee seeks a construction of the Hopkins Trust, which currently directs that the income from the trust be distributed to The Waterbury Hospital, to determine whether GWHN after the sale of its assets ("Legacy GWHN") is the proper recipient of the accumulated and future income from the Trust.

The lodestar for any assessment of a charitable gift is the intent of the donor, for it, above all else, is what defines the proper use of the charitable funds. See Conn. Gen. Stat. §§ 45a-514, the Statute of Charitable Trusts, and 47-2, the Statute of Charitable Uses. Determining the intent of Ms. Hopkins, in this case, is not a difficult task. First, she restricted the income from her donation for use in providing "accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck." Second, if there remained any surplus from the income, The Waterbury Hospital is allowed to use the surplus for its general uses and purposes.

The initial question, therefore, is whether Legacy GWHN can fulfill Ms. Hopkins's charitable intent now that it has sold substantially all of its assets to PMH and no longer provides medical care. The answer to this question is, undoubtedly, no. Because it no longer provides medical services itself, it cannot fulfill Hopkins's primary charitable intent through its own actions. Additionally, Legacy GWHN is not currently constituted to fulfill the primary charitable purpose of the funds by providing grants to individuals or other charities for the restricted purpose set forth by Ms. Hopkins. Legacy GWHN's current corporate purpose is solely to pay off all of the outstanding obligations accrued prior to the date of the sale. In short, it is impossible for Legacy GWHN to honor Hopkins's primary charitable intent.

The court can address this impasse simply by replacing The Waterbury Hospital with a charitable foundation that can put the income to proper use. In other words, the court can use

the equitable doctrine of deviation to fix the current impossibility problem.[1] Other entities, specifically those that manage and distribute charitable funds, can honor the charitable intent set forth in Ms. Hopkins's will. For example, a community foundation could manage, and identify proper recipients for, the funds, whether they are individuals in need or charities that have programs that provide "accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck." Even though such entities do not offer healthcare services themselves, they do have the administrative means to grant such charitable funds to other charitable organizations that can fulfill Ms. Hopkins's charitable intent.

The Attorney General believes that it would be appropriate for the independent foundation that was set up by Legacy GWHN pursuant to the Conversion Act, the WH Foundation,[2] to receive these funds. The court may choose an entity other than the WH Foundation to receive and administer the Hopkins Income, but the Attorney General supports the WH Foundation for this role because it has been vetted through the "independent foundation" requirements of the Conversion Act; See Conn. Gen. Stat. § 19a-486c(a)(8)(A); and its primary purpose will be to provide for the healthcare needs of the Greater Waterbury community.

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[1] The equitable doctrine of "[d]eviation has been applied to preserve the 'dominant purpose by modifying what is described as [a] secondary purpose, often the method or means for carrying out the dominant purpose.'" *Blumenthal v. White*, 43 Conn. App. 365, 372 (1996) (citing, 8 G. Bogert, Trusts and Trustees (2d Ed. Rev.Repl. 1991) § 396, p. 330.)

[2] The Waterbury Hospital Foundation, Inc., is not affiliated with Legacy GWHN or with PMH through corporate structure, governance, or membership.

The final issue for discussion in connection with the distribution of Future Income from the Trust is whether the secondary contingent charitable purpose can and should be honored. The Attorney General's Final Decision in the GWHN conversion matter acknowledges that Legacy GWHN should continue to receive unrestricted charitable income after the closing date. (Final Decision, p. 39; Exhibit C of the Petition.) It also addresses how those unrestricted funds may be used. Specifically, the Final Decision states: "Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the cost incurred in setting up the Independent Foundation." (Id., p. 9.)

The Attorney General has sought to maintain this position in each of the construction of trust petitions previously brought by the Trustee in connection with the sale of GWHN's assets, two of which were brought in the Naugatuck Probate Court—the Jacob Keeling Trust u/w dated June 30, 1952, f/b/o Waterbury Hospital and the Frank Keeling Trust u/w dated December 15, 1954, f/b/o Waterbury Hospital. See Petition, page 5, n. 2. In both of these cases, the court ruled as follows:

> 32. The will provides quite broadly for the use of the funds for the "general purposes" of the hospital. It is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.
>
> 33. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

> 34. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

The Jacob Keeling Trust u/w dated June 30, 1952, f/b/o Waterbury Hospital, ¶¶ 32-34, See Exhibit A, attached hereto; the Frank Keeling Trust u/w dated December 15, 1954, f/b/o Waterbury Hospital, ¶¶ 32-34, see Exhibit B, attached hereto.

In those cases, the court ruled that it was appropriate for unrestricted funds to be distributed to Legacy GWHN for use to pay off liabilities incurred while it was operating as a hospital. The relevant facts in this case are identical to those in the Keeling Trusts; Legacy GWHN continues to need unrestricted funds to pay for liability accrued while it provided healthcare services, and the Keeling Trusts have provided for unrestricted funds to be distributed to The Waterbury Hospital, albeit contingently. For consistency, therefore, the results here should not differ. If the organization that receives the future income from the Trust has a surplus of that income at the end of the year, it should distribute that income to Legacy GWHN, which would receive it as unrestricted charitable assets.

The remaining issue that the Court must address is how to distribute the Accumulated Income. It would seem more consistent with Ms. Hopkins's primary charitable purpose to have the Accumulated Income distributed with the restriction that it be used for "providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck." As discussed earlier, there are numerous organizations that could make use of these charitable funds consistent with donor intent. And as above, the Attorney

General believes that the WH Foundation is the proper recipient of the Accumulated Income from the Trust.

III. Conclusion

The Attorney General respectfully requests the following:

1. For the Court to find that

a. it has become impossible to honor the charitable intent in the Will due to the sale of substantially all of the assets of GWHN; but

b. the charitable purposes of the Hopkins Trust do not need to be modified because another institution can honor the charitable intent in the Will.

2. Based on the finding of impossibility and pursuant to its equitable powers, for the Court to order the Trustee to distribute the Income, the Accumulated Income, and the Future Income from the Hopkins Trust to The Waterbury Hospital Foundation, Inc., consistent with the discussion above.

Dated at Hartford, Connecticut, this 10th day of February, 2020.

WILLIAM TONG
ATTORNEY GENERAL

/s/ Gary W. Hawes

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CERTIFICATION

I hereby certify that a copy of the foregoing position statement has been sent to each party and/or counsel of record via electronic and/or U.S. Mail First Class, postage prepaid, on this 10th day of February, 2020:

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/s/ Gary W. Hawes
Gary W. Hawes, AAG

Exhibit A

STATE OF CONNECTICUT
DISTRICT OF NAUGATUCK - #21

NAUGATUCK PROBATE COURT

JULY 26, 2017

IN RE: **Jacob Keeling Trust u/w dtd 6/30/52 f/b/o Waterbury Hospital, Bank of America, N.A. Trustee (The "Trust")**

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Article 10 of the Last Will and Testament of Jacob Keeling dated June 30, 1952 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH") and to determine if giving notice to the proposed Independent Foundation or the reservation agent thereof is a requirement of Rule 32.2 of the Probate Court Rules of Procedure, as in said application on file more fully appears.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of Jacob Keeling (the "Testator"), the Will was duly admitted to probate by this Court.

2. Under Article 10 of the Will, the Testator created the Trust to hold the residue of his estate, and provided for net income to be paid, in equal shares, to his brother, sister and two nieces. Upon the death of the survivor of them, the remaining property was to be delivered to The Colonial Trust Company, of Waterbury, Connecticut [,] the same to be held in trust as a perpetual trust fund to be known as 'The Jacob Keeling Fund', the income only thereof to be paid to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be used for the general purposes of said Hospital

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3. There are no contingent beneficiaries named in the Will in the event that Waterbury Hospital ceases to operate as a hospital, be acquired by another organization or cease to exist, nor does the Will contain a giftover or reverter provision.

4. The Trustee identifies Waterbury Hospital as the sole current income beneficiary of one-half of the net income of the Trust.

5. The Trustee is the successor to The Colonial Trust Company who is named as Trustee of the Trust pursuant to the Will.

6. GWHN is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

7. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

8. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

9. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

10. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

11. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

12. The Sale closed on October 1, 2016 (the "Closing").

13. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

14. The Trustee has been accumulating the Trust's income as of the Closing (the "Accumulated Income").

15. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

16. The Final Decision provides for the disposition of GWEN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

17. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWEN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

18. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," (See Exhibit C, p.9): "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

19. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent

Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

20. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

21. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

22. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income").

23. Along with its petition, the trustee has provided the Court a list of interested parties.

24. Counsel to Legacy GWHN has reserved a name for the Independent Foundation (the "Waterbury Hospital Foundation, Inc."), but the Independent Foundation has not yet been formed.

25. Rule 32.2 of the Probate Court Rules of Procedure provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

26. As of the date of the filing of the petition, the Independent Foundation had not been formed.

27. Counsel to the Trustee sent notice of the petition to counsel for Legacy GWHN as the reservation agent for the Independent Foundation.

28. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

29. The Court finds that the proposed "Independent Foundation", is not a current beneficiary of presumptive remainder beneficiary of this Trust, as those terms are defined in the Connecticut Probate Practice Book, and notice is not required to the Independent Foundation under Rule 32.2.

30. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testator. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention--the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

31. The relevant language of Article 10 provides upon the death of the survivor of the Testator's brother, sister and two nieces, the remaining property was to be "delivered to The Colonial Trust Company, of Waterbury, Connecticut[,] the same to be held in trust as a perpetual trust fund to be known as 'The Jacob Keeling Fund', the income only thereof to be paid to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be used for the general purposes of said Hospital. "There are no further limitations on the use of the income, nor are there any reverter provisions, giftover provisions or contingent beneficiaries.

32. The will provides quite broadly for the use of the funds for the "general purposes" of the hospital. It is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

33. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

34. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

35. The court concludes that the intent of the testator, as expressed in the language of Article 10, permits the distribution of trust income during the wind down period to Legacy GWHN to be used for the payment debts and expenses of GWHN that were incurred while it continued to operate as a hospital.

36. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period.

Brian T. Mahon, Judge

Exhibit B

STATE OF CONNECTICUT
DISTRICT OF NAUGATUCK - #21

NAUGATUCK PROBATE COURT

JULY 26, 2017

IN RE: **Frank Keeling Trust u/w dtd 12/15/1954 f/b/o Waterbury Hospital, Bank of America, N.A. Trustee (The "Trust")**

At a Court of Probate held at the time and place of hearing set by the Court, together with an any continuances thereof as of record appears, on Petition for Construction of Trust seeking the Court's direction on the interpretation of Paragraph B of Article 12 of the Last Will and Testament of Frank Keeling dated December 15, 1954 ("the Will") to determine the proper distribution of Waterbury Hospital's share of income of the Trust following the sale by Greater Waterbury Health Network, Inc. and its affiliates ("GWHN") of its assets to Prospect Medical Holdings, Inc. ("PMH") and to determine if giving notice to the proposed Independent Foundation or the reservation agent thereof is a requirement of Rule 32.2 of the Probate Court Rules of Procedure, as in said application on file more fully appears.

Present, Hon. Brian T. Mahon,

After due hearing, the Court finds that:

1. Following the death of Frank Keeling (the "Testator"), the Will was duly admitted to probate by this Court.

2. Under Article 11 of the Will, the Testator created a trust for the benefit of his sister and nieces for their lives. Under Article 12 of the Will, the Testator provided for the disposition of the remaining principal of the trust created under Article 11 upon termination. Article 12 provided for a bequest to St. Michael's Parish of the Protestant Episcopal Church, of Naugatuck, Connecticut, and created the Trust to hold the balance of the principal. Paragraph B of Article 12 provides as follows:

> The balance of said principal shall be retained by said Trustee and shall constitute and become a trust fund to be known as 'The Frank Keeling Fund', the principal thereof to be held in trust in perpetuity and the income only thereof to be paid over to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be used for the general purposes of said Hospital

3. There are no contingent beneficiaries named in the Will in the event that Waterbury Hospital ceases to operate as a hospital, be acquired by another organization or cease to exist, nor does the Will contain a giftover or reverter provision.

4. The Trustee identifies Waterbury Hospital as the sole current income beneficiary of the Trust.

5. The Trustee is the successor to The Colonial Trust Company who is named as Trustee of the Trust pursuant to the Will.

6. GWHN is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

7. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and the OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

8. The Nonprofit Hospital Conversation Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statutes §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was issued by the OAG on July 15, 2016 (the "Final Decision").

9. The Conversion Act requires that:

> the net asset value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service'. Conn. Gen. Stat §19a-486c(8)(A).
>
> In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that the OAG reviewed the draft certificate of incorporation and bylaws

for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

10. The Final Decision also provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action").

11. GWHN's beneficial interests in charitable gifts, funds and third party trusts were specifically excluded from the Sale.

12. The Sale closed on October 1, 2016 (the "Closing").

13. GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs following the Sale as provided in the Final Decision.

14. The Trustee has been accumulating the Trust's income as of the Closing (the "Accumulated Income").

15. The Final Decision identifies the Trust as a "third party trust without use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders." The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust.

16. The Final Decision provides for the disposition of GWEN' s charitable endowment funds (referred to in the Final Decision as the "charitable gift assets", "charitable assets" and "charitable gift funds") during the period that Legacy GWHN continues to maintain its legal corporate existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWEN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

17. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWEN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and used to promote healthcare in the Waterbury area."

18. The Final Decision further provides that the Independent Foundation will receive the net proceeds of the Sale, which include "[a]ny income or unrestricted gifts received by Legacy GWHN post-[C]losing," (See Exhibit C, p.9): "[The net proceeds from the Sale] will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community."

19. As a condition of the OAG's approval of the Sale, the Final Decision states that "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction," but that "[n]otwithstanding [this] condition, Legacy GWHN may use any unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHH, and the costs incurred in setting up the Independent Foundation."

20. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's income during the Wind Down Period, including the Accumulated Income (collectively, the "Income"), the Income distributed to Legacy GWHN will be treated as net proceeds as described above, and may be used, in whole or in part, by Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation".

21. It is Legacy GWHN' s position that it is the appropriate recipient of the Income, and has requested a distribution of the Income to satisfy debts incurred prior to the Closing.

22. Legacy GWHN has made no claim to any income following the conclusion of the Wind Down Period (the "Future Income").

23. Along with its petition, the trustee has provided the Court a list of interested parties.

24. Counsel to Legacy GWHN has reserved a name for the Independent Foundation (the "Waterbury Hospital Foundation, Inc."), but the Independent Foundation has not yet been formed.

25. Rule 32.2 of the Probate Court Rules of Procedure provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

26. As of the date of the filing of the petition, the Independent Foundation had not been formed.

27. Counsel to the Trustee sent notice of the petition to counsel for Legacy GWHN as the reservation agent for the Independent Foundation.

28. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

29. The Court finds that the proposed "Independent Foundation", is not a current beneficiary of presumptive remainder beneficiary of this Trust, as those terms are defined in the

Connecticut Probate Practice Book, and notice is not required to the Independent Foundation under Rule 32.2.

30. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testator. In seeking that intent, the court looks first to the will itself and examines the words and language used in the light of the circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to the precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention--the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. *Bank of Boston Connecticut v. Brewster*, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

31. The relevant language of Paragraph B of Article 12 provides as follows:

"The balance of said principal shall be retained by said Trustee and shall constitute and become a trust fund to be known as 'The Frank Keeling Fund', the principal thereof to be held in trust in perpetuity and the income only thereof to be paid over to THE WATERBURY HOSPITAL, of Waterbury, Connecticut, to be used for the general purposes of said Hospital. "There are no further limitations on the use of the income, nor are there any reverter provisions, giftover provisions or contingent beneficiaries.

32. The will provides quite broadly for the use of the funds for the "general purposes" of the hospital. It is beyond question that this enabled the hospital to use the funds to pay its debts and administrative expenses while it was operating.

33. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of hospital, including paying its remaining pre-closing obligations.

34. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

35. The court concludes that the intent of the testator, as expressed in the language of Paragraph B of Article 12, permits the distribution of trust income during the wind down period to Legacy GWHN to be used for the payment debts and expenses of GWHN that were incurred while it continued to operate as a hospital.

36. It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the wind down period.

Brian T. Mahon, Judge

EXHIBIT D

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February 12, 2020

Honorable Peter E. Mariano
Naugatuck Probate Court
229 Church Street
Naugatuck, CT 06770

Re: Trust u/w Abbie C. Hopkins f/b/o Waterbury Hospital (09-000055)

Dear Judge Mariano:

This firm represents Legacy Waterbury Hospital, Inc. in the above-captioned matter. As indicated during yesterday's hearing, Legacy Waterbury Hospital is in support of the position of the Attorney General, as outlined in the Attorney General's position statement dated February 10, 2020.

Sincerely yours,

Brian T. Henebry

BTH/JJD
cc: See Service List attached

Abbie Hopkins (09-000055) FBO Waterbury Hospital

Name and Address

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American Red Cross
Chief Executive Officer
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Farmington, CT 06032

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Waterbury Hospital Foundation
c/o Julie Loughran, President and CEO
Connecticut Community Foundation
43 Field Street
Waterbury, CT 06702

EXHIBIT E

DECREE
PC-160 REV. 3/03

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Naugatuck Probate Court **DISTRICT NO. PD21**

ESTATE OF/IN THE MATTER OF

Abbie C. Hopkins, in Trust (09-000055)
FBO Waterbury Hospital, et al

At a court of probate held at the time and place of hearing set by the Court, together with any continuances thereof, as of record appears, on the Petition for Construction of Trust, as per Petition on file more fully appears.

PRESENT: Hon. Peter E. Mariano, Judge

After due hearing, THE COURT FINDS that:

Notice was given in a previous order.

THE COURT FURTHER FINDS that:

1. Following the death of Abbie C. Hopkins (the "Testator"), the Will was duly admitted to probate by this Court.

2. The Trust was established under Article VII (seven) of the Will, which disposed of the residue of the Testatrix's estate by setting apart "all the rest, residue and remainder" of the Testatrix's property to be held as "The Hopkins Memorial" fund. Section A of Article VII (seven) provided for a number of fixed annual payments to be made from the net income of the fund to certain named individuals for the respective lifetimes. Section B of Article VII (seven) provide for a number of fixed annual payments to certain charitable originations in perpetuity. Finally, Section C of Article VII (seven) provides for the disposition of the balance of the net income of the trust as follows:

   After the payment of the annuities as herein before provided for, I direct that the remainder of said net income be added to the principal of said fund, and invested and reinvested for a period of time not exceeding twenty years after my decease.

   (a) If during the 20 (twenty years) the Governing Board of the Naugatuck Hospital Corporation, a corporation of said Naugatuck, (Hereinafter referred to as "Naugatuck Hospital"), concludes that the available funds of the Naugatuck Hospital, together with the total of the income thus added to the principal of this fund, are sufficient, in its opinion, to warrant the building and maintenance of a hospital in said Naugatuck, and notifies the Trustee to that effect, and requests in writing, that a sum of money equal to the income thus added to the principal of this fund be paid to the Naugatuck Hospital for said purpose, the Trustee is hereby authorized and directed to pay the Naugatuck Hospital for all such income theretofore added to the principal of this fund, which shall be used as said Governing Board may deem wise and for the best interest of Naugatuck Hospital, and thereafter the Trustee shall pay quarterly, in perpetuity, to the Naugatuck Hospital said remainder of net income upon said principal sum for the general uses and purposes of such hospital.

   (b) If, however, at the termination of said twenty-year period, no hospital has been built by the Naugatuck Hospital in said Naugatuck, I direct the Trustee to continue to hold and invest and reinvest said fund and the increment thereto, as aforesaid, until a hospital has been erected in said Naugatuck by the Naugatuck Hospital, and meantime to pay the Waterbury Hospital, a corporation of said Waterbury, said remainder of the net income from sad fund and from the increment there to for the purpose of providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck aforesaid, with the understanding, however, that the surplus of said income, if any, may be used by The Waterbury Hospital aforesaid for its general uses and purposes.

   (c) If, at some later period, a hospital is erected in said Naugatuck by the Naugatuck Hospital, I direct the Trustee to pay said remainder of the net income from said fund and from the increment thereto, in perpetuity, to the Naugatuck Hospital, to be used for the general purposes of said institution.

3. Article VII (seven) of the Will names The Colonial Trust Company as the Trustee. The Trustee is the Successor to The Colonial Trust Company

4. The following organizations are currently receiving annuities pursuant to Section B of Article VII (seven) of the Will: The Congregational Church of Naugatuck, the American National Red Cross, the Borough of Naugatuck, the Masonic Charity Foundation of Connecticut, St. Michael's Parish off the Protestant Episcopal Church, the Young Men's Christian Association, of Naugatuck (YMCA) and Gaylord Hospital, (collectively, the "Charitable Organizations")

5. The Naugatuck Hospital Corporation ceases to exist, there are no viable contingent beneficiaries in the Will; no hospital exists in Naugatuck today.

6. From the time of inception the Trust's income has been distributed to Waterbury Hospital for the stated purpose in the Will of providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck, Connecticut, with the understanding, however, that the surplus of said income, if any may be used for the general purposes of Waterbury Hospital.

7. The value of the Trust as of December 20, 2019 was $6,467,295.67.

8. GWHN is a non-stock, 501(c)(3) charitable corporation, and is the parent company of Waterbury Hospital.

9. Substantially all the assets of GWHN have been sold to PMH, a for-profit entity headquartered in California; following a review and hearing process specified by Connecticut law. Specifically, on July 16, 2015, PMH and GWHN filed with the Office of Health Care Access ("OHCA") and the Office of the Attorney General ("OAG") a Certificate of Need Determination Letter proposing the transfer of GWHN's assets to PMH. On May 3, 2016, pursuant to Connecticut General Statutes §19a-639a and §19a-486, a public hearing on the application was held jointly by OHCA and OAG. The final order approving the transaction (the "Sale"), subject to certain conditions, was issued by OHCA on July 15, 2016 (the "OHCA Decision").

10. The Nonprofit Hospital Conversion Act, Connecticut General Statutes §19a-486 et seq., (the "Conversion Act") requires the OAG to review and investigate proposed nonprofit to for-profit hospital transactions for compliance with specifically articulated standards. Connecticut General Statues §19a-486c(a). The Conversion Act authorizes the OAG to disapprove a transaction if it finds that any of the standards is not satisfied or to approve a transaction, subject to any appropriate modifications or conditions, if it finds that the criteria are met. A final decision approving the Sale, subject to certain conditions, was used by the OAG on July 15, 2016 (the "Final Decision")

11. The Conversion Act requires that:

    The net asset of the value of the nonprofit hospital be transferred to 'one or more persons to be selected by the Superior Court who are not affiliated through the corporate structure, governance or membership with either the nonprofit hospital or the purchaser, unless the nonprofit hospital continues to provide health care service. §19a-486c(8)(A).

    In order to satisfy this requirement, GWHN proposed that it would create a new charitable entity, an independent conversion foundation (the "Independent Foundation"), following the Sale. The Final Decision states that OAG reviewed the draft certificate of incorporation and bylaws for the Independent Foundation submitted by GWHN and determined that the draft documents comply with the Conversion Act.

12. ..... The Sale closed on October 1, 2016 (the "Closing").

13. ..... GWHN has ceased to operate as a hospital or to provide any hospital services as of the Closing, but continues to exist as a Legal entity ("Legacy GWHN") charged with winding down its affairs i

14. ..... The Trust is classified as a private foundation under Internal Revenue Code ("Code") § 509, and is required by the Internal Revenue Service ("IRS") regulations to make minimum

distribution each year for charitable purposes. The Trustee has been unable to meet the required minimum distribution for tax years 2017, 2018 and 2019 because it has been accumulating the Trust's income as of the Closing. The accumulated income as of December 20, 2019 was $451,707.00

15. On February 16, 2017, a Certificate of Incorporation for the Independent Foundation was filed with the Connecticut Secretary of State, naming Attorney Ann Zucker, of Carmody Torrance Sendak and Hennessey, as the registered agent for service of process. The name of the Independent Foundation is "Waterbury Hospital Foundation, Inc."

16. By letter dated April 5, 2019, the OAG approved certain changes to the Certificate of Incorporation and Bylaws of the Independent Foundation.

17. The Independent Foundation received a Determination Letter dated December 4, 2019 confirming its exemption from federal income taxation under Code §501(c)(3)

18. GWHN's beneficial interests in charitable gifts, funds and third party trusts were excluded from the Sale.

19. The Final Decision provides that a condition of the OAG's approval of the Sale is that "Legacy GWHN must present to the Superior Court, in coordination with the OAG, a petition for equitable deviation and approximation in connection with the transfer of GWHN's unrestricted endowments, restricted endowments and any restricted, fully expendable funds that still have money in them to the Independent Foundation (the "Superior Court Action")

20. The Superior Court Action has not yet been filed, but third party trusts, such as the Trust, will not be subject of the Superior Court Action, and the charitable funds that are to be the subject of the Superior Court Action are not at issue at present.

21. The Final Decision identifies the Trust as a "third part trust with use restrictions." As a condition of the OAG's approval of the Sale with respect to third party trusts, "Legacy GWHN must, in coordination with the OAG and the third party trustees, bring any third party trust in need of construction or approximation before a court of competent jurisdiction for appropriate orders."

22. The Trustee serves as trustee of thirteen third party trusts that benefit Waterbury Hospital, including the Trust. The Trustee has filed nine (9) petitions for Construction, in contrast to the terms of the Trust, the use of income was unrestricted in each of the petitions.

23. The Trustee delayed filing its Construction until charitable status with the IRS had been obtained.

24. Petitions for the remaining four of the thirteen third party trusts for which the Trustee serves as trustee, including the Trust, will be filed with this Court and the Waterbury Probate Court. Three of the remaining trusts, including the Trust, involve testator intent to restrict the use of trust income for a particular purpose.

25. The Final Decision provides for the disposition of GWHN's charitable endowment funds (referred to in the Final Decision as "charitable gift assets," "charitable assets" and "charitable gift funds") during the period of that Legacy GWHN continues to maintain its legal existence and to wind down its affairs and pay its creditors (the "Wind Down Period") as follows: "The charitable assets of GWHN, which have been held in trust for the public, will continue to be held by GWHN after the closing..., and with respect to unrestricted funds will be used in the interim to pay off GWHN's pre-closing liabilities."

26. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the charitable endowment funds held by Legacy GWHN: "Ultimately, all charitable funds will be transferred to the Independent Foundation and be used to promote healthcare in the Waterbury area.

27. The Final Decision provides that, following the Wind Down Period, the Independent Foundation will receive the net proceeds of the Sale, which include any income or unrestricted gifts received by Legacy GWHN post-closing. The net proceeds from the Sale will be transferred to the Independent Foundation and will be restricted to charitable uses consistent with The Waterbury Hospital's original purpose and for the support and promotion of healthcare generally in the Waterbury community.

28. As a condition of OAG's approval of the Sale, the Final Decision states that, "[a]fter the [C]losing, Legacy GWHN shall hold and protect all charitable gift funds and any net proceeds from the [Sale] in its possession until they are transferred to the Independent Foundation or other charitable organization by order of a court of competent jurisdiction, "but that "[n]ot withstanding 'this' condition, Legacy GWEN may use and unrestricted funds it has or receives, net proceeds, to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

29. Legacy GWHN has significant pre-closing liabilities and distributions from charitable endowment funds held by Legacy GWHN during the Wind Down Period which may be largely or entirely applied to the payment of creditors. Further, if this Court determines that Legacy GWHN is the appropriate recipient of Waterbury Hospital's share of the Trust's Income during the Wind Down Period, including the Accumulated Income (collectively, the "Income), may be used in whole or in part, buy Legacy GWHN "to pay any and all obligations of the pre-closing GWHN, the administrative costs of Legacy GWHN, and the costs incurred in setting up the Independent Foundation."

30. The Trustee is uncertain as to whether Legacy GWHN is or is not the proper recipient of the Income following the Sale.

31. The Trustee has requested clarification regarding the historic breakdown of the use of funds received form the Trust for "providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck, Connecticut" per Article IX of the Will, and surplus used for general hospital purposes. However, Counsel for Legacy GWHN was unable to obtain this information.

32. Legacy GWHN no longer offers hospital services, and is therefore unable to use the income to provide accommodations and medical care and attention for the poor and needy resident of the Borough of Naugatuck, Connecticut. Therefore the Trustee understands that the distribution of the income to Legacy GWHN would be considered "surplus."

33. Along with its petition, the trustee has provided the Court a list of interested parties.

34. The Independent Foundation is named "Waterbury Hospital Foundation, Inc.

35. Rule 32.2 of the Probate Court Rules of Procedure provides that notice in a trust proceeding must be sent to each current beneficiary and each presumptive remainder beneficiary in addition to the other parties to whom notice must be sent.

36. Counsel to the Trustee sent notice of the petition to counsel for Legacy GWHN as the reservation agent for the Independent Foundation.

37. The Court has jurisdiction to construe the meaning and effect of the Will provisions governing the Trust under Connecticut General Statutes §45a-98(a)(4) and to apply the doctrine of cy pres or approximation under Connecticut General Statutes §45a-98(a)(5).

38. The cardinal rule to be followed in construing a will is to find and effectuate the intent of the testator. In seeking that, intent, the court looks first to the will itself and examines the words and language use in the light of circumstances under which the will was written. To ascertain the intent of a particular provision, the will must be read as a whole to discover whether it discloses an underlying intent which should be considered in finding the meaning to be accorded to the particular language under construction. In searching for the testator's intent we look first to precise wording employed by the testator in his will, for the meaning of the words as used by the testator is the equivalent of his legal intention—the intention that the law recognizes as dispositive. The words used by the testator are to be interpreted according to their ordinary meaning unless the context or circumstances indicate a different meaning. Bank of Boston Connecticut v. Brewster, 42 Conn. Supp. 474, 486-487 (Super. Ct., 1992), affirmed 32 Conn. App. 215 (1993).

39. The relevant language of Article VII (seven), provides upon the death of named individuals the remainder to be held by "Colonial Trust Company," for the use of providing fixed payments to certain Charitable Organizations for perpetuity. Section C. directed the Trustee to add the remainder of said net income to the principal and invest and reinvest for a period of time not to exceed 20(twenty) years. If , however at the termination of said 20 (twenty) year period no hospital has been built, the Trustee is directed to continue to hold and invest and reinvest said fund and the increment thereto, as aforesaid, until a hospital has been erected in said Naugatuck by the Naugatuck Hospital, and meantime to pay the Waterbury Hospital, a corporation of said Waterbury, said remainder of the net income from sad fund and from the increment there to for the purpose of providing accommodations and medical care and attention for the poor and needy residents of the Borough of Naugatuck aforesaid, with the understanding, however, that the surplus of said income, if any, may be used by The Waterbury Hospital aforesaid for its general uses and purposes.

40. The will provides use of the income for "general purposes" of the hospital. It is beyond question that his enabled the hospital to use the income to pay its debts and administrative expenses while it was operating.

41. While GWHN has ceased to provide medical care, it continues to have a legal existence in the form of Legacy GWHN. The purpose of Legacy GWHN is to wind down the affairs of the hospital, including paying its remaining pre-closing obligations.

42. The use of trust income to pay expenses incurred while the hospital was in operation continues to be an appropriate use of those funds, notwithstanding that payment occurs after the operations of the hospital have ceased.

43. The court concludes that the intent of the testator, as expressed in the language of Article VII (seven), permits the distribution of trust income during the Wind Down Period to legacy GWHN to be used for payment of debts and expenses of GWHN that were incurred while it continued to operate as a hospital.

And it is ORDERED AND DECREED that:

It is therefore ordered and decreed that the Trustee continue to distribute income from the trust to Legacy GWHN for that purpose during the Wind Down Period.

DECREE
PC-160 REV. 3/03

STATE OF CONNECTICUT

COURT OF PROBATE

COURT OF PROBATE, Naugatuck Probate Court **DISTRICT NO. PD21**

ESTATE OF/IN THE MATTER OF

Abbie C. Hopkins, in Trust (09-000055)
FBO Waterbury Hospital, et al

Dated at Naugatuck, Connecticut, this 11 day of February, 2020.

Peter E. Mariano, Judge

CERTIFICATION

The undersigned hereby certifies that a copy of the above decree was mailed on 10/23/20 to the following as provided in the Probate Court Rules of procedure, section 8.2:

Name and Address

LISA P STARON, MURTHA CULLINA LLP, 280 TRUMBULL STREET, 12TH FLOOR, HARTFORD, CT 06103 (by eService)

American Red Cross, Diane Auger, Chief Executive Officer, 209 Farmington Avenue, Farmington, CT 06032

Connecticut Community Foundation, 43 Field Street, Waterbury, CT 06702

Waterbury Hospital Foundation, Inc., c/o Julie Loughran, President/CEO, Connecticut Community Foundation, 43 Field Street, Waterbury, CT 06702

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EDWARD BRASSIL SPINELLA (attorney for Connecticut Community Foundation and Waterbury Hospital Foundation, Inc.), MURTHA CULLINA LLP, 185 ASYLUM STREET, 29TH FLOOR, HARTFORD, CT 06103 (by eService)

ANN HEDGES ZUCKER (attorney for Legacy Waterbury Hospital, Inc), CARMODY TORRANCE SANDAK & HENNESSEY LLP, 707 SUMMER STREET, 3RD FLOOR, STAMFORD, CT 06901 (by eService)

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Waterbury Hospital, Barbara Hallinan, 64 Robbins Street, Waterbury, CT 06708

Office of the Attorney General, Public Charities Unit, 165 Capitol Ave., Hartford, CT 06106

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Director YMCA, Young Men's Christian Association, 284 Church Street, Naugatuck, CT 06770-2807

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MICHAEL J REARDON, CARMODY TORRANCE SANDAK & HENNESSEY LLP, 50 LEAVENWORTH STREET, P.O. BOX 1110, WATERBURY, CT 06702

Wendy E. Murphy, Clerk