

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

)	
DIGITAL MEDIA SOLUTIONS, LLC,)	Case No. 1:19-cv-00145
)	
Plaintiff)	Judge Dan Aaron Polster
)	
v.)	Magistrate Judge Thomas M. Parker
)	
SOUTH UNIVERSITY OF OHIO, LLC, <i>et al.</i> ,)	
)	
Defendants.)	
)	

RECEIVER’S MOTION FOR ENTRY OF ORDER
(1) APPROVING GLOBAL SETTLEMENT AND COMPROMISE AMONG
RECEIVER AND ALL INSURED UNDER THE PORTFOLIOSELECT FOR
NON-PROFIT ORGANIZATIONS LIABILITY INSURANCE POLICY;
(2) APPROVING PAYMENT OF DEFENSE COSTS; AND
(3) BARRING AND PROHIBITING PARTIES FROM ASSERTING CERTAIN CLAIMS

Mark E. Dottore, the duly appointed and acting receiver (the “**Receiver**”) for the Receivership Entities,¹ by and through undersigned counsel, respectfully states as follows in support of this motion (“**Motion**”):

¹ The “**Receivership Entities**” include (i) South University of Ohio LLC; (ii) Dream Center Education Holdings, LLC; (iii) The DC Art Institute of Raleigh-Durham LLC; (iv) the DC Art Institute of Charlotte LLC; (v) DC Art Institute of Charleston, LLC; (vi) DC Art Institute of Washington LLC; (vii) The Art Institute of Tennessee - Nashville LLC; (viii) AiTN Restaurant LLC; (ix) The Art Institute of Colorado LLC; (x) DC Art Institute of Phoenix LLC; (xi) The Art Institute of Portland LLC; (xii) The Art Institute of Seattle LLC; (xiii) The Art Institute of Pittsburgh, DC LLC; (xiv) The Art Institute of Philadelphia, DC, LLC; (xv) DC Art Institute of Fort Lauderdale LLC; (xvi) The Illinois Institute of Art LLC; (xvii) The Art Institute of Michigan LLC; (xviii) The Illinois Institute of Art at Schaumberg LLC; (xix) DC Art Institute of Phoenix, LLC, and its direct subsidiaries (xx) the Art Institute of Las Vegas LLC; (xxi) the Art Institute of Indianapolis, LLC; (xxii) AiIN Restaurant LLC; (xxiii) Dream Center Argosy; (xxiv) University of California LLC, and its direct subsidiaries; (xxv) Argosy Education Group LLC; (xxvi) Dream Center Education Management LLC; and (xxvii) South University of Michigan LLC. *See* Order Appointing Receiver (“**Initial Receiver Order**”) [ECF No. 8] at 3-4; *see also* Order Clarifying Order Appointing Receiver (“**Clarifying Receiver Order**”) [ECF No. 14] at 1 (removing AU Student Funding, LLC as a “Receivership Entity”). All capitalized terms not initially defined in this Motion shall have the same meaning(s) as defined later in this Motion; and all capitalized terms not otherwise defined in this Motion, shall have the same meaning(s) as ascribed in the Settlement Agreement. In the event of any inconsistency between the terms of the Settlement Agreement and this Motion, the Settlement Agreement shall control.

I. RELIEF REQUESTED

1. The Receiver requests entry of an order, substantially in the form attached hereto as Exhibit A (the “**Settlement and Bar Order**”): (a) approving that certain Settlement Agreement (“**Settlement Agreement**”),² a copy of which is attached hereto as Exhibit B, entered into by and among the Parties;³ (b) approving a Bar Order (as defined below) in favor of the Insureds and National Union Fire Insurance Company of Pittsburgh, Pa (“**Insurer**” or “**National Union**”);⁴ and (c) authorizing the Insurer to make the Settlement Payment and pay the Approved Payments (including Defense Costs) and, to the extent necessary, lifting the stay imposed by this Court’s prior Orders [ECF Nos. 8 and 150], as may be amended, modified, or supplemented.

II. BACKGROUND

A. Receivership

2. On January 8, 2019, Digital Media Solutions, LLC (“**Digital Media**”) filed a receivership Complaint against South University of Ohio, LLC, a/k/a DC South University of

² The Settlement Agreement remains subject to the Insurer’s review and approval, and may be amended or supplemented, as necessary, prior to the hearing on this Motion.

³ The Parties to the Settlement Agreement are as follows: the RECEIVER, as the federal equity receiver, custodian and liquidator for the Receivership Entities; THE DREAM CENTER FOUNDATION, and its former and current officers, directors, employees and affiliates (collectively, “**DCF**”); BRENT RICHARDSON (“**B. Richardson**”); CHRISTOPHER RICHARDSON (“**C. Richardson**”); JOHN CROWLEY (“**Crowley**”); CHAD GARRETT (“**Garrett**”); MONICA CARSON (“**Carson**”); MELISSA ESBENSHADE (“**Esbenshade**”); SHELLEY GARDNER (“**Gardner**”); MICHAEL LACROSSE (“**Lacrosse**”); RANDALL BARTON (“**Barton**”); SHELLEY MURPHY (“**Murphy**”); ROB PAUL (“**Paul**”); DEBBI LANNON-SMITH (“**Lannon-Smith**”); STACEY SWEENEY (“**Sweeney**”); PASTOR MATTHEW BARNETT (“**Barnett**”); TIMOTHY SLOTTOW (“**Slottow**”); RUFUS GLASPER (“**Glasper**”); JACK DEBARTOLO (“**DeBartolo**”); CYNTHIA BAUM (“**Baum**”); and JAMES TERRELL (“**Terrell**”). B. Richardson, C. Richardson, Crowley, Garrett, Carson, Esbenshade, Gardner, Lacrosse, Barton, Murphy, Paul, Lannon-Smith, Sweeney, Barnett, Slottow, Glasper, DeBartolo, Baum and Terrell are referred to herein collectively as the “**Ds&Os**,” and together with DCF and any and all other persons who are an “Insured” as defined in either of the Policies (including, with respect to the defined Primary Policy, the Receivership Entities and any non-Receivership Entities covered under the Primary Policy including without limitation DCF), the “**Insureds**.” The Receiver, the Ds&Os, and DCF are collectively referred to herein as the “**Parties**” or singularly as a “**Party**.”

⁴ All references to the Insurer include National Union Fire Insurance Company of Pittsburgh, Pa and AIG Claims, Inc., on behalf of themselves and their respective predecessors, successors-in-interest, assigns, subrogees, and persons acting by or through any of the foregoing.

Ohio, LLC, d/b/a South University, DCEH, and Argosy Education Group, LLC, in the United States District Court, Northern District of Ohio (“**Court**”), thereby initiating the above-styled receivership case (“**Receivership**,” “**Receivership Estate**,” or “**Receivership Case**”).

3. On January 18, 2019, the Court entered the Initial Receiver Order [ECF No. 8], as clarified [ECF No. 14] and amended [ECF No. 150], appointing Mark E. Dottore as the Receiver of the Receivership Entities.

4. The Receivership remains open, including the stay orders issued therein, in order to allow the Receiver to close certain open issues, including among other matters, the Receiver’s Alleged Claims (defined below) against the Insureds.

B. National Union Policies

5. Prior to the commencement of the Receivership, the Insurer issued a PortfolioSelect for Non-Profit Organizations liability insurance policy to Receivership Entity, Dream Center Education Holdings, LLC (“**DCEH**”), under Policy Number 02-420-25-70 (“**Primary Policy**”); and also issued a Side-A Edge excess insurance policy to DCEH, under Policy No. 02-42-25-71 (“**Excess Policy**”) (the Primary Policy and the Excess Policy, including any and all declarations, amendments, supplements, and endorsements, and subject to all of the policies’ terms, conditions and exclusions, are referred to herein collectively as the “**Policies**”), for the initial policy period from October 17, 2017 through October 17, 2018, as extended until April 17, 2019, along with a one-year Discovery Period following April 17, 2019.

6. The Policies generally provide certain coverage to protect and indemnify the directors and officers of the Insured Entity(ies) in connection with Losses, including Defense Costs, judgments, and settlements, arising from particular types of claims that might be made against them in their capacity as directors or officers of the Insured Entity(ies) or in connection with investigations dealing with their roles as directors or officers of the Insured Entity(ies).

7. Importantly, the Policies are “wasting” insurance policies; meaning the limits of coverage are reduced as Defense Costs are incurred.

8. The Policies are also written on a “claims made and reported” basis, and the claims made by the Receivership Estate against the Insureds and certain claims identified below, are the only known timely claims remaining against the Policies.

C. Non-National Union Excess Carrier Policies

9. Upon information and belief, prior to the commencement of the Receivership, the following insurers (“**Non-National Union Excess Carrier(s)**”) also issued liability insurance policies (“**Non-National Union Excess Policy(ies)**”) to DCEH for D&O excess coverage relating to the Receivership Entities:

Excess Carrier	Policy
Everest National Insurance Company	SC5EX00110-171
Starr Indemnity and Liability Company	1000620558171
Landmark American Insurance Company	LHS674187
Ironshore Indemnity Inc.	003319500

D. The Receiver’s Alleged Claims and Specified Litigation and Potential Claims

10. On July 8, 2020, the Receiver, by and through his counsel, Robert Glickman and Hugh Berkson, of the Law Firm of McCarthy Lebit Crystal Liffman, sent a confidential settlement demand letter to Special Settlement Counsel to DCF and the Ds&Os (“**Demand Letter**”), wherein the Receiver outlined his alleged claims against the Ds&Os (“**Receiver’s Alleged Claims**”).

11. The Receiver asserts there is merit to the Receiver’s Alleged Claims against the Ds&Os, and the Ds&Os dispute the validity of any and all claims by the Receiver against them. The Ds&Os, through counsel, have informed the Receiver that they will assert numerous affirmative defenses against any action the Receiver may bring against them and will vigorously defend their position through summary judgment, and trial if necessary.

12. In addition to, or included in, the claims made by the Receiver on behalf of the Receivership Estate, certain other parties have made, or may make, claims against the Receivership Entities and/or the Insureds, including, without limitation, the following:

- (i) *Darlene Bolden, et al v. Argosy Education Group, LLC, et al*, Superior Court of the State of California, County of San Diego, Case No. 37-2018-00038876-CU-BT-CTL (“**Bolden Action**”);
- (ii) *Emmanuel Dunagan, et al. v. Illinois Institute of Art-Chicago, LLC, et al*, United States District Court, Northern District of Illinois (Eastern Division), Case No. 19-CV-809 (“**Dunagan Action**”);⁵
- (iii) *FSP Pacific Center, LLC v. Argosy Education Group, LLC*, Superior Court of the State of California, Orange County, Central Justice Center, Case No. 30-2019-01063136-CU-BC-CJC (“**FSP Action**”);
- (iv) George L. Miller (“**Trustee Miller**”), as Chapter 7 Trustee of the bankruptcy estate of *In re The Art Institute of Philadelphia, LLC, et al*, United States Bankruptcy Court for the District of Delaware, Case No. 18-11535,⁶ or any subsequent trustee or successor of said bankruptcy

⁵ On February 13, 2019, the Court entered an Order [ECF No. 49] granting the Dunagan Plaintiffs’ Motion to Intervene in the Receivership Case, and the Dunagan Plaintiffs have actively participated in the Receivership Case.

⁶ The debtors/entities included in the definition of Trustee Miller are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Education Centers, Inc. (6160); Argosy Education Group, Inc. (5674); Argosy University of California LLC (1273); Brown Mackie College - Tucson, Inc. (4601); Education Finance III LLC (2533); Education Management LLC (6022); Education Management II LLC (2661); Education Management Corporation (9571); Education Management Holdings II LLC (2529); Higher Education Services II LLC (3436); Miami International University of Art & Design, Inc. (1065); South Education – Texas LLC (2573); South University of Florida, Inc. (9226); South University of Michigan, LLC (6655); South University of North Carolina LLC (9113); South University of Ohio LLC (9944); South University of Virginia, Inc. (9263); South University, LLC (7090); Stautzenberger College Education Corporation (4675); TAIC-San Diego, Inc. (1894); TAIC-San Francisco, Inc. (9487); The Art Institutes International Minnesota, Inc. (6999); The Art Institute of Atlanta, LLC (1597); The Art Institute of Austin, Inc. (3626); The Art Institute of California-Hollywood, Inc. (3289); The Art Institute of California-Inland Empire, Inc. (6775); The Art Institute of California - Los Angeles, Inc. (4215); The Art Institute of California-Orange County, Inc. (6608); The Art Institute of California-Sacramento, Inc. (6212); The Art Institute of Charleston, Inc. (6048); The Art Institute of Charlotte, LLC (4912); The Art Institute of Colorado, Inc. (3062); The Art Institute of Dallas, Inc. (9012); The Art Institute of Fort Lauderdale, Inc. (0255); The Art Institute of Houston, Inc. (9015); The Art Institute of Indianapolis, LLC (6913); The Art Institute of Las Vegas, Inc. (6362); The Art Institute of Michigan, Inc. (8614); The Art Institute of Philadelphia LLC (7396); The Art Institute of Pittsburgh LLC (7441); The Art Institute of Portland, Inc. (2215); The Art Institute of Raleigh-Durham, Inc. (8031); The Art Institute of St. Louis, Inc. (9555); The Art Institute of San Antonio, Inc. (4394); The Art Institute of Seattle, Inc. (9614); The Art Institute of Tampa, Inc. (6822); The Art Institute of Tennessee-Nashville, Inc. (5359); The Art Institute of Virginia Beach LLC (2784); The Art Institute of Washington, Inc. (7043); The Art Institutes International II LLC (9270); The Illinois Institute of Art at Schaumburg, Inc. (3502); The Illinois Institute of Art, Inc. (3500); The Institute of Post-Secondary Education, Inc. (0283); The New England Institute of Art, LLC (7798); The University of Sarasota, Inc. (5558); and Western State University of Southern California (3875).

estate, and including the respective debtors and their respective directors, officers, shareholders, managers, agents and members;

- (v) *Raymond Gonzales v. Education Management Corporation, et al.*, Superior Court of the State of California, County of San Francisco, Case No. CGC-18-564745 (“**Gonzales Action**”);
- (vi) *Coleby Lombardo v. Dream Center Foundation, Inc. et al.* Superior Court of the State of California, County of Los Angeles, Case No. BC694492 (“**Lombardo Action**”);
- (vii) *Burge v. Education Management Corporation, et.al.* (United States District Court, Northern District of Georgia). Case No. 1:16-CV-04299-RWS, and any related arbitration (“**Burge Action**”);
- (viii) *Robert Gillman v. Dream Center Education Holdings, LLC, d/b/a The Art Institutes, d/b/a The Art Institute of Pittsburg*, United States District Court for the Northern District of Illinois Eastern Division, Case No. 1:18-cv-5844 (“**Gillman Action**”);
- (ix) *Tolani Akamo v. South University*, District Court of Williamson County, 368th Judicial District Court, Case No. 18-1167-C368 (“**Akamo Action**”);
- (x) *Vallerie Hancock v. Argosy University, Phoenix*, Case No. 18-009452, filed on or about September 13, 2018 with the Arizona Office of the Attorney General (“**Hancock Action**”);
- (xi) Thomas J. Perrelli, the Settlement Administrator appointed to monitor the compliance of Dream Center Education Holdings with consent judgments entered into in November 2015 with the Education Management Corporation (“EDMC”) and the Attorneys General of 39 states and the District of Columbia to resolve consumer-protection claims arising out of alleged unfair and deceptive practices at EDMC’s for profit educational institutions and all matters arising out of the consent judgments;
- (xii) U.S. Department of Labor, including, without limitation, any Notice of Intent To Take Action Letters sent to any of the Insureds (“**DOL**”);
- (xiii) U.S. Department of Education (“**DOE**”);
- (xiv) The various accrediting agencies of the Receivership Entities, including, without limitation, the Higher Learning Commission (“**Accrediting Agencies**”);
- (xv) The Secured Lenders under: the Senior Secured Credit and Guarantee Agreement, dated as of October 17, 2017, by and among Dream Center Education Holdings, LLC, the Arts Institutes International, LLC, Dream

Center South University, LLC, Dream Center Argosy University of California, LLC, and Dream Center Education Management, LLC, as borrowers, and Dream Center Foundation (“Parent”) and certain subsidiaries of the borrowers, as guarantors, the lenders party thereto from time to time, and U.S. Bank National Association, as administrative agent and collateral agent for the Secured Lenders, as amended, amended and restated, modified, supplemented, or otherwise modified from time to time and any ancillary documents, assignments or transfers related thereto; and, the Second Lien Guaranty dated as of October 17, 2017, made by each of the guarantors party thereto in favor of U.S. Bank National Association, as collateral agent for the Secured Lenders, as amended, amended and restated, modified, supplemented, or otherwise modified from time to time and any ancillary documents, assignments or transfers related thereto;

- (xvi) The various taxing authorities, including but not limited to, the Indiana Department of Revenue; the Commonwealth of Kentucky Department of Revenue; the State of Michigan, Department of Labor and Economic Opportunity, Unemployment Insurance Agency; the Missouri Department of Revenue, Taxation Division; the Missouri Department of Labor and Industrial Relations, Division of Employment Security; the Oklahoma Employment Security Commission; the Kansas Department of Revenue; the California Department of Tax and Fee Administration; the State of Maine Revenue Services; the Illinois Department of Revenue; the Illinois Department of Employment Security; the Oregon Department of Revenue; and the Oregon Employment Department;
- (xvii) The various state and district attorney generals, including, but not limited to, the Attorney Generals of Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, Washington and Wisconsin;
- (xviii) Claims by or on behalf of former employees of DCEH, DCF and/or other entity Insureds relating to, *inter alia*, layoffs and/or closure of individual campuses, offices or locations of DCEH and/or other entity Insureds;
- (xix) Claims by or on behalf of employee welfare benefit plans sponsored by DCEH, DCF and/or other entity Insureds, fiduciaries of such plans and/or plan participants or beneficiaries of such plans; and
- (xx) All creditors (or potential creditors) of the Receivership Estate, including but not limited to, claims by or on behalf of any government agency(ies), landlord(s), lender(s), former students, former employees and/or independent contractors.

The foregoing lawsuits and/or potential claims, together with any known or unknown claims or potential claims involving the Receivership Entities, DCF, the Ds&Os, and/or the Insureds that arise from, are related to, or derive from the Receivership Entities or transactions conducted with the Receivership Entities and potentially implicate the Policies, and any and all attorneys' fees, costs or expenses arising out of or related thereto are referred to collectively as the "**Specified Litigation and Potential Claims.**"

13. The Specified Litigation and Potential Claims and all proposed third-party claims have been stayed by Orders of the Court [ECF Nos. 8, 14, 150] ("**Stay Orders**") as against the Receivership Entities, but any action against DCF is not stayed because it is not a Receivership Entity.

E. Settlement Agreement

14. The Parties and their respective professionals have engaged in lengthy negotiations in an effort to resolve all claims the Receiver has identified or asserted or could assert against the Insureds, the Insurer, and the Policies, in any manner or that might implicate the Policies, including, without limitation, each of the potential claims identified in the Receiver's Alleged Claims, and/or otherwise relating to the operations of the Receivership Entities and the Insureds, the Receivership Case, the Specified Litigation and Potential Claims, and/or any bankruptcy actions or other claim or action relating to the Receivership Entities, as more fully set forth in the Settlement Agreement (including any and all indemnification claims) that arise from, are related to, or derive from the Receivership Entities or transactions involving or related to the Receivership Entities (collectively, "**Claims**").

15. As a result of the Parties' good-faith efforts, they successfully resolved their contested issues and entered into the Settlement Agreement, which subject to this Court's approval, will resolve all of the Claims, without the further cost and expense of litigation (the "**Settlement**").

16. The salient terms of the Settlement, as set forth in more detail in the Settlement Agreement, are summarized as follows:⁷

Agreed Settlement Provisions	Summary
Settlement Payment	The Insureds shall cause the Insurer to pay to the Receiver from the proceeds of the Primary Policy's D&O Coverage Section, the agreed Settlement Payment in the amount of Eight Million Five Hundred Thousand Dollars (\$8,500,000.00) , consistent with, and subject to, the terms of the Settlement Agreement.
Broad General Releases	Subject to the exceptions set forth in the Settlement Agreement, the Parties will provide the broadest possible full and complete releases from any and all Claims and causes of action, whether known or unknown, including those that are currently pending or could be filed or asserted against one another.
Release of Insurer and Policies	Each of the Parties will release completely the Insurer and the Policies. The Insurer's payment of the Settlement Payment and any Defense Costs/Approved Payments will be deemed to have exhausted the limits of the Policies. Upon the Receiver's receipt of the Settlement Payment in cleared funds, the Policies shall be immediately discharged and cancelled, and the Insurer shall be immediately released from any and all obligations under the Policies. Notwithstanding the complete discharge and cancellation of the Policies, nothing in the Settlement shall be construed to release the Insurer's obligations under the Settlement Agreement.
Bar Order	The Settlement is contingent upon, among other things, the Court entering the Settlement and Bar Order approving the Settlement and incorporating a Bar Order permanently enjoining the pursuit of claims against the Insureds and Insurer as more specifically stated in the Settlement Agreement and this Motion.
Termination of Settlement	Prior to entry of the Settlement and Bar Order, all Parties shall retain, in their sole discretion, the right to terminate the Settlement at any time if they do not obtain such consideration as they deem just and proper, including the entry of the Bar Order.
Preservation of Receiver's Rights to Pursue Actions for Recovery from Non-National Union Excess Carriers	The Receiver shall retain all rights to seek recovery from any Non-National Union Excess Policy, subject to the terms and provisions in the Settlement Agreement.

⁷ Creditors and interested parties are encouraged to read the Settlement Agreement in its entirety. In the event of any inconsistency between the terms of the Settlement Agreement and this Motion, the Settlement Agreement shall control.

Agreed Settlement Provisions	Summary
Remaining Proceeds (if any)	The Insurer shall be authorized to utilize the Primary Policy in its sole discretion, consistent with the parties' Settlement Agreement, during the 36-Month Post-Effective Date Period. To the extent there are any Remaining Primary Proceeds in the Primary Policy after the expiration of the 36-Month Post-Effective Date Period, the Insurer shall pay such Remaining Primary Proceeds to the Receiver, or his designee, for the benefit of the Receivership Estate. For the avoidance of doubt, the Insurer's maximum, aggregate payment under the Policies shall be \$10 million, all of which shall be funded from the Shared Limit of Liability of the Primary Policy's D&O Coverage Section.

17. DCF has made valuable contributions to the Settlement that include the payment of the \$500,000 Retention requirement necessary to implicate the Primary Policy's Non-Profit Directors & Officers Liability Coverage Section (the "**D&O Coverage Section**"). (The Receiver did not have the funds to make this payment.) Absent this payment, neither the Receiver nor any other person would have had access to the D&O Coverage Section. Moreover, DCF has continued to manage litigation against it that resulted solely from the filing of the Receivership, yet was not subject to any stay. Had DCF not managed this litigation, then competing litigants that should have looked to the Receivership for their claims may have attempted to access the proceeds of the Policies before this Settlement and negatively affected the ability of the Receiver to enter into this Settlement. Additionally, DCF and its directors and officers are Insureds and have a right to the Primary Policy proceeds for defense fees and expenses and potential indemnity obligations. DCF is willing to forego such rights as against the Primary Policy in order to allow the proceeds to fund the Settlement. Without such contributions, this Settlement may not be possible.

III. BASIS FOR REQUESTED RELIEF

A. Settlement

18. This court has wide discretion when determining the fairness of a settlement. *See Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006) (emphasizing that a district court administering an equity receivership has broad discretion). The terms of the Settlement here are fair and equitable, were negotiated in good faith, represent a compromise of matters within the duties of the Receiver, and the Settlement Agreement is consistent with and furthers the purposes of this Receivership. “The primary purpose of the equitable receivership is the marshaling of the estate’s assets for the benefit of all aggrieved investors and other creditors of the receivership entities.” *SEC v. Parish*, 2010 WL 8347143 (D.S.C. 2010)(citation omitted). Moreover, in administering the receivership, the District Court has broad discretion to effectuate the purpose of the Receivership. *United States v. Vanguard Inv. Co.*, 6 F.3d 222, 226-27 (4th Cir. 1993).

19. The Receiver respectfully submits that the Settlement Agreement is the culmination of the Receiver’s efforts to marshal the Receivership Estate’s assets for the benefit of the stakeholders of the Receivership Estate. Importantly, subject to the Court’s approval, the Settlement will (i) provide a significant, immediate cash benefit in the amount of \$8.5 million to the Receivership Estate, which will allow meaningful distributions to the Receivership Estate’s stakeholders; (ii) avoid the costs and uncertainty of protracted litigation of the Receiver Estate’s Claims against the Insureds, and the Specified Litigation and Potential Claims; (iii) eliminate significant claims and liabilities against the Receivership Estate; and (iv) help facilitate the long overdue closing of this complex Receivership.

20. While the Receiver believes the Claims have merit, the probability of success in litigating the Claims against the Insureds is uncertain at best, especially considering the defenses

already raised by the Ds&Os in informal negotiations. The Claims involve complex factual and legal issues, all of which are contested by the Ds&Os. Litigation would require further investigation, discovery, retention of experts, preparation and prosecution of motions and preparation for trial. The Receiver estimates that rejecting the offer and Settlement Agreement and incurring the costs to litigate the Claims, coupled with the depletion of funds available from the Policies, would net less to the Receivership Estate than the Settlement Payment. By contrast, approval of the Settlement Agreement will eliminate the risk of this uncertainty.

21. Moreover, because the Settlement Proceeds will be administered through the Receivership and distributed to stakeholders with allowed claims against the Receivership Estate, the result will be far more fair and efficient than having the Receiver and other creditors (*i.e.*, claimants in the Specified Litigation and Potential Claims) compete for recoveries through the prosecution of multiple lawsuits against the Insureds in various jurisdictions.

22. Finally, the Settlement preserves the Receivership Estate's rights to pursue additional recoveries from the Non-National Union Excess Policies.

23. Based on the foregoing, the Receiver respectfully submits that there is good and sufficient cause for the Court to approve the Settlement Agreement.

B. Bar Order

i. The Requested Bar Order

24. The Settlement is contingent upon the Court entering a Bar Order to permanently bar, prohibit, enjoin and restrain the filing, commencing, prosecuting, conducting, asserting or continuing in any manner, directly, indirectly or derivatively, any suit, action, cause of action, cross-claim, counterclaim, third-party claim, or other demand (including, without limitation, the Specified Litigation and Potential Claims and any of the Claims being released herein) in any federal or state court or any other judicial or non-judicial proceeding (including, without limitation,

any proceeding in any judicial, arbitral, mediation, administrative, or other forum) by any Barred Person (as defined below) against or affecting any of the Insureds or the Insurer (Insureds and the Insurer are collectively defined herein as the “**Insured Released Parties**”) that arises from, relates to, or derives from the Receivership Entities or transactions involving or related to the Receivership Entities, and which is based in whole and part on any allegation, claim, demand, cause of action, matter or fact directly or indirectly relating in any way to or arising in connection with the Receivership Entities, the Insureds, the Policies, and/or the facts and circumstances underlying the Claims and all other claims that have been made or could be made, in connection with the Receiver’s Alleged Claims and/or the Specified Litigation and Potential Claims, or otherwise, whether or not asserted therein, or which may implicate the Policies in any way, subject to the exceptions set forth in the Settlement Agreement (collectively, the “**Barred Claims**”). For purposes of the Bar Order, “**Barred Persons**” shall mean any person or entity that has held, holds, may hold, or purports to hold a claim or other debt or liability or an interest in or other right against, in, arising out of, or in any way related to the Receivership Entities and the Insureds (including, without limitation, all persons that have or could bring claims in connection with the Specified Litigation and Potential Claims, or otherwise), whether that person or entity filed a proof of claim, proof of interest, or otherwise against the Receivership Estate.

25. In the event such potential holder of a claim timely objects and the Parties and/or Court do not resolve or overrule the objection to the satisfaction of the Insured Released Parties, then the Insured Released Parties shall have the right to withdraw from the Settlement without the need for Court approval or the consent of any Party, and such Settlement shall be null and void.

26. The intent and purpose of the Bar Order are to enjoin directly the most expansive and comprehensive group of third parties, whether such party is known or unknown, identified or

unidentified, suspected or unsuspected, named or unnamed class action members or potential class action members from pursuing any and all claims or causes of action against the Insured Released Parties that would implicate the Policies.

27. Notwithstanding anything herein to the contrary, the Bar Order shall NOT (i) relieve the Parties from their obligations under the Settlement Agreement; (ii) preclude the Barred Persons from pursuing any independent claim or action against any of the Insured Released Parties, but only if such independent claim or action is completely and wholly unrelated to the activities of the Receivership Entities and such claim is not able to implicate either of the Policies in any manner; nor (iii) preclude the Receiver from pursuing claims that would implicate any Non-National Union Excess Policies, as discussed further in paragraph 12 of the Settlement Agreement.

28. The Bar Order shall be in substantially the form attached as Exhibit A and include the provisions discussed in paragraph 6 of the Settlement Agreement regarding the Receiver's subsequent settlement, if any, with any Non-National Union Excess Carrier. To be clear, the Bar Order shall prevent any and all actions related to any of the Barred Claims against and/or that may implicate the Insurer and/or the Policies.

29. The Receiver respectfully submits that, based on the Court's inherent powers as a court of equity, this Court has the authority to approve the Settlement and releases, issue a Bar Order, and establish procedures, as necessary, relating to the Bar Order.

ii. Authority to Enter the Bar Order

30. As discussed more fully below, bar orders similar to the one requested herein have been approved by the United States Court of Appeals for the Sixth Circuit as well as other courts.

31. A district court "has broad powers in fashioning relief in an equity receivership proceeding." *Liberte Capital*, 421 F.3d at 382; *see also SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001). These broad powers extend to claims brought against

assets in the receivership and “the costs of defending such claims as a drain on receivership assets.” *Liberte Capital*, 462 F.3d at 551 (citing *SEC v. Universal Fin.*, 760 F.2d 1024, 1038 (9th Cir. 1985)).

32. “Blanket anti-litigation stays repeatedly have been upheld in circumstances affecting assets of a receivership estate.” *SEC v. Kaleta*, No. H-09-3674, 2013 WL 2408017, *6 (S.D. Tex. 2013) (approving bar order prohibiting third-party claims by insureds against insurance company that issued policies to defendant in receivership proceeding); *see also SEC v. Byers*, 609 F.3d 87, 91 (2d Cir. 2010); *Liberte Capital*, 462 F.3d at 551-52. Of critical import, a district court’s approval of a bar order under these circumstances, where a wasting insurance policy is at issue, protects the assets of the receivership estate by “forestalling a race to judgment that would have diminished the recovery of all creditors against receivership assets.” *SEC v. Stanford Int’l Bank*, 927 F.3d 830, 843 (5th Cir. 2019) (discussing *SEC v. Kaleta*, 530 F. App’x 360, 362 (5th Cir. 2013)); *see also Zacarias v. Stanford International Bank, Ltd.*, 945 F.3d 883 (5th Cir. 2019).

33. The use of bar orders is not limited to claims against the receiver or the receivership estate only; “courts have also used bar orders to bar claims against third parties settling with receiverships.” *S.E.C. v. Stanford International Bank, Ltd.*, No. 3:09-CV-0298, 2017 WL 9989249, *3 (N.D. Tex. 2017).

34. There are no stringent standards for approving a settlement or bar order in a federal receivership; “instead, a district court has wide discretion to determine what relief is appropriate.” *Gordon v. Dadante*, 336 Fed. Appx. 540, 549 (6th Cir. 2009).

35. When a Court is considering the resolution of potential claims against the receivership estate by a third party that has materially contributed to or participated in the resolution of such claims, the entry of a bar order may be especially appropriate. The approval of

a bar order also may be critical – and permissible – where a third party may refuse to participate in a settlement or resolve claims without the issuance of an injunction or stay (especially where such a settlement may resolve a significant portion of claims against a receivership estate). *See SEC v. DeYoung*, 850 F.3d 1172, 1182 (10th Cir. 2017) (“there would have been no settlement without the bar order.”).

36. Bar orders that do not totally enjoin all claims concerning a receivership estate or the receiver – or preserve the right of parties to pursue claims through a claims administration process in the receivership case – have also been affirmed as valid. *See Zacarias*, 945 F.3d 883. (noting that investors may still pursue claims in the claim process in the receivership estate); *see also Kaleta*, 530 Fed. Appx. at 362 (5th Cir. 2013) (noting that investors still retained the opportunity to participate in the claims process, and retained the right to pursue certain other claims).

37. Importantly, a court’s approval of a settlement and related bar order “does not necessarily require that the Court find the settlement to be a net benefit to every non-settling party.” *S.E.C. v. Stanford International Bank, Ltd.*, No. 3:09-CV-0298, 2017 WL 9989249 (N.D. Tex. 2017). Because of the nature of a receivership, “[t]he inability of a receivership estate to meet all of its obligations is typically the *sine qua non* of the receivership,” and a court may consider nontraditional resolutions of claims that may be in the best interest of the receivership estate as a whole as part of its considerations. *Liberte Capital*, 462 F.3d at 552 (6th Cir. 2006) (finding that a blanket stay against claims against the receivership assets in a bar order was valid).

38. This Court is no stranger to the issue. It has already entered a bar order in this Receivership Case in connection with DCEH’s transactions with Studio Enterprise Manager, LLC. *See* ECF No. 501.

39. Similarly, Mr. Dottore has obtained bar orders in connection with other receivership cases in this District before the Honorable Kathleen McDonald O'Malley. *See Gordon v. Dadante*, 336 F. App'x 540 (6th Cir. 2009) (affirming bar order in a securities fraud case involving an equity receiver); *Gordon v. Dadante*, 2008 WL 1805787 (N.D. Ohio 2008) (approving settlement with Ferris, Baker, Watts, Inc. including entry of a bar order); *Gordon v. Dadante*, 2008 WL 4625157 (N.D. Ohio 2008) (approving settlement with McDonald Investments, Inc. n/k/a KeyBanc Capital Markets, Inc. including entry of a bar order).

40. In the *Gordon v. Dadante* case, Mr. Dottore, in his capacity as the federal court appointed equity receiver for several entities that held stock in various brokerage accounts, reflecting substantial margin debt allegedly incurred pursuant to a fraudulent scheme, asserted claims against Ferris Baker, Watts, Inc. ("**Ferris Baker**"), a brokerage firm, and (2) McDonald Investments, Inc. n/k/a KeyBanc Capital Markets, Inc. ("**McDonald**"), an investment company, under the securities laws. Mr. Dottore sought and obtained approval of settlements including similar bar orders with both Ferris Baker and McDonald. In his settlement with Ferris Baker, Ferris Baker contributed \$7,200,000 to the receivership estate, delivered significant shares of stock (valued at approximately \$9 million) to the receivership estate, and waived its \$9 million+ claim against the receivership estate. In exchange, the receivership estate released Ferris Baker and certain of its directors and officers, and agreed to seek approval of a bar order in favor of Ferris Baker. Judge O'Malley approved the settlement and entered the bar order. In the order approving the settlement agreement, Judge O'Malley found as follows:

After its own review of the Release and Bar Order, the Court finds the conditions found therein to be both fair, and fairly typical, conditions to impose in exchange for settlement. Entry of a bar order that is required by a proposed settlement agreement is within a court's authority and discretion. *See In re Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996); *CFTC v. Equity Fin. Grp.*, 2007 U.S. Dist. LEXIS 53310 (D.N.J. 2007); *S.C. Nat'l Bank v.*

Stone, 749 F.Supp. 1419, 1431 (D.S.C. 1990). Accordingly, the Court approves the Settlement Agreement and declines to require modification of any aspect of the Settlement Agreement, its attendant Releases, or the Bar Order. Within seven (7) days of the date of this Order, the Court will enter the *Bar Order, Injunction and Dismissal of Claims* attached to the proposed settlement agreement as Exhibit A.

Gordon v. Dadante, 2008 WL 1805787, *14 (N.D. Ohio 2008).

41. Notably, the bar order entered in favor of Ferris Baker barred claims by the “Non-Settling Defendants,” which included (a) all defendants, counter-defendants, cross-defendants and third-party defendants, other than Ferris Baker, in the underlying litigation; and (b) any other person or entity that directly or through his/her/its counsel had been served with notice of the hearing on the Motion. The Non-Settling Defendants were barred “from commencing, prosecuting or asserting claims for indemnity or contribution against [Ferris Baker] (or any other claim against [Ferris Baker] where the injury to the Non-Settling Defendant is the Non-Settling Defendant’s liability to the [receivership entity]) arising out of or relating to the claims or allegations in the Receivership Action, the Small Action or the Amantea Action, trading in the stock of Innotrak Corporation, or the conduct of a former employee of Ferris Baker, Stephen J. Glantz.” *See Gordon v. Dadante*, Case No. 1:05CV2726 (N.D. Ohio 2008), ECF No. 362.

42. Thereafter, a group of former investors (Regalbutto Plaintiffs) appealed the Order approving the Ferris Baker settlement, including the bar order. The Court of Appeals for the Sixth Circuit affirmed and remarked that “no federal rules prescribe a particular standard for approving settlements in the context of an equity receivership; instead, a district court has wide discretion to determine what relief is appropriate.” 336 Fed. Appx. at 549 (citing *Liberte Capital Group, LLC*, 462 F.3d at 551).

43. In Mr. Dottore’s settlement with McDonald, McDonald delivered shares of stock (valued at approximately \$562,000) to the receivership estate, and waived its claim against the

receivership estate. In exchange, the receivership estate released McDonald and its directors and officers, and agreed to seek approval of a bar order in favor of McDonald. Judge O'Malley approved the settlement and entered the requested bar order.

44. Accordingly, there is ample authority to enter the Bar Order as requested.

iii. Application of Authority to Requested Bar Order

45. Exercising its broad, equitable powers, the Court should approve the Settlement, including the entry of the Bar Order requested.

46. First, the Insureds (and the Insurer) are parting with significant consideration in exchange for the Bar Order. The Settlement calls for the Insureds to cause the Insurer to pay \$8.5 million from the Primary Policy's proceeds to the Receiver for the benefit of the Receivership Estate. In addition, certain of the non-Receivership Entities that are Insureds under the Policies (namely, DCF) have given additional valuable consideration. As set forth above, DCF has (i) contributed the payment of the \$500,000 retention requirement necessary to implicate the Primary Policy; (ii) continued management of litigation against it which deterred competing litigants from asserting claims against the Receivership Estate or from accessing proceeds of the Policies before this Settlement; and (iii) agreed to forego certain rights against the Primary Policy in order to allow the proceeds to fund the Settlement.

47. That is why the entry of the Bar Order is a critical condition of the Settlement, without which, the Insureds would not enter into the Settlement Agreement. *DeYoung*, 850 F.3d at 1182. The Insureds face known and unknown claims by third parties, other than the Receiver, stemming from their conduct in connection with the Receivership Entities, including the Specified Litigation and Potential Claims, which may implicate the Policies. As a result of the Insureds' agreement to have the Insurer fund the \$8.5 million Settlement Payment to the Receivership Estate, the Policies will be deemed exhausted. Without the entry of the Bar Order, the Insureds will face

the Specified Litigation and Potential Claims without the benefit of the Policies' coverage. That is an untenable result for the Insureds.

48. Moreover, the Settlement also provides additional value to the Receivership Estate by eliminating the indemnification and contribution claims the Insureds would have against the Receivership Entities.

49. Further, the Bar Order is limited to enjoining any claims, including derivative claims that belong to the Receivership Estate, and does not bar independent claims against the Insured Released Parties that are wholly unrelated to the Receivership Entities and do not implicate the Policies. Because the Receiver preempts the field with respect to these claims, including the Specified Litigation and Potential Claims, the Bar Order is narrowly tailored and equitable under the circumstances.

50. Similar to the bar order approved by the Fifth Circuit in the *Stanford* receivership, this Bar Order protects the assets of the receivership estate by “forestalling a race to judgment that would have diminished the recovery of all creditors against receivership assets.” *SEC v. Stanford Int'l Bank*, 927 F.3d at 843. Indeed, the Policies are wasting policies. By entering the Bar Order and channeling all claims that could implicate the Policies to the Receivership Estate, the Court is preserving the Policies' proceeds for the benefit of the Receivership Estate's stakeholders. That is especially so under the circumstances where the Receivership Estate is preserving the right to seek additional recoveries from the Non-National Union Excess Policies.

51. Finally, the Bar Order does not prevent the Barred Persons from bringing claims against the Receivership Estate. Instead, the Bar Order would not prohibit any party, including claimants in the Specified Litigation and Potential Claims, from asserting claims against the Receivership Estate, where such claims should properly be brought and adjudicated. In fact, some

of the claimants in the Specified Litigation and Potential Claims have already intervened and are actively involved in the Receivership Case.

52. Consistent with the foregoing, the Receiver respectfully submits there is good and sufficient cause to enter a Bar Order in connection with the Settlement.

C. Insurer's Payment of Defense Costs/Approved Payments

53. As set forth in the Settlement Agreement, the Parties agree to cooperate with the Insureds so that all of their current and future reasonable attorneys' fees, professional fees, and expenses that arise from, are related to or derive from (i) the Receivership Entities, or transactions conducted with the Receivership Entities, and which may implicate the Policies, including, without limitation, the Claims (including but not limited to the Receiver's Alleged Claims), and the Specified Litigation and Potential Claims, as well as any and all other claims, if any, that may be disguised derivative claims that are in actuality claims the Receiver, any bankruptcy trustee, liquidator, or successor to the Receivership Entities has possessed, now possesses, or could ever possess as rightful holder of derivative claims of the Receivership Entities that may implicate the Policies; and (ii) the enforcement of the Settlement and Bar Order against any Barred Persons, and related matters ("**Defense Cost Matters**") will be funded by the Primary Policy's proceeds without the necessity of satisfying any additional retention or co-insurance amounts under the Policies, provided that such payments will not interfere with nor affect the payment of the Settlement Payment. The Receiver agrees, and respectfully requests the Court approve in the Settlement and Bar Order the following terms regarding payment of Defense Costs/Approved Payments:

- (a) The automatic stay imposed by the Court in the Initial Receiver Order, and any other Order entered in the Receivership Estate, and/or any other applicable injunction ("**Stay**") does not apply to the proceeds of the Primary Policy. To the extent the Stay applies to any portion of the Policies, it is modified and lifted to allow the Insurer in its reasonable discretion, to settle, advance and make payment from the Remaining Policy Proceeds of the Primary Policy's D&O Coverage Section on behalf of any and all Insureds

under the Primary Policy, either jointly or severally, for (i) any and all Claims that have been or may be made against the Policies and/or any of the Insureds, whether direct or indirect, including, without limitation, claims by the Receiver and for any Defense Costs Matters, (ii) any and all other applicable Loss covered under the Policies, and (iii) any and all Defense Costs (including for Defense Costs Matters), and including payments for fees and expenses to defense counsel, experts, or other third-party professionals and vendors, who may be retained on behalf of the Insureds, that have already incurred or will be incurred in connection with any such Claims or potential litigation (“**Approved Payments**”);

- (b) The Insurer is authorized and allowed, but not directed, to make the Approved Payments under the terms herein on behalf of the Insureds. The Insurer, in accordance with the Policies and subject to all rights of the Insureds and their counsel, shall determine if the Approved Payments (including Defense Costs) are reasonable and necessary, and no further motion, notice or court order is necessary for the Insurer to make the Approved Payments;
- (c) The Approved Payments shall reduce the Shared Limits of Liability applicable to the D&O Coverage Section of the Primary Policy and shall not be considered a violation of the Stay, nor shall they be considered property of the Receivership Estate;
- (d) The Receiver, the Receivership Entities, the Receivership Estate, and any subsequent receiver, trustee or successor for the Receivership Entities, are not allowed to recover any payment of Defense Costs, including attorneys’ fees, advanced in accordance with the terms of the Primary Policy and the Settlement and Bar Order;
- (e) Nothing in this Settlement Agreement nor the Settlement and Bar Order shall constitute (i) a waiver, modification, or limitation of the contractual rights and obligations provided for in the Policies or the Insurer’s reservation of all of its rights, remedies and defenses under the Policies; nor (ii) a finding that such sums are due and owing under either the Policies;
- (f) Nothing in the Settlement Agreement nor the Settlement and Bar Order shall give the Insureds or their counsel, representatives, agents, or assigns, or anyone acting through them, any rights in and to the Settlement Payment, and the Parties expressly acknowledge that, notwithstanding anything in the Settlement Agreement, in the event the Insurer fails to pay any of the Insureds’ current and future reasonable attorneys’ fees, professional fees, and expenses relating to the Receivership, the Specified Litigation and Potential Claims, the Settlement Agreement, the enforcement of the Settlement and Bar Order against any Barred Persons, and related matters, for any reason, the Insureds or their counsel, representatives, agents or assigns or anyone acting through them shall have no claim in or to the

Settlement Payment and the Releases herein in favor of Receiver shall remain in full force and effect; and

- (g) The Settlement and Bar Order shall be immediately valid and fully effected upon its entry and any applicable stay shall be waived.

IV. NOTICE

54. Notice of this Motion will be provided pursuant to the provisions of this Court's Order on the Receiver's Motion seeking approval of the form and manner of notice, which is being filed simultaneously herewith.

V. NO PRIOR REQUEST

55. No party has made any prior request for the particular relief sought in this Motion to this or any other court in connection with this Receivership Case.

VI. CONCLUSION

56. For the reasons stated above, the Receiver respectfully submits that the Settlement and Bar Order meets the applicable legal standards for approval and is in the best interest of the Receivership Estate and its creditors, and represents the exercise of the Receiver's sound and prudent business judgment. Moreover, subject to the Court's approval, the Settlement will avoid lengthy, burdensome, and expensive litigation, and bring substantial cash to this Estate.

WHEREFORE, the Receiver respectfully requests that this Court enter the Settlement and Bar Order, in substantially the form attached hereto as Exhibit A: (a) granting this Motion; (b) approving the terms of the Settlement Agreement (including approval of the Bar Order, and the requested modification of the Stay, to the extent applicable, regarding the Approved Payments); and (c) granting any further relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED this 18th day of February, 2021.

/s/ Mary K. Whitmer

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EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

))	Case No. 1:19-cv-00145
DIGITAL MEDIA SOLUTIONS, LLC,))	Judge Dan Aaron Polster
Plaintiff))	Magistrate Judge Thomas M. Parker
v.))	
SOUTH UNIVERSITY OF OHIO, LLC, <i>et al.</i> ,))	
Defendants.))	

**ORDER GRANTING RECEIVER’S MOTION FOR ENTRY OF ORDER
(1) APPROVING GLOBAL SETTLEMENT AND COMPROMISE AMONG
RECEIVER AND ALL INSUREDS UNDER THE PORTFOLIOSELECT FOR
NON-PROFIT ORGANIZATIONS LIABILITY INSURANCE POLICY;
(2) APPROVING PAYMENT OF DEFENSE COSTS; AND (3) BARRING
AND PROHIBITING PARTIES FROM ASSERTING CERTAIN CLAIMS**

This matter came before the Court for hearing on _____ (“**Hearing**”) upon the *Receiver’s Motion for Entry of Order (1) Approving Global Settlement and Compromise Among Receiver and All Insureds Under the PortfolioSelect For Non-Profit Organizations Liability Insurance Policy; (2) Approving Payment of Defense Costs; (3) and Barring and Prohibiting Parties From Asserting Certain Claims* (“**Motion**”)¹ [ECF No. ____] filed by Mark E. Dottore, the duly appointed and acting Receiver for the Receivership Entities.²

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

² The “**Receivership Entities**” include (i) South University of Ohio LLC; (ii) Dream Center Education Holdings, LLC; (iii) The DC Art Institute of Raleigh-Durham LLC; (iv) the DC Art Institute of Charlotte LLC; (v) DC Art Institute of Charleston, LLC; (vi) DC Art Institute of Washington LLC; (vii) The Art Institute of Tennessee - Nashville LLC; (viii) AiTN Restaurant LLC; (ix) The Art Institute of Colorado LLC; (x) DC Art Institute of Phoenix LLC; (xi) The Art Institute of Portland LLC; (xii) The Art Institute of Seattle LLC; (xiii) The Art Institute of Pittsburgh, DC LLC; (xiv) The Art Institute of Philadelphia, DC, LLC; (xv) DC Art Institute of Fort Lauderdale LLC; (xvi) The Illinois Institute of Art LLC; (xvii) The Art Institute of Michigan LLC; (xviii) The Illinois Institute of Art at Schaumburg LLC; (xix) DC Art Institute of Phoenix, LLC, and its direct subsidiaries; (xx) the Art Institute of Las Vegas LLC; (xxi) the Art Institute of Indianapolis, LLC; (xxii) AiIN Restaurant LLC; (xxiii) Dream Center Argosy;

The Motion seeks approval of a Settlement Agreement entered into by and among the Receiver and all Insureds under that certain PortfolioSelect for Non-Profit Organizations Insurance Policy issued by National Union.³ The Settlement Agreement will yield a Settlement Payment of \$8.5 million to the Receiver, or his designee, on behalf of the Receivership Estate; provides for releases among the Parties, subject to the terms and conditions set forth in the Settlement Agreement; and seeks a Bar Order in favor of the Insureds and the Insurer. The Court has reviewed the Motion and Settlement Agreement, considered the proffer of evidence by Receiver's counsel, heard argument of counsel, and taken judicial notice of the entire record in this case. Based on the foregoing, the Court makes the following Findings of Fact and Conclusions of Law:⁴

A. Good-Faith Negotiations: Counsel for the Parties have apprised the Court of the negotiations that preceded the Settlement Agreement, and the Court finds that the Settlement Agreement is the result of extensive, arm's-length bargaining among the Parties and represents a

(xxiv) University of California LLC, and its direct subsidiaries; (xxv) Argosy Education Group LLC; (xxvi) Dream Center Education Management LLC; and (xxvii) South University of Michigan LLC. *See* Order Appointing Receiver ("**Initial Receiver Order**") [ECF No. 8] at 3-4; *see also* Order Clarifying Order Appointing Receiver ("**Clarifying Receiver Order**") [ECF No. 14] at 1 (removing AU Student Funding, LLC as a "Receivership Entity").

³ The Parties to the Settlement Agreement are as follows: the RECEIVER, as the federal equity receiver, custodian and liquidator for the Receivership Entities; THE DREAM CENTER FOUNDATION, and its former and current officers, directors, managers, members, employees and affiliates (collectively, "**DCF**"); BRENT RICHARDSON ("**B. Richardson**"); CHRISTOPHER RICHARDSON ("**C. Richardson**"); JOHN CROWLEY ("**Crowley**"); CHAD GARRETT ("**Garrett**"); MONICA CARSON ("**Carson**"); MELISSA ESBENSHADE ("**Esbenshade**"); SHELLEY GARDNER ("**Gardner**"); MICHAEL LACROSSE ("**Lacrosse**"); RANDALL BARTON ("**Barton**"); SHELLEY MURPHY ("**Murphy**"); ROB PAUL ("**Paul**"); DEBBI LANNON-SMITH ("**Lannon-Smith**"); STACEY SWEENEY ("**Sweeney**"); PASTOR MATTHEW BARNETT ("**Barnett**"); TIMOTHY SLOTTOW ("**Slottow**"); RUFUS GLASPER ("**Glasper**"); JACK DEBARTOLO ("**DeBartolo**"); CYNTHIA BAUM ("**Baum**"); and JAMES TERRELL ("**Terrell**"). B. Richardson, C. Richardson, Crowley, Garrett, Carson, Esbenshade, Gardner, Lacrosse, Barton, Murphy, Paul, Lannon-Smith, Sweeney, Barnett, Slottow, Glasper, DeBartolo, Baum and Terrell are referred to herein collectively as the "**Ds&Os**," and together with DCF and any and all other persons who are an "Insured" as defined in the either of Policies (including, with respect to the defined Primary Policy, the Receivership Entities and any non-Receivership Entities covered under the Primary Policy including without limitation DCF), the "**Insureds**." The Receiver, the Ds&Os, and DCF are collectively referred to herein as the "**Parties**" or singularly as a "**Party**."

⁴ Any finding of fact constitutes a finding of fact even if it is stated as a conclusion of law, and any conclusion of law constitutes a conclusion of law even if it is stated as a finding of fact.

good-faith compromise and resolution of the matters settled. The Settlement Agreement is not the product of any collusion among the Parties, nor did the Parties negotiate the Settlement Agreement with any intent to prejudice persons or entities subject to the Settlement Agreement.

B. Settlement is Reasonable and in the Best Interests of the Receivership Estate:

The Court is familiar with the claims and defenses asserted or that could have been asserted in this Court, or otherwise, which have been settled pursuant to the Settlement Agreement, and finds that the Settlement Agreement is fair, reasonable, and adequate within the parameters established by applicable law in this Circuit. Specifically, the Court finds and concludes that the Settlement is within the duties of the Receiver and is consistent with the purposes of the Receivership. The Receiver and all Parties have acted in good faith and demonstrated the exercise of prudent business judgment in connection with the Settlement Agreement. The Settlement Agreement falls within the range of reasonableness and is in the best interests of the Receivership Estate.

C. Notice and Opportunity to be Heard: The form and means of the notice of the Motion and the Hearing that the Receiver and the Court provided complies with the provisions of this Court's Order, dated ____ ("**Notice Order**") [ECF No. ____], and is good and proper notice pursuant to applicable law, and is determined to be the best notice practicable under the circumstances, and no other or further notice is or shall be required. In particular, (a) the Court provided notice of the Motion and Hearing electronically via CM/ECF to all parties and counsel who have appeared in this Receivership Case and consented to electronic notice; and (b) the Receiver provided notice of the Motion and Hearing, *via* U.S. Mail, postage prepaid (either via Certified Mail or Regular Mail as set forth in the Notice Order) to (i) all known parties who have appeared or may be an interested party in the Specified Litigation and Potential Claims; and (ii) all counsel, creditors and interested parties who have appeared but are not registered to receive

Notices of Electronic Filings in this Receivership Case; and (c) the Receiver further provided notice by publication in *USA Today* (or a national publication of substantially similar stature) pursuant to the provisions in the Notice Order (collectively, “**Noticed Parties**”). See Certificate of Service [ECF No. ____].

D. Bar Order is Appropriate: The Court finds and concludes that the Bar Order is an appropriate exercise of the Court’s sound discretion to facilitate settlements and promote the consensual resolution of disputes. *Gordon v. Dadante*, 336 F. App’x 540 (6th Cir. 2009); *Zacarias v. Stanford International Bank, Ltd.*, 945 F.3d 883 (5th Cir. 2019); *In re Munford, Inc.*, 97 F.3d 449, 455 (11th Cir.1996); *CFTC v. Equity Fin. Grp.*, 2007 U.S. Dist. LEXIS 53310 (D.N.J.2007); *S.C. Nat’l Bank v. Stone*, 749 F.Supp. 1419, 1431 (D.S.C.1990). In connection therewith, the Court finds and concludes that: (1) all of the Claims released under the Settlement Agreement arise from, are related to, or derive from the Receivership or transactions conducted with the Receivership Entities; (2) the Insureds have given valuable consideration for the releases and protections in the Bar Order; (3) the Bar Order is a mandatory condition of the Settlement Agreement, and without the Bar Order, the Settlement Agreement will not be consummated by the Insureds; and (4) entry of this Order approving and implementing the Bar Order is necessary and appropriate in order to achieve the finality and repose contemplated by the Settlement Agreement. As for the Insureds’ consideration, they are parting with \$8.5 million in proceeds from the Primary Policy and foregoing important rights thereunder; in particular, DCF funded the applicable retention requirements that allowed the Insureds to access the remaining Primary Policy proceeds for the benefit of the Receivership Estate, defended un-stayed litigation claims that could have wasted critical Receivership Estate resources, and DCF and its directors and officers as Insureds have a right to the Primary Policy proceeds for defense fees and expenses and potential indemnity

obligations and are willing to forego such rights as against the Primary Policy in order to allow the proceeds to fund the Settlement. Without such contributions, this Settlement may not be possible. The Court also finds and concludes that the Bar Order is necessary to protect the assets of the Receivership Estate, namely the proceeds of the Policies, where the Policies are wasting insurance policies, and the Bar Order “forestall[s] a race to judgment that would have diminished the recovery of all creditors against the receivership assets.” *SEC v. Stanford Int’l Bank*, 927 F.3d 830, 843 (5th Cir. 2019).

Based on the foregoing, and for the reasons set forth on the record at the Hearing, which are incorporated by reference herein in their entirety, the Court finds and determines that the Settlement Agreement is fair, equitable, falls within the range of reasonableness, is in the best interest of the creditors of the Receivership Estate, and that the Receiver exercised prudent business judgment in connection therewith and satisfied the legal standards under the facts of this Receivership Case. Accordingly, it is –

ORDERED as follows:

1. **Motion**: The Motion is GRANTED in its entirety.
2. **Settlement Agreement**: The Settlement Agreement is APPROVED in all respects, and the terms and conditions of the Settlement Agreement, including the terms and scope of the Bar Order, are incorporated in this Order as if fully stated herein.
3. **Objections**: Any creditor or other party-in-interest that did not file nor assert and serve a written objection to the Motion, nor raise any objection at the Hearing to the Settlement Agreement, is conclusively deemed to have waived any objection they may have to the Motion, the Settlement Agreement, and the Bar Order. Any objection not expressly sustained, in whole or in part, in a ruling of the Court is hereby overruled.

4. **Execution of Documents:** The Parties are authorized to execute any and all documents and perform all acts as are necessary and appropriate to effectuate the Settlement Agreement.

5. **Releases:** The Releases contained in the Settlement Agreement are APPROVED in their entirety and incorporated herein by reference, conditioned on the Receiver's receipt of the Settlement Payment in cleared funds. The Insurer's payment of the Settlement Payment and any Defense Costs (as defined in the Policies) is deemed to have exhausted the limits of the Policies. Upon the Receiver's (or his designee's) receipt of the Settlement Payment in cleared funds, the Policies are immediately DISCHARGED and CANCELLED, and the Insurer is immediately RELEASED from any and all obligations under the Policies. Notwithstanding the complete discharge and cancellation of the Policies, nothing herein shall be construed to release the Insurer's obligation under the Settlement Agreement to exhaust completely the \$10 million Shared Limit of Liability of the Primary Policy's D&O Coverage Section.

6. **Preservation of Receiver's Rights to Pursue Actions for Recovery From Non-National Union Excess Carriers.** Notwithstanding the Releases and Bar Order granted herein, the Receiver shall retain all rights to seek recovery from any Non-National Union Excess Policy, and to name the Insureds as defendants in such actions (if necessary), solely for the purpose to pursue the policy proceeds of any Non-National Union Excess Policy ("**Non-National Union Excess Coverage**"). However, any such action shall only be allowed to the extent the Court enters a judgment that is limited to the amount of the Non-National Union Excess Coverage (if any), and under no circumstances shall the Receiver be permitted to pursue any judgment amounts beyond the Non-National Union Excess Coverage from any Insured or affiliate, or officer, director, manager, member, or shareholder of any Insured, nor encourage or obtain any direct monetary

benefit from any contribution or reimbursement claims that might be asserted by any of the Non-National Union Excess Coverage entities against any Insured or affiliate, or officer, director, manager, member, or shareholder of any Insured. An Insured is not required to pay any amount within the Non-National Union Excess Coverage if the Non-National Union Excess Carrier refuses or fails to satisfy such obligation (if any). To the extent the Receiver enters into any settlement with a Non-National Union Excess Carrier subsequent to the Court's entry of this Order, the parties may add the settling Non-National Union Excess Carrier to this Order, by amendment, and such settling Non-National Union Excess Carrier shall receive the full protections of the Releases and Bar Order herein. Upon the Receiver's receipt of the settlement payment from any settling Non-National Union Excess Carrier in cleared funds, the respective Non-National Union Excess Policy shall be immediately deemed fully exhausted, discharged and cancelled, and the settling Non-National Union Excess Carrier shall be immediately released from any and all obligations under its Non-National Union Excess Policy.

7. **Reservation of Insurer's Rights During 36-Month Post-Effective Date Period:**

The Insurer shall have thirty-six (36) months following the date of the Settlement Payment ("**36-Month Post-Effective Date Period**") to utilize the Primary Policy in its sole discretion. To the extent any proceeds remain ("**Remaining Primary Proceeds**") in the Primary Policy's D&O Coverage Section after the expiration of the 36-Month Post-Effective Date Period, the Insurer shall pay such Remaining Primary Proceeds to the Receiver, or his designee, for the benefit of the Receivership Estate. For purposes of clarity, in no event shall (i) the provisions of this paragraph affect or alter any other terms in this Settlement Agreement, including, without limitation, the immediate effect of the releases or the exhaustion and cancellation of the Policies upon the Receiver's receipt of the Settlement Payment, as set forth below; nor shall (ii) the aggregate

amount of National Union's payment of the Settlement Payment, Defense Costs, and Remaining Primary Proceeds (if any) from the Primary Policy exceed \$10,000,000 in the aggregate.

8. **Bar Order:**

- (a) All Barred Persons (as defined below) are permanently barred, prohibited, enjoined and restrained from filing, commencing, prosecuting, conducting, asserting or continuing in any manner, directly, indirectly or derivatively, any suit, action, cause of action, cross-claim, counterclaim, third-party claim, or other demand (including, without limitation any and all of the Claims, which includes without limitation, any and all of the Receiver's Alleged Claims and the Specified Litigation and Potential Claims, all of which Claims are being released herein) in any federal or state court or any other judicial or non-judicial proceeding (including, without limitation, any proceeding in any judicial, arbitral, mediation, administrative, or other forum) by any Barred Person (as defined below) against or affecting any of the Insureds or the Insurer (Insureds and the Insurer are collectively defined herein as the "**Insured Released Parties**") that arises from, relates to, or derives from the Receivership Entities or transactions involving or related to the Receivership Entities, and which is based in whole and part on any allegation, claim, demand, cause of action, matter or fact directly or indirectly relating in any way to or arising in connection with the Receivership Entities, the Insureds, the Policies, and/or the facts and circumstances underlying the Claims and all other claims that have been made or could be made, in connection with the Receiver's Alleged Claims and/or the Specified Litigation and Potential Claims, or otherwise, whether or not asserted therein, subject to the exceptions set forth herein (collectively, the "**Barred Claims**"). For purposes of this Bar Order, "**Barred Persons**" shall mean any person or entity that has held, holds, may hold, or purports to hold a claim or other debt or liability or an interest in or other right against, in, arising out of, or in any way related to the Receivership Entities and the Insureds (including, without limitation, all persons that have or could bring claims in connection with the Receiver's Alleged Claims and/or the Specified Litigation and Potential Claims, or otherwise), whether that person or entity filed a proof of claim, proof of interest, or otherwise against the Receivership Estate;
- (b) The intent and purpose of this Bar Order are to enjoin directly the most expansive and comprehensive group of third parties, whether such party is known or unknown, identified or unidentified, suspected or unsuspected, named or unnamed class action members or potential class action members from pursuing any and all claims or causes of action against the Insured Released Parties that would implicate the Policies;
- (c) Notwithstanding anything herein to the contrary, this Bar Order shall **NOT** (i) relieve the Parties from their obligations under the Settlement

Agreement; (ii) preclude the Barred Persons from pursuing any independent claim or action against any of the Insureds, but only if such independent claim or action is completely and wholly unrelated to the activities of the Receivership Entities and such claim is not able to implicate either of the Policies in any manner; nor (iii) preclude the Receiver from pursuing claims that would implicate any Non-National Union Excess Policies, as set forth in paragraph 6 above;

- (d) The Bar Order shall prevent any and all actions related to any of the Barred Claims against and/or that may implicate the Insurer and/or the Policies; and
- (e) In the event that any party brings a claim or action against any of the Insured Released Parties subsequent to the entry of this Bar Order which relates to the activities of the Receiver Released Parties or implicates the Policies in any manner, then the Insured Released Parties may seek an expedited hearing with this Court to determine whether such claim or action should be enjoined.

9. **Approved Payments (including Defense Costs):**

- (a) The automatic stay imposed by the Court in the Initial Receiver Order, and any other Order entered in the Receivership Estate, and/or any other applicable injunction (“**Stay**”) does not apply to the proceeds of the Primary Policy. To the extent the Stay applies to any portion of the Policies, it is modified and lifted to allow the Insurer in its reasonable discretion, to settle, advance and make payment solely from the Remaining Policy Proceeds of the Primary Policy’s D&O Coverage Section on behalf of any and all Insureds under the Primary Policy, either jointly or severally, for (i) any and all Claims that have been or may be made against the Policies and/or any of the Insureds, whether direct or indirect, including, without limitation, claims by the Receiver and for any Defense Cost Matters, (ii) any and all other applicable Loss covered under the Policies, and (iii) any and all Defense Costs, including payments for fees and expenses to defense counsel, experts, or other third-party professionals and vendors, who may be retained on behalf of the Insureds, that have already incurred or will be incurred in connection with any such Claims or potential litigation, including Defense Cost Matters (“**Approved Payments**”);
- (b) The Insurer is authorized and allowed, but not directed, to make the Approved Payments under the terms herein on behalf of the Insureds. The Insurer, in accordance with the Policies and subject to all rights of the Insureds and their counsel, shall determine if the Approved Payments (including Defense Costs) are reasonable and necessary, and no further motion, notice or court order is necessary for the Insurer to make the Approved Payments;

- (c) The Approved Payments shall reduce the Shared Limits of Liability applicable to the D&O Coverage Section of the Primary Policy and shall not be considered a violation of the Stay, nor shall they be considered property of the Receivership Estate;
- (d) The Receiver, the Receivership Entities, the Receivership Estate, and any subsequent receiver, trustee or successor for the Receivership Entities, are not allowed to recover any payment of Defense Costs, including attorneys' fees, advanced in accordance with the terms of the Primary Policy and this Order;
- (e) Nothing in the Settlement Agreement nor this Order shall constitute (i) a waiver, modification, or limitation of the contractual rights and obligations provided for in the Policies or the Insurer's reservation of all of its rights, remedies and defenses under the Policies; nor (ii) a finding that such sums are due and owing under either the Policies; and
- (f) Nothing in the Settlement Agreement nor this Order shall give the Insureds or their counsel, representatives, agents, or assigns, or anyone acting through them, any rights in and to the Settlement Payment, and the Parties expressly acknowledge that, notwithstanding anything in the Settlement Agreement, in the event the Insurer fails to pay any of the Insureds' current and future reasonable attorneys' fees, professional fees, and expenses relating to the Receivership, the Specified Litigation and Potential Claims, the Settlement Agreement, the enforcement of this Order against any Barred Person, and related matters, for any reason, the Insureds or their counsel, representatives, agents or assigns or anyone acting through them shall have no claim in or to the Settlement Payment and the Releases herein in favor of Receiver shall remain in full force and effect.

10. **Notice:** In addition to service that will be effected electronically on all parties that are registered to receive electronic notice in this Receivership Case, the Receiver's counsel is directed to serve a copy of this Order on all Noticed Parties pursuant to the provisions in the Notice Order, and such service is deemed good and adequate service of this Order.

11. **Retention of Jurisdiction:** The Court retains jurisdiction to enforce, implement, and interpret the terms of this Order and the Settlement Agreement and all other matters addressed herein, including without limitation, the Bar Order contained herein. Before any party or entity seeks to prosecute in any manner whatsoever any claims, debts or obligations they believe are not released by this Bar Order, such party must first seek relief from this Court, and such party shall

be deemed to have affirmatively consented to the jurisdiction of this Court to enter final orders and judgments on such issue.

12. **Waiver of Stay**: This Order is immediately valid and fully effected upon its entry, and any stay that may be applicable to this Order is hereby waived.

IT IS SO ORDERED.

Dated: _____

Judge Dan Aaron Polster

Magistrate Judge Thomas M. Parker

EXHIBIT B

SETTLEMENT AGREEMENT¹

The parties listed in (i)-(xxi) below, who collectively are referred to herein as the “**Parties**” or in the singular case as a “**Party**,” make this agreement (“**Settlement Agreement**”) by and among each of them:

- (i) MARK E. DOTTORE (“**Receiver**”), as the federal equity receiver, custodian and liquidator for the Receivership Entities;²
- (ii) THE DREAM CENTER FOUNDATION and its former and current officers, directors, managers, members, employees and affiliates (collectively, “**DCF**”);
- (iii) BRENT RICHARDSON (“**B. Richardson**”);
- (iv) CHRISTOPHER RICHARDSON (“**C. Richardson**”);
- (v) JOHN CROWLEY (“**Crowley**”);
- (vi) CHAD GARRETT (“**Garrett**”);
- (vii) MONICA CARSON (“**Carson**”);
- (viii) MELISSA ESBENSHADE (“**Esbenshade**”);
- (ix) SHELLEY GARDNER (“**Gardner**”);
- (x) MICHAEL LACROSSE (“**Lacrosse**”);
- (xi) RANDALL BARTON (“**Barton**”);

¹ All capitalized terms not defined initially herein shall have the same meaning as defined later in the Settlement Agreement, or if not defined, as in the Policy.

² The “**Receivership Entities**” include (i) South University of Ohio LLC; (ii) Dream Center Education Holdings, LLC; (iii) The DC Art Institute of Raleigh-Durham LLC; (iv) the DC Art Institute of Charlotte LLC; (v) DC Art Institute of Charleston, LLC; (vi) DC Art Institute of Washington LLC; (vii) The Art Institute of Tennessee - Nashville LLC; (viii) AiTN Restaurant LLC; (ix) The Art Institute of Colorado LLC; (x) DC Art Institute of Phoenix LLC; (xi) The Art Institute of Portland LLC; (xii) The Art Institute of Seattle LLC; (xiii) The Art Institute of Pittsburgh, DC LLC; (xiv) The Art Institute of Philadelphia, DC, LLC; (xv) DC Art Institute of Fort Lauderdale LLC; (xvi) The Illinois Institute of Art LLC; (xvii) The Art Institute of Michigan LLC; (xviii) The Illinois Institute of Art at Schaumburg LLC; (xix) DC Art Institute of Phoenix, LLC, and its direct subsidiaries (xx) the Art Institute of Las Vegas LLC; (xxi) the Art Institute of Indianapolis, LLC; (xxii) AiIN Restaurant LLC; (xxiii) Dream Center Argosy; (xxiv) University of California LLC, and its direct subsidiaries, (xxv) Argosy Education Group LLC; (xxvi) Dream Center Education Management LLC; and (xxvii) South University of Michigan LLC. *See* Order Appointing Receiver (“**Initial Receiver Order**”) [ECF No. 8] at 3-4; *see also* Order Clarifying Order Appointing Receiver (“**Clarifying Receiver Order**”) [ECF No. 14] at 1 (removing AU Student Funding, LLC as a “Receivership Entity”).

- (xii) SHELLY MURPHY (“Murphy”);
- (xiii) ROB PAUL (“Paul”);
- (xiv) DEBBI LANNON-SMITH (“Lannon-Smith”);
- (xv) STACEY SWEENEY (“Sweeney”);
- (xvi) PASTOR MATTHEW BARNETT (“Barnett”);
- (xvii) TIMOTHY SLOTTOW (“Slottow”);
- (xviii) RUFUS GLASPER (“Glasper”);
- (xix) JACK DEBARTOLO (“DeBartolo”);
- (xx) CYNTHIA BAUM (“Baum”); and
- (xxi) JAMES TERRELL (“Terrell”).

B. Richardson, C. Richardson, Crowley, Garrett, Carson, Esbenshade, Gardner, Lacrosse, Barton, Murphy, Paul, Lannon-Smith, Sweeney, Barnett, Slottow, Glasper, DeBartolo, Baum and Terrell are referred to herein collectively as the “Ds&Os,” and together with DCF and any and all other persons who are an “Insured” as defined in the either of Policies (including, with respect to the defined Primary Policy, the Receivership Entities and any non-Receivership Entities covered under the Primary Policy including without limitation DCF), the “Insureds.”

RECITALS:

WHEREAS, on January 8, 2019, Digital Media Solutions, LLC (“Digital Media”) filed a receivership Complaint against South University of Ohio, LLC, a/k/a DC South University of Ohio, LLC, d/b/a South University, DCEH, and Argosy Education Group, LLC, in the United States District Court, Northern District of Ohio (“Court”). *See Digital Media Solutions, LLC v. South University of Ohio, LLC, et al*, United States District Court, Northern District of Ohio, Eastern Division, Case No. 1:19-cv-145 (“Receivership,” “Receivership Estate,” or “Receivership Case”);

WHEREAS, on January 18, 2019, the Court entered the Initial Receiver Order [ECF No. 8], as clarified [ECF No. 14] and amended [ECF No. 150], appointing Mark E. Dottore as the Receiver of the Receivership Entities. The Receivership remains open, including the stay orders issued therein, in order to allow the Receiver to close certain open issues, including among other matters, the Receiver's Alleged Claims (defined below) against the Insureds;

WHEREAS, prior to the commencement of the Receivership, National Union Fire Insurance Company of Pittsburgh, Pa. ("**Insurer**" or "**National Union**")³ issued a PortfolioSelect for Non-Profit Organizations liability insurance policy to Dream Center Education Holdings, LLC ("**DCEH**"), under Policy Number 02-420-25-70 ("**Primary Policy**"); and also issued a Side-A Edge excess insurance policy to DCEH, under Policy No. 02-42-25-71 ("**Excess Policy**") (the Primary Policy and the Excess Policy, including any and all declarations, amendments, supplements, and endorsements, and subject to all of the policies' terms, conditions and exclusions, are referred to herein collectively as the "**Policies**"), for the initial policy period from October 17, 2017 through October 17, 2018, as extended until April 17, 2019, along with a one-year Discovery Period following April 17, 2019;

WHEREAS, upon information and belief, prior to the commencement of the Receivership, the following insurers ("**Non-National Union Excess Carrier(s)**") also issued liability insurance policies ("**Non-National Union Excess Policy(ies)**") to DCEH for D&O excess coverage relating to the Receivership Entities:

³ All references to the Insurer include National Union and AIG Claims, Inc., on behalf of themselves and their respective predecessors, successors-in-interest, assigns, subrogees, and persons acting by or through any of the foregoing.

Excess Carrier	Policy
Everest National Insurance Company	SC5EX00110-171
Starr Indemnity and Liability Company	1000620558171
Landmark American Insurance Company	LHS674187
Ironshore Indemnity Inc.	003319500

WHEREAS, on July 8, 2020, the Receiver, by and through his counsel, Robert Glickman and Hugh Berkson, of the Law Firm of McCarthy Lebit Crystal Liffman, sent a confidential settlement demand letter to Special Settlement Counsel to DCF and the Ds&Os (“**Demand Letter**”), wherein the Receiver outlined his alleged claims against the Ds&Os (“**Receiver’s Alleged Claims**”);

WHEREAS, the Parties acknowledge that certain other parties have made, or may make, claims against the Receivership Entities, DCF and/or the Ds&Os, including but not limited to the following:

- (i) *Darlene Bolden, et al v. Argosy Education Group, LLC, et al*, Superior Court of the State of California, County of San Diego, Case No. 37-2018-00038876-CU-BT-CTL (“**Bolden Action**”);
- (ii) *Emmanuel Dunagan, et al. v. Illinois Institute of Art-Chicago, LLC, et al*, United States District Court, Northern District of Illinois (Eastern Division), Case No. 19-CV-809 (“**Dunagan Action**”),⁴
- (iii) *FSP Pacific Center, LLC v. Argosy Education Group, LLC*, Superior Court of the State of California, Orange County, Central Justice Center, Case No. 30-2019-01063136-CU-BC-CJC (“**FSP Action**”);
- (iv) George L. Miller (“**Trustee Miller**”), as Chapter 7 Trustee of the bankruptcy estate of *In re The Art Institute of Philadelphia, LLC, et al*, United States Bankruptcy Court for the District of Delaware, Case No. 18-11535,⁵ or any subsequent trustee or successor of said bankruptcy

⁴ On February 13, 2019, the Court entered an Order [ECF No. 49] granting the Dunagan Plaintiffs’ Motion to Intervene in the Receivership Case, and the Dunagan Plaintiffs have actively participated in the Receivership Case.

⁵ The debtors/entities included in the definition of Trustee Miller are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Education Centers, Inc. (6160); Argosy Education Group, Inc. (5674); Argosy University of California LLC (1273); Brown Mackie College - Tucson, Inc.

estate, and including the respective debtors and their respective directors, officers, shareholders, managers, agents and members;

- (v) *Raymond Gonzales v. Education Management Corporation, et al.*, Superior Court of the State of California, County of San Francisco, Case No. CGC-18-564745 (“**Gonzales Action**”);
- (vi) *Coleby Lombardo v. Dream Center Foundation, Inc. et al.* Superior Court of the State of California, County of Los Angeles, Case No. BC694492 (“**Lombardo Action**”);
- (vii) *Burge v. Education Management Corporation, et.al.* (United States District Court, Northern District of Georgia). Case No.: 1:16-CV-04299-RWS, and any related arbitration (“**Burge Action**”);
- (viii) *Robert Gillman v. Dream Center Education Holdings, LLC, d/b/a The Art Institutes, d/b/a The Art Institute of Pittsburg*, United States District Court for the Northern District of Illinois Eastern Division, Case No. 1:18-cv-5844 (“**Gillman Action**”);
- (ix) *Tolani Akamo v. South University*, District Court of Williamson County, 368th Judicial District Court, Case No. 18-1167-C368 (“**Akamo Action**”);
- (x) *Vallerie Hancock v. Argosy University, Phoenix*, Case No. 18-009452, filed on or about September 13, 2018 with the Arizona Office of the Attorney General (“**Hancock Action**”);

(4601); Education Finance III LLC (2533); Education Management LLC (6022); Education Management II LLC (2661); Education Management Corporation (9571); Education Management Holdings II LLC (2529); Higher Education Services II LLC (3436); Miami International University of Art & Design, Inc. (1065); South Education – Texas LLC (2573); South University of Florida, Inc. (9226); South University of Michigan, LLC (6655); South University of North Carolina LLC (9113); South University of Ohio LLC (9944); South University of Virginia, Inc. (9263); South University, LLC (7090); Stautzenberger College Education Corporation (4675); TAIC-San Diego, Inc. (1894); TAIC-San Francisco, Inc. (9487); The Art Institutes International Minnesota, Inc. (6999); The Art Institute of Atlanta, LLC (1597); The Art Institute of Austin, Inc. (3626); The Art Institute of California-Hollywood, Inc. (3289); The Art Institute of California-Inland Empire, Inc. (6775); The Art Institute of California - Los Angeles, Inc. (4215); The Art Institute of California-Orange County, Inc. (6608); The Art Institute of California-Sacramento, Inc. (6212); The Art Institute of Charleston, Inc. (6048); The Art Institute of Charlotte, LLC (4912); The Art Institute of Colorado, Inc. (3062); The Art Institute of Dallas, Inc. (9012); The Art Institute of Fort Lauderdale, Inc. (0255); The Art Institute of Houston, Inc. (9015); The Art Institute of Indianapolis, LLC (6913); The Art Institute of Las Vegas, Inc. (6362); The Art Institute of Michigan, Inc. (8614); The Art Institute of Philadelphia LLC (7396); The Art Institute of Pittsburgh LLC (7441); The Art Institute of Portland, Inc. (2215); The Art Institute of Raleigh-Durham, Inc. (8031); The Art Institute of St. Louis, Inc. (9555); The Art Institute of San Antonio, Inc. (4394); The Art Institute of Seattle, Inc. (9614); The Art Institute of Tampa, Inc. (6822); The Art Institute of Tennessee-Nashville, Inc. (5359); The Art Institute of Virginia Beach LLC (2784); The Art Institute of Washington, Inc. (7043); The Art Institutes International II LLC (9270); The Illinois Institute of Art at Schaumburg, Inc. (3502); The Illinois Institute of Art, Inc. (3500); The Institute of Post-Secondary Education, Inc. (0283); The New England Institute of Art, LLC (7798); The University of Sarasota, Inc. (5558); and Western State University of Southern California (3875).

- (xi) Thomas J. Perrelli, the Settlement Administrator appointed to monitor the compliance of Dream Center Education Holdings with consent judgments entered into in November 2015 with the Education Management Corporation (“EDMC”) with the Attorneys General of 39 states and the District of Columbia to resolve consumer-protection claims arising out of alleged unfair and deceptive practices at EDMC’s for profit educational institutions and all matters arising out of the consent judgments;
- (xii) U.S. Department of Labor, including, without limitation, any Notice of Intent To Take Action Letters sent to any of the Insureds (“**DOL**”);
- (xiii) U.S. Department of Education (“**DOE**”);
- (xiv) The various accrediting agencies of the Receivership Entities, including, without limitation, the Higher Learning Commission (“**Accrediting Agencies**”);
- (xv) The Secured Lenders under: the Senior Secured Credit and Guarantee Agreement, dated as of October 17, 2017, by and among Dream Center Education Holdings, LLC, the Arts Institutes International, LLC, Dream Center South University, LLC, Dream Center Argosy University of California, LLC, and Dream Center Education Management, LLC, as borrowers, and Dream Center Foundation (“Parent”) and certain subsidiaries of the borrowers, as guarantors, the lenders party thereto from time to time, and U.S. Bank National Association, as administrative agent and collateral agent for the Secured Lenders, as amended, amended and restated, modified, supplemented, or otherwise modified from time to time and any ancillary documents, assignments or transfers related thereto; and, the Second Lien Guaranty dated as of October 17, 2017, made by each of the guarantors party thereto in favor of U.S. Bank National Association, as collateral agent for the Secured Lenders, as amended, amended and restated, modified, supplemented, or otherwise modified from time to time and any ancillary documents, assignments or transfers related thereto;
- (xvi) The various taxing authorities, including but not limited to, the Indiana Department of Revenue; the Commonwealth of Kentucky Department of Revenue; the State of Michigan, Department of Labor and Economic Opportunity, Unemployment Insurance Agency; the Missouri Department of Revenue, Taxation Division; the Missouri Department of Labor and Industrial Relations, Division of Employment Security; and the Oklahoma Employment Security Commission;
- (xvii) The various state and district attorney generals, including, but not limited to, the Attorney Generals of Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho,

Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, Washington and Wisconsin;

- (xviii) Claims by or on behalf of former employees of DCEH, DCF and/or other entity Insureds relating to, *inter alia*, layoffs and/or closure of individual campuses, offices or locations of DCEH and/or other entity Insureds;
- (xix) Claims by or on behalf of employee welfare benefit plans sponsored by DCEH, DCF and/or other entity Insureds, fiduciaries of such plans and/or plan participants or beneficiaries of such plans; and
- (xx) All creditors (or potential creditors) of the Receivership Estate, including but not limited to, claims by or on behalf of any government agency(ies), landlord(s), lender(s), former students, former employees and/or independent contractors.

The foregoing lawsuits and/or potential claims, together with any known or unknown claims or potential claims involving the Receivership Entities, DCF, the Ds&Os, and/or the Insureds that arise from, are related to, or derive from the Receivership Entities or transactions conducted with the Receivership Entities and potentially implicate the Policies, and any and all attorneys' fees, costs or expenses arising out of or related thereto are referred to collectively as the "**Specified Litigation and Potential Claims;**"

WHEREAS, the Specified Litigation and Potential Claims, and all proposed third-party claims have been stayed by Orders of the Court [ECF Nos. 8, 14, 150] ("**Stay Orders**") as against the Receivership Entities, but any action against DCF is not stayed because it is not a Receivership Entity;

WHEREAS, DCF has made valuable contributions to the Settlement that include the payment of the \$500,000 Retention requirement necessary to implicate the Primary Policy's Non-Profit Directors & Officers Liability Coverage Section (the "**D&O Coverage Section**"). (The Receiver did not have the funds to make this payment.) Absent this payment, neither the Receiver

nor any other person would have had access to the D&O Coverage Section. Moreover, DCF has continued to manage litigation against it that resulted solely from the filing of the Receivership, yet was not subject to any stay. Had DCF not managed this litigation, then competing litigants that should have looked to the Receivership for their claims may have attempted to access the proceeds of the Policies before this Settlement and negatively affected the ability of the Receiver to enter into this Settlement. Additionally, DCF and its directors and officers are Insureds and have a right to the Primary Policy proceeds for defense fees and expenses and potential indemnity obligations. DCF is willing to forego such rights as against the Primary Policy in order to allow the proceeds to fund the Settlement. Without such contributions, this Settlement may not be possible;

WHEREAS, the Policies are written on a “claims made and reported” basis, and the claims made by the Receiver against the Ds&Os, as alleged in the Receiver’s Alleged Claims and certain claims identified as the Specified Litigation and Potential Claims above, are the only known timely claims remaining against the Policies;

WHEREAS, the Receiver asserts there is merit to the potential Receiver Alleged Claims, and the Ds&Os deny any liability or wrongdoing; but each of the Parties recognizes that it is difficult at this point to assess the probability of success in litigation because of (i) the complexity of the claims and issues, (ii) the number of parties involved, and (iii) the significant time and expense that the prosecution and defense of the claims will require;

WHEREAS, the Insurer has raised questions as to whether coverage is in fact afforded with respect to any claims against the Ds&Os and DCF (including, but not limited to, the Claims (as defined below)), makes no admission as to whether the Ds&Os, DCF, and any other alleged Insured are actual “Insureds” as defined in the Policies, and has reserved all rights and defenses available to it under the Policies and applicable law;

WHEREAS, in an effort to efficiently and amicably resolve the contested issues in a cost-effective manner, the Parties and/or their counsel engaged in good faith, arms' length settlement negotiations, including the exchange, review and analysis of documents, legal analysis, written settlement proposals, and multiple conference calls;

WHEREAS, as a result of the Parties' negotiations, and without admitting the validity of any allegations or any liability in respect thereto, the Parties have reached an agreement, the terms of which are set forth in this Settlement Agreement, providing for a global settlement of any and all claims the Receiver has identified or asserted or could assert against the Insureds in any manner or any and all claims that might implicate the Policies, including, without limitation, each of the potential claims identified in the Receiver Alleged Claims and/or otherwise relating to the operations of the Receivership Entities, the Receivership Case, the Specified Litigation and Potential Claims, any bankruptcy action or other claim or action, including any and all indemnification claims that arise from, are related to, or derive from the Receivership Entities or transactions involving or related to the Receivership Entities (collectively, "**Claims**"), on the terms and subject to the conditions set forth below ("**Settlement**");

WHEREAS, the Parties have determined that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Parties and the Receivership Estate; and

WHEREAS, the Parties intend this Settlement Agreement to be a binding agreement that sets forth the terms and obligations of the Parties for the complete and final resolution of any and all Claims, subject only to the Court's approval in the Receivership Estate.

NOW, THEREFORE, in consideration of the mutual promises and the performance of the covenants and agreements hereinafter contained, the Parties represent, warrant, consent and agree as follows:

1. **Adoption of Recitals.** The Parties adopt the above recitals as being true and correct, and incorporate the recitals herein as material parts of this Settlement Agreement.

2. **Settlement Payment.** For and in consideration of each of the terms set forth herein, the Insureds shall cause the Insurer to pay from proceeds of the Primary Policy's D&O Coverage Section the sum of Eight Million Five Hundred Thousand Dollars (\$8,500,000.00) ("**Settlement Payment**") to the Receiver within thirty (30) days after the later date that (a) the Court enters the Settlement and Bar Order (defined below in paragraph 7), (b) the Settlement and Bar Order has become a Final Order (defined below in paragraph 7), and (c) the Receiver has provided to the Insurer a W-9 form or other such necessary information to comply with any withholding requirements of any governmental unit.

3. **Reservation of Insurer's Rights During 36-Month Post-Effective Date Period:** The Insurer shall have thirty-six (36) months following the date of the Settlement Payment ("**36-Month Post-Effective Date Period**") to utilize the Primary Policy in its sole discretion. To the extent any proceeds remain ("**Remaining Primary Proceeds**") in the Primary Policy's D&O Coverage Section after the expiration of the 36-Month Post-Effective Date Period, the Insurer shall pay such Remaining Primary Proceeds to the Receiver, or his designee, for the benefit of the Receivership Estate. For purposes of clarity, in no event shall (i) the provisions of this paragraph affect or alter any other terms in this Settlement Agreement, including, without limitation, the immediate effect of the releases or the exhaustion and cancellation of the Policies upon the Receiver's receipt of the Settlement Payment, as set forth below; nor shall (ii) the aggregate amount of National Union's payment of the Settlement Payment, Defense Costs, and Remaining Primary Proceeds (if any) from the Primary Policy exceed \$10,000,000 in the aggregate.

4. **Claims Relating to or Arising Out of Employee Welfare Benefit Plans.** The Receiver states that (i) he has determined that the Settlement is reasonable in light of the likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone by any and all employee welfare benefit plans sponsored by DCEH and by any and all plan participants or beneficiaries of such employee welfare benefit plans sponsored by DCEH, fiduciaries of such plans and/or plan participants or beneficiaries of such plans; and (ii) he will consider the interests of employee welfare benefit plans and plan participants or beneficiaries of employee welfare benefit plans sponsored by DCEH in connection with any allocation or distribution of the Settlement Payment.

5. **Settlement Motion.** Within three business (3) days after this Settlement Agreement is fully executed, the Receiver shall file a motion with the Receivership Court seeking (i) approval of the terms and conditions of this Settlement Agreement, (ii) approval and relief from the Stay imposed by this Court's Receiver Orders, or any other applicable stay, to the extent it applies, for the Insurer to make the Settlement Payment and pay Defense Costs (as discussed below), and (iii) the issuance of a bar order ("**Bar Order**") in favor of the Insureds and Insurer that releases the Insureds and the Insurer from any and all claims that arise from, are related to, or derive from the Receivership Entities or transactions involving or related to the Receivership Entities and which may implicate the Policies, including, without limitation, the Claims (including but not limited to the Receiver's Alleged Claims), and the Specified Litigation and Potential Claims, as well as any and all other claims, if any, that may be disguised derivative claims that are in actuality claims the Receiver, any bankruptcy trustee, liquidator or successor to the Receivership Entities has possessed, now possesses, or could ever possess as rightful holder of derivative claims of the Receivership Entities that may implicate the Policies ("**Settlement Motion**"). For the avoidance of doubt, the Bar Order shall apply to only those

Barred Claims (as defined below) and any potential claims that may implicate the Policies, and the Receiver shall retain the right to pursue claims against any Non-National Union Excess Carrier, as set forth in paragraph 12 below. The Settlement Motion shall be in form and content reasonably acceptable to each of the Parties.

6. **Bar Order**. In order to facilitate the Settlement contained herein, and as an essential, material and integral element of such Settlement (without which DCF and the Ds&Os would not enter into this Settlement Agreement and make the Settlement Payment), the Settlement Motion shall contain an obligation for the Receiver to seek entry of a Bar Order, which Bar Order shall permanently bar, prohibit, enjoin and restrain the filing, commencing, prosecuting, conducting, asserting or continuing in any manner, directly, indirectly or derivatively, any suit, action, cause of action, cross-claim, counterclaim, third-party claim, or other demand (including, without limitation, any and all of the Claims, which includes without limitation, any and all of the Receiver's Alleged Claims and the Specified Litigation and Potential Claims, all of which Claims are being released herein) in any federal or state court or any other judicial or non-judicial proceeding (including, without limitation, any proceeding in any judicial, arbitral, mediation, administrative, or other forum) by any Barred Person against or affecting any of the Insureds or the Insurer (Insureds and the Insurer are collectively defined herein as the "**Insured Released Parties**"), that arises from, relates to, or derives from the Receivership Entities or transactions involving or related to the Receivership Entities, and which is based in whole and/or in part on any allegation, claim, demand, cause of action, matter or fact directly or indirectly relating in any way to or arising in connection with the Receivership Entities, the Insureds, the Policies and/or the facts and circumstances underlying the Claims and all other claims that have been made or could be made, in connection with the Receiver's Alleged Claims and/or the Specified Litigation and Potential Claims, or otherwise, whether or not asserted therein (collectively,

the “**Barred Claims**”). For purposes of the Bar Order, “**Barred Persons**” shall mean any person or entity that has held, holds, may hold, or purports to hold a claim or other debt or liability or an interest in or other right against, in, arising out of, or in any way related to the Receivership Entities and the Insureds (including, without limitation, all persons or entities that have or could bring claims in connection with the Receiver’s Alleged Claims and/or the Specified Litigation and Potential Claims, or otherwise), whether that person or entity filed a proof of claim, proof of interest, or otherwise against the Receivership Estate. In the event such potential holder of a claim timely objects and the Parties and/or Court do not resolve or overrule the objection to the satisfaction of the Insured Released Parties, then any of the Insured Released Parties shall have the right to withdraw from the Settlement without the need for Court approval or the consent of any Party, and such Settlement shall then be null and void. The intent and purpose of the Bar Order are to enjoin directly the most expansive and comprehensive group of third parties, whether such party is known or unknown, identified or unidentified, suspected or unsuspected, named or unnamed class action members or potential class action members from pursuing any and all claims or causes of action against the Insured Released Parties that would implicate either of the Policies. Notwithstanding anything herein to the contrary, the Bar Order shall NOT (i) relieve the Parties from their obligations under this Settlement Agreement; (ii) preclude the Barred Persons from pursuing any independent claim or action against any of the Insureds, but only if such independent claim or action is completely and wholly unrelated to the activities of the Receivership Entities and such claim is not able to implicate either of the Policies in any manner; nor (iii) preclude the Receiver from pursuing claims that would implicate any Non-National Union Excess Policies, as discussed further in paragraph 12 below. The Bar Order shall include the provisions discussed in paragraph 12 below regarding the Receiver’s subsequent settlement, if any, with any Non-National Union Excess Carrier. To be clear, the Bar Order shall

prevent any and all actions related to any of the Barred Claims against and/or that may implicate the Insurer and/or the Policies.

7. **Court Approval.** The Settlement contained herein shall become effective and binding in all respects upon the Court entering an Order (“**Settlement and Bar Order**”), which (i) grants the Settlement Motion and approves the Settlement Agreement in the form and content presented to the Court; (ii) authorizes the Insurer to make the Settlement Payment and pay Defense Costs, and modifies the Stay Orders, or any other applicable stay, to the extent it applies, for the Insurer to make the Settlement Payment and pay Defense Costs; (iii) becomes final upon its entry, and any applicable stay is waived; (iv) does not remove DCF from the terms of the Settlement Agreement or Bar Order and does not add DCF as a Receivership Entity; and (v) includes a Bar Order under the terms and conditions set forth herein. In addition, the form of the Settlement and Bar Order shall be acceptable to each of the Parties, be binding on any subsequently appointed receiver, trustee, liquidator, or successor to the Receivership Entities or any bankruptcy estate of any and all of the Receivership Entities, and become a Final Order before the Settlement becomes effective. In the event the Court denies the Settlement Motion or the Settlement and Bar Order is entered by the Court, but is subsequently reversed on appeal by and through a Final Order (“**Reversal Order**”), then (i) the Parties shall be returned, as of such date, to the *status quo ante* prior to their entry into this Settlement Agreement; (ii) the Parties agree that any statute of limitations in respect of the Claims shall be and shall have been tolled through the date seven days following the date of the Reversal Order; and (iii) this Settlement Agreement shall terminate and, except for the tolling agreement in the preceding clause, shall be deemed null and void without any continuing force or effect whatsoever. For purposes of this Settlement Agreement, a “**Final Order**” means an order or judgment of the Court

that (i) has not been appealed, or (ii) if appealed has not been reversed, stayed, modified or amended as a result of such appeal and as to which the time to file any subsequent appeal has expired.

8. **General Release of Insureds by the Receiver, Receivership Entities, and Receivership Estate.** Except as provided in paragraph 12 below, effective immediately upon the Receiver's receipt of the Settlement Payment in cleared funds and in consideration of such Settlement Payment, the Receiver, Receivership Entities, and the Receivership Estate, and all of their current and former officers, directors, shareholders, members, managers, agents, employees, attorneys, affiliates, partners, associates, successors, heirs, insurers, representatives and assigns (collectively "**Receiver Releasers**") agree to and shall be deemed to have fully and generally released and discharged the Insureds and all of their current and former officers, directors, managers, members, agents, employees, attorneys, affiliates, partners, associates, successors, heirs, insurers, representatives and assigns (collectively the "**Insured Releasees**") from and against any and all manner of claims (including the Claims), causes of actions, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, losses, damages, liabilities and demands of any kind whatsoever in law or in equity, whether known or unknown, suspected or unsuspected, contingent or fixed, including attorneys' fees and costs that any of the Receiver Releasers now has, has had or in the future may have against any of the Insured Releasees arising out of, related to, or in connection with, directly or indirectly, the Receivership Entities, the Receivership Estate, the Insureds, the Insurer, the Policies, and/or the facts and circumstances underlying the Claims ("**Insured Released Claims**"). Notwithstanding anything herein to the contrary, the release of the Insured Releasees herein shall not release the Ds&Os from any of their express obligations set forth in this Settlement Agreement.

9. **General Release of Receiver, Receivership Entities and Receivership Estate by the Insureds.** Except as provided in paragraph 12 below, effective immediately upon the Receiver's receipt of the Settlement Payment in cleared funds and in consideration for the obligations herein, the Insureds, and all of their current and former officers, directors, managers, members, agents, employees, attorneys, affiliates, partners, associates, successors, heirs, insurers, representatives and assigns (collectively the "**Insured Releasers**") agree to and shall be deemed to have fully and generally released and discharged the Receiver, Receivership Entities, and the Receivership Estate, and all of their current and former officers, directors, shareholders, members, managers, agents, employees, attorneys, affiliates, partners, associates, successors, heirs, insurers, representatives and assigns (collectively the "**Receiver Releasees**") from and against any and all manner of claims (including the Claims), causes of actions, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, losses, damages, liabilities and demands of any kind whatsoever in law or in equity, whether known or unknown, suspected or unsuspected, contingent or fixed, including attorneys' fees and costs that any of the Insured Releasers now has, has had or in the future may have against any of the Receiver Releasees arising out of, related to, or in connection with, directly or indirectly, the Receivership Entities, the Receivership Estate, the Insureds, the Insurer, the Policies, and/or the facts and circumstances underlying the Claims ("**Receiver Released Claims**"). Notwithstanding anything herein to the contrary, the release of the Receiver Releasees herein shall not release the Receiver from any of his obligations under this Settlement Agreement.

10. **Release of Insurer and Policies.** Effective immediately upon the Receiver's receipt of the Settlement Payment in cleared funds, the Parties, on behalf of themselves, together with their respective officers, directors, managers, members, attorneys, agents, heirs, executors, fiduciaries, representatives, predecessors, successors, affiliates and assigns, and all persons acting by, through or

under them, and each of them, fully release and forever discharge the Insurer, together with its predecessors, successors, affiliates, and assigns, and all persons acting by, through or under them, from all known and unknown claims, liabilities, obligations, promises, agreements (including the Policies), controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees and expenses (including attorneys' fees and costs), of any nature whatsoever, whether or not apparent or yet to be discovered, related to the Receiver, the Receivership Entities, the Receivership Estate, the Policies, and/or the facts and circumstances underlying the Claims, whether or not asserted therein; provided that nothing in this paragraph releases (a) any Party from its obligations under this Settlement Agreement; or (b) any Party from its liability for breach of any term, warranty, or representation in this Settlement Agreement; or (c) the Insurer from payment of Defense Costs (as defined in and in accordance with the terms of the Policies) incurred in connection with this Settlement Agreement. The foregoing release and discharge shall include, without limitation, any assertion that, in connection with or in any way related to this Settlement Agreement and/or any of the Claims, the Insurer breached any obligation under or in connection with either of the Policies or any other policy of insurance issued by the Insurer for the benefit of any of the Insureds, or engaged in any bad faith conduct or any breach of any implied covenant of good faith or fair dealing or unfair claim handling practice. **The Insurer's payment of the Settlement Payment and any Defense Costs shall be deemed to have completely exhausted all of the limits of the Policies under each and every Coverage Section and each and every Limit of Liability, Sublimit of Liability, or otherwise. For the avoidance of any doubt, National Union's maximum, aggregate payment under the Policies shall be \$10,000,000.00, all of which shall be funded from the Shared Limit of Liability of the Primary Policy's D&O Coverage Section. Moreover, upon the Receiver's receipt of the Settlement Payment in cleared funds, both of the Policies shall be immediately**

discharged and cancelled, and the Insurer shall be immediately released from any and all obligations under the Policies. Notwithstanding the complete discharge and cancellation of the Policies, nothing herein should be construed to release National Union's obligation under this Settlement Agreement to exhaust completely the \$10,000,000 Shared Limit of Liability of the Primary Policy's D&O Coverage Section.

11. **Release of Unknown Claims.** The Receiver Releasors and the Insured Releasors each acknowledge that (a) they may have sustained damages, expenses, losses in connection with the subject of the Claims released hereunder which are presently unknown or not suspected and that such damages, expenses and losses, if any, may give rise to additional damages, expenses and losses in the future which are not anticipated by them and (b) that this Settlement Agreement and the foregoing releases have been negotiated and agreed upon despite this realization and, being fully advised, expressly waive any and all rights they may have under any statute, including but not limited to §1542 of the California Civil Code, or common law principle which would limit the effect of the foregoing releases to those Claims actually known or suspected to exist at the time of the effectiveness of the foregoing release. California Civil Code §1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

It is the intention of Receiver Releasors and the Insured Releasors that, notwithstanding the possibility that they or their counsel discover or gain a more complete understanding of the facts, events or law which, if presently known or fully understood, would have affected the foregoing releases, this Settlement Agreement shall be deemed to have fully, finally and forever

settled any and all Claims encompassed by the releases set forth herein, without regard to the subsequent discovery or existence of different of additional facts, events or law.

12. **Preservation of Receiver's Rights to Pursue Actions for Recovery from Non-National Union Excess Carriers.** Notwithstanding the Releases and Bar Order set forth above, the Parties agree that the Receiver shall retain all rights to seek recovery from any Non-National Union Excess Policy, and to name the Insureds as defendants in such actions (if necessary), solely for the purpose to pursue the policy proceeds of any Non-National Union Excess Policy ("**Non-National Union Excess Coverage**"). However, any such action shall only be allowed to the extent the Court enters a judgment that is limited to the amount of the Non-National Union Excess Coverage (if any), and under no circumstances shall the Receiver be permitted to pursue any judgment amounts beyond the Non-National Union Excess Coverage from any Insured or affiliate, or officer, director, manager, member, or shareholder of any Insured nor encourage or obtain any direct monetary benefit from any contribution or reimbursement claims that might be asserted by any of the Non-National Union Excess Coverage entities against any Insured or affiliate, or officer, director, manager, member, or shareholder of any Insured. An Insured shall not be required to pay any amount within the Non-National Union Excess Coverage if the Non-National Union Excess Carrier refuses or fails to satisfy such obligation (if any). To the extent the Receiver enters into any settlement with a Non-National Union Excess Carrier subsequent to the Court's entry of the Settlement and Bar Order, the parties may add the settling Non-National Union Excess Carrier to the Settlement and Bar Order, by amendment, and such settling Non-National Union Excess Carrier shall receive the full protections of the Releases and Bar Order herein. In addition, upon the Receiver's receipt of the settlement payment from any settling Non-National Union Excess Carrier in cleared funds, the respective Non-National Union Excess Policy shall be immediately deemed fully exhausted, discharged and

cancelled, and the settling Non-National Union Excess Carrier shall be immediately released from any and all obligations under its Non-National Union Excess Policy.

13. **Defense Costs.** The Parties agree to cooperate, as set forth in this paragraph, with the Insureds to ensure that all of the Insureds' current and future reasonable attorneys' fees, professional fees, and expenses that arise from, are related to or derive from (i) the Receivership Entities or transactions conducted with the Receivership Entities and which may implicate the Policies, including, without limitation, the Claims (including but not limited to the Receiver's Alleged Claims), and the Specified Litigation and Potential Claims, as well as any and all other claims, if any, that may be disguised derivative claims that are in actuality claims the Receiver, any bankruptcy trustee, liquidator, or successor to the Receivership Entities has possessed, now possesses, or could ever possess as rightful holder of derivative claims of the Receivership Entities that may implicate the Policies; and (ii) the enforcement of the Settlement and Bar Order against any barred Persons and related matters ("**Defense Cost Matters**") will be funded by the Primary Policy proceeds without the necessity of satisfying any additional retention or co-insurance amounts under the Policies. To that end, the Parties further agree that the following terms regarding payment of Defense Costs shall be included in the Settlement and Bar Order:

a. The automatic stay imposed by the Court in the Initial Receiver Order, and any other Order entered in the Receivership Estate, and/or any other applicable injunction ("**Stay**") does not apply to the proceeds of the Primary Policy. To the extent the Stay applies to any portion of the Policies, it is modified and lifted to allow the Insurer in its reasonable discretion, to settle, advance and make payment solely from the Remaining Policy Proceeds of the Primary Policy's D&O Coverage Section on behalf of any and all Insureds under the Primary Policy, either jointly or severally, for (i) any and all Claims that have been or may be made against the Policies and/or any of the Insureds, whether direct or indirect, including, without limitation, claims by the Receiver and for any Defense Cost Matters, (ii) any and all other applicable Loss covered under the Policies, and (iii) any and all Defense Costs, (including for Defense Cost Matters), and including payments for fees and expenses to defense counsel, experts, or other third-party professionals and vendors, who may be retained on behalf of the Insureds, that have already incurred or will be

incurred in connection with any such Claims or potential litigation (“**Approved Payments**”);

b. The Insurer is authorized and allowed, but not directed, to make the Approved Payments under the terms herein on behalf of the Insureds. The Insurer, in accordance with the Policies and subject to all rights of the Insureds and their counsel, shall determine if the Approved Payments (including Defense Costs) are reasonable and necessary, and no further motion, notice or court order is necessary for the Insurer to make the Approved Payments;

c. The Approved Payments shall reduce the Shared Limits of Liability applicable to the D&O Coverage Section of the Primary Policy and shall not be considered a violation of the Stay, nor shall they be considered property of the Receivership Estate;

d. The Receiver, the Receivership Entities, the Receivership Estate, and any subsequent receiver, trustee or successor for the Receivership Entities, are not allowed to recover any payment of Defense Costs, including attorneys’ fees, advanced in accordance with the terms of the Primary Policy and the Settlement and Bar Order;

e. Nothing in this Settlement Agreement nor the Settlement and Bar Order shall constitute (i) a waiver, modification, or limitation of the contractual rights and obligations provided for in the Policies or the Insurer’s reservation of all of its rights, remedies and defenses under the Policies; nor (ii) a finding that such sums are due and owing under either the Policies;

f. Nothing in this Settlement Agreement nor the Settlement and Bar Order shall give the Insureds or their counsel, representatives, agents, or assigns, or anyone acting through them, any rights in and to the Settlement Payment, and the Parties expressly acknowledge that, notwithstanding anything in this Settlement Agreement, in the event the Insurer fails to pay any of the Insureds’ current and future reasonable attorneys’ fees, professional fees, and expenses relating to the Receivership, the Specified Litigation and Potential Claims, this Settlement Agreement, the enforcement of the Settlement and Bar Order against any Barred Persons, and related matters, for any reason, the Insureds or their counsel, representatives, agents or assigns or anyone acting through them shall have no claim in or to the Settlement Payment, and the Releases herein in favor of Receiver shall remain in full force and effect; and

g. The Settlement and Bar Order shall be immediately valid and fully effected upon its entry and any applicable stay shall be waived.

14. **No Admissions.** This Settlement Agreement is entered into for settlement and compromise of disputed claims, including the Claims, the Barred Claims and the released claims, and shall not be treated as an admission by any Party of any liability or wrongdoing whatsoever or as an admission by any Party of any violation of the rights of any other Party or person, or the violation of

any law, statute, regulation, duty, or contract whatsoever. By entering into this Settlement Agreement, the Parties do so solely to avoid the inconvenience, expense, and uncertainty of further proceedings and expressly disclaim any liability to any other party or person.

15. **Attorneys' Fees and Costs.** Each Party will bear its own expenses, including any costs or attorneys' fees incurred in connection with the negotiation and execution of this Settlement Agreement, the Claims, and the Receivership, except for any such costs or attorneys' fees incurred in the Defense Cost Matters set forth in paragraph 13 above.

16. **Notices.** Any notice required or permitted to be given pursuant to any provision of this Settlement Agreement shall be given in writing and delivered in person or sent by registered or certified mail, postage prepaid and return receipt requested, or by overnight courier with a parcel tracking system, (with copies sent by email), to the Parties at their respective counsel's address set forth below:

As to Receiver. Mark E. Dottore:

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As to D&O, Cynthia Baum:

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As to D&Os, Jack DeBartolo and Pastor Matthew Barnett:

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As to D&O, James Terrell:

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or to such other address as the Party to whom notice is to be given may, from time to time, designate in writing delivered in a like manner. All such notices shall be deemed received as of the date of personal delivery or five (5) days following deposit in the U.S. Mail. In addition, the

Receiver shall comply, as required, with the Class Action Fairness Act of 2005 notice and any FRCP 23 notice requirements.

17. **Entire Agreement.** This Settlement Agreement constitutes the only existing and binding agreement of settlement among the Parties, and the Parties acknowledge that there are no other warranties, promises, assurances or representations of any kind, express or implied, upon which the Parties have relied in entering into this Settlement Agreement, unless expressly set forth herein. This Settlement Agreement shall not be modified except by written agreement signed by all Parties.

18. **Parties Affected.** This Settlement Agreement shall inure to the benefit of the Parties and their officers, directors, managers, members, shareholders, employees, partners, attorneys, professionals, affiliates, representatives, spouses, trustees, heirs, successors, assigns, and insurers.

19. **Governing Law/Forum Selection.** The Parties agree that the United States District Court for the Northern District of Ohio, Eastern Division shall have continuing jurisdiction to enforce the terms of this Settlement Agreement, and the Parties expressly consent to the exercise of personal jurisdiction over them for that limited purpose. This Settlement Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Ohio, without regard to conflict of law principles.

20. **Acknowledgment of Terms.** The Parties have read and understand the terms of this Settlement Agreement, have consulted with their respective counsel, and understand and acknowledge the significance and consequence of each such term. No Party is relying on information provided by or from the other Party in entering into this Settlement Agreement and there are no duties of disclosure by either Party to the other. The Parties execute this Settlement Agreement after arm's length negotiations among the Parties and their respective counsel, and the Settlement Agreement reflects the conclusion of the Parties that this Settlement Agreement is in the best interests of the

Parties. Each Party represents and warrants that the person executing this Settlement Agreement on his, her, or its behalf has all authority and legal right to do so and separately acknowledges and represents that this representation and warranty is an essential and material provision of this Settlement and shall survive execution of this Settlement Agreement.

21. **Advice of Counsel.** The Parties acknowledge that they have been represented by counsel of their own choice in the negotiations leading up to the execution of this Settlement Agreement, have read this Settlement Agreement, and have had the opportunity to receive an explanation from legal counsel regarding the legal nature and effect of same. The Parties have had the Settlement Agreement fully explained to them by their respective counsel and understand the terms and provisions of this Settlement Agreement and its nature and effect. The Parties further represent that they are entering into this Settlement Agreement freely and voluntarily, relying solely upon the advice of their own counsel, and not relying on the representation of any other Party or of counsel for any other Party.

22. **Neutral Interpretation.** In the event any dispute arises among the Parties with regard to the interpretation of any term of this Settlement Agreement, all of the Parties shall be considered collectively to be the drafting party and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall be inapplicable.

23. **Execution of Documents in Counterparts.** This Settlement Agreement may be executed in counterparts; that is, not all signatures need appear on the same copy and execution of counterparts shall have the same force and effect as if the Parties had signed the same instrument. All such executed copies shall together constitute the complete Settlement Agreement. The Parties may execute this Settlement Agreement and create a complete set of signatures by exchanging PDF copies

of the executed signature pages. Signatures transmitted in PDF format shall have the same effect as original signatures.

24. **Execution by Client or Counsel.** By execution below, consistent with this Settlement Agreement, each Party agrees and affirmatively represents that it has the full capacity and authority to execute, perform, and be bound by each and every term of this Settlement Agreement; and that if its undersigned counsel is executing this Settlement Agreement on its behalf, that such counsel is qualified and has the authority to do so and to bind its client to the terms of this Settlement Agreement as if the Party had actually signed the Settlement Agreement.

25. **Non-Party Defendants.** Any person or entity that is (a) named in the **Specified Litigation or Potential Claims**, or could have been named in the **Specified Litigation or Potential Claims**, or any other third-party who has received notice of the Settlement and the time to object to the Settlement, and (b) is not signatory to this Settlement Agreement, shall be referred to as a “**Non-Party Defendant(s).**” By entering into this Settlement Agreement, it is the intent of the Parties to reach a global settlement with respect to the Barred Claims; and accordingly, this Settlement Agreement shall apply to all Non-Party Defendants, whether or not they become a signatory to this Settlement Agreement. Any Non-Party Defendant who is not a signatory to this Settlement Agreement will be subject to the Bar Order.

26. **Divisions and Headings.** The divisions of this Settlement Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Settlement Agreement.

27. **Waiver.** The failure of a Party to enforce any provision or provisions of this Settlement Agreement shall not in any way be construed as a waiver of any such provision or provisions as to any future violations thereof, nor prevent that Party thereafter from enforcing each

and every other provision of this Settlement Agreement. The rights granted the Parties herein are cumulative and the waiver of any single remedy shall not constitute a waiver of such Party's right to assert all other legal remedies available to it under the circumstances. No extension of time of performance of an act or obligation under this Settlement Agreement shall constitute an extension of time of performance of any other act or obligation.

28. **Cooperation.** The Parties agree to cooperate with each other to the extent necessary and commercially reasonable, and use their collective best efforts, to enable the Receiver to obtain entry of the Settlement and Bar Order and to cause the Settlement and Bar Order to become a Final Order. The Parties agree to provide the Receiver and any successor(s) with any and all reasonably requested materials, documents, information and assistance in connection with the Receiver's efforts to seek and obtain entry of the Settlement and Bar Order. The Parties also agree to promptly execute and deliver such further documents and take such other actions as may be reasonably necessary to carry out the purpose and intent of this Settlement Agreement.

29. **No Public Statements.** Except as provided in Paragraph 12 above, the Parties agree not to make any public statement disparaging any of the other Parties. The Parties agree that there will be no press releases or public announcements of the Settlement reflected in this Settlement Agreement, other than the Settlement Motion seeking the Court's approval of the Settlement Agreement.

30. **Termination of Settlement Agreement:** Prior to entry of the Settlement and Bar Order, each of the Parties shall retain, in their sole discretion, the right to terminate the Settlement at any time if they do not obtain such consideration as they deem just and proper, including the entry of the Bar Order.

31. **Time is of the Essence:** Time is of the essence of the Parties to perform their obligations under this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date(s) indicated below.

MARK E. DOTTORE, Receiver

By: 
Name: _____
Title: US DISTRICT COURT RECEIVER
Dated: 2/10/2021

SHELLY MURPHY

By: _____
Name: _____
Title: _____
Dated: _____

THE DREAM CENTER FOUNDATION

By: _____
Name: _____
Title: _____
Dated: _____

ROB PAUL

By: _____
Name: _____
Title: _____
Dated: _____

BRENT RICHARDSON

By: _____
Name: _____
Title: _____
Dated: _____

DEBBI LANNON-SMITH

By: _____
Name: _____
Title: _____
Dated: _____

CHRISTOPHER RICHARDSON

By: _____
Name: _____
Title: _____
Dated: _____

STACEY SWEENEY

By: _____
Name: _____
Title: _____
Dated: _____

31. **Time is of the Essence:** Time is of the essence of the Parties to perform their obligations under this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date(s) indicated below.

MARK A. DOTTORE, Receiver

By: _____
Name: _____
Title: _____
Dated: _____

SHELLY MURPHY

By: Shelly Murphy
Name: Shelly Murphy
Title: _____
Dated: 2/16/2021

THE DREAM CENTER FOUNDATION

By: _____
Name: _____
Title: _____
Dated: _____

ROB PAUL

By: _____
Name: _____
Title: _____
Dated: _____

BRENT RICHARDSON

By: _____
Name: _____
Title: _____
Dated: _____

DEBBI LANNON-SMITH

By: _____
Name: _____
Title: _____
Dated: _____

CHRISTOPHER RICHARDSON

By: _____
Name: _____
Title: _____
Dated: _____

STACEY SWEENEY

By: _____
Name: _____
Title: _____
Dated: _____

31. **Time is of the Essence:** Time is of the essence of the Parties to perform their obligations under this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date(s) indicated below.

MARK A. DOTTORE, Receiver

By: _____
Name: _____
Title: _____
Dated: _____

SHELLY MURPHY

By: _____
Name: _____
Title: _____
Dated: _____

THE DREAM CENTER FOUNDATION

By:  _____
Name: Edward Duncan
Title: CFO
Dated: 2-11-21

ROB PAUL

By: _____
Name: _____
Title: _____
Dated: _____

BRENT RICHARDSON

By: _____
Name: _____
Title: _____
Dated: _____

DEBBI LANNON-SMITH

By: _____
Name: _____
Title: _____
Dated: _____

CHRISTOPHER RICHARDSON

By: _____
Name: _____
Title: _____
Dated: _____

STACEY SWEENEY

By: _____
Name: _____
Title: _____
Dated: _____

31. **Time is of the Essence:** Time is of the essence of the Parties to perform their obligations under this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date(s) indicated below.

MARK A. DOTTORE, Receiver

SHELLY MURPHY

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

THE DREAM CENTER FOUNDATION

ROB PAUL

By: _____
Name: _____
Title: _____
Dated: _____

By:  _____
Name: ROBERT PAUL
Title: EX-SVP OF STRATEGIC INITIATIVES
Dated: 2/10/21

BRENT RICHARDSON

DEBBI LANNON-SMITH

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

CHRISTOPHER RICHARDSON

STACEY SWEENEY

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

31. **Time is of the Essence:** Time is of the essence of the Parties to perform their obligations under this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date(s) indicated below.

MARK A. DOTTORE, Receiver

SHELLY MURPHY

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

THE DREAM CENTER FOUNDATION

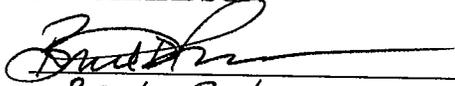
ROB PAUL

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

BRENT RICHARDSON

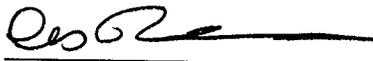
DEBBI LANNON-SMITH

By: 
Name: Brent Richardson
Title: CEO
Dated: 2-16-21

By: _____
Name: _____
Title: _____
Dated: _____

CHRISTOPHER RICHARDSON

STACEY SWEENEY

By: 
Name: CHRIS RICHARDSON
Title: _____
Dated: 2-16-21

By: _____
Name: _____
Title: _____
Dated: _____

31. **Time is of the Essence:** Time is of the essence of the Parties to perform their obligations under this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date(s) indicated below.

MARK A. DOTTORE, Receiver

SHELLY MURPHY

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

THE DREAM CENTER FOUNDATION

ROB PAUL

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

BRENT RICHARDSON

DEBBI LANNON-SMITH

By: _____
Name: _____
Title: _____
Dated: _____

By: Debbi Lannon-Smith
Name: Debbi Lannon-Smith
Title: CHRO
Dated: February 11, 2021

CHRISTOPHER RICHARDSON

STACEY SWEENEY

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

31. **Time is of the Essence:** Time is of the essence of the Parties to perform their obligations under this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date(s) indicated below.

MARK A. DOTTORE, Receiver

SHELLY MURPHY

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

THE DREAM CENTER FOUNDATION

ROB PAUL

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

BRENT RICHARDSON

DEBBI LANNON-SMITH

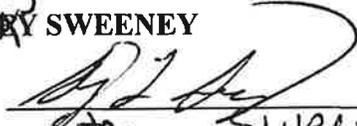
By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

CHRISTOPHER RICHARDSON

STACY SWEENEY

By: _____
Name: _____
Title: _____
Dated: _____

By:  _____
Name: STACY SWEENEY
Title: _____
Dated: 2-11-21

JOHN CROWLEY

By: 
Name: JOHN E. CROWLEY
Title: COO
Dated: 2/12/21

PASTOR MATTHEW BARNETT

By: _____
Name: _____
Title: _____
Dated: _____

CHAD GARRETT

By: _____
Name: _____
Title: _____
Dated: _____

TIMOTHY SLOTTOW

By: _____
Name: _____
Title: _____
Dated: _____

MONICA CARSON

By: _____
Name: _____
Title: _____
Dated: _____

RUFUS GLASPER

By: _____
Name: _____
Title: _____
Dated: _____

MELISSA ESBENSHADE

By: _____
Name: _____
Title: _____
Dated: _____

JACK DEBARTOLO

By: _____
Name: _____
Title: _____
Dated: _____

SHELLEY GARDNER

By: _____
Name: _____
Title: _____
Dated: _____

CYNTHIA BAUM

By: _____
Name: _____
Title: _____
Dated: _____

JOHN CROWLEY

By: _____
Name: _____
Title: _____
Dated: _____

PASTOR MATTHEW BARNETT

By: _____
Name: _____
Title: _____
Dated: _____

CHAD GARRETT

By: Chad M. Garrett
Name: Chad Garrett
Title: CFO
Dated: 2/10/21

TIMOTHY SLOTTOW

By: _____
Name: _____
Title: _____
Dated: _____

MONICA CARSON

By: _____
Name: _____
Title: _____
Dated: _____

RUFUS GLASPER

By: _____
Name: _____
Title: _____
Dated: _____

MELISSA ESBENSHADE

By: _____
Name: _____
Title: _____
Dated: _____

JACK DEBARTOLO

By: _____
Name: _____
Title: _____
Dated: _____

SHELLEY GARDNER

By: _____
Name: _____
Title: _____
Dated: _____

CYNTHIA BAUM

By: _____
Name: _____
Title: _____
Dated: _____

JOHN CROWLEY

PASTOR MATTHEW BARNETT

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

CHAD GARRETT

TIMOTHY SLOTTOW

By: _____
Name: _____
Title: _____
Dated: _____

By: *Timothy P. Slottow*
Name: *TIMOTHY P. SLOTTOW*
Title: _____
Dated: *2/7/2021*

MONICA CARSON

RUFUS GLASPER

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

MELISSA ESBENSHADE

JACK DEBARTOLO

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

SHELLEY GARDNER

CYNTHIA BAUM

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

JOHN CROWLEY

By: _____
Name: _____
Title: _____
Dated: _____

PASTOR MATTHEW BARNETT

By: _____
Name: _____
Title: _____
Dated: _____

CHAD GARRETT

By: _____
Name: _____
Title: _____
Dated: _____

TIMOTHY SLOTTOW

By: _____
Name: _____
Title: _____
Dated: _____

MONICA CARSON

By: *Monica Carson* _____
Name: Monica Carson
Title: Chief Enrollment Officer
Dated: 2-12-2021

RUFUS GLASPER

By: _____
Name: _____
Title: _____
Dated: _____

MELISSA ESBENSHADE

By: _____
Name: _____
Title: _____
Dated: _____

JACK DEBARTOLO

By: _____
Name: _____
Title: _____
Dated: _____

SHELLEY GARDNER

By: _____
Name: _____
Title: _____
Dated: _____

CYNTHIA BAUM

By: _____
Name: _____
Title: _____
Dated: _____

JOHN CROWLEY

By: _____
Name: _____
Title: _____
Dated: _____

PASTOR MATTHEW BARNETT

By: _____
Name: _____
Title: _____
Dated: _____

CHAD GARRETT

By: _____
Name: _____
Title: _____
Dated: _____

TIMOTHY SLOTTOW

By: _____
Name: _____
Title: _____
Dated: _____

MONICA CARSON

By: _____
Name: _____
Title: _____
Dated: _____

RUFUS GLASPER

By: Rufus Glasper
Name: RUFUS GLASPER
Title: _____
Dated: 2/7/2021

MELISSA ESBENSHADE

By: _____
Name: _____
Title: _____
Dated: _____

JACK DEBARTOLO

By: _____
Name: _____
Title: _____
Dated: _____

SHELLEY GARDNER

By: _____
Name: _____
Title: _____
Dated: _____

CYNTHIA BAUM

By: _____
Name: _____
Title: _____
Dated: _____

JOHN CROWLEY

By: _____
Name: _____
Title: _____
Dated: _____

PASTOR MATTHEW BARNETT

By: _____
Name: _____
Title: _____
Dated: _____

CHAD GARRETT

By: _____
Name: _____
Title: _____
Dated: _____

TIMOTHY SLOTTOW

By: _____
Name: _____
Title: _____
Dated: _____

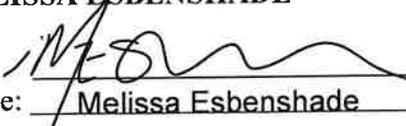
MONICA CARSON

By: _____
Name: _____
Title: _____
Dated: _____

RUFUS GLASPER

By: _____
Name: _____
Title: _____
Dated: _____

MELISSA ESBENSHADE

By:  _____
Name: Melissa Esbenshade
Title: _____
Dated: February 11, 2021

JACK DEBARTOLO

By: _____
Name: _____
Title: _____
Dated: _____

SHELLEY GARDNER

By: _____
Name: _____
Title: _____
Dated: _____

CYNTHIA BAUM

By: _____
Name: _____
Title: _____
Dated: _____

JOHN CROWLEY

By: _____
Name: _____
Title: _____
Dated: _____

PASTOR MATTHEW BARNETT

By: _____
Name: _____
Title: _____
Dated: _____

CHAD GARRETT

By: _____
Name: _____
Title: _____
Dated: _____

TIMOTHY SLOTTOW

By: _____
Name: _____
Title: _____
Dated: _____

MONICA CARSON

By: _____
Name: _____
Title: _____
Dated: _____

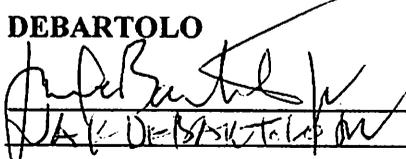
RUFUS GLASPER

By: _____
Name: _____
Title: _____
Dated: _____

MELISSA ESBENSHADE

By: _____
Name: _____
Title: _____
Dated: _____

JACK DEBARTOLO

By: 
Name: JACK DEBARTOLO
Title: _____
Dated: 2/10/21

SHELLEY GARDNER

By: _____
Name: _____
Title: _____
Dated: _____

CYNTHIA BAUM

By: _____
Name: _____
Title: _____
Dated: _____

JOHN CROWLEY

PASTOR MATTHEW BARNETT

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

CHAD GARRETT

TIMOTHY SLOTTOW

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

MONICA CARSON

RUFUS GLASPER

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

MELISSA ESBENSHADE

JACK DEBARTOLO

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

SHELLEY GARDNER

CYNTHIA BAUM

By: Shelley Gardner
Name: Shelley Gardner
Title: SVP Student Services
Dated: February 11, 2021

By: _____
Name: _____
Title: _____
Dated: _____

JOHN CROWLEY

PASTOR MATTHEW BARNETT

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

CHAD GARRETT

TIMOTHY SLOTTOW

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

MONICA CARSON

RUFUS GLASPER

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

MELISSA ESBENSHADE

JACK DEBARTOLO

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

SHELLEY GARDNER

CYNTHIA BAUM

By: _____
Name: _____
Title: _____
Dated: _____

By: Cynthia Baum
Name: _____
Title: _____
Dated: 2/12/2021

MICHAEL LACROSSE

By: 
Name: Mike Lacrosse
Title: CIO
Dated: 2/10/21

JAMES TERRELL

By: _____
Name: _____
Title: _____
Dated: _____

RANDALL BARTON

By: _____
Name: _____
Title: _____
Dated: _____

MICHAEL LACROSSE

By: _____
Name: _____
Title: _____
Dated: _____

JAMES TERRELL

By: James A. Terrell
Name: James A. Terrell
Title: Former CFO of DCEH
Dated: 2/15/2021

RANDALL BARTON

By: _____
Name: _____
Title: _____
Dated: _____

MICHAEL LACROSSE

JAMES TERRELL

By: _____
Name: _____
Title: _____
Dated: _____

By: _____
Name: _____
Title: _____
Dated: _____

RANDALL BARTON

By: Randall K. Barton
Name: RANDALL K. BARTON
Title: _____
Dated: 17 Feb 21