

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.))	

**RECEIVER’S FIRST AMENDED 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**

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 amended motion (“the **Amended 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. As was the case under 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; and (3) Barring and Prohibiting Parties from Asserting Certain Claims [Dkt. No. 674] (the "**Original Motion**"), the Receiver requests entry of an order, substantially in the form attached hereto as Exhibit A (the redlined version is attached as Exhibit B) (the "**Amended Settlement and Bar Order**"): (a) approving that certain Settlement Agreement ("**Settlement Agreement**"),² a copy of which is attached hereto as Exhibit C, entered into by and among the Parties;³ (b) approving a Bar Order (as was attached to the original Motion and amended as described 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

² The Settlement Agreement remains the same as was attached to the Original Motion and is 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**"); SHELLY 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.

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 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. The Original Motion

5. On February 18, 2021, the Receiver filed the Original Motion; it was served on interested persons consistent with this Court's Order granting Motion for an Order Approving Form and Manner of Notice Regarding the Receiver's [Original Motion] [Dkt. No. 676]. The Original Motion is incorporated into this Amended Motion as if fully rewritten herein, and the representations made in the Original Motion shall be made in this Amended Motion unless modified or superseded by the specific representations, terms and conditions contained in this Amended Motion.

6. Various parties filed formal objections to the Original Motion and several parties expressed private reservations. The parties who have raised issues regarding the to the Original Motion are as follows:

- a. The Chapter 7 Trustee of Education Management Corporation and related entities the “**Trustee Issues**”);
- b. The United States of America, including the United States Department of Education and the United States Department of Labor (the “**U.S. Issues**”);
- c. Four students known to the Court as the “Dunagan Intervenors”:
 - i. Emmanuel Dunagan, who attended the Illinois Institute of Art, LLC-Chicago campus from 2014 through December 2018;
 - ii. Jessica Muscari, who attended the Illinois Institute of Art, LLC-Chicago campus from 2015 through December 2018;
 - iii. Robert J. Infusino, who attended the Illinois Institute of Art-Schaumburg LLC from 2015 until he withdrew in September, 2018;
 - iv. Stephanie Porreca, who attended Art Institute of Illinois Institute of Art-Schaumburg LLC from 2014 until she graduated in June, 2018.
- d. Students who did not object to the fairness of the settlement but did object to the bar order, and sought to preserve their claims against the Receivership Estate (if any) (collectively the “**Inland Campus Claimants**”):
 - i. Victoria Rice, whose claims were against the predecessor institution, Education Management Corporation and related entities (“**EDMC**”)
 - ii. Cherisse Hunter-Southern, whose claims were against EDMC.

- iii. Tito Thomas, whose claims were for harassment arose out of an incident on June 21, 2016, when EDMC operated the school.
 - iv. Tiar Duke, who does not state the nature of the claim, but who attended EDMC operated colleges from May, 2014 through August, 2017. Mr. Duke took his last 3 credit hours during the semester that commenced August 31, 2017, at the school operated by EDMC, and finished the semester at Argosy University Inland Empire, then operated by DCEH. He received his degree on January 19, 2018 from Argosy University while it was operated by DCEH and prior to the commencement of the Receivership.
 - v. Earma Washington attended EDMC campuses from January 2009 through December, 2017.
 - vi. Megan Castillo attended EDMC campuses until August 23, 2018.
- e. Employees who worked for Save AI Las Vegas, the entity that sought to purchase the Arts Institute of Las Vegas (the “**Save AI Employees**”). The Save AI Employees did not object to the settlement or the bar order but rather made an informal claim for their earnings.
- i. Kristin Albert
 - ii. Kenneth J. Cioe
 - iii. William J. Ramsey
 - iv. Bridgette Davidson
 - v. Michael McShea
 - vi. Loretta Hernandez

vii. Michael Brown

7. The Amended Motion was filed to address, to the extent possible, the claims and issues that arose after the filing of the Original Motion through objection or otherwise. The Receiver has resolved the Trustee Issues (subject to approval of the Delaware Bankruptcy Court), and addressed the U.S. Issues. Consistent with the terms of the Amended Settlement and Bar Order, the Dunagan Intervenors, the Inland Campus Claimants and the Save AI Employees all shall have the right to assert their claims against the Receivership Entities and the Receivership Estate and further participate in any claims process.

8. The purpose of the Amended Motion is to present the Amended Settlement and Bar Order to this Court and to interested persons and request that the Court approve it consistent with the terms and conditions of this Amended Motion.

C. The Amendments Incorporated into the Amended Settlement and Bar Order.

9. The Receiver has incorporated the following language into Para. 8(c):

(iv) impair the ability of the Barred Persons to assert claims against Education Management II LLC or its current or former affiliates or subsidiaries or any of their respective current or former directors or officers and any applicable insurance; nor, (v) impair the ability of Barred Persons who have not released the Receivership Estates pursuant to the terms of this Settlement Agreement or otherwise to take such actions as are necessary to assert their claims against the Receivership Entities or their respective estates.

The purpose of the language was to ensure that all creditors with unreleased claims of any nature against EDMC and/or the Receivership Entities would be able to prosecute their claims within EDMC's bankruptcy estate or in the Receivership Estate and seek ordinary administration of those claims. Ordinary administration of the creditor claims within the EDMC bankruptcy estate or the Receivership Estate includes but is not limited to allowance or disallowance of the claim and the assignment of proper priority among the estate's various classes of creditors.

10. The Receiver has added Para. 8(d) as follows:

Notwithstanding anything herein to the contrary, the Barred Claims shall not include, and expressly exclude, any and all claims that (i) the Receiver and Receivership Entities, (ii) the chapter 7 bankruptcy estates of The Art Institute of Philadelphia, LLC, et al. [1] (collectively, the “Education Management Debtors”), and (iii) George L. Miller, the chapter 7 trustee (the “Trustee”) of the Education Management Debtors, had, have or may have, whether asserted or not, against one another, that arose from or are related to: (i) that certain Asset Purchase Agreement, as amended (the “DCEH Purchase Agreement”) by and among the Education Management Debtors and Dream Center Foundation, a not for profit entity, Dream Center Education Holdings, LLC, and certain of its newly formed subsidiaries (collectively, the “DCEH Buyers”), and (ii) any and all claims, counterclaims or defenses, whether in equity or under law, regarding any and all proofs of claim filed by the Receiver or Receivership entities (the the “DCEH Claims”) in the bankruptcy cases of the Education Management Debtors. For the avoidance of doubt: (a) the Barred Claims prohibit (i) the Education Management Debtors, their current and former officers and directors, and the Trustee from bringing any claims against the Ds&Os and DCF; and, (ii) the Receiver, the Receivership Entities, the Education Management Debtors and the Trustee from bringing any claims against the Policies; and, (b) the Barred Claims shall not include, and expressly exclude, and shall not impair or preclude, any and all claims the Education Management Debtors or Trustee have asserted in Adversary Proceeding No. 20-50627 (LSS) pending in the United States Bankruptcy Court for the District of Delaware.

This paragraph was added to address the concerns of George Miller, Trustee (the “**Trustee**”) in the EDMC Chapter 7 bankruptcy cases (the “**Chapter 7 Cases**”, which were filed on June 29, 2018, in the United States Bankruptcy Court for the District of Delaware and are currently jointly administered). The Trustee filed an Objection [Dkt No. 694] (the “**Trustee’s Objection**”). In addition to the insertion of the language above into the Amended Settlement and Bar Order, the Trustee and the Dream Center Foundation, a non-receivership entity (the “**Foundation**”), have agreed to mutually release one another. To resolve the Trustee’s Objection, the following preconditions to the entry of the Proposed Amended Settlement and Bar Order must be met: (i) the Delaware Bankruptcy Court’s approval of the settlement agreement and mutual releases between the Trustee and the Foundation; (ii) the Foundation’s withdrawal of the claim it filed in the EDMC Chapter 7 Cases.

11. The Receiver has added Para. 8(e) as follows:

Nothing contained in this Order (and no action taken by any party in this case) shall require, stay or otherwise constrain any action or proceeding by any federal government unit (as that term is defined in 11 U.S.C. 101(27)). Furthermore, nothing in this Order shall preclude the United States from arguing at any time that any provision in this Order is void or inapplicable to the United States.

This paragraph, which is also included in the Amended Order Appointing Receiver [Dkt. No. 150] as Para. 13, was added to ensure that the United States' right of sovereign immunity is preserved.

12. The final amendment to the Original Motion is that the Receiver obtain Court approval for a plan (the "**Medical Claim Payment Plan**") to pay the pre- and post-receiver employee medical claims (the "**Medical Payments**") in form as is attached hereto as Exhibit D. The Medical Claim Payment Plan was developed with the cooperation, input and approval of the United States Department of Labor (the "**DOL**") and the secured lender and is made possible by virtue of a "carve out" from the collateral of the secured lender. The Medical Claim Payment Plan envisions that the Receivership Estate will pay over 6,000 medical claims on behalf of thousands of employees who were participants in DCEH's self-funded medical plan and who were left "on their own" to pay medical claims they thought were covered under their insolvent medical plan. The Court's simultaneous approval of the (i) Amended Settlement and Bar Order and (ii) Medical Claim Payment Plan is a pre-condition for implementation of the Settlement Agreement and the Amended Settlement and Bar Order.

III. NOTICE

13. Notice of this Amended Motion will be provided to the (i) ECF filing list; (ii) to all those who filed objections, comments or responses to the Original Motion; (iii) to the United States Department of Justice, and DOL; (v) to parties and persons who have expressed a new potential claim or interest in the receivership proceedings after the filing of the Original Motion. Parties who received notice of the Original Motion by service of a copy or by newspaper publication in

the *USA Today* and who did not object to the Original Motion will not receive further notice by newspaper publication or otherwise.

IV. CONCLUSION

14. For the reasons stated above, the Receiver respectfully submits that the Amended Settlement and Bar Order together with the Medical Claims Payment Plan meets the applicable legal standards for approval contained in the Original Motion, 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 (a) grant this Amended Motion; (b) approve the terms of the Settlement Agreement in form as is attached as Exhibit C, (c) enter the Amended Settlement and Bar Order, in substantially the form attached hereto as Exhibit A simultaneously with the Medical Claims Payment Plan with the Proposed Order in form as is attached as Exhibit E, and (d) and approve and grant such other and further relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED this 18th day of June, 2021.

/s/ Mary K. Whitmer

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Counsel for Mark E. Dottore, Receiver

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 in order 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; (iii) preclude the Receiver from pursuing claims that would implicate any Non-National Union Excess Policies, as set forth in paragraph 6 above; (iv) impair the ability of the Barred Persons to assert claims against Education Management II LLC or its current or former affiliates or subsidiaries or any of their respective current or former directors or officers and any applicable insurance; nor, (v) impair the ability of Barred Persons who have not released the Receivership Estates pursuant to the terms of this Settlement Agreement or otherwise to take such actions as are necessary to assert their claims against the Receivership Entities or their respective estates,

- (d) Notwithstanding anything herein to the contrary, the Barred Claims shall not include, and expressly exclude, any and all claims that (i) the Receiver and Receivership Entities, (ii) the chapter 7 bankruptcy estates of The Art Institute of Philadelphia, LLC, et al. [1] (collectively, the “Education Management Debtors”), and (iii) George L. Miller, the chapter 7 trustee (the “Trustee”) of the Education Management Debtors, had, have or may have, whether asserted or not, against one another, that arose from or are related to: (i) that certain Asset Purchase Agreement, as amended (the “DCEH Purchase Agreement”) by and among the Education Management Debtors and Dream Center Foundation, a not for profit entity, Dream Center Education Holdings, LLC, and certain of its newly formed subsidiaries (collectively, the “DCEH Buyers”), and (ii) any and all claims, counterclaims or defenses, whether in equity or under law, regarding any and all proofs of claim filed by the Receiver or Receivership entities (the the “DCEH Claims”) in the bankruptcy cases of the Education Management Debtors. For the avoidance of doubt: (a) the Barred Claims prohibit (i) the Education Management Debtors, their current and former officers and directors, and the Trustee from bringing any claims against the Ds&Os and DCF; and, (ii) the Receiver, the Receivership Entities, the Education Management Debtors and the Trustee from bringing any claims against the Policies; and, (b) the Barred Claims shall not include, and expressly exclude, and shall not impair or preclude, any and all claims the Education Management Debtors or Trustee have asserted in Adversary Proceeding No. 20-50627 (LSS) pending in the United States Bankruptcy Court for the District of Delaware.
- (e) Nothing contained in this Order (and no action taken by any party in this case) shall require, stay or otherwise constrain any action or proceeding by any federal government unit (as that term is defined in 11 U.S.C. 101(27)). Furthermore, nothing in this Order shall preclude the United States from arguing at any time that any provision in this Order is void or inapplicable to the United States.

- (f) 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
- (g) 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

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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 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;

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 ~~in order to (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

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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; (iv) impair the ability of the Barred Persons to assert claims against Education Management II LLC or its current or former affiliates or subsidiaries or any of their respective current or former directors or officers and any applicable insurance; nor, (v) impair the ability of Barred Persons who have not released the Receivership Estates pursuant to the terms of this Settlement Agreement or otherwise to take such actions as are necessary to assert their claims against the Receivership Entities or their respective estates.

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(d) Notwithstanding anything herein to the contrary, the Barred Claims shall not include, and expressly exclude, any and all claims that (i) the Receiver and Receivership Entities, (ii) the chapter 7 bankruptcy estates of The Art Institute of Philadelphia, LLC, et al. [1] (collectively, the "Education Management Debtors"), and (iii) George L. Miller, the chapter 7 trustee (the "Trustee") of the Education Management Debtors, had, have or may have, whether asserted or not, against one another, that arose from or are related to: (i) that certain Asset Purchase Agreement, as amended (the "DCEH Purchase Agreement") by and among the Education Management Debtors and Dream Center Foundation, a not for profit entity, Dream Center Education Holdings, LLC, and certain of its newly formed subsidiaries (collectively, the "DCEH Buyers"), and (ii) any and all claims, counterclaims or defenses, whether in equity or under law, regarding any and all proofs of claim filed by the Receiver or Receivership entities (the "DCEH Claims") in the bankruptcy cases of the Education Management Debtors. For the avoidance of doubt: (a) the Barred Claims prohibit (i) the Education Management Debtors, their current and former officers and directors, and the Trustee from bringing any claims against the Ds&Os and DCF; and, (ii) the Receiver, the Receivership Entities, the Education Management Debtors and the Trustee from bringing any claims against the Policies; and, (b) the Barred Claims shall not include, and expressly exclude, and shall not impair or preclude, any and all claims the Education Management Debtors or Trustee have asserted in Adversary Proceeding No. 20-50627 (LSS) pending in the United States Bankruptcy Court for the District of Delaware.

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(e) Nothing contained in this Order (and no action taken by any party in this case) shall require, stay or otherwise constrain any action or proceeding by any federal government unit (as that term is defined in 11 U.S.C. 101(27)). Furthermore, nothing in this Order shall preclude the United States from arguing at any time that any provision in this Order is void or inapplicable to the United States.

(e)

~~(f)~~ 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

~~(g)~~ 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.

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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.

~~10.~~ —

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

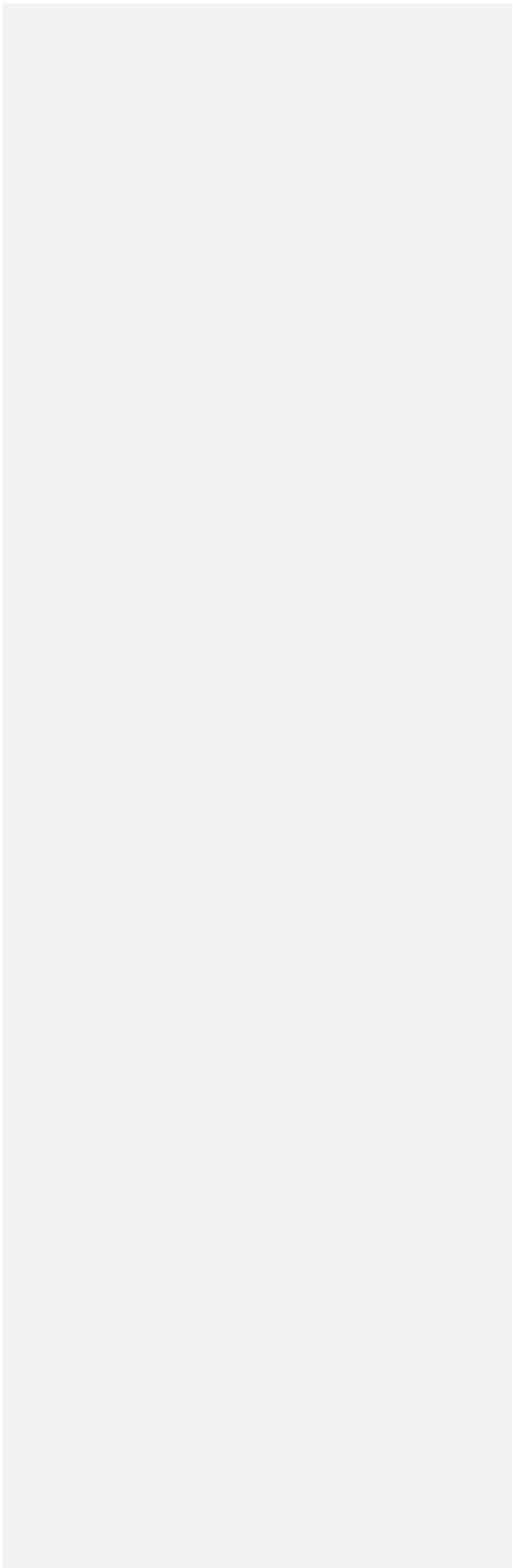


EXHIBIT C

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

SHELLY MURPHY

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

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

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

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

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

SHELLY MURPHY

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

THE DREAM CENTER FOUNDATION

By:  _____
Name: Edward Duran
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: _____

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MARK A. DOTTORE, Receiver

SHELLY MURPHY

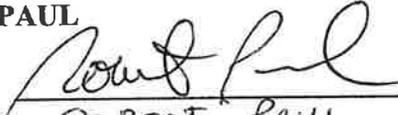
By: _____
Name: _____
Title: _____
Dated: _____

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

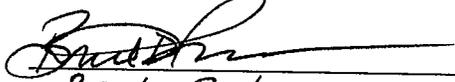
ROB PAUL

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

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

BRENT RICHARDSON

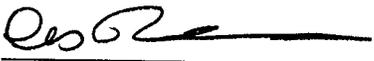
DEBBI LANNON-SMITH

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: _____

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

MARK A. DOTTORE, Receiver

SHELLY MURPHY

By: _____
Name: _____
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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: _____
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Dated: _____

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

THE DREAM CENTER FOUNDATION

ROB PAUL

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

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

BRENT RICHARDSON

DEBBI LANNON-SMITH

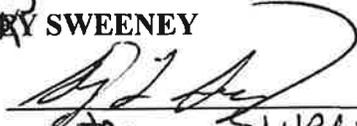
By: _____
Name: _____
Title: _____
Dated: _____

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

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

PASTOR MATTHEW BARNETT

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

CHAD GARRETT

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

TIMOTHY SLOTTOW

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

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: _____
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: _____

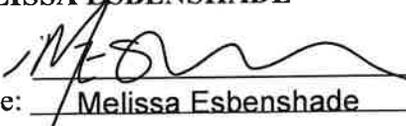
MONICA CARSON

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: _____

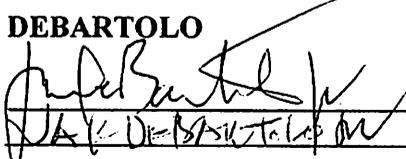
RUFUS GLASPER

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

MELISSA ESBENSHADE

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

JACK DEBARTOLO

By: 
Name: JACK DEBARTOLO
Title: _____
Dated: 7/10/21

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

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: _____
Title: _____
Dated: _____

SHELLEY GARDNER

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

CYNTHIA BAUM

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

EXHIBIT D

PLAN FOR THE PAYMENT OF MEDICAL CLAIMS ON BEHALF OF PLAN PARTICIPANTS OF DREAM CENTER EDUCATION HOLDINGS LLC SIGNATURE BENEFITS PLAN

I. Definitions

- “Benefits Plan” means the Dream Center Education Holdings, LLC Signature Benefits Plan, an ERISA-covered employee benefits plan.
- “Aetna Period” means the period from approximately October 17, 2017 through December 31, 2018, pursuant to which the Aetna Life Insurance Company agreed to provide administrative services to the Benefits Plan.
- “BAS Period” means the period from January 1, 2019 through April 30, 2019, pursuant to which Benefit Administrative Systems, LLC (“BAS”) agreed to provide administrative services to Benefits Plan.
- “Bar Order” means the Order that the Court enters pursuant to the Receiver’s Amended Motion for on 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 [Dkt. No. 674] and for Approval of the Receiver’s Plan for the Payment of Unpaid DCEH Medical Claims.
- “Beneficiaries” means the participants, as well as their dependents, beneficiaries, or COBRA continuees, covered by the Benefits Plan during the Aetna Period and/or the BAS Period.
- “Cost Sharing” means amounts during the Aetna Period and/or the BAS Period that are the responsibility of the Beneficiary, which are generally co-pays, co-insurance, and deductibles.
- “DCEH Medical Claims” means the unpaid medical claims incurred by Beneficiaries during the Aetna Period and/or the BAS Period.
- “Explanation of Benefits” or “EOB” means a statement to a Beneficiary providing details about a Provider Payment made on a Provider Claim, and explaining what portion of services were paid by the Benefits Plan and the portion the Beneficiary is responsible for paying.
- “Medical Services Plan” means the Receiver’s Plan for the payment of the unpaid DCEH Medical Claims.
- “Medical Plan Motion” means the Receiver’s Amended Motion for on 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 [Dkt. No. 674] and for Approval of the Receiver’s Plan for the Payment of Unpaid DCEH Medical Claims
- “Provider” means those physicians, hospitals, clinics, and other entities and persons who provided health care services to the Beneficiaries.

- “Provider Claim” means any unpaid health care services claim owed under the Benefits Plan.
- “Provider Payment” means the payment that the Receiver proposes to pay under the terms of this Medical Services Plan.
- “Receivership Entities” means (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”).

II. Fund to Retire Unpaid Medical Claims under the Benefits Plan.

Promptly after the Bar Order becomes a final, appealable order and the settlement funds are paid over to the Receiver, the Receiver shall set aside funds sufficient to pay the Provider Claims and unreimbursed payments by Beneficiaries for DCEH Medical Claims.

III. Amount of Provider Payments

Upon approval of the Court, the Receiver shall offer to pay to the Providers 120% of the amount Medicare would pay on the same claim if the claim were submitted to Medicare for payment under the terms and conditions outlined in the Proposed Order attached hereto as Exhibit A.

IV. Payment in Full to the Provider and Releases

If the Provider agrees to accept the Provider Payment and/or deposits and/or cashes the Provider Payment, the Provider Claim shall be deemed to be paid in full. Upon receipt and deposit of the Provider Payment, the Provider is deemed to have accepted the terms and conditions of payment under this Medical Services Plan, including a full and complete release of claims against any Beneficiary for any further amounts due (except for any Cost Sharing amounts due from the

Beneficiary). Provider shall not bill any Beneficiary for any balance Provider asserts is remaining to be paid, except that Provider may bill the Beneficiary for normal Cost Sharing under the Benefits Plan.

V. Overpayments.

Upon receipt and deposit of the Provider Payment, Provider promptly shall remit and return to the Beneficiaries any amounts paid by them in excess of the Cost Sharing.

VI. When possible and available, the Receiver shall retain the services of claims administrators to process the claims, re-price them, determine eligibility, coverage and Cost Sharing amounts. Where possible, upon the tender of the Provider Payment, the Receiver shall provide the Beneficiaries an Explanation of Benefits.

VII. The Receiver shall track the Provider Payments on an Excel spreadsheet and, when the information is available, shall include in the Excel spreadsheet the Health Claim Attributes indicated in the Exhibit B to this Term Sheet. The Receiver shall retain evidence of all Provider Payments and Beneficiary reimbursements made, such as cancelled checks and copies of all EOBs issued. Upon request, the Receiver shall provide this information to the United States Department of Labor. All Provider Payments and Beneficiary Reimbursements information should track and tie out to cancelled checks and EOBs, as well as the Excel spreadsheet.

VIII Court Orders.

The Receiver's Medical Plan Motion shall request the Court's approval of this Medical Services Plan and the Proposed Orders attached hereto as Exhibits A and C (the "Proposed Orders"). The Approval of this Medical Services Plan and the entry of the Proposed Orders must be simultaneous with the Bar Order. The failure by the Receiver to obtain the Court's approval of the Medical Services Plan and the entry of the Proposed Orders may result in further actions by the United States against the DCEH directors and officers.

IX. Timing

All time limitations in this Medical Services Plan are subject to extension with approval of the Court.

X. Notice to Beneficiaries with DCEH Medical Claims incurred during the BAS Period ("BAS Period Beneficiaries")

The Receiver will use his best efforts to retain BAS to administer the BAS Period Beneficiaries' Provider Claims. As part of its administration of claims, BAS plans to provide the BAS Period Beneficiaries with an Explanation of Benefits. When the Explanation of Benefits is mailed to the Beneficiary, the Receiver shall provide additional notice to each BAS Period Beneficiary informing them of the following:

- A. The Provider Claim has been paid and that the Provider is prohibited from billing the Beneficiary for any balance the Provider asserts is remaining to be paid, except that Provider may bill the Beneficiary for normal Cost Sharing under the Benefits Plan;
- B. Information regarding the payment of the Provider Claims can be located on the Receiver's webpage;
- C. Notice that any Beneficiary who has paid more money on a Provider Claim than Cost Sharing is entitled to be reimbursed;
- D. Further notice that any Beneficiary who is entitled to be reimbursed may file for such reimbursement by visiting the Receiver's webpage and filling out and submitting the relevant forms and providing proof of the payment(s) they made for which they seek reimbursement;
- E. If the Receiver mails a notice to a Beneficiary at the last known address in the Receiver's records and it is returned to the Receiver as undeliverable, the Receiver's obligation to provide further notice is ended for that Beneficiary.

XI. Notice to Beneficiaries with DCEH Medical Claims incurred during the Aetna Period ("Aetna Period Beneficiaries")

Aetna Period Beneficiaries will not receive an Explanation of Benefits because the information necessary to complete an Explanation of Benefits is not available to the Receiver. After the Receiver has paid the Provider Claims, he will provide notice to each Aetna Period Beneficiary at the last-known address in the Receiver's records informing them of the following:

- A. The Provider Claim has been paid and that the Provider is prohibited from billing the Beneficiary for any balance the Provider asserts is remaining to be paid, except that Provider may bill the Beneficiary for normal Cost Sharing under the Benefits Plan;
- B. The name and address of the Provider;
- C. The date of the Provider Claim;
- D. The amount paid on the Provider Claim;
- E. Information regarding the payment of the Provider Claims can be located on the Receiver's webpage;
- F. Notice that any Beneficiary who has paid more money on a Provider Claim than Cost Sharing is entitled to be reimbursed;
- G. Further notice that any Beneficiary who is entitled to be reimbursed may file for such reimbursement by visiting the Receiver's webpage and filling out and submitting the relevant forms and providing proof of the payment(s) they made for which they seek reimbursement;
- H. If the Receiver mails a notice to a Beneficiary at the last known address in the Receiver's records and it is returned to the Receiver as undeliverable, the Receiver's obligation to provide further notice is ended for that Beneficiary.

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, LLC,)	CASE NO. 1:19-cv-145
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
v.)	MAGISTRATE JUDGE
)	THOMAS M. PARKER
SOUTH UNIVERSITY OF OHIO,)	
LLC, <i>et. al.</i> ,)	
)	
Defendants.)	

**[PROPOSED] ORDER APPROVING PAYMENT OF DREAM CENTER
EDUCATION HOLDINGS SELF-FUNDED HEALTH CARE PLAN
MEDICAL EXPENSES AT 120% OF MEDICARE RATE AND RELEASE OF
OF PLAN PARTICIPANTS AND BENEFICIARIES**

This matter came on for hearing on the Receiver’s Amended for on 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 [Dkt. No. 674] and for Approval of the Receiver’s Plan for the Payment of Unpaid DCEH Medical Claims [Dkt. No. ____] (the “Amended Settlement Motion” seeking among other things, approval of the method and amount of payment of the unpaid medical claims of the Receivership Entities¹

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 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 “DCEH Medical Claims”) under the Dream Center Education Holdings, LLC Signature Benefits Plan, an ERISA-covered employee benefit plan (the “Benefits Plan”) (i) in effect from October 17, 2017 through December 31, 2018 administered by Aetna Life Insurance Company (the “Aetna Period”) and (ii) in effect from January 1, 2019 through April 30, 2019 administered by Benefit Administrative Systems LLC (the “BAS Period”), and the Court, having determined and found that (x) the relief in the Medical Plan Motion is in the best interest of the Receivership estate and its creditors; (y) the Medical Services Plan is reasonable and appropriate under the circumstances and comports in all regards with the requirements of due process; and (z) good cause having been shown for the entry of this Order regarding the Payment of the DCEH Medical Claims,

IT IS HEREBY ORDERED THAT:

1. The Medical Services Plan shall be, and it hereby is approved as set forth in the Amended Settlement Motion; and
2. All capitalized terms not defined herein shall have the same meaning as set forth in the Amended Settlement Motion and the Medical Services Plan attached thereto;
3. Health care services providers (the “**Providers**”) who provided medical services to Benefits Plan Beneficiaries during the Aetna Period and the BAS Period

(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”).

shall be paid according to the terms of the Medical Services Plan and this Order;
and

4. The Receiver's plan to pay the Providers at a rate of 120% of the standard Medicare rate for the services provided to the Benefits Plan Beneficiaries is APPROVED; and

5. The Receiver is hereby authorized to tender payment upon the DCEH Medical Claims by tendering a check to each Provider in an amount which is 120% of the rate Medicare pays for that same claim or service (the "**Provider Payment**"); and

6. Upon receipt, deposit and/or cashing of the Provider Payment, the Provider shall be deemed to be paid in full, and shall not bill the Beneficiaries for any balance remaining except for amounts due from the Beneficiaries for normal co-pays and deductibles (the "**Cost Sharing**"); and

7. Upon receipt and deposit of the Provider Payment, the Provider is deemed to have accepted the terms and conditions of Provider Payment under the Medical Services Plan, including a full and complete release of the Beneficiaries for any further amounts due (except for the Cost Sharing amounts); and

8. Upon receipt deposit and or cashing of the Provider Payment, the Provider promptly shall return and remit to the Beneficiary any amounts paid to the Provider in excess of the Cost Sharing.

IT IS SO ORDERED this ____ day of _____, 2021.

JUDGE DAN AARON POLSTER

MAGISTRATE JUDGE THOMAS M.
PARKER