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*Co-Counsel for the Official Committee of Unsecured Creditors*

Honorable Whitman L. Holt

**UNITED STATES BANKRUPTCY COURT**
**EASTERN DISTRICT OF WASHINGTON**

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| IN RE:<br><br>ASTRIA HEALTH, et al.<br><br>Debtors.[1] | Lead Case No. 19-01189-11<br><br>Jointly Administered<br><br>**LIMITED OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTION FOR AN** |

[1] The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHC Holdco, LLC (19-01196-11), SHC Medical Center-Toppenish (19-01190-11), SHC Medical Center-Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-

**ORDER APPROVING: (I) PROPOSED DISCLOSURE STATEMENT; (II) SOLICITATION AND VOTING PROCEDURES; (III) NOTICE AND OBJECTION PROCEDURE FOR CONFIRMATION OF JOINT PLAN OF REORGANIZATION; AND (IV) GRANTING RELATED RELIEF**

The Official Committee of Unsecured Creditors (the "Committee") in the chapter 11 cases of Astria Health and its affiliated debtors in possession (collectively, the "Debtors"), by and through its undersigned counsel, hereby files this limited objection (the "Objection") to the *Motion for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Joint Plan of Reorganization; and (IV) Granting Related Relief* (the "Motion") [Docket No. 1473].[2] In support of the Objection, the Committee respectfully represents as follows:

## PRELIMINARY STATEMENT

The Debtors' Plan, negotiated among the Debtors and their secured creditors Lapis Advisers, LP ("Lapis") and UMB Bank, N.A. ("UMB," and together with

01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-19-01200-11).

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion, the *Disclosure Statement Relating to the Joint Chapter 11 Plan of Reorganization of Astria Health and Its Affiliates* (the "Disclosure Statement") [Docket No. 1472], or the *Joint Chapter 11 Plan of Reorganization of Astria Health and Its Debtor Affiliates* (the "Plan") [Docket No. 1471], as applicable.



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Lapis and UMB, the "Plan Proponents") to the Committee's exclusion, is deeply flawed and fails to meet the confirmation requirements of section 1129 of the Bankruptcy Code. Notwithstanding the fact that the Debtors, on a consolidated basis, may be in the best financial position in years as a result of closure of SHC Medical Center – Yakima and the Debtors collectively hold approximately $29 million of cash on hand (based on recent operating reports)[3], the proposed Plan allocates all of the Debtors' distributable value to the reorganized Debtors and the Debtors' secured creditors while providing the Class 4 general unsecured creditors only a *pro rata* share of any proceeds of the estates' avoidance actions arising under chapter 5 of the Bankruptcy Code, which would result in the mere redistribution of potential litigation proceeds within the general unsecured class.

The Committee intends to demonstrate through discovery to be conducted in this contested matter that the Debtors' total enterprise value, combined with other distributable assets, exceeds the secured debt and administrative and priority claims as of the projected effective date of the Plan. This "excess" value should be shared by the Class 4 general unsecured creditors consistent with the provisions of section 1129 of the Bankruptcy Code. Accordingly, as currently structured, the Plan is not

[3] The June 2020 monthly operating report [Docket No. 1582] reflected ending bank balance of $29,228,461 and the balance sheet reflects cash of $29,472,143.



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in the best interests of, or fair and equitable with respect to, the Class 4 general unsecured creditors, and should not be confirmed.

Notwithstanding the foregoing, consistent with the Court's remarks at the July 21, 2020 status conference (the "Status Conference"), the Committee reserves these and all other issues pertaining to the Plan's confirmability for the hearing on the Plan's confirmation, and objects to the approval of the Disclosure Statement solely to the extent that it does not adequately apprise the Debtors' creditors of the Committee's opposition to the Plan and certain potential confirmation issues relevant to a creditor's consideration of whether to accept or reject the Plan, as highlighted in this Objection. These issues include, but are not limited to: (i) the aforementioned dispute regarding the Debtors' distributable value and its allocation; (ii) the Plan's ability to meet the "best interests" test with respect to the general unsecured creditors under section 1129(a)(7) of the Bankruptcy Code; (iii) the Debtors' ability to meet the "cramdown" and "fair and equitable" requirements with respect to the general unsecured creditors under section 1129(b) of the Bankruptcy Code; (iv) the Plan's inclusion of releases and/or exculpations of and by third parties not related to the chapter 11 plan process, including releases of potentially valuable claims against the Debtors' directors and officers; (v) the effects of the proposed substantive consolidation of the Debtors' estates and creditors of each estate herein; (vi) the proposed treatment of classes of claims that



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will be satisfied in full or reinstated as "impaired" and therefore entitled to vote on the Plan in an apparent attempt to create an impaired, consenting class for confirmation purposes; and (vii) whether, in light of the circumstances of the Plan's formulation and treatment of Class 4 general unsecured creditors, the Plan was proposed in good faith as required by section 1129(a)(3).

In the interest of providing the Debtors' creditors with the information necessary to make an informed decision regarding the Plan and avoiding unnecessary disputes regarding the Disclosure Statement, the Committee requests that (i) the Disclosure Statement be modified as set forth in the comparison attached hereto as Exhibit A and (ii) the Court approve the letter from the Committee attached hereto as Exhibit B and require that it be included in the Debtors' solicitation materials.

In addition, in light of (i) the unfortunate adversarial posture of these cases resulting in large part from the Plan Proponents' decision to exclude the Committee from the Plan's negotiation and formulation and (ii) the number and complexity of the confirmation issues already identified by the Committee, the Committee anticipates that significant discovery, including expert discovery, and extensive briefing will be required in advance of the confirmation hearing. To facilitate a full, fair, and timely confirmation hearing, the Committee, which has already delivered informal document requests to the Debtors and formal document requests



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to all of the Plan Proponents, proposes the following solicitation, discovery, briefing, and hearing schedule:

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| Entry of disclosure statement order (presumed): | August 13, 2020 |
| Voting record date: | August 13, 2020 |
| Solicitation commencement deadline: | August 20, 2020 |
| Deadline to disclose affirmative expert(s) any party intends to present at trial, and topic(s) on which any such expert(s) may testify: | September 23, 2020 |
| Deadline to complete written and deposition discovery other than with respect to expert testimony: | September 29, 2020 |
| Deadline to serve expert report for parties intending to present expert testimony: | October 6, 2020 |
| Deadline to serve rebuttal expert report for parties intending to present rebuttal expert testimony: | October 20, 2020 |
| Deadline to complete depositions and written discovery for experts: | October 27, 2020 |
| Deadline to object to claim or file motion to estimate claim for voting purposes: | October 27, 2020 |
| Voting objection deadline: | October 27, 2020 |
| Voting deadline: | October 27, 2020 at 4:00 p.m. (Pacific Time) |
| Confirmation objection deadline: | November 3, 2020 |
| Deadline to file tabulation report, memorandum of law in support of confirmation, proposed confirmation order, and response to confirmation objections: | November 10, 2020 at 12:00 p.m. (Pacific Time) |



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| Confirmation Hearing: | November 13, 2020 at 11:00 a.m. (Pacific Time) |

Finally, in the interests of pursuing a consensual and equitable resolution to the Committee's opposition to the Plan and limiting the need for the anticipated expensive and time-consuming litigation, the Committee is willing to pursue alternative dispute resolution, including mediation, with the Plan Proponents simultaneously with the foregoing, and requests that the Court and the Plan Proponents consider this course of action at the August 13, 2020 hearing on the Disclosure Statement.

## BACKGROUND

On May 6, 2019 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Washington (the "Court"). The Debtors continue to operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code.

On May 24, 2019, the Office of the United States Trustee for the Eastern District of Washington appointed the Committee. No trustee or examiner has been appointed in these cases.

Although the Committee has been an active participant in these cases and repeatedly requested inclusion in the Plan formulation process, the Plan Proponents

negotiated the Plan without the Committee's input and filed the Plan[4], the Disclosure Statement, and the Motion on July 7, 2020.

As proposed, the Plan provides for a reorganization of the Debtors' corporate and capital structure, including satisfaction of the Debtors' secured creditors' claims in full, and in certain respects on terms that are more advantageous than their original debt instruments, while allocating no meaningful value to the Debtors' general unsecured creditors. *See* Plan §§ II-III.

Specifically, the Plan provides that (i) Lapis, as agent under the DIP Agreement, will have its unclassified claims under the DIP Agreement (the "DIP Claims," satisfied through the issuance of replacement debt (the "DIP Claims Exchange Debt") in the DIP Claims' full amount; (ii) UMB, as trustee under the Bond Indenture, will have its Class 2A claims under the Bond Documents (the "Senior Secured Bond Debt Claims," reinstated in their full amount; and (iii) Lapis and certain other parties as creditors under the Credit Agreement will have their Class 2B claims (the "Senior Secured Credit Agreement Claims," satisfied through the issuance of replacement debt (the "Senior Secured Credit Agreement Exchange Debt") in the Senior Secured Credit Agreement Claims' full amount. Plan §§ II(D)-(E).

[4] Discussions with Debtors' counsel have recently been initiated, and the Committee is hopeful that the discussion will progress in an effort to reach a consensual Plan.



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The Plan secures satisfaction of these replaced and reinstated obligations with the entirety of the Debtors' enterprise value and transfers substantially all of the Debtors' other distributable assets to a Liquidation Trust for the reorganized Debtors' and the secured creditors' benefit, including:

> [A]ll assets of the Debtors not necessary for the operation of the core health care businesses of the Debtors including, but not limited to the (i) Yakima Medical Office Building (excluding the operations within); (ii) SHC Medical Center-Yakima; (iii) any other unused buildings currently owned by the Debtors; (iv) A/R Collections of SHC Medical Center – Yakima; (v) all 180 day and older aged accounts receivable of Sunnyside Community Hospital Association and SHC – Medical Center Toppenish; and (vi) any Causes of Action held by the Debtors, including the Vendor Litigation, not expressly assigned to the Litigation Trust.

Plan, §§ 1.90 III(C)(2).

In contrast, holders of general unsecured claims (Class 4 under the Plan) would receive only a *pro rata* share of any proceeds of the estates' avoidance actions under chapter 5 of the Bankruptcy Code, which would be transferred to a Litigation Trust without even providing any source of funding for the trust or the pursuit of such causes of action. Plan §§ 1.94; 3(C)(1). The transferred avoidance actions expressly exclude any avoidance actions that would constitute Vendor Litigation causes of action, which would instead be transferred to the Liquidation



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Trust for the benefit of the Debtors' secured creditors as set forth above. Plan §§ 1.90, 1.94.

The Plan also, among other things, (i) includes broad releases and/or exculpations of and by third parties, including the release of claims against the Debtors' current and former directors and officers for conduct unrelated to the plan process in these chapter 11 cases (Plan §§ 1.114, 1.67, VII(E)-(F)); (ii) provides for a substantive consolidation of the Debtors' estates under which "all assets and all liabilities of each of the Debtors shall be deemed merged or treated as though they were merged into and with the assets and liabilities of each other" and "each and every Claim filed or to be filed in any of the Chapter 11 Cases shall be treated as filed against the consolidated Debtors and shall be treated [sic] one Claim against and obligation of the consolidated Debtors" (Plan § II(B)); and (iii) treats the Class 2A Senior Secured Bond Debt Claims and Class 2B Senior Secured Credit Agreement Claims as impaired notwithstanding that the former will be reinstated and the latter will be replaced in full (Plan § II(C)).

The Disclosure Statement does not adequately inform the Debtors' creditors of the circumstances of the Plan's formulation, the Committee's opposition to the Plan, the issues highlighted in this Objection, or potential sources of value for the Class 4 general unsecured creditors, particularly in light of the Debtors' previous

representations to this Court and parties in interest regarding the valuation of their enterprise and discrete assets during the course of these cases.

## OBJECTION

The Committee reserves its objections regarding the Plan's confirmability for the confirmation hearing. However, the Committee objects to the approval of the Disclosure Statement on the ground that it does not contain "adequate information" as required by section 1125(b) of the Bankruptcy Code to the extent that it omits information regarding (i) the Committee's opposition to the Plan and (ii) discussion of certain fundamental issues, summarized below, concerning the Plan's confirmability. Absent inclusion of this information, the Disclosure Statement will not contain "information of a kind, and in sufficient detail . . . that would enable [a hypothetical investor typical of the holders of claims or interests] of the relevant class[es] to make an informed judgment about the plan[.]" Section 1125(a)(1).

In particular, the Disclosure Statement currently falls short in its descriptions of (i) available assets and their value (based on the Debtors' own representations in prior testimony in these cases); (ii) the estimated return to creditors under a chapter 7 liquidation after significant additional causes of action are included in the liquidation analysis; (iii) the accounting methods and assumptions utilized to produce financial information; (iv) financial information, data, and valuations relevant to the creditors' decision to accept or reject the Plan; and/or (v) the actual

or projected realizable value from recovery of preferential or otherwise voidable transfers. *See In re Phx. Petroleum Co.*, 278 B.R. 385, 393 n.6 (Bankr. E.D. Pa. 2001).

Adequate disclosure of this information is essential in these cases, as the issue of valuation is fundamental to an understanding of the Plan's treatment of the Class 4 general unsecured creditors and will likely be the central confirmation issue. *See In re A.H. Robins Co.*, 216 B.R. 175, 180 (E.D. Va. 1997) ("Creditors form their ideas about what they will receive out of the debtor's estate from the disclosure statement. It plays a pivotal role in the give and take among creditors and between creditors and the debtor and leads to a confirmed negotiated plan of reorganization by requiring adequate disclosure to the parties so they can make their own decisions on the plan's acceptability.").

Specifically, (i) the Debtors have previously represented in these cases that the book value of the Debtors' assets was approximately $200 million, the Debtors' enterprise value was approximately $120 million to $150 million, and the realizable value of such assets exceeded the prepetition value of the Lapis Prepetition Secured Parties' liabilities totaling approximately $45.4 million[5]; (ii) the

[5] *Declaration of Michael Lane in Support of Emergency Motion of Debtors for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing; (II) Granting Security Interests and Superpriority Administrative Expense Status; (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties; (IV) Modifying the Automatic Stay; (V) Authorizing*

Liquidation Analysis relies solely on an aggregate book value analysis and fails to include the potential Vendor Litigation to which the Debtors have previously implied a value of at least between $70 and $75 million[6] and potential causes of action against other third parties, including the Debtors' directors and officers; and (iii) the Debtors propose to release potentially valuable causes of action against the Debtors' current and former directors and officers not related to the chapter 11 plan process.

Based on these indisputable facts and admissions, the Debtors' creditors should be informed of the Committee's view that the Plan fails the "best interest of creditors" test because of the inadequacies in the Liquidation Analysis and fails to meet the "fair and equitable" test because the distributable value of the estates exceeds the total amount required to satisfy the obligations relating to the DIP Claims, the Senior Secured Bond Claims, and the Senior Secured Credit Agreement Claims under the Plan. Indeed, in light of the Debtors' prior representations in these cases and the Court's determinations based upon those representations, the Committee questions whether the Debtors are now judicially estopped from

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*the Debtors to Enter Into Agreements With JMB Capitla Partners Lending, LLC; (VI) Authorizing Use of Cash Collateral; (VII) Scheduling a Final Hearing; and (VIII) Granting Related Relief* [Docket No. 16], ¶ 55.

[6] *See* Transcript of June 13, 2019 hearing, 46:24-47:2 ("That number, I think, and just what the debate what the damage is, but the receivables number there's somewhere probably in the area of $70 -- $75 million that were uncollected.").

advancing a new, reduced valuation to justify the Plan's treatment of Class 4 general unsecured creditors. *See Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001) (setting forth factors that inform the decision to apply judicial estoppel: (i) a party's later position is clearly inconsistent with its earlier position; (ii) the party succeeded in persuading a court to accept the party's earlier position; and (iii) the party seeking to assert the inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped) (citing *New Hampshire v. Maine*, 532 U.S. 742 (2001)). At a minimum, the Debtors should disclose their prior admissions and explain, to the extent possible, how and/or why they believe the values have dramatically changed (despite the approximately $29 million current bank balance, enterprise value and assets to be distributed).

This information is required not only for the general unsecured creditors to understand the context of their proposed treatment under the Plan, but also for them to evaluate the Plan's ability to satisfy both the "best interests" of the creditors test under section 1129(a)(7) of the Bankruptcy Code and "fair and equitable" treatment in a "cramdown" scenario under section 1129(b) of the Bankruptcy Code:

(i) Best Interests of Creditors. Section 1129(a)(7) requires that, with respect to each impaired class of claims (including, in this case, Class 4), each holder of a claim in the class either (i) accept the plan or (ii) "receive



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or retain under the plan on account of such claim . . . property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of [the Bankruptcy Code] on such date[.]" As set forth above, although the Liquidation Analysis purports to demonstrate that holders of Class 4 general unsecured claims will not receive less under the Plan than they would in a chapter 7 liquidation, that analysis is based solely upon the alleged book value of the Debtors' collective assets and ignores the value of the potential Vendor Litigation and potential causes of action against the Debtors' current and former officers and directors, which would be released under the Plan as proposed. The Debtors' creditors should be apprised of these potential additional sources of value in order to determine whether the Plan is in their best interests. *See In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 300-301 (Bankr. S.D.N.Y. 1990) ("Disclosure statements are required to contain liquidation analyses that enable creditors to make their own judgment as to whether a plan is in their best interests and to vote to object to a plan if they so desire.").

(ii) Fair and Equitable Treatment. Section 1129(b)(1) of the Bankruptcy Code provides that, if any class of impaired claims votes to reject a plan, a plan proponent cannot confirm the plan without demonstrating that,



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among other things, the plan "does not discriminate unfairly, and is fair and equitable" with respect to the rejecting class. Confirmation under such circumstances, known as a "cramdown," requires that, with respect to a rejecting class of general unsecured creditors, (i) the plan provide claimholders in the class property of a value equal to the allowed amount of the claim (which would not occur under the Plan as proposed) or (ii) no holder of a claim or interest junior to claims of the rejecting class receive or retain any property on account of its junior claim or interest (known as the "absolute priority rule"). 11 U.S.C. § 1129(b)(2)(B). The corollary of the absolute priority rule is that no senior class of claims may receive more than full compensation for its claims. *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 612 (Bankr. D. Del. 2001). *See also In re Exide Techs.*, 303 B.R. 48, 61 (Bankr. D. Del. 2003). Accordingly, the Debtors' creditors should be made aware that the Committee believes (based, in part, on the Debtors' own admissions) that the distributable value in these cases exceeds the Debtors' restructured obligations to their secured creditors and other priority claims.

In addition to the foregoing, the Debtors' creditors should understand the following issues to aid their evaluation of the Plan:

(i) Third Party Releases. Sections VII(E) and (F) of the Plan contain broad releases and exculpations of third parties (including the

Debtors' current and former directors and officers) by both the Debtors and other third parties (including all holders of claims against the Debtors) which are more expansive than current Ninth Circuit precedent. The Debtors' creditors must understand these releases, exculpations, and their respective effects because, among other things, (i) certain released claims, including potential claims against the Debtors' directors and officers, represent an additional potential source of value for the estates; (ii) it is not clear what, if any, value the released third parties are contributing to the estates in exchange for the releases or what steps the Debtors have taken to investigate the merits and value of the released claims; and (iii) under Ninth Circuit law, plans containing third party releases and exculpations are approved only in limited circumstances, *see Blixseth v. Credit Suisse*, 961 F.3d 1074 (9th Cir. 2020) (approving narrow exculpation of participants in reorganization from claims based on actions during the case); *Underhill v. Royal*, 769 F.2d 1426 (9th Cir. 1985) (disapproving release provision discharging all claims against debtor, affiliates, and insiders); *In re American Hardwoods, Inc.*, 885 F.2d 621, 622 (9th Cir. 1989) (disapproving broad third party releases).

(ii) Substantive Consolidation. The Plan proposes to substantively consolidate the Debtors' estates, treating all of the Debtors' assets as a single pool to be shared amongst all of the Debtors' creditors, irrespective of the



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relative value of one estate over another, the effect of which is to subsidize distributions to the creditors of a less valuable estate at the expense of the creditors of a more valuable estate. This is a drastic remedy that is only available where (i) creditors dealt with the debtor entities as a single economic unit and did not rely on their separate identity in extending credit or (ii) the affairs of the debtors are so entangled that consolidation will benefit all creditors. *Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 766 (9th Cir. 2000). It is important for the Debtors' creditors to be aware of the Debtors' consolidation plan because (a) it is not clear that substantive consolidation is appropriate in these cases and (b) it could provide a windfall to one Debtor's creditors at the expense of another's, particularly in light of the closure of SHC Medical Center – Yakima and the apparent profitability and improved cash position of Sunnyside Community Hospital Association and/or SHC – Medical Center Toppenish. At a minimum, in light of the profitability of Sunnyside as compared with other Debtors, the Debtors should provide an analysis of how Sunnyside creditors could be treated based



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on the value of that individual enterprise compared with the Yakima creditors based on the value (or lack thereof) of that enterprise[7].

(iii) Impaired Classes. Cramdown under section 1129(b), discussed above, requires that at least one class of "impaired' claims vote to accept the plan. Section 1124 provides that a class of claims is unimpaired if, among other things, the plan "leaves unaltered the legal, equitable, and contractual rights to which such claim . . . entitles the holder[.]" The Debtors' creditors should understand that, (i) in order to lay the groundwork for a potential cramdown, it is in the interests of the Plan Proponents to attempt to create impaired classes of claims, and (ii) the Plan identifies Classes 2A and 2B as impaired and entitled to vote notwithstanding the reinstatement and/or replacement of their claims.

(iv) Good Faith. Section 1129(a)(3) requires that a plan be proposed in "good faith and not by any means forbidden by law." While the Committee does not suggest that the Plan has been proposed unlawfully, the Committee's exclusion from the Plan formulation process and the general unsecured creditors' treatment under the Plan in light of the apparent value

[7] The June 2020 operating report reflects a current liability of more than $40 million in accounts payable for Yakima and current assets of only $12,888,086. The report further reflects that Yakima has total net assets of ($79,718,596).

held by the Debtors and their estates raise questions regarding whether the Plan has been proposed in good faith. *See In re Am. Capital Equip., LLC*, 688 F.3d 145, 156 (3d Cir. 2012) ("In analyzing whether a plan has been proposed in good faith under § 1129(a)(3), the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.") In order to evaluate whether the Plan was proposed in good faith, the Debtors' creditors should understand that the Committee does not support the Plan, was not involved in its negotiation, and believes the Plan to be structured to transfer all of the Debtors' distributable value to the reorganized Debtors for the benefit of the Plan Proponents at the general unsecured creditors' expense.

To bring the foregoing to the Debtors' creditors' attention and provide the Debtors' creditors with adequate information to make an informed decision to accept or reject the Plan, the Committee requests that the Disclosure Statement be amended as set forth on Exhibit A, and that the Court approve the letter from the Committee attached hereto as Exhibit B and require that it be included in the Debtors' solicitation materials.

In addition to advising the creditor body of these issues, the Committee intends to take discovery on all relevant aspects of the Plan from the Plan Proponents. Due to the complexity of the issues – in particular, the valuation of the



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Debtors' distributable assets – the Committee believes extensive discovery, including expert discovery, and briefing will be required. The Committee has already begun this process by providing informal discovery requests to the Debtors in early July and following with formal document requests to all of the Plan Proponents (which were served on July 28, 2020).

Notwithstanding the Committee's efforts to proceed with discovery in a timely manner, the schedule proposed by the Plan Proponents in the Motion is insufficient to provide all parties with adequate time to complete discovery and brief the issues in advance of the confirmation hearing. To facilitate a full and fair hearing on the merits, the Committee proposes that the Court adopt the proposed schedule set forth in the preliminary statement of this Objection.

Consistent with the Supreme Court's recent observation that "[t]he plan-confirmation process . . . involves back and forth negotiations[,]" the Committee also proposes that the parties pursue alternative dispute resolution concurrently with the proposed schedule to curtail the need for expensive and contentious litigation. *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 140 S. Ct. 582, 588 (2020).

## RESERVATION OF RIGHTS

The Committee expressly reserves and preserves (i) all rights, claims, objections, arguments, defenses, and remedies with respect to the Plan, including with respect to the issues raised in this Objection, and (ii) the right to raise

additional objections to the adequacy of the Disclosure Statement in writing or orally at the hearing on the approval of the Disclosure Statement.

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**WHEREFORE**, for the foregoing reasons, the Committee respectfully requests that the Court (i) direct the Plan Proponents to amend the Disclosure Statement as set forth on Exhibit A, (ii) approve the letter from the Committee attached hereto as Exhibit B and require that it be included in the Debtors' solicitation materials, (iii) adopt the solicitation, discovery, briefing, and hearing schedule proposed herein, and (iv) grant such other and further relief that the Court deems just and proper.

Dated: July 30, 2020

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# Exhibit A

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HONORABLE WHITMAN L. HOLT

**UNITED STATES BANKRUPTCY COURT**
**EASTERN DISTRICT OF WASHINGTON**

| | |
|---|---|
| In re:<br>ASTRIA HEALTH, *et al.*,<br>Debtors and Debtors in Possession.[1] | Chapter 11<br>Lead Case No. 19-01189-11<br>Jointly Administered<br><br>**FIRST AMENDED DISCLOSURE STATEMENT RELATING TO THE JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ASTRIA HEALTH AND ITS AFFILIATES** |

[1] The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHS Holdco, LLC (19-01196-11), SHC Medical Center - Toppenish (19-01190-11), SHC Medical Center - Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).

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**EXHIBITS**

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
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## NOTICE TO HOLDERS OF CLAIMS AND DISCLAIMERS

THIS DISCLOSURE STATEMENT ((TOGETHER WITH ITS EXHIBITS, THE "**DISCLOSURE STATEMENT**") INCLUDES AND DESCRIBES THE JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ASTRIA HEALTH AND ITS AFFILIATES, DATED JULY 7, 2020 (THE "**PLAN**"),[2] A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A, WHICH WAS FILED JOINTLY BY ASTRIA HEALTH, A WASHINGTON NONPROFIT PUBLIC BENEFIT CORPORATION ("**ASTRIA**"), AND THE ABOVE-REFERENCED AFFILIATED DEBTORS AND DEBTORS IN POSSESSION (THE "**DEBTORS**") UNDER CHAPTER 11 OF TITLE 11 OF THE UNITED STATES CODE, 11 U.S.C. §§ 101, *ET SEQ.* (THE "**BANKRUPTCY CODE**"),[3] IN THESE CHAPTER 11 CASES (THE "**CHAPTER 11 CASES**"), AND LAPIS ADVISERS, LP AS LENDER UNDER THE DEBTOR IN POSSESSION FACILITY IN THE CHAPTER 11 CASES, AGENT UNDER THE DEBTORS' PREPETITION CREDIT AGREEMENT, AND AS INVESTMENT ADVISOR AND INVESTMENT MANAGER FOR CERTAIN FUNDS WHICH ARE BENEFICIAL HOLDERS OF THOSE CERTAIN WASHINGTON HEALTH CARE FACILITIES AUTHORITY REVENUE BONDS, SERIES 2017A BONDS AND THE SERIES 2017B BONDS (COLLECTIVELY THE "**LAPIS PARTIES**" AND, TOGETHER WITH THE DEBTORS, THE "**PLAN PROPONENTS**").

THIS DISCLOSURE STATEMENT, THE PLAN, AND THE ACCOMPANYING BALLOTS AND RELATED MATERIALS DELIVERED HEREWITH, ARE BEING PROVIDED TO KNOWN HOLDERS OF CLAIMS PURSUANT TO § 1125 IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT THE PLAN PROPOSED JOINTLY BY THE PLAN PROPONENTS.

IF YOU ARE ENTITLED TO VOTE ON THE PLAN, YOU ARE RECEIVING A BALLOT WITH YOUR NOTICE OF THIS DISCLOSURE STATEMENT. THE PLAN PROPONENTS BELIEVE THAT THE PLAN IS IN THE BEST INTEREST OF AND PROVIDES THE HIGHEST AND MOST EXPEDITIOUS RECOVERIES TO HOLDERS OF ALL CLAIMS. THE PLAN PROPONENTS URGE YOU TO VOTE TO ACCEPT THE PLAN.

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (THE "**COMMITTEE**") CONTENDS THAT THE PLAN DOES NOT PROVIDE THE HIGHEST AND MOST EXPEDITIOUS RECOVERIES TO HOLDERS OF CLAIMS FOR THE REASONS SET FORTH IN THE LETTER FROM THE COMMITTEE ATTACHED HERETO AS EXHIBIT D (THE "**COMMITTEE LETTER**") AND URGES CREDITORS TO VOTE TO REJECT THE PLAN.

**EACH HOLDER OF A CLAIM AGAINST THE DEBTORS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN SHOULD READ THIS DISCLOSURE STATEMENT, ITS EXHIBITS, INCLUDING THE COMMITTEE LETTER, AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING. THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT INFORMATION THAT MAY BEAR UPON YOUR DECISION TO VOTE TO ACCEPT OR REJECT THE PLAN. PLEASE READ THIS**

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[2] All capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Plan.

[3] All references to § herein are to sections of the Bankruptcy Code. All references to "**Bankruptcy Rules**" are to provisions of the Federal Rules of Bankruptcy Procedure. All references to "**LBR**" are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of Washington.

**DOCUMENT AND ITS EXHIBITS WITH CARE.**

NO SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN MAY BE MADE EXCEPT PURSUANT TO THIS DISCLOSURE STATEMENT-, ITS EXHIBITS, AND § 1125. NO HOLDER OF A CLAIM SHOULD RELY ON ANY INFORMATION RELATING TO THE DEBTORS, THEIR PROPERTY, OR THE PLAN OTHER THAN THAT CONTAINED IN THIS DISCLOSURE STATEMENT AND THE ATTACHED EXHIBITS.

THIS DISCLOSURE STATEMENT ~~IS~~ AND ITS EXHIBITS ARE THE ONLY ~~DOCUMENT~~ DOCUMENTS AUTHORIZED BY THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF WASHINGTON (THE "**BANKRUPTCY COURT**")[4] TO BE USED IN CONNECTION WITH THE PLAN. NO SOLICITATIONS FOR OR AGAINST THE PLAN MAY BE MADE EXCEPT THROUGH THIS DISCLOSURE STATEMENT AND ITS EXHIBITS.

**THIS DISCLOSURE STATEMENT CONTAINS A SUMMARY OF CERTAIN PROVISIONS OF THE PLAN. ALTHOUGH EVERY EFFORT HAS BEEN MADE TO ENSURE THAT THIS DISCLOSURE STATEMENT PROVIDES ADEQUATE INFORMATION WITH RESPECT TO THE PLAN, IT DOES NOT PURPORT TO BE COMPLETE, AND ALL PLAN SUMMARIES AND STATEMENTS MADE HEREIN ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ANNEXED TO THE PLAN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF. IF THERE IS ANY INCONSISTENCY BETWEEN THE PLAN AND THE SUMMARY OF THE PLAN CONTAINED IN THIS DISCLOSURE STATEMENT, THE PLAN SHALL CONTROL. ACCORDINGLY, EACH HOLDER OF A CLAIM SHOULD REVIEW THE PLAN IN ITS ENTIRETY.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH § 1125 AND BANKRUPTCY RULE 3016(b), AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAW OR OTHER NON-BANKRUPTCY LAW. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING SECURITIES OF OR CLAIMS AGAINST THE DEBTORS SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED. THIS DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE REORGANIZATION OR LIQUIDATION OF THE DEBTORS AS TO HOLDERS OF CLAIMS AGAINST THE DEBTORS. NO PERSON OR ENTITY SHOULD RELY ON THE INFORMATION CONTAINED IN, OR THE TERMS OF, THIS DISCLOSURE STATEMENT OR THE PLAN, INCLUDING IN CONNECTION WITH ANY PURCHASE OR SALE OF THE DEBTORS' SECURITIES PRIOR TO THE CONFIRMATION OF THE PLAN BY THE BANKRUPTCY COURT.**

**THIS DISCLOSURE STATEMENT INCLUDES A SUMMARY OF CERTAIN MATERIAL FEDERAL TAX CONSEQUENCES OF THE PLAN, WHICH IS PROVIDED FOR INFORMATION PURPOSES ONLY, IS NOT TAX ADVICE, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL**

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[4] As defined in the Plan and used in this Disclosure Statement, "**Court**" means the Bankruptcy Court or any other court of the United States exercising competent jurisdiction over the Chapter 11 Cases or any proceeding any proceeding therein.

**THIS DISCLOSURE STATEMENT WAS NOT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC") OR ANY STATE AUTHORITY AND NEITHER THE SEC NOR ANY STATE AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN. NEITHER THIS DISCLOSURE STATEMENT NOR THE SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN CONSTITUTES AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY SECURITIES IN ANY STATE OR JURISDICTION IN WHICH SUCH OFFER OR SOLICITATION IS NOT AUTHORIZED.**

**THIS DISCLOSURE STATEMENT MAY CONTAIN "FORWARD LOOKING STATEMENTS" WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD LOOKING TERMINOLOGY SUCH AS "MAY," "EXPECT," "ANTICIPATE," "ESTIMATE" OR "CONTINUE" OR THE NEGATIVE THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. THE READER IS CAUTIONED THAT ALL FORWARD LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE REFERRED TO IN SUCH FORWARD LOOKING STATEMENTS.**

**HOLDERS OF CLAIMS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE SOLICITATION, THE PLAN, AND THE TRANSACTIONS CONTEMPLATED THEREBY. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING.**

**HOLDERS OF CLAIMS AND OTHER THIRD PARTIES SHOULD BE AWARE THAT THE PLAN CONTAINS INJUNCTIONS AND RELEASES THAT MAY MATERIALLY AFFECT THEIR RIGHTS.**

**ALL OF THE PROJECTED RECOVERIES TO CREDITORS ARE BASED UPON THE ANALYSES PERFORMED BY THE PLAN PROPONENTS AND THEIR PROFESSIONALS. ALTHOUGH EVERY EFFORT HAS BEEN MADE TO VERIFY THE ACCURACY OF THE INFORMATION PRESENTED HEREIN AND IN THE EXHIBITS ATTACHED HERETO, THE PLAN PROPONENTS CANNOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY OF THE INFORMATION. AS SET FORTH IN THE COMMITTEE LETTER, THE COMMITTEE DISPUTES THE BASES FOR THE PROJECTED RECOVERIES, INCLUDING THE ANALYSES PERFORMED BY THE PLAN PROPONENTS.**

**AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS THE PLAN PROPONENTS' STATEMENT OR THE COMMITTEE'S STATEMENT OF THE STATUS OF THE RESPECTIVE MATTER, AS APPLICABLE.**

THE PLAN PROPONENTS RECOMMEND THAT CREDITORS SUPPORT AND VOTE TO ACCEPT THE PLAN. IT IS THE OPINION OF THE PLAN PROPONENTS THAT THE TREATMENT OF CREDITORS UNDER THE PLAN CONTEMPLATES A GREATER

RECOVERY THAN THAT WHICH IS LIKELY TO BE ACHIEVED UNDER OTHER ALTERNATIVES FOR THE REORGANIZATION OR LIQUIDATION OF THE DEBTORS. ACCORDINGLY, THE PLAN PROPONENTS BELIEVE THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS. FOR THE REASONS SET FORTH IN THE COMMITTEE LETTER, THE COMMITTEE RECOMMENDS THAT CREDITORS VOTE TO REJECT THE PLAN.

**THE DEADLINE TO ACCEPT OR REJECT THE PLAN IS 4:00 P.M. PACIFIC DAYLIGHT TIME, ~~SEPTEMBER 10~~OCTOBER 27, 2020 (THE "VOTING DEADLINE"), UNLESS EXTENDED BY ORDER OF THE BANKRUPTCY COURT. ALL BALLOTS MUST BE ACTUALLY *RECEIVED* BY KURTZMAN CARSON CONSULTANTS, LLC ("KCC" OR THE "SOLICITATION AGENT") NO LATER THAN THE VOTING DEADLINE. DO NOT RETURN ANY OTHER DOCUMENTS WITH YOUR BALLOT. YOUR VOTE ON THE PLAN IS IMPORTANT.**

## I.
## INTRODUCTION

On May 6, 2019 (the "**Petition Date**"), Astria Health, a Washington nonprofit public benefit corporation ("**Astria**"), and the above-referenced affiliated debtors and debtors in possession (the "**Debtors**"), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"),[5] in the United States Bankruptcy Court for the Eastern District of Washington (the "**Bankruptcy Court**"). The chapter 11 cases are jointly administered under lead bankruptcy case number 19-01189-11 (the "**Chapter 11 Cases**"). Since the Petition Date, the Debtors have remained in possession of their assets, and managed their businesses as debtors in possession, pursuant to §§ 1107 and 1108.

The Debtors submit this disclosure statement ~~(~~(together with its exhibits, the "**Disclosure Statement**") pursuant to § 1125 on behalf of themselves and Lapis Advisers, LP as lender under the Debtor in Possession Facility in the Chapter 11 Cases, agent under the Debtors' prepetition Credit Agreement, and as investment advisor and investment manager for certain funds which are beneficial holders of those certain Washington Health Care Facilities Authority Revenue Bonds, and any fund managed or affiliated with the foregoing (collectively the "**Lapis Parties**" and, together with the Debtors, the "**Plan Proponents**") in connection with the solicitation of votes to accept or reject their Joint Chapter 11 Plan of Reorganization of Astria Health and Its Affiliates, dated July 7, 2020 (the "**Plan**"), a copy of which is attached hereto as Exhibit A. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. To the extent that the information provided in this Disclosure Statement and the Plan (including any Plan supplements or amendments) conflict, the terms of the Plan (including any Plan supplements or amendments) will control. Terms not otherwise specifically defined herein will have the meanings attributed to them in the Plan. Each definition in this Disclosure Statement and in the Plan includes both the singular and plural. Headings are for convenience or reference and shall not affect the meaning or interpretation of this Disclosure Statement.

At a hearing to be held on the adequacy of this Disclosure Statement and confirmation of the Plan, the Plan Proponents will request that the Bankruptcy Court approve this Disclosure Statement as containing "adequate information" in accordance with § 1125(b) to enable a hypothetical, reasonable investor typical of claimholders in a Class of Claims entitled to vote as set forth in the Plan to make an informed judgment about whether to accept or reject the Plan. A

[5] All references to **§** herein are to sections of the Bankruptcy Code. All references to "**Bankruptcy Rules**" are to provisions of the Federal Rules of Bankruptcy Procedure. All references to "**LBR**" are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of Washington.

hearing to consider the adequacy of this Disclosure Statement and confirmation of the Plan (the "**Confirmation Hearing**") will be held on ~~September 24~~November 13, 2020, at 11:00 a.m. Pacific Daylight Time, before the Honorable Whitman L. Holt, United States Bankruptcy Judge, at the Bankruptcy Court, 402 East Yakima Avenue, Suite 200, Yakima, Washington 98901. At the Confirmation Hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements for confirmation under the Bankruptcy Code.

The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan must be filed and served so they are received on or before ~~September 10~~November 3, 2020~~, at 4:00 p.m. Pacific Daylight Time~~, in the manner described in section VI.B.1 of this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.

The following documents are attached as Exhibits to this Disclosure Statement:

Exhibit A: The Plan

Exhibit B: Liquidation Analysis

Exhibit C: Financial Projections

Exhibit D: Committee Letter

Voting instructions are contained in section VI.B.1 of this Disclosure Statement, as well as on the ballot you received in connection with this Disclosure Statement. To be counted, your original ballot must be actually received by 4:00 p.m., Pacific Daylight Time, on ~~September 10~~October 27, 2020 (the "**Voting Deadline**").

If your ballot is not timely received, it may not be counted in determining whether the Plan has been accepted. You are urged to carefully review the contents of the Plan and Disclosure Statement, including all exhibits attached thereto, before making your decision to vote to accept or reject the Plan. Pursuant to the provisions of the Bankruptcy Code, only holders of Allowed Claims in Classes of Claims that are "impaired" (as defined in section VI.B.3 of this Disclosure Statement) and not deemed to have rejected the Plan are entitled to vote to accept or reject the Plan. Particular attention should be directed to the provisions of the Plan affecting or impairing your rights as they may presently exist, including, but not limited to, the provisions which provide for injunctions and releases.

This Disclosure Statement is intended to provide adequate information of a kind, and in sufficient detail, to enable the Debtors' creditors to make an informed judgment about the Plan, including whether to accept or reject the Plan. This Disclosure Statement sets forth certain information regarding (i) the Debtors' prepetition operating and financial history; (ii) the Debtors' need to file for relief under chapter 11 of the Bankruptcy Code; (iii) significant events that have occurred during the Debtors' Chapter 11 Cases; (iv) the terms of the Plan; (v) the manner in which distributions will be made under the Plan; (vi) certain effects of confirmation of the Plan; (vii) certain risk factors associated with the Plan; and (viii) the confirmation process and the voting procedures that Holders of Claims entitled to vote under the Plan must follow for their votes to be counted.

This Disclosure Statement is subject to the Bankruptcy Court's approval as containing information of a kind, and in sufficient detail, adequate to enable a hypothetical, reasonable investor typical of each of the Classes whose votes are being solicited to make an informed judgment with respect to the Plan. **THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION WITH**

**RESPECT TO THE MERITS OF THE PLAN. ALL CREDITORS ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS EXHIBITS CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE TO ACCEPT OR REJECT THE PLAN.**

## II.
## EXPLANATION OF CHAPTER 11

### A. Overview of Chapter 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code pursuant to which a debtor in possession may reorganize its business for the benefit of its creditors and other parties in interest. The commencement of a chapter 11 case creates an estate comprising all the legal and equitable interests of the debtor in possession as of the date the petition is filed. The Debtors commenced the Chapter 11 Cases on the Petition Date. *See* Section I.

Sections 1101, 1107, and 1108 provide that a debtor may continue to operate its business and remain in possession of its property as a "debtor in possession" unless the bankruptcy court orders the appointment of a trustee. In the Chapter 11 Cases, each Debtor remains in possession of its property and continues to operate its businesses as a debtor in possession. *See* Section I.

Section 1102(a) and (b)(1) provides for the appointment of a committee of creditors holding unsecured claims. On May 24, 2019, the Office of the United States Trustee (the "**U.S. Trustee**") appointed such a committee (the "**Committee**"). *See* Section V.C.1.

Section 333(a)(2) further provides for the appointment of a patient care ombudsman where the debtor is a health care business as defined in § 101(27A). On June 17, 2019, the U.S. Trustee appointed a patient care ombudsman in these Chapter 11 Cases (the "**Patient Care Ombudsman**"). *See* Section V.C.2.

The filing of a chapter 11 petition triggers the automatic stay provisions of the Bankruptcy Code. Section 362 provides, among other things, for an automatic stay of all attempts by creditors or other third parties to collect prepetition claims from the debtor or otherwise interfere with its property or business. Exempted from the automatic stay are governmental authorities seeking to exercise regulatory or policing powers. Except as otherwise ordered by the bankruptcy court, the automatic stay remains in full force and effect until the effective date of a confirmed plan of reorganization. In the Chapter 11 Cases, no creditor or party in interest has obtained relief from the automatic stay, except for David Becerril, Jan Hemstad, and Suzanne Cleland-Zamudio, as well as the DIP Lenders with limited regard to enforcing the terms of the DIP Facility. *See* Section V.B.6. In addition, the Debtors were forced to file an emergency motion to enforce the automatic stay against one party. *Id.*

### B. Plan of Reorganization

The formulation of a plan of reorganization is the principal purpose of a chapter 11 case. The plan sets forth the means for satisfying the holders of claims against and interests in the debtor's estate. Although referred to as a plan of reorganization, a plan may provide anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation of the debtor's assets. In either event, upon confirmation of the plan, it becomes binding on the debtor and all of its creditors, and the prior obligations owed by the debtor to such parties are compromised and exchanged for the obligations specified in the plan. For a description of key components of the Plan, *see* Section III.A.

After a plan of reorganization has been filed, the holders of impaired claims against a debtor are permitted to vote to accept or reject the plan. Before soliciting acceptances of the

proposed plan, § 1125 requires the debtor to prepare and file a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. This Disclosure Statement is presented to holders of Claims against the Debtors to satisfy the requirements of § 1125 in connection with the Debtors' solicitation of votes on the Plan.

**C. Confirmation of a Plan of Reorganization**

If all classes of claims accept a plan of reorganization, the bankruptcy court may confirm the plan if the bankruptcy court independently determines that the requirements of § 1129(a) have been satisfied. *See* Section VI.C. The Debtors believe that the Plan satisfies all the applicable requirements of § 1129(a). As set forth in the Committee Letter, the Committee disputes the satisfaction of those requirements, in particular the "best interests of the creditors" test set forth in § 1129(a)(7).

Chapter 11 of the Bankruptcy Code does not require that each holder of a claim in a particular class vote in favor of a plan of reorganization for the bankruptcy court to determine that the class has accepted the plan. *See* Section VI.C.7.

In addition, classes of claims that are not "impaired" under a plan of reorganization are conclusively presumed to have accepted the plan and thus are not entitled to vote. Furthermore, classes that are to receive no distribution under the plan are conclusively deemed to have rejected the plan. *See* Section VI.B.3. Accordingly, acceptances of a plan will generally be solicited only from those persons who hold claims in an impaired class. **Except for Class 1 Priority Claims and Class 2C Other Secured Claims, which are unimpaired and deemed to have accepted the Plan, all classes of Claims are impaired under the Plan and entitled to vote on the Plan. However, the Committee disputes the treatment of Classes 2A and 2B as impaired and entitled to vote on the Plan.**

The Plan contemplates the grouping—or deemed consolidation—of all the Debtors, treating them as a single Estate solely for purposes of voting on the Plan, confirmation of the Plan, and determining treatment of and making distributions in respect of Claims against in the Debtors. For each Debtor that is able to satisfy the requirements of § 1129(a)(8) and/or (10) on a standalone basis, provided that all other requirements to confirmation of the Plan are met, the consolidation of the Debtors will be deemed to occur by operation of the Plan. If a Debtor is unable to satisfy the requirements of § 1129(a)(8) and/or (10) on a standalone basis, the inclusion of such Debtor will be subject to a determination of the Bankruptcy Court that such inclusion is appropriate under applicable standards, which the Committee disputes, and which determination may be made at the Confirmation Hearing. Accordingly, for purposes of determining whether the Plan satisfies § 1129(a)(8) and/or (10) with respect to each Debtor, the Debtors will tabulate votes on an individual Debtor basis and to the extent relevant and appropriate as determined by the Bankruptcy Court, on a consolidated basis. *See* Sections VI.D.2 and VI.M.

In general, a bankruptcy court also may confirm a plan of reorganization even though fewer than all the classes of impaired claims accept such plan. For a plan of reorganization to be confirmed, despite its rejection by a class of impaired claims, the plan must be accepted by at least one class of impaired claims (determined without counting the vote of insiders) and the proponent of the plan must show, among other things, that the plan does not "discriminate unfairly" and that the plan is "fair and equitable" with respect to each impaired class of claims that has not accepted the plan. *See* Section VI.C.7. **The Plan Proponents believe that the Plan has been structured so that it will satisfy the foregoing requirements as to any rejecting class of Claims, and can therefore be confirmed, if necessary, over the objection of any (but not all) classes of Claims. However, the Committee contends that the Plan is not "fair and equitable" with respect to Class 4.**

## III.
## OVERVIEW OF THE PLAN

### A. Summary of the Terms of the Plan

The Plan is built around the following key elements:

- The Debtors will be deemed consolidated for the sole purpose of treatment of Claims and liabilities under a single Plan, but will otherwise retain the separate corporate structure of individual Debtors (and any other Debtor not included therein shall be treated under a separate Plan).

- AH NP 2, a Washington nonprofit corporation and currently a wholly owned nondebtor subsidiary of Astria, will become the sole member of Astria; and Astria will change from a no-member nonprofit corporation to a single member nonprofit corporation.

- A newly created nondebtor entity, AH System, a freestanding Washington nonprofit corporation, will assume the non-discharged debt of the Debtors in exchange for AH NP 2's transfer of its sole membership interest in Astria to AH System.

- The Lapis Parties have agreed to reinstatement of the Senior Secured Bond Debt Claims which will be paid by the Reorganized Debtors over time.

- AH System will issue debt instruments described in the scheduled attached as Exhibit A to the Plan to satisfy the DIP Claims and Senior Secured Credit Agreement Claims in full.

- A Litigation Trust will be created to pursue all Avoidance Actions, other than any Avoidance Action against the vendor which provided revenue cycle, billing and collection services prepetition, to enable recoveries *pro rata* to Holders of Allowed General Unsecured Creditor Claims. As set forth in the Committee Letter, the Committee asserts this treatment to be an insufficient allocation of value to the Holders of Claims in Class 4.

- A Liquidation Trust (together with the Litigation Trust, the "**Plan Trusts**," and each individually, a "**Plan Trust**") will be created from assets of the Debtors not necessary for the operation of their core health care businesses. In the event any assets in the Liquidation Trust are liquidated, the proceeds of such liquidation shall be used to fund AH System's operating cash account up to an amount equal to the lesser of $10 million or 30 days cash on hand and then to pay debt issued by AH System.

- Holders of Allowed Claims will receive a distribution of Cash or proceeds from the applicable Plan Trust, consistent with the priority provisions of the Bankruptcy Code.

- All Intercompany Claims will be expunged and eliminated through the limited consolidation of the Debtors for purposes of treatment of Claims and distributions under the Plan.

- The Debtors will proceed with the Closure Plan of SHC Medical Center - Yakima, doing business as Astria Regional Medical Center ("**ARMC**" or the "**Medical Center**") in Yakima, Washington, and dissolve the non-operating Debtors relating thereto.

## B. Summary of Distributions Under the Plan

The estimated potential range of recovery to holders of Allowed Claims in the Classes of Impaired Claims is set forth in the chart below. The range of recoveries set forth below is not a guarantee of actual results, but is an estimate by the Plan Proponents based on the currently available information and assumptions that are subject to material change. The actual distributions to holders of Allowed Claims in the Classes of Impaired Claims will necessarily be affected by a variety of contingencies that cannot be determined with certainty at this time, including, without limitation, the ultimate amount of funds that will be available for distribution with respect to the Allowed Claims after payment in full of unclassified Claims, Claims senior in priority to each such Class, and the expenses of effectuating the Plan and administering the Liquidation Trust; the aggregate amount of Allowed Claims in each such Class; the results of the claim objection and reconciliation process; and the results of prosecution of the Chapter 5 Actions and other Causes of Action, which may have a material effect on funding a distribution to holders of Allowed Claims in Classes of Impaired Claims.

### 1. Unclassified Claims

Certain types of Claims are not placed into voting classes; instead they are unclassified. They are not considered impaired and they do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. As such, Debtors have not placed the following Claims in a class. The treatment of these Claims is provided below.

| DESCRIPTION | TREATMENT |
|---|---|
| DIP Claims | In accordance with the Senior Debt 9019 Settlement, all DIP Claims shall be shall be Allowed and satisfied, without setoff, reduction or subordination, by the exchange of DIP Claims for DIP Claims Exchange Debt with the attributes described in the schedule attached to the Plan as Exhibit A in the amount of all DIP Claims as of the Effective Date. This treatment of DIP Claims is an integral component of the Senior Debt 9019 Settlement. |
| Other Administrative Claims | Except for Ordinary Course Administrative Expenses[6] (which will be paid in the ordinary course of business) and DIP Claims, all Administrative Claims, including Cure Payments, and U.S. Trustee Fees, will be paid in full in Cash (a) on the later of the Effective Date or the date such Claims are Allowed under § 503, or (b) upon such other terms as may be mutually agreed upon between the Holder of such Claim and the Debtors, and consistent with the terms of the Definitive Documents. |
| Professional Fee Claims | All persons and entities seeking an award by the Court of professional fees on behalf of the Debtors (a) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses no later than forty- |

[6] "**Ordinary Course Administrative Expense**" means Administrative Claims for goods and services of types consistent with the Debtors' ordinary course business operations as of the Petition Date that will be paid as they come due after the Effective Date in the ordinary course of Reorganized Debtors' business.

| | |
|---|---|
| | five (45) days after the Effective Date, and, (b) upon Court approval of such final application, shall receive, in full satisfaction, settlement, and release of, and in exchange for such Claim, from the Administrative and Priority Claims Reserve, Cash in such amounts as allowed by the Court (i) on the later of (A) the Effective Date (or as soon thereafter as reasonably practicable) and (B) the date that is ten (10) days after the allowance date, or (ii) upon such other terms as may be mutually agreed upon between the holder of such Claim and the Plan Proponents, and consistent with the terms of the Definitive Documents. For the avoidance of doubt, estate Professionals may still receive interim compensation prior to the Effective Date if otherwise able to under existing court orders. |
| Priority Tax Claims | Priority Tax Claims shall be paid in full in Cash from the Administrative and Priority Claims Reserve (a) on the later of the Effective Date or the date such Claim is allowed, (b) after the Effective Date, over a period not to exceed five years from the date of assessment of the subject tax, together with interest thereon at a rate satisfactory to the Debtors or such other rate as may be required by the Bankruptcy Code, or (c) upon such other terms as may be mutually agreed upon between the holder of such Claim and the Plan Proponents, and consistent with the terms of the Definitive Documents. |

**2. Classified Claims**

| CLASS | DESCRIPTION | IMPAIRED/ UNIMPAIRED | VOTING STATUS | TREATMENT |
|---|---|---|---|---|
| 1 | Priority Claims (priority unsecured claims alleged pursuant to Code §§ 507(a)(4) and (5)) Total Amount = Unknown | Unimpaired | Not Entitled to Vote / Deemed to Accept | Paid in cash in full on later of Effective Date or when Allowed |
| 2A | Senior Secured Bond Debt Claims<br><br>Total Amount = $43,194,789.04 | Impaired | Entitled to Vote | In accordance with the Senior Debt 9019 Settlement, all Senior Secured Bond Debt Claims shall be Allowed and reinstated without setoff, reduction or subordination on the terms of the Exchange Debt Documents in the amount of all such Senior Secured Bond Debt Claims as of the Effective |

| | | | | |
|---|---|---|---|---|
| | | | | Date. |
| 2B | Senior Secured Credit Agreement Claims<br><br>Total Amount = $13,007,397.26 | Impaired | Entitled to Vote | In accordance with the Senior Debt 9019 Settlement, all Senior Secured Credit Agreement Claims shall be Allowed and satisfied, without setoff, reduction, subordination or challenge, by the exchange of all Senior Secured Credit Agreement Claims for Senior Secured Credit Agreement Exchange Debt with the attributes described in the schedule attached to the Plan in Exhibit A in the amount of all Senior Secured Credit Agreement Claims as of the Effective Date. |
| 2C | Other Secured Claims | Unimpaired | Not Entitled to Vote / Deemed to Accept | On or as soon as practicable after the Effective Date, each Holder of an allowed Other Secured Claim against the Debtors will receive from the assets of the Debtors, at the discretion of the Debtors (i) cash equal to the full amount of its Claim, (ii) a reinstated note on the same payment and collateral terms as its prior Claim, (iii) a return of collateral securing the Claim against the Debtor, with any deficiency to result in a General Unsecured Claim, or (iv) such less favorable treatment to which the Holder otherwise agrees. |
| 3 | Convenience Class Claims | Impaired | Entitled to Vote | To be paid 20% of allowed amount of claim up to a maximum of |

| | | | | |
|---|---|---|---|---|
| | Total Amount = Est. Allowed amount of $1,611,501,[7] assuming all claimants with Claims between $5,000 and $10,000 elect Class 3 treatment | | | $1,000, on the Effective Date or as soon as practicable thereafter. There shall be no limitation on the number of Convenience Class members. |
| 4 | General Unsecured Claims (Not Otherwise Classified)<br><br>Total Amount = Approximately $101,950,399.80[8] | Impaired | Entitled to Vote | Allowed General Unsecured Claims shall be satisfied *pro rata* solely from assets transferred to the Litigation Trust. |
| 4A | Insured Claims | Impaired | Entitled to Vote | Subject to the terms and conditions set forth in in the Plan, Holders of Allowed Insured Claims in Class 4A shall recover only from the available insurance and Debtors shall be discharged to the extent of any such excess. As of the Effective Date, all Insured Claims are Disputed. |
| 5 | Intercompany Claims | N/A | N/A | All intercompany claims shall be expunged and eliminated through the limited consolidation of the Debtors for purposes of treatment of Claims and distributions under the Plan. |

Based on an initial review of the Claims filed in the Chapter 11 Cases, the total amount of General Unsecured Claims are approximately $101,950,399.80. The Debtors, however, believe that this amount will materially reduce following the claims adjudication process. The actual

[7] This amount of is based on General Unsecured Claims filed and the Debtors believe that this amount will materially reduce following the claims adjudication process.

[8] This amount of is based on General Unsecured Claims filed and the Debtors believe that this amount will materially reduce following the claims adjudication process.

amount distributed to Holders of Class 4 General Unsecured Claims (and the timing any such distributions) will vary based on the Assets that are recovered by the Litigation Trust and the reconciled amount of General Unsecured Claims that are Allowed. Holders of Class 5 Intercompany Claims are eliminated through the limited consolidation of the Debtors for Plan purposes.

## IV.
## GENERAL OVERVIEW OF THE DEBTORS[9]

The discussion below briefly describes the Debtors and their businesses as they exist as of the date of this Disclosure Statement.

### A. Overview of the Debtors

The Astria Health system, headquartered in the heart of Yakima Valley, Washington, is the largest non-profit healthcare system based in Eastern Washington, with annual revenues of approximately $140 million. Astria is the parent non-profit organization of three hospitals—(1) Sunnyside Community Hospital Association ("**Sunnyside**"), based in Sunnyside, Washington; (2) SHC Medical Center – Yakima ("**SHC–Yakima**") formerly d/b/a Astria Regional Medical Center, based in Yakima, Washington; and (3) SHC Medical Center – Toppenish d/b/a Astria Toppenish Hospital ("**SHC–Toppenish**," and collectively with Sunnyside and SHC–Yakima, the "**Hospitals**"), based in Toppenish, Washington—along with outpatient Astria Health Centers (14 medical clinics and 24 specialty clinics), Ambulatory Surgical Center, Astria Hearing and Speech, and Astria Home Health and Hospice with healthcare sites and providers conveniently located in towns and cities throughout the region.

In addition to Astria and the Hospitals, the other Debtors in these Chapter 11 Cases are:

- SHC Holdco, LLC ("**SHC Holdco**");
- Sunnyside Community Hospital Home Medical Supply, LLC ("**Sunnyside Home Medical Supply**");
- Sunnyside Home Health d/b/a Astria Home Health ("**Astria Home Health**");
- Sunnyside Professional Services, LLC ("**SPS**");
- Yakima Home Care Holdings, LLC ("**Yakima Home Care**");
- Kitchen and Bath Furnishings, LLC ("**K&B**");
- Glacier Canyon, LLC ("**Glacier**");
- Oxbow Summit, LLC ("**Oxbow Summit**"); and
- Yakima HMA Home Health, LLC d/b/a Astria Home Health ("**Yakima HMA Home Health**").[10]

With the exception of SHC–Yakima, which will be dissolved upon the conclusion of the ARMC's Closure Plan, the Plan provides for the reorganization of the Debtors, and their emergence from the Chapter 11 Cases as the Reorganized Debtors.

[9] The Debtors have prepared and are solely responsible for the statements and assumptions reflected in this Section IV.

[10] Yakima HMA Home Health and Sunnyside Home Health do business together as Astria Home Health. For purposes of this Disclosure Statement, all references to Astria Home Health are to Sunnyside Home Health, whose sole member is Sunnyside.

### 1. The Health System

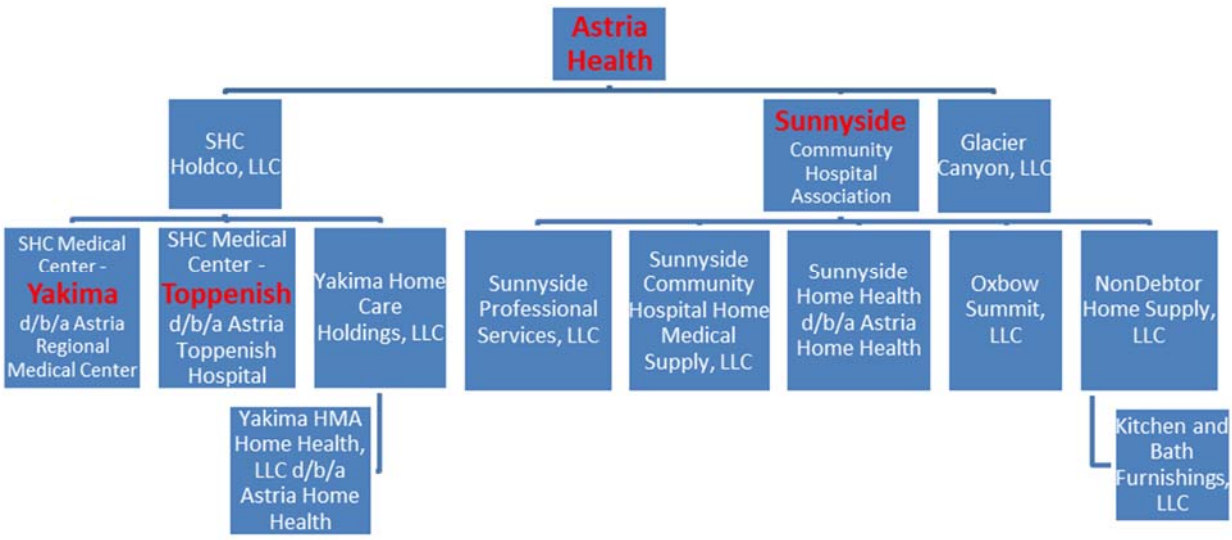
The Debtors operate as a nonprofit health care system (the "**Health System**") providing medical services to patients who generally reside in Yakima County and Benton County, Washington through the operation of Sunnyside and SHC-Toppenish, several health clinics, home health services, and other healthcare services. Collectively, they have 111 licensed beds, three active emergency rooms, and a host of medical specialties.

Overall, the Health System provides medical treatments to approximately 273,000 patients annually, including approximately 4,253 who spend at least one night in its Hospitals during the year. Sunnyside is the only hospital in Sunnyside, Washington, and SHC–Toppenish is the only hospital in Toppenish, Washington.

The Health System employs approximately 890 regular employees (making it one of the largest employers in the Yakima Valley), and approximately 329 doctors have privileges at the Hospitals.

Collectively, the Debtors provide the following services: allergy testing and treatment program, ambulatory surgery, audiology, behavioral health/psychiatry, breast health center, cancer care, catheterization lab, colorectal surgery, critical care medicine, diabetes education, diagnostic imaging and radiology, ear, nose and throat, emergency services, endocrinology, family medicine, gastroenterology, gynecological surgery, heart care, hand surgery, heart failure, home health, hospice, hospitalists, inpatient behavioral health, internal medicine, interventional cardiology, laboratory, life transitions intensive out-patient program, maternity services, medical withdrawal management, nephrology, neurosurgery, spine care, nutritional services, obstetrics and gynecology, occupational medicine, orthopedics, orthopedic surgery, outpatient palliative care, speech therapy, physical therapy, pediatrics, pharmacy, plastic and reconstructive surgery, podiatry, rehabilitation, inpatient rehabilitation, senior services, sleep medicine, sports medicine, stroke care, surgical services, robotic surgery, general surgery, telehealth, urology, urological surgery, walk-in care, women's health, vascular medicine, and wound care center.

The following graphic depicts the prepetition organizational structure of the Debtor entities:




As depicted above, Astria is the sole member of Debtors SHC Holdco, Sunnyside, and Glacier. SHC Holdco is, in turn, the sole member of Debtors SHC–Yakima, SHC–Toppenish,

and Yakima Home Care. Yakima Home Care is, in turn, the sole member of Debtor Yakima HMA Home Health. Sunnyside is the sole member of Debtors SPS, Sunnyside Home Medical Supply, Astria Home Health, and Oxbow Summit; and the sole member of nondebtor Home Supply, LLC, which, in turn, is the sole member of Debtor K&B.

**a. Astria**

As depicted in the graphic above, Astria sits atop the Health System's corporate structure. Astria is the holding company for the entire Health System, and is the sole member of SHC Holdco, Sunnyside, and Glacier. SHC Holdco and Sunnyside are, in turn the direct or indirect sole members of other Debtors, as described below.

Astria and each of the Hospitals have a separate Board of Trustees to ensure local representation.

**b. Sunnyside entities**

Sunnyside, located in Sunnyside, Washington, is a 38-bed critical access hospital. Services offered at Sunnyside include medical, surgical, labor/delivery and nursery care, 24-hour emergency, laboratory, imaging services, physical therapy, rehabilitation, urgent care, oncology, cardiology, and clinics. Members of the Sunnyside medical staff include specialists in emergency medicine, family practice, internal medicine, general surgery, neurosurgery, cardiology, pediatrics, obstetrics/gynecology, orthopedics, otolaryngology, radiology, and inpatient hospitalization. Sunnyside was originally established as Valley Memorial Hospital in 1946 and Sunnyside General Hospital in 1962, merging in 1986 as Sunnyside Community Hospital. In October 2017, the hospital began doing business as Astria Sunnyside Hospital.

Sunnyside has been in the planning stages of constructing a new hospital facility that will house the majority of the current operations of Sunnyside.

Sunnyside is the sole owner of the following Debtors: 1) SPS, 2) Astria Home Health, 3) Sunnyside Home Medical Supply, and 4) Oxbow Summit. Sunnyside is also the sole owner of nondebtor Home Health, LLC, which, in turn, is the sole owner of Debtor K&B.

- SPS is a wholly owned subsidiary of Sunnyside, and a for-profit limited liability corporation. SPS owns two medical office buildings and manages those buildings for Sunnyside.

- Astria Home Health is a wholly-owned subsidiary of Sunnyside. It is a nonprofit organization providing home health services in Sunnyside. Astria Home Health is exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "**IRC**") from federal income taxes except for unrelated business income.

- Sunnyside Home Medical Supply is a wholly-owned subsidiary of Sunnyside. It buys and sells inventory and leases medical equipment, such as oxygen tanks, concentrators, transcutaneous electrical nerve stimulation ("**TENS**") units and similar equipment. It is a nonprofit organization exempt under Section 501(c)(3) of the IRC from federal income taxes except for unrelated business income.

- Oxbow Summit is a wholly owned subsidiary of Sunnyside. Oxbow Summit owns 50 acres of land in Sunnyside to be developed for the future Sunnyside replacement hospital.

- K&B is a wholly owned subsidiary of Home Supply, LLC, which is a wholly owned nondebtor subsidiary of Sunnyside. K&B owns approximately 2.5 acres of land on I-

84 in Zillah being held for future medical development.

**c. Yakima entities**

As of the Petition Date, SHC–Yakima was a 214-bed hospital which provided medical services including open-heart surgery, advanced imaging, comprehensive robotics, neurosurgery, and a Commission on Accreditation of Rehabilitation Facilities (CARF) accredited inpatient rehabilitation. The Astria Heart Institute (part of SHC–Yakima) was a Level I Cardiac and Level II Stroke center, with a Level III Trauma designation. SHC–Yakima owns 14 clinics with various specialties. SHC–Yakima was originally established by the Sisters of Province as St. Elizabeth's Hospital in 1891. On September 1, 2017, the hospital became a part of Astria and began doing business as ARMC on October 17, 2018. On January 8, 2020, in these Chapter 11 Cases, the Bankruptcy Court authorized the Debtors to close ARMC, which the Debtors then closed. *See* Section V.F. The Plan envisions the dissolution of SHC–Yakima.

Yakima Home Care is a for-profit limited liability corporation. Another wholly-owned subsidiary of SHC Holdco, Yakima Home Care owns and operates Yakima HMA Home Health, which, in turn, provides home health and hospice services throughout Yakima County, Washington.

**d. SHC–Toppenish**

SHC–Toppenish, located in Toppenish, Washington, is a 63-bed hospital, with medical and surgical capabilities, pediatrics, behavioral health, medical detox, and a Family Maternity Center. SHC–Toppenish was originally established by a group of residents as Toppenish Community Hospital in 1944. On September 1, 2017, this hospital became a part of Astria and began doing business as SHC–Toppenish on October 17, 2018.

**e. Nondebtor entities**

The following is a list of the Debtors' nondebtor affiliates:[11]

- Sunnyside Medical Center, LLC
- Sunnyside Hospital Foundation[12]
- Caravan Health ACO. 19, LLC d/b/a Astria Health Clinically Integrated Network, LLC
- Bridal Dreams, LLC
- Depot Plus, LLC
- Home Supply, LLC
- Kitchen Appliances, LLC
- Northwest Health, LLC
- Pacific Northwest ASC Management, LLC
- Sunnyside Hospital Service Corp.
- Wedded Bliss, LLC
- Yakima HMA Physician Management, LLC
- AH NPP
- AH NP1
- AH NP2
- AN NP3

[11] Each of the Debtors' nondebtor affiliates have no assets and do not file tax returns.

[12] Sunnyside Hospital Foundation (the "**Foundation**") is a nonprofit organization that provides contributions to Sunnyside. The Foundation is exempt under Section 501(c)(3) of the IRC from federal income taxes except for unrelated business income.

- AH NP4
- AH NP5
- AH NP6
- AH NP7
- AN NP8

**2. Employees**

**a. Physicians**

The Debtors are dependent on approximately 329 local physicians practicing in their service area to provide admissions and utilize hospital services on an outpatient basis.

**b. Employees**

The Debtors have 890 regular employees, including 724 full-time, and 166 part-time and per diem. Of the total employees, 640 are at Sunnyside, 223 are at SHC–Toppenish, 22 are at Yakima HMA Home Health, 3 are at Astria Home Health, and 2 are at Sunnyside Home Medical Supply. Astria also contracts with two third party staffing agencies.

**c. Collective Bargaining Agreements**

The Debtors have three Collective Bargaining Agreements ("**CBAs**"): between (a) Washington State Nurses Association ("**WSNA**") and each of (i) Sunnyside and (ii) SHC–Toppenish; and (b) SEIU Healthcare 1199NW ("**SEIU**") and SHC–Toppenish.

**d. Benefits**

Although the Debtors have no pension obligations, they sponsor the Regional Health 401(k) Plan (the "**401(k) Plan**"), a defined contribution plan that covers all employees with a minimum of three months' service. Employees are 100 percent vested upon entering the 401(k) Plan. The Debtors make 100% matching contributions to the 401(k) Plan up to 3% of employee compensation plus additional matching of 50% of employee contributions between 3-5% of compensation. Total expenses are approximately $640,000 per year. Additional benefits include: medical, dental, vision, basic life insurance, dependent life insurance, accidental death and dismemberment ("**AD&D**"), long-term disability ("**LTD**"), vacation and sick pay, and tuition assistance.

**3. Management**

Astria's current (a) President and Chief Executive Officer ("**CEO**") is John M. Gallagher, who has held such position since September 2016; and (b) Chief Financial Officer ("**CFO**") is Cary Rowan, who has held such position since August 2016. These officers are employed by AHM, Inc. ("**AHM**"), a nondebtor entity that provides management services to the Health System. AHM qualifies as an "insider" under § 101(31), with pass-through compensation over the course of these Chapter 11 Cases as reflected in the monthly operating reports (see section V.B.6 below).

It is anticipated that Mr. Gallagher will continue to serve in his capacity as CEO with the Debtors through Confirmation and with the Reorganized Debtors as of the Effective Date. *See* Section VI.E.5. If required by the Court, his future compensation will be disclosed under seal. Mr. Gallagher has served as President and CEO of Astria since September 2016. He previously served as CEO of Sunnyside from May 2012. He has been a healthcare executive for more than

twenty (20) years, leading both non-profit and for-profit hospitals and systems. His experience includes healthcare consulting, strategic planning (both short-term and long-term), setting organizational missions, vision and values, mergers and acquisitions, hospital turnarounds, board relations, hospital and system governance, and community relations. He has experience in building and sustaining healthcare growth strategies, healthcare delivery, and operations management through financial management, negotiations, integrated marketing, communications and business development, physician practice acquisition and expansion, healthcare service line leadership, quality care and population health oversight, disease management, recruiting, and employee relations. He is a Board-Certified Fellow in the American College of Healthcare Executives; and received a Master of Business Administration (1997) and a Master of Healthcare Administration (1997) from the University of Houston, and a Bachelor of Science in Zoology from Texas A&M University (1995).

Mr. Rowan is anticipated to retire as CFO before the Effective Date. His successor has been identified but has not yet started in the position. Maxwell Owens is currently a Senior Vice President of Finance, and then will be promoted to the role of CFO upon Mr. Rowan's departure. If required by the Court, Mr. Owen's future compensation will be disclosed under seal.

## B. Events Leading to the Commencement of the Chapter 11 Cases

Astria was financially successful when it only owned Sunnyside. However certain issues arose in connection with Astria's acquisitions of SHC–Yakima and SHC–Toppenish resulting in significant financial setback for Astria. During the acquisition process, the Washington State Department of Health CON Program unexpectedly moved the approval of the CON of a sale from an expedited approval process, as required in regulations and precedent, to a public hearing process. This, in turn, created extended uncertainty, and resulted in a degradation of EBITDA of approximately $12 million annually. The full impact of this harm did not become apparent until September 2017.

Of greater significance, in preparation for its acquisitions of SHC–Yakima and SHC–Toppenish, Astria contracted for a new system-wide Electronic Health Record ("**EHR**") platform for ambulatory and inpatient services for all three Hospitals and their clinics. Shortly thereafter, Astria also contracted for the outsourcing of its revenue cycle, billing and collection functions and extended business office services. In connection with the system conversion and the outsourcing of its revenue cycle functions, Astria experienced certain unexpected challenges including, among other things, a significant decline in cash flow from collections on accounts receivable ("**A/R**").

Astria's lack of cash flow caused Astria to default or otherwise fall behind on its obligations to lenders and creditors, which in turn significantly limited its liquidity and, in turn, caused the need for chapter 11 protections.

### 1. The Debtors' Prepetition Secured Debt

As of the Petition Date, the Debtors collectively had a total of approximately $71.7 million of outstanding secured debt outstanding, held by Banner Bank, MidCap Financial Trust as Agent for the MidCap Lenders, UMB Bank, N.A. as the trustee for bondholders, certain entities affiliated with Lapis Advisers, LP, Lapis Advisers, LP, as agent for certain lenders, and GE HFS LLC (collectively, the **Prepetition Secured Parties**"), consisting of liens on the following collateral in the approximate principal amounts:

| Lien Priority | Sunnyside | SHC–Yakima and SHC–Toppenish A/R | SHC–Yakima and SHC–Toppenish Assets (other than A/R) | Certain Equipment Owned By Astria |
|---|---|---|---|---|
| Senior Liens | Banner Bank ($10.6m) | MidCap ($10.7m) | UMB Bank ($35.4m)/ Lapis Advisers, LP ($10m) | GE HFS, LLC ($5m) |
| Junior Liens | UMB Bank ($35.4m)/ Lapis Advisers, LP ($10m) | UMB Bank ($35.4m)/ Lapis Advisers, LP ($10m) | | |

**a. Banner Bank Prepetition Debt**

Prior to the commencement of the Chapter 11 Cases, Sunnyside entered into various Business Loan Agreements, dated December 30, 2010, May 19, 2015, March 21, 2016, August 2, 2016, October 6, 2016, March 21, 2017, and May 4, 2018, each between Banner Bank and Sunnyside (as each such agreement has been amended, modified, or supplemented to date, the "**Banner Bank Loan Documents**") providing Sunnyside with financing in the aggregate principal amount of $27,006,225. The advances made pursuant to the Banner Bank Loan Documents were secured by a first priority lien (the "**Banner Senior Sunnyside Liens**") on personal property and real property of Sunnyside as set forth in the Banner Bank Loan Documents and associated documents (such assets the "**Banner Bank Collateral**"). As of the Petition Date, Sunnyside was indebted to Banner Bank in the approximate principal amount of $10.6 million (the "**Outstanding Prepetition Banner Bank Obligations**").

**b. MidCap Financial Trust Prepetition Debt**

Prior to the commencement of the Chapter 11 Cases, SHC Holdco, LLC, SHC–Yakima, SHC–Toppenish, Yakima Home Care Holdings, LLC, and Yakima HMA Home Health, LLC, as co-borrowers (collectively, the "**MidCap Borrowers**"), entered into that certain Credit and Security Agreement dated September 18, 2017 (as amended, modified, or supplemented to date, the "**MidCap Credit Agreement**"), with the lenders party thereto (the "**MidCap Lenders**") and MidCap Financial Trust, as agent for the MidCap Lenders (the "**MidCap Agent**"), providing the MidCap Borrowers with a revolving loan facility in the maximum principal amount of $15 million. The advances made pursuant to the MidCap Credit Agreement were secured by a first priority lien (the "**MidCap Senior A/R Liens**") on A/R of SHC–Toppenish and SHC–Yakima as well as certain other assets of the MidCap Borrowers as set forth in Schedule 9.1 to the MidCap Credit Agreement (such assets, the "**MidCap A/R Collateral**"). As of the Petition Date, the MidCap Borrowers were indebted to the MidCap Lenders in the approximate principal amount of $10.7 million (the "**Outstanding Prepetition MidCap Obligations**").

In addition, the Debtors defaulted or otherwise missed financial covenants under their facility with MidCap. MidCap did not agree to waive certain defaults but, instead, had increased the borrowing base reserves under the MidCap Credit Agreement resulting in the reduction of the

borrowing base as well as the reduction of cash available to the Debtors. The borrowing base under the MidCap Credit Agreement was calculated based upon aged A/R that are further reduced for certain aging categories and payor classes. As a result, the availability to the Debtors under the MidCap Credit Agreement was significantly less than the net A/R for SHC–Yakima and SHC–Toppenish, which serve as collateral for the MidCap Credit Agreement. This, in turn, created significant liquidity restrictions and placed Astria in further financial distress.

Thus, the Debtors were burdened by the highly restricted, high cost of capital with regard to the MidCap Credit Agreement. The Debtors believed these problems could be alleviated by entering into the proposed debtor in possession facility (the "**DIP Facility**") through the Chapter 11 Cases.

**c. Lapis Obligations**

Pursuant to that certain Bond Indenture, dated as of November 1, 2017, between Washington Health Care Facilities Authority (the "**Authority**"), as issuer, and UMB Bank, N.A. as the trustee (the "**Bond Trustee**") for the bondholders, entities affiliated with Lapis Advisers, LP (collectively, the "**Bondholders**"), the Authority issued $27 million of tax-exempt Washington Health Care Facilities Authority Revenue Bonds, Series 2017A (the "**Series 2017A Bonds**") and $8.4 million of tax-exempt Washington Health Care Facilities Authority Revenue Bonds, Series 2017B (the "**Series 2017B Bonds**" and, together with the Series 2017A Bonds, collectively the "**2017 Bonds**").

Also on November 1, 2017, SHC–Yakima, SHC–Toppenish, SHC Holdco, LLC, and Astria as co-borrowers (the "**Lapis 2017 Loan Borrowers**"), entered into a Loan and Security Agreement (the "**Lapis 2017 Loan Agreement**") with the Authority, wherein the Authority loaned the proceeds of the sale of the 2017 Bonds ($35.4 million) (the "**Lapis 2017 Loan**") to the Lapis 2017 Loan Borrowers. Sunnyside and Kitchen and Bath Furnishings, LLC, as well as certain other non-filing affiliates, as guarantors (the "**Lapis 2017 Loan Guarantors**"), entered into a Continuing Guaranty (the "**Lapis 2017 Loan Guaranty**" and together with the Lapis 2017 Loan Agreement, the "**Lapis 2017 Loan Documents**"), dated November 1, 2019, wherein the Lapis 2017 Loan Guarantors agreed to guaranty the obligations of the Lapis 2017 Loan Borrowers under the Lapis 2017 Loan. The advances made pursuant to the Lapis 2017 Loan were secured by (i) a first priority lien (the "**Lapis 2017 SHC Holdco Liens**") on the assets of the Lapis 2017 Loan Borrowers not subject to the MidCap Senior A/R Liens, (ii) a junior lien (the "**Lapis 2017 A/R Liens**") on the assets of the Lapis 2017 Loan Borrowers subordinate and subject to the MidCap Senior A/R Liens, and (iii) a junior lien (the "**Lapis 2017 Sunnyside Liens**") on the assets of the Lapis 2017 Loan Guarantors subordinate and subject to the Banner Senior Sunnyside Liens (collectively, the "**Lapis 2017 Loan Collateral**"). *See* Intercreditor and Lien Subordination Agreement, dated as of November 1, 2017 (as amended, modified, or supplemented to date), by and among the Bond Trustee, MidCap Funding IV Trust, as successor-by-assignment to the MidCap Agent, Regional Health, the Lapis 2017 Loan Borrowers and Sunnyside. The Authority assigned this security interest to the Bond Trustee, as trustee for the Bondholders. As of the Petition Date, approximately $35.4 million of principal was outstanding under the Lapis 2017 Loan.

Prior to the commencement of the Chapter 11 Cases, Astria and Sunnyside, as co-borrowers (the "**Lapis 2019 Loan Borrowers**"), entered into a Credit Agreement dated January 18, 2019 (the "**Lapis 2019 Loan Agreement**") with Lapis Advisers, LP (the "**Lapis Agent**"), as

agent for lenders party thereto (the "**Lapis 2019 Loan Lenders**"), whereby the Lapis 2019 Loan Lenders agreed to make advances to the Lapis 2019 Loan Borrowers in the principal amount of up to $10 million (the "**Lapis 2019 Loan**"). SHC Holdco, LLC, Glacier Canyon, LLC, SHC–Yakima, SHC–Toppenish, Yakima Home Care Holdings, LLC, Yakima HMA Home Health, LLC, as well as certain other non-filing affiliates, as guarantors (the "**Lapis 2019 Loan Guarantors**"), entered into a Continuing Guaranty (the "**Lapis 2019 Loan Guaranty**" and together with the Lapis Sunnyside Loan Agreement, the "**Lapis 2019 Loan Documents**"), dated January 18, 2019, wherein the Lapis 2019 Loan Guarantors agreed to guaranty the obligations of the Lapis 2019 Loan Borrowers under the Lapis 2019 Loan. The advances made pursuant to the Lapis 2019 Loan were secured by (i) a junior lien (the "**Lapis 2019 Sunnyside Liens**" and together with the Lapis 2017 Sunnyside Liens, the "**Lapis Subordinated Sunnyside Liens**") on the assets of the Lapis 2019 Borrowers subordinate and subject to the Banner Senior Sunnyside Liens, (ii) a junior lien (the "**Lapis 2019 SHC Holdco Liens**" and together with the Lapis 2017 SHC Holdco Liens, the "**Lapis Senior Holdco Liens**") on the assets of the Lapis 2019 Loan Guarantors not subject to the MidCap Senior A/R Liens as set forth in the Lapis 2019 Loan Documents, and (iii) a junior lien (the "**Lapis 2019 A/R Liens**" and together with the Lapis 2017 A/R Liens, the "**Lapis Subordinated A/R Liens**") on the MidCap Priority Collateral (such assets, the "**Lapis 2019 Collateral**" and together with the Lapis SHC Holdco Collateral, the "**Lapis Prepetition Collateral**").

For example, on April 23, 2019, Lapis sent Astria a notice of default. As of the Petition Date, approximately $10 million of principal was outstanding under the Lapis 2019 Loan.

#### d. Equipment Loan

On June 12, 2018, GE HFS, LLC ("**GE**") entered into a Master Security Agreement with Astria, whereby GE agreed to provide Astria with a $5 million term loan (the "**GE Note**") to finance Astria's purchase of certain equipment which was previously leased by Astria from GE. As of the Petition Date, a principal amount of approximately $5 million was outstanding under the GE Note. The GE Note was secured by approximately $4.6 million in capital assets at SHC–Yakima and SHC–Toppenish, with the $400,000 balance held in escrow.

### 2. The Debtors' Prepetition Unsecured Debt

As of the Petition Date, the Debtors collectively had a total of approximately $75 million in unsecured debt, not including amounts owed among the Debtors, affiliates, and subsidiaries, which includes approximately $21 million to Community Health Systems ("**CHS**") based upon a) a working capital note of August 31, 2017, to finance, in part, the Debtors' purchase of SHC–Yakima and SHC–Toppenish (the "**CHS Note**"), which was reduced after settlement to $13.6 million; and b) a $8 million line of credit which was utilized by the Debtors between August and October 2018.

## C. Certain Affiliate Transactions

### 1. Centralized Cash Management

As of the Petition Date, the Debtors maintained 37 accounts with six banks. Twenty-eight of the accounts were regular depository and/or checking accounts; four were savings accounts (two money market accounts and two CDs); five were credit card accounts.

For the most part, the Debtors maintain cash systems for each of (a) Astria; (b) Sunnyside and its affiliates, including Sunnyside Community Hospital Home Medical Supply, LLC, and Astria Home Health (collectively, the "**Sunnyside Entities**"); and (c) SHC–Yakima and SHC–Toppenish together and with their affiliates, including Yakima HMA Home Health, LLC (collectively "**Yakima/Toppenish**"). These grouped cash systems further connect through a complex series of intercompany transfers. From a broad perspective, (a) each Debtor (or Debtor group) maintains one or more depository accounts to collect receivables and one or more credit card accounts; (b) Astria's depository account also serves as a checking account from which it pays corporate obligations, such as corporate management fees, life insurance costs, other employee benefits, property insurance, and other corporate vendors; (c) the Sunnyside Entities maintain an account for non-payroll accounts payable ("**A/P**"), payroll account, accounts related to their health insurance, and money market accounts and certificates of deposit; and (d) Yakima/Toppenish maintains a payroll account and A/P account, both of which list Astria as owner. As of the Petition Date, all of Yakima/Toppenish deposit accounts were swept to MidCap, and their operating accounts are then funded by Midcap on regular request; but this mechanism was eliminated with the DIP Facility.

#### 2. Corporate Overhead

Astria pays corporate obligations, such as management pay (contracted through a third party), life insurance costs, other employee benefits, property insurance, and other corporate vendors from the Astria Account. Astria allocates such expenses among the Debtors, based on which the comptroller requests corresponding transfers to be made from those Debtors' accounts.

#### 3. Treatment of Intercompany Claims Under the Plan

The Intercompany Claims will be expunged and eliminated through the limited consolidation of the Debtors for purposes of treatment of Claims and distributions under the Plan under the Plan. *See* Section VI.D.5.e.

## V.
## THE CHAPTER 11 CASES[13]

### A. Commencement and Joint Administration of the Chapter 11 Cases

On May 6, 2019, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

In order to expedite the administration of the Chapter 11 Cases and reduce administrative expenses without prejudicing any creditor's substantive rights, the Debtors sought the joint administration of the Chapter 11 Cases. The Bankruptcy Court issued an order directing the joint administration of the Chapter 11 Cases for procedural purposes.

### B. Continuation of Business After the Petition Date

#### 1. Postpetition Financing

On May 9, 2019, following a hearing held on May 8, 2019, the Bankruptcy Court entered the Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing; (II) Granting Security Interests and Superpriority Administrative Expense Status; (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties; (IV) Modifying the Automatic Stay; (V) Authorizing the Debtors to Enter Into Agreements with JMB Capital Partners Lending, LLC; (VI)

[13] The Debtors have prepared and are solely responsible for the statements and assumptions reflected in this Section V.

Authorizing Use of Cash Collateral; (VII) Scheduling a Final Hearing and (VIII) Granting Related Relief [Docket No. 82], authorizing the Debtors to obtain senior secured postpetition financing in an aggregate principal amount of up to $28 million from JMB Capital Partners Lending, LLC (the "**Initial DIP Lender**"), with the Debtors' request to obtain a total of $36 million in postpetition financing to be considered at the final hearing (the "**Initial DIP Facility**").

The Interim DIP Facility enabled the Debtors to refinance their existing senior indebtedness by repaying in full all obligations of the Debtors owed to MidCap. The Initial DIP Facility provided needed liquidity to the Debtors to ensure the efficient operations and future growth of the Debtors' business and promote a successful reorganization of the Debtors.

On June 18, 2019, following a hearing held on June 13, 2019, the Bankruptcy Court entered the Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing; (II) Granting Security Interests and Superpriority Administrative Expense Status; (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties; (IV) Modifying the Automatic Stay; (V) Authorizing the Debtors to Enter Into Agreements with JMB Capital Partners Lending, LLC; (VI) Authorizing Use of Cash Collateral; (VII) Scheduling a Final Hearing and (VIII) Granting Related Relief [Docket No. 293].

On December 13, 2019, the Debtors filed a motion [Docket No. 818], seeking a new order (I) Authorizing the Debtors to Obtain Replacement Postpetition Financing; (II) Granting Security Interests and Superpriority Administrative Expense Status; (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties; (IV) Modifying the Automatic Stay; (V) Authorizing the Debtors to Enter Into Agreements with Lapis Advisers, L.P. (VI) Authorizing Use of Cash Collateral; (VII) Scheduling a Final Hearing; and (VIII) Granting Related Relief [Docket No. 841], authorizing the Debtors to obtain from Lapis Advisers, L.P., as agent for the lenders party thereto (collectively, the "**Replacement DIP Lenders**"), additional senior secured postpetition financing in an amount sufficient to pay off and replace the Initial DIP Facility plus $700,000 of Committed Advances to fund the Debtors' working capital needs, with the Debtors' request to obtain a total of $43,100,000 in postpetition financing to be considered at the final hearing (the "**Replacement DIP Facility**").

On December 20, 2019, following a hearing held on December 18, 2019, the Bankruptcy Court entered an order granting the Replacement DIP Motion on an interim basis [Docket No. 841].

On February 5, 2020, the Bankruptcy Court held a hearing and entered the second interim order granting the Replacement DIP Motion [Docket No. 1020].

On March 18, 2020, the Bankruptcy Court held a hearing and entered the third interim order granting the Replacement DIP Motion [Docket Nos. 1117, 1181].

On April 15, 2020, the Bankruptcy Court held the final hearing and entered the *Final Order (I) Authorizing the Debtors to Obtain Replacement Postpetition Financing; (II) Granting Security Interests and Superpriority Administrative Expense Status; (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties; (IV) Modifying the Automatic Stay; (V) Authorizing the Debtors to Enter Into Agreements with Lapis Advisers, L.P. (VI) Authorizing Use of Cash Collateral; and (VII) Granting Related Relief* [Docket No. 1201] (the "**Final DIP Order**"). The Final DIP Order authorizes the Debtors, until July 17, 2020, to (a) continue to use cash collateral to support ongoing operations, and (b) borrow additional funds if necessary (although the budget does not currently anticipate any additional borrowings).

**2. Cash Management**

As described above, as is typical with most enterprises, as of the Petition Date the Debtors

had in place a cash management system for the collection of receipts and the disbursement of funds. On May 9, 2019 [Docket No. 85], the Bankruptcy Court authorized the Debtors to continue to use their existing cash management system, bank accounts, and business forms; and continue postpetition their system of intercompany transfers, with limited exception.

**3. Employee-Related Matters**

Of particular importance to the Debtors' efforts to stabilize their businesses and continue their operations uninterrupted was their ability to maintain the continued support and cooperation of their employees. Accordingly, on the Petition Date, the Debtors sought and, on May 9, 2019 [Docket Nos. 83 and 368], the Bankruptcy Court authorized the Debtors to pay and honor certain prepetition obligations owing to the Debtors' employees, including, but not limited to, (i) paying amounts owed to employees for wages, salaries, and leased employee fees; (b) paying and honoring benefits and other workforce obligations, such as remitting withholding obligations, maintaining workers' compensation and benefits programs, paying related administration obligations, making contributions to retirement plans, and paying reimbursable employee expenses; and (c) continuing to pay and honor such obligations as they arose postpetition in the ordinary course of business. Furthermore, the Bankruptcy Court authorized and directed each of the banks in which the Debtors maintained a bank account to honor all prepetition and postpetition checks related to such prepetition obligations to employees.

**4. Maintenance of Utility Services**

Prior to the Petition Date, in connection with the operation of their businesses and management of their properties, the Debtors obtained a wide range of utility services (collectively, the "Utility Services") from certain utility companies (the "Utility Companies"), including electricity, telephone, and similar service suppliers for which no alternate service can be expected. It was essential that the Utility Services continued uninterrupted after the Petition Date. The Bankruptcy Court issued an order on May 9, 2019 [Docket No. 84], (a) prohibiting the Utility Companies from altering, refusing, or discontinuing service to the Debtors, and (b) establishing procedures for determining adequate assurance of payment for future Utility Services.

**5. The Employment and Interim Compensation of Professionals**

During the course of the Chapter 11 Cases, the Court approved the employment of the following professionals:

- Dentons US LLP – Counsel for the Debtor, retained July 8, 2019 *nunc pro tunc* to the Petition Date [Docket No. 377];
- Bush Kornfeld KKP – Co-Counsel for the Debtor, retained June 26, 2019 *nunc pro tunc* to the Petition Date [Docket No. 337];
- Piper Sandler Companies[14] – Investment Banker to the Debtors, retained September 13, 2019 *nunc pro tunc* to July 2, 2019 [Docket No. 606];
- Cushman & Wakefield U.S., Inc. – Broker to the Debtors, retained April 30, 2020 *nunc pro tunc* to March 1, 2020 [Docket No. 1244];
- Almon Commercial Real Estate – Broker for the Debtors, retained April 30, 2020 *nunc pro tunc* to March 1, 2020 [Docket No. 1245];

[14] Effective January 3, 2020, Piper Jaffray & Co. changed its name through merger to Piper Sandler Companies.

- Sills Cummis & Gross P.C. – Co-Counsel to the Committee, retained July 5, 2019 *nunc pro tunc* to May 23, 2019 [Docket No. 371];

- Polsinelli PC – Co-Counsel to the Committee, retained July 5, 2019 *nunc pro tunc* to May 23, 2019 [Docket No. 372];

- Berkeley Research Group, LLC – Financial Advisor to the Committee, retained July 15, 2019 *nunc pro tunc* to May 29, 2019 [Docket No. 392];

- Susan N. Goodman – Patient Care Ombudsman, appointed June 17, 2019 [Docket Nos. 278, 1382];[15]

- Kurtzman Carson Consultants LLC – Noticing Agent, appointed June 19, 2019, *nunc pro tunc* to June 6, 2019 [Docket No. 292].

On August 6, 2019, the Bankruptcy Court issued an order establishing certain procedures by which all Professionals would be required to comply in seeking compensation for fees and reimbursement of expenses [Docket No. 453]. During the course of these Chapter 11 Cases, the Debtors' have paid $2,691,516 to Debtor professionals, $1,214,283.91 to Committee professionals, $217,198.65 to the Patient Care Ombudsman, $0 to Patient Care Ombudsman professionals, $653,466.95 to KCC, and $1,979,577.73 to the U.S. Trustee.

In addition, prior to the Petition Date, the Debtors employed and was in the practice of employing certain professionals, in the ordinary course of business, to render services to their Estates (collectively, the "Ordinary Course Professionals"), including legal, tax, and insurance services, which were necessary to the day-to-day continuation of the Debtors' operations. On June 21, 2019, and as amended on July 5, 2019, the Bankruptcy Court granted the Debtors the authority to continue to employ and compensate the Ordinary Course Professionals in the ordinary course [Docket Nos. 306 and 370].

**6. Reporting and Disclosures**

The Debtors have made every effort to comply with their duties under §§ 521, 1106 and 1107 and all applicable U.S. Trustee guidelines, including the filing of the Debtors' monthly operating reports with the U.S. Trustee. *See* Docket Nos. 310, 409, 521, 626, 768, 847, 955, 1075, 1174, 1248, 1347, 1455. The Debtors also attended their initial interview with the U.S. Trustee and the meeting of creditors required under § 341(a).

**7. Current Financial Information**

Following the closure of ARMC, the Debtors were able to stabilize operations and finances prior to the COVID-19 pandemic. On March 13, 2020, the Governor of Washington State issued a moratorium on elective procedures which had a significant impact on net patient revenues generated. The Debtors responded by further reducing operating expenses including management and staff salary reductions along with temporary furloughs. In response to the pandemic, the federal government provided payments to providers based upon their recent historical patient revenues to compensate for the loss of patient revenues. The Debtors received payments approximating $16 million in aggregate during the months of April through June 2010, resulting in net operating profits during those months. As of June 1, 2020, the Debtors had approximately $19.4 million in cash in the bank and are meeting postpetition liabilities, including payment of professional fees approved to date. For the six months ending December 31, 2020, the Debtors are projected to generate approximately $78 million in net revenue and net income

[15] The Patient Care Ombudsman has sought authorization to retain Crowe & Dunlevy and Sussman Shank LLP as counsel. *See* Docket Nos. 1384-87.

and EBIDA (earnings before interest, depreciation and amortization) of $2.7 million and $8.6 million, respectively. The Debtors are projected to generate positive monthly EBIDA in every month subsequent to confirmation of the Plan sufficient to pay operating expenses in the normal course of business, debt service and capital expenditures ("capex") as needed.

## C. Appointment of Statutory Parties in Interest

### 1. Formation and Representation of the Committee

On May 24, 2019, the U.S. Trustee appointed the Committee pursuant to § 1102(a) and (b)(1) [Docket No. 135]. The members of the Committee are CHSPSC, LLC, LocumTenens.com, LLC, Medtronic USA, Inc., Morrison Management Specialists, Inc., Apogee Physicians, and Boston Scientific.

### 2. Appointment of the Patient Care Ombudsman

Because the Debtors are a health care business as defined in § 101(27A), on June 10, 2019, the Bankruptcy Court directed the U.S. Trustee to appoint a patient care ombudsman pursuant to § 333(a)(2) [Docket Nos. 239 and 241]. On June 17, 2019, the U.S. Trustee appointed Susan Goodman, of Mesch, Clark & Rothschild, as the Patient Care Ombudsman [Docket No. 278], which the Bankruptcy Court approved on June 12, 2020 [Docket No. 1382]. The Patient Care Ombudsman has filed two interim reports relating to Yakima [Docket Nos. 465, 682], two interim reports relating to Toppenish [Docket Nos. 464, 686], two interim reports relating to Sunnyside [Docket Nos. 463, 687], three interim consolidated reports [Docket Nos. 855, 1042, 1205], and two interim supplemental reports [Docket Nos. 750, 1356].

## D. The Automatic Stay

As discussed above, the automatic stay under § 363 provides that, as of the Petition Date, most pending litigation is stayed, and absent further order of the bankruptcy court, no party, subject to certain exceptions, may take any action, again subject to certain exceptions, to recover on prepetition claims against the Debtors.

During the Chapter 11 Cases, the Bankruptcy Court granted limited relief from the automatic stay in six discrete instances, as described below.

Pursuant to the DIP Order, the DIP financing parties have been granted limited relief from the automatic stay to protect their security interests.

On August 21, 2019, the Bankruptcy Court also granted relief to Dr. David Becerril to exercise his contractual rights to terminate his employment contract without providing the Debtors the full contractual notice [Docket No. 519]. Initially the Debtors appealed this order to the Bankruptcy Appellate Panel of the Ninth Circuit, Case No. 19-1209. On October 23, 2019, the Court granted the parties' stipulated dismissal of the appeal [App. Docket No. 5-1].

On October 4, 2019, the Bankruptcy Court lifted the automatic stay to authorize both Maria Estrella [Docket No. 665] and Florenda LeClair [Docket No. 666] to proceed with their respective personal injury lawsuits pending in Yakima County Superior Court through judgment; provided, however, that Estrella and LeClair could only recover any judgment from proceeds of the applicable medical liability insurance policy or policies. Also in October 2019, the Bankruptcy Court granted a stipulation between the Debtors and Dr. Jan Hemstad, lifting the automatic stay to permit both parties to exercise their respective rights under Hemstad's employment agreement [Docket Nos. 707 and 718]. On January 31, 2020, the Banrkuptcy Court annulled the automatic stay as to Dr. Suzanne Cleland-Zamudio regarding a contractual dispute [Docket No. 1007].

In addition, in one instance the Debtors were forced by an action of a contract counterparty to seek emergency relief to enforce the automatic stay. On May 29, 2019, the Bankruptcy Court entered the Order Granting Debtors' Emergency Motion to Enforce the Automatic Stay [Docket No. 171] against a staffing agency that violated the stay.

On June 30, 2020, the Bankruptcy Court approved [Docket No. 1454] a stipulation [Docket No. 1303] between the Debtors and Cardinal Health 110, LLC ("**CH 100**"), Cardinal Health 200, LLC ("**CH 200**"), and Cardinal Health 414, LLC ("**CH 414**," and together with CH 100 and CH 200, "**Cardinal Health**"), granting Cardinal Health limited relief from the automatic stay to permit it to set off certain prepetition credits owing to the Debtors, first, against prepetition claims that would otherwise constitute § 503(b)(9) Claims, and, second against Cardinal Health's General Unsecured Claim.

**E. The Preliminary Sale Process**

On November 20, 2019, the Debtors filed a motion (the "**Sale Motion**") for an order, among other things, establishing bid procedures related to the sale of substantially of the Debtors' Assets, scheduling an auction and hearing to consider approval of the sale, and authorizing the sale of free and clear of any liens, security interests, claims, charges, or encumbrances in accordance with § 363(f) [Docket No. 765].

On December 6, 2019, following a hearing held on December 5, 2019, the Bankruptcy Court entered an order approving the bidding procedures and related matters associated with the sale process (the "**Bid Procedures Order**") [Docket No. 807].

An auction, if necessary, was scheduled to be held on February 5, 2020.

The Debtors engaged Piper Sandler ("**Piper**") to conduct a dual track process seeking potential refinancing of existing senior secured indebtedness or sale of some or all of the operating assets of the Debtors. After an extensive marketing process to local, regional and national healthcare operating companies only two hospital operating company buyers submitted letters of interest for certain operating assets of the Debtors. One company submitted an offer for all three Hospitals at a level insufficient to pay existing senior secured indebtedness. Through Piper, the Debtors were informed that their offer was contingent on acquiring all three Hospitals and would not be increased due to the losses incurred at ARMC. The Debtors determined this was unacceptable and further discussions ceased. The second company was only interested in the Sunnyside hospital but, after weeks of confirmatory due diligence, withdrew from consideration citing decisions made by their senior management. Piper re-canvassed the market again without success. Thus, the Plan Proponents ultimately concluded that a sale process is not a viable exit strategy for the Debtors. Accordingly, on April 24, 2020, the Debtors filed a notice cancelling all dates and deadlines relating to the Sale Motion and Bid Procedures Order [Docket No. 1229].

Piper also conducted an extensive marketing process reaching out to approximately 130 financial institutions seeking exit financing for the Debtors sufficient to pay down senior secured debt and support a plan of reorganization. Fifty-seven of the financial institutions contacted by Piper requested and received marketing material outlining the opportunity. Six indications of interest were received, both verbal and written, ranging from refinancing only the DIP Facility to a complete takeout of the Debtors' senior secured debt. The Debtors pursued opportunities with two lenders offering the most liquidity and the best opportunity to takeout the entire existing indebtedness. The search for financing was reduced to only one lender after one of the lenders required exclusivity and significant due diligence requirements, including engaging a third party consultant for due diligence at the expense of the Debtors. Subsequent to significant due diligence, the Debtors received positive feedback from the lender and the credit was presented for approval to the lender's commitment committee. Unfortunately, the timing was not favorable and the lender ultimately declined the opportunity citing the uncertainty of the COVID pandemic.

Throughout the process, Piper continued to reach out to all of the original financial institutions contacted but received no further interest in the transaction.

**F. The Closure and Sale of SHC-Yakima**

From the Petition Date through December 2019, the Debtors worked to obtain exit financing or a buyer interested in acquiring ARMC, the medical center operated by SHC–Yakima and Astria, under acceptable terms. Notwithstanding those efforts (including retention of an investment banker), the Debtors were not able to obtain such financing or buyer. In fact, ARMC's deteriorating financial condition coupled with a last-gasp failed effort to obtain refinancing or a purchaser led to the emergency closure of ARMC in order to prevent a risk to patient safety at ARMC.

On January 3, 2020, the Debtors moved on an emergency basis to close ARMC [Docket No. 867] (the "**Closure Motion**"). As set forth in the Bankruptcy Court's order approving the Closure Motion [Docket No. 874] (the "**Closure Order**"), the Debtors filed the Closure Motion under seal because, if the relief sought became public, "maintaining adequate staff to provide quality patient care could have become problematic" and created "an immediate threat to both patient and public health and safety." *Id*. at 2. The Bankruptcy Court granted the Closure Motion on January 8, 2020, and authorized the Debtors "to implement a plan (the "**Closure Plan**") . . . for the closure of the Medical Center." *Id*. at 3. The Bankruptcy Court-approved Closure Plan provided for a safe but quick closure of ARMC's operations. *Id*. at 5-9. ARMC closed on or about January 13, 2020, when the last patient was discharged.

On January 16, 2020, after an evidentiary hearing, the Bankruptcy Court denied an emergency motion for reconsideration of the Closure Order filed by the Washington State Nurses Association [Docket Nos. 876, 897].

On March 27, 2020 [Docket No. 1146] and June 11, 2020 [Docket No. 1369], the Court granted the Debtors' two omnibus motions to reject certain executory contracts and unexpired leases of real property relating to the terminated operations at ARMC.

In accordance with their agreement with Lapis and the Committee, the Debtors retained Cushman & Wakefield U.S., Inc. and Almon Commercial Real Estate as real estate brokers to market the ARMC facility, as well as other real estate in the Yakima area. *See* Docket Nos. 1243-44.

On May 6, 2020, Debtors filed their (a) *Motion to Authorize And Approve Private Sale of Property (910 S. 10th Avenue, Yakima)* [Docket No. 1255], and (b) *Motion to Authorize And Approve Private Sale of Property (Unit 42, Yakima Professional Center)* [Docket No. 1256], both supported by the *Declaration of William Almon in Support of the Private Sales of These Properties* [Docket No. 1257]. On June 11 and 12, 2020, the Bankruptcy Court approved these two sales, which will result in value to the estates of more than $230,000. *See id*.; Docket Nos. 1368, 1381].

Cushman Wakefield is also actively marketing the ARMC building and the adjacent medical office building.

**G. COVID-19 PANDEMIC**

**1. ARMC Lease Discussions**

In late March 2020, the Debtors were approached by representatives of the State of Washington, seeking to lease the formally operating ARMC facility building to deal with the expected surge of COVID-19 patients. On March 30, 2020, the Debtors filed a Motion to

Authorize Approval of Interim Lease to the State of Washington in Response to the Covid-19 Pandemic and Request for Emergency Hearing [Docket No. 1151]. This matter was heard and approved on an emergency basis on March 31, 2020. The Court entered a formal order approving the relief on April 3, 2020 [Docket No. 1172], concluding that due to the pandemic it was in the best interest of the estate and the community to lease the ARMC facility to the State of Washington (the "**Lease**").

On April 11, 2020, the State notified the Debtors that it had concluded that the facility was no longer needed, and, therefore, the Lease would be terminated as of May 11, 2020. Nonetheless, to date, the Debtors have been paid $1,596,744 by the State pursuant to the Lease and expect the State to additionally pay the Debtors approximately $530,000 plus related costs under the Lease.

**2. Suspension of Elective Procedures**

On March 18, 2020, CMS issued a memorandum recommending the immediate suspension of all elective non-essential surgeries and procedures, including dental procedures. On March 19, 2020, Washington Governor Jay Inslee ordered a halt to all elective surgeries and dental procedures for all hospitals, ambulatory surgery centers, dental and orthodontic offices. The Governor's proclamation did not apply to emergency care or patients with urgent needs. High end procedures such as elective orthopedic and cardiology services were explicitly mentioned in the proclamation as banned procedures. Emergency and trauma services were not included in the proclamation.

The majority of surgical cases in hospitals are performed on an outpatient elective basis, a trend that has been occurring for decades. This includes joint replacements, most orthopedic surgeries, GI procedures, general surgery and non-emergency cardiac procedures. Inpatient revenue at Sunnyside represents only 24% of revenue volume. Following the ban on elective procedures, nearly all scheduled elective procedures at Sunnyside were cancelled. Total surgical procedures at Sunnyside for the month of March 2020 were down to 228 compared to 319 the prior month and budgeted value of 298, consistent with the prior year, a 29% reduction from the prior month and directly related to the state order halting procedures. Prior to the Governor's proclamation, surgical procedures in March were on target to meet budget. Surgical volume for the month of May was down approximately 27% from budget and prior year, with year-to-date procedures down approximately 20%. Emergency department visits are down approximately 60% from January. With a significant percentage of volume dependent on outpatient visits and surgical procedures, net patient revenue for April and May is down approximately 35%, before receipt of CARES funds, from January and February, just prior to the Governor's proclamation. SHC-Toppenish, while much smaller than Sunnyside, had similar results in March, April and May with net revenue down, before receipt of CARES funds, approximately 20% from the beginning of the year. With less revenue generation there will be an overall reduction in A/R and future cash collections as billed claims are being collected but not replaced at the same level prior to the order to halt procedures. Reduced cash collections will not be immediate but deferred approximately 30-60 days (depending on payor) from the date of service. Reimbursement for COVID-19 inpatient admissions along with special funding from CMS will not come close to replacing lost revenue. The long-term impact is unknown, but patients have communicated their concerns and will not return until they are absolutely sure hospitals are safe environments. Utilization and revenue lost overnight will not return quickly but rather slowly over the next several months.

**H. Continuing Cost Reimbursement at Sunnyside and SHC-Toppenish**

Sunnyside is a critical access hospital ("**CAH**") and therefore reimbursed for the cost of rendering all care for the entire year with payments made on an interim basis. Cost is determined based on filing an annual cost report. As a CAH, Sunnyside is reimbursed for Medicare and

Medicaid services at cost plus 1%, plus pass-thru reimbursement for certain capital costs like interest and depreciation. Individual claims are paid on an interim basis on a flat daily rate that approximates/estimates the cost of rendering care on an aggregate basis, established based on historical results from the most recently filed cost report. At the end of the provider's fiscal year (calendar for Astria) cost reports are filed for each hospital. Annually, CMS (through fiscal intermediaries) reviews (and eventually audits) filed cost reports and compares the cost of rendering care for the entire year to the aggregate payments made on an interim basis. The difference between what was paid and what should have been paid determines if the provider owes money back to CMS or is entitled to receive more money from CMS for that cost reporting year. This process does not get finalized for up to 2-3 years after filing the cost report. In any one given year there could be multiple cost reports outstanding with amounts owing or owed. It is not unusual to see a provider owe money for one outstanding cost report year while at the same time have a receivable from CMS for another open cost report. Therefore, for Sunnyside Medicare and Medicaid claims, any overpayment, or underpayment is determined on an aggregate basis after filing the annual cost report, after desk review of the cost report and, finally, ONLY after a final audit and determination of final cost which is a process each and every provider goes through yearly. Every hospital in the country goes through the same process annually, including the 1,000+ cost reimbursed critical access hospitals. Finally, commercially insured claims representing approximately 25% of the business at Sunnyside are paid based on contracted rates for inpatient and outpatient services with updates negotiated periodically. Overpayments on an individual claim could occur but are unlikely as commercial insurers typically reject a claim first or ask for additional information to determine the appropriateness or necessity of the claim. All third-party payors, including CMS and the State of Washington Medicaid, routinely audit claims or batches of claims under audit recovery provisions consistent with provider-payor agreements. Sunnyside has no outstanding disputes with payors related to over-payments.

SHC-Toppenish is reimbursed on a prospective payment basis system and accordingly, claims are reimbursement for medical/surgical cases on a claim basis based on diagnostic related groups for inpatient Medicare and Medicaid claims and fee schedules for outpatient services. Behavior claims are paid on a per diem basis. Individual claims at both hospitals go through a complex process of charge capture, coding, audit and claims review prior to being submitted to the third-party payor. Claims that don't meet criteria within SHC-Toppenish's systems are rejected internally until a "clean" claim can be submitted. After going through a complex internal process, claims rejected by third party payors are *de minimis*.

## I. The Adversary Proceedings

### 1. Washington State Nurses Association

On January 31, 2020, Washington State Nurses Association ("**WSNA**"), the collective bargaining representative of nurses currently and formerly employed by the Debtors, filed a complaint [Adv. Docket No. 1] (the "**WSNA Complaint**") against the Debtors, commencing an adversary proceeding, Adv. Pro. Case No. 20-80005-WLH (the "**WSNA Adversary Proceeding**"). The WSNA Complaint alleges violations of the Worker Adjustment and Retraining Notification Act ("**WARN Act**"), 29 U.S.C. §§ 2101-09, the Washington Wage Payment and Collection Act ("**Washington Payment Act**"), RCW 49.48.010-900, and the Washington Wage Rebate Act ("**Washington Rebate Act**"), RCW 49.52.010-090, on account of the Debtors' closing the Medical Center without providing nurses or other employees at least 60 days advance notice of the closure. As relief, the WSNA Complaint seeks damages, punitive damages, fees and costs under three counts. The first count seeks an unspecified amount of damages for all WSNA-represented employees under the WARN Act. The second and third counts seek payment of all accrued and unused paid time off ("**PTO**"), regardless of when earned, plus double damages equal to the value of such PTO under the Washington Payment Act and the Washington Rebate Act, based upon Defendants' alleged failure to pay all PTO on the nurses'

last day of employment.

On March 4, 2020, the Debtors filed a motion to dismiss the WSNA Adversary Proceeding [Adv. Docket No. 6] (the "**WSNA-AP MTD**").

On March 13, 2020, WSNA filed, on behalf of the parties, a Joint Status Report and Discovery Plan [Adv. Docket No. 10], under which the parties may conduct discovery until May 15, 2020, and briefing will occur in June 2020. The Debtors advised the Bankruptcy Court of their position that discovery should be stayed pending resolution of the WSNA-AP MTD. On March 18, 2020, the Bankruptcy Court conducted a scheduling conference in which it addressed, among other things, the permissible scope of discovery pending resolution of the WSNA-AP MTD.

On March 25, 2020, WSNA filed an Objection to the WSNA-AP MTD [Adv. Pro. Docket No. 13] (the "**WSNA Objection**").

On April 1, 2020, the Defendants, on behalf of the parties, filed a Stipulated Protective Order [Adv. Pro. Docket No. 14] and a Jointly Proposed Scheduling Order [Adv. Pro. Docket No. 16]. On that same day, this Court entered an order setting the scheduled April 15, 2020 hearing on the WSNA-AP MTD to be conducted telephonically. On April 3, 2020, the Defendants responded to WSNA's permissible discovery requests. On April 10, 2020, this Court entered the Jointly Proposed Scheduling Order, with modification [Adv. Pro. Docket No. 18].

On April 13, 2020, Defendants filed their Reply to the WSNA Objection and in support of the WSNA-AP MTD. On April 17, 2020, Defendants filed a notice of payment in full of unused administrative and prepetition priority PTO balances [Adv. Pro. Docket No. 23].

On April 21, 2020, the Bankruptcy Court held a hearing to deliver its oral decision on the WSNA-AP MTD. On April 30, 2020, the Bankruptcy Court entered an Order granting in part and denying in part the WSNA-AP WSNA-AP [Adv. Pro. Docket No. 29] (the "**WSNA-AP MTD Order**"). Specifically, the WSNA-AP MTD Order denied the WSNA-AP MTD as to the first cause of action (alleged WARN violations); but granted the WSNA-AP MTD, *with prejudice*, as to the second (alleged Washington Payment Act violations) and third (alleged Washington Rebate Act violations) causes of action.

On May 5, 2020, WSNA filed its Answer to the Complaint [Adv. Pro. Docket No. 31]. Discovery has been scheduled to continue until August. *See* Adv. Pro. Docket No. 29.

**2. Small Business Administration**

On May 15, 2020, the Debtors filed a complaint [Docket No. 1278; Adv. Docket No. 1] (the "**SBA Complaint**") against the U.S. Small Business Administration ("**SBA**") and Jovita Carranza (in her capacity as Administrator for the SBA, "**SBA Administrator**," and together with the SBA, "**SBA Defendants**"), commencing an adversary proceeding, Adv. Pro. Case No. 20-80016-WLH (the "**SBA Adversary Proceeding**"). The Complaint alleges improper and unlawful administration of the Paycheck Protection Program ("**PPP**"), on account of Banner Bank's denial, at the direction of the SBA acting through the Administrator, of two of the Debtors' applications for loans under the PPP because the applicants are debtors in bankruptcy. The first count seeks an order enjoining: (a) the SBA, the SBA Administrator, any of their agents, servants, employees, and any parties acting in concert with any of the foregoing, or any commercial lender (collectively, the "**Restrained Parties**") from denying an application under PPP funds on the basis that the applicant is a debtor in bankruptcy or because of the words "presently involved in any bankruptcy" on the PPP Application; and (b) the SBA and the SBA Administrator from issuing loan guaranties or approving PPP Applications in an amount that would leave insufficient funds for the Debtors' funding pursuant to the Applications (or any

amended applications). The second through seventh counts further seek determinations, declaratory judgments, and/or writ of mandamus in connection with the SBA and SBA Administrator's implementation of PPP, including that it violates § 525(a) and the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, and is not consistent with the Coronavirus Aid, Relief, and Economic Security Act (the "**CARES Act**"), Public Law 116-136. The third, sixth, and seventh counts also seek damages if no injunction is issued and it is later determined that the Debtors were eligible for PPP funds but none remain available.

On May 15, 2020, the Debtors also filed a motion for a temporary restraining order [Adv. Docket No. 2] (the "**TRO Motion**"), which, among other things, sought to ensure that the SBA Defendants would reserve sufficient funds or guaranty authority pending resolution of the issues raised in the SBA Complaint. The Debtors and the SBA Defendants agreed to a briefing schedule on the TRO Motion, during which the SBA agreed to maintain sufficient funds to make the requested loan if the Bankruptcy Court held for the Debtors, and to have a hearing on the TRO Motion as if it were seeking a preliminary injunction. The SBA Defendants opposed the TRO Motion on May 26, 2020 [Adv. Docket Nos. 14-15], and the Debtors filed their reply on June 1, 2020 [Adv. Docket No. 16].

On June 8, 2020, the Debtors and the Lapis Parties entered into a stipulation [Adv. Docket No. 18] regarding the treatment and use of any funds obtained by the Debtors in connection with their PPP Application.

On June 10, 2020, the Bankruptcy Court entered an order granting the Debtors' request for a preliminary injunction. *See* Adv. Docket No. 10. The order, among other things: (a) authorizes the Debtors to submit modified PPP applications; (b) enjoining the Restrained Parties from conditioning approval of or otherwise refusing to guaranty a PPP loan sought by the Debtors on the basis of their status as debtors in these Chapter 11 Cases; and (c) enjoining the Restrained Parties from continuing to provide PPP loans without reserving sufficient funds or guaranty authority to provide the Debtors with access to PPP funds should they be eligible. The Bankruptcy Court denied the SBA's oral motion for stay pending appeal, and certified its order for direct appeal to the Ninth Circuit. *Id.*

The Debtors received confirmation that their resubmitted PPP applications were approved and will be funded. *See* Adv. Docket No. 33. In fact, the Debtors have now received approximately $2.7 million in PPP loans.

On June 23, 2020, the SBA Defendants filed a notice of appeal [Adv. Docket No. 28] of the Bankruptcy Court's decision to the District Court, which is proceeding under Case No. 1:20-cv-03089-RMP. The parties have agreed [Adv. Docket No. 33] to stay the SBA Adversary Proceeding pending appeal. A status conference is scheduled for August 25, 2020. The SBA Defendants have also filed a motion to withdraw the reference, which would result in the SBA Adversary Proceeding being held before the District Court. See Adv. Docket No. 26.

**3. Yakima HMA**

On May 19, 2020, Yakima HMA, LLC and Yakima HMA Physician Management, LLC (collectively the "**YHMA Plaintiffs**") filed a complaint [Docket No. 1293; Adv. Docket No. 1] (the "**YHMA Complaint**") against Yakima and Toppenish (the "**YHMA Debtor Defendants**"), commencing an adversary proceeding, Adv. Pro. Case No. 20-80018-WLH (the "**YHMA Adversary Proceeding**"). The YHMA Complaint seeks judgment for turnover by the YHMA Debtor Defendants of all funds they received resulting from cost reports for periods before the effective date of the asset purchase agreement, dated as of December 13, 2016, relating to the YHMA Debtor Defendant hospitals and related businesses. *See id.*

A scheduling conference had been set in the YHMA Adversary Proceeding for July 8,

2020, but a delayed continuance of approximately one month has been requested so that the YHMA Plaintiffs could obtain a new summons and re-serve the YHMA Complaint on the YHMA Debtor Defendants. *See* Adv. Docket No. 6.

**J. Schedules and Claims Bar Dates**

On June 20, 2019, after having received one extension from the Bankruptcy Court, the Debtors filed their respective Schedules. On November 12, 2019, the Debtors filed amendments to certain of the original Schedules.

In addition to claims scheduled by the Debtors, more than 800 proofs of claim have been filed against the Debtors in these Chapter 11 Cases in an amount exceeding $770 million in the aggregate.

The Bankruptcy Court has fixed certain deadlines—or "bar dates"—for creditors and contract counterparties to file their Claims against the Debtors, as follows:

(A) *Bar Date for Prepetition Claims*. On August 10, 2016, the Bankruptcy Court entered the *Notice of Chapter 11 Bankruptcy Case* [Docket No. 91], which fixed August 5, 2019 as the last day for the filing of proofs of claim in this case for all Claims against the Debtors arising prior to the Petition Date (including any claims arising under § 503(b)(9)) (the "**General Bar Date**"), except for claims by Governmental Units. The bar date for Governmental Claims was November 4, 2019 (the "**Governmental Bar Date**," and together with the General Bar Date, the "**Bar Dates**"). On June 17, 2020, the Bankruptcy Court entered an order [Docket No. 1417] setting a second general bar date of July 22, 2020, for those certain potential prepetition claimants who did not receive notice of the General Bar Date before August 5, 2019.

Any Claims required to be filed before the Bar Dates that were not timely filed are forever barred from assertion against the Debtors, the Estates or property thereof, the Litigation Trust or property thereof, and/or the Liquidation Trust or property thereof, and the holder of such Claim is not entitled to vote on the Plan or to participate in any distribution in this case.

(B) *Bar Date for Rejection Damage Claims*. The Debtors currently have until August 30, 2020, subject to further extension prior to Confirmation, to assume or reject their unexpired leases of nonresidential real property pursuant to § 365(d) [Docket No. 1466].

The Plan provides that any Rejection Damage Claim or other Claim for damages arising from the rejection under the Plan of an executory contract or unexpired lease must be Filed and served upon counsel to the Debtors within 30 days after the entry of an order (including the Confirmation Order) approving such rejection. Any such Claims that are not timely Filed and served will be forever barred and unenforceable against Debtors, the Estate, Reorganized Debtors, and their respective property, and Entities holding these Claims will be barred from receiving any distribution under the Plan on account of such untimely claims.

Except as (1) already rejected during the Chapter 11 Cases, (2) expressly set forth in the Schedule of Assumed Agreements attached to the Plan, or (3) otherwise expressly provided in the Plan or the Confirmation Order, all contracts, leases, and other agreements that Debtors entered into after Petition Date will be rejected by Reorganized Debtors.

On February 5, 2020, the Debtors filed their first omnibus motion [Docket No. 1019] for an order authorizing them to reject certain executory contracts and unexpired leases of real property, to which certain counterparties objected [Docket Nos. 1052, 1096]. The Bankruptcy Court granted the first omnibus motion on March 27, 2020. *See* Docket No. 1146. On May 8, 2020, the Debtors filed their second omnibus motion [Docket No. 1262] for an order authorizing them to reject certain additional executory contracts and unexpired leases of real property, to

which certain counterparties objected [Docket Nos. 1321]. The Bankruptcy Court granted the second omnibus motion on June 11, 2020 [Docket No. 1369], with the exception of two agreements the rejection of which was authorized on July 6, 2020 [Docket No. 1465].

(C) *Administrative Claims Bar Date.* On June 17, 2020, the Bankruptcy Court entered an order [Docket No. 1416] fixing July 20, 2020 as the deadline by which all proofs of claim for Administrative Claims must have been filed, other than with respect to the following excluded Claims (the "**Excluded Administrative Claims**"):

a) Administrative Claims based upon liabilities that the Debtors (other than ARMC) incur in the ordinary course of their business to providers of goods and services. To be clear, Administrative Claims held by vendors of goods and services to ARMC are *not* Excluded Administrative Claims and such vendors *must* file an Administrative Claim;

b) Administrative Claims arising out of the employment by one or more of the Debtors (other than ARMC) of an individual after the Petition Date. To be clear, Administrative Claims held by former employees of ARMC who are no longer employed by a Debtor are *not* Excluded Administrative Claims and such former employees *must* file an Administrative Claim;

c) Any entity that has already properly filed a motion requesting allowance of an Administrative Claim pursuant to § 503(b) related to the Postpetition Period;

d) A holder of an Administrative Claim related to or incurred during the Postpetition Period that previously has been allowed by order of the Court;

e) A holder of an Administrative Claim that has been paid in full by the Debtors pursuant to the Bankruptcy Code or in accordance with an Order of the Court; and

f) Any Claims held by the Bond Trustee or the Lapis Parties in connection with (i) the 2017 Bonds, (ii) the Lapis 2019 Loan Agreement, and/or (iii) the Final DIP Order or any similar order in these proceedings.

A hearing on the Debtors' motion is scheduled for June 17, 2020. *See* Docket No. 1354.

## VI.
## THE CHAPTER 11 PLAN

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT AND IMPLEMENTATION OF THE PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT A. THIS SUMMARY DOES NOT PURPORT TO BE COMPLETE, AND CREDITORS ARE URGED TO READ THE PLAN IN FULL.

The Claims against the Debtors are divided into Classes according to their seniority and other criteria. The Classes of Claims for each of the Debtors and the funds and other property to be distributed under the Plan are described more fully below.

### A. Introduction

The Plan provides for the reorganization of the Debtors, with the sole exception of SHC-Yakima, which will proceed along its Closure Plan and be dissolved. As a result of the chapter 11 process and through the Plan, the Debtors expect that creditors will obtain a substantially

greater recovery from the Estates than the recovery that would be available if the Debtors' assets had been liquidated under chapter 7 of the Bankruptcy Code.

## B. Voting Procedures and Confirmation Requirements

### 1. Ballots and Voting Deadlines

Accompanying this Disclosure Statement is a Ballot for acceptance or rejection of the Plan. The Bankruptcy Court has directed that, to be counted for voting purposes, Ballots for the acceptance or rejection of the Plan must be filed with the Solicitation Agent by no later than 4:00 p.m. Pacific Daylight Time on ~~September 10~~October 27, 2020. Ballots not actually received by the Voting Deadline may not be counted, and Ballots that do not indicate either an acceptance or rejection of the Plan will be deemed to constitute an acceptance of the Plan. If you have any questions regarding the procedure for voting, please contact:

Geoffrey M. Miller
Dentons US LLP
1221 Avenue of the Americas
New York, New York 10020-1089
geoffrey.miller@dentons.com
(212) 768-6734

Correspondence sent by hand delivery or overnight mail should be sent to the address provided above.

It is important for all Creditors that are entitled to vote on the Plan to exercise their right to vote to accept or reject the Plan. Even if you do not vote to accept the Plan, you may be bound by the Plan if it is accepted by the requisite Holders of Claims and confirmed by the Bankruptcy Court.

### 2. Parties in Interest Entitled to Vote

Pursuant to the provisions of the Bankruptcy Code, only Holders of Allowed Claims in Classes of Claims that are "impaired" (see subsection below) and not deemed to have rejected the Plan are entitled to vote to accept or reject the Plan. In addition, any Claim to which an objection has been filed is not entitled to vote unless the Bankruptcy Court, upon application of the Holder of the Claim, temporarily allows the Claim in an amount that it deems proper for the purpose of accepting or rejecting the Plan. Any such application must be heard and determined by the Bankruptcy Court on or before the Voting Deadline. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that the vote was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

### 3. Definition of Impairment

Pursuant to § 1124, a class of claims is impaired under a plan unless, with respect to each claim of such class, the plan:

1) leaves unaltered the legal, equitable, and contractual rights of the holder of the claim or equity interest; or

2) notwithstanding any contractual provision or applicable law that entitles the holder of a claim or equity interest to demand or receive accelerated payment of such claim or equity interest after the occurrence of a default:

(A) cures any such default that occurred before or after the commencement of the case under the Bankruptcy Code, other than a default of a kind specified in § 365(b)(2);

(B) reinstates the maturity of such claim or interest as it existed before such default;

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance on such contractual provision or such applicable law;

(D) if such claim arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to § 365(b)(1)(A), compensates the Holder of such claim or such interest (other than the debtor or an insider) for actual pecuniary loss incurred by such Holder as a result of such failure; and

(E) does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the Holder of such claim or interest.

The following Classes are impaired under the Plan and not deemed to have rejected the Plan and are thus entitled to vote:

- Class 2A (Senior Secured Bond Debt Claims)
- Class 2B (Senior Secured Credit Agreement Claims)
- Class 3 (Convenience Class Claims)
- Class 4 (General Unsecured Claims)
- Class 4A (Insured Claims).

Pursuant to § 1126(g), because the Holders of Intercompany Claims are not entitled to receive or retain any property under the Plan on account of such Claims, Class 5 is deemed to have rejected the Plan and, thus, Holders of Class 5 Intercompany Claims are not entitled to vote.

## C. Confirmation Procedure

### 1. Confirmation Hearing

A hearing before the Honorable Whitman L. Holt, United States Bankruptcy Judge, to consider confirmation of the Plan, has been scheduled for ~~September 24~~November 13, 2020 at 11:00 a.m. Pacific Daylight Time, at the Bankruptcy Court, 402 East Yakima Avenue, Suite 200, Yakima, Washington 98901. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing.

### 2. Procedure for Objections

Any objection to confirmation of the Plan must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim held by the objector. Any such objection must be filed with the Bankruptcy Court and served on

counsel for the Plan Proponents, counsel for the Committee, the U.S. Trustee, and all parties who have filed a notice of appearance by ~~4:00 p.m. Pacific Daylight Time on September 10~~November 3, 2020. Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court.

### 3. Requirements for Confirmation

The Bankruptcy Court will confirm the Plan only if it meets all the requirements of § 1129. Among the requirements for confirmation are that the Plan be: (a) accepted by all impaired classes of Claims that are entitled to vote or, if rejected by an impaired Class, that the Plan "does not discriminate unfairly" against and is "fair and equitable" with respect to such Class; (b) feasible; and (c) in the "best interests" of Creditors impaired under the Plan that have not voted to accept the Plan. The Bankruptcy Court also must find that:

- the Plan has classified Claims in a permissible manner;
- the Plan complies with the technical requirements of chapter 11 of the Bankruptcy Code; and
- the Plan has been proposed in good faith.

### 4. Voting and Acceptance of the Plan

As a condition to confirmation of the Plan, the Bankruptcy Code requires each Class of "impaired" Claims entitled to vote on the Plan to vote to accept the Plan. The Bankruptcy Code defines acceptance of a plan by a class of creditors as acceptance by holders of two-thirds (2/3) in dollar amount and more than one-half (1/2) number of those claims or interests in that class actually voting. Holders of Claims who fail to vote will not be counted as either accepting or rejecting the Plan. A vote, moreover, may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that it was not made or solicited in good faith.

Classes of Claims that are not "impaired" under the Plan are conclusively presumed to have accepted the Plan and, therefore, are not entitled to vote. Classes of Claims that receive no distribution under the Plan are conclusively presumed to have rejected the Plan and are not entitled to vote.

### 5. Best Interests Test

The "best interests" of impaired creditors test requires that each Holder of a Claim that has not voted to accept the Plan and belongs to an impaired Class receive or retain under the Plan property of a value that is not less than the value such Holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. To determine what members of each impaired Class of Claims would receive if the Debtors were liquidated, the Bankruptcy Court must determine the dollar amount that a liquidation of the Debtors' assets would generate in the context of a Chapter 7 liquidation. The amount available for satisfaction of Claims would consist of the proceeds resulting from the liquidation, reduced by the Claims of secured creditors to the extent of the value of their collateral, and the costs and expenses of the liquidation.

Attached as Exhibit B is a liquidation analysis prepared by the Debtors, reflecting a greater distribution to Creditors pursuant to the Plan than Creditors would receive in a hypothetical Chapter 7 liquidation. Accordingly, the Plan Proponents believe the Plan satisfies the "best interests" of impaired creditors test. The Committee asserts that the liquidation analysis overlooks value that would benefit the General Unsecured Creditors in a Chapter 7 liquidation, and therefore does not satisfy the "best interests" test with respect to Class 4.

**6. The Feasibility Test**

The "feasibility" test requires the Bankruptcy Court to find that confirmation of the Plan is not likely to be followed by the liquidation or the need for further reorganization of the Debtors. For purposes of determining whether the Plan satisfies this condition, the Debtors have analyzed the capacity of each Debtor to service its obligations under the Plan.

The Debtors have prepared the projected operating and financial results (the "**Financial Projections**") for the Debtors for a period of five years. The Financial Projections are attached to this Disclosure Statement as Exhibit C. The Financial Projections should be read in conjunction with the assumptions, qualifications, and the footnotes to the tables containing the Financial Projections.

Based upon their analysis of their Financial Projections, the Debtors believe they will be able to make all payments required to be made under the Plan.

**7. Unfair Discrimination and the Fair and Equitable Test**

If any impaired Class of Claims does not accept the Plan, the Bankruptcy Court may still confirm the Plan despite such non-acceptance under the "cram down" provisions set forth in § 1129(b). To obtain a confirmation under those circumstances, the Plan Proponents must show, among other things, that the Plan "does not discriminate unfairly" against and is "fair and equitable" with respect to each impaired Class of Claims that has rejected the plan.

Under § 1129(b), a plan is "fair and equitable" to a class of claims or equity interests if, among other things, the plan provides: (i) with respect to secured claims, that each holder of a claim included in the rejecting class will receive or retain on account of its claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; and (ii) with respect to unsecured claims and equity interest, that the holder of any claim or equity interest that is junior to the claims or equity interest of such class will not receive or retain on account of such junior claim or equity interest any property at all unless the senior class is paid in full. A plan does not discriminate unfairly if the legal rights of a dissenting class are treated in a manner consistent with the treatment of other classes whose legal rights are similar to those of the dissenting class and if no class receives more than it is entitled to receive on account of its claim or interest.

AS THE HOLDERS OF INTERCOMPANY CLAIMS (CLASS 5) ARE ELIMINATED AND DEEMED TO REJECT THE PLAN, THE PLAN PROPONENTS WILL SEEK CONFIRMATION OF THE PLAN UNDER THE "CRAM DOWN" PROVISIONS OF § 1129(b).

The Committee asserts that the Plan is not fair and equitable and disputes the ability of the Plan Proponents to satisfy the "cram down" requirements of § 1129(b).

**8. Other Requirements of § 1129**

The Plan Proponents believe that the Plan meets all the other technical requirements of § 1129, including that the Plan has been proposed in good faith and the Committee disputes that contention.

**D. Classification of Claims and Their Treatment Under the Plan**

**1. General Overview**

As required by the Bankruptcy Code, the Plan classifies Claims in various classes

according to their right to priority of payments as provided in the Bankruptcy Code. The Plan states whether each Class of Claims is impaired or unimpaired. The Plan provides the treatment each Class will receive under the Plan.

**2. Limited Consolidation**

Except as expressly provided in the Plan, each Debtor shall continue to maintain its separate corporate existence for all purposes other than the treatment of Claims and distributions under the Plan. Except as expressly provided in the Plan, the Exchange Debt Documents, the other Definitive Documents, or as otherwise ordered by the Court, on the Effective Date: (a) all assets and all liabilities of each of the Debtors shall be deemed merged or treated as though they were merged into and with the assets and liabilities of each other; (b) no distributions shall be made under the Plan on account of Intercompany Claims among the Debtors, and all such Claims shall be eliminated and extinguished; (c) all guaranties of the Debtors of the obligations of any other Debtor shall be deemed eliminated and extinguished so that any Claim against any Debtor and any guarantee thereof executed by any Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the consolidated Debtors; (d) each and every Claim filed or to be filed in any of the Chapter 11 Cases shall be treated filed against the consolidated Debtors and shall be treated one Claim against and obligation of the consolidated Debtors; and (e) for purposes of determining the availability of the right of setoff under § 553, the Debtors shall be treated as one entity so that, subject to the other provisions of § 553, debts due to any of the Debtors may be set off against the debts of any of the other Debtors. Such consolidation shall not (other than for purposes relating to the Plan) affect the legal and corporate structures of the Reorganized Debtors. Notwithstanding anything in this section (and the corresponding Section II.B of the Plan) to the contrary, all U.S. Trustee Fees, if any, shall be calculated on a separate legal entity basis for each Reorganized Debtor. In addition, the Committee asserts that the foregoing consolidation may not be (i) consistent with applicable law or (ii) otherwise necessary under the circumstances, and has requested discovery on these issues.

**3. Summary and Classification of Claims**

The Plan classifies Claims—except for Administrative Claims, Priority Tax Claims, Professional Fee Claims, and DIP Claims which are not classified—for all purposes, including voting, Confirmation, and distribution under the Plan. A Claim is classified in a particular Class only to the extent that the Claim falls within the Class description. To the extent that part of the Claim falls within a different Class description, the Claim is classified in that different Class. The classification of Senior Secured Bond Debt Claims and Senior Secured Credit Agreement Claims is an integral component of the Senior Debt 9019 Settlement.

The following table summarizes the Classes of Claims under the Plan that are Allowed Claims:

| CLASS | DESCRIPTION | IMPAIRED/ UNIMPAIRED | VOTING STATUS |
|---|---|---|---|
| 1 | Priority Claims | Unimpaired | Not Entitled to Vote / Deemed to Accept |
| 2A | Senior Secured Bond Debt Claims | Impaired | Entitled to Vote |
| 2B | Senior Secured Credit Agreement Claims | Impaired | Entitled to Vote |
| 2C | Other Secured Claims | Unimpaired | Not Entitled to Vote / Deemed to Accept |
| 3 | Convenience Class | Impaired | Entitled to Vote |

| | | | |
|---|---|---|---|
| | Claims | | |
| 4 | General Unsecured Claims | Impaired | Entitled to Vote |
| 4A | Insured Claims | Impaired | Entitled to Vote |
| 5 | Intercompany Claims | Eliminated Through Consolidation of Debtors for Plan Purposes | N/A |

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN, NO DISTRIBUTIONS WILL BE MADE AND NO RIGHTS WILL BE RETAINED ON ACCOUNT OF ANY CLAIM THAT IS NOT AN ALLOWED CLAIM.**

The treatment in the Plan is in full and complete satisfaction of the legal, contractual, and equitable rights (including any Liens) that each individual or Entity holding an Allowed Claim may have in or against Debtors, the Estates, or their respective property. This treatment supersedes and replaces any agreements or rights those individuals or Entities may have in or against Debtors, the Estates, or their respective property. Except as otherwise provided in the Plan, all distributions in respect of Allowed Claims will be allocated first to the principal amount of such Allowed Claim, as determined for federal income tax purposes, and thereafter, to the remaining portion of such Allowed Claim, if any.

**4. Unclassified Claims**

Pursuant to § 1123(a)(1), Claims of a kind specified in § 507(a)(2) or (8) are not to be designated in a class. Thus, Claims for fees, costs or expenses of administering the Debtors' Chapter 11 Cases that are allowed under § 503(b)—including Administrative Claims, DIP Claims, Professional Fee Claims requesting professional compensation pursuant to §§ 330 and 331, and Priority Tax Claims for unsecured income, employment and other taxes described by § 507(a)(8),[16] as well as statutory fees under 28 U.S.C. § 1930—are treated separately under the Plan as unclassified Claims. They do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. As such, the Debtors have not placed the following Claims in a class. The treatment of these Claims is provided below.

**a. Administrative Claims**

**i. Types of Claims Entitled to Administrative Priority**

The following types of Claims are entitled to administrative priority under the Plan: Administrative Claims (including Ordinary Course Administrative Expense Claims), DIP Claims, Professional Fee Claims, U.S. Trustee Fees, 503(b)(9) Claims and Cure Payments. The foregoing claims, other than Ordinary Course Administrative Expense Claims and DIP Claims are estimated to be Allowed in the approximate aggregate amount of $4,624,674.

**ii. Administrative Claims Bar Date**

Holders of Administrative Claims incurred during the period from and after the Petition

[16] During the Chapter 11 Cases, Debtors obtained Bankruptcy Court authority to bring wages, benefits and payroll taxes current for the prepetition period, so no prepetition employment related taxes remain due. Debtors have otherwise kept current on taxes.

Date until the date of entry of the Administrative Claims Bar Date Order were required to File and serve a request for payment of such Administrative Claims and those that did not File and serve such a request by the Administrative Claims Bar Date are forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their Estates, and such Administrative Claims shall be deemed discharged as of the Effective Date, except as provided in the Plan.

**iii. Supplemental Administrative Claims Bar Date**

Holders of Administrative Claims based upon liabilities incurred by the Debtors in the ordinary course of their business on or after the date the Administrative Claims Bar Date Order was entered but prior to the Effective Date must File and serve such Claims on the Reorganized Debtors within thirty (30) days after the Effective Date or such claims shall be forever barred against the Debtors or their Estates. Objections to the requests for payment of such Administrative Claims must be Filed and served on the Reorganized Debtors and the requesting party within twenty (20) days after the Filing of the applicable request for payment of such Administrative Claims.

**iv. Treatment of Administrative Claims**

**1) DIP Claims**. In accordance with the Senior Debt 2019 Settlement, all DIP Claims shall be Allowed and satisfied, without setoff, reduction, or subordination, by the exchange of DIP Claims for DIP Claims Exchange Debt with the attributes described in the schedule attached to the Plan in Exhibit A in the amount of all DIP Claims as of the Effective Date. This treatment of DIP Claims is an integral component of the Senior Debt 2019 Settlement.

**2) Other Administrative Claims**. The Plan provides that, except for Ordinary Course Administrative Expenses (which will be paid in the ordinary course of business) and DIP Claims, all Administrative Claims, including Cure Payments, 503(b)(9) Claims, and U.S. Trustee Fees, will be paid in full in Cash (a) on the later of the Effective Date or the date such Claims are Allowed under § 503, or (b) upon such other terms as may be mutually agreed upon between the Holder of such Claim and the Plan Proponents, and consistent with the terms of the Definitive Documents.

**b. Treatment of Professional Fee Claims.**

The Plan provides that all persons and entities seeking an award by the Bankruptcy Court of professional fees on behalf of the Debtors (a) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses no later than forty-five (45) days after the Effective Date, and, (b) upon Bankruptcy Court approval of such final application, shall receive, in full satisfaction, settlement, and release of, and in exchange for such Claim, from the Administrative and Priority Claims Reserve, cash in such amounts as allowed by the Bankruptcy Court (i) on the later of (A) the Effective Date (or as soon thereafter as reasonably practicable) and (B) the date that is ten (10) days after the allowance date, or (ii) upon such other terms as may be mutually agreed upon between the holder of such Claim and the Plan Proponents, and consistent with the terms of the Definitive Documents. For the avoidance of doubt, estate Professionals may still receive interim compensation prior to the Effective Date if otherwise able to under existing court orders.

**c. Treatment of Priority Tax Claims**.

The Plan provides that Priority Tax Claims shall be paid in full in Cash from the Administrative and Priority Claims Reserve (a) on the later of the Effective Date or the date such Claim is allowed, (b) after the Effective Date, over a period not to exceed five years from the date of assessment of the subject tax, together with interest thereon at a rate satisfactory to the Debtors

or such other rate as may be required by the Bankruptcy Code, or (c) upon such other terms as may be mutually agreed upon between the holder of such Claim and the Plan Proponents, and consistent with the terms of the Definitive Documents.

**5. Classified Claims**

Section 1122 requires the Plan to place a Claim in a particular Class only if such Claim is substantially similar to the other Claims in that Class. The Plan Proponents believe the Plan's classifications place substantially similar Claims in the same Class and thus meet the requirements of § 1122.

The Plan classifies Claims into five (5) Classes, some with subclasses: Class 1 consisting of all Priority Claims (Other than Priority Tax Claims); Class 2 consisting of all Secured Claims (broken down further into Class 2A Senior Secured Bond Debt Claims, Class 2B Senior Secured Credit Agreement Claims, and Class 2C Other Secured Claims); Class 3 consisting of Convenience Class Claims; Class 4 consisting of all General Unsecured Claims (with Class 4A consisting of Class 4 Claims that are also Insured Claims); and Class 5 consisting of all Intercompany Claims. For each Class, the Plan states whether the Claims are not Impaired (Classes 1, 2B, and 2C) or Impaired (Classes 2A, 3, 4, and 4A) and how the Holders of the Claims will be treated under the Plan; however, the Committee disputes the characterization of Classes 2A and 2B as Impaired. The Classes and proposed treatment of Allowed Claims of each Class under the Plan are summarized and described below. **After Confirmation, and upon the occurrence of the Effective Date, the Plan binds the Debtors and all Creditors, whether or not those Creditors have accepted the Plan.**

The following describes the Plan's classification of those Claims against the Debtors required to be classified under the Bankruptcy Code:

**a. Class 1 – Priority Claims (Other than Priority Tax Claims)**

Class 1 consists of Priority Claims against Debtors, other than Priority Tax Claims. These Priority Claims are entitled to priority treatment in that each Holder of such a Claim is entitled to receive Cash from the Administrative and Priority Claims Reserve on the Effective Date (or as soon as practicable thereafter) equal to the allowed amount of such Claim, unless the Class votes to accept deferred Cash payments of a value, as of the Effective Date, equal to the allowed amount of such Claims.

Excluded from this Class are (a) wage claims (including severance pay) in excess of the statutory limit of $13,650, and (b) PTO Claims in excess of the statutory limit of $13,650 for benefits. Such Claims will be treated as General Unsecured Claims in Class 4.[17]

Class 1 is not Impaired. Holders of Class 1 Priority Claims, therefore, are conclusively presumed to have accepted the Plan pursuant to § 1126(f) and are not entitled to vote to accept or reject the Plan.

| CLASS # | DESCRIPTION | INSIDER (Y/N) | IMPAIRED (Y/N) | TREATMENT |
|---|---|---|---|---|

[17] Under Debtors' human resources policies, employees may have accumulated paid time off ("**PTO**") that the employees were able to roll forward from year to year, or cash out at retirement or departure. Reorganized Debtors will assume the PTO Claims for retained employees of the Hospital, and PTO will be allowed to be used on the same terms and conditions as before Petition Date.

| | | | | |
|---|---|---|---|---|
| 1 | Priority unsecured claims alleged pursuant to Code §§ 507(a)(4) and (5)<br><br>Total Amount = Unknown | No | No | Paid in cash in full on later of Effective Date or when Allowed |

**b. Classes 2A, 2B, and 2C – Secured Claims**

Classes 2A, 2B, and 2C consist of Secured Claims against Debtors. Secured Claims are claims secured by liens on property of the Estate. The treatment of Senior Secured Bond Debt Claims and Senior Secured Credit Agreement Claims is an integral component of the Senior Debt 9019 Settlement.

All Class 2A Senior Secured Bond Debt Claims shall be Allowed and reinstated without setoff, reduction or subordination on the terms of the Exchange Debt Documents in the amount of all such Senior Secured Bond Debt Claims as of the Effective Date.

All Class 2B Senior Secured Credit Agreement Claims shall be paid Allowed and satisfied, without setoff, reduction, subordination or challenge, by the exchange of such Senior Secured Credit Agreement Claims for Senior Secured Credit Agreement Exchange Debt with the attributes described in the schedule attached to the Plan in Exhibit A in the amount of all Senior Secured Credit Agreement Claims as of the Effective Date.

Classes 2A and 2B are Impaired. Therefore, Holders of Class 2A and 2B Secured Claims are entitled to vote to accept or reject the Plan. However, the Committee disputes the characterization of Classes 2A and 2B as Impaired.

Class 2C consists of all Other Secured Claims that are not Senior Secured Bond Debt Claims or Senior Secured Credit Agreement Claims. On or as soon as practicable after the Effective Date, each Holder of an allowed Other Secured Claim against the Debtors will receive from the assets of the Debtors, at the discretion of the Debtors (i) cash equal to the full amount of its Claim, (ii) a reinstated note on the same payment and collateral terms as its prior Claim, (iii) a return of collateral securing the Claim against the Debtor, with any deficiency to result in a General Unsecured Claim, or (iv) such less favorable treatment to which the Holder otherwise agrees.

Class 2C Claims are not Impaired. Holders of Class 2C Other Secured Claims, therefore, are conclusively presumed to have accepted the Plan pursuant to § 1126(f) and are not entitled to vote to accept or reject the Plan.

| CLASS # | DESCRIPTION | INSIDER (Y/N) | IMPAIRED (Y/N) | TREATMENT |
|---|---|---|---|---|
| 2A | Senior Secured Bond Debt Claims<br><br>Total Amount = | No | Yes | In accordance with the Senior Debt 9019 Settlement, all Senior Secured Bond Debt Claims shall be Allowed and reinstated without setoff, reduction or |

| | | | | |
|---|---|---|---|---|
| | $43,194,789.04 | | | subordination on the terms of the Exchange Debt Documents in the amount of all such Senior Secured Bond Debt Claims as of the Effective Date. |
| 2B | Senior Secured Credit Agreement Claims<br><br>Total Amount = $13,007,397.26 | No | Yes | In accordance with the Senior Debt 9019 Settlement, all Senior Secured Credit Agreement Claims shall be Allowed and satisfied, without setoff, reduction, subordination or challenge, by the exchange of such Senior Secured Credit Agreement Claims for Senior Secured Credit Agreement Exchange Debt with the attributes described in the schedule attached to the Plan in Exhibit A in the amount of all Senior Secured Credit Agreement Claims as of the Effective Date. |
| 2C | Other Secured Claims | No | No | On or as soon as practicable after the Effective Date, each Holder of an allowed Other Secured Claim against the Debtors will receive from the assets of the Debtors, at the discretion of the Plan Proponents (i) cash equal to the full amount of its Claim, (ii) a reinstated note on the same payment and collateral terms as its prior Claim, (iii) a return of collateral securing the Claim against the Debtor, with any deficiency to result in a General Unsecured Claim, or (iv) such less favorable treatment to which the Holder otherwise agrees. |

**c. Class 3 – Convenience Class Claims**

Class 3 consists of Convenience Class Claims, meaning those General Unsecured Claims that are either less than or equal to $5,000, or if the claim amount is greater, the claimant elects to reduce its Claim to $5,000 pursuant to the Convenience Class Election, and thus accept a maximum of $1,000 as payment in full. As used in the Plan and herein, "**Convenience Class Election**" means the timely election by a Holder of an General Unsecured Claim in the amount of $5,000 or greater to have such entire General Unsecured Claim be treated as a claim in the

Convenience Class (Class 3), in which case the portion of such General Unsecured Claim in excess of $5,000 shall be discharged in full on the Effective Date.

Holders of Class 3 Convenience Class Claims shall be entitled to receive 20% of the allowed amount of their claim up to a maximum of $1,000, on the Effective Date or as soon as practicable thereafter. There shall be no limitation on the number of Convenience Class members.

Class 3 is Impaired. Therefore, Holders of Class 3 Claims are entitled to vote to accept or reject the Plan.

| CLASS # | DESCRIPTION | INSIDER (Y/N) | IMPAIRED (Y/N) | TREATMENT |
|---|---|---|---|---|
| 3 | Convenience Class Claims<br><br>Total Amount = Est. Allowed amount of $1,611,501,[18] assuming all claimants with Claims between $5,000 and $10,000 elect Class 3 treatment | No | Yes | To be paid 20% of allowed amount of claim up to a maximum of $1,000, on the Effective Date or as soon as practicable thereafter.<br><br>There shall be no limitation on the number of Convenience Class members. |

**d. Classes 4 and 4A – General Unsecured Claims Not Otherwise Classified and Insured General Unsecured Claims**

Class 4 consists of General Unsecured Claims. Class 4A is a subclass consisting of Class 4 General Unsecured Claims that are also Insured Claims. Class 4 and 4A Claims do not include claims arising under any assumed contracts and leases, which shall be treated as Administrative Claims and paid or otherwise satisfied according to the terms of the assumed contract or lease and any order of the Court authorizing its assumption. To the extent any Class 4 or 4A Claim is paid in the ordinary course of business by any party that has reached a prior agreement with Debtors, such Claim will be deemed satisfied and shall not receive a distribution under the Plan. Otherwise, Holders of Allowed Class 4 General Unsecured Claims shall be satisfied *pro rata* solely from assets transferred to the Litigation Trust; and Holders of Class 4A Allowed Insured Claims shall, subject to the terms and conditions set forth in the Plan, recover only from the available insurance and Debtors shall be discharged to the extent of any such excess. As of the Effective Date, all Insured Claims are Disputed.

Classes 4 and 4A are Impaired. Therefore, Holders of Class 4 and 4A Claims are entitled to vote to accept or reject the Plan.

[18] This amount of is based on General Unsecured Claims filed and the Debtors believe that this amount will materially reduce following the claims adjudication process.

The Committee asserts that the treatment of Class 4 is an insufficient allocation of value to the Holders of General Unsecured Claims.

| CLASS # | DESCRIPTION | INSIDER (Y/N) | IMPAIRED (Y/N) | TREATMENT |
|---|---|---|---|---|
| 4 | General Unsecured Claims (Not Otherwise Classified)<br><br>Total Amount = Approximately $101,950,399.80[19] | No | Yes | Allowed General Unsecured Claims shall be satisfied *pro rata* solely from assets transferred to the Litigation Trust. |
| 4A | Insured Claims | No | Yes | Subject to the terms and conditions set forth in in the Plan, Holders of Allowed Insured Claims in Class 4A shall recover only from the available insurance and Debtors shall be discharged to the extent of any such excess.<br><br>As of the Effective Date, all Insured Claims are Disputed. |

**e. Class 5 – Intercompany Claims**

All Intercompany Claims shall be expunged and eliminated through the limited consolidation of the Debtors for purposes of treatment of Claims and distributions under the Plan.

Class 5 is not entitled to receive or retain any property under the Plan. Holders of Class 5 Intercompany Claims, therefore, are conclusively presumed to have rejected the Plan pursuant to § 1126(g) and are not entitled to vote to accept or reject the Plan.

**E. Means of Implementing the Plan**

**1. The Senior Debt 9019 Settlement**

The Plan is centered around the settlement of all rights and claims associated with the DIP Claims, Senior Secured Bond Debt Claims, and Senior Secured Credit Agreement Claims (the "Senior Debt 9019 Settlement"). The Senior Debt 9019 Settlement comprises (i) the classification and treatment of the DIP Claims, Senior Secured Bond Debt Claims, and Senior Secured Credit Agreement Claims and other Lapis Parties prepetition Claims as specified in the Plan, (ii) the issuance (or reinstatement, as applicable) of the debt instruments (the "Exchange Debt") described in the schedule attached to the Plan as Exhibit A and more specifically in the Exchange Debt Documents, and (iii) the release and exculpation terms for the Lapis Parties as specified in the Plan.

[19] This amount of is based on General Unsecured Claims filed and the Debtors believe that this amount will materially reduce following the claims adjudication process.

The treatment and distributions provided for in the Plan with respect to the DIP Claims, Senior Secured Bond Debt Claims, Senior Secured Credit Agreement Claims and other Lapis Parties prepetition Claims under the Senior Debt 9019 Settlement reflect a compromise and settlement of numerous complex issues including the Debtors' obligation to satisfy the DIP Claim on the Effective Date, the scope, extent and value of the collateral associated with the Senior Secured Bond Debt Claims and Senior Secured Credit Agreement Claims and related matters. The settlement provides final resolution of all issues relating to the DIP Claims and the rights and benefits of Lapis Parties, and the validity, enforceability and priority of the Senior Secured Bond Debt Claims and Senior Secured Credit Agreement Claims. Pursuant to the Senior Debt 9019 Settlement, subject to the occurrence of the Effective Date, each prepetition Claim reflected in a proof of claim filed by the Lapis Parties in the Chapter 11 Cases that is not a Senior Secured Bond Debt Claim or Senior Secured Credit Agreement Claim shall be Allowed as a General Unsecured Claim in the liquidated amount specified therein.

The Plan shall constitute a motion to approve the Senior Debt 9019 Settlement. Subject to the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of the Senior Debt 9019 Settlement pursuant to Bankruptcy Rule 9019 (which is inclusive of the releases by the Debtors and their Estates against the Lapis Parties) and a finding by the Bankruptcy Court that the Senior Debt 9019 Settlement is in the best interest of the Debtors and their Estates. If the Effective Date does not occur the Senior Debt 9019 Settlement shall be deemed to have been withdrawn without prejudice to the respective positions of the parties.

**2. Corporate Actions**

AH NP 2 is currently a wholly owned non-debtor subsidiary of Astria Health. AH NP2 is a 501(c)(3) Washington non-profit corporation. On the Effective Date of the Plan, AH NP2 will amend its articles and bylaws to become the sole member of Astria Health on terms acceptable to the Lapis Parties. Astria Health will also amend its articles and bylaws to change Astria Health from a no-member non-profit corporation to a single member non-profit corporation on terms acceptable to the Lapis Parties.

On the Effective Date, simultaneously with the matters reflected in Section III.A of the Plan, AH System, a newly created non-debtor entity, will assume the non-discharged debt of the Debtors in exchange for AH NP2's transfer of its sole membership interest in Astria Health to AH System. AH System is a freestanding Washington non-profit corporation. There is no overlap of Board of Directors between AH System and Astria Health or any of the Astria Health subsidiaries (including AH NP2). The AH System bylaws shall be on terms acceptable to the Lapis Parties.

The Lapis Parties have agreed to reinstatement of the Senior Secured Bond Debt Claims which will be paid by the Reorganized Debtors over time.

Also on the Effective Date, AH System will issue (or reinstate, as applicable) the Exchange Debt and otherwise execute and deliver the Exchange Debt Documents.

**3. Establishment of Litigation Trust; Appointment of Litigation Trustee; Transferring Causes of Action and Claims to the Litigation Trust**

On the Effective Date, the following Assets (the "**Litigation Trust Assets**") shall be contributed to the Litigation Trust for the benefit of the Holders of General Unsecured Claims in Class 4 (the "**Litigation Trust Beneficiaries**") subject to a Litigation Trust Agreement acceptable to the Committee, the Lapis Parties, and the Debtors and the appointment of a Litigation Trustee acceptable to the Lapis Parties in their sole discretion:

> all Avoidance Actions[20] other than any Avoidance Action against the vendor which provided revenue cycle, billing, and collection services prepetition.

As set forth in the Committee Letter, the Committee believes this treatment to be an insufficient allocation of value to the Holders of Claims in Class 4.

**4. Establishment of Liquidation Trust; Appointment of Liquidation Trustee; Transferring Assets and Claims to the Liquidation Trust**

On the Effective Date, the following Assets (the "**Liquidation Trust Assets**" and, together with the Litigation Trust Assets, "**Plan Trust Assets**") shall be contributed to the Liquidation Trust subject to a Liquidation Trust Agreement (together with the Litigation Trust Agreement, the "**Plan Trust Agreements**," and each individually a "**Plan Trust Agreement**") acceptable to the Debtors and the Lapis Parties and the appointment of a Liquidation Trustee acceptable to the Lapis Parties in their sole discretion:

> All assets of the Debtors not necessary for the operation of the core health care businesses of the Debtors including, but not be limited to the (i) Yakima Medical Office Building (excluding the operations within); (ii) SHC–Yakima; (iii) any other unused buildings currently owned by the Debtors; (iv) A/R Collections of SHC–Yakima; (v) all 180 day and older days aged accounts receivable of Sunnyside and SHC–Toppenish; and (vi) any Causes of Action[21] held by the Debtors, including the Vendor Litigation, not expressly assigned to the Litigation Trust.

In the event any Liquidation Trust Assets are liquidated, the proceeds of such liquidation shall be used to fund AH System's operating cash account up to an amount equal to the lesser of $10 million or 30 days cash on hand and then to pay the Exchange Debt in accordance with the Exchange Debt Documents.

The Committee asserts that this is an over-allocation of value for the benefit of the Reorganized Debtors and the Debtors' secured creditors that should be shared with the Holders of Class 4 General Unsecured Claims.

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[20] The Plan defines Avoidance Actions as any and all actual or potential claims and causes of action to avoid a transfer of property or an obligation incurred by a Debtor pursuant to any applicable section of the Bankruptcy Code, including §§ 502, 510, 542, 544, 547, 548, 549, 550, 551, 553 and 724(a) or under similar or related state or federal statutes and common law, including fraudulent transfer laws.

[21] The Plan defines Causes of Action as any action, claim, cause of action, controversy, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law, or in equity or pursuant to any other theory of law. For the avoidance of doubt, "Cause of Action" includes (i) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (ii) the right to object to Claims; (iii) any Claim pursuant to § 362; (iv) any claim or defense including fraud, mistake, duress, and usury; and any other defenses set forth in § 558; and (v) any Avoidance Actions.

### 5. Post-Confirmation Management

Reorganized Debtors, controlled by AH System as the sole member, will provide the management for the Hospitals after the Effective Date. It is anticipated that Mr. Gallagher will continue to serve in his capacity as CEO with the Debtors through Confirmation and with the Reorganized Debtors as of the Effective Date. *See* Section 5. Cary Rowan currently serves as CFO of the Debtors but is anticipated to retire as CFO before the Effective Date. Mr. Rowan's successor has been identified but has not yet started in the position. Maxwell Owens is currently a Senior Vice President of Finance, and then will be promoted to the role of CFO upon Mr. Rowan's departure. If required by the Court, Mr. Gallagher's compensation and Mr. Owen's future compensation will be disclosed under seal.

To the extent necessary to implement the Plan, AH System, will govern pursuant to amended and restated bylaws and other corporate documents. The new Board of Directors for the Reorganized Debtors will be set forth in the Plan Supplement and whose composition is subject to (a) applicable law and (b) the consent of the Lapis Parties. The new Board of Directors will also, in the alternative, enter into a new management agreement with AHM Management or otherwise obtain management on terms acceptable to AH System.

### 6. Creation of Administrative and Priority Claims Reserve

On the Effective Date or as soon as practicable thereafter, the Debtors shall fund, and the Reorganized Debtors shall establish and thereafter maintain, the Administrative and Priority Claims Reserve with the Administrative and Priority Claims Reserve Amount, subject to the Administrative, Professional, and Priority Claims Cap, in an authorized depository in the state of Washington, which funds shall vest in the Reorganized Debtors free and clear of all Liens, Claims, encumbrances, charges, and other interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Funds in the Administrative and Priority Claims Reserve shall be used by the Reorganized Debtors only for the payment of U.S. Trustee Fees and Administrative Claims, Priority Claims, and Professional Fee Claims Allowed after the Effective Date to the extent that such Allowed Claims have not been paid in full on or prior to the Effective Date. To the extent not otherwise provided herein or ordered by the Court, the Reorganized Debtors shall estimate appropriate reserves of Cash to be set aside in order to pay or reserve for Disputed Administrative Claims, Priority Claims, and Professional Fee Claims. Any amounts set aside to pay or reserve for Disputed Administrative Claims, Priority Claims, and Professional Fee Claims shall include the amounts needed to fund the ongoing costs and expenses of such reserve, including, without limitation, taxes in respect of Disputed Administrative Claims, Priority Claims, and Professional Fee Claims, if any. Any amounts remaining in the Administrative and Priority Claims Reserve after payment of all Allowed Administrative Claims, Priority Claims, and Professional Fee Claims and the U.S. Trustee Fees shall be transferred to the Reorganized Debtors and thereafter be subject to the terms of the Exchange Debt Documents.

## F. Objections to Claims

Prior to the Effective Date, Debtors will seek to resolve as many disputes or objections to Claims as possible. After the Effective Date, Reorganized Debtors will have the authority and obligation to review, compromise, and object to any Claims other than Allowed Claims. Reorganized Debtors will: (i) have the authority, without Court approval, to compromise, release or settle any Claim where the Claim has an asserted face value of $25,000 or less and (ii) be required to seek an order of the Court approving the compromise, release or settlement of any Claim that has an asserted value of greater than $500,000, with notice and opportunity for hearing required with respect to such compromise, release or settlement. If the Debtors seek to compromise, release or settle any Claim where the Claim has an asserted face value of between $25,000 and $500,000, the Debtors will provide at least five (5) days' advance notice of the same to the Lapis Parties and the Committee and the opportunity to object within such notice period. If

the Lapis Parties or the Committee objects and the objection is not resolved consensually, the Debtors may seek approval of the compromise, release or settlement by the Court on an expedited basis.

### G. Special Issues Regarding Insured Claims

Under the terms of Debtors' various insurance policies, Debtors may owe deductible amounts on account of Insured Claims for personal injury and medical malpractice. After the Effective Date of the Plan (unless an order modifying the automatic stay has been entered at an earlier date), Holders of Insured Claims may proceed with litigation in appropriate nonbankruptcy forums to liquidate the Insured Claims, but they shall be enjoined by the injunction established by the Confirmation Order from commencing or continuing any enforcement action to collect such Claim against the Estate except in conformity with the Bankruptcy Code's claim adjudication procedures.

Subject to the foregoing, distributions under the Plan to each Holder of an Allowed Insured Claim shall be recoverable only from the available insurance and Debtors shall be discharged to the extent of any such excess. Further, the Plan shall not expand the scope of, or alter in any other way, the rights and obligations of Debtors' insurers under their policies, and Debtors' insurers shall retain any and all defenses to coverage that such insurers may have, including the right to contest and/or litigate with any party, including Debtors, the existence, primacy and/or scope of available coverage under any alleged applicable policy. The Plan shall not operate as a waiver of any other Claims that Debtors' insurers have asserted or may assert in any proof of Claim or Debtors' rights and defenses to such proofs of Claim.

### H. Distributions of Property Under the Plan

The following procedures set forth in the Plan apply to distributions made pursuant to the Plan whether by (i) Debtors as to the Effective Date Distributions, or (ii) the Reorganized Debtors as to all post-Effective Date Distributions (each of Reorganized Debtor or the Debtors, a "**Distributing Party**"). In connection with the Plan, to the extent applicable, the Distributing Party shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.

#### 1. Manner of Cash Payments Under the Plan

Cash payments to domestic Entities holding Allowed Claims will be tendered in U.S. Dollars and will be made by checks drawn on a domestic bank or by wire transfer from a domestic bank. Payments made to any foreign creditors holding Allowed Claims may be paid, at the option of the Distributing Party in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

#### 2. No Distributions with Respect to Disputed Claims

No payments of Cash or distributions of other property or other consideration of any kind shall be made on account of any Disputed Claim unless and until such Claim becomes an Allowed Claim or is deemed to be such for purposes of distribution, and then only to the extent that the Claim becomes, or is deemed to be for distribution purposes, an Allowed Claim. Unless otherwise provided herein, any Holder of a Claim that becomes an Allowed Claim after the Effective Date will receive any unpaid distribution that otherwise would have been payable under the Plan on the Next Payment Date after the date that such Claim becomes an Allowed Claim.

### 3. Record Date for Distribution

On the Distribution Record Date, the Claims Register shall be closed and the Distributing Party shall be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date. The foregoing terms shall not apply to distributions to the Lapis Parties, their successors and assigns with respect to DIP Claims as well as under Class 2A, Class 2B or Class 4 of the Plan.

### 4. Delivery of Distributions

The Distributing Party shall make distributions to each Holder of an Allowed Claim by mail as follows: (a) at the address set forth on the proof of Claim filed by such Holder of an Allowed Claim; (b) at the address set forth in any written notice of address change delivered to the Distributing Party after the date of any related proof of Claim; (c) at the address reflected in the Schedules if no proof of Claim is filed and the Distributing Party has not received a written notice of a change of address; and (d) with respect to the Lapis Parties, as directed by the Lapis Parties.

### 5. Undeliverable and Unclaimed Distributions

If the distribution to the Holder of any Allowed Claim is returned as undeliverable, no further distribution shall be made to such Holder unless and until the Distributing Party is notified in writing of such Holder's then current address. Subject to the other provisions of the Plan, undeliverable distributions shall remain in the possession of the Distributing Party pursuant to Section III.M of the Plan until such time as a distribution becomes deliverable. All undeliverable Cash distributions will be held in unsegregated, interest-bearing bank accounts for the benefit of the Entities entitled to the distributions. These Entities will be entitled to any interest actually earned on account of the undeliverable distributions. The bank account will be maintained in the name of the Distributing Party, but it will be accounted for separately.

Any Holder of an Allowed Claim who does not assert a Claim in writing for an undeliverable distribution within one year after the date such distribution was due shall no longer have any Claim to or interest in such undeliverable distribution, and shall be forever barred from receiving any distributions under the Plan, or from asserting a Claim against the Debtors or their property and the Claim giving rise to the undeliverable distribution will be discharged.

Nothing contained in the Plan shall require the Distributing Party to attempt to locate any Holder of an Allowed Claim.

### 6. Estimation of Disputed Claims for Distribution Purposes

Debtors (on or before the Effective Date) or the Reorganized Debtors may move for a Court order estimating any Disputed Claim. The estimated amount of any Disputed Claim so determined by the Court shall constitute the maximum recovery that the Holder thereof may recover after the ultimate liquidation of its Disputed Claim, irrespective of the actual amount ultimately Allowed.

## I. Full Satisfaction

The Distributing Party shall make, and each Holder of a Claim shall receive, the distributions provided for in the Plan for full satisfaction and discharge of such Claim.

## J. Conditions Precedent to Plan Confirmation

The conditions precedent to confirmation of the Plan shall include: (a) a final order,

finding that this Disclosure Statement contains adequate information pursuant to § 1125, shall have been entered by the Court; (b) the proposed Confirmation Order will be in form and substance satisfactory to the Lapis Parties in their sole discretion; (c) the Plan, including any amendments, modifications or supplements thereto, and all documentation contemplated by the Plan and the terms set forth in any Plan Supplement and the Definitive Documentation, shall be in form and substance satisfactory to the Lapis Parties in their sole discretion; (e) and any order authorizing the DIP Agreement shall be in full force and effect, shall not have been terminated and there shall be no ongoing event of default; and (f) the Exchange Debt Documents shall be in a form acceptable to the Plan Proponents.

## K. Conditions to Effectiveness

The Plan shall not become binding unless and until the Effective Date occurs. The Effective Date is the first Business Day (a) that is at least fourteen days after the Confirmation Date; (b) on which no stay of the Confirmation Order is in effect; and (c) on which all of the following conditions have been satisfied as set forth below or waived:

### 1. Conditions

a) The Confirmation Order shall have become a Final Order;

b) Execution of the Definitive Documents, including the Exchange Debt Documents;

c) The actual and anticipated Allowed Administrative, Professional and Priority Claims does not exceed the Allowed Administrative, Professional and Priority Claims Cap;

d) The bylaws of AH System, AH NP2, the Debtors and their affiliates shall be acceptable to the Lapis Parties; and

e) All such other actions, documents, and agreements the Debtors and the Lapis Parties determine are necessary to implement the Plan shall have been effected or executed.

Debtors shall mail a "Notice of Occurrence of Effective Date" to all creditors and interest Holders of record as of the date of entry of the Confirmation Order.

### 2. Waiver of Conditions

Except as otherwise specified in the Plan or herein, the requirement that the conditions to the occurrence of the Effective Date be satisfied may be waived in whole or in part, and the time within which any such conditions must be satisfied may be extended, by Debtors with the prior written consent of the Lapis Parties. The failure to timely satisfy or waive any of such conditions may be asserted by Debtors regardless of the circumstances giving rise to the failure of such condition to be satisfied, including any action or inaction by Debtors. The failure of Debtors to exercise any of the foregoing rights shall not be deemed a waiver of any other rights and each such right shall be deemed ongoing and subject to assertion at any time.

## L. Authorization of Entity Action

Each of the matters provided for under the Plan involving the Entity structure of Debtors or Entity action to be taken by or required of Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan and herein, and shall be authorized, approved and, to the extent taken prior to the Effective Date, ratified in all respects without any

requirement of further action by creditors or directors of Debtors.

## M. Limited Consolidation

The Plan provides for the limited—or "deemed" substantive—consolidation of the Debtors, which the Committee asserts may not be (i) consistent with applicable law or (ii) otherwise necessary under the circumstances. This Disclosure Statement sets forth (i) the legal requirements to establish deemed substantive consolidation, and (ii) the factual bases supporting the Debtors' request for deemed substantive consolidation. As set forth in the Plan, this Disclosure Statement and the Plan shall be deemed a motion requesting that the Bankruptcy Court approve the deemed substantive consolidation contemplated by the Plan at the Confirmation Hearing, unless otherwise separately scheduled. **Objections to the proposed deemed substantive consolidation must be made in writing on or before the deadline to object to confirmation of the Plan, or such other date as may be fixed by the Bankruptcy Court. The Bankruptcy Court will schedule a hearing with respect to timely filed objections, which the Bankruptcy Court may schedule contemporaneously with the Confirmation Hearing.** The Plan Proponents reserve all rights with respect to such objections, including, but not limited to, the right to further supplement the facts and legal analysis in support of deemed substantive consolidation as set forth in this Disclosure Statement or the Plan.

If the Bankruptcy Court determines that deemed substantive consolidation of any given Debtor is not appropriate, then the Plan Proponents may request that the Bankruptcy Court otherwise confirm the Plan and approve the treatment of, and distributions to, the different Classes under the Plan on an adjusted, Debtor-by-Debtor basis. Furthermore, the Plan Proponents reserve their rights (i) to seek confirmation of the Plan without implementing deemed substantive consolidation of any given Debtor, and, in the Plan Proponents' reasonable discretion, to request that the Bankruptcy Court approve the treatment of, and distributions to, any given Class under the Plan on an adjusted, Debtor-by-Debtor basis; and (ii) to seek to substantively consolidate all Debtors into Astria if all Impaired Classes entitled to vote on the Plan vote to accept the Plan.

As will be set forth in more detail in the Debtors' brief in support of confirmation of the Plan, the Debtors believe deemed substantive consolidation is appropriate here. However, the Committee, based upon information to date, disputes this position and believes discovery with respect to the issue and the factual statements of the Debtors regarding substantive consolidation set forth below will be required, and reserves all rights.

### 1. The Effect of Deemed Substantive Consolidation

"Deemed consolidation" merely treats the assets and liabilities as if they were pooled without actually merging the debtor entities. *In re Owens Corning*, 419 F.3d 195, 202 (3d Cir. 2005) (deemed consolidation will "not result in the merger of or the transfer or commingling of any assets of the Debtors . . . [which] will continue to be owned by the respective Debtors").

Here, deemed consolidation for creditor distribution purposes is appropriate to avoid the impact consolidation of the legal entities may have on matters such as licensing and other post-confirmation issues relating to the Hospital assets.

### 2. The Facts of the Chapter 11 Cases Satisfy Each Independent Basis for Deemed Substantive Consolidation

The facts of these Chapter 11 Cases demonstrate that the Debtors are entitled to the deemed consolidation contemplated by the Plan.

#### a. Creditors Dealt with the Debtors as a Single, Economic Unit

**i.** The Debtors Obtained Secured Financing as a Single Economic Unit

The Debtors' secured lenders dealt with the Debtors as a single economic unit. Thus, this factor is satisfied even if the Debtors never claimed to be a singular entity. *See, e.g., In re Abeinsa Hldg., Inc.*, 562 B.R. 265, 280-81 (Bankr. D. Del. 2016) (finding creditor expectations were satisfied by partial substantive consolidation where, among other things, "[t]he lenders under these credit agreements received combined financial reports from the Debtors as to all obligors that were parties to the applicable credit agreements, and calculated financial covenant compliance based on the assets and liabilities of those entities").

A substantial amount of the Debtors' prepetition secured debt relates to loan and bond obligations on which multiple debtors are obligated. For example, all of the Debtors are obligated as co-borrowers or guarantors under the 2017 Bonds, the Lapis 2017 Loan and the Lapis 2019 Loan (collectively, the "Lapis Prepetition Obligations").

The Lapis Prepetition Obligations imposed joint and several liability on the Debtors, and the terms of the Lapis Prepetition Obligations only addressed the rights and obligations of the Debtors collectively, rather than on a Hospital-by-Hospital basis.

The terms of the postpetition adequate protection offered to the Lapis Prepetition Obligations are no different. The adequate protection approved by the Bankruptcy Court [*see* Docket Nos. 293, 1201] clearly contemplates the continued joint and several nature of the relief as follows:

- adequate protections liens are joint and several as to the Debtors; and
- adequate protection superpriority claims are joint and several as to the Debtors.

**ii.** The Debtors Negotiated Major Contracts and Agreements as a Single Economic Unit

After Astria's acquisitions of SHC–Yakima and SHC–Toppenish, major contracts and agreements were negotiated or entered-into on a system-wide basis, such that counterparties dealt with the Astria Health System as a single economic unit. The Debtors received benefits by negotiating collectively, such as better terms or pricing, which resulted from the greater economies of scale of the Astria Health System. In light of these benefits, the Debtors standardized system-level contracting that normalized pricing for contracts (including physician-related contracts) across all Hospitals. The Debtors' critical system-wide contracts and negotiations include:

- health insurance and retirement benefits;
- group purchasing order contracts;
- IT systems contracts; and
- other contracts.

The Debtors also have centralized management in place which allows the Debtors to operate as one integrated health system—the Astria Health System. The Debtors contract with AHM which provides information technology, management and other services system-wide.

In light of these facts, separate-entity plans would likely be contrary to the expectations of creditors that viewed their agreements with the Debtors as backed by the Astria Health System.

**b. The Debtors' Affairs Are So Entangled That Consolidation Will Benefit All Creditors**

Although the Debtors maintained certain separate formalities for each entity—or, more often, each entity group—as set forth in the Debtors' "first-day" motion to authorize continued use of its cash management system [Docket No. 22] (the "Cash Management Motion"), a more thorough analysis of the Debtors' finances and operations reveals significant interconnectivity, which would prove costly and time-consuming to unwind at the expense of recoveries in these Chapter 11 Cases. Accordingly, the interests of creditors are best served by deemed substantive consolidation. *See In re Bonham*, 229 F.3d 750, 766 (9th Cir. 2000) (citing *Augie/Restivo Baking Co., Ltd.*, 860 F.2d 515, 519 (2nd Cir. 1988)).

Here, there are also significant facts related to entangled affairs among the Debtors that weigh in favor of substantive consolidation. The Debtors engaged in the following complex, prepetition intercompany transfers (not always booked as intercompany transfers), combined accounting, valuation issues, and collective management that would prove difficult and costly to creditors to unwind or reconcile:

- Prior to its closure, SHC–Yakima operated cash-flow negative, exhausting the proceeds of the DIP Facility and then requiring transfers from the other Debtors.

- As noted in section IV.C.1 above, further described in the Cash Management Motion, and reflected in the Debtors' monthly operating reports (see section V.B.6 above), the Debtors engaged in extensive intercompany transfers.

- Decisions to hire physicians and determine contract terms are made through a consolidated health system process including legal and chief executive review.

Unwinding the transactions to prepare separate-Debtor plans would require time and allocations and assumptions. By way of example, prepetition and postpetition allocations by the Estates may be subject to challenge as follows:

- Professional fees must also be allocated among the Debtors if the Debtors cases are not consolidated. This task would require, for each time entry, an analysis of which Debtor, or Debtors, benefitted from the particular services. Although laborious, such an analysis directly impacts creditors if the cases are not consolidated given that Professional Claims receive priority treatment.

- The recent closure of SHC-Yakima severely limits any assumptions with respect to future operations based on the Debtors' historic operations. The Debtors capital structure also changed significantly during the Chapter 11 Cases—the Debtors incurred liabilities in the form of postpetition financing in excess of $36 million, which was used in part to pay off the Outstanding Prepetition Banner Bank Obligations and Outstanding Prepetition MidCap Obligations. The Debtors also continue to accrue unpaid interest on postpetition financing incurred.

Moreover, different asset valuation or liability allocation assumptions will lead to different results in both asset allocations among Debtors and balances available for distributions to creditors. Given that the analysis necessarily requires substantial judgment, these assumptions would present a basis for objection and conjecture from creditors attacking the Debtors' separate plans. Preserving funds in the Estates and avoiding litigation costs maximizes value and weighs in favor of substantive consolidation under the circumstances in these Chapter 11 Cases.

## N. Reservation of Fair and Equitable (Cram Down) Power

The Debtors reserve the right to confirm the Plan as to any impaired Class that does not accept the Plan by the requisite number of votes pursuant to the fair and equitable power of § 1129(b). However, the Committee disputes the Debtors' ability to confirm the Plan under § 1129(b).

## O. Treatment of Executory Contracts and Unexpired Leases

### 1. Assumption of Executory Contracts

#### a. Assumptions

On or before the Voting Deadline, Debtors will File the "Schedule of Assumed Agreements" and serve it on the parties to agreements listed on the schedule. Debtors reserve the right to amend the Schedule of Assumed Agreements at any time prior to the Voting Deadline to: (a) delete any Executory Contract from the Schedule of Assumed Agreements and provide for its rejection under the Plan or (b) add any Executory Contract and provide for its assumption under the Plan or otherwise, subject to the right of the counterparty to object to such transfer within ten Business Days after notice with a right to hearing thereon, and subject to the requirement that Debtor must reserve amounts for Disputed Cure Payments in the full amounts claimed by objecting contract counterparties. The Debtors shall not include any agreement in the Schedule of Assumed Agreements or otherwise seek to assume an agreement after the filing of the Plan except an agreement as to which AH System has consented to the assumption thereof or as to which the Debtors have given AH System not less than ten (10) Business Days' notice that it intends to assume or list the agreement on the Schedule of Assumed Agreements and AH System has not given the Debtors' written notice that it opposes the assumption thereof.

On the Effective Date, Debtors will assume all Executory Contracts set forth on the Schedule of Assumed Agreements. The Confirmation Order will constitute a Court order approving the assumption, as of the Effective Date, of the Executory Contracts not rejected under the Plan, subject to the requirement that Debtors must reserve amounts for Disputed Cure Payments in the full amounts claimed by objecting contract counterparties to contracts to be assumed.

#### b. Cure Payments

Any monetary amounts by which each Executory Contract to be assumed is in default shall be satisfied, pursuant to § 365(b)(l), by payment from the Administrative and Priority Claims Reserve, of the default amount (as set forth in the Debtors' books and records), a schedule of which will be Filed and served by the Voting Deadline, in full in Cash on the later of the Effective Date or when such Cure Claim is Allowed, or on such other terms as the parties to each such Executory Contract may otherwise agree. In these Chapter 11 Cases, prior to Confirmation of the Plan, some known Cure Payments will have already been paid or resolved by stipulation or agreement. In the event of a dispute regarding (a) the amount of any Cure Payments, (b) the ability of Reorganized Debtors to provide "adequate assurance of future performance" (within the meaning of § 365) under the contract or lease to be assumed, or (c) any other matter pertaining to assumption, the cure payments required by § 365(b)(1) shall be made following the entry of a Final Order resolving the dispute and approving the assumption. Pending the Court's ruling on such motion, the Executory Contract at issue shall be deemed assumed by Reorganized Debtors as of the Effective Date, unless otherwise ordered by the Court, and the Debtors will reserve amounts for Disputed Cure Payments in the full amounts claimed by objecting contract counterparties.

**c. Objections to Assumption**

Any Entity who is a party to an Executory Contract that will be assumed under the Plan must File with the Court and serve upon interested parties a written statement and supporting declaration stating the basis for any objection to assumption by no later than seven (7) days after the filing of the Schedule of Assumed Agreements ("**Assumption Objections**"). Any Entity that fails to timely File and serve such a statement and declaration will be deemed to waive any and all objections to the proposed assumption of its contract or lease. Debtors must file and serve its reply with respect to any Assumption Objections by no later than five (5) days after the filing of an Assumption Objection. A hearing on the Assumption Objections will take place at the Confirmation Hearing, or as soon thereafter as the Court is available.

In the absence of a timely objection by an Entity who is a party to an Executory Contract, the Confirmation Order shall constitute a conclusive determination as to the amount of any cure and compensation due under the Executory Contract, and that Reorganized Debtors have demonstrated adequate assurance of future performance with respect to such Executory Contract.

**d. Resolution of Claims Relating to Assumed Agreements**

In accordance with the procedures set forth in Plan Section IV relating to the Cure Payments and objections to assumption, payment of the Cure Payments with respect to Executory Contracts that will be assumed under the Plan shall be deemed to satisfy, in full, any prepetition or postpetition arrearage or other Claim asserted in a Filed proof of Claim or listed in the Schedules, irrespective of whether the Cure Payment is less than the amount set forth in such proof of Claim or the Schedules. Upon the tendering of the Cure Payment, such Claim shall be Disallowed, without further order of the Court or action by any party.

**2. Rejection of Executory Contracts**

**a. Rejected Agreements**

Immediately prior to the Effective Date, all Executory Contracts of the Debtors will be deemed rejected in accordance with the provisions and requirements of §§ 365 and 1123 except those Executory Contracts that (i) have been assumed by order of the Bankruptcy Court, (ii) are subject to a motion to assume pending on the Effective Date, or (iii) have been identified on a list of assumed contracts to be filed with the Bankruptcy Court prior to the Voting Deadline, which shall be a date prior to the Effective Date of the Plan. The Confirmation Order will constitute a Court order approving such rejections of Executory Contracts as of the Effective Date pursuant to §§ 365 and 1123.

**b. Bar Date for Rejection Damages**

Any Claim for damages arising from the rejection under the Plan of an Executory Contract must be Filed and served upon counsel to the Debtors within 30 days after the entry of an order (including the Confirmation Order) approving such rejection. Any such Claims that are not timely Filed and served will be forever barred and unenforceable against the Debtors, the Estates, the Reorganized Debtors, and their respective property, and Entities holding these Claims will be barred from receiving any distribution under the Plan on account of such untimely claims.

**3. Postpetition Contracts and Leases**

Except as set forth in the Schedule of Rejected Agreements or as otherwise expressly provided in the Plan or the Confirmation Order, all contracts, leases, and other agreements that Debtors entered into after Petition Date will be assumed by Reorganized Debtors.

**4. Indemnification Obligations**

Subject to the occurrence of the Effective Date, the obligations of the Debtors as of the Effective Date to indemnify, defend, reimburse, or limit the liability of the current and former officers, employees, attorneys, other professionals and agents of the Debtors, and such current and former officers', employees', attorneys', other professionals' and agents' of the Debtors, and such current respective Affiliates, respectively, against any Claims or Causes of Action under the Indemnification Provisions or applicable law, shall survive Confirmation, shall be assumed by the Debtors and assigned to the Reorganized Debtors and will remain in effect after the Effective Date if such indemnification, defense, reimbursement, or limitation is owed in connection with an event occurring before the Effective Date; provided, however, that, notwithstanding anything herein to the contrary, the obligation of the Reorganized Debtors to fund such Indemnification Provisions shall be limited to the extent of coverage available under any Reorganized Debtor Insurance Policies.

**5. Lapis Parties Fees and Expenses**

As an integral component of the Senior Debt 9019 Settlement, to the extent not previously paid prior to the Effective Date or in connection with the Plan, the fees and expenses of each of the Lapis Parties shall be deemed Allowed Administrative Expenses and shall be paid in Cash on the Effective Date.

**P. Procedures for Resolving Contingent, Unliquidated, and Disputed Claims**

**1. Resolution of Disputed Claims**

**a. Allowance of Claims**

Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Reorganized Debtors, shall have and shall retain any and all rights and defenses that the Debtors had with respect to any Claim, except with respect to any Claim deemed Allowed as of the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code or the Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Cases allowing such Claim.

With respect to a Claim, to the extent that: (a) any Claim, a proof of Claim of which was timely Filed by the applicable Claims Bar Date, Supplemental Bar Date or Administrative Claims Bar Date (or a Claim for which a Proof of Claim is not required to be Filed under the Plan, the Bankruptcy Code, or a Final Order of the Court); (b) any Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; or (c) any Claim allowed pursuant to the Plan or Final Order of the Court; provided, that with respect to any Claim described in clause (a) above, such Claim shall be considered Allowed only if and to the extent that no objection to the allowance of such Claim has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or Court, or if such an objection is so interposed and the Claim shall have been Allowed by a Final Order; provided, further, that the Debtors or the Reorganized Debtors, as applicable, may affirmatively determine to allow any Claim described in clause (a) notwithstanding the fact that the period within which an objection may be interposed has not yet expired; or (c) a Claim that is not Disputed. Unless otherwise specified in the Plan, an Allowed Claim does not include interest on the Claim accruing after Petition Date. Moreover, all or any portion of a Claim that is satisfied or released during the Chapter 11 Cases is not an Allowed Claim.

**b. Prosecution of Objections to Claims**

Prior to the Effective Date, the Debtors, and on or after the Effective Date, the Reorganized Debtors and Litigation Trustee shall have the authority to File objections to Claims, and the exclusive authority to settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtors' Estates to any and all Claims, except with respect to any Claim deemed Allowed as of the Effective Date. From and after the Effective Date, the Reorganized Debtors shall have the sole authority to administer and adjust the Claims Register with respect to Claims to reflect any such settlements or compromises and no further notice to or action, order, or approval of the Court with respect to such settlements or compromises shall be required.

**c. Claims Estimation**

On and after the Effective Date, the Reorganized Debtors may, at any time, request that the Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, in each case regardless of whether the Debtors or the Reorganized Debtors have previously objected to such Claim or whether the Court has ruled on any such objection, and the Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Court to estimate any such Disputed Claim, contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection.

Notwithstanding any provision otherwise in the Plan to the contrary, a Claim that has been expunged from the Claims Register but that is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Court. In the event that the Court estimates any Disputed Claim, contingent Claim, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under the Plan, including for purposes of distributions, and the Reorganized Debtors may elect to pursue additional objections to the ultimate distribution on such Claim. If the estimated amount constitutes a maximum limitation on such Claim, the Reorganized Debtors may elect to pursue any supplemental proceedings to object to any ultimate distribution on account of such Claim. Notwithstanding § 502(j), in no event shall any Holder of a Claim that has been estimated pursuant to § 502(c) or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before 21 days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Court.

**d. Expungement or Adjustment to Claims Without Objection**

Any Claim that has been paid, satisfied, or superseded may be expunged on the Claims Register by the Reorganized Debtors (or the Claims and Noticing Agent at the Reorganized Debtors' direction), and any Claim that has been amended may be adjusted thereon by the Reorganized Debtors without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Court.

**e. Deadline to File Objections to Claims**

Any objections to Claims shall be Filed no later than the Claims Objection Bar Date.

**2. Disallowance of Claims**

Any Claim, or any portion thereof, is Disallowed and shall be expunged without further

action by the Debtors and without further notice to any party or action, approval, or Order of the Court, to the extent that it (i) has been disallowed by Final Order or settlement; (ii) is scheduled at zero or as contingent, disputed, or unliquidated on the Schedules and as to which a Claims Bar Date, Supplemental Bar Date or Administrative Claims Bar Date has been established but no Proof of Claim has been timely Filed or deemed timely Filed with the Court pursuant to either the Bankruptcy Code or any Final Order of the Court, including the Claims Bar Date Order, Supplemental Bar Date Order or Administrative Claims Bar Date Order or otherwise deemed timely Filed under applicable law; or (iii) is not scheduled on the Schedules and as to which a Claims Bar Date, Supplemental Bar Date or Administrative Claims Bar Date has been established but no Proof of Claim has been timely Filed or deemed timely Filed with the Court pursuant to either the Bankruptcy Code or any Final Order of the Court, including the Claims Bar Date Order, Claims Bar Date Order, Supplemental Bar Date Order or Administrative Claims Bar Date Order or otherwise deemed timely Filed under applicable law.

To the maximum extent provided by § 502(d), except as otherwise provided in the Plan, all Claims of any Entity from which property is recoverable by the Litigation Trustee under §§ 542, 543, 550, or 553 or that the Litigation Trustee alleges is a transferee of a transfer that is avoidable under § 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) shall be Disallowed if (a) the Entity, on the one hand, and the Litigation Trustee, on the other hand, agree or it has been determined by Final Order that such Entity or transferee is liable to turnover any property or monies under any of the aforementioned sections of the Bankruptcy Code, and (b) such Entity or transferee has failed to turnover such property by the date set forth in such agreement or Final Order.

**3. Amendments to Claims**

After the Confirmation Date, a Claim may not be filed or amended without the authorization of the Court and any such new or amended Claim Filed shall be deemed Disallowed and expunged without any further notice to or action, order, or approval of the Court; provided, that such Holder may amend the Claim Filed solely to decrease, but not to increase, the amount, number, or priority of such Claim, unless otherwise provided by the Court.

**4. No Interest**

Unless otherwise specifically provided for in the Plan, by applicable law (including, without limitation, § 506(b)), or agreed to by, as applicable, the Debtors or the Reorganized Debtors, interest shall not accrue or be paid on any Claim, and no Holder of any Claim shall be entitled to interest accruing on and after the Petition Date on account of any Claim. Without limiting the foregoing, interest shall not accrue or be paid on any Claim after the Effective Date to the extent the final distribution paid on account of such Claim occurs after the Effective Date.

**Q. Jurisdiction**

**1. Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Court shall retain jurisdiction over the Chapter 11 Cases and all matters arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to:

a) Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or Allowance of Claims; provided that, for the avoidance of doubt, the Court's retention of

jurisdiction with respect to such matters shall not preclude the Debtors or the Reorganized Debtors, as applicable, from seeking relief from any other court, tribunal, or other legal forum of competent jurisdiction with respect to such matters;

b) decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to professionals authorized pursuant to the Bankruptcy Code or the Plan;

c) resolve any matters related to (i) the assumption or assumption and assignment of any Executory Contract to which a Debtor is a party or with respect to which a Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract, cure costs pursuant to § 365, or any other matter related to such Executory Contract; and (ii) any dispute regarding whether a contract or lease is or was executory or unexpired;

d) adjudicate controversies, if any, with respect to distributions to Holders of Allowed Claims;

e) adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

f) adjudicate, decide, or resolve any and all matters related to Causes of Action;

g) adjudicate, decide, or resolve any and all matters related to § 1141;

h) enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

i) enforce any order for the sale of property pursuant to §§ 363, 1123, or 1146(a);

j) resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

k) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

l) resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, discharges, releases, injunctions, exculpations, and other provisions contained in Section VII and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

m) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

n) determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement;

o) adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

p) adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective date, including the WSNA Adversary Proceeding, SBA Adversary Proceeding, and YHMA Adversary Proceeding;

q) consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Court order, including the Confirmation Order;

r) determine requests for the payment of Claims entitled to priority pursuant to § 507;

s) hear and determine matters concerning state, local, and federal taxes in accordance with §§ 346, 505, and 1146 (including the expedited determination of taxes under § 505(b));

t) hear and determine matters concerning exemptions from state and federal registration requirements in accordance with § 1145;

u) hear and determine all disputes involving the existence, nature, or scope of the release provisions set forth in the Plan, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

v) enforce all orders previously entered by the Court;

w) hear any other matter not inconsistent with the Bankruptcy Code;

x) enter an order concluding or closing the Chapter 11 Cases; and

y) enforce the compromise, settlement, injunction, release, and exculpation provisions set forth in Section VII of the Plan.

**2. Consent to Jurisdiction**

All creditors who have filed claims in the Chapter 11 Cases shall be deemed to have consented to the jurisdiction of the Bankruptcy Court for purposes of the Causes of Action.

**R. Effect of Confirmation of Plan**

**1. Discharge**

The Plan is a reorganization plan. The rights afforded in the Plan and the treatment of all Claims shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever arising prior to the Effective Date, including any interest accrued on such Claims from and after the Petition Date (except as otherwise ordered by the Court), against the Debtors, the Estates and their property.

Except as otherwise provided in the Plan or the Confirmation Order or in any Executory Contract assumed by Debtors during the Chapter 11 Cases (including, without limitation, the Debtors' indemnification obligations thereunder), the Plan and Confirmation Order shall: (a) on the Effective Date, discharge and release the Debtors, the Estate, the Reorganized Debtors, and

their property to the fullest extent permitted by §§ 524 and 1141 from all Claims, including all debts, obligations, demands, liabilities, and Claims that arose before the Effective Date, and all debts of the kind specified in §§ 502(g), 502(h), or 502(i), regardless of whether or not (i) a proof of Claim based on such debt is Filed or deemed Filed, (ii) a Claim based on such debt is allowed pursuant to § 502, or (iii) the Holder of a Claim based on such debt has or has not accepted the Plan; (b) void any judgment underlying a Claim discharged hereunder; and (c) preclude all Entities from asserting against the Debtors, the Estate, the Reorganized Debtors, or their respective property any Claims based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date. To the extent any Claim is paid other than under the Plan, Debtors will be deemed discharged and released with respect to such Claim and such Claim and shall not receive a distribution under the Plan.

Except as otherwise provided in the Plan or the Confirmation Order, or as provided in contracts assumed during the Case and Debtor's indemnification obligations thereunder, on and after the Effective Date, all Entities who have held, currently hold, or may hold a debt or Claim against the Debtors, the Estate, the Reorganized Debtors, or their respective property that is based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, that otherwise arose or accrued prior to the Effective Date, or that is otherwise discharged pursuant to the Plan, shall be permanently enjoined from taking any of the following actions on account of any such discharged debt, Claim, (the "**Permanent Injunction**"): (a) commencing or continuing in any manner any action or other proceeding against the Debtors, the Estate, the Reorganized Debtors, or their respective property that is inconsistent with the Plan or the Confirmation Order; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors, the Estate, the Reorganized Debtors, or their respective property other than as specifically permitted under the Plan, as approved by the Confirmation Order; (c) creating, perfecting, or enforcing any lien or encumbrance against the Debtors, the Estate, the Reorganized Debtors, or their respective property; and (d) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan, the Confirmation Order, or the discharge provisions of § 1141. Any Entity injured by any willful violation of such Permanent Injunction shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages, from the willful violator.

### 2. Compromise and Settlement of Claims and Controversies

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete settlement, compromise, and release, effective as of the Effective Date, of Claims, and Causes of Action of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, including, but not limited to, all known or unknown liabilities of, Liens on, obligations of, rights against the Debtor or any of its assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims relate to services performed by employees of the Debtor before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in § 502(g), (h), or (i), in each case whether or not: (a) a Proof of Claim based upon such debt, right, or interest is Filed or deemed Filed pursuant to § 501; (b) a Claim based upon such debt, right, or interest is Allowed pursuant to § 502; or (c) the Holder of such a Claim has accepted the Plan. Any default by the Debtor or its Affiliates with respect to any Claim that existed immediately before or on account of the filing of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the settlement, compromise, and release of all Claims, subject to the Effective Date occurring.

**3. Release of Liens**

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released, settled, and compromised and all rights, titles, and interests of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall revert or otherwise transfer to the Reorganized Debtors or the Liquidation Trust, as applicable, and their successors and assigns. For the avoidance of doubt, this section (and the corresponding Section VII.C of the Plan) shall not apply to DIP Claims, Senior Secured Bond Claims, or Senior Secured Credit Agreement Claims.

**4. Subordinated Claims**

The allowance, classification, and treatment of all Allowed Claims and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, § 510(b), or otherwise. Except with respect to Allowed Claims, pursuant to § 510, the Debtors reserve the right for the Debtors or the Reorganized Debtors, as applicable, to re-classify, upon approval by the Court, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto.

**5. Exculpation**

The Exculpated Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with the Chapter 11 Cases, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, or implementing the Plan or consummating the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Reorganized Debtors or liquidation of the Liquidating Debtors. Without limiting the foregoing "Exculpation" provided under Plan Section VII.E, the rights of any Holder of a Claim to enforce rights arising under the Plan shall be preserved, including the right to compel payment of distributions in accordance with the Plan; provided, that the foregoing "Exculpation" shall have no effect on the liability of any Entity solely to the extent resulting from any such act or omission that is determined in a final order to have constituted gross negligence or willful misconduct; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement. The exculpation of the Lapis Parties is an integral component of the Senior Debt 9019 Settlement.

**6. Releases**

The Plan provides for certain releases, as described more fully below. As used below, and in the Plan, "**Released Parties**" means (a) the Debtors, (b) the Debtors' current and former officers, directors, managers and executive committee members, (c) the Lapis Parties, (d) the Committee and the Committee Members, and (e) each of the forgoing Entities' respective predecessors, successors and assigns, subsidiaries, Affiliates and their subsidiaries, beneficial owners, managed accounts or funds, current and former officers, directors, principals, shareholders, direct and indirect equity holders, members partners (general and limited), employees, agents, advisory board members, financial advisors, attorneys accountants, investment bankers, consultants, representatives, management companies, fund advisors,

Professionals, and other professionals; provided, that as a condition to receiving or enforcing any release granted pursuant to Section VII.F.2 of the Plan, each Released Party and its Affiliates shall be deemed to have released the Releasing Parties, the Estate, and the Debtors from any and all Claims or Causes of Action arising from or related to their relationship with the Debtors, but not, for the avoidance of doubt, Professional Fee Claims or rights to enforce the Plan. For the avoidance of doubt, and notwithstanding anything herein to the contrary, in no event shall an Entity that appropriately marks a Ballot to opt out of the third party release provided in Section VII.F.2 of the Plan and returns such Ballot in accordance with the Solicitation Procedures Order be a Released Party, except that a member of the Committee who either holds a Claim that has opted out of the Third Party Release or represents a Claim that has opted out of the Third Party Release shall be a Released Party only in his or her capacity as a member of the Committee. Furthermore, "**Releasing Party**" means all Holders of Claims and the Released Parties. (a) the Released Parties; and (b) all Holders of Claims that (i) vote to accept the Plan, and (ii) do not affirmatively opt out of the third party release provided by Section VII.F.2 of the Plan pursuant to a duly executed Ballot; provided, that, notwithstanding anything contained herein to the contrary, in no event shall an Entity that (x) does not vote to accept or reject the Plan, (y) votes to reject the Plan, or (z) appropriately marks the Ballot to opt out of the third party release provided in Section VII.F.2 of the Plan and returns such Ballot in accordance with the Solicitation Procedures Order, be a Releasing Party.

The Committee questions the scope of these releases and opposes them to the extent that (i) they release parties (including the Debtors' directors and officers) for conduct not related to the chapter 11 plan process or (ii) they are offered (a) without justification, (b) for no apparent consideration, and/or (c) without a full and complete investigation into the merits of the released claims.

**a. Debtors' Releases**

The Plan provides for the following releases of the Debtors:

ON THE EFFECTIVE DATE OF THE PLAN AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY WILL BE EXPRESSLY, UNCONDITIONALLY, GENERALLY AND INDIVIDUALLY AND COLLECTIVELY RELEASED, ACQUITTED AND DISCHARGED BY THE DEBTORS ON BEHALF OF THEMSELVES, THEIR ESTATES, THE REORGANIZED DEBTORS, THE LITIGATION TRUST AND THE LIQUIDATION TRUST (SUCH THAT THE REORGANIZED DEBTORS, THE LITIGATION TRUST AND THE LIQUIDATION TRUST WILL NOT HOLD ANY CLAIMS OR CAUSES OF ACTION RELEASED PURSUANT TO THE PLAN, FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, FROM ANY AND ALL ACTIONS, CLAIMS, DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTOR, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, MATURED OR UNMATURED, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT OR OTHERWISE, BY STATUTE, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, ANY OF THE DEBTORS' PRESENT OR FORMER ASSETS, THE RELEASED PARTIES' INTERESTS IN OR MANAGEMENT OF THE DEBTORS, THE PLAN, THE DISCLOSURE STATEMENT, THIS CHAPTER 11 CASE, OR ANY RESTRUCTURING OF CLAIMS UNDERTAKEN PRIOR TO THE EFFECTIVE DATE, INCLUDING THOSE THAT THE DEBTORS, THE REORGANIZED DEBTORS, THE LITIGATION TRUST, OR THE LIQUIDATION TRUST WOULD HAVE BEEN LEGALLY

ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST THE DEBTOR OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTORS OR THEIR ESTATES INCLUDING WITH RESPECT TO THE LAPIS PARTIES ANY CHALLENGE TO CLAIMS AND RIGHTS OF THE LAPIS PARTIES UNDER THE BOND DOCUMENTS AND CREDIT AGREEMENT DOCUMENTS; *PROVIDED, HOWEVER*, THAT THE FOREGOING "DEBTORS' RELEASES" SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CLAIMS OR CAUSES OF ACTION OF THE DEBTORS OR THEIR ESTATES AGAINST A RELEASED PARTY ARISING UNDER ANY CONTRACTUAL OBLIGATION OWED TO THE DEBTORS THAT IS ENTERED INTO OR ASSUMED PURSUANT TO THE PLAN.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTORS RELEASES, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND, FURTHER, SHALL CONSTITUTE THE COURT'S FINDING THAT THE DEBTORS RELEASES ARE: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTORS' RELEASES; (3) IN THE BEST INTERESTS OF THE DEBTORS' ESTATES AND ALL HOLDERS OF CLAIMS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR AGAINST ANY OF THE DEBTORS' ESTATES, THE REORGANIZED DEBTORS, THE LITIGATION TRUST, OR THE LIQUIDATION TRUST, ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE DEBTORS' RELEASES.

THE FOREGOING RELEASE AS TO THE LAPIS PARTIES IS AN INTEGRAL COMPONENT OF THE SENIOR DEBT 9019 SETTLEMENT.

**b. Third Party Releases**

The Plan further provides for the following nondebtor releases:

ON THE EFFECTIVE DATE OF THE PLAN AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, THE RELEASING PARTIES SHALL BE DEEMED TO HAVE EXPRESSLY, UNCONDITIONALLY, GENERALLY AND INDIVIDUALLY AND COLLECTIVELY, RELEASED AND ACQUITTED THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY (INCLUDING THE RELEASED PARTIES' PREDECESSORS, SUCCESSORS AND ASSIGNS, SUBSIDIARIES, AFFILIATES, MANAGED ACCOUNTS OR FUNDS, CURRENT AND FORMER OFFICERS, DIRECTORS, PRINCIPALS, SHAREHOLDERS, DIRECT AND INDIRECT EQUITY HOLDERS, MEMBERS, PARTNERS (GENERAL AND LIMITED), EMPLOYEES, AGENTS, ADVISORY BOARD MEMBERS, FINANCIAL ADVISORS, ATTORNEYS, ACCOUNTANTS, INVESTMENT BANKERS, CONSULTANTS, REPRESENTATIVES, MANAGEMENT COMPANIES, FUND ADVISORS AND OTHER PROFESSIONALS) AND THE RELEASED PARTIES FROM ANY AND ALL ACTIONS, CLAIMS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTOR, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, MATURED OR UNMATURED, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT OR OTHERWISE, THAT SUCH HOLDER (WHETHER INDIVIDUALLY OR COLLECTIVELY) EVER HAD, NOW HAS OR HEREAFTER CAN, SHALL OR MAY HAVE, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, ANY OF THE DEBTORS' PRESENT OR FORMER ASSETS, THE RELEASED PARTIES' INTERESTS IN OR MANAGEMENT OF THE DEBTORS, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED

PARTY, THE PLAN, THE DISCLOSURE STATEMENT, THESE CHAPTER 11 CASES, OR ANY RESTRUCTURING OF CLAIMS UNDERTAKEN PRIOR TO THE EFFECTIVE DATE, INCLUDING THOSE THAT THE DEBTORS, THE REORGANIZED DEBTORS, THE LITIGATION TRUST, OR THE LIQUIDATION TRUST WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST THE DEBTORS OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTORS OR THEIR ESTATES, EXCEPT FOR (I) ANY CLAIMS AND CAUSES OF ACTION FOR ACTUAL FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND (II) THE RIGHT TO RECEIVE DISTRIBUTIONS FROM THE DEBTORS, THE REORGANIZED DEBTORS, THE LITIGATION TRUST, OR THE LIQUIDATION TRUST ON ACCOUNT OF AN ALLOWED CLAIM AGAINST THE DEBTORS PURSUANT TO THE PLAN. FOR THE AVOIDANCE OF DOUBT, THE RELEASING PARTIES SHALL INCLUDE (A) THE RELEASED PARTIES, AND (B) ALL HOLDERS OF CLAIMS THAT (I) VOTE TO ACCEPT THE PLAN, AND (II) DO NOT AFFIRMATIVELY OPT OUT OF THE THIRD PARTY RELEASE PROVIDED BY SECTION VII.F.2 OF THE PLAN PURSUANT TO A DULY EXECUTED BALLOT. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL AN ENTITY THAT (X) DOES NOT VOTE TO ACCEPT OR REJECT THE PLAN, (Y) VOTES TO REJECT THE PLAN, OR (Z) APPROPRIATELY MARKS THE BALLOT TO OPT OUT OF THE THIRD PARTY RELEASE PROVIDED IN SECTION VII.F.2 OF THE PLAN AND RETURNS SUCH BALLOT IN ACCORDANCE WITH THE SOLICITATION PROCEDURES ORDER, BE A RELEASING PARTY.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND, FURTHER, SHALL CONSTITUTE THE COURT'S FINDING THAT THE THIRD PARTY RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE THIRD PARTY RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS AND ALL HOLDERS OF CLAIMS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM RELEASED PURSUANT TO THE THIRD PARTY RELEASE.

NOTWITHSTANDING ANY PROVISION IN THE PLAN, THERE SHALL BE NO RELEASE OR EXCULPATION BY OR INJUNCTION AGAINST ANY COMMITTEE MEMBER HOLDING A CLAIM OR REPRESENTING A CLAIMANT THAT HAS OPTED OUT OF THE THIRD PARTY RELEASE OR HAS NOT VOTED ON THE PLAN, EXCEPT SOLELY IN SUCH COMMITTEE MEMBER'S CAPACITY AS SUCH.

THE FOREGOING RELEASE AS TO THE LAPIS PARTIES IS AN INTEGRAL COMPONENT OF THE SENIOR DEBT 9019 SETTLEMENT. PURSUANT TO § 1123(B)(3)(A) AND THE SENIOR DEBT 9019 SETTLEMENT, AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH HOLDER OF ANY CLAIM SHALL BE DEEMED TO FOREVER RELEASE, WAIVE, AND DISCHARGE ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION, AND LIABILITIES WHATSOEVER, AGAINST THE LAPIS PARTIES ARISING FROM OR RELATED TO THE LAPIS PARTIES' PRE AND/OR POSTPETITION ACTIONS, OMISSIONS OR LIABILITIES, TRANSACTION, OCCURRENCE, OR OTHER ACTIVITY OF ANY NATURE EXCEPT FOR AS PROVIDED IN THIS PLAN OR THE CONFIRMATION ORDER.

**7. Injunction**

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS, CAUSES OF ACTION, OR LIABILITIES THAT: (1) ARE SUBJECT TO COMPROMISE AND SETTLEMENT PURSUANT TO THE TERMS OF THE PLAN; (2) HAVE BEEN RELEASED PURSUANT TO SECTION VII.F.1 OF THE PLAN; (3) HAVE BEEN RELEASED PURSUANT TO SECTION VII.F.2 OF THE PLAN; (4) ARE SUBJECT TO EXCULPATION PURSUANT TO SECTION VII.E OF THE PLAN; OR (5) ARE OTHERWISE STAYED OR TERMINATED PURSUANT TO THE TERMS OF THE PLAN, ARE PERMANENTLY ENJOINED AND PRECLUDED, FROM AND AFTER THE EFFECTIVE DATE, FROM: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, INCLUDING ON ACCOUNT OF ANY CLAIMS, CAUSES OF ACTIONS, OR LIABILITIES THAT HAVE BEEN COMPROMISED OR SETTLED AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE LITIGATION TRUST, THE LIQUIDATION TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF ANY ENTITY, DIRECTLY OR INDIRECTLY, SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, CAUSES OF ACTION, OR LIABILITIES; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE LITIGATION TRUST, THE LIQUIDATION TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, CAUSES OF ACTION, OR LIABILITIES; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN, CLAIM, OR ENCUMBRANCE OF ANY KIND AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE LITIGATION TRUST, THE LIQUIDATION TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, CAUSES OF ACTION, OR LIABILITIES; (D) ASSERTING ANY RIGHT OF SETOFF OR SUBROGATION OF ANY KIND AGAINST ANY OBLIGATION DUE FROM THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATES OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, CAUSES OF ACTION, OR LIABILITIES UNLESS SUCH ENTITY HAS TIMELY ASSERTED SUCH SETOFF OR SUBROGATION RIGHT PRIOR TO CONFIRMATION IN A DOCUMENT FILED WITH THE COURT EXPLICITLY PRESERVING SUCH SETOFF OR SUBROGATION; AND (E) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE LITIGATION TRUST, THE LIQUIDATION TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, CAUSES OF ACTION, OR LIABILITIES RELEASED, SETTLED, OR COMPROMISED PURSUANT TO THE PLAN; PROVIDED THAT NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE AN ENTITY FROM OBTAINING BENEFITS DIRECTLY AND EXPRESSLY PROVIDED TO SUCH ENTITY PURSUANT TO THE TERMS OF THE PLAN OR THE SALE ORDER; PROVIDED, FURTHER, THAT NOTHING CONTAINED IN THE PLAN SHALL BE CONSTRUED TO PREVENT ANY ENTITY FROM DEFENDING AGAINST CLAIMS OBJECTIONS OR

COLLECTION ACTIONS WHETHER BY ASSERTING A RIGHT OF SETOFF OR OTHERWISE TO THE EXTENT PERMITTED BY LAW.

**8. Waiver of Statutory Limitations on Releases**

EACH RELEASING PARTY IN EACH OF THE RELEASES CONTAINED IN THE PLAN (INCLUDING UNDER SECTION VII.H OF THE PLAN) EXPRESSLY ACKNOWLEDGES THAT ALTHOUGH ORDINARILY A GENERAL RELEASE MAY NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE PARTY RELEASED, THEY HAVE CAREFULLY CONSIDERED AND TAKEN INTO ACCOUNT IN DETERMINING TO ENTER INTO THE ABOVE RELEASES THE POSSIBLE EXISTENCE OF SUCH UNKNOWN LOSSES OR CLAIMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH RELEASING PARTY EXPRESSLY WAIVES ANY AND ALL RIGHTS CONFERRED UPON IT BY ANY STATUTE OR RULE OF LAW WHICH PROVIDES THAT A RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CLAIMANT DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE RELEASED PARTY. THE RELEASES CONTAINED IN SECTION VII.H OF THE PLAN ARE EFFECTIVE REGARDLESS OF WHETHER THOSE RELEASED MATTERS ARE PRESENTLY KNOWN, UNKNOWN, SUSPECTED OR UNSUSPECTED, FORESEEN OR UNFORESEEN.

**9. Setoffs**

Except as otherwise provided in the Plan, prior to the Effective Date, the Debtors, and on and after the Effective Date, the Reorganized Debtors, the Litigation Trustee or the Liquidation Trustee, as applicable, pursuant to the Bankruptcy Code (including §§ 553 and 558), applicable nonbankruptcy law, or as may be agreed to by the Holder of a Claim, may set off against any Allowed Claim on account of any Proof of Claim or other pleading Filed with respect thereto prior to the Confirmation Hearing and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any claims, rights, and Causes of Action of any nature that the Debtor's Estate may hold against the Holder of such Allowed Claim, to the extent such claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Debtors, the Reorganized Debtors, the Litigation Trustee or the Liquidation Trustee, as applicable, of any such claims, rights, and Causes of Action that the Debtors' Estates may possess against such Holder. In no event shall any Holder of Claims be entitled to set off any Claim against any claim, right, or Cause of Action of the Debtor's Estate unless such Holder has timely Filed a Proof of Claim (including any Proof of Claim timely Filed by the Governmental Bar Date) with the Court expressly preserving such setoff; provided that nothing in the Plan shall prejudice or be deemed to have prejudiced the Debtors', the Reorganized Debtors', the Litigation Trustee's or the Liquidation Trustee's right to assert that any Holder's setoff rights were required to have been asserted by motion or pleading filed with the Court prior to the Effective Date, or any such Holder's right to assert that there was no such requirement.

**10. Revesting of Property in the Debtors**

Except as provided in the Plan or in the Exchange Debt Documents, the Confirmation of the Plan revests the assets of the Estate in the Reorganized Debtors, free and clear of all Claims, liens, encumbrances, except as expressly provided in the Plan. From and after the Effective Date, Reorganized Debtors may operate their business and use, acquire and dispose of property without

supervision by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and the Confirmation Order.

**11. Preservation of Restricted Funds for Charitable Purposes**

Pursuant to § 1123(b) and all other applicable law and subject to consent of the Washington Attorney General, the Reorganized Debtors shall be vested with and shall retain any and all restricted funds formerly held by Debtors. All such funds shall be held in charitable trust and may be used only for the restricted purposes permitted under applicable law. The Debtors are not aware of any restricted funds.

**12. Modification of Plan**

Subject to such notice as the Bankruptcy Court may require, the Debtors may, with the prior written consent of the Lapis Parties, modify the Plan at any time before Confirmation, if circumstances develop that warrant modification or amendment to the Plan.

However, the Bankruptcy Court may require a new disclosure statement and/or re-voting on the Plan if the Debtors materially modify the Plan before Confirmation. The Debtors may also seek to modify the Plan at any time after Confirmation so long as (1) the Plan has not been substantially consummated and (2) if the Court authorizes the proposed modifications after notice and a hearing.

**13. Dissolution of Committee**

No later than the Effective Date, the Committee shall be dissolved, and shall be released and discharged from the rights and duties arising from or related to the Chapter 11 Cases, except with respect to final applications for professionals' compensation. The professionals retained by the Committee and the Committee Members thereof shall not be entitled to compensation or reimbursement of expenses for any services rendered or expenses incurred after the Effective Date, except for services rendered and expenses incurred in connection with any applications by such professionals or Committee Members for allowance of compensation and reimbursement of expenses pending on the Effective Date or timely Filed after the Effective Date as provided in the Plan, as approved by the Court.

**14. Post-Confirmation Status Report**

Within 120 days of the entry of the order confirming the Plan, the Debtors (if the Effective Date has not occurred) or Reorganized Debtors (if it has) shall file a status report with the Court explaining what progress has been made toward Consummation of the confirmed Plan. The status report shall be served on the U.S. Trustee, the twenty largest unsecured creditors, and those parties who have requested special notice. Further status reports shall be filed every 120 days and served on the same Entities.

**15. Quarterly Fees**

Quarterly fees accruing under 28 U.S.C. § 1930(a)(6) to date of Confirmation shall be paid to the U.S. Trustee on or before the Effective Date of the Plan. Quarterly fees accruing under 28 U.S.C. § 1930(a)(6) after Confirmation shall be paid by the Litigation Trustee to the U.S. Trustee in accordance with 28 U.S.C. § 1930(a)(6) and the Litigation Trust Agreement until entry of a final decree, or entry of an order of dismissal or conversion to chapter 7.

**16. Post-Confirmation Conversion/Dismissal**

A creditor or party in interest may bring a motion to convert or dismiss the Chapter 11

Cases under § 1112(b), after the Plan is confirmed, if there is a default in performing the Plan. If the Court orders the Chapter 11 Cases converted to Chapter 7 after the Plan is confirmed, then all property that had been property of the Chapter 11 Estate, and that has not been disbursed pursuant to the Plan, will revest in the Chapter 7 Estate, and the automatic stay will be reimposed upon the revested property only to the extent that relief from stay was not previously granted by the Court during these Chapter 11 Cases.

The Confirmation Order may also be revoked under very limited circumstances. The Court may revoke the order if the Confirmation Order was procured by fraud and if the party in interest brings an adversary proceeding to revoke Confirmation within 180 days after the entry of the Confirmation Order.

### 17. Final Decree

Once the Estates have been fully administered as referred to in Bankruptcy Rule 3022, the Reorganized Debtors, or such other party as the Court shall designate in the Confirmation Order, shall file a motion with the Court to obtain a final decree to close the Chapter 11 Cases.

## VII.
## ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

The Plan Proponents believe the Plan is in the best interests of the Creditors and should accordingly be accepted and confirmed. If the Plan as proposed, however, is not confirmed, the following three alternatives may be available to the Debtors: (i) a liquidation of the Debtors' Assets pursuant to chapter 7 of the Bankruptcy Code; (ii) an alternative plan of reorganization and liquidation may be proposed and confirmed; or (iii) the Debtors' Chapter 11 Cases may be dismissed.

### A. Chapter 7 Liquidation

If a plan pursuant to chapter 11 of the Bankruptcy Code is not confirmed by the Bankruptcy Court, the Debtors' Chapter 11 Cases may be converted to a liquidation case under chapter 7 of the Bankruptcy Code, in which case a trustee would be elected or appointed, pursuant to applicable provisions of chapter 7 of the Bankruptcy Code, to liquidate the Assets of the Debtors for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtors believe that such a liquidation would result in smaller distributions being made to the Debtors' Creditors than those provided for in the Plan because (a) the likelihood that other Assets of the Debtors would have to be sold or otherwise disposed of in a less orderly fashion, (b) additional administrative expenses attendant to the appointment of a trustee and the trustee's employment of attorneys and other professionals, (c) additional expenses and Claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of leases and other executory contracts. The Debtors have determined that confirmation of the Plan will provide each Holder of an Allowed Claim with a recovery that is not less than such Holder would receive pursuant to liquidation of the Debtors under chapter 7 of the Bankruptcy Code. However, the Committee disputes that the Holders of Class 4 General Unsecured Claims will not receive less they would in a liquidation under chapter 7 on the ground that the Debtors' liquidation analysis overlooks significant potential sources of value, including potential causes of action against the Debtors' revenue cycle vendor.

### B. Alternative Plan Pursuant to Chapter 11 of the Bankruptcy Code

If the Plan is not confirmed, the Debtors may propose a different plan, which might involve an alternative means for the reorganization or liquidation of the Debtors' Assets. However, it is difficult to speculate on or assess the terms and potential treatment of Allowed Claims under any such alternative plan. Furthermore, for the Debtors and/or Creditors to

formulate, solicit and confirm any such alternative plan would likely require the Estates to incur additional administrative and other expenses, may substantially delay distributions to Creditors, and may result in lower recoveries to Creditors than the proposed Plan. The Plan Proponents believe that the terms of the Plan provide for an orderly and efficient administration of the Debtors' Assets and will result in the realization of the most value for Holders of Claims against the Debtors' Estates; however, the Committee disputes this position.

### C. Dismissal of the Debtors' Chapter 11 Cases

Dismissal of the Debtors' Chapter 11 Cases would have the effect of restoring (or attempting to restore) all parties to the *status quo ante*. Upon dismissal of the Debtors' Chapter 11 Cases, the Debtors would lose the protection of the Bankruptcy Code, thereby requiring, at the very least, an extensive and time-consuming process of negotiation with the various creditors of the Debtors, and possibly resulting in costly and protracted litigation in various jurisdictions. Dismissal would also permit unpaid unsecured creditors to obtain and enforce judgments against the Debtors. The Debtors believe that these actions could lead ultimately to the liquidation of the Debtors' Assets under chapter 7 of the Bankruptcy Code. Therefore, the Debtors believe that dismissal of the Chapter 11 Cases is not a preferable alternative to the Plan.

## VIII.
## CERTAIN MATERIAL FEDERAL TAX CONSEQUENCES

THE FOLLOWING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN MATERIAL U.S. FEDERAL TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FOLLOWING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH HOLDER IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE APPLICABLE U.S. FEDERAL, STATE, LOCAL, AND NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

### A. General

The following discussion summarizes certain material U.S. federal income tax consequences to the Debtors, the Liquidation Trust, the Litigation Trust, and Holders entitled to vote on the Plan. This discussion is based on current provisions of the IRC, applicable Treasury Regulations, judicial authority and current administrative rulings and pronouncements of the Internal Revenue Service (the "**Service**"). There can be no assurance that the Service will not take a contrary view, no ruling from the Service has been or will be sought nor will any counsel be asked to provide a legal opinion as to any of the expected tax consequences set forth below.

Legislative, judicial or administrative changes or interpretations may be forthcoming that could alter or modify the statements and conclusions set forth herein. Any such changes or interpretations may or may not be retroactive and could affect the tax consequences to Holders of Claims, the Liquidation Trust, the Litigation Trust, or the Debtors. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences described herein.

The following summary is for general information only. The tax treatment of a Holder may vary depending upon such Holder's particular situation. This summary does not address all of the tax consequences that may be relevant to a Holder, including any consequences of the alternative minimum tax or net investment income tax, and does not address the tax consequences to a Holder that has made an agreement to resolve its claim in a manner not explicitly provided for in the Plan. This summary also does not address the U.S. federal income tax consequences to

persons not entitled to vote on the Plan or to Holders subject to special treatment under the U.S. federal income tax laws, such as brokers or dealers in securities or currencies; persons that use the accrual method of accounting and report income on an "applicable financial statement"; certain securities traders; tax-exempt or government entities; persons that have ceased to be U.S. citizens or lawful permanent residents of the United States; financial institutions; insurance companies; partnerships and other pass-through entities; Holders that have a "functional currency" other than the United States dollar; and Holders that have acquired Claims in connection with the performance of services. This summary addresses the tax United States federal tax treatment only of a United States person, defined as a Holder that is, for U.S. federal income tax purposes: (i) an individual citizen or resident of the United States; (ii) a corporation created or organized under the laws of the United States, any state thereof or the District of Columbia; (iii) an estate the income of which is subject to U.S. federal income tax without regard to its source or (iv) a trust if either a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or the trust has validly elected to be treated as a domestic trust for U.S. federal income tax purposes. The following summary assumes that all Claims denominated as indebtedness are properly treated as debt for U.S. federal income tax purposes.

The tax treatment of Holders and the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan may vary, depending upon, among other things: (i) whether the Claim (or portion thereof) constitutes a Claim for principal or interest; (ii) the type of consideration received by the Holder in exchange for the Claim and whether the Holder receives distributions under the Plan in more than one taxable year; (iii) whether the Holder is a citizen or resident of the United States for tax purposes, is otherwise subject to U.S. federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv) the manner in which the Holder acquired the Claim; (v) the length of time that the Claim has been held; (vi) whether the Claim was acquired at a discount; (vii) whether the Holder has taken a bad debt deduction with respect to the Claim (or any portion thereof) in the current or prior years; (viii) whether the Holder has previously included in income accrued but unpaid interest with respect to the Claim; (ix) the method of tax accounting of the Holder; (x) whether the Claim is an installment obligation for U.S. federal income tax purposes; and (xi) whether the "market discount" rules are applicable to the Holder. Therefore, each Holder should consult its tax advisor for information that may be relevant to its particular situation and circumstances, and the particular tax consequences to such Holder of the transactions contemplated by the Plan.

## B. U.S. Federal Income Tax Consequences to the Debtors

### 1. In General

The Debtors are not-for-profit corporations that are exempt from federal income taxation under Section 501(c)(3) of the IRC. It is intended that nothing in the Plan shall adversely affect the tax-exempt status of the Debtors. Accordingly, the Debtors do not expect the implementation of the Plan to have any adverse federal income tax consequences on the Debtors before or after the Effective Date. If the tax-exempt status of the Debtors would terminate, the Debtors may be subject to tax on their income, which would reduce the amount of distributions payable to the Holders of Claims. This summary assumes that that the Debtors are and will continue to be exempt from federal income tax under Section 501 of the IRC.

Organizations that are otherwise exempt from federal income tax under Section 501 of the IRC are nevertheless subject to tax on their "unrelated business taxable income" ("**UBTI**"). UBTI is generally defined as gross income from any unrelated trade or business regularly carried on by a tax-exempt entity less any deductions attributable thereto. An unrelated trade or business consists of any trade or business the conduct of which is not substantially related to the organization's exempt purpose or function.

UBTI includes unrelated debt-financed income ("**UDFI**"). UDFI includes income derived from debt-financed property during the taxable year and may include income derived from a sale or other disposition of debt-financed property if there was acquisition indebtedness outstanding with respect to such property during the 12-month period ending with the date of sale or other disposition. Acquisition indebtedness generally includes any debt incurred directly or indirectly to purchase such property. Thus, to the extent that a tax-exempt directly or indirectly (including through an investment in a partnership or other entity (or arrangement) which is treated as a pass-through entity for federal income tax purposes) has income from a trade or business, or earns income in respect of certain leveraged investments, a tax-exempt partner's allocable share of such income generally will be treated as UBTI.

If the Debtors retain their tax-exempt status and any of their assets are regarded as UDFI (which generally would not include property substantially all the use of which is substantially related to the exercise or performance by the Debtors of the purpose or function constituting the basis for its tax-exempt status), the Debtors may be subject to tax on a percentage of the income (including gain) derived from such assets.

**2. Gain or Loss on Sale or Exchange**

Under the IRC, a taxpayer must recognize and include in gross income gain on the sale or exchange of assets equal to the excess of the amount realized therefrom over the adjusted basis of the assets. The transfer of assets, in payment and discharge of recourse indebtedness is treated as a sale or exchange of such assets.

Each Debtor is exempt from U.S. federal income taxation under section 501(c)(3) of the IRC. Gain realized and recognized in a transfer of assets in payment and discharge of recourse indebtedness would be exempt from U.S. federal income taxation.

Each Debtor is also subject to tax on UBTI. Gain on the sale of assets other than (a) property subject to depreciation recapture, or (b) property includable in inventory or held primarily for sale to customers in the ordinary course of an unrelated trade or business is excluded from UBTI under the IRC. Gain on the sale of assets includable in inventory or held primarily for sale to customers is included in UBTI, and is subject to tax.

In addition, gain on the sale or exchange of debt-financed property is included in UDFI, and so includable in UBTI, and subject to tax.

**3. Cancellation of Debt Income**

Under the IRC, a taxpayer generally must include in gross income the amount of any cancellation of indebtedness ("**COD**") income recognized during the taxable year. COD income generally equals the excess of the adjusted issue price of the indebtedness discharged over the sum of (i) the amount of cash, (ii) the issue price of any new debt, and (iii) the fair market value of any other property transferred by the debtor in satisfaction of such discharged indebtedness (including stock). COD income also includes any interest that has been previously accrued and deducted but remains unpaid at the time the indebtedness is discharged.

The IRC permits a debtor in bankruptcy to exclude its COD income from gross income if the discharge occurs in a bankruptcy case ("**Bankruptcy Exception**") or to the extent that the debtor is insolvent at the time of the discharge ("**Insolvency Exception**"), either of which should apply to exclude any COD income from taxation in these Chapter 11 Cases.

The same analysis applies to UBTI and UDFI. Income excluded from gross income under the Bankruptcy Exception or Insolvency Exception for income tax purposes is also excluded from gross income for UBTI and UDFI purposes. Accordingly, either the Bankruptcy Exception or the

Insolvency Exception should apply to exclude any UBTI or UDFI from taxation.

### C. U.S. Federal Income Tax Treatment with Respect to the Plan Trusts

The Debtors shall file copies of the Plan Trust Agreements prior to the hearing on the Disclosure Statement. The Plan Trust Agreements will provide additional information concerning the U.S. federal income tax treatment of the Plan Trusts.

### D. U.S. Federal Income Tax Treatment with Respect to Holders of Allowed Claims that Are Beneficiaries of the Plan Trusts

Holders of Allowed Claims as of the Effective Date that are Beneficiaries of either Plan Trust should be treated as receiving from the Debtors their respective shares of the applicable assets of the applicable Plan Trust in satisfaction of their Allowed Claims, and simultaneously transferring such assets to the applicable Plan Trust. Accordingly, a Holder of such Claim should generally recognize gain or loss in an amount equal to the amount deemed realized on the Effective Date (as described above) less its adjusted tax basis of its Claim. Additionally, such Holders should generally recognize their allocable share of income, gain, loss and deductions recognized by the applicable Plan Trust on an annual basis.

Because a Holder's ultimate share of the assets of the applicable Plan Trust based on its Allowed Claim will not be determinable on the Effective Date due to, among other things, the existence of Disputed Claims and the value of the assets at the time of actual receipt not being ascertainable on the Effective Date, such Holder should recognize additional or offsetting gain or loss if, and to the extent that, the aggregate amount of cash and fair market value of the assets of the applicable Plan Trust ultimately received by such Holder is greater than or less than the amount used in initially determining gain or loss in accordance with the procedures described in the preceding paragraph. It is unclear when a Holder of an Allowed Claim that is a beneficiary of a Plan Trust should recognize, as an additional amount received for purposes of computing gain or loss, an amount attributable to the disallowance of a Disputed Claim.

The character of any gain or loss as capital gain or loss or ordinary income or loss and, in the case of capital gain or loss, as short-term or long-term, will depend on a number of factors, including: (i) the nature and origin of the Claim; (ii) the tax status of the Holder of the Claim; (iii) whether the Claim has been held for more than one year; (iv) the extent to which the Holder previously claimed a loss or bad debt deduction with respect to the Claim; and (v) whether the Claim was acquired at a market discount. A Holder that purchased its Claim from a prior Holder at a market discount may be subject to the market discount rules of the IRC. Under those rules (subject to a *de minimis* exception), assuming that such Holder has made no election to accrue the market discount and include it in income on a current basis, any gain recognized on the exchange of such Claim generally would be characterized as ordinary income to the extent of the accrued market discount on such Claim as of the date of the exchange.

It is possible that the IRS may assert that any loss should not be recognizable until the respective Plan Trustee makes its final distribution of the assets of the applicable Plan Trust. Holders should consult their tax advisors regarding the possibility that the recognition of gain or loss may be deferred until the final distribution of the assets of the applicable Plan Trust.

Although not free from doubt, Holders of Disputed Claims should not recognize any gain or loss on the date that the applicable Plan Trust Assets are transferred to the applicable Plan Trust, but should recognize gain or loss in an amount equal to: (i) the amount of cash and the fair market value of any other property actually distributed to such Holder less (ii) the adjusted tax basis of its Claim. It is possible, however, that such Holders may be required to recognize the fair

market value of such Holder's allocable share of the applicable Plan Trust Assets, as an amount received for purposes of computing gain or loss, either on the Effective Date or the date such Holder's Claim becomes an Allowed Claim.

Holders of Allowed Claims will be treated as receiving a payment of interest (includible in income in accordance with the Holder's method of accounting for tax purposes) to the extent that any cash or other property received (or deemed received) pursuant to the Plan is attributable to accrued but unpaid interest, if any, on such Allowed Claims. The extent to which the receipt of cash or other property should be attributable to accrued but unpaid interest is unclear. The Debtors and the Plan Trustees intend to take the position, and the Plan provides, that such cash or property distributed pursuant to the Plan will first be allocable to the principal amount of an Allowed Claim and then, to the extent necessary, to any accrued but unpaid interest thereon. Each Holder should consult its tax advisor regarding the determination of the amount of consideration received under the Plan that is attributable to interest (if any). A Holder generally will be entitled to recognize a loss to the extent any accrued interest was previously included in its gross income and is not paid in full.

### E. Tax Withholding and Information Reporting

Distributions to Holders of Allowed Claims are subject to applicable tax withholding. Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then-applicable withholding rate (currently 24%). Backup withholding generally applies if the holder (a) fails to furnish its social security number or other taxpayer identification number, (b) furnishes an incorrect taxpayer identification number, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the tax identification number provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax, and may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding. Holders of Allowed Claims are urged to consult their tax advisors regarding the Treasury Regulations governing backup withholding and the extent to which the transactions contemplated by the Plan would be subject to these Treasury Regulations.

In addition, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these Treasury Regulations and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations and require disclosure on the holder's tax returns.

## IX.
## RISK FACTORS IN CONNECTION WITH THE PLAN

The Holders of Claims against the Debtors should read and carefully consider the following risk factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith), before deciding whether to vote to accept or reject the Plan. These risk factors should not, however, be regarded as constituting the only risks associated with the Plan and its implementation.

### A. Bankruptcy Considerations

Although the Plan Proponents believe that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, the Committee disputes this, and there can be no assurance that the Bankruptcy Court will confirm the Plan as proposed. Moreover, there can be no assurance that modifications of the Plan will not be required for confirmation or that such

modifications would not necessitate the re-solicitation of votes.

In addition, the occurrence of the Effective Date is conditioned on the satisfaction of the conditions precedent set forth in the Plan, and there can be no assurance that such conditions will be satisfied. In the event the conditions precedent described in the Plan have not been satisfied as of the Effective Date, then the Confirmation Order will be vacated, no Distributions will be made pursuant to the Plan, and the Debtors and all Holders of Claims will be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred.

Section 1122 provides that a plan may place a claim in a particular class only if such claim or equity interest is substantially similar to the other claims in such class. The Plan Proponents believe that the classification of Claims under the Plan complies with the requirements set forth in the Bankruptcy Code because each Class of Claims encompass Claims, as applicable, that are substantially similar to the other Claims in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

The liquidation of certain Assets and the prosecution of certain Causes of Action may result in the availability of additional assets for distribution pursuant to the Plan's terms. The potential recoveries from any such actions, and the outcomes of the Adversary Proceedings are unknown. In addition, there can be no assurance that the Litigation Trust assets will be sufficient to pay the fees and expenses of the Litigation Trustee or make any distributions to the Litigation Trust Beneficiaries.

As to each Impaired Class that has not accepted the Plan, the Plan may be confirmed if the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to these Classes. The Plan Proponents believe that the Plan satisfies these requirements. Nevertheless, the Committee disputes that the Plan is "fair and equitable" with respect to Class 4, there can be no assurance that the Bankruptcy Court will reach the same conclusion as the Plan Proponents.

**B. No Duty to Update Disclosures**

The Plan Proponents have no duty to update the information contained in this Disclosure Statement as of the date hereof, unless otherwise specified herein, or unless the Plan Proponents are required to do so pursuant to an order of the Bankruptcy Court. Delivery of the Disclosure Statement after the date hereof does not imply that the information contained herein has remained unchanged.

**C. Representations Outside this Disclosure Statement**

This Disclosure Statement contains representations concerning or related to the Debtors and the Plan that are authorized by the Bankruptcy Code and the Bankruptcy Court. Please be advised that any representations or inducements made outside this Disclosure Statement and any related documents which are intended to secure your acceptance or rejection of the Plan should not be relied upon by Holders of Claims that are entitled to vote to accept or reject the Plan.

**D. No Admission**

The information and representations contained herein shall not be construed to constitute an admission of, or be deemed evidence of, any legal effect of the Plan on the Plan Proponents, the Plan Trustees, ~~or~~ Holders of Claims, or the Committee.

## E. Tax and Other Related Considerations

A discussion of potential tax consequences of the Plan is set forth in this Disclosure Statement. However, the content of this Disclosure Statement is not intended and should not be construed as tax, legal, business or other professional advice. Holders of Claims should seek advice from their own independent tax, legal and other professional advisors based on their own individual circumstances.

# X.
# RECOMMENDATION AND CONCLUSION

The Plan Proponents believe the Plan provides the best available alternative for maximizing the recoveries that Creditors may receive from the Estates. Therefore, the Plan Proponents recommend that all Creditors that are entitled to vote on the Plan vote to accept the Plan.

Dated: ~~July 7~~August [*], 2020

DENTONS US LLP

By: */s/ Samuel R. Maizel*
Samuel R. Maizel
Sam J. Alberts
Geoffrey M. Miller

Counsel to the *Debtors and Debtors In Possession*

Dated: ~~July 7~~August [*], 2020

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

By: */s/ William Kannel*
William Kannel
Ian A. Hammel

Counsel to the *Lapis Parties*

| Comparison Details | |
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| Title | **compareDocs Comparison Results** |
| Date & Time | 7/29/2020 12:42:45 PM |
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| compareDocs version | v4.3.300.65 |

| Sources | |
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| Modified Document | [#7391526] [v4] Astria - Draft Disclosure Statement(114451991_11).docx |

| Comparison Statistics | |
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| Update Automatic Links at Open | Word | [Yes / No] |
| Summary Report | Word | End |
| Include Change Detail Report | Word | Separate |
| Document View | Word | Print |
| Remove Personal Information | Word | False |
| Flatten Field Codes | Word | True |

# Exhibit B

The Official Committee of Unsecured
Creditors of Astria Health, *et al.*

c/o Sills Cummis & Gross P.C.
One Riverfront Plaza
Newark, NJ 07102

and

Polsinelli PC
1000 Second Avenue, Suite 3500
Seattle, WA 98104

August [*], 2020

To: All Unsecured Creditors of Astria Health, *et al.*

Re: In re Astria Health, *et al.*, Case No. 19-01189-11 (Bankr. E.D. Wash.)

Dear General Unsecured Creditors:

The Official Committee of Unsecured Creditors (the "Committee") of Astria Health and its affiliated debtors and debtors-in-possession (the "Debtors") submits this letter to all general unsecured creditors concerning their consideration of whether to vote in favor of the *Joint Chapter 11 Plan of Reorganization of Astria Health and Its Debtor Affiliates* [Docket No. 1471] (the "Plan"). The Plan is described in, and attached as an exhibit to, the accompanying *Disclosure Statement Relating to the Joint Chapter 11 Plan of Reorganization of Astria Health and Its Affiliates* [Docket No. 1472] (the "Disclosure Statement").[1]

**BASED ON THE FACTS AND CIRCUMSTANCES CURRENTLY KNOWN TO THE COMMITTEE, THE COMMITTEE DOES NOT SUPPORT THE PLAN, INCLUDING THE PLAN'S TREATMENT OF GENERAL UNSECURED CREDITORS THEREIN, AND URGES ALL GENERAL UNSECURED CREDITORS TO VOTE TO REJECT THE PLAN**

**BEFORE VOTING ON THE PLAN, THE COMMITTEE RECOMMENDS THAT GENERAL UNSECURED CREDITORS REVIEW THE DOCKET IN THESE CASES AVAILABLE AT HTTPS://KCCLLC.NET/ASTRIAHEALTH**

While the Committee supports a process that results in continuity of care, the maintenance of vital healthcare services, and the preservation of local jobs, it does not support the Plan as currently proposed. Under the Plan, the Debtors have allocated substantially all of the Debtors' distributable value for the benefit of their secured creditors while allocating only a *pro rata* share of any proceeds of the estates' avoidance actions under chapter 5 of the Bankruptcy Code to the

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Disclosure Statement or the Plan, as applicable.

general unsecured creditors (Class 4 under the Plan). Based upon previous statements and information provided by the Debtors, the Committee believes the distributable value of the Debtors' assets may exceed the amount of the Debtors' secured debt by an amount sufficient to make a distribution to the holders of general unsecured claims in an amount greater than provided for in the Plan.

In addition to the Plan's failure to properly allocate value to general unsecured creditors, the Plan provides broad releases for the Debtors' current and former officers and directors for conduct not related to the chapter 11 approval process. The Committee believes that the releases which address conduct not related to the chapter 11 approval process are being offered with no justification, for no apparent consideration, and without a full and complete investigation into their merits.

Further explanation of the Committee's concerns regarding the Plan and the Committee's recommendation to vote to reject the Plan can be found in the Committee's limited objection to the approval of the Disclosure Statement [Docket No. ___], which is available upon request to the undersigned counsel or at https://kcclcc.net/astria.

**In light of the Plan's defects and the information the Committee has received to date, the Committee believes that the current Plan is <u>NOT</u> in the best interests of the Debtors' general unsecured creditors. In view of the foregoing, the Committee recommends that all general unsecured creditors <u>VOTE AGAINST</u> the Plan by indicating your rejection of the Plan on the ballot that you will receive from the Debtors. Your vote to <u>REJECT</u> the Plan is crucial regardless of the size of your claim.**

Notwithstanding the Committee's views, before you cast your ballot, you should review the enclosed Plan, the Disclosure Statement, and the exhibits to the Disclosure Statement in their entirety, the Committee's limited objection to the Disclosure Statement, and consult your own legal and financial professionals. This letter is not intended or offered as legal advice as to any specific claim or the treatment of any such claim under the Plan. It has been prepared for informational purposes only.

**YOU ARE URGED TO CAREFULLY READ THE DISCLOSURE STATEMENT AND PLAN. THE DESCRIPTION OF THE PLAN IN THIS LETTER IS INTENDED TO BE ONLY A SUMMARY FOR INFORMATIONAL PURPOSES.**

By this letter, the Committee is expressing its opposition to the Plan; however, this letter does not necessarily reflect the views of any individual Committee member, each of which reserves any and all of its rights.

**THIS COMMUNICATION DOES NOT CONSTITUTE, AND SHALL NOT BE CONSTRUED AS, A SOLICITATION BY ANY INDIVIDUAL MEMBER OF THE COMMITTEE.**

If you have any questions regarding voting procedures or otherwise, please contact counsel to the Committee, Andrew H. Sherman, Esq. and Boris I. Mankovetskiy, Esq. at (973) 643-7000, or Jane E. Pearson, Esq. at (206) 393-5415.

Very truly yours,

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ASTRIA HEALTH, ET AL.