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 In Possession*

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

IN RE:

ASTRIA HEALTH, et al.,

Debtors and Debtors in  
 Possession.<sup>1</sup>

Chapter 11

Lead Case No. 19-01189-11

Jointly Administered

**DEBTORS' APPLICATION FOR ENTRY OF  
 AN ORDER AUTHORIZING EMPLOYMENT  
 OF PIPER JAFFRAY & CO., AS  
 INVESTMENT BANKER TO THE DEBTORS  
 NUNC PRO TUNC TO JULY 2, 2019**

<sup>1</sup> 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).

PIPER JAFFRAY & CO.  
 EMPLOYMENT APPLICATION

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1 **APPLICATION**

2 Astria Health (“Astria”) and the above-referenced affiliated debtors  
3 (collectively, the “Debtors”), the debtors and debtors in possession in the above-  
4 captioned chapter 11 bankruptcy cases (collectively, the “Chapter 11 Cases”),  
5 hereby file the Debtors’ *Application for Entry of an Order Authorizing Employment*  
6 *of Piper Jaffray & Co. as Investment Banker to the Debtors Nunc Pro Tunc to July*  
7 *2, 2019* (this “Application”), pursuant to § 327(a) of title 11 of the United States  
8 Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”),<sup>2</sup> Bankruptcy  
9 Rules 2014 and 2016(a), and LBR 2014-1, with compensation approved under §  
10 328(a). In support of this Application, the Debtors further state as follows:

11 **I.**  
12 **RELIEF REQUESTED**

13 Pursuant to this Application, the Debtors seek entry of an order, pursuant to  
14 §§ 327(a) and 328(a), Bankruptcy Rule 2014(a) and LBR 2014-1, authorizing the

15 <sup>2</sup> All references to “§” or “sections” herein are to sections of title 11 of the United  
16 States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”). All references  
17 herein to “Bankruptcy Rules” are to provisions of the Federal Rules of Bankruptcy  
18 Procedure. All references to “LBR” are to provisions of the Local Rules for the  
19 United States Bankruptcy Court for the Eastern District of Washington (the  
20 “Court”).

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1 employment and retention of Piper Jaffray & Co. ("Piper Jaffray"), as investment  
2 banker to the Debtors in connection with the prosecution of these Chapter 11 Cases,  
3 *nunc pro tunc* to July 2, 2019, as supported by the declaration of Teri Stratton (the  
4 "Stratton Declaration"), attached hereto, and in accordance with the terms set forth  
5 in the Letter of Engagement, dated as of July 2, 2019, by and between the Debtors  
6 and Piper Jaffray (the "Engagement Letter"), attached hereto as **Exhibit A.**<sup>3</sup>  
7 Specifically, Piper Jaffray will assist the Debtors in reviewing the Debtors'  
8 business, operations, and financial projections, using that information to evaluate  
9 possible refinancing, recapitalization or other similar transactions, and assisting the  
10 Debtors in soliciting and evaluating proposals for, and negotiating the terms of, exit  
11 financing. Exit financing in this case is necessary to provide liquidity for  
12 distributions required under a plan of reorganization, refinancing existing  
13 indebtedness, and providing the funds necessary to support the post-emergence  
14 business plan.

## 15 **II.** 16 **JURISDICTION**

17 This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

18 <sup>3</sup> Copies of the Engagement Letter were previously provided to the Official  
19 Committee of Unsecured Creditors, JMB Capital Partners Lending, LLC, Lapis  
20 Advisers, LP and UMB Bank, N.A.

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Venue for these Chapter 11 Cases and this Application is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This Application constitutes a core proceeding pursuant to 28 U.S.C. § 157(b).

### **III.** **STATEMENT OF FACTS**

1. On May 6, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. These Chapter 11 Cases are currently being jointly administered before this Court. [Docket No. 10]. The Debtors are operating their businesses as debtors in possession pursuant to §§1107 and 1108.

2. Debtor Astria, a Washington nonprofit corporation, is the direct or indirect corporate member of several entities that make it the largest non-profit healthcare system based in Eastern Washington. The Astria system is headquartered in the heart of Yakima Valley, Washington, with operating hospitals in Yakima, Sunnyside, and Toppenish, Washington.

3. The Astria system includes three hospitals: Astria Regional Medical Center, a 214-bed hospital in Yakima, Washington (“Yakima”); Astria Sunnyside Hospital, a 38-bed critical access hospital in Sunnyside, Washington (“Sunnyside”); and Astria Toppenish Hospital, a 63-bed hospital in Toppenish, Washington (“Toppenish,” and referred to collectively with Sunnyside and Yakima as the “Hospitals”). In addition to collectively having 315 licensed beds, the Hospitals

1 have three active emergency rooms and a host of medical specialties. The Astria  
2 system also has outpatient Astria Health Centers (14 medical clinics and 24  
3 specialty clinics), the Ambulatory Surgical Center, Astria Hearing and Speech, and  
4 Astria Home Health and Hospice.

5 4. The Astria system provides medical treatments to approximately  
6 346,400 patients annually, including approximately 7,344 who spend at least one  
7 night in its Hospitals during the year. Astria's necessity to the health and welfare of  
8 the people of the Yakima Valley is evidenced by several facts, including having the  
9 only open-heart surgery, neurosurgery, and elective cardiac catheterization  
10 programs in Yakima County; the only hospitals in Sunnyside and Toppenish,  
11 Washington; and the only obstetric services in the Lower Valley (both at Sunnyside  
12 and Toppenish).

13 5. The system employs approximately 1,547 employees (making it one of  
14 the largest employers in the Yakima Valley), plus an additional 172 contract  
15 personnel, and approximately 600 doctors have privileges at the Hospitals.

16 6. On May 24, 2019 the Office of the United States Trustee (the "U.S.  
17 Trustee") appointed an Official Committee of Unsecured Creditors in these Chapter  
18 11 Cases.

19 7. The Debtors will require exit financing to allow them to propose a  
20 chapter 11 plan of reorganization. The Debtors need the assistance of an

1 investment banker to solicit and obtain that exit financing. Given the deadlines set  
2 forth in the terms of the Debtor in Possession financing, retention of an investment  
3 banker now is essential.

4 7. Additional background facts on the Debtors, including an overview of  
5 the Debtors' business, information on the Debtors' capital structure, and events  
6 leading up to these Chapter 11 Cases, are contained in the *Declaration of John M.*  
7 *Gallagher in Support of Emergency First-Day Motions*, filed May 6, 2019 [Docket  
8 No. 21] (the "First Day Declaration").

9  
10 **IV.**  
**SERVICES TO BE RENDERED**

11 8. The employment of Piper Jaffray is appropriate and necessary to  
12 enable the Debtors to execute their duties as debtors and debtors in possession and  
13 effect their reorganization efforts, which includes obtaining exit financing to allow  
14 them to propose a plan of reorganization. Subject to further order of this Court,  
15 Piper Jaffray is prepared to render the following services in these Chapter 11 Cases  
16 as investment banker to the Debtors:<sup>4</sup>

17  
18 <sup>4</sup> To the extent there is any inconsistency between the summary of the Fee Structure  
19 set forth in this Application and the Fee Structure as set forth in the Engagement  
20 Letter, the terms of the Engagement Letter, as modified by any order of this Court,

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- 1 i. Financing Services. Provide advice and assistance to the Debtors in  
2 connection with any of the following (each, a “Financing”): a private  
3 issuance, sale or placement of debt securities, instruments or  
4 obligations of the Debtors with one or more lenders and/or investors,  
5 or any loan or other financing;  
6  
7 ii. Restructuring Services. Provide advice and assistance to the Debtors  
8 in connection with any recapitalization, modification, amendment or  
9 restructuring of the Debtors’ debt securities and/or other indebtedness  
10 (any of the foregoing, a “Restructuring”);  
11  
12 iii. Bond Issuance Services. Provide advice and assistance to the Debtors  
13 in connection with an underwriting of Series 2019 Health Care  
14 Facilities Revenue Bonds to effect a refinancing of all outstanding debt  
15 and fund new capital purchases on a taxable or tax-exempt with gross  
16 proceeds of approximately \$100-120 million (the “Bond Issuance”);  
17  
18 iv. A Bond Issuance, a Financing and a Restructuring are each and  
19 collectively hereinafter referred to as a “Transaction.” In connection  
20 with any Transaction, Piper Jaffray will also provide the following  
21 services to the Debtors, as deemed appropriate and necessary by the  
Debtors: Familiarize itself with the business, operations, properties,  
financial condition and prospects of the Debtors; review the Debtors’  
financial condition and outlook; assist the Debtors in their  
development of financial data; present to the Debtors’ Board of  
Directors and creditors, as requested by the Debtors; analyze the  
Debtors’ financial liquidity and evaluate alternatives to improve such  
liquidity; evaluate the Debtors’ debt capacity and alternative capital  
structures; and provide such other advisory services as are customarily  
provided, as requested and mutually agreed.

Subject to the terms of the Engagement Agreement and further order  
of the Court, the Debtors expect that Piper Jaffray will be required to  
perform the following tasks to assist the Debtors in obtaining exit  
Financing: (a) preparing an information memorandum describing the

shall control. Capitalized terms used but not otherwise defined herein shall have  
the meanings ascribed to such terms in the Engagement Letter.

Debtors, their historical performance and prospects, including existing contracts, marketing and sales, labor force, management, and financial projections; (b) assisting the Debtors in compiling a data room of any necessary and appropriate documents related to the refinancing; (c) assisting the Debtors in developing a list of suitable potential refinancing entities who will be contacted on a discreet and confidential basis after approval by the Debtors and updating and reviewing such list with the Debtors on an ongoing basis; (d) coordinating the execution of confidentiality agreements for potential financing entities wishing to review the information memorandum; (e) assisting the Debtors in coordinating site visits for interested refinancing entities and working with the management team to develop appropriate presentations for such visits; (f) soliciting competitive offers from potential refinancing entities; (g) advising and assisting the Debtors in structuring any financing and negotiating the financing documents; and (h) otherwise assisting the Debtors and its other professionals, as necessary through closing of a refinancing on a best efforts basis.

9. It is necessary for the Debtors to employ Piper Jaffray to render the foregoing professional services. Therefore, the Debtors have requested that Piper Jaffray perform the services set forth herein and, subject to this Court's approval of this Application, Piper Jaffray has stated its desire, willingness, and ability to act in these Chapter 11 Cases and to render such professional services as investment banker to the Debtors.

## **V.**

### **QUALIFICATIONS AND SELECTION OF PIPER JAFFRAY**

10. Piper Jaffray is an international investment banking and financial advisory firm, with twenty-nine (29) offices worldwide and more than 1,000 employees. Piper Jaffray provides corporate finance and investment banking



1 services, as well as execution capabilities, in a variety of areas, including financial  
2 restructuring. Piper Jaffray is one of the leading advisors and investment bankers to  
3 troubled companies, both inside and outside of bankruptcy, as well as to their  
4 bondholders, banks, other secured and unsecured creditors, official creditor  
5 committees, acquirers, equity sponsors, and other parties in interest involved with  
6 financially challenged companies. Piper Jaffray's Restructuring and Special  
7 Situations Group has professionals dedicated to providing restructuring and other  
8 financial advisory services. The professionals of Piper Jaffray's Restructuring and  
9 Special Situations Group have advised on over 100 transactions, valued in excess of  
10 \$200 billion.

11 11. Piper Jaffray is recognized for its expertise in providing investment  
12 banking and financial advisory services in financially distressed situations and has  
13 served a number of reorganization, workout, and bankruptcy clients in several  
14 industries across the United States. Piper Jaffray has extensive experience in  
15 structuring transactions and conducting mergers and acquisitions processes in a  
16 financially distressed context. Some in- and out-of-court transactions completed by  
17 Piper Jaffray or its current restructuring personnel over the past fifteen (15) years  
18 include Egalet Corporation, Synergy Pharmaceuticals, Willowood USA, RM  
19 Holdco LLC, Aerosoles Group, Arhaus Furniture, Quintana Energy Services, Ignite  
20 Restaurant Group, Central Grocers, Pyote Water Systems, Sotera Wireless, Garden

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1 Fresh Restaurant Corporation, Rotary Drilling Tools, Malibu Lighting Corporation,  
2 Golden County Foods, Mi Pueblo San Jose, C&K Markets, Solavei, Eurofresh,  
3 Neogenix Oncology, Barneys New York, Chef Solutions, Brooks Food Group,  
4 Loehmann's Inc., Accuride Corp., Claim Jumper, Sun World International, Custom  
5 Food Holdings, Hoop Retail, J.T. Packard, Brown & Cole Stores, Larry's Markets,  
6 Select Snacks, Chi-Chi's, Mercury Plastics, Enron Corp., W.R. Grace & Co., Levitz  
7 Furniture, Safety-Kleen, and Edwards Theatres, as well as numerous private  
8 transactions. Piper Jaffray was specifically retained in the Egalet Corporation and  
9 Mi Pueblo San Jose bankruptcies to raise exit financing.

10 12. An experienced investment banker, Piper Jaffray fulfills a critical need  
11 that complements the services offered by the Debtors' other restructuring  
12 professionals. The Debtors desire to employ Piper Jaffray to act as the Debtors'  
13 investment because, among other reasons, Piper Jaffray has substantial expertise in  
14 the restructuring and financing of troubled businesses. Absent the retention of  
15 Piper Jaffray as of July 2, 2019, the Debtors will suffer immediate and irreparable  
16 harm because the services provided by Piper Jaffray are necessary to an effective  
17 and efficient resolution of these Chapter 11 Cases.

18 **VI.**  
**PIPER JAFFRAY'S COMPENSATION**

19 13. Pursuant to § 328(a), the Debtors may retain Piper Jaffray on any  
20 reasonable terms and conditions. The Debtors therefore request that, pursuant to §

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1 328(a), compensation be granted in accordance with the Engagement Letter and not  
2 subject to review or evaluated under § 330.

3 14. Section 328(a) provides, in relevant part, that the Debtors “with the  
4 court’s approval, may employ or authorize the employment of a professional person  
5 . . . on any reasonable terms and conditions of employment, including on a retainer,  
6 on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis . .  
7 . .” 11 U.S.C. § 328(a). Section 328 permits the compensation of professionals,  
8 including investment bankers, on more flexible terms that reflect the nature of their  
9 services and market conditions. As the United States Court of Appeals for the Fifth  
10 Circuit recognized in *Donaldson Lufkin & Jenrette Sec. Corp. v. Nat’l Gypsum Co.*  
11 (*In re Nat’l Gypsum Co.*), 123 F.3d 861 (5th Cir. 1997):

12 Prior to 1978 the most able professionals were often unwilling to  
13 work for bankruptcy estates where their compensation would be  
14 subject to the uncertainties of what a judge thought the work was  
15 worth after it had been done. That uncertainty continues under the  
16 present § 330 of the Bankruptcy Code, which provides that the court  
award to professional consultants “reasonable compensation” based  
on relevant factors of time and comparable costs, etc. Under present §  
328 the professional may avoid that uncertainty by obtaining court  
approval of compensation agreed to with the trustee (or debtor or  
committee).

17 *Id.* at 862 (citations omitted), *cited in Riker, Danzig, Scherer, Hyland & Perretti*  
18 *LLP v. Official Comm. of Unsecured Creditors (In re Smart World Techs. LLC)*,  
19 383 B.R. 869, 874 (S.D.N.Y. 2008). Owing to this inherent uncertainty, courts  
20 have approved similar arrangements that contain reasonable terms and conditions

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1 under § 328. *See, e.g., In re Chaparral Energy, Inc.*, Case No. 16-11144 (LSS)  
2 (Bankr. D. Del. June 10, 2016); *In re Energy & Exp. Partners, Inc.*, Case No. 15-  
3 44931 (RFN) (Bankr. N.D. Tex. Feb. 8, 2016).

4 15. Furthermore, the Bankruptcy Abuse Prevention and Consumer  
5 Protection Act of 2005 amended § 328(a) to read as follows:

6 The trustee, or a committee appointed under section 1102 of this title,  
7 with the court's approval, may employ or authorize the employment  
8 of a professional person under section 327 or 1103 of this title, as the  
9 case may be, on any reasonable terms and conditions of employment,  
10 including on a retainer, on an hourly basis, *on a fixed or percentage*  
11 *fee basis*, or on a contingent fee basis.

12 11 U.S.C. § 328(a) (amendment emphasized). This change makes clear that the  
13 Debtors are able to retain a professional on a fixed or percentage fee basis, such as  
14 the Fee Structure described herein, with bankruptcy court approval.

15 16. As more fully described in the Engagement Letter, in consideration of  
16 the services provided, the Debtors have agreed to pay Piper Jaffray as follows (the  
17 "Fee Structure"): <sup>5</sup>

- 18 i. Monthly Fee: A monthly fee of \$50,000 (the "Monthly Fee"), with the  
19 first Monthly Fee due and payable on the date hereof, and each  
20 subsequent Monthly Fee due and payable in advance of each  
21 subsequent calendar month commencing on July 2, 2019. 50% of the

22 <sup>5</sup> To the extent there is any inconsistency between the summary of the Fee Structure  
23 set forth in this Application and the Fee Structure as set forth in the Engagement  
24 Letter, the terms of the Engagement Letter shall control.

Monthly Fee shall be credited upon consummation of a transaction against the Restructuring Fee or Financing Fee.

- ii. Restructuring or Financing Fee: A Restructuring fee (the “Restructuring Fee”) or a Financing fee (the “Financing Fee”) equal to \$1,500,000, payable promptly upon consummation of a Restructuring or Financing. Piper Jaffray shall not be paid more than one of the Financing Fee or Restructuring Fee.
- iii. Bond Issuance Fee: A Bond Issuance fee (“Bond Issuance Fee”) equal to an underwriting discount of two percent (2.00%) of the gross proceeds received by you on all sales of the Securities payable at closing. The Bond Issuance Fee will be payable upon completion of a long-term financing and is in addition to the Financing Fee, or Restructuring Fee, as appropriate.
- iv. For the avoidance of doubt, where the nature of the transaction and services provided may fall into more than one category, the highest of any of the Fees shall apply.
- v. If a Financing and a Bond Issuance occurs as a simultaneous Transaction, the Financing Fee will be modified to two percent (2.00%) of the aggregate principal amount of any Financing.

17. The Fee Structure in the Engagement Letter and above is consistent with the typical arrangement Piper Jaffray and other leading investment bankers that do not bill their clients on an hourly basis. Similar fixed and contingency fee arrangements have been approved and implemented by the courts in other large chapter 11 cases. *See, e.g., In re ExGen Texas Power, LLC*, Case No. 17-12377 (BLS) (Bankr. D. Del. Dec. 13, 2017); *In re Peekay Acquisition, LLC*, Case No. 17-11722 (BLS) (Bankr. D. Del. Sept. 5, 2017); *In re Paragon Offshore plc*, Case No. 16-10386 (CSS) (Bankr. D. Del. Mar. 11, 2016); *In re Vantage Drilling Int'l (f/k/a Offshore Grp. Investment Ltd.)*, Case No. 15-12422 (BLS) (Bankr. D. Del. Dec. 15,

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2015); *In re Hercules Offshore, Inc.*, Case No. 15-11685 (KJC) (Bankr. D. Del. Sept. 8, 2015); *In re Dendreon Corp.*, Case No. 14-12515 (PJW) (Bankr. D. Del. Dec. 9, 2014). In addition, the Debtors understand that indemnification, contribution and reimbursement provisions such as those set forth in the Engagement Agreement are customary and reasonable for investment banking engagements, both out-of-court and in chapter 11. *See United Artists Theatre Co. v. Walton (In re United Artists Theatre Co.)*, 315 F.3d 217, 234 (3d Cir. 2003) (finding indemnification agreement between debtor and financial adviser reasonable under section 328).

18. While the Fee Structure is favorable to the Debtors, the Fee Structure is consistent with Piper Jaffray's practices and no less favorable than the fee structure customarily employed by Piper Jaffray and generally accepted by its clients. The Debtors believe the Fee Structure is reasonable, market-based, and designed to compensate Piper Jaffray for its work in a fair and equitable manner. The Debtors believe the benefit of Piper Jaffray's services cannot be measured by reference to number of hours to be expended by Piper Jaffray's professionals.

19. In agreeing to seek Piper Jaffray's retention under § 328(a), the Debtors acknowledge that they believe that Piper Jaffray's general experience and expertise will inure to the benefit of the Debtors in pursuing a Transaction, that the value to the Debtors of Piper Jaffray's services derives in substantial part from that

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1 expertise and experience and that, accordingly, the Fee Structure is reasonable  
2 regardless of the number of hours to be expended by Piper Jaffray's professionals in  
3 the performance of the services to be provided hereunder, and that the deferred fees  
4 shall not be considered to be "bonuses" or fee enhancements under applicable law.

5 20. Accordingly, Piper Jaffray and the Debtors have agreed to the Fee  
6 Structure in anticipation that a substantial commitment of professional time and  
7 effort will be required, and because (a) Piper Jaffray's sizable commitment to the  
8 instant matters may foreclose other opportunities that would otherwise be available  
9 to Piper Jaffray and (b) the actual time commitment required by Piper Jaffray may  
10 vary considerably throughout the proceedings. Piper Jaffray will maintain records  
11 to support and document actual and necessary costs and expenses incurred in  
12 connection with its services in these Chapter 11 Cases. The Debtors respectfully  
13 request this Court excuse Piper Jaffray from the requirement to maintain time  
14 records, provided that Piper Jaffray will maintain a log of its activities with respect  
15 to potential sale transaction counterparties.

16 21. The Debtors request—and Piper Jaffray understands—that all advisory  
17 fees and related costs incurred by the Debtors on account of services rendered by  
18 Piper Jaffray in these Chapter 11 Cases will be paid as administrative expenses in  
19 accordance with the Bankruptcy Code and applicable Orders entered in these  
20 Chapter 11 Cases.

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22. At the conclusion of these Chapter 11 Cases, Piper Jaffray will file an appropriate application seeking allowance of all fees and costs, regardless of whether interim compensation has been paid.

23. The Engagement Letter contains terms for indemnification, contribution, and exculpation, as set forth in Annex A of the Engagement Letter. The Debtors have agreed to indemnify Piper Jaffray and each of its partners, managers, members, directors, officers, agents, consultants, employees and controlling persons from or against any and all claims related to Piper Jaffray's actions or omissions during the course of the engagement, unless finally judicially determined by a court of competent jurisdiction that the actions or omissions resulted from Piper Jaffray's willful misconduct, gross negligence, or bad faith, as more fully set forth in Annex A of the Engagement Letter. The description of the exculpation, indemnification, and contribution terms of Annex A set forth in this paragraph is only a general summary; parties wishing to know the full terms of Annex A are directed to read the Engagement Letter.

## VII. PIPER JAFFRAY'S DISCLOSURES

24. As set forth above, Piper Jaffray understands the provisions of §§ 327 and 328(a), Bankruptcy Rules 2014(a) and 2016, and LBR 2014-1(b) and 2016-1, which require, among other things, Court approval of the Debtors' employment of it as investment banker.

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1           25. Section 327(a) incorporates a general disinterestedness standard, and  
2 Bankruptcy Rule 2014 requires that an application for employment disclose all  
3 connections with the Debtors, their estates, the professionals, and the U.S. Trustee.  
4 Piper Jaffray is in the process of conducting an extensive conflict search within its  
5 database and will disclosure the results of that search, including any actual conflicts  
6 and/or connections with any of the parties which would disqualify it from serving  
7 as financial advisor to the Debtors, prior to the hearing on this Application.

8           26. As described in the Stratton Declaration, Piper Jaffray does not, to its  
9 knowledge, represent any party with an interest materially adverse to the Debtors or  
10 the estate.

11           27. Piper Jaffray has not received and will not receive any lien or any  
12 other interest in property of the Debtors or of a third party to secure payment of its  
13 fees, but reserves the right to seek to surcharge collateral if appropriate. Piper  
14 Jaffray intends to apply to this Court in conformity with the Bankruptcy Code and  
15 applicable rules, the guidelines for compensation and reimbursement for fees  
16 incurred and costs advanced in this matter and any orders of the Court governing  
17 application and allowance of compensation in these Chapter 11 Cases.

18           28. Upon information and belief, as set forth in the Stratton Declaration,  
19 Piper Jaffray: (i) is not a creditor, an equity security holder, or an insider of the  
20 Debtors; (ii) is not and was not, within two years before the Debtors' Petition Date,

21  
PIPER JAFFRAY & CO.  
EMPLOYMENT APPLICATION

DENTONS US LLP   BUSH KORNFIELD LLP  
SUITE 2500           LAW OFFICES  
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Los Angeles, California 90017-5704   Seattle, Washington 98101-2373  
T 213-623-9300 / F 213-623-9924   T 206 292 2110 / F 206 292 2104

1 a director, officer, or employee of the Debtors; and (iii) does not have an interest  
2 materially adverse to the interest of the estates or of any class of creditors or equity  
3 security holders, by reason of any direct or indirect relationship to, connection with,  
4 or interest in, the Debtors, or for any other reason.

5 29. In view of the foregoing, the Debtors submit that Piper Jaffray is a  
6 “disinterested person” as that term is defined in § 101(14), as modified by section  
7 1107(b) and as required under § 327(a).

8 30. The Debtors believe that its employment of Piper Jaffray upon the  
9 terms and conditions set forth above is in the best interest of the Debtors’ estates, its  
10 creditors, and other parties in interest.

11 **VIII.**  
**RETROACTIVE RELIEF**

12 31. The Debtors request that this Application be approved *nunc pro tunc* to  
13 July 2, 2019 (the “Retention Date”). In proper circumstances, the equitable aspects  
14 of bankruptcy proceedings permit the court to retroactively approve the  
15 employment of professionals. *See, e.g., Atkins v. Wain, Samuel & Co. (In re*  
16 *Atkins)*, 69 F.3d 970, 974-76 (9th Cir. 1995); *In re Mehdipour*, 202 BR 474, 479  
17 (9th Cir. B.A.P. 1996); *Gowan v. Lefkas Gen. Partners No. 1017 (In re Lefkas Gen.*  
18 *Partners No. 1017)*, 153 B.R. 804, 808 (N.D. Ill. 1993).

19 32. The Debtors submit that retroactive approval of Piper Jaffray’s  
20 retention is appropriate under the circumstances because of: (i) the short duration

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1 of time between the retention of Piper Jaffray and the filing of this Application; and  
2 (ii) the need for Piper Jaffray's services immediately after the Retention Date.

3 **VIII.**  
4 **NOTICE OF HEARING REQUIREMENT**

5 33. Pursuant to LBR 2014-1(a), and this Court's *Order (A) Directing the*  
6 *Joint Administration of These Cases, Including the Use of Consolidated Lists, and*  
7 *(B) Limiting Scope of Notice* [Docket No. 10], counsel to the Debtors will serve this  
8 Application and the Stratton Declaration on: (i) the U.S. Trustee; (ii) counsel to the  
9 DIP Lender and the Lapis Secured Parties (as each is defined in the First Day  
10 Declaration); (iii) the Committee and its counsel; (iv) the United States of America,  
11 and the State of Washington; and (vi) parties that file with the Court and serve upon  
12 the Debtors requests for notice of all matters in accordance with Bankruptcy  
13 Rule 2002(i).

14 **IV.**  
15 **CONCLUSION**

16 **WHEREFORE**, the Debtors respectfully request an order (i) approving the  
17 employment and retention of Piper Jaffray as investment banker to the Debtors, on  
18 the terms set forth in the Engagement Letter, *nunc pro tunc* to July 2, 2019, (ii)  
19 approving the compensation of Piper Jaffray at the expense of the Debtors' estate  
20 on the terms set forth in the Engagement Letter, (iii) excusing Piper Jaffray from  
21 maintaining time records with respect to the services to be rendered by Piper Jaffray

PIPER JAFFRAY & CO.  
EMPLOYMENT APPLICATION

1 in these Chapter 11 Cases, and (iv) granting such other and further relief as the  
2 Court deems just and proper.

3  
4 Dated: July 16, 2019

/s/ Sam J. Alberts

JAMES L. DAY (WSBA #20474)  
BUSH KORNFELD LLP

SAMUEL R. MAIZEL (*Pro Hac Vice*)  
SAM J. ALBERTS (WSBA #22255)  
DENTONS US LLP

*Attorneys for the Chapter 11 Debtors  
and Debtors In Possession*

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## EXHIBIT A

July 2, 2019

Astria Health  
900 West Chestnut  
Yakima, Washington 98902

Attention: John Gallagher, CEO

Re: Engagement Letter

Ladies and Gentlemen:

This letter agreement (the “**Agreement**”) confirms the terms under which Astria Health, a 501(c)(3) corporation (the “**Company**” or “**you**”) has engaged Piper Jaffray & Co. (“**Piper Jaffray**”, “**we**” or “**us**”) as your exclusive investment banker and underwriter for the proposed Transactions described below. For purposes hereof, the term “**Company**” includes subsidiaries of the Company and any entity that the Company or its subsidiaries may form or invest in and shall also include any successor to or assignee of all or any substantial portion of the assets and/or businesses of the Company. The matters referred to in this Agreement constitute our “**Engagement**”. This Agreement shall be effective as of July 2, 2019.

“**Transaction**” means a Bond Issuance, a Financing, or a Restructuring.

“**Bond Issuance**” means an underwriting of Series 2019 Health Care Facilities Revenue Bonds to effect a refinancing of all outstanding debt and fund new capital purchases on a taxable or tax-exempt basis (the “**Securities**”) with gross proceeds of approximately \$100-120 million.

“**Financing**” means a private issuance, sale or placement of equity, equity-linked or debt securities, instruments or obligations of the Company with one or more lenders and/or investors, or any loan or other financing, or a rights offering (each such lender or investor, an “**Investor**”). “**Restructuring**” means any recapitalization, modification, amendment, restructuring or reorganization (whether or not pursuant to chapter 11 (“**Chapter 11**”) of the title 11 of the United States Code (the “**Bankruptcy Code**”)) of the Company’s equity and/or debt securities and/or other indebtedness, obligations or liabilities (including partnership interests, lease obligations, trade credit facilities (but for the avoidance of doubt, not the negotiation by the Company of adjustments of bills from vendors in the ordinary course) and/or contract or tort obligations) (collectively, the “**Obligations**”), including pursuant to any repurchase, exchange, conversion, cancellation, forgiveness, retirement, plan, solicitation of consents, waivers, acceptances, authorizations and/or a modification or amendment to the terms, conditions or covenants thereof.

## **I. SERVICES TO BE RENDERED.**

The investment banking services to be provided by Piper Jaffray shall include the following:

**Investment Banking Services.** To the extent requested by the Company, we shall:

(a) Familiarize ourselves with the business, operations, properties, financial condition and prospects of the Company;

- (b) Review the Company's financial condition and outlook;
- (c) Assist you in your development of financial data;
- (d) Present to the Company's Board of Directors, creditors, as you request;
- (e) Analyze the Company's financial liquidity and evaluate alternatives to improve such liquidity;
- (f) Evaluate the Company's debt capacity and alternative capital structures;
- (g) Participate in negotiations among the Company and its creditors, suppliers, lessors and other interested parties with respect to any of the transactions contemplated by this Agreement; and
- (h) Provide such other advisory services as are customarily provided in connection with the analysis and negotiation of any of the transactions contemplated by this Agreement, as requested and mutually agreed.

***Bond Services.*** To the extent requested by the Company, we shall:

- (a) Develop a financing plan for the Securities and assist you in determining the economic impact of the Securities;
- (b) Provide advice concerning structure, timing, terms and other similar matters concerning the Securities, including recommendations as to maturities, interest rates, structure, security, timing, and amount of proceeds needed to implement your project;
- (c) Review and make comments with respect to sale documents, as applicable, including Explanatory Statements, Authorizing Bond Resolutions, bond declarations and indentures and other underlying documents relating to the Securities;
- (d) Develop a sale schedule that incorporates all aspects of bringing Securities to market and arranging for a successful closing of the transaction;
- (e) Assist in the preparation of the preliminary and final Official Statements to be issued by you relating to the Securities for final approval by you and your agents, including bond counsel;
- (f) Assist in making presentations to rating agencies with respect to the Securities;
- (g) Evaluate and make recommendations concerning the use of bond insurance and any other available credit enhancements;
- (h) Distribute preliminary and final Official Statements and other documents to a broad list of institutions, banks, trusts, insurance companies, professional investment advisors, and other prospective investors in Securities;
- (i) For a public sale, form, if deemed appropriate by Piper Jaffray and you an underwriting group for the purpose of underwriting the Securities, and inform you as to the membership of any group so formed;

- (j) Develop a marketing plan for the offering, including identification of potential investors;
- (k) Negotiate the pricing, including the interest rate, and other terms of Securities;
- (l) Obtain CUSIP number(s) for Securities and arranging for their DTC book-entry eligibility as required;
- (m) Provide a final schedule of debt service payments for Securities;
- (n) Review and make comments with respect to closing documents prepared by Bond Counsel;
- (o) Plan and arrange for the closing and settlement of the issuance and the delivery of Securities;

***Financing Services.*** To the extent requested by the Company, we shall:

- (a) Provide financial advice to the Company in structuring and effecting a Financing, identify potential Investors and, at the Company's request, contact and solicit such Investors; and
- (b) Assist in the arranging of a Financing, including identifying potential sources of capital, assisting in the due diligence process, and negotiating the terms of any proposed Financing.

It is understood that nothing contained herein shall constitute an express or implied commitment by us to act in any capacity or to underwrite, place or purchase any financing or securities, which commitment shall only be set forth in a separate underwriting, placement agency or other appropriate agreement relating to the Financing.

***Restructuring Services.*** To the extent requested by the Company, we shall:

- (a) Analyze various Restructuring scenarios and the potential impact of these scenarios on the value of the Company and the recoveries of those stakeholders impacted by the Restructuring;
- (b) Advise the Company and negotiate with lenders with respect to potential waivers, forbearances or amendments of various credit facilities;
- (c) Provide strategic advice with regard to restructuring or refinancing the Company's obligations;
- (d) Provide financial advice and assistance to the Company in developing a Restructuring;
- (e) In connection therewith, provide financial advice and assistance to the Company in structuring any new securities to be issued under a Restructuring; and
- (f) Assist the Company and/or participate in negotiations with entities or groups affected by the Restructuring.

***Generally.*** Notwithstanding anything contained in this Agreement to the contrary, we shall have no responsibility for designing or implementing any initiatives to improve the Company's administration, organization, operations, profitability, cash management or liquidity, or to provide any fairness, valuation,



or solvency opinions or to make any independent evaluation or appraisal of any assets or liabilities of the Company or any other party; provided, for the avoidance of doubt, we will, to the extent requested, provide the services described in Section 1(d) in “**Investment Banking Services**.” We make no representations or warranties about the Company’s ability to (i) successfully improve its operations, (ii) maintain or secure sufficient liquidity to operate its business, or (iii) successfully complete a Transaction. We are retained under this Agreement solely to provide advice and services regarding the transactions contemplated by this Agreement. Our Engagement does not encompass providing “crisis management” and business consulting services to the Company.

The services and compensation arrangements set forth in this Agreement do not encompass other investment banking services or transactions that may be undertaken by us at the written request of the Company, or any other specific services not set forth in this Agreement. The terms and conditions of such investment banking services, including compensation and arrangements, would be set forth in a separate written agreement between us and the Company.

## 2. **COMPENSATION**

As compensation for our services, the Company agrees to pay us in cash, by wire transfer of immediately available funds when due, the following fees (individually or collectively, “**Fees**”):

(a) a monthly investment banking fee (“**Monthly Fee**”) of \$50,000 for each month of the Engagement, with the first Monthly Fee due and payable on the date hereof, and each subsequent Monthly Fee due and payable in advance of each subsequent calendar month commencing on July 2, 2019; plus

(b) a Restructuring fee (“**Restructuring Fee**”) in the amount of \$1,500,000, payable promptly upon consummation of a Restructuring; or

(c) a Financing fee (“**Financing Fee**”) equal to \$1,500,000, payable promptly upon consummation of each such Financing; plus

(d) a Bond Issuance Fee (“**Bond Issuance Fee**”) equal to an underwriting discount of two percent (2.00%) of the gross proceeds received by you on all sales of the Securities payable at closing.

Notwithstanding the foregoing, Piper Jaffray shall not be paid more than one of the Financing Fee or Restructuring Fee. The Bond Issuance Fee will be payable upon completion of a long-term financing and is in addition to the Financing Fee, or Restructuring Fee, as appropriate. For the avoidance of doubt, where the nature of the transaction and services provided may fall into more than one category, the highest of any of the Fees shall apply. 50% of the Monthly Fee shall be credited upon consummation of a transaction against the Restructuring Fee or Financing Fee.

If a Financing and a Bond Issuance occurs as a simultaneous Transaction, the Financing Fee will be modified to two percent (2.00%) of the aggregate principal amount of any Financing.

## 3. **EXPENSES**

In addition to our fees for professional services, the Company agrees that it will promptly reimburse us for all of our reasonable out-of-pocket costs and expenses (“**Expenses**”) (including, without limitation, (i) reasonable legal fees and expenses of Piper Jaffray, (ii) reasonable appraisal, consulting and audit fees, and (iii) reasonable travel and hotel expenses, document delivery, and publicity costs) and for a reasonable allocation of database, courier and communication costs, incurred by Piper Jaffray in connection with each

transaction contemplated hereby and the Engagement, as incurred by Piper Jaffray. The Company's obligation to reimburse expenses incurred by us in connection with the Engagement will survive the completion or termination of the Engagement.

#### **4. BANKRUPTCY COURT APPROVAL**

Because the Company is a debtor under Chapter 11 of the Bankruptcy Code, the Company shall use its reasonable efforts to seek an order authorizing our employment pursuant to the terms of this Agreement, as a professional person pursuant to, and subject to the standard of review of, Sections 327(a) and 328(a) of title 11 of the Bankruptcy Code, the applicable Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and applicable local rules and orders and not subject to any other standard of review under Section 330 of the Bankruptcy Code. In so agreeing to seek our retention under Sections 327(a) and 328(a) of the Bankruptcy Code, the Company acknowledges that it believes that our general restructuring experience and expertise, our knowledge of the capital markets and our merger and acquisition capabilities will inure to the benefit of the Company in pursuing any transaction, that the value to the Company of our services derives in substantial part from that expertise and experience and that, accordingly, the structure and amount of the contingent Fees are reasonable regardless of the number of hours to be expended by our professionals in the performance of the services to be provided hereunder. The Company shall submit our employment application as soon as practicable. The employment application and the proposed order authorizing our employment shall be provided to us prior to being filed, to enable us to review and approve (in our sole discretion) any such application or order prior to its filing. Following entry of the order authorizing our employment, the Company shall pay all Fees and Expenses due pursuant to this Agreement as promptly as possible subject to (i) the approval of the court having jurisdiction of the bankruptcy case involving the Company (the "**Bankruptcy Court**"), (ii) any fee and expense guidelines, orders of the Bankruptcy Court, the Bankruptcy Rules and applicable local rules and orders, and (iii) any requirements governing interim and final fee applications. The Company will work with us to promptly file any and all necessary applications regarding such fees and expenses with the Bankruptcy Court. We shall have no obligation to provide services under this Agreement unless our retention under this Agreement is approved under Sections 327(a) and 328(a) of the Bankruptcy Code by final order of the Bankruptcy Court which is acceptable to us and which approves this Agreement in all material respects. If the order authorizing our employment is not obtained, or is later reversed, modified or set aside for any reason, we may terminate this Agreement, and the Company shall promptly reimburse us for all Fees and Expenses due hereunder, including any Fees due or to become due under the tail period described in the **TERMINATION** section below. The terms of this Section are solely for our benefit, and may be waived, in whole or in part, only by us.

#### **5. EXPERTISE**

The Company acknowledges and agrees that Piper Jaffray's restructuring expertise as well as its capital markets knowledge, financing skills and mergers and acquisitions capabilities, some or all of which may be required by the Company during the term of our Engagement hereunder, were important factors in determining the amount of the various fees set forth herein, and that the ultimate benefit to the Company of our services hereunder could not be measured merely by reference to the number of hours to be expended by our professionals in the performance of such services. The Company also acknowledges and agrees that the various fees set forth herein have been agreed upon by the parties in anticipation that a substantial commitment of professional time and effort will be required of us and our professionals hereunder over the life of the Engagement, and in light of the fact that such commitment may foreclose other opportunities for us and that the actual time and commitment required of us and our professionals to perform their services hereunder may vary substantially from week to week or month to month, creating "peak load" issues for the firm. In addition, given the numerous issues which we may be required to address in the performance

of our services hereunder, our commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for our services for engagements of this nature in an out-of-court context, the Company agrees that all of the fee arrangements specified herein are commercially reasonable.

## **6. COMPANY INFORMATION**

You agree to furnish Piper Jaffray with such information about the Company, and its subsidiaries and affiliates and the transactions contemplated hereby as Piper Jaffray reasonably requests, including information to be included in a prospectus (including any related registration statement), private placement memorandum, offering memorandum or circular or other disclosure document. You hereby represent and covenant to Piper Jaffray that (a) all information other than the Projections (as defined below) that has been or will be made available to Piper Jaffray by you, or any of your representatives in connection with the transactions contemplated hereby (the “**Information**”), when taken as a whole, is and will be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in the light of the circumstances under which such statements are made, not misleading and (b) all financial projections that have been or will be made available to Piper Jaffray by you, or any of your representatives in connection with the transactions contemplated hereby (the “**Projections**”) have been and will be prepared in good faith and will be based upon assumptions believed by you to be reasonable (it being understood that projections by their nature are inherently uncertain and no assurances are being given that the results reflected in the Projections will be achieved).

You agree that if at any time prior to the Closing Date any of the representations in the preceding sentence are or would be no longer accurate and complete in all material respects, if the Information and Projections were being furnished or delivered, and such representations were being made, at any such time, then you will promptly supplement, or cause to be supplemented, the Information and Projections so that such representations will be correct in all material respects at such time. You also agree to promptly advise Piper Jaffray of all developments materially affecting the Company or any of its subsidiaries or affiliates or the transactions contemplated hereby. In addition, any representations and warranties made by you to purchasers of securities in connection with any of Financing contemplated hereby shall be deemed to be incorporated into this Agreement and any opinions delivered by or on behalf of you to the purchasers of any such securities shall expressly provide that Piper Jaffray may rely upon such opinions. Subject to its confidentiality obligations to you, you acknowledge that Piper Jaffray may share with any of its affiliates, and such affiliates may share with Piper Jaffray, any information related to the Company or any of its subsidiaries or affiliates including, without limitation, in each case, information relating to creditworthiness and the transactions contemplated hereby.

In conducting the transactions hereunder, you acknowledge that Piper Jaffray is and will be using and relying on the Information without independent verification thereof. You will be solely responsible for all Information contained in any prospectus or other Financing document.

## **7. WORK PRODUCT**

All documents, materials or information of any kind created by us in connection with this engagement, including, without limitation, any written reports, memoranda, analyses, work papers or status summaries, whether or not delivered to the Company, are work product (collectively, “**Work Product**”). You agree not to use any Work Product except in connection with any transaction contemplated by this Agreement or otherwise within the scope of the Engagement, and not for any other purpose. Unless otherwise expressly agreed, no one, other than senior management or the Company’s Board of Directors,

is authorized to rely upon the Work Product. You may not publicly disclose, summarize, excerpt from or otherwise refer to any Work Product rendered by us, whether formal or informal, without our prior written consent. Notwithstanding the foregoing, the Company may disclose Work Product if, upon written advice of outside counsel, and then only to the extent required by law, order of a court of competent jurisdiction, or legal process, provided the Company shall provide us prior written notice of such requirement and cooperate with us to seek reasonable protective treatment of such Work Product.

**8. *SCOPE OF PIPER JAFFRAY'S SERVICES/RELATIONSHIP OF THE PARTIES***

In performing its services pursuant to this Agreement, Piper Jaffray is not assuming any responsibility for the decision of the Company or any other party to pursue (or not to pursue) any business strategy or to effect (or not to effect) any Transaction. Piper Jaffray shall not be responsible for providing or deemed to have provided any tax, accounting, actuarial, legal or other specialist advice.

You acknowledge that you have retained us solely to provide the services to you as set forth in this agreement. As underwriter or placement agent, Piper Jaffray may provide advice concerning the structure, timing, terms, and other similar matters concerning the transaction. You acknowledge and agree that: (i) the primary role of Piper Jaffray as a potential underwriter or placement agent, is to sell or place securities to investors in an arms-length commercial transaction and that Piper Jaffray has financial and other interests that differ from your interests (ii) Piper Jaffray is not acting as a municipal advisor, financial advisor or fiduciary to you or any other person or entity and has not assumed any advisory or fiduciary responsibility to you with respect to the transaction contemplated herein and the discussions, undertakings and proceedings leading thereto (irrespective of whether Piper Jaffray has provided other services or is currently providing other services to you on other matters) and (iii) the only obligations Piper Jaffray has to you with respect to the transaction contemplated hereby expressly are set forth in this agreement.

**9. *INDEMNIFICATION AND CONTRIBUTION***

Annex A is hereby incorporated by reference into and made a part of this Agreement.

**10. *USE AND DISCLOSURE OF ADVICE AND INFORMATION***

You acknowledge that all opinions and advice we render, whether formal or informal, are intended solely for the benefit and use of your Board of Directors in its consideration of the applicable Transaction. Except to the Board of Directors, your senior management and their professional advisors, no advice or opinion we render, whether formal or informal, may be disclosed, in whole or in part, or summarized, excerpted from, or otherwise referred to without our prior written consent, which consent will not be unreasonably withheld.

To help the United States government fight the funding of terrorism and money laundering activities, the federal law of the United States requires all financial institutions to obtain, verify and record information that identifies each person with whom they do business. This means we must ask you for certain identifying information, including a government-issued identification number (e.g., a U.S. taxpayer identification number) and such other information or documents that we consider appropriate to verify your identity, such as certified articles of incorporation, a government-issued business license, a partnership agreement or a trust instrument.

You agree that Piper Jaffray has the right to place advertisements including, without limitation, upon the consummation of any Financing, customary "tombstone" advertisements in financial and other

newspapers and journals at its own expense describing its services to you.

**11. REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF THE COMPANY**

With respect to any Financing involving the issuance of securities that is to be conducted pursuant to an exemption from the registration requirements of the Securities Act, you represent and warrant to, and agree with us, that:

- (a) the Securities will be sold by you in compliance with the requirements for exemptions from registration or qualification of, and otherwise in accordance with, all federal and state securities laws and regulations;
- (b) you will have responsibility for the accuracy and completeness of any Financing materials. You agree to notify us promptly of any material adverse changes, or development that may lead to any material adverse change, in your business, properties, operations, financial condition or prospects and concerning any statement contained in any Financing materials, or in any other information provided to us, which is not accurate or which is incomplete or misleading in any material respect;
- (b) you will make available to us such documents and other information which we reasonably deem appropriate and will provide us with access to your officers, directors, employees, accountants, counsel and other representatives; it being understood that we will rely solely upon such information supplied by you and your representatives without assuming any responsibility for independent investigation or verification thereof;
- (c) you will provide Piper Jaffray with copies of all subscription or purchase agreements entered into with investors, and to the extent not included in all such subscription or purchase agreements, all information otherwise known to you with respect to each investor that is relevant for purposes of compliance by Piper Jaffray with its filing obligations under Financial Industry Regulatory Authority ("FINRA") Rule 5123; and
- (d) at each closing, you will permit us to rely on the representations and warranties of the Company, and cause your counsel to permit us to rely upon any opinion, furnished to any purchaser of Securities.

**12. REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF PIPER JAFFRAY**

We represent and warrant to you that Piper Jaffray is a broker-dealer registered with the U.S. Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, and is a member firm of FINRA, and at all times relevant to this engagement, will maintain such registration and membership.

**13. OTHER MATTERS RELATING TO OUR ENGAGEMENT**

You acknowledge and agree that you have retained Piper Jaffray solely to provide the services set forth in this Agreement and that your engagement of Piper Jaffray shall not be deemed to be on behalf of, and is not intended to confer rights upon, any of your affiliates, security holders, creditors or other persons

not a party hereto as against Piper Jaffray or any of its affiliates or any of their respective directors, officers, agents, employees or representatives.

In rendering such services, we will act as an independent contractor. You acknowledge and agree that nothing in this Agreement is intended to create duties to you beyond those expressly provided for in this Agreement, and we expressly disclaim the creation of any fiduciary or agent relationship on our part. In no event, shall Piper Jaffray or any of its affiliates or agents be responsible or liable as a fiduciary to you or any of your affiliates, security holders, creditors, or employees, or any other person making any claim on behalf of or through you or any of your affiliates, security holders, creditors or employees, in connection with any activity that Piper Jaffray may undertake or has undertaken in furtherance of a transaction or otherwise pursuant to this Agreement, either before or after the date hereof.

You acknowledge that Piper Jaffray is a securities firm engaged in securities trading and brokerage activities and providing investment banking services. You further acknowledge that affiliates of Piper Jaffray engage in investment advisory and asset management activities, both for their own accounts and for those of their clients. In the ordinary course of business, we and our affiliates may at any time hold long or short positions, and may trade or otherwise effect transactions, for their own account or the accounts of customers, in your debt or equity securities, or the debt or equity securities of your affiliates or other entities that may be involved in the transactions contemplated by this Agreement.

In connection with the services to be provided hereunder, Piper Jaffray may employ the services of its affiliates and may share with any such affiliate any information concerning the Company in accordance with the terms of this Agreement. Any affiliate so employed shall be entitled to all of the benefits afforded to Piper Jaffray hereunder and shall be entitled to be reimbursed for its expenses on the same basis as Piper Jaffray.

In addition, we and our affiliates may from time to time perform various investment banking services for other clients and customers who may have conflicting interests with respect to you or a Financing. Except as otherwise provided herein or by separate agreement with you, we and our affiliates will not use confidential information obtained from you pursuant to this engagement in connection with the performance by us and our affiliates of services for other companies, and we and our affiliates will not furnish any such information to other companies. You also acknowledge that we and our affiliates have no obligation to use in connection with this engagement or to furnish you, confidential information obtained from other companies.

Furthermore, you acknowledge we may have fiduciary or other relationships whereby we or our affiliates may exercise voting power over securities of various persons, which securities may from time to time include securities of the Company or of potential purchasers or others with interests in respect of any Financing. You acknowledge that we or such affiliates may exercise such powers and otherwise perform our functions in connection with such fiduciary or other relationships without regard to our relationship to you hereunder.

You acknowledge that we are not an advisor as to legal, tax, accounting or regulatory matters in any jurisdiction. You should consult with your own advisors concerning such matters and are responsible for making your own independent investigation and appraisal of the transactions contemplated by this agreement, and we have no responsibility or liability to you with respect such matters.

If the definitive transaction agreement includes a provision which disclaims on behalf of you any representation, warranty or agreement, not made in writing in the definitive transaction agreement, you will use your best efforts to include in such agreement a similar disclaimer for the benefit of Piper Jaffray and



an acknowledgment by the acquiring party of Piper Jaffray's third party beneficiary status in respect of such disclaimer.

#### **14. CONFIDENTIALITY**

This Agreement is delivered to you upon the condition that neither the existence of this Agreement, nor any of its contents shall be disclosed by you or any of your affiliates, directly or indirectly, to any other person, except that such existence and contents may be disclosed (i) as may be compelled in a judicial or administrative proceeding or as otherwise required by law and (ii) to your directors, officers, employees, legal counsel and accountants, in each case on a confidential and "need-to-know" basis and only in connection with the transactions contemplated hereby.

We agree to use all non-public information provided to us by you or on your behalf solely for the purpose of providing the services which are the subject of this agreement and to treat all such information confidentially; provided that nothing herein will prevent us from disclosing any such information (i) to purchasers or prospective purchasers in connection with a Financing (to the extent such information is included in the memorandum to be prepared in connection with a Transaction or such disclosure is otherwise consented to by you), (ii) to any rating agency, (iii) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, (iv) upon the request or demand of any regulatory authority having jurisdiction over us or any our affiliates, (v) to the extent that such information was or becomes publicly available other than by reason of disclosure by us in violation of this agreement or was or becomes available to us or our affiliates from a source which is not known by us to be subject to a confidentiality obligation to you, (vi) to the extent such information was independently developed by us without reference to such non-public information, or (vii) to our affiliates and our respective employees, legal counsel, independent auditors and other experts or agents who need to know such information in connection with a Transaction or any other services provided by us or our affiliates to you and your affiliates. We accept responsibility for compliance with the provisions of this paragraph by the persons referred to in clause (vii) above. This undertaking by us will automatically terminate one year following the earlier of completion of a Transaction or termination of our engagement hereunder.

#### **15. TERMINATION**

The engagement of Piper Jaffray hereunder may be terminated (i) by Piper Jaffray at any time or (ii) by you on the date that is **12** months after the date hereof, in each case by prior written notice thereof to the other party; provided, that the provisions under the headings **COMPENSATION**, **EXPENSES**, **INDEMNIFICATION AND CONTRIBUTION** (including *Annex A*), **CONFIDENTIALITY**, and **MISCELLANEOUS** shall survive any termination of this Engagement; provided, however, that prior to any such termination by you, you shall have paid or cause to be paid to Piper Jaffray any fees or other amounts due to Piper Jaffray hereunder; provided, further, that in the case of termination by you, we shall be entitled to be paid the full amount of our Fees if, within **12** months of such termination, (x) any Financing and/or Sale is effected, or (y) the Company agrees to a Financing and/or Sale which is subsequently effected, at any time.

#### **16. MISCELLANEOUS**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. You and we hereby waive any right to trial by jury with respect to any claim, action or counterclaim (whether based in contract, tort or otherwise) in connection with any dispute arising out of this Agreement or any of the matters contemplated herein. You further agree that the foregoing provisions of this paragraph shall also apply to your subsidiaries to the same extent as to you, and that Piper Jaffray's obligations hereunder are being made in reliance on your foregoing agreements.

This Agreement shall not be assignable by either party without the prior written consent of the other party, provided, however, that either party shall have the absolute right to assign this Agreement to any party that is a successor to the assigning party by contract or operation of law. Any purported assignment to a non-successor party without such prior written consent shall be void.

Piper Jaffray reserves the right to employ the services of its affiliates in providing services contemplated by this Agreement and to allocate, in whole or in part, to its affiliates certain fees payable to Piper Jaffray in such manner as Piper Jaffray and its affiliates may agree, in Piper Jaffray's sole discretion.

You further acknowledge that Piper Jaffray may share with any of its affiliates, and such affiliates may share with Piper Jaffray, any information related to the Company or any of its subsidiaries or affiliates (including, without limitation, information relating to creditworthiness) and the transactions contemplated hereby; provided that Piper Jaffray agrees to treat, and cause any such affiliate to treat, all non-public information provided to us by you as confidential information in accordance with customary banking industry practices.

This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to such subject matter. No party has been authorized by Piper Jaffray to make any oral or written statements or agreements that are inconsistent with this Agreement. This Agreement may not be amended or any provision hereof waived or modified except by an instrument in writing signed by Piper Jaffray and you. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one agreement. Delivery of a manually executed counterpart of a signature page of this Agreement by e-mail in PDF format shall be effective as delivery of the hardcopy original signature page. Headings are for convenience of reference only and shall not affect the construction of, or be taken into consideration when interpreting, this Agreement.

Except with respect to any Indemnified Person as set forth in Annex A hereto, this Agreement is intended for the benefit of the parties hereto and, is not intended to confer any benefits upon, or create any rights in favor of, and may not be relied on by, any persons other than the parties hereto.

[Signature Page Follows]



We are delighted to accept this engagement and look forward to working with you. Please confirm that the foregoing is our mutual understanding by signing in the appropriate space below and returning this letter to us.

Sincerely,

PIPER JAFFRAY & CO.

By:   
Teri Stratton  
Managing Director

Accepted and Agreed to as of  
the date first above written:

ASTRIA HEALTH

By: \_\_\_\_\_  
John Gallagher  
Chief Executive Officer

## Annex A

You agree to (i) indemnify and hold harmless us, our affiliates (within the meaning of the Securities Act of 1933), and each of our respective past, present and future partners, managers, members, directors, officers, agents, consultants, employees and controlling persons (within the meaning of the Securities Act of 1933, as amended or Section 20 of the Securities Exchange Act of 1934, as amended) (each of Piper Jaffray and such other person or entity is hereinafter referred to as an **“Indemnified Person”**), to the fullest extent lawful from and against any losses, claims, damages, liabilities and expenses, joint or several, and all actions, inquiries, proceedings and investigations in respect thereof, to which any Indemnified Person may become subject, arising out of or in connection with our engagement under, or any matter referred to in the agreement to which this Annex A is attached and of which this Annex A forms a part (whether occurring before, at, or after the date hereof) (the **“Agreement”**), regardless of whether any of such Indemnified Persons is a party thereto, and (ii) periodically reimburse an Indemnified Person for such person’s legal and other expenses as may be incurred in connection with investigating, preparing, defending, paying, settling or compromising any such action, inquiry, proceeding or investigation, whether or not such action, inquiry, proceeding or investigation is initiated or brought by you, your creditors or stockholders, or any other person. You are not responsible under clause (i) of the foregoing sentence for any losses, claims, damages, liabilities or expenses to the extent that such loss, claim, damage, liability or expense has been finally judicially determined to have resulted primarily and directly from actions taken or omitted to be taken by such Indemnified Person due to such person’s gross negligence, willful misconduct or bad faith. To the extent that any prior payment you made to an Indemnified Person is determined to have been improper by reason of such Indemnified Person’s gross negligence, willful misconduct or bad faith, such Indemnified Person will promptly pay you such amount.

If the indemnity or reimbursement referred to above is, for any reason whatsoever, unenforceable, unavailable or otherwise insufficient to hold each Indemnified Person harmless, you agree to pay to or on behalf of each Indemnified Person contributions for losses, claims, damages, liabilities or expenses so that each Indemnified Person ultimately bears only a portion of such losses, claims, damages, liabilities or expenses as is appropriate (i) to reflect the relative benefits received by each such Indemnified Person, respectively, on the one hand and you and your stockholders on the other hand in connection with the transaction or (ii) if the allocation on that basis is not permitted by applicable law, to reflect not only the relative benefits referred to in clause (i) of the foregoing sentence but also the relative fault of each such Indemnified Person, respectively, and you as well as any other relevant equitable considerations; *provided, however*, that in no event will the aggregate contribution of all Indemnified Persons to all losses, claims, expenses, damages, liabilities or expenses in connection with any transaction exceed the amount of the fee actually received by us pursuant to this Agreement. The respective relative benefits received by us and you in connection with any transaction will be deemed to be in the same proportion as the aggregate fee paid or proposed to be paid to Piper Jaffray in connection with the transaction bears to the transaction value paid or proposed to be paid in the transaction, whether or not consummated.

Promptly after its receipt of notice of the commencement of any action or proceeding, any Indemnified Person will, if a claim in respect thereof is to be made against you pursuant to this Agreement, notify you in writing of the commencement thereof; but omission so to notify you will not relieve you from any liability which you may have to any Indemnified Person, except your obligations to indemnify for losses, claims, damages, liabilities or expenses to the extent that you suffer actual prejudice as a result of such failure, but will not relieve you from your obligation to provide reimbursement of expenses and any liability which you may have to an Indemnified Person otherwise than hereunder. If you so elect, you may assume the defense of such action or proceeding in a timely manner, including the employment of

counsel (reasonably satisfactory to us) and payment of expenses, *provided* you permit an Indemnified Person and counsel retained by an Indemnified Person at its expense to participate in such defense. Notwithstanding the foregoing, in the event (i) you fail promptly to assume the defense and employ counsel reasonably satisfactory to us, or (ii) the Indemnified Person has been advised by counsel that there exist actual or potential conflicting interests between you or your counsel and such Indemnified Person, an Indemnified Person may employ separate counsel (in addition to local counsel) to represent or defend such Indemnified Person in such action or proceeding, and you agree to pay the fees and disbursements of such separate counsel as incurred; *provided however*, that you will not, in connection with any one such action or proceeding, or separate but substantially similar actions or proceedings arising out of the same general allegations, be liable for fees and expenses of more than one separate firm of attorneys (in addition to any local counsel).

You will not, without our prior written consent, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought under this agreement, unless such settlement, compromise or consent includes an express, complete and unconditional release of us and each other Indemnified Person from all liability and obligations arising therefrom and does not include any admission of fault on the part of us or any other Indemnified Person. Without your prior written consent, which will not be unreasonably withheld, delayed or conditioned, no Indemnified Person will settle or compromise any claim for which indemnification or contribution may be sought hereunder. Notwithstanding the foregoing sentence, if at any time an Indemnified Person requests that you reimburse the Indemnified Person for fees and expenses as provided in this agreement, you agree that you will be liable for any settlement of any proceeding effected without your prior written consent if (i) such settlement is entered into more than 30 days after receipt by you of the request for reimbursement, and (ii) you will not have reimbursed the Indemnified Person in accordance with such request prior to the date of such settlement.

You also agree that no Indemnified Person will have any liability to you or your affiliates, directors, officers, employees, agents, creditors or stockholders, directly or indirectly, related to or arising out of the Agreement or the services performed hereunder, except losses, claims, damages, liabilities and expenses you incur which have been finally judicially determined to have resulted primarily and directly from actions taken or omitted to be taken by such Indemnified Person due to such person's gross negligence, willful misconduct or bad faith. In no event, regardless of the legal theory advanced, will any Indemnified Person be liable for any consequential, indirect, incidental or special damages of any nature. Your indemnification, reimbursement, exculpation and contribution obligations in this Annex A will be in addition to any rights that any Indemnified Person may have at common law or otherwise.

Capitalized terms used, but not defined in this Annex A, have the meanings assigned to such terms in the Agreement.