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Attorneys for the Chapter 11 Debtors and Debtors In Possession

HONORABLE WHITMAN L. HOLT

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re: ASTRIA HEALTH *et al.*, Debtors and Debtors in Possession.[1]	Chapter 11 Lead Case No. 19-01189-11 Jointly Administered **DEBTORS' NOTICE OF EMERGENCY MOTION AND EMERGENCY MOTION TO AUTHORIZE CLOSURE OF MEDICAL CENTER; DECLARATION OF JOHN GALLAGHER**

[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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PLEASE TAKE NOTICE that Astria Health ("Astria") and SHC Medical Center - Yakima, both Washington nonprofit corporations, doing business as Astria Regional Medical Center (the "Medical Center"), along with their above-referenced affiliated debtors and debtors in possession (collectively, the "Debtors"), hereby move on an emergency basis (the "Motion") for an Order (a) authorizing the Debtors to implement a plan (the "Closure Plan") for the closure of the Medical Center (the "Closure") to, among other things, make appropriate arrangements for patients, the transfer and storage of medical records, the disposition of controlled substances, pharmaceuticals, inventory, medical waste, and other hazardous materials, and ultimately, the cessation of operations at the Medical Center,[2] (b) scheduling a hearing on the Motion, and (c) granting such further relief as is just.

PLEASE TAKE FURTHER NOTICE that the Closure is necessary to ensure the safety of patients and to maintain the financial viability of the Debtors'

[2] Certain elements of the Closure Plan may require the Debtors to reject certain executory contracts and unexpired leases, enter into new contracts, and dispose of equipment and other property. The Debtors, by this Motion, do not seek authority to assume or reject contracts and leases, enter into new contracts, or sell equipment or other property; to the extent necessary, such relief will be sought by separate motion(s).

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remaining two hospitals and related clinics. It is required for the following four reasons, which are explained in more detail in the Motion itself:

(1) The Medical Center has incurred substantial financial losses which are draining resources of the Debtors' other, more viable healthcare facilities, including the Debtors' two other acute care hospitals and related clinics.

(2) Although the Debtors are seeking exit financing to allow the Debtors to exit bankruptcy, potential lenders have indicated to the Debtors' investment banker that the Medical Center has a negative effect on the Debtors' ability to obtain exit financing. Moreover, responses to the Debtors' investment bankers indicate that potential acquirers of the Debtors will take a similar approach to the Medical Center as have potential lenders. The proposal received from one potential buyer that included the Medical Center was materially lower than a proposal received from a different buyer that excluded the Medical Center—simply stated, the price excluding the Medical Center is higher than the price including the Medical Center.

(3) Due to recent comments and opinions expressed at the most recent status conference, combined with aggressive solicitation of Astria's nursing staff by other healthcare facilities in the community, the Medical Center has experienced an increased turnover of nursing staff, making continued operations of a safe and effective hospital problematic because replacing employed nurses with temporary staffing nurses can affect patient care and is significantly more expensive.

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(4) The State of Washington Department of Health (the "DOH") issued a ruling on December 2, 2019 (the "Ruling") granting Virginia Mason Memorial Hospital ("VMMH") an elective percutaneous coronary intervention ("PCI") program. This Ruling eliminates one of the Medical Center's market differentiators — its Certificate of Need for elective PCI procedures, previously making it the only Hospital in the City of Yakima to provide elective heart procedures.

For all these reasons, the Debtors have concluded that ceasing operations at and closing the Medical Center is the right decision.

PLEASE TAKE FURTHER NOTICE that this Motion is filed on an *emergency basis* since continued operation of the Medical Center with financial losses could impact the Debtors' efforts to (i) continue to operate the remaining two hospitals in a manner that provides continuity of effective and safe patient care, and (ii) provide sufficient time to effectuate a refinancing of the remaining two hospitals, SHC Medical Center - Toppenish ("Toppenish") and Sunnyside Community Hospital Association ("Sunnyside"), or a sale of certain assets. Additionally, the relief sought by this Motion becaome public, and the community is informed that the Medical Center is closing, staff is likely to seek other employment immediately, and maintaining adequate staff to provide quality patient care will become problematic, and, if possible at all, much more expensive.

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PLEASE TAKE FURTHER NOTICE that the Debtors bring this Motion pursuant to §§ 105(a), 363(b), and 1108 of title 11 of the United States Code, 11 U.S.C § 101, *et seq*. (the "Bankruptcy Code"),[3] and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), seeking an Order that the Motion be heard on an emergency basis. Granting the relief requested in this Motion on an emergency basis will benefit the Debtors' estates by ensuring the Debtors have sufficient staff and funds to effectuate an orderly and expeditious Closure while maintaining patient safety and allowing for a later sale of the Medical Center as a closed facility.

PLEASE TAKE FURTHER NOTICE that the Motion is based on this Notice and Motion, the attached Memorandum of Points and Authorities, the declaration of John Gallagher attached hereto (the "Gallagher Declaration"), the arguments of counsel, and other admissible evidence properly brought before the United States Bankruptcy Court for the Eastern District of Washington (the "Court") at or before the hearing regarding this Motion. In addition to the attached Gallagher Declaration, the Debtors refer the Court to previous declarations submitted by Mr. Gallagher [Docket Nos. 4, 21, and 58], which explain in detail the Debtors' precarious financial circumstances, the requirement for DIP Financing, and the

[3] All references to "section" or "§" herein are to sections of the Bankruptcy Code unless otherwise noted.

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efforts to obtain exit financing or conduct an alternative transaction. The Debtors request that the Court take judicial notice of all documents filed with the Court in this case.

PLEASE TAKE FURTHER NOTICE that the Debtors request that the Court permit any opposition or objection to the Motion to be presented at any time before or at the hearing regarding the Motion.

PLEASE TAKE FURTHER NOTICE that the Debtors will serve this Notice and Motion, the attached Memorandum of Points and Authorities, and the Gallagher Declaration on: (1) the Office of the United States Trustee; (2) Counsel for the Official Committee of Unsecured Creditors (the "Committee"); (3) Counsel for Lapis Advisers, LP ("Lapis") and UMB Bank, N.A. ("UMB") (together, the "Prepetition Secured Creditors"); and (4) any parties, including federal and state governmental entities, that have agreed to maintain confidentiality of the Motion. Counsel for the Committee, Lapis and UMB have previously been provided with drafts of this Motion and been made aware of the Debtors' intent. In the event that the Court sets a hearing on the Motion, the Debtors shall provide notice of the entry of the Order setting a hearing date upon each of the foregoing parties and any other parties in interest as the Court directs, including by telephonic notice. The Debtors submit that such notice is sufficient and that no other or further notice need be given.

WHEREFORE, for all the foregoing reasons, and such additional reasons as may be advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the Court enter an Order (a) authorizing the Debtors to implement the Closure Plan, (b) scheduling a hearing on the Motion, and (c) granting such further relief as is just.

Dated: January 3, 2020

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Debtors consent to entry of final orders and judgments by the bankruptcy judge. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II.

STATEMENT OF FACTS

A. The Bankruptcy

1. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on May 6, 2019 (the "Petition Date"). These chapter 11 cases (the "Chapter 11 Cases") are currently being jointly administered before the Court [Docket No. 10]. Since the Petition Date, the Debtors have been operating their businesses as debtors in possession pursuant to §§1107 and 1108.

2. The United States Trustee appointed the Committee in these Chapter 11 Cases on May 24, 2019 [Docket No. 135]. No trustee or examiner has been appointed.

B. Events Leading to the Debtors' Decision to Close of the Medical Center

3. The Medical Center is a 214-bed hospital which provides a full complement of 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 the Medical Center) is a Level I Cardiac and Level II Stroke center, with a Level III Trauma designation. The Medical Center owns 14 clinics with various specialties. On September 1, 2017, the Medical Center became a part of Astria and began doing business as Astria Regional Medical Center on October 17, 2018.

4. The Closure is necessary to ensure the safety of patients and to maintain the financial viability of the Debtors' remaining two hospitals and related clinics. The Medical Center has operated at a significant monthly negative net cash flow for some time even prior to its acquisition in September 2017. Efforts to improve operations were stymied by implementation of a replacement electronic health record and revenue cycle resulting in severe cash constraints and then by the bankruptcy filing. The Debtors have historically funded operations with excess cash generated by other Debtors' hospitals and clinics, primarily from Sunnyside, given the continual losses at the Medical Center. Postpetition, the Medical Center has been the largest and most consistent drain on the Debtors' DIP Financing funds received from the initial DIP Lender. The Medical Center has not improved operationally sufficiently to reach a break-even status, as it continues to require significant cash infusions on a weekly basis. In contrast to the Medical Center, operations at Sunnyside have continued to increase, with revenue growth and improvements in the

revenue cycle resulting in consistent billing, follow-up, and cash flows. Sunnyside collections now approximate prepetition levels. Unfortunately, Sunnyside's success is offset by the Medical Center. The Medical Center losses have increased as a result of declining patient utilization, and, combined with continued revenue cycle issues, those losses have required a disproportionate allocation of the Debtors' funds from all sources to keep the Yakima hospital operating. Given the limited liquidity available to the Debtors, such practice cannot continue as it endangers the viability of Sunnyside and Toppenish, as well as the prospect of a successful exit from bankruptcy for the entire system.

5. The Debtors retained Piper Jaffray & Co. ("Piper Jaffray") to serve as their investment banker beginning in late July 2019 to provide assistance in, among other things, sourcing and coordinating a refinancing or alternative transaction that would support the continued operation of the Medical Center. Following Piper Jaffray's retention, Piper Jaffray developed marketing materials, including a "teaser" and a confidential information memorandum. Piper Jaffray also established an electronic data room containing key information for parties to conduct in-depth due diligence on the Debtors. As of December 15, 2019, Piper Jaffray sent the teaser to approximately twenty-eight (28) parties potentially interested in acquiring the assets, twelve (12) of which requested entry into and signed nondisclosure agreements and were granted access to the data room. Despite significant effort by Piper Jaffray, the only buyer which has expressed an interest in writing to acquire the Medical Center,

has done so only as part of an acquisition of all the assets, including Toppenish and Sunnyside, but at a significantly reduced offer from other offers which *excluded* the Medical Center. While final expressions of interest for a potential alternative transaction have not yet been formally submitted to the Debtors' investment bankers, Piper Jaffray is aware of only one other entity which, just prior to the filing of this Motion, expressed an interest in potentially submitting a bid that might include include the Medical Center in their offer.

6. Likewise, Piper Jaffray has been unable to locate an exit financing lender willing to provide funding to the Medical Center. As of December 15, 2019, Piper Jaffray contacted approximately 132 financial institutions potentially interested in a refinancing transaction with the Debtors, with 60 expressing enough interest to sign nondisclosure agreements and request additional information. Although the Debtors collectively are seeking exit financing to allow the Debtors to exit bankruptcy, initial expressions of interest from lenders indicate that the Medical Center has a negative effect on the Debtors' ability to obtain exit financing and no lender has agreed to loan against the Medical Center. Indeed, lenders expressed concern that any transaction including the Medical Center would result in continued financial support from Sunnyside and jeopardize its operations — and subsequently the creditworthiness of the refinancing transaction.

7. Moreover, in part because of recent anecdotal comments and opinions shared in a public hearing, the Medical Center has experienced an increased turnover

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of nursing staff in the last six to eight weeks, making continued operations of a safe and effective hospital problematic. Notably, the issue referenced, without explicitly stating, was the absence of *excess* nurses. The stated corresponding concern, which was not fully articulated, was that then-currently employed nurses could leave, and without *excess* nurses, such departure could strain the Medical Center's ability to care for patients. Unfortunately, those comments of potential future concerns increased uncertainty and thereby influenced nurses to leave. Replacing employed nurses with temporary staffing nurses is not a long-term solution to ensure patient care remains at a high quality level, and is significantly more expensive. Thus, these comments have had a significant negative impact on the Medical Center.

8. In addition, upon information and belief, individuals associated with VMMH have substantially increased solicitation of the Medical Center's nursing staff. Specifically, VMMH employees have contacted nurses employed by the Medical Center, telling those nurses that the Medical Center was closing (which was untrue at that time) and encouraging those nurses to leave the Medical Center to work for VMMH. It is important to note that the Debtors had believed the Yakima market was too large for VMMH's emergency room, and efforts to fund the Medical Center were part of the Medical Center's nonprofit mission of serving the community. However, the Debtors' are reassured by communications from the Chief Executive Officer of VMMH to its employees and medical staff (i) indicating VMMH has been planning for the closure of the Medical Center since November of 2018, and (ii)

expressing VMMH's ability to provide increased volume of healthcare services resulting from the closure of the Medical Center.

9. Finally, on December 2, 2019, the Washington Department of Health ("DOH") issued its Ruling granting VMMH an elective PCI program. As is reflected in numerous pleadings filed with the Court, the Medical Center has a Certificate of Need for elective PCI procedures. As such, the Medical Center was the only hospital allowed to conduct elective heart procedures in Yakima (rather than two hours away in Seattle, for example, where VMMC was previously licensed to perform such procedures). This market differentiator was a driving force in the Debtors' decision to fund losses at the Medical Center, as dedication to the community's access to healthcare is paramount. The DOH's Ruling eliminates the critical need the Medical Center previously exclusively served in the City of Yakima, resulting in the removal of the Medical Center's remaining favorable market criteria.

10. The Debtors have carefully considered whether reducing operations at the Medical Center would allow it to continue to operate even without offering the full panoply of its current operations. This analysis included analyzing revenue and expenses by service line to determine whether various combinations of service line reductions or service line combinations could result in a profitable or break-even operation for the Medical Center. After reviewing several scenarios for the Medical Center, the Debtors determined that the current operations could not be restructured or repurposed in the near-term to sufficiently reduce or eliminate operating losses.

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No combination of closing or reducing operations would allow the Medical Center to maintain its license and provide meaningful patient care while simultaneously reducing costs and losses sufficiently to allow the Debtors' remaining hospitals to continue to operate successfully. This is especially true considering the recent loss of nurses and the DOH's Ruling. At all relevant times, the Debtors have been in ongoing communication with their professionals, counsel to the Prepetition Secured Creditors, and the Committee regarding the Medical Center's status, as well as the refinancing and transaction progress, and have discussed the above-mentioned analysis and budget impacts of closing or not closing the Medical Center. The Debtors further discussed the financial situation with the Board of Directors for Astria and the Medical Center, each of which consent to the Closure.

11. As such, given the Medical Center's dire financial picture, its increased operational challenges, its continued negative effect on the Debtors' ability to obtain exit financing, and the Debtors' focus on patient safety, the Debtors, in consultation with their professionals, and having provided notice to the counsel for the Committee and its secured creditors, have determined that it is necessary and unfortunately unavoidable to shut down the Medical Center in the context of these Chapter 11 Cases. As noted above, unless the Debtors can promptly close the Medical Center, which they have been unable to refinance or sell, they endanger their ability to maintain staff and therefor maintain quality patient care and the future of Toppenish and Sunnyside, two hospitals owned by the Debtors that provide services to a

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critically underserved and vulnerable patient population. The Debtors intend to work closely with the DOH and the local health authorities to address their concerns and comments regarding the Closure Plan. For all these reasons, the Debtors have concluded that ceasing operations at, and closing the Medical Center is the right decision.

III.

THE CLOSURE PLAN

A. Overview of the Closure Plan

12. The Debtors, in consultation with their professionals and healthcare advisors, have developed a comprehensive Closure Plan, certain key elements of which are described herein. Specifically, the Closure Plan provides for each of the following steps to terminate the operations of the Medical Center's services:

- Cessation of new inpatient admissions;
- Transfer, discharge, and referral of patients;
- Communication to employees, patients, providers, government entities, area hospitals, and the community at large;
- Safeguard, transfer, storage, and disposal of medical records;
- Disposal of pharmaceuticals, including controlled substances;
- Disposal and handling of medical waste and other hazardous materials;
- Coordination with Emergency Medical Services ("EMS") and removal of Medical Center road signs; and
- Implementation of enhanced security measures.

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13. Above all, the Closure Plan emphasizes patient safety. The Debtors plan to work closely with the DOH, other relevant authorities, and area providers to prevent disruption of patient care and ensure a smooth transition of the Debtors' patients to new care providers.

B. Timeline for the Closure Plan

14. Although subject to modification based on patient safety concerns and input from the DOH and others, the Debtors' current general timeline for shut-down of operations is as follows (the reference to "Order entered" is the date, if any, that an order is entered by the Bankruptcy Court granting this Motion):[4]

- Order Entered: (1) Notify CMS, DOH, the Joint Commission, and local Media; (2) Send out communication to medical staff and others.
- Order entered + 1 day: (1) Contact local providers (VMMC and others) and inform them of pending closure and provide appropriate transfer agreements to avoid EMTALA violations; (2) Debtors will discharge patients to home if possible, or home with home health, or rehabilitation or Skilled Nursing Facilities if appropriate, with appropriate payment arranged; (3) Will coordinate with medical staff to stop all elective admissions; (4) Notify Emergency Medical Services on diversion protocol of all patients; (5) Notify local media that ED will be closing and when; (6) Begin process of discharging patients in the normal course and work with discharge planning regarding the potential need to transfer patients with a longer length of stay, and/or make

[4] All dates are subject to ongoing discussions with the DOH and others as appropriate.

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arrangements for home health services for appropriate follow-up care: (7) Patients medical records should be copied (hard copy if possible) or an electronic version should be prepared and submitted to accepting patient, to hospitals in the greater Yakima Valley, with appropriate level of care or a hospital of their choice with appropriate level of care.

- Order entered + 3: Cease all elective inpatient admissions to the Medical Center.
- Order entered + 5: (1) Complete the Medical Center emergency department (the "ED") closure; (2) conclude and cease all elective surgeries.
- Order entered + 7: (1) Complete the Medical Center Intensive Care unit closure; (2) Complete the Medical Center Intermediate Care unit closure; (3) Complete the Medical Center Medical & Surgical unit closure; and (4) Complete the Medical Center acute care hospital closure and cease clinical operations (the "Closure Date").

C. Transfer, Discharge, and Referral of Patients

15. The most critical aspect of the Closure Plan is ensuring continuity of care for the Debtors' patients. The majority of currently-admitted patients will be discharged in the ordinary course, and, if necessary, provided with information and assistance to make follow-up appointments with replacement providers. Inpatients will be notified of the anticipated Closure and will be transferred, along with their medical record information, to a hospital in the greater Yakima Valley or a hospital of the patients' choice. Arrangements with an ambulance carrier will be in place to

accommodate the orderly transition of all patients. The Debtors expect to complete the transfer and discharge of acute care patients by the Closure Date.

D. Medical Records Safeguard, Storage, Transfer, and Disposal

16. The safeguard, storage, transfer, and disposal of medical records are also an important element of the Closure Plan. The Debtors currently store a significant portion of their physical patient medical records with a prepetition vendor specializing in document management, with a separate prepetition vendor maintaining all electronic medical records. The Debtors will continue to work with prepetition vendors to maintain all physical and electronic medical records for the Medical Center. Written notification of how to locate patient records will also be sent to all physicians currently on the active staff of the Medical Center, along with a protocol for transferring such records. Finally, the Debtors will follow the procedures established under § 351 for disposal of patient records.

E. Communications Regarding the Closure Plan

17. The Debtors have developed a comprehensive approach to keep patients, employees, government agencies, area hospitals, and the community at large informed of the Closure process. In particular, the Debtors will contact area hospitals and outpatient practices to inform them of the Closure and to discuss procedures for the transfer of patients. In addition, the Debtors will notify the fire department and the appropriate regulatory and governmental agencies of the Closure. As noted above, the Debtors intend to follow the procedures in the Bankruptcy Code regarding

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patient medical records, and will provide written notice to all physicians currently on the active staff of the Medical Center as to how to locate patient records.

18. With respect to employees, in addition to the appropriate notices to be sent, the Debtors intend to schedule job fairs for displaced employees and provide information to displaced employees about open positions at Toppenish and Sunnyside, which are also operated by the Debtors. As noted above, those hospitals are not in any way subject to the Closure Plan.

F. Disposal of Controlled Substances, Pharmaceuticals, Medical Waste, and Other Hazardous Materials

20. The Debtors will manage and dispose of controlled substances, pharmaceuticals, medical waste, and other hazardous materials in accordance with state and federal guidelines. Medications, including controlled substances, radioactive materials, chemicals, medical waste, infectious materials, and other hazardous materials will be identified, secured and inventoried, then destroyed, disposed of, returned to vendors, or transferred to other providers as appropriate. The Medical Center will have vendors to manage the disposal of medical waste and infectious materials. After termination of services, the Debtors will also retain an outside vendor to decontaminate hot rooms.

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IV.

THE DEBTORS SHOULD BE PERMITTED TO WIND DOWN THE MEDICAL CENTER'S OPERATIONS AND CLOSE

Section 105(a) of the Bankruptcy Code, in conjunction with §§ 363(b) and 1108, permits the relief requested herein. Closure of the Medical Center will preserve the Debtors' rights to use their other property to stymie continued losses and to maximize value to their estates through the continued operations at Toppenish and Sunnyside, which provide services to a critically underserved and vulnerable patient population. Otherwise, an inability to gain control over future mounting losses could arguably cause administrative insolvency in one or more estates at a later date.

Section 105(a) provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a). "Section 105(a) vests bankruptcy courts with broad residual powers." *In re Mastro*, 585 B.R. 587 (B.A.P. 9th Cir. 2018). Thus, the Court may invoke § 105(a) if necessary to preserve a right provided elsewhere in the Bankruptcy Code. *Law v. Siegel*, 134 S. Ct. 1188, 1194 (2014); *In re Dyer*, 322 F.3d 1178, 1193 (9th Cir. 2003); *In re Chaussee*, 399 B.R. 225, 235 (B.A.P. 9th Cir. 2008). While § 105(a) cannot be used to take "action that the Code prohibits," *Law*, 134 S. Ct. at

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1194, there is no such prohibition here, because the Bankruptcy Code does not prohibit the relief sought by this Motion. To the contrary, the Bankruptcy Code supports the relief sought herein.

For example, § 1108 grants a debtor in possession the *right* to operates its business, providing that the trustee (or debtor in possession) "*may* operate the debtor's business." 11 U.S.C. § 1108 (emphasis added). With its use of the permissive term, "may," the statute "clearly indicates that a trustee is not required to operate the debtor's business." *In re Thrifty Liquors, Inc.*, 26 B.R. 26, 28 (Bankr. D. Mass. 1982). Indeed, § 1108 "necessarily implies the lesser authority to modify the operation of the business on such grounds as he deems appropriate under the circumstances." *Id.* Thus, a debtor is not required to operate its business "if such operations will reduce the value of the debtor's assets or if the debtor's business is moribund." 7 COLLIER ON BANKRUPTCY, ¶ 1108.13 (Alan N. Resnick & Henry Sommer eds., 16th ed.). Indeed, in such circumstances, "continued operation of a business that ought to be closed down and liquidated may be a breach of the fiduciary duties of a trustee or debtor in possession." *Id.*

Additionally, § 363 permits a debtor to "use" its property in a manner that will enhance its value to the estate. Specifically, § 363(b) provides, in relevant part, that a debtor "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate . . . ." 11 U.S.C. § 363(b). Further, a debtor may enter into transactions involving property of the estate without first obtaining

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court approval if done in the ordinary course of business. *See* 11 U.S.C. § 363(c)(1); *see also In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) ("The framework of section 363 is designed to allow a trustee (or debtor-in-possession) the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight, while protecting creditors by giving them an opportunity to be heard when transactions are not ordinary.").

Although the Bankruptcy Code does not explicitly require Court approval of the Closure Plan, the decision to wind down a debtor's business dramatically affects a debtor's core services and thus directly impacts many of its creditors, patients, and other parties in interest. Therefore, in the exercise of caution, and because Closure of the Medical Center is arguably a transaction outside the ordinary course of business, the Debtors seek Court approval of the continued implementation of the Closure Plan under §§ 105(a), 363(b), and 1108.

In reviewing a debtor's decision to use estate property pursuant to § 363, courts have routinely held that if such use represents reasonable business judgment on the part of the debtor, such use should be approved. *See In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, Case No. 2:16-bk-17463-ER, Docket No. 633, at 2, lines7-10 (Bankr. C.D. Cal. Jan. 20, 2017); *see also In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983) (requiring a "good business reason" to approve a transaction under § 363). "Ordinarily, the position of the trustee is afforded deference, particularly where

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business judgment is entailed in the analysis or where there is no objection." *In re Lahijani*, 325 B.R. 282, 289 (B.A.P. 9th Cir. 2005).

Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied "as long as the proposed transaction appears to enhance the debtor's estate." *In re Food Barn Stores, Inc.*, 107 F.3d 558, 566 n.16 (8th Cir. 1997); *accord In re AbitibiBowater*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is "not a difficult standard to satisfy"). Moreover, ceasing operations at one location in some cases may serve to maximize the value of the debtor's estate. *See In re R.H. Macy & Co., Inc.*, 170 B.R. 69, 74 (Bankr. S.D.N.Y. 1994) ("The debtor's duty to maximize estate assets may require, as it did here, the cessation of operations at one location.").

Under the business judgment rule, "management of a corporation's affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code." *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)).

In *Gardens Regional Hospital*, the bankruptcy court recognized the following similar facts in that case:

> The Debtor's existing operations do not generate sufficient cash flow to keep the hospital open. To maintain operations, the Debtor would be required to obtain additional debtor-in-possession ("DIP") financing. No lenders will extend credit to the Debtor unless the credit is secured by a lien senior in priority to the liens of the Debtor's pre-petition secured creditors. Under the circumstances, the Court lacks the statutory authority to authorize the Debtor to obtain additional credit priming the liens of the secured creditors.

Case No. 2:16-bk-17463-ER, Docket No. 633, at 2, lines 7-15. As a result, the bankruptcy court concluded that "[t]he closing of the hospital constitutes use of estate property, outside the ordinary course of business, within the meaning of Bankruptcy Code §363(b). The Debtor's decision to close the hospital is a proper exercise of the Debtor's business judgment." *Id*. Indeed, the bankruptcy court in *Gardens Regional Hospital* further recognized that under these circumstances, the Debtors' very duty is to close the Hospital:

> In view of the lack of funds to continue operations, and the inability of the Debtor to obtain additional credit, the vote by the Debtor's Board of Directors ("Board") to seek closure of the hospital was entirely consistent with the Board's fiduciary duties, imposed under state law, to uphold the hospital's mission of sustaining public health and welfare. Public health and safety would be jeopardized if the Debtor continued to admit new patients when it lacks funds to adequately sustain operations. In fact, the Board would be acting in violation of its fiduciary duties to the community if it attempted to continue operating the hospital despite the lack of sufficient cash to sustain operations.

Id. at 3, lines 9-16.

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Here, the business reasons for closing the Medical Center are both sound and compelling. Simply put, the Debtors may have no alternative but to close the Medical Center. Thus, the Debtors have determined in their business judgment that it is prudent to shut down operations at the Medical Center. The Debtors have limited cash and cannot continue operations, despite the numerous steps the Debtors have taken to address their liquidity issues and search for a strategic partner for continued operation of the Medical Center. Without access to exit financing or a potential transaction, the Debtors' options are limited to Closure of the Medical Center to ensure patient safety. Similar relief has been granted in previous chapter 11 cases. *See In re Gardens Regional Hospital and Medical Center, Inc.*, Case No. 2:16-bk-17463-ER, Docket No. 633 (Bankr. C.D. Cal. Jan. 20, 2017) (order authorizing closure of the debtor's hospital); *In re Saint Vincents Catholic Med. Ctr. Of N.Y.*, Case No. 10-11963, Docket No. 276 (Bankr. S.D.N.Y. May 14, 2010) (order authorizing continued implementation of closure plan for the debtors' Manhattan hospital and certain affiliated outpatient clinics and practices); *In re Saint Vincents Catholic Med. Ctr. Of N.Y.*, Case No. 05-14945, Docket No. 394 (Bankr. S.D.N.Y. Sept. 20, 2005) (order authorizing closure of St. Mary's hospital).

The above concerns are coupled with recent anecdotal comments made at a recent hearing in this Case and VMMH's solicitation of the Medical Center's nursing staff, both of which have created morale issues and have increased the turnover of nurses—at a time when there is already a shortage of nurses nationwide. Replacing

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employed nurses with temporary nurses is detrimental to the quality and continuity of care to patients and is significantly more expensive than employing nurses. Finally, the DOH's Ruling eliminates the critical need the Medical Center previously exclusively served, resulting in the removal of the Medical Center's remaining favorable market criteria.

Thus, the Debtors intend to implement the Closure Plan consistent with applicable law and regulations, with due care for their patients, and with the assistance of their healthcare advisors. The Debtors will work closely with the DOH and all other relevant authorities to address their concerns regarding the Closure Plan.

V.

REQUESTS FOR IMMEDIATE RELIEF AND WAIVER OF STAY

Pursuant to Bankruptcy Rule 6004(h), the Debtors seek (a) the immediate entry of an Order granting the relief sought herein, and (b) a waiver of any stay of effectiveness of such an Order. Bankruptcy Rule 6004(h) provides, in relevant part, that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Here, failure to grant immediate relief would risk immediate and irreparable harm to the Debtors' patients. Notwithstanding the unquestioned skill and dedication of the Debtors' employees to attend to the continued needs of the Debtors' patients, given their financial condition and available funding, the Debtors must be permitted to move expeditiously to implement the Closure Plan, in

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coordination with the DOH and other applicable authorities, to ensure patient safety. Thus, the Debtors seek entry of an Order granting the relief requested in the Motion.

VI.

CONCLUSION

For all the reasons set forth herein, the Debtors request an Order (a) authorizing the Debtors to implement the Closure Plan at the Medical Center, (b) scheduling a hearing on the Motion, and (c) and granting such further relief as is just.

Dated: January 3, 2020

/s/ Sam J. Alberts
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<u>DECLARATION OF JOHN M. GALLAGHER IN SUPPORT OF EMERGENCY MOTION TO CLOSE MEDICAL CENTER</u>

I, John M. Gallagher, hereby state and declare as follows:

1. I am the President and Chief Executive Officer ("<u>CEO</u>") of Astria Health ("<u>Astria</u>"). I am employed by AHM, Inc. ("<u>AHM</u>"), a nondebtor entity that provides management services to Astria and its affiliated debtors and debtors in possession (collectively, the "<u>Debtors</u>") under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (the "<u>Bankruptcy Code</u>") in these chapter 11 cases (the "<u>Chapter 11 Cases</u>").

2. I am a senior healthcare industry executive. My experience includes leading both nonprofit and for-profit hospitals and systems. I have been a healthcare executive for more than twenty (20) years. My 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. I have 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.

3. I am a Board-Certified Fellow in the American College of Healthcare Executives. I received a Master of Business Administration (1997) and a Master of Healthcare Administration (1997) from the University of Houston, and I have a Bachelor of Science in Zoology from Texas A&M University (1995).

4. My previous leadership experience, in reverse chronological order (from most recent in time), was serving as CEO of SCHC from May 2012 to April 2017. In that role, my responsibilities included the turnaround and leadership of that 501(c)(3) independent 38-bed, $100 million per year, critical access hospital. With the recruitment of more than fifty (50) new primary care providers and specialists, the introduction of thirty-seven (37) new service lines including Neurosurgery, Interventional Cardiology, Nephrology, Vascular Medicine, Urology, the addition of dozens of new primary and multi-specialty outpatient centers, and the acquisition of a competitive ambulatory surgery center, physician practice and hospital programs and improved operations, I led a $39 million turnaround of the facility in forty-eight (48) months. This returned that hospital to profitable growth that has been sustained over time.

5. Prior thereto, I served as an executive with Health Management Associates, Inc., in Naples, Florida from 2008 to 2011. My responsibilities included serving as CEO of 125-bed, $70 million per year, Stringfellow Memorial Hospital in Anniston, Alabama from 2009 through 2011 and as Chief Operating Officer

("COO") of 281-bed, $120 million per year, Riverview Medical Center in Gadsden, Alabama from 2008 to 2009. In both hospitals, I was able to realize significant profitable growth. At Stringfellow Memorial Hospital there was a 35% growth in profits, yielding a 19.8% margin and $13.8 million in Earnings Before Income, Taxes, Depreciation & Amortization ("EBITDA"). My responsibilities included managing joint ventures, recruiting new physicians, acquiring physician practices, establishing new outpatient health centers, and realizing a 120% improvement in inpatient Hospital Consumer Assessment of Healthcare Providers and Systems ("HCAHPS") patient satisfaction scores. At Riverview Regional Medical Center, I realized an 11% growth in profits, yielding a 15.7% margin and $18 million in EBITDA through merging independent anesthesiologists and employed certified registered nurses and anesthetist groups, replacing a Radiology Group, and implementing nine newly employed physician clinics.

6. From 2005 to 2008, I served as an Executive with Community Health Systems ("CHS") headquartered in Franklin, Tennessee. While at CHS, from 2007 to 2008, I was the CEO of 115-bed, $54 million per year, Mimbres Memorial Hospital, in Deming, New Mexico, and from 2005 to 2006, I served as Associate CEO of 326-bed, $200 million per year, Laredo Medical Center in Laredo, Texas. While at Mimbres Memorial Hospital, it realized a 25% margin, yielding $13 million in EBITDA and a 33% increase in patient volume, managing through a 10-year

National Labor Relations Board ("NLRB") appeal, and improving to 95% on Core Measure scores. While at Laredo Medical Center, it achieved an EBITDA growth of 90% (by $32 million) and an average daily census increase (ADC) from 197 to 256. There, I realized a 66% reduction in patients who left against medical advice (AMAs) and patients who left without treatment (LWOTs) to 4%, yielding better emergency room patient flow ratios. While there, I was also responsible for reorganizing the hospital-based ambulatory surgery center.

7. From 2002 to 2005, I served both as a CEO and COO at IASIS Healthcare in Franklin, Tennessee—a 14-hospital for-profit health system. Specifically, from 2003 to 2005, I was the CEO of MidJeff Hospital & Park Place Medical Center in Port Arthur, Texas. There, I was responsible for the two-hospital, 385-bed, $130 million per year, system where part of my responsibilities included overseeing the construction of a $90 million replacement facility, the Medical Center of Southeast Texas. In that role, I increased margin to 22.1%, yielding $28.6 million in EBITDA from 18.7%, and saved $1.1 million in salaries through consolidating leadership. In 2003, I also served as interim CEO of 130-bed, $50 million per year, Mid Jefferson Hospital, in Nederland, Texas. In that role, the hospital's net revenue grew from $43 to $50 million, yielding a 30% improvement in EBITDA, and outpatient volume increased by 10% with a reduction in staffing of 3%, yielding employees per occupied bed (EPOB) to 3:4.

8. From 2002 to 2003, I also served as CEO of 142-bed, $58 million per year, Mesa General Hospital, in Phoenix, Arizona, and as CEO of 225-bed, $55 million per year, Park Place Medical Center, in Port Arthur, Texas. At Mesa General Hospital, my responsibilities included overseeing a $6 million turnaround of the facility from a negative $600,000 to a positive $5.5 million EBITDA, recruiting the largest cardiology group in Arizona to join the facility (thirty-two (32) physicians and three (3) clinics), and initiating a da Vinci Robotics program yielding the first successful closed-chest bypass surgery in the Southwest United States.

9. A full description of the facilities and services which comprise the Astria Health system are contained in my declaration in support of the Emergency First Day Motions [Docket No. 21].

10. The Medical Center is a 214-bed hospital which provides a full complement of medical services including the Yakima Valley's only 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 the Medical Center) is a Level I Cardiac and Level II Stroke center, with a Level III Trauma designation. The Medical Center owns 14 clinics with various specialties. On September 1, 2017, the Medical Center became a part of Astria and began doing business as Astria Regional Medical Center on October 17, 2018.

11. The Closure is necessary to ensure the safety of patients and to maintain the financial viability of the Debtors' remaining two hospitals and related clinics. The Medical Center has operated at a significant monthly negative net cash flow for some time even prior to its acquisition in September 2017. Efforts to improve operations were stymied by implementation of a replacement electronic health record and revenue cycle resulting in severe cash constraints and then by the bankruptcy filing. The Debtors have historically funded operations with excess cash generated by other Debtors' hospitals and clinics, primarily from Sunnyside, given the continual losses at the Medical Center. Postpetition, the Medical Center has been the largest and most consistent drain on the Debtors' DIP Financing funds received from the initial DIP Lender. The Medical Center has not improved operationally sufficiently to reach a break-even status, as it continues to require significant cash infusions on a weekly basis. In contrast to the Medical Center, operations at Sunnyside have continued to increase, with revenue growth and improvements in the revenue cycle resulting in consistent billing, follow-up, and cash flows. Sunnyside collections now approximate prepetition levels. Unfortunately, Sunnyside's success is offset by the Medical Center. The Medical Center losses have increased as a result of declining patient utilization, and, combined with continued revenue cycle issues, those losses have required a disproportionate allocation of the Debtors' funds from all sources to keep the Yakima hospital operating. Given the limited liquidity

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available to the Debtors, such practice cannot continue as it endangers the viability of Sunnyside and Toppenish, as well as the prospect of a successful exit from bankruptcy for the entire system.

12. The Debtors retained Piper Jaffray & Co. ("Piper Jaffray") to serve as their investment banker beginning in late July 2019 to provide assistance in, among other things, sourcing and coordinating a refinancing or alternative transaction that would support the continued operation of the Medical Center. Following Piper Jaffray's retention, Piper Jaffray developed marketing materials, including a "teaser" and a confidential information memorandum. Piper Jaffray also established an electronic data room containing key information for parties to conduct in-depth due diligence on the Debtors. As of December 15, 2019, Piper Jaffray sent the teaser to approximately twenty-eight (28) parties potentially interested in acquiring the assets, twelve (12) of which requested entry into and signed nondisclosure agreements and were granted access to the data room. Despite significant effort by Piper Jaffray, the only buyer which has expressed an interest in writing to acquire the Medical Center, has done so only as part of an acquisition of all the assets, including Toppenish and Sunnyside, but at a significantly reduced offer from other offers which *excluded* the Medical Center. While final expressions of interest for a potential alternative transaction have not yet been formally submitted to the Debtors' investment bankers, Piper Jaffray is aware of only one other entity which, just prior to the filing of this

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Motion, expressed an interest in potentially submitting a bid that might include include the Medical Center in their offer.

13. Likewise, Piper Jaffray has been unable to locate an exit financing lender willing to provide funding to the Medical Center. As of December 15, 2019, Piper Jaffray contacted approximately 132 financial institutions potentially interested in a refinancing transaction with the Debtors, with 60 expressing enough interest to sign nondisclosure agreements and request additional information. Although the Debtors collectively are seeking exit financing to allow the Debtors to exit bankruptcy, initial expressions of interest from lenders indicate that the Medical Center has a negative effect on the Debtors' ability to obtain exit financing and no lender has agreed to loan against the Medical Center. Indeed, lenders expressed concern that any transaction including the Medical Center would result in continued financial support from Sunnyside and jeopardize its operations — and subsequently the creditworthiness of the refinancing transaction.

14. Moreover, in part because of recent anecdotal comments and opinions shared in a public hearing, the Medical Center has experienced an increased turnover of nursing staff in the last six to eight weeks, making continued operations of a safe and effective hospital problematic. Notably, the issue referenced, without explicitly stating, was the absence of *excess* nurses. The stated corresponding concern, which was not fully articulated, was that then-currently employed nurses could leave, and

without *excess* nurses, such departure could strain the Medical Center's ability to care for patients. Unfortunately, those comments of potential future concerns increased uncertainty and thereby influenced nurses to leave. Replacing employed nurses with temporary staffing nurses is not a long-term solution to ensure patient care remains at a high quality level, and is significantly more expensive. Thus, these comments have had a significant negative impact on the Medical Center.

15. In addition, upon information and belief, individuals associated with VMMH have substantially increased solicitation of the Medical Center's nursing staff. Specifically, VMMH employees have contacted nurses employed by the Medical Center, telling those nurses that the Medical Center was closing (which was untrue at that time) and encouraging those nurses to leave the Medical Center to work for VMMH. It is important to note that the Debtors had believed the Yakima market was too large for VMMH's emergency room, and efforts to fund the Medical Center were part of the Medical Center's nonprofit mission of serving the community. However, the Debtors' are reassured by communications from the Chief Executive Officer of VMMH to its employees and medical staff (i) indicating VMMH has been planning for the closure of the Medical Center since November of 2018, and (ii) expressing VMMH's ability to provide increased volume of healthcare services resulting from the closure of the Medical Center.

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16. Finally, on December 2, 2019, the Washington Department of Health ("DOH") issued its Ruling granting VMMH an elective PCI program. As is reflected in numerous pleadings filed with the Court, the Medical Center has a Certificate of Need for elective PCI procedures. As such, the Medical Center was the only hospital allowed to conduct elective heart procedures in Yakima (rather than two hours away in Seattle, for example, where VMMC was previously licensed to perform such procedures). This market differentiator was a driving force in the Debtors' decision to fund losses at the Medical Center, as dedication to the community's access to healthcare is paramount. The DOH's Ruling eliminates the critical need the Medical Center previously exclusively served in the City of Yakima, resulting in the removal of the Medical Center's remaining favorable market criteria.

17. The Debtors have carefully considered whether reducing operations at the Medical Center would allow it to continue to operate even without offering the full panoply of its current operations. This analysis included analyzing revenue and expenses by service line to determine whether various combinations of service line reductions or service line combinations could result in a profitable or break-even operation for the Medical Center. After reviewing several scenarios for the Medical Center, the Debtors determined that the current operations could not be restructured or repurposed in the near-term to sufficiently reduce or eliminate operating losses. No combination of closing or reducing operations would allow the Medical Center to maintain its license and provide meaningful patient care while simultaneously reducing costs and losses sufficiently to allow the Debtors' remaining hospitals to continue to operate successfully. This is especially true considering the recent loss of nurses and the DOH's Ruling. At all relevant times, the Debtors have been in ongoing communication with their professionals, counsel to the Prepetition Secured Creditors, and the Committee regarding the Medical Center's status, as well as the refinancing and transaction progress, and have discussed the above-mentioned analysis and budget impacts of closing or not closing the Medical Center. The Debtors further discussed the financial situation with the Board of Directors for Astria and the Medical Center, each of which consent to the Closure.

18. As such, given the Medical Center's dire financial picture, its increased operational challenges, its continued negative effect on the Debtors' ability to obtain exit financing, and the Debtors' focus on patient safety, the Debtors, in consultation with their professionals, and having provided notice to the counsel for the Committee and its secured creditors, have determined that it is necessary and unfortunately unavoidable to shut down the Medical Center in the context of these Chapter 11 Cases. As noted above, unless the Debtors can promptly close the Medical Center, which they have been unable to refinance or sell, they endanger their ability to maintain staff and therefor maintain quality patient care and the future of Toppenish and Sunnyside, two hospitals owned by the Debtors that provide services to a

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critically underserved and vulnerable patient population. The Debtors intend to work closely with the DOH and the local health authorities to address their concerns and comments regarding the Closure Plan. For all these reasons, the Debtors have concluded that ceasing operations at, and closing the Medical Center is the right decision.

19. The Debtors, in consultation with their professionals and healthcare advisors, have developed a comprehensive Closure Plan, certain key elements of which are described herein. Specifically, the Closure Plan provides for each of the following steps to terminate the operations of the Medical Center's services: (a) Cessation of new inpatient admissions; (b) Transfer, discharge, and referral of patients; (c) Communication to employees, patients, providers, government entities, area hospitals, and the community at large; (d) Safeguard, transfer, storage, and disposal of medical records; (e) Disposal of pharmaceuticals, including controlled substances; (f) Disposal and handling of medical waste and other hazardous materials; (g) Coordination with Emergency Medical Services ("EMS") and removal of Medical Center road signs; and (h) Implementation of enhanced security measures.

20. Above all, the Closure Plan emphasizes patient safety. The Debtors plan to work closely with the DOH, other relevant authorities, and area providers to prevent disruption of patient care and ensure a smooth transition of the Debtors' patients to new care providers.

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21. Although subject to modification based on patient safety concerns and input from the DOH and others, the Debtors' current general timeline for shut-down of operations is as follows (the reference to "Order entered" is the date, if any, that an order is entered by the Bankruptcy Court granting this Motion):[5] (a) Order Entered: (1) Notify CMS, DOH, the Joint Commission, and local Media; (2) Send out communication to medical staff and others; (b) Order entered + 1 day: (1) Contact local providers (VMMC and others) and inform them of pending closure and provide appropriate transfer agreements to avoid EMTALA violations; (2) Debtors will discharge patients to home if possible, or home with home health, or rehabilitation or Skilled Nursing Facilities if appropriate, with appropriate payment arranged; (3) Will coordinate with medical staff to stop all elective admissions; (4) Notify Emergency Medical Services on diversion protocol of all patients; (5) Notify local media that ED will be closing and when; (6) Begin process of discharging patients in the normal course and work with discharge planning regarding the potential need to transfer patients with a longer length of stay, and/or make arrangements for home health services for appropriate follow-up care: (7) Patients medical records should be copied (hard copy if possible) or an electronic version should be prepared and submitted to accepting patient, to hospitals in the greater

[5] All dates are subject to ongoing discussions with the DOH and others as appropriate.

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Yakima Valley, with appropriate level of care or a hospital of their choice with appropriate level of care; (c) Order entered + 3: Cease all elective inpatient admissions to the Medical Center; (d) Order entered + 5: (1) Complete the Medical Center emergency department (the "ED") closure; (2) conclude and cease all elective surgeries; (e) Order entered + 7: (1) Complete the Medical Center Intensive Care unit closure; (2) Complete the Medical Center Intermediate Care unit closure; (3) Complete the Medical Center Medical & Surgical unit closure; and (4) Complete the Medical Center acute care hospital closure and cease clinical operations (the "Closure Date").

22. The most critical aspect of the Closure Plan is ensuring continuity of care for the Debtors' patients. The majority of currently-admitted patients will be discharged in the ordinary course, and, if necessary, provided with information and assistance to make follow-up appointments with replacement providers. Inpatients will be notified of the anticipated Closure and will be transferred, along with their medical record information, to a hospital in the greater Yakima Valley or a hospital of the patients' choice. Arrangements with an ambulance carrier will be in place to accommodate the orderly transition of all patients. The Debtors expect to complete the transfer and discharge of acute care patients by the Closure Date.

23. The safeguard, storage, transfer, and disposal of medical records are also an important element of the Closure Plan. The Debtors currently store a significant

portion of their physical patient medical records with a prepetition vendor specializing in document management, with a separate prepetition vendor maintaining all electronic medical records. The Debtors will continue to work with prepetition vendors to maintain all physical and electronic medical records for the Medical Center. Written notification of how to locate patient records will also be sent to all physicians currently on the active staff of the Medical Center, along with a protocol for transferring such records. Finally, the Debtors will follow the procedures established under § 351 for disposal of patient records.

24. The Debtors have developed a comprehensive approach to keep patients, employees, government agencies, area hospitals, and the community at large informed of the Closure process. In particular, the Debtors will contact area hospitals and outpatient practices to inform them of the Closure and to discuss procedures for the transfer of patients. In addition, the Debtors will notify the fire department and the appropriate regulatory and governmental agencies of the Closure. As noted above, the Debtors intend to follow the procedures in the Bankruptcy Code regarding patient medical records, and will provide written notice to all physicians currently on the active staff of the Medical Center as to how to locate patient records.

25. With respect to employees, in addition to the appropriate notices to be sent, the Debtors intend to schedule job fairs for displaced employees and provide information to displaced employees about open positions at Toppenish and

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Sunnyside, which are also operated by the Debtors. As noted above, those hospitals are not in any way subject to the Closure Plan.

26. The Debtors will manage and dispose of controlled substances, pharmaceuticals, medical waste, and other hazardous materials in accordance with state and federal guidelines. Medications, including controlled substances, radioactive materials, chemicals, medical waste, infectious materials, and other hazardous materials will be identified, secured and inventoried, then destroyed, disposed of, returned to vendors, or transferred to other providers as appropriate. The Medical Center will have vendors to manage the disposal of medical waste and infectious materials. After termination of services, the Debtors will also retain an outside vendor to decontaminate hot rooms.

27. Astria Health, its ambulatory services in the Upper Valley, and Astria Sunnyside Hospital, Astria Toppenish Hospital, and their related Astria Health Centers in the Upper and Lower Valley will remain open to serve patients throughout the Valley. The Emergency Departments at both Astria Sunnyside Hospital and Astria Toppenish Hospital remain open 24/7 and 365 days a year. The Astria Sunnyside Foundation is also not affected by this decision.

28. In Yakima, the following Astria Health ambulatory care and outpatient locations are not affected by this decision and will remain open as usual and during their regular business hours. Astria Health locations in Yakima include: (a) Astria

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Ambulatory Surgical Center on 11th Avenue; (b) Atria Health Center – Gastroenterology on Walnut Ave; (c) Astria Health Center – Cardiology on Walnut Ave; (d) Astria Health Center – General Surgery on Walnut Ave; (e) Astria Health Center – Orthopedics on Walnut Ave; (f) Astria Health Center – Vascular Surgery on Walnut Ave; (g) Astria Health Center Multi-Specialty Center on Summitview Avenue (Neurosurgery, Podiatry, Endocrinology, PT, Imaging); (h) Astria Health Center Primary Care and Walk-In on Summitview Avenue; (i) Astria Health Center Primary Care and Walk-In on Business Lane, Terrace Heights; (j) Astria Health Center Primary Care and Walk-in in Selah; (k) Astria Plastic Surgery Center on Creekside Loop; (l) Astria Home Health & Hospice; and (m) Astria Hearing & Speech Center.

29. Astria Health will ensure all Astria Regional Medical Center hospital patients are transitioned smoothly to other Astria Health hospitals or other facilities as appropriate.

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Executed this 3rd day of January 2020, at Yakima, Washington.

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ASTRIA HEALTH

By:______________________

John M. Gallagher
Chief Executive Officer

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