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Attorneys for the Lapis Parties

Attorneys for the Chapter 11  
Debtors and Debtors 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

**NOTICE OF HEARING AND JOINT  
MOTION FOR AN ORDER  
APPROVING: (I) PROPOSED  
DISCLOSURE STATEMENT; (II)  
SOLICITATION AND VOTING  
PROCEDURES; (III) NOTICE AND  
OBJECTION PROCEDURES FOR  
CONFIRMATION OF JOINT PLAN**

<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), SHC Holdco, LLC (19-01196-11), SHC Medical Center - Toppenish (19-01190-11), SHC Medical Center - Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).



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**OF REORGANIZATION; AND (IV)  
GRANTING RELATED RELIEF;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

**HEARING:**  
**Date/Time:** August 13, 2020/11:00 am  
**(Pacific)**  
**Location:** Telephonic or in person at:  
**U.S. Bankruptcy Court,**  
**402 E. Yakima Avenue,**  
**Second Floor Courtroom**  
**Yakima, WA 98901**  
  
**Telephone Conference: (877) 402-9757**  
**Access Code: 7036041**

1           **PLEASE TAKE NOTICE** that, at the above referenced time and date, before  
2 the Honorable Whitman L. Holt, United States Bankruptcy Judge, or as soon  
3 thereafter as the Court may hear the matter, the Court shall hold a hearing on the *Joint*  
4 *Motion for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation*  
5 *and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of*  
6 *Joint Plan of Reorganization; and (IV) Granting Related Relief* (the “Motion”) filed  
7 by Astria Health (“Astria”) and its affiliated debtors, the debtors and debtors in  
8 possession (collectively, the “Debtors”) in the above-captioned chapter 11  
9 bankruptcy cases (the “Chapter 11 Cases”), and Lapis Advisers, LP as lender under  
10 the Debtors’ debtor in possession facility in the Chapter 11 Cases, agent under the  
11 Debtors’ prepetition credit agreement, and as investment advisor and investment  
12 manager for certain funds which are beneficial holders of those certain Washington  
13 Health Care Facilities Authority Revenue Bonds (collectively the “Lapis Parties”  
14 and, together with the Debtors, the “Movants”). **The hearing will take place in**  
15 **person at 402 East Yakima Avenue, Suite 200, Yakima, Washington 98901 or**  
16 **by telephone, to be determined at a later date, as will be reflected on the docket.**  
17 On July 7, 2020, the Movants filed the *Joint Chapter 11 Plan of Reorganization of*  
18 *Astria Health and Its Debtor Affiliates* [Docket No.1471] (the “Plan”) and related  
19 disclosure statement [Docket No. 1472] (the “Disclosure Statement”).

20           **PLEASE TAKE FURTHER NOTICE** that the Motion is based upon this

21           **NOTICE OF MOTION TO APPROVE  
DISCLOSURE STATEMENT**

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1 Notice, the accompanying Memorandum of Points and Authorities, the *Declaration*  
2 *of John M. Gallagher in Support of Emergency First-Day Motions* [Docket No. 21]  
3 (the “First-Day Declaration”), the record in these cases and all other matters of which  
4 this Court may take judicial notice pursuant to Rule 201 of the Federal Rules of  
5 Evidence, the arguments of counsel to be made at the hearing, and all other  
6 admissible evidence properly brought before the Court at or before the hearing on  
7 this Motion, if any.

8 **PLEASE TAKE FURTHER NOTICE** that any party may review and obtain  
9 a copy of the Motion, Plan, and Disclosure Statement, by visiting the following  
10 website <https://www.kccllc.net/astriahealth>. Parties may also contact and request a  
11 copy from: Kurtzman Carson Consultants LLC (“KCC”), the Debtors’ solicitation  
12 agent, by sending a written request via standard overnight or hand delivery to: Astria  
13 Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El  
14 Segundo, CA 90245. A copy may also be obtained by e-mail request to:  
15 [astriainfo@kccllc.com](mailto:astriainfo@kccllc.com). Additionally, copies of the Motion, Disclosure Statement,  
16 and Plan are on file with the Office of the Clerk of the Bankruptcy Court for review.

17 **PLEASE TAKE FURTHER NOTICE** that any party opposing or  
18 responding to the Motion must file and serve any response (“Response”) by **July 30,**  
19 **2020**, on the Movants and the Office of the United States Trustee as follows: (i)  
20 counsel to the Debtors, Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los

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1 Angeles, CA 90017, Attn: Samuel R. Maizel (samuel.maizel@dentons.com); (ii)  
2 counsel to the Lapis Parties, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.,  
3 One Financial Center, Boston, MA 02111, Attn: William Kannel and Ian Hammel  
4 (wkannel@mintz.com, iahammel@mintz.com); and (iii) counsel to the U.S. Trustee,  
5 Office of the United States Trustee, 920 W. Riverside Ave., Suite 593, Spokane, WA  
6 99201, Attn: Gary W. Dyer (gary.w.dyer@usdoj.gov). A Response must be a  
7 complete written statement of all reasons in opposition to or in support of the Motion,  
8 declarations and copies of all evidence on which the responding party intends to rely,  
9 and any responding memorandum of points and authorities.

10 **PLEASE TAKE FURTHER NOTICE** that the failure to file and serve a  
11 timely objection to the Motion may be deemed by the Court to be consent to the relief  
12 requested therein.

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14 *[Remainder of page left intentionally blank]*

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Dated: July 7, 2020

DENTONS US LLP

By: /s/ Samuel R. Maizel

Samuel R. Maizel  
Sam J. Alberts  
Geoffrey M. Miller

Counsel to the *Debtors and Debtors In Possession*

Dated: July 7, 2020

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

By: /s/ William Kannel

William Kannel  
Ian A. Hammel

Counsel to the *Lapis Parties*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Astria Health (“Astria”) and the affiliated debtors, the debtors and debtors in  
4 possession (each a “Debtor” and, collectively, the “Debtors”) in the above-captioned  
5 chapter 11 bankruptcy cases (the “Chapter 11 Cases”), and Lapis Advisers, LP as  
6 lender under the Debtors’ debtor in possession facility in the Chapter 11 Cases, agent  
7 under the Debtors’ prepetition credit agreement, and as investment advisor and  
8 investment manager for certain funds which are beneficial holders of those certain  
9 Washington Health Care Facilities Authority Revenue Bonds (collectively the “Lapis  
10 Parties” and, together with the Debtors, the “Movants” or “Plan Proponents”),  
11 request (the “Motion”) approval of (i) the *Disclosure Statement Relating to the Joint*  
12 *Chapter 11 Plan of Reorganization of Astria Health and Its Affiliates* (the  
13 “Disclosure Statement”)<sup>2</sup> filed concurrently herewith, (ii) the solicitation and voting  
14 procedures proposed herein, (iii) the proposed notice and objection procedures for  
15 confirmation of the *Joint Chapter 11 Plan of Reorganization of Astria Health and Its*  
16 *Debtor Affiliates* (the “Plan”) filed concurrently herewith, and (iv) granting related  
17 relief as set forth more fully herein. In support of the Motion, the Movants refer to

18 \_\_\_\_\_  
19 <sup>2</sup> Capitalized terms not otherwise defined herein have the same definitions set forth  
20 in the Disclosure Statement.

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1 the Declaration of John M. Gallagher in Support of Emergency First-Day Motions  
2 [Docket No. 21] (the “First-Day Declaration”). The Movants respectfully submit that  
3 the Disclosure Statement contains “adequate information,” as that phrase is defined  
4 in § 1125(a)(1),<sup>3</sup> and, thus, request the Court grant the Motion.

5 **JURISDICTION, VENUE, AND REQUESTED RELIEF**

6 The Bankruptcy Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.  
7 This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

8 Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

9 The statutory predicates for the relief sought herein are §§ 105, 1125, and  
10 1126; Bankruptcy Rules 2002, 3016, 3017, 3018, and 3020; and Local Bankruptcy  
11 Rules 2002-1, 3017-1, and 3018-1.

12 **BACKGROUND**

13 1. On May 6, 2019 (the “Petition Date”), each of the Debtors filed a  
14 voluntary petition for relief under the Bankruptcy Code. The Chapter 11 Cases are

15  
16 <sup>3</sup> Unless specified otherwise, all chapter and section references are to title 11 of the  
17 United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and all  
18 “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure. All  
19 “Local Bankruptcy Rule” references are to the Local Bankruptcy Rules for the United  
20 States Bankruptcy Court for the Eastern District of Washington.

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1 jointly administered before the Bankruptcy Court. *See* Docket No. 10. Since the  
2 Petition Date, the Debtors have been operating their businesses as debtors in  
3 possession pursuant to §§ 1107 and 1108.

4 2. The United States Trustee appointed the Official Committee of  
5 Unsecured Creditors on May 24, 2019 [Docket No. 135]. No trustee or examiner has  
6 been appointed.

7 3. As of the Petition Date, Debtor Astria, a Washington nonprofit  
8 corporation, was the direct or indirect corporate member of entities that made it the  
9 largest non-profit healthcare system based in Eastern Washington. The Astria Health  
10 system is headquartered in the heart of Yakima Valley, Washington, with facilities  
11 in Yakima, Sunnyside, and Toppenish, Washington.

12 4. At the Petition Date, the Astria Health system included three hospitals:  
13 Astria Regional Medical Center, a 214-bed hospital in Yakima, Washington  
14 (“ARMC”); Sunnyside Community Hospital Association doing business as Astria  
15 Sunnyside Hospital, a 38-bed critical access hospital in Sunnyside, Washington  
16 (“Sunnyside”); and SHC Medical Center – Toppenish doing business as Astria  
17 Toppenish Hospital, a 63-bed hospital in Toppenish, Washington (“Toppenish,” and  
18 referred to collectively with ARMC and Sunnyside as the “Hospitals”).

19 5. Additional background facts regarding the Debtors, including an  
20 overview of the Debtors’ business, historical operations, capital structure,

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1 employment plans, and issues that led to these Chapter 11 Cases are contained in the  
2 First-Day Declaration.

### 3 DISCLOSURE STATEMENT AND PLAN

4 6. Concurrently herewith, the Plan Proponents filed the proposed Plan and  
5 related Disclosure Statement. The Plan Proponents worked diligently with their  
6 advisors to prepare the Plan, which maximizes value for the estates for the benefit of  
7 creditors. The Plan essentially implements a comprehensive settlement and  
8 compromise between the Lapis Parties and the Debtors, of all rights and claims  
9 associated with the DIP Claims, Senior Secured Bond Debt Claims, and Senior  
10 Secured Credit Agreement Claims (each as defined in the Plan). The settlement is  
11 comprised of (i) the classification and treatment of the DIP Claims, Senior Secured  
12 Bond Debt Claims, and Senior Secured Credit Agreement Claims as specified in the  
13 Plan, (ii) the issuance (or reinstatement, as applicable) of the debt instruments (the  
14 “Exchange Debt”), and (iii) the release and exculpation of the Lapis Parties as  
15 specified in the Plan. Further, the Plan Proponents concluded, after a careful analysis  
16 of the Debtors’ complex corporate and financial structure, that a single plan of  
17 reorganization—rather than thirteen separate plans—will maximize value and avoid  
18 unnecessary costs and potential litigation. Thus, as more fully described in the  
19 Disclosure Statement, the Plan provides for the “deemed” substantive consolidation  
20 of the Debtors solely for purposes of implementation of the Plan and distributions to

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1 creditors otherwise in accordance with the Bankruptcy Code's distribution and  
2 classification provisions. The Disclosure Statement describes further facts and legal  
3 bases that support substantive consolidation.

4 7. As set forth in the Disclosure Statement, the primary source of funding  
5 of cash distributions under the Plan will be from cash on hand. Certain assets shall  
6 also be contributed to a "Liquidation Trust" and, in the event such assets are  
7 liquidated, the proceeds of such liquidation shall be used to fund the Reorganized  
8 Debtors' operating cash account up to an amount equal to 30 days cash on hand and  
9 then to pay the Exchange Debt. Certain avoidance actions shall also be contributed  
10 to a "Litigation Trust," the proceeds of such actions shall be used to make  
11 distributions to unsecured creditors.

12 8. The Movants propose the following key dates in connection with the  
13 approval of the Disclosure Statement and confirmation of the Plan:<sup>4</sup>

<b>Event Date/Deadline</b>	<b>Event Date/Deadline</b>
Disclosure Statement Objection Deadline	July 30, 2020
Deadline to File Reply to Disclosure Statement Objections	August 7, 2020 at 5:00 p.m. (Pacific Time)
Disclosure Statement Hearing	August 13, 2020 at 11:00 a.m. (Pacific Time)
Voting Record Date	August 13, 2020
Entry of Disclosure Statement Order	August 13, 2020

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19 <sup>4</sup> The dates set forth herein are subject to the Court's availability with respect to the  
20 proposed confirmation schedule.

1	Solicitation Commencement Deadline <sup>5</sup>	August 20, 2020
2	Deadline to Object or to File a Motion to Estimate Claims for Voting Purposes	September 3, 2020
3	Voting Objection Deadline	September 3, 2020
	Voting Deadline	September 10, 2020 at 4:00 p.m. (Pacific Time)
4	Confirmation Objection Deadline	September 10, 2020
5	Deadline to File Tabulation Report, Memorandum of Law in Support of Confirmation, Proposed Confirmation Order and Response to Objections to the Confirmation	September 17, 2020
6	Confirmation Hearing	September 24, 2020 at 11:00 a.m. (Pacific Time)

7  
8 The Movants respectfully request entry of an order: (i) approving the  
9 Disclosure Statement as containing “adequate information,” as that term is defined  
10 in § 1125(a)(1); (ii) establishing procedures for solicitation and tabulation of votes to  
11 accept or reject the Plan, including (a) approving the form and manner of the  
12 solicitation packages, (b) approving the form and manner of notice of the hearing to  
13 confirm the Plan, (c) establishing a voting record date and approving procedures for  
14 distributing the solicitation packages, (d) approving the forms of ballots, (e)  
15 establishing the deadline for the receipt of ballots, and (f) approving procedures for

16  
17 <sup>5</sup> The solicitation commencement deadline, and subsequent deadlines, are contingent  
18 on the date of the entry of the order approving the Disclosure Statement. For  
19 purposes of this proposed timeline, the Movants assume entry of the order approving  
20 the Disclosure Statement on August 13, 2020.

21  
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1 tabulating acceptances and rejections of the Plan; (iii) establishing procedures with  
2 respect to, and the deadline for filing objections to, the confirmation of the Plan; and  
3 (iv) granting related relief.

## 4 ARGUMENT

### 5 **A. The Disclosure Requirements of the Bankruptcy Code**

6 Pursuant to § 1125, a plan proponent must provide holders of impaired claims  
7 with “adequate information” regarding a proposed chapter 11 plan. In that regard,  
8 § 1125(a)(1) provides in pertinent part that:

9 “adequate information” means information of a kind, and  
10 in sufficient detail, as far as is reasonably practicable in  
11 light of the nature and history of the debtor and the  
12 condition of the debtor’s books and records, including a  
discussion of the potential material Federal tax  
consequences of the plan to the debtor, any successor to the  
debtor, and a hypothetical investor typical of the holders of  
claims or interests in the case, that would enable such a  
hypothetical investor of the relevant class to make an  
informed judgment about the plan . . . .

13 11 U.S.C. § 1125(a)(1). Thus, a disclosure statement must, as a whole, provide  
14 information that is reasonably designed to permit an informed judgment by impaired  
15 creditors or equity or other interest holders entitled to vote on a plan. *See In re Cal.*  
16 *Fidelity, Inc.*, 198 B.R. 567, 571 (B.A.P. 9th Cir. 1996) (“At a minimum, § 1125(b)  
17 seeks to guarantee that a creditor receives adequate information about the plan before  
18 the creditor is asked for a vote.”); *In re Art & Architecture Books of the 21st Century*,  
19 No. 2:13-bk-14135-RK, 2016 WL 1118743, at \*14 (Bankr. C.D. Cal. Mar. 18, 2016)  
20 (“The primary purpose of a disclosure statement is to give creditors and interest

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1 holders the information they need to decide whether to accept the plan.”) (citing  
2 *Captain Blythers, Inc. v. Thompson (In re Captain Blythers, Inc.)*, 311 B.R. 530, 537  
3 (B.A.P. 9th Cir. 2004)).

4 In examining the adequacy of the information contained in a disclosure  
5 statement, the Court has broad discretion. *See Comput. Task Grp., Inc. v. Brotby (In*  
6 *re Brotby)*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (“[T]he determination of what  
7 is adequate information . . . is largely within the discretion of the bankruptcy court.”  
8 (quoting *Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844  
9 F.2d 1142, 1157 (5th Cir. 1988)); *Kirk v. Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y.  
10 1988) (“The legislative history could hardly be more clear in granting broad  
11 discretion to bankruptcy judges under § 1125(a)”); *Menard-Sanford v. Mabey (In re*  
12 *A.H. Robins Co., Inc.)*, 880 F.2d 694, 696 (4th Cir. 1989); *Tex. Extrusion Corp. v.*  
13 *Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988);  
14 *see also In re Oxford Homes, Inc.*, 204 B.R. 264, 269 (Bankr. D. Me. 1997) (Congress  
15 intentionally drew vague contours of what constitutes adequate information so that  
16 bankruptcy courts may exercise discretion to tailor them to each case’s particular  
17 circumstances); *In re Dakota Rail Inc.*, 104 B.R. 138, 143 (Bankr. D. Minn. 1989) (a  
18 bankruptcy court has “wide discretion to determine . . . whether a disclosure  
19 statement contains adequate information, without burdensome, unnecessary, and  
20 cumbersome detail”).

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1           Accordingly, the determination of whether a disclosure statement contains  
2 adequate information is to be made on a case-by-case basis, focusing on the unique  
3 facts and circumstances of each case. *See In re Diversified Inv'rs Fund XVII*, 91 B.R.  
4 559, 561 (Bankr. C.D. Cal. 1988) (“According to the legislative history, the  
5 parameters of what constitutes adequate information are intended to be flexible.”);  
6 *see also In re PC Liquidation Corp.*, 383 B.R. 856 at 866 (E.D.N.Y. 2008); *In re Tex.*  
7 *Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination is largely  
8 within the discretion of the bankruptcy court.”); *In re Egan*, 33 B.R. 672, 674-75  
9 (Bankr. N.D. Ill. 1983). This discretion provides flexibility and facilitates the  
10 effective reorganization of the different types of chapter 11 debtors by  
11 accommodating the varying circumstances accompanying chapter 11 cases. *See* H.R.  
12 REP. NO. 595, at 408-09, 95th Cong. (1st Sess. 1977).

13           The determination of whether adequate information has been provided should  
14 take account of the expertise and resources, including outside advisors and relevant  
15 information already possessed or publicly available, of the hypothetical investor of  
16 each class of claims or interests from which classes the acceptance or rejection of the  
17 Plan is solicited after the commencement of the cases. *See In re Zenith Elec. Corp.*,  
18 241 B.R. 92, 99-100 (Bankr. D. Del. 1999).

21           **MOTION TO APPROVE  
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1 **B. The Proposed Disclosure Statement Meets the Applicable Standards**

2 The Disclosure Statement provides “adequate information” to allow holders of  
3 Claims in the Voting Classes (as defined below) to make an informed decision about  
4 whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement  
5 contains a number of categories of information that courts consider “adequate  
6 information” and satisfy LBR 3017-1(a), including:

- 7 i. Description of the business of the Debtors (*see* Disclosure Statement,  
8 Section IV.A);
- 9 ii. History of the Debtors prior to filing (*see id.*, Section IV);
- 10 iii. The corporate structure and indebtedness of the Debtors (*see id.*, Section  
11 IV);
- 12 iv. Key events leading to the commencement of the Chapter 11 Cases (*see*  
13 *id.*, Section IV.B);
- 14 v. Current financial information (*see id.*, Section V.B.7);
- 15 vi. Significant events that occurred during the Chapter 11 Cases (*see id.*,  
16 Section V);
- 17 vii. Description of the Plan (*see id.*, Sections II, III, and VI);
- 18 viii. How the Plan is to be executed (*see id.*, Sections II, III, and VI);
- 19 ix. Liquidation analysis under chapter 7 of the Bankruptcy Code (*see id.*,  
20 Section VII.A);
- 21 x. Management to be retained and their compensation (*see id.*, Sections  
IV.A.3, VI.E.6);

- 1 xi. Detailed financial projections of operations and discussion of  
underlying assumptions (*see id.*, Section VI.C.6);
- 2  
3 xii. Financial information that would be relevant to determinations of  
whether to accept or reject the Plan (*see id.*, Sections III.B.2, VI.D.5);
- 4 xiii. Litigation pending or contemplated (*see* Sections V.D, V.I, VI.E.4);
- 5 xiv. Payments made for services in connection with the case or Plan (*see id.*,  
Section V.B.5);
- 6 xv. Transactions with insiders (*see id.*, Section IV.A.3);
- 7 xvi. Tax consequences (*see id.*, Section VIII);
- 8 xvii. Risk factors affecting the Plan and the Debtors (*see id.*, Section IX);
- 9 xviii. Requirements for confirmation of the Plan (*see id.*, Section II.C); and
- 10 xix. Description of Plan Releases (*see id.*, Section VI.R.6).
- 11

12 The Disclosure Statement also provides adequate notice of the release,  
13 exculpation, and injunction provisions in the Plan. Pursuant to Bankruptcy Rule  
14 3016(c), “[i]f a plan provides for an injunction against conduct not otherwise  
15 enjoined under the Code, the plan and disclosure statement [must] describe in specific  
16 and conspicuous language all acts to be enjoined and identify the entities that would  
17 be subject to the injunction.” FED. R. BANKR. P. 3016(c). The Disclosure Statement  
18 provides a detailed description of releases and exculpations to be provided under the  
19 Plan. *See* Disclosure Statement, § VI.R.5, .6.

20  
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1 Furthermore, the Disclosure Statement provides an analysis of the alternatives  
2 to confirmation and consummation of the Plan, which demonstrates that an impaired  
3 claimant or interest holder that does not accept the Plan will receive or retain under  
4 the Plan property of a value greater than the amount that such holder would receive  
5 or retain if the Debtors were forced to liquidate under chapter 7 of the Bankruptcy  
6 Code. *See id.*, § VII.A (setting forth the Debtors' liquidation analysis). Accordingly,  
7 the Plan Proponents recommend that holders of claims eligible to vote on the Plan  
8 vote to accept the Plan because it is the most efficient and effective means to provide  
9 remaining recoveries to holders of claims against the Debtors' estates.

10 The Movants respectfully submit that the Disclosure Statement complies with  
11 all aspects of § 1125. The Movants will demonstrate at the hearing to approve the  
12 Disclosure Statement that the Disclosure Statement addresses the information set  
13 forth above in a manner that provides holders of impaired unsecured claims that are  
14 entitled to vote to accept or reject the Plan with adequate information within the  
15 meaning of § 1125 and should therefore be approved.

16 **ESTABLISHING PROCEDURES FOR SOLICITATION OF THE PLAN**

17 **A. Approval of Form and Manner of Solicitation Package**

18 Bankruptcy Rule 3017(d) sets forth the materials that must be provided to  
19 holders of claims for the purpose of soliciting their votes and providing adequate  
20 notice of the hearing on confirmation of a plan of reorganization:

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1 Upon approval of a disclosure statement,—except to the  
2 extent that the court orders otherwise with respect to one or  
3 more unimpaired classes of creditors or equity security  
4 holders—the debtor in possession, trustee, proponent of the  
5 plan, or clerk as the court orders shall mail to all creditors  
6 and equity security holders, and in a chapter 11  
7 reorganization case shall transmit to the United States  
8 trustee:

- 4 (1) the plan or a court-approved summary of the plan;
- 5 (2) the disclosure statement approved by the court;
- 6 (3) notice of the time within which acceptances and  
7 rejections of the plan may be filed; and
- 8 (4) any other information as the court may direct,  
including any court opinion approving the disclosure  
statement or a court-approved summary of the  
opinion.

9 In addition, notice of the time fixed for filing objections and  
10 the hearing on confirmation shall be mailed to all creditors  
and equity security holders in accordance with Rule  
2002(b), and a form of ballot conforming to the appropriate  
Official Form shall be mailed to creditors and equity  
security holders entitled to vote on the plan . . . .

11 FED. R. BANKR. P. 3017(d).

12 As further discussed below, if the Bankruptcy Court approves the Disclosure  
13 Statement as containing adequate information pursuant to § 1125, the Debtors  
14 propose to distribute by First Class Mail to holders of claims in the classes entitled  
15 to vote on the Plan (the “Voting Classes”)<sup>6</sup> the Confirmation Hearing Notice (as  
16

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17 <sup>6</sup> The Voting Classes consist of Classes 2A (Senior Secured Bond Debt Claims), 2B  
18 (Senior Secured Credit Agreement Claims), 3 (Convenience Class Claims), 4  
19 (General Unsecured Claims), and 4A (Insured Claims). Class 1 (Priority Claims) and  
20

1 defined below), as well as a package containing solicitation materials (the  
2 “Solicitation Package”) including:

- 3 a) the Bankruptcy Court’s Order approving the Disclosure Statement (the  
“Disclosure Statement Order”), excluding the exhibits attached thereto;
- 4 b) the applicable ballot (a “Ballot”), the proposed forms of which will be  
5 filed with the Court as a supplement to this Motion, together with a pre-  
6 paid, pre-addressed return envelope and either paper copies of or  
7 electronic copies in “pdf” format on a CD-ROM or USB flash drive  
containing the Disclosure Statement (with the Plan and other exhibits  
attached thereto); and
- 8 c) any supplemental documents filed with the Bankruptcy Court and such  
9 other materials as the Bankruptcy Court may direct, including any letters  
in support of the Plan.

10 The Movants submit that such materials and manner of service satisfy the  
11 requirements of Bankruptcy Rule 3017(d).

12 Kurtzman Carson Consultants LLC (“KCC”) will serve as the Plan  
13 Proponents’ Solicitation Agent (the “Solicitation Agent”) and provide access to  
14 Solicitation Packages, among other things. Solicitation Packages (except for Ballots)  
15 will be available (i) for download at <https://www.kccllc.net/astriahhealth>, (ii) by email  
16 request to [astriainfo@kccllc.com](mailto:astriainfo@kccllc.com), (iii) by written request via standard overnight or  
17 hand delivery to: Astria Ballot Processing Center, c/o KCC, 222 N. Pacific Coast

18 \_\_\_\_\_  
19 Class 2C (Other Secured Claims) are not impaired and, therefore, deemed to accept  
20 the Plan and not entitled to vote.

1 Highway, Suite 300, El Segundo, CA 90245, and (iv) on the Bankruptcy Court's  
2 website.<sup>7</sup>

3 **B. Approval of Form and Manner of Confirmation Hearing Notice**

4 Upon approval of the Disclosure Statement pursuant to the Disclosure  
5 Statement Order, the Movants will serve or cause to be served the following  
6 documents on the following parties, as applicable: (i) a written notice to the Voting  
7 Classes (the "Confirmation Hearing Notice") of (a) the Bankruptcy Court's approval  
8 of the Disclosure Statement, (b) the deadline for voting on the Plan, (c) the time, date,  
9 and place for the hearing to consider confirmation of the Plan, and (d) the deadline  
10 and procedures for filing objections to the confirmation of the Plan, together with the  
11 Solicitation Package; and (ii) a written notice to the non-voting accepting classes (the  
12 "Notice of Non-Voting Accepting Status and Confirmation Hearing") that sets forth  
13 such parties' Plan treatment, a summary of the Plan's release, injunction, and  
14 exculpation provisions, and certain information regarding the hearing to consider  
15 confirmation of the Plan and related deadlines. The relevant notices will be served  
16 on the appropriate parties by First Class Mail. The Debtors will file the proposed  
17 form of notices prior to the hearing on this Motion.

18  
19 <sup>7</sup> <http://www.waeb.uscourts.gov/> (a PACER login and password are required to  
20 access documents on the Bankruptcy Court's website).

1 Consistent with § 1126(f) and Bankruptcy Rule 3017(d), the Movants propose  
2 to send the Notice of Non-Voting Accepting Status and Confirmation Hearing to  
3 holders of Administrative Claims, Professional Fee Claims, U.S. Trustee Fees,  
4 Priority Tax Claims, and DIP Claims (the “Unclassified/Unimpaired Claimholders”),  
5 which classes are unclassified or deemed to accept the Plan.

6 The Movants submit that such notices satisfy the requirements of the  
7 Bankruptcy Code and Bankruptcy Rule 3017(d). Accordingly, the Movants request  
8 that the Bankruptcy Court determine that the Movants are not required to distribute  
9 copies of the Plan, Disclosure Statement, or Disclosure Statement Order to any of the  
10 Unclassified/Unimpaired Claimholders, unless otherwise requested in writing or by  
11 the terms of the Disclosure Statement Order.

12 **C. Establishment of Voting Record Date and Approving of Procedures for  
13 Distribution of Solicitation Packages**

14 Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in  
15 connection with the confirmation of a bankruptcy plan, “creditors and equity security  
16 holders shall include holders of stock, bonds, debentures, notes and other securities  
17 of record on the date the order approving the disclosure statement is entered or  
18 another date fixed by the court, for cause, after notice and a hearing.” Fed R. Bankr.  
19 P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding  
20 determination of the record date for voting purposes.

1 The Movants request that the Bankruptcy Court establish August 13, 2020, as  
2 the record date (the "Voting Record Date"), for purposes of determining the  
3 claimholders that are entitled to vote (subject to the voting procedures set forth  
4 below) on the Plan or, in the case of non-voting classes, for purposes of determining  
5 the claimholders to receive certain Plan-related materials. The Debtors expect that  
6 they will be able to commence distribution of (i) the Confirmation Hearing Notice  
7 and Solicitation Package to the Voting Classes and (ii) the Notice of Non-Voting  
8 Accepting Status and Confirmation Hearing and Confirmation Hearing to parties-in-  
9 interest outside of the Voting Classes, as applicable, as set forth herein, within six (6)  
10 calendar days after the date of entry of the Disclosure Statement Order, or as soon as  
11 reasonably practicable thereafter (the "Solicitation Commencement Date"). The  
12 Movants anticipate that, subject to entry of an order granting this Motion, that the  
13 Solicitation Commencement Date will be August 20, 2020.

14 The Movants shall cause to be distributed electronically the Disclosure  
15 Statement Order (excluding exhibits thereto), the Confirmation Hearing Notice, the  
16 Disclosure Statement (together with the Plan and other exhibits attached thereto), and  
17 such other materials as the Bankruptcy Court may direct (excluding a Ballot) to,  
18 among other parties (to the extent such parties did not otherwise receive the  
19 Solicitation Package):

20 a) the U.S. Trustee;

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- b) the Internal Revenue Service;
- c) the Washington Attorney General; and
- d) all persons and entities that have filed a request for service of filings in the Debtors' Cases pursuant to Bankruptcy Rule 2002.

The Debtors anticipate that some of the notices served in the Debtors' Cases, including notices of the hearing to approve the Disclosure Statement and notices of the commencement of the Debtors' Cases, have been or may be returned, including because certain notice parties have foreign addresses. The Debtors believe that it would be costly and inefficient to distribute the Solicitation Package to the same addresses to which undeliverable notices were previously distributed. Therefore, the Movants seek the Bankruptcy Court's approval for a departure from the strict notice rule, excusing the Debtors from distributing Solicitation Packages to those entities listed at such addresses if the Debtors are not provided with updated addresses for such entities before the Solicitation Commencement Date. Further, if the Debtors send Solicitation Packages that are deemed undeliverable and are not provided with a forwarding or more updated address, the Movants seek that the Debtors be excused from attempting to re-deliver Solicitation Packages to such entities. The Movants submit that good cause exists for implementing the aforementioned notice and service procedures.

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1 **D. Approval of Forms of Ballot**

2 Bankruptcy Rule 3017(d) requires that the Plan Proponents mail a form of  
3 Ballot to “creditors and equity security holders entitled to vote on the plan.” The  
4 Movants propose to distribute to each holder of a claim in each Voting Class a Ballot,  
5 the form of which will be filed by the Debtors as a supplement prior to the hearing  
6 on this Motion. The form of Ballot is based upon Official Form No. B314, but has  
7 been modified to address the particular aspects of the Debtors’ Cases and to include  
8 certain additional information that the Movants believe to be relevant and appropriate  
9 for the applicable classes of claims that are entitled to vote to accept or reject the  
10 Plan, including information regarding the releases, injunctions, and exculpations  
11 contained in the Plan.

12 **E. Establishment of Deadline for Receipt of Ballots**

13 Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure  
14 statement, the court shall fix a time within which the holders of claims or equity  
15 security interests may accept or reject a plan. The Movants have developed the  
16 proposed schedule to allow for a solicitation period in these Chapter 11 Cases of  
17 approximately 21 days, which the Movants believe is appropriate in light of the  
18 circumstances of the case and consistent with the requirements set forth in  
19 Bankruptcy Rule 2002(b). Accordingly, the Movants propose that in order to be  
20 counted as a vote to accept or reject the Plan, each Ballot must be properly executed,

1 completed, and delivered to the Debtors so as to be received by the Debtors no later  
2 than **4:00 p.m. (Pacific Time) on September 10, 2020** or as otherwise ordered by  
3 the Bankruptcy Court (the “Voting Deadline”) as set forth below. The Movants  
4 submit that such solicitation period is a sufficient period within which creditors can  
5 make an informed decision to accept or reject the Plan in light of the circumstances  
6 of these Chapter 11 Cases.

7 All Ballots must be delivered via First Class Mail, overnight courier, or hand  
8 delivery so as to be actually received by the Solicitation Agent no later than the  
9 Voting Deadline. Except as provided below, Ballots must be submitted to the  
10 Solicitation Agent at the following address in accordance with the voting procedures  
11 set forth below:

12 Astria Ballot Processing Center  
13 c/o Kurtzman Carson Consultants LLC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245  
14 (877) 726-6508 (U.S./Canada)  
(424) 236-7248 (International)

15 In addition to accepting hard copy Ballots via first class mail, overnight  
16 courier, and hand delivery, the Movants request authorization to accept Ballots via  
17 electronic, online transmissions, solely through a customized online balloting portal  
18 on the Debtors’ case website. Parties entitled to vote may cast an electronic Ballot  
19 and electronically sign and submit a Ballot instantly by utilizing the online balloting  
20 portal (which allows a holder to submit an electronic signature). Instructions for

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1 electronic, online transmission of Ballots shall be set forth on the forms of Ballots.  
2 The encrypted ballot data and audit trail created by such electronic submission shall  
3 become part of the record of any Ballot submitted in this manner and the creditor's  
4 electronic signature will be deemed to be immediately legally valid and effective.  
5 For the avoidance of doubt, the Movants request that Ballots submitted via the  
6 customized online balloting portal be deemed to contain an original signature.

7           BALLOTS TRANSMITTED TO THE DEBTORS BY FACSIMILE,  
8 ELECTRONIC MAIL, OR OTHER MEANS NOT SPECIFICALLY APPROVED  
9 BY THE BANKRUPTCY COURT MAY BE ACCEPTED BY THE MOVANTS  
10 ON A CASE-BY-CASE BASIS.

11 **F. Approval of Procedures for Vote Tabulation**

12           Section 1126(c) provides as follows:

13                           A class of claims has accepted a plan if such plan has been  
14                           accepted by creditors, other than any entity designated  
15                           under subsection (e) of this section, that hold at least two-  
                          thirds in amount and more than one-half in number of the  
                          allowed claims of such class held by creditors, other than  
                          any entity designated under subsection (e) of this section,  
                          that have accepted or rejected such plan.

16           11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that “the court after  
17 notice and hearing may temporarily allow the claim or interest in an amount which  
18 the court deems proper for the purpose of accepting or rejecting a plan.” FED. R.  
19 BANKR. P. 3018(a).

1 For purposes of voting on the Plan, with respect to all creditors of the Debtors,  
2 the Movants propose that the amount and/or eligibility of a claim used to tabulate  
3 acceptance or rejection of the Plan should be, as applicable:

- 4 a) The amount of the claim listed in the Debtors' schedules of assets and  
5 liabilities (the "Schedules") shall be the amount of the claim for voting  
6 purposes; provided that (i) such claim is not scheduled as contingent,  
7 unliquidated, undetermined, disputed, and/or in a zero dollar amount,  
8 and (ii) no proof of claim has been timely filed (or otherwise deemed  
9 timely filed by the Bankruptcy Court under applicable law) with respect  
10 to such claim.
- 11 b) The noncontingent and liquidated amount specified in a proof of claim  
12 timely filed with the Bankruptcy Court (or otherwise deemed timely  
13 filed by the Bankruptcy Court under applicable law) shall be the amount  
14 of the claim for voting purposes to the extent the proof of claim is not  
15 the subject of an objection filed by **September 3, 2020** (the "Voting  
16 Objection Deadline") (or, if such claim has been resolved for allowance  
17 and/or voting purposes pursuant to a stipulation or order entered by the  
18 Bankruptcy Court, or otherwise resolved by the Bankruptcy Court, the  
19 amount set forth in such stipulation or order).
- 20 c) If a proof of claim has been timely filed prior to the applicable bar date  
21 and such claim is asserted in the amount of \$0.00, such claim shall not  
be entitled to vote.
- d) With respect to Senior Secured Bond Claims or Senior Secured Credit  
Agreement Claims, the noncontingent and liquidated amount specified  
in ballots timely submitted on account of those claims shall be the  
amount of such claims for voting purposes.
- e) Notwithstanding anything to the contrary in these tabulation rules, the  
holder of any claim that has been indefeasibly paid, in full or in part,  
shall only be permitted to vote the unpaid amount of such claim, if any,  
to accept or reject the Plan.
- f) The amount temporarily allowed or estimated by the Bankruptcy Court  
for voting purposes, pursuant to Bankruptcy Rule 3018(a), subject to  
notice consistent with the procedures set forth herein, the Bankruptcy  
Code, the Bankruptcy Rules and the Local Bankruptcy Rules shall be  
the amount of the claim for voting purposes.
- g) If a claim for which a proof of claim has been timely filed for unknown  
or undetermined amounts (as determined on the face of the claim or after  
a reasonable review of the supporting documentation by the Movants)  
and such claim has not been allowed, such Claim shall be temporarily  
allowed for voting purposes only, and not for purposes of allowance or  
distribution, at \$1.00.

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- h) If a claim is listed on a timely filed proof of claim as either wholly or partially contingent or unliquidated, such claim is temporarily allowed in the amount that is the greater of (i) the liquidated and non-contingent amount and (ii) \$1.00, for voting purposes only, and not for purposes of allowance or distribution.
- i) If a claim is deemed allowed under the Plan, such claim is allowed for voting purposes in the deemed allowed amount set forth in the Plan.
- j) If a claim is not listed in the Schedules or is listed in the Schedules as contingent, unliquidated, or disputed (or in a zero amount) and a proof of claim was not (i) filed by the applicable bar date for the filing of proofs of claim established by the Bankruptcy Court or (ii) deemed timely filed by an order of the Bankruptcy Court prior to the Voting Deadline, such claim shall be disallowed for voting purposes.
- k) If a proof of claim has been amended by a later proof of claim that is filed on or prior to the Voting Record Date, the later filed amending claim shall be entitled to vote in a manner consistent with these tabulation rules, and the earlier filed claim shall be disallowed for voting purposes, regardless of whether the Debtors have objected to such amended claim. Except as otherwise ordered by the Bankruptcy Court, any amendments to proofs of claim after the Voting Record Date shall not be considered for purposes of these tabulation rules.

The temporary allowance of claims for voting purposes does not constitute an allowance of claims for purposes of distribution under the Plan and is without prejudice to the rights of the Movants or any other party-in-interest in any other context, including to contest the amount or validity of any claim for purposes of allowance under the Plan.

Additionally, the Movants seek authorization from the Bankruptcy Court for the Movants to object to any claim (as defined in § 101(5)) solely for Plan voting purposes by filing a determination motion (the “Determination Motion”) no later than the Voting Objection Deadline. If an objection by the Movants to a claim (made by way of a Determination Motion or otherwise) filed on or before the Voting Objection

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1 Deadline requests that such claim be reduced or reclassified, such claimant's Ballot  
2 shall be counted in such reduced amount or as falling into the reclassified category.  
3 Further, if a creditor casts a Ballot and has timely filed a proof of claim (or has  
4 otherwise had a proof of claim deemed timely filed by the Bankruptcy Court under  
5 applicable law), but the creditor's claim is the subject of an objection by Movants  
6 (made by way of a Determination Motion or otherwise) filed no later than the Voting  
7 Objection Deadline, the Movants request, in accordance with Bankruptcy Rule 3018,  
8 that the creditor's Ballot not be counted to the extent it is challenged by the objection,  
9 unless such claim is temporarily allowed by the Bankruptcy Court for voting  
10 purposes pursuant to Bankruptcy Rule 3018(a) after the creditor files a motion for  
11 such temporary allowance (the "Claims Estimation Motion").<sup>8</sup>

12 If a creditor seeks to have its claim temporarily allowed for purposes of voting  
13 to accept or reject the Plan pursuant to Bankruptcy Rule 3018(a), the Movants request  
14 that such creditor be required to file a Claims Estimation Motion for such temporary  
15 allowance by the later of (i) the Voting Objection Deadline or (ii) if such claim is the

16 \_\_\_\_\_  
17 <sup>8</sup> This proposed procedure is consistent with § 1126, which provides that a plan may  
18 be accepted or rejected by the holder of a claim allowed under § 502. In turn, § 502(a)  
19 provides that a filed proof of claim is deemed allowed "unless a party in interest . . .  
20 objects." 11 U.S.C. § 502(a).

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1 subject of an objection or a Determination Motion, seven (7) days after the filing of  
2 the applicable objection or Determination Motion.

3 In the event that a Determination Motion or Claims Estimation Motion is filed,  
4 the Movants request that the Bankruptcy Court allow the non-moving party to file a  
5 reply to such motion by the later of (i) the Voting Objection Deadline, or (ii) seven  
6 (7) days after the filing of the applicable motion (the “Voting Objection Reply  
7 Deadline”). A hearing will be scheduled (subject to the Bankruptcy Court’s  
8 availability) on such motion within seven (7) days of the Voting Objection Reply  
9 Deadline but in no event later than the Confirmation Hearing (as defined below). The  
10 Movants further request that the ruling by the Bankruptcy Court on any  
11 Determination Motion or Claims Estimation Motion be considered a ruling with  
12 respect to the allowance of the claim(s) under Bankruptcy Rule 3018 and such  
13 claim(s) be counted, for voting purposes only, in the amount determined by the  
14 Bankruptcy Court.

15 The Movants propose that, in the event a claimant reaches an agreement with  
16 the Movants, as to the treatment of its claim for voting purposes, the claim may be  
17 treated in such manner.

18 The Movants further request that the following voting procedures and standard  
19 assumptions be used in tabulating the Ballots:

- 20 a) For purposes of the numerosity requirement of § 1126(c) and based on  
the reasonable efforts of the Movants, separate claims held by a single

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1 creditor in a particular class will be aggregated as if such creditor held  
2 one claim against the Debtors in such class, and the votes related to such  
3 claims will be treated as a single vote to accept or reject the Plan.

- 4
- 5 b) Any creditor who holds duplicate claims within the same class (against  
6 one Debtor or across multiple Debtors) shall be provided with only one  
7 Solicitation Package and one Ballot for voting a single claim in such  
8 class, regardless of whether the Debtors have objected to such duplicate  
9 claims.
- 10 c) Creditors must vote all of their claims within a particular class either to  
11 accept or reject the Plan and may not split their vote. Accordingly, a  
12 Ballot (or multiple Ballots with respect to multiple claims within a  
13 single class) that partially rejects and partially accepts the Plan will not  
14 be counted.
- 15 d) Ballots that fail to indicate an acceptance or rejection of the Plan or that  
16 indicate both acceptance and rejection of the Plan, but which are  
17 otherwise properly executed and received prior to the Voting Deadline,  
18 will not be counted.
- 19 e) Only Ballots that are timely received with signatures will be counted.  
20 Unsigned Ballots will not be counted.
- 21 f) Ballots sent by mail or overnight delivery that are postmarked prior to  
the Voting Deadline, but received after the Voting Deadline, will not be  
counted.
- g) Ballots that are illegible, or contain insufficient information to permit  
the identification of the creditor, will not be counted.
- h) Ballots transmitted to the Debtors by facsimile, electronic mail, or other  
means not specifically approved by the Bankruptcy Court may be  
accepted by the Debtors on a case-by-case basis.
- i) Whenever a creditor casts more than one Ballot voting the same claim  
prior to the Voting Deadline, the last valid Ballot received prior to the  
Voting Deadline shall be deemed to reflect the voter's intent and  
supersede any prior received Ballots.
- j) If a creditor simultaneously casts inconsistent duplicate Ballots with  
respect to the same claim, such Ballots shall not be counted.
- k) Each creditor shall be deemed to have voted the full amount of its claim  
in a class. Unless otherwise ordered by the Bankruptcy Court, questions  
as to the validity, form, eligibility (including time of receipt),  
acceptance, and revocation or withdrawal of Ballots shall be determined  
by the Debtors, which determination shall be final and binding.
- l) Any Ballot containing a vote that the Bankruptcy Court determines,  
after notice and a hearing, was not solicited or procured in good faith or  
in accordance with the provisions of the Bankruptcy Code shall not be  
counted.

21 **MOTION TO APPROVE  
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- m) Any Ballot cast by a person or entity that does not hold a Claim in a class that is entitled to vote to accept or reject the Plan shall not be counted.
- n) Notwithstanding anything contained herein to the contrary, the Movants may contact parties that submitted Ballots to cure any defects in the Ballots.
- o) Any class that does not contain any claim eligible to vote to accept or reject the Plan (by reason of temporary allowance by the Bankruptcy Court or otherwise) as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such class pursuant to § 1129(a)(8).
- p) If a class contains claims eligible to vote and no holders of claims eligible to vote in such class vote to accept or reject the Plan, the Plan shall be deemed accepted by the holders of such claims in such class.
- q) Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Movants or the Bankruptcy Court determines. Neither the Movants nor any other person or entity shall be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor shall any incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots shall not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) shall not be counted.
- r) The Movants, and subject to contrary order of the Bankruptcy Court, may waive any defect in any Ballot at any time, either before or after the Voting Deadline and without notice, and any such waivers shall be documented in the voting results filed with the Bankruptcy Court.
- s) Except as provided below, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline, the Movants may reject such Ballot as invalid, and therefore, decline to utilize it in connection with confirmation of the Plan by the Bankruptcy Court; provided, however, that such invalid Ballots shall be documented in the voting results filed with the Bankruptcy Court.
- t) Subject to contrary order of the Bankruptcy Court, the Movants reserve the absolute right to reject any and all Ballots not proper in form, the acceptance of which would, in the opinion of the Movants, not be in accordance with the provisions of the Bankruptcy Code; provided, however, that such invalid Ballots shall be documented in the voting results filed with the Bankruptcy Court.

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1 The Movants submit that such procedures provide for a fair and equitable  
2 voting process.

3 **G. Establishment of Deadline and Procedures for Filing Objections to the**  
4 **Confirmation of the Plan**

5 **1. Scheduling the Confirmation Hearing**

6 Bankruptcy Rule 3017(c) provides:

7 On or before approval of the disclosure statement, the court  
8 shall fix a time within which the holders of claims and  
interests may accept or reject the plan and may fix a date  
for the hearing on confirmation.

9 FED. R. BANKR. P. 3017(c). In accordance with Bankruptcy Rule 3017(c), the  
10 Debtors request that a hearing on confirmation of the Plan (the “Confirmation  
11 Hearing”) be scheduled for **September 24, 2020 at 11:00 a.m. (Pacific Time)**.

12 The Movants propose that, no later than **September 17, 2020**, the Movants  
13 will file with the Bankruptcy Court a tabulation report for Plan voting, a proposed  
14 form of confirmation order, a memorandum in support of confirmation addressing  
15 the requirements of § 1129(a) and any declarations or other evidence in support  
16 thereof, and replies to any objections received by the Confirmation Objection  
17 Deadline. In light of these deadlines, the Movants respectfully request that the Court  
18 shorten the ballot tabulation deadline set forth in Local Bankruptcy Rule 3018-1(b)  
19 from fourteen days to seven days.

20  
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1 The Movants request that the Confirmation Hearing may be continued from  
2 time to time by the Bankruptcy Court or the Debtors without further notice other than  
3 by notices of continuance filed on the docket of the Chapter 11 Cases. The proposed  
4 timing for the Confirmation Hearing is in compliance with the Bankruptcy Code, the  
5 Bankruptcy Rules, and the Local Bankruptcy Rules, and will enable the Plan  
6 Proponents to pursue confirmation of the Plan in a timely fashion.

7 **2. Establishing Procedures for the Confirmation Hearing**

8 Bankruptcy Rules 2002(b) and 3017(d) require not less than twenty-eight (28)  
9 days' notice to all creditors and equity security holders of the time fixed for filing  
10 objections and the hearing to consider confirmation of a chapter 11 plan. The  
11 Movants propose to provide to all creditors and interest holders a copy of either the  
12 Confirmation Hearing Notice, the Notice of Non-Voting Accepting Status and  
13 Confirmation Hearing, or the Notice of Non-Voting Rejecting Status and  
14 Confirmation Hearing as proposed herein, setting forth, among other things, (a) the  
15 date of approval of the Disclosure Statement, (b) the Voting Record Date, (c) the  
16 Voting Deadline, (d) the time fixed for filing objections to confirmation of the Plan,  
17 and (e) the time, date, and place for the Confirmation Hearing. Such notice will be  
18 sent at least twenty-one (21) days before the deadline to object to confirmation of the  
19 Plan. Accordingly, the Movants request that the Court shorten the deadline set forth  
20 in Bankruptcy Rules 2002(b) and 3017(d) to 21 days.

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1 Bankruptcy Rule 2002(1) permits the Bankruptcy Court to “order notice by  
2 publication if it finds that notice by mail is impracticable or that it is desirable to  
3 supplement the notice.” FED. R. BANKR. P. 2002(1). In addition to mailing the  
4 Confirmation Hearing Notice, the Movants propose to publish the Confirmation  
5 Hearing Notice, as soon as reasonably practical after the entry of the Disclosure  
6 Statement Order, one time in each of the following newspapers: *Yakima Herald* and  
7 *USA Today*. The Movants believe that publication of the Confirmation Hearing  
8 Notice will provide sufficient notice of the approval of the Disclosure Statement, the  
9 Voting Record Date, the Voting Deadline, the time fixed for filing objections to  
10 confirmation of the Plan, and the time, date, and place of the Confirmation Hearing  
11 to persons who do not otherwise receive actual written notice by mail as provided for  
12 in the Disclosure Statement Order.

13 The Movants submit that the foregoing procedures will provide adequate  
14 notice of the Confirmation Hearing and, accordingly, request that the Bankruptcy  
15 Court approve such notice as adequate.

### 16 **3. Establishing Procedures for the Filing of Objections to the** 17 **Confirmation of the Plan**

18 Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan  
19 must be filed and served “within a time fixed by the court.” The Confirmation  
20 Hearing Notice provides, and the Movants request the Bankruptcy Court to direct,

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1 that objections to the confirmation of the Plan or proposed modifications to the Plan,  
2 if any, must:

- 3 a) be in writing;
- 4 b) comply with the Bankruptcy Rules and the Local Bankruptcy Rules;
- 5 c) set forth the name of the objector and the nature and amount of any  
6 Claim asserted by the objector against or in the Debtors;
- 7 d) state with particularity the legal and factual bases for the objection and,  
8 if practicable, a proposed modification to the Plan that would resolve  
9 such objection; and
- 10 e) be filed with the Bankruptcy Court, together with proof of service, and  
11 served so that they are actually received by the Notice Parties (as defined  
12 below) no later than **September 10, 2020**, which deadline may be  
13 extended by all Movants (the "Confirmation Objection Deadline").

14 The Movants request that the Court require any confirmation objection to be  
15 served on the following parties (collectively, the "Notice Parties"): (i) counsel to the  
16 Debtors, Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, CA  
17 90017, Attn: Samuel R. Maizel (samuel.maizel@dentons.com); (ii) counsel to the  
18 Committee, Sills Cummis & Gross, P.C., One Riverfront Plaza, Newark, NJ 07102,  
19 Attn: Andrew H. Sherman and Boris I. Mankovetskiy (asherman@sillscummis.com,  
20 bmankovetskiy@sillscummis.com); (iii) counsel to the Lapis Parties, Mintz, Levin,  
21 Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111,  
Attn: William Kannel and Ian Hammel (wkannel@mintz.com,  
iahammel@mintz.com); and (iv) counsel to the U.S. Trustee, Office of the United  
States Trustee, 920 W. Riverside Ave., Suite 593, Spokane, WA 99201, Attn: Gary  
W. Dyer (gary.w.dyer@usdoj.gov).

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1 The proposed timing for filing and service of objections and proposed  
2 modifications, if any, will afford the Bankruptcy Court, the Plan Proponents, and  
3 other parties in interest sufficient time to consider the objections and proposed  
4 modifications prior to the Confirmation Hearing.

5 **CONCLUSION**

6 WHEREFORE, the Movants respectfully request that the Bankruptcy Court  
7 enter an order: (i) approving the Disclosure Statement; (ii) approving the solicitation  
8 and voting procedures; (iii) approving the proposed notice and objection procedures  
9 for confirmation of the Plan; and (iv) granting such other and further relief as the  
10 Bankruptcy Court deems just and proper.

11 Dated: July 7, 2020

DENTONS US LLP

12 By: /s/ Samuel R. Maizel

13 Samuel R. Maizel  
Sam J. Alberts  
Geoffrey M. Miller

14 Counsel to the *Debtors and Debtors In*  
15 *Possession*

16 Dated: July 7, 2020

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

18 By: William Kannel

19 William Kannel  
Ian A. Hammel

20 Counsel to the *Lapis Parties*

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