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

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

17 In re:

18 ASTRIA HEALTH, *et al.*,

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

Chapter 11  
Lead Case No. 19-01189-11  
Jointly Administered

**NOTICE OF FILING CERTAIN PLAN**  
**SUPPLEMENTS TO THE SECOND AMENDED**  
**JOINT CHAPTER 11 PLAN OF**  
**REORGANIZATION OF ASTRIA HEALTH AND**  
**ITS DEBTOR AFFILIATES**

**[RELATED DOCUMENT NOS. 1986]**

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23  
24 <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,  
25 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 -  
26 Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11),  
Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11),  
27 Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-  
01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA  
28 Home Health, LLC (19-01200-11).

**NOTICE OF FILING**



1  
2 **PLEASE TAKE NOTICE** that, on November 11, 2020, Astria Health and  
3 the affiliated debtors, the debtors and debtors in possession (collectively, the  
4 “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Chapter 11  
5 Cases”), and Lapis Advisers, LP as lender under the Debtors’ debtor in possession  
6 facility in the Chapter 11 Cases, agent under the Debtors’ prepetition credit  
7 agreement, and as investment advisor and investment manager for certain funds  
8 which are beneficial holders of those certain Washington Health Care Facilities  
9 Authority Revenue Bonds (collectively the “Lapis Parties” and, together with the  
10 Debtors, the “Plan Proponents”) filed the *Second Amended Joint Chapter 11 Plan of*  
11 *Reorganization of Astria Health and its Debtor Affiliates* [Docket No. 1986] (the  
12 “Plan”) and related disclosure statement [Docket No. 1987] (the “Disclosure  
13 Statement”). On November 12, 2020, the Court entered an order approving the  
14 Disclosure Statement [Docket No. 1991] (the “Order Approving the Disclosure  
15 Statement”), and setting December 18, 2020, at 10:00 a.m. (Pacific Time), as the  
16 hearing on confirmation of the Plan.  
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21

22 **PLEASE TAKE FURTHER NOTICE** that the Plan provides that the Plan  
23 Proponents will file certain Plan Supplement items at least ten (10) days prior to the  
24 Voting Deadline (December 4, 2020). *See* Plan § 1.121.  
25

26 **PLEASE TAKE FURTHER NOTICE** that, pursuant to the Plan, the Plan  
27 Proponents provide the following Plan Supplement:  
28

**NOTICE OF FILING**

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- Schedule of Assumed Agreements, attached hereto as **Exhibit “A.”**
- Schedule of Insurance Policies, attached hereto as **Exhibit “B.”**
- List of directors for Reorganized Debtors, attached hereto as **Exhibit “C.”**
- Exchange Debt Documents, attached hereto as **Exhibit “D.”**
- GUC Distribution Trust Agreement, attached hereto as **Exhibit “E.”**
- Liquidation Trust Agreement, attached hereto as **Exhibit “F.”**
- Term Sheet, filed under seal as **Exhibit “G.”**
- D&O Cause of Action Agreement, attached hereto as **Exhibit “H.”**
- Revised Financial Projections, attached hereto as **Exhibit “I.”**

**PLEASE TAKE FURTHER NOTICE** that materials filed with the Plan Supplement may be modified or amended hereafter as set forth more fully in the Plan and related documents.

Dated: November 25, 2020

DENTONS US LLP  
SAMUEL R. MAIZEL  
SAM J. ALBERTS

By /s/ Samuel R. Maizel  
SAMUEL R. MAIZEL

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

**NOTICE OF FILING**

115949052\V-1

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**Exhibit A**

Notice Party	Debtor(s)	Contract Parties	Astria Document Reference ID	Contract Details	Effective Date	Cure Amount
Ahtanum MOB	Yakima Regional Medical & Cardiac Center			Amendment Summary	8/24/2015	\$ 59,479.04
AHTANUM MOB, LLC, formerly Butler Medical Building, LLC	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	AHTANUM MOB, LLC	ARFM - Lease Extended Eff 10-1-2015.pdf	AMENDED, EXTENDED COMMERCIAL	11/1/2015	\$ 23,551.30
Alan Greenwald, M.D.	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Alan Greenwald, M.D.	Greenwald, Alan MD - First Amendment.pdf	FIRST AMENDMENT TO EMPLOYMENT	11/6/2017	\$ 1,680.09
American Medical Response	SHC Medical Center - Toppenish d/b/a Astria Toppenish Hospital	American Medical Response NW	American Medical Response - Lease - TCH - 03-2012.pdf	MEDICAL OFFICE BUILDING LEASE	3/15/2012	\$0.00
Antony Kim, MD	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Antony Kim, MD	Kim Antony MD - Employment Fully Signed - 03-25-2019.pdf	Physician Employment Agreement -	3/26/2019	\$ 2,094.84
Bosma, Angela PA-C	Yakima HMA Physician Management, LLC			First Amendment to PA Employment Agreement	3/16/2017	\$ 1,209.00
Bremjit, Vani MD	Yakima HMA Physician Management, LLC			Physician Employment Agreement	3/9/2015	\$ 518.54
BUTLER MEDICAL BUILDING, LLC	SHC Medical Center - Toppenish d/b/a Astria Toppenish Hospital	BUTLER MEDICAL BUILDING, LLC	Vintage Valley Lease Executed 4-29-19.pdf	BUTLER MEDICAL BUILDING, LLC - Commercial Net	8/1/2018	\$ 7,527.20
Butler Snow LLP ATTN: Privacy Officer ATTN: Scott B. Shanker	Sunnyside Community Hospital Association	Butler Snow LLP	BAA Butler Snow.pdf	BUSINESS ASSOCIATE AGREEMENT	12/30/2013	\$0.00
Cahn, Mitchell MD	ARMC/fka Yakima HMA Phys.Mngmt,LLC			Second Amendment to Physician	Signed by CEO only April 2019	\$ 2,712.17
Calla Heathman Corporate Consultant	Astria Health			CSC Agreement Fully Executed 9-26-17	9/26/2017	\$ 5,343.00
Care Fusion Solutions, LLC / MedMined	ASH Sunnyside, ARMC Yakima, ATH Toppenish			Amendment to Master Agreement	7/25/2018	\$27,003.25
CENTURYLINK SALES SOLUTIONS, INC. Sales Administration	SHC Medical Center - Toppenish d/b/a Astria Toppenish Hospital	CENTURYLINK SALES SOLUTIONS, INC.	CenturyLink - TCH - 8-2011.pdf	Products and Services Agreement	8/30/2011	\$ 16,584.63
Change Healthcare Technologist	ASH			Service Order		\$0.00
Charles Vaughn Bulfinch, DO	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Charles Vaughn Bulfinch, DO	Bulfinch, Charles DO - Employment Agreement Amendment - Fully Signed - 03-19-2019.pdf	Dr. Bulfinch Hospital Medical Directorship, Amendment to Employment Agreement	8/1/2018	\$ 232.26
Charter Communications ATTN: Charter Business ATTN: CB Corporate —	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Charter Fiberlink WA-CCVII, LLC	Charter Contract for Vintage Valley Family Med.pdf	DATA TRANSPORT SERVICE AGREEMENT	7/30/2013	\$ 31,704.64
City of Sunnyside	Astria Health	City of Sunnyside	BAA City of Sunnyside.pdf	BUSINESS ASSOCIATE AGREEMENT	1/1/2018	\$0.00
Collective Medical Technologies, Inc. Attention: Legal	Sunnyside Community Hospital Association	Collective Medical Technologies, Inc.	CollectiveMedical_ASH.pdf	EDIE (a/k/a PreManage ED) Services	1/1/2018	\$ 37,409.27
Coordinated Care Corporation Attn: President	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Coordinated Cure Corporation	Coordinated Care - CWMG Provider Agreement - 11-2014.pdf	GROUP PROVIDER AGREEMENT	7/1/2014	\$ 528.39
Craig Whittlesey	ARMC			Physician Employment Agreement	12/28/2017	\$ 9,712.41
DaVita HealthCare Partners Inc. Attention: Acute Paralegal	Sunnyside Community Hospital Association	Renal Treatment Centers West, Inc.	DaVita Acute Services Agreement.2013.pdf	ACUTE SERVICES AGREEMENT	10/30/2013	\$ 422,698.48

Notice Party	Debtor(s)	Contract Parties	Astria Document Reference ID	Contract Details	Effective Date	Cure Amount
DiMeo, Joseph DO	Yakima HMA Physician Management, LLC			Physician Employment Agreement Renewal	8/28/2015	\$0.00
Durable Medical Equipment and Supply Company	Yakima HMA Home Health, LLC d/b/a Astria Home Health	Astria Home Health	Astria Home Medical Supply & Astria Home Health - DME - Fully signed - 04-15-2019.pdf	AGREEMENT FOR PROVISION OF DURABLE MEDICAL	4/15/2019	\$ 3,860.00
EM Agreement (management fee guarantee) Sunnyside	Sunnyside Emergency Group/Astria Sunnyside Hospital			Emergency Department Agreement	2/4/2019	\$0.00
Evergreen Anesthesia Associates LLC	Sunnyside Community Hospital Association	Evergreen Anesthesia Associates LLC	Sunnyside - Evergreen Anesthesia - PSA (4 24_17) signed.pdf	PROFESSIONAL SERVICES AGREEMENT	4/28/2017	\$ 81,357.26
Evergreen Financial Services, Inc	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	CENTRAL WASHINGTON MEDICAL GROUP	Evergreen Financial Services.pdf	Business Associate Contract - HIPPA COMPLIANCE	6/29/2010	\$ 8,894.66
Evergreen Financial Services, Inc	Yakima HMA Physician Management, LLC			Collections Services Agreement ; BAA	6/15/2017	\$0.00
Field Group	Astria Health			Email re summons, complaint and contract	11/28/2018	\$ 994.68
FISHER HEALTHCARE	SHC Medical Center - Toppenish d/b/a Astria Toppenish Hospital	FISHER HEALTHCARE a division of Fisher Scientific Company, LLC	Fischer Scientific - Master Agreement - TCH - 03-2011.pdf	FACILITY PARTICIPATION AGREEMENT FOR	4/6/2011	\$ 373,220.38
Frontier Neurosurgery, P.L.L.C. Attn: Dave S. Atteberry	Sunnyside Community Hospital Association	Frontier Neurosurgery, P.L.L.C. d/b/a NOVA Health	Atteberry, David MD - Employment Agreement.pdf	MASTER EXCLUSIVE PROFESSIONAL	5/16/2016	\$ 75,260.00
Greenwald, Alan MD	Sunnyside Community Hospital & Clinics			Confidentiality & Non-disclosure Agreement	2/25/2016	\$0.00
HealthStream	Fully Executed MSA - ORD-0052173			Master Services Agreement	2/9/2018	\$0.00
HealthStream, Inc.	Astria Health SHC Medical Center - Yakima Regional Medical	Yakima Regional Medical and Cardiac Center	HealthStream - Master Services Agreement - ARMC & ATH & ASH & AH - Fully Signed	Master Services Agreement	9/8/2017	\$ 31,920.33
Heflick, Scott MD	Yakima HMA Physician Management, LLC			Physician Employment Agreement Renewal	3/3/2015	\$ 835.00
Humana Behavioral Health, Inc.	Astria Toppenish Hospital			Facility Participation Agreement	2/1/2019	\$0.00
Hurley, Randall	Astria Health			401 K Administration		\$ 46,548.14
ID Inc. Didier Salem, CEO	Sunnyside Community Hospital Association	ID Inc.	BAA ID Inc.pdf	BUSINESS ASSOCIATE AGREEMENT	4/19/2017	\$ 13,500.00
Johnston Group	Astria Health			Letter of Agreement 2019	1/4/2019	\$ 60.32
Joseph DiMeo, D.O.	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Joseph DiMeo, D.O.	DiMeo, Joseph DO - Medical Directorship Amendment - Signed.pdf	AMENDMENT TO EMPLOYMENT AGREEMENT	9/17/2018	\$ 4,440.28
Kristin Bond, M.D. Mid-Valley Community Clinic	Sunnyside Community Hospital Association	Kristin Bond, M.D.	BAA Bond K.pdf	Business Associate Agreement	1/25/2019	\$ 1,350.00
Kronos, Inc.	Sunnyside Community Hospital Association			Order Form	6/22/2018	\$ 12,878.65
MACRO HELIX LLC	Sunnyside Community Hospital Association	MACRO HELIX LLC	Macro Helix amendment 10.12.18.pdf	AMENDMENT TO MACRO HELIX LICENSE AND	10/12/2018	\$ 18,522.47
Mail Finance (A Neopost USA Company)	Astria Health			Lease Agreement - 63 months	3/1/2018	\$ 1,623.37

Notice Party	Debtor(s)	Contract Parties	Astria Document Reference ID	Contract Details	Effective Date	Cure Amount
MEDLINE INDUSTRIES INC.	Astria Health	MEDLINE INDUSTRIES INC	Medline - Surgery Reprocessing Services - 01-2012.pdf	Reprocessing Services for Single Use Devices	1/1/2012	\$0.00
Mid-Valley Nephrology Associates, PLLC	Sunnyside Community Hospital Association	Nephrology Associates, PLLC	Mid-Valley Nephrology agreement 2019 Kanneganti.pdf	Second Amendment to Physician Services	5/23/2019	\$ 44,050.31
Mitchell Cahn, MD	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Mitchell Cahn, M.D.	Cahn - Mitchell - Second Amendment to Employment Agreement - Fully Signed - 04-	Second Amendment to Physician	5/16/2019	\$ 2,712.17
Molina Healthcare of Washington, Inc. Attention: President/CEO	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Molina Healthcare of Washington, Inc.	Molina - YR Amendment - 09-2015.pdf	AMENDMENT TO MOLINA HEALTHCARE OF	9/22/2015	\$0.00
Net Health Systems, Inc.	Astria Health			BAA	5/17/2018	\$0.00
Net Health Systems, Inc.	Astria Health	Net Health Systems, Inc	Net Health Systems Inc - ReDoc & Cerner Interface - Fully Signed - 04-03-2019.pdf	MASTER AGREEMENT	1/31/2018	\$ 12,803.02
Novarad Corporation ATTN: Julie Petterson, Director of Finance	Sunnyside Community Hospital Association	Novarad	BAA Novarad.pdf	BUSINESS ASSOCIATE AGREEMENT	8/19/2014	\$ 1,251.36
Nuance	Astria Health	Nuance	Nuance Contract Summary - Transcription 2014 08 01.doc	Nuance Contract Summary	7/1/2014	\$ 282,949.99
Nuance Communications, Inc.	Astria Health			eScripton Services		\$0.00
OneHealthPort, Inc.	SHC Medical Center - Toppenish d/b/a Astria Toppenish Hospital	OneHealthPort, Inc	One Health Port HIE Participation Agreement executed TCH - 06-2016.pdf	OneHealthPort Health Information Exchange	5/26/2016	\$ 8,980.65
Optimum Solutions, Inc. Amendment	Astria Health (all 3 hospitals)			Amendment to 6.30.17 License Agreement	12/31/2018	\$ 300.00
PREMERA BLUE CROSS John Castiglia, MD Senior Vice President and	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	REGENCE BLUESHIELD	BlueCrossCardiacDistinction.pdf	Blue Distinction Centers for Cardiac Care Clinical	10/3/2006	\$0.00
PREMERA BLUE CROSS Provider Credentialing Department PO Box 327, MS 263 Seattle, WA 98111-0327	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	PREMERA BLUE CROSS	Premera Blue Cross - YR - 7-2012.pdf	ORGANIZATION/FACILITY CREDENTIALING & RE-CREDENTIALING APPLICATION	10/15/2012	\$0.00
PREMERAFirst, Inc. Premera Blue Cross LifeWise Health Plan of	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	LifeWise Health Plan of Washington	PremeraFirst YR Facility Agreement - 11-2010.pdf	FACILITY AGREEMENT	12/1/2010	\$0.00
PREMERAFirst, Inc., Premera Blue Cross LifeWise Health Plan of Washington	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	PremeraFirst, Inc.	Premera Blue Cross - YR - 12-2010.pdf	FACILITY AGREEMENT	12/1/2010	\$0.00
Providence Medical Group ATTN: Chief Executive Officer Providence Center for	Sunnyside Community Hospital Association	PROVIDENCE HEALTH & SERVICES - WASHINGTON d/b/a PROVIDENCE MEDICAL GROUP	Professional Services Agreement Pediatric Echocardiogram 3-21-19.pdf	PROFESSIONAL SERVICES AGREEMENT	3/19/2019	\$ 165.00
Qilin Lu, MD	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Qilin Lu, M.D.	Lu, Qilin - Amendment on Salary and bonus - SIGNED.pdf	FIRST AMENDMENT TO EMPLOYMENT AGREEMENT	8/1/2017	\$ 1,388.00
Regence BlueShield	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Regence BlueShield TriWest Healthcare Alliance Corp	Regence Blue Shield & TriWest Addendum - 01-1013.pdf	AMENDMENT TO TRICARE CONTRACT	4/1/2013	\$0.00
Region 8 Healthcare Coalition	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Community Health of Central Washington	Region 8 Healthcare Coalition MOU - 02-2012.pdf	Region 8 Healthcare Coalition MOU	10/11/2011	\$ 792.58
Region 8 Healthcare Coalition	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Prosser Memorial Hospital Medical Center	Region 8 Healthcare Coalition MOU - 02-2012.pdf	Region 8 Healthcare Coalition MOU	10/11/2011	\$ 2,570.50
Region 8 Healthcare Coalition	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Skyline Hospital	Region 8 Healthcare Coalition MOU - 02-2012.pdf	Region 8 Healthcare Coalition MOU	10/11/2011	\$ 2,782.00

Notice Party	Debtor(s)	Contract Parties	Astria Document Reference ID	Contract Details	Effective Date	Cure Amount
Region 8 Healthcare Coalition	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Yakima Valley Memorial Hospital	Region 8 Healthcare Coalition MOU - 02-2012.pdf	Region 8 Healthcare Coalition MOU	10/11/2011	\$ 3,860.00
Rural Physician Group	Sunnyside Community Hospital Association			Hospitalist Services Agreement	11/20/2012	\$0.00
Rural Physicians Group Attn Sukhbir Pannu, M.D	Sunnyside Community Hospital Association	Rural Physician Group	Rural Physicians Group Contract 11.12.pdf	HOSPITALIST SERVICES AGREEMENT	11/30/2012	\$ 277,393.48
Sherry Johnson, ARNP	Sunnyside Community Hospital Association	Sherry Johnson, ARNP	Sherry Johnson - Fully Executed Employment Agreement.pdf	EMPLOYMENT AGREEMENT	5/15/2019	\$ 496.42
Shred-It	Astria Health			Addendum dated 6.22.18	6/25/2018	\$ 2,422.57
Sunnyside Community Hospital	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	Sunnyside Community Hospital	Sunnyside.pdf	WASHINGTON CRITICAL ACCESS HOSPITAL	1/1/2005	\$ 5,609.72
Sunnyside Emergency Group, a Professional LLC	Sunnyside Community Hospital	No record found		Second Amendment to Emergency Dept.	1/27/2017	\$ 10,610.80
Sunnyside Emergency Group, a Professional LLC Attn: David M. Grace, MD	Sunnyside Community Hospital Association	Sunnyside Emergency Group	Schumacher ED Agreement 612014 Executed.pdf	EMERGENCY DEPARTMENT AGREEMENT	6/1/2014	\$ 10,610.80
TZ Medical Inc	Astria Health	TZ Medical Inc	Holter contract 02082018.pdf	EQUIPMENT RENTAL AGREEMENT	10/14/2017	\$ 1,510.93
UnitedHealthcare	SHC Medical Center - Yakima d/b/a Astria Regional Medical Center	UnitedHealthcare Insurance Company, PacifiCare Life and Health Insurance	PacifiCare Name Change Amendment - 04-25-2011.pdf	AMENDMENT TO FACILITY PARTICIPATION	7/1/1997	\$0.00
Vintage Health Resources, Inc. Melanie N. Beckham,	Sunnyside Community Hospital Association	Vintage Health Resources, Inc.	Vintage Health Resources, Inc Service Agreement (Washington 2016) with	SERVICE AGREEMENT	7/7/2017	\$ 30,645.95
Vintage Health Resources, Inc. Melanie N. Beckham,	Sunnyside Community Hospital Association	Vintage Health Resources, Inc.	Vintage Health Resources.pdf	EMPLOYEE SERVICE AGREEMENT	7/7/2017	\$ 30,645.95
Wapato-WA c/o: DaVita Inc.	Sunnyside Community Hospital Association	Wapato-WA	DaVita - Astria Sunnyside Pt Xfer Agreement 06042018.pdf	PATIENT TRANSFER AGREEMENT	6/4/2018	\$0.00
Washington State Health Care Authority	SHC Medical Center - Toppenish d/b/a Astria Toppenish Hospital	Washington State Health Care Authority	10_17_18 Final Draft Contract 10 19 18.docx	PROFESSIONAL SERVICES CONTRACT	9/1/2018	\$ 2,823,612.00
Washington State Health Care Authority Basic Health	Astria Health	Washington State Health Care Authority, Basic Health	BasicHealth.pdf	Health Care Authority Basic Health	8/20/2007	\$ 775,430.00

**Exhibit B**

Astria Health  
Insurance Summary

**General and Professional Liability**

Policy No.	Carrier	Period Covered	Named Insured	Limits	Annual Premium	Paid Through Date	Comments
300003147	Physicians Insurance, A Mutual Company	ERP Only	SHC Medical Center - Yakima	\$1MM \$1MM \$25K \$1MM \$5MM \$1MM \$5MM		12/1/2020	ea Occurrence Damage to Rented Premises Medical Expense (any one person) Personal Injury General Aggregate/Products Occurrence Aggregate
300003148	Physicians Insurance, A Mutual Company	08/31/20 - 08/31/21	SHC Medical Center - Toppenish	\$1MM \$1MM \$25K \$1MM \$5MM \$1MM \$5MM		12/1/2020	ea Occurrence Damage to Rented Premises Medical Expense (any one person) Personal Injury General Aggregate/Products Occurrence Aggregate
300002039	Physicians Insurance, A Mutual Company	06/15/20 - 06/15/21	Sunnyside Community Hospital Association	\$1MM \$1MM \$25K \$1MM \$5MM \$1MM \$5MM		12/1/2020	ea Occurrence Damage to Rented Premises Medical Expense (any one person) Personal Injury General Aggregate/Products Occurrence Aggregate
<b>General Liability</b>							
AES120284002	Associated Industries Insurance Company	10/06/20-10/06/21	SHC Medical Center - Yakima	\$1MM \$100K \$5K \$1MM \$2MM		10/6/2021	ea Occurrence Damage to Rented Premises Medical Expense (any one person) Personal Injury General Aggregate/Products
<b>Worker's Comp</b>							
Not Provided.	N/A	N/A	N/A	N/A		N/A	N/A
<b>Auto</b>							
BAP9876043	Zurich	08/31/20-8/1/21	Astria Health	\$1MM		8/1/2021	Comments Combined Single Limit
<b>Property</b>							
ZMD682755802	Zurich	08/01/20 - 08/01/21	Astria Health	\$138,309,800 \$48,265,500 \$64,312,000 \$50MM \$50MM		1/1/2021	Comments Commercial Property Coverage Business Personal Property Coverage Business Income Earth Movement Flood
<b>Umbrella</b>							
300003147	Physicians Insurance, A Mutual Company	ERP Only	SHC Medical Center - Yakima	\$10MM		12/1/2020	Excess Liability/Occurrence/Aggregate
300003148	Physicians Insurance, A Mutual Company	08/31/20 - 08/31/21	SHC Medical Center - Toppenish	\$5MM		12/1/2020	Excess Liability/Occurrence/Aggregate
300002039	Physicians Insurance, A Mutual Company	06/15/20 - 06/15/21	Sunnyside Community Hospital Association	\$10MM		12/1/2020	Excess Liability/Occurrence/Aggregate
<b>Crime</b>							
106794824	Travelers Casualty & Surety Company of America	08/31/20 - 08/31/21	Astria Health	\$1MM Employee Dishonesty \$1MM Forgery/Alterations		8/31/2021	Comments Computer Fraud: \$1MM Funds Transfer Fraud: \$1MM Retention: \$10K
<b>Cyber Liability</b>							
CYP25920	Underwriters at Lloyds London	08/11/20 - 08/11/21	Astria Health	\$3MM Each Occurrence \$3MM Aggregate		8/11/2021	Comments
<b>D&amp;O/EPL</b>							
RVA100119300	Republic-Vanguard Insurance Company	06/30/20-06/30/21	Astria Health	\$3MM Each Occurrence - D&O \$3MM Each Occurrence - EPL \$3MM Fiduciary		6/30/2021	Comments \$250K Retention (Insuring Agreements B & C) \$250K Retention \$10K Retention
<b>Billing E&amp;O</b>							
KBRMPL0014002	Lloyd's London	09/01/20 - 09/01/21	SHC Medical Center - Toppenish	\$2MM		9/1/2021	
KBRMPL0013801	Lloyd's London	ERP Only	SHC Medical Center - Yakima	\$2MM		6/27/2023	
KBRMPL0013902	Lloyd's London	09/01/20 - 09/01/21	Sunnyside Community Hospital Association	\$2MM		9/1/2021	

**Exhibit C**

**REORGANIZED ASTRIA HEALTH DIRECTORS**

Maureen Ames Spivack  
Kimberly Anne Clift  
Debbie Jo Ahl  
Jim Hansen

**Exhibit D**

Credit Agreement

---

**CREDIT AGREEMENT**

Dated as of [\_\_\_\_\_], 2020

Among

**AH SYSTEM, INC.**

**ASTRIA HEALTH,  
SUNNYSIDE COMMUNITY HOSPITAL ASSOCIATION  
d/b/a Astria Sunnyside Hospital,**

**SHC HOLDCO, LLC,**

**SHC MEDICAL CENTER—TOPPENISH  
d/b/a Astria Toppenish Hospital,**

and

**THE OTHER PERSONS PARTY HERETO THAT ARE  
DESIGNATED AS BORROWERS OR GUARANTORS,**

**THE FINANCIAL INSTITUTIONS OR FUNDS PARTY HERETO, as Lenders**

and

**LAPIS ADVISERS, LP,  
as Agent for all Lenders**

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**EXHIBITS**

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## CREDIT AGREEMENT

This Credit Agreement, including all exhibits and schedules hereto, as the same may be amended, modified and/or restated from time to time, this “Agreement”) is entered into as of [\_\_\_\_\_], 2020, among AH SYSTEM, INC., a Washington non-profit corporation (“Parent”), ASTRIA HEALTH, a Washington non-profit corporation (“Astria”), SUNNYSIDE COMMUNITY HOSPITAL ASSOCIATION, a Washington non-profit corporation (“Sunnyside”), SHC MEDICAL CENTER—TOPPENISH, a Washington non-profit corporation (“Toppenish”), SHC HOLDCO, LLC, a Washington limited liability company (“Intermediate Holdco”), SUNNYSIDE COMMUNITY HOSPITAL HOME MEDICAL SUPPLY, LLC, a Washington limited liability company (“Sunnyside Medical Supply”), SUNNYSIDE HOME HEALTH, a Washington non-profit corporation (“Sunnyside Home Health”); SUNNYSIDE PROFESSIONAL SERVICES, LLC, a Washington limited liability company (“Sunnyside Professional”), OXBOW SUMMITT, LLC, a Delaware limited liability company (“Oxbow”), KITCHEN AND BATH FURNISHINGS LLC, a Delaware limited liability company (“Kitchen and Bath”), and GLACIER CANYON, LLC, a Delaware limited liability company (“Glacier”), YAKIMA HOME CARE HOLDINGS, a Delaware limited liability company (“Home Care Holdings”), YAKIMA HMA HOME HEALTH, LLC, a Washington limited liability company (“HMA Home Health” and with Parent, Astria, Sunnyside, Toppenish, Intermediate Holdco, Sunnyside Medical Supply, Sunnyside Home Health, Sunnyside Professional, Oxbow, Kitchen and Bath, Glacier, Home Care Holdings, HMA Home Health and the other persons from time to time party to this Agreement, as borrowers, collectively, the “Borrowers” and each, a “Borrower”), and SUNNYSIDE MEDICAL CENTER, LLC, a Washington limited liability company (“Sunnyside Medical”), SUNNYSIDE HOSPITAL SERVICE CORP., a Washington corporation (“Sunnyside Service”), WEDDED BLISS, LLC, a Washington limited liability company (“Wedded Bliss”), BRIDAL DREAMS, LLC, a Delaware limited liability company (“Bridal Dreams”), HOME SUPPLY, LLC, a Delaware limited liability company (“Home Supply”); KITCHEN APPLIANCES, LLC (“Kitchen Appliances”), DEPOT PLUS, LLC, a Delaware limited liability company, (“Depot Plus”), NORTHWEST HEALTH, LLC, a Delaware limited liability company (“Northwest Health”), PACIFIC NORTHWEST ASC MANAGEMENT, LLC, a Delaware limited liability company (“Northwest Management” and with Sunnyside Medical, Sunnyside Service, Wedded Bliss, Bridal Dreams, Home Supply, Kitchen Appliances, Depot Plus, Northwest Health and Northwest Management, collectively, the “Guarantors” and each, a “Guarantor”, and with the Borrowers, collectively, the “Credit Parties” and each a “Credit Party”), those persons from time to time party to this Agreement as lenders (collectively, the “Lenders”; individually, each a “Lender”), and LAPIS ADVISERS, LP, as Agent for the Lenders (in such capacity, the “Agent”). THE LIQUIDATION TRUST OF THE ASTRIA CHAPTER 11 BANKRUPTCY CASE; a \_\_\_\_\_ Trust (the “Liquidation Trust” is a party to this Agreement with respect to the provisions set forth in **Section 2.04(a)**.

## RECITALS

A. Pursuant to the Plan of Reorganization (as defined below) and this Agreement, the Agent and Lenders have agreed to provide certain financing to the Borrowers in connection with the consummation of the transactions contemplated by the Plan of Reorganization;

B. The Borrowers and other Credit Parties are willing to secure all of their obligations under the Loan Documents by granting to Agent, for the benefit of the Lenders, security interests in and liens upon substantially all of their existing and after-acquired personal and real property as more particularly described herein;

C. Pursuant to a Bond Indenture dated as of November 1, 2017 (the "2017 Bond Indenture"), between the Washington Health Care Facilities Authority, as issuer (the "Authority"), and UMB Bank, N.A., as trustee (the "2017 Bond Trustee"), the Authority has issued its Washington Health Care Facilities Authority Revenue Bonds, Series 2017A (the "Series 2017A Bonds"), in the aggregate principal amount of \$27,000,000 and its Washington Health Care Facilities Authority Revenue Bonds, Series 2017B (the "Series 2017B Bonds" and, together with the Series 2017A Bonds, collectively the "2017 Bonds"), in the aggregate principal amount of \$8,400,000, plus all accrued and unpaid interest thereon and other fees and amounts due and payable thereunder, which has been allowed under the Plan of Reorganization in the amount of \$[\_\_\_\_\_] (the "2017 Bond Claims").; The 2017 Bond Claims are evidenced and secured by, among other documents, a Loan and Security Agreement, dated as of November 1, 2017 (the "Bond Loan Agreement"), Continuing Guaranty agreements, dated as of November 1, 2017 (each, as amended, a "Bond Guaranty", collectively, the "Bond Guarantees"), a Credit Agreement, dated as of November 1, 2017 (the "2017 Bond Credit Agreement"), a Security Agreement, dated as of November 1, 2017 (the "Bond Security Agreement"), Amended and Restated Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing agreements, each dated as of November 1, 2017 (each a "Bond Deed of Trust", collectively the "Bond Deeds of Trust"), and Tax Certificate and Agreement, dated as of November 30, 2017 (the "Bond Tax Agreement"). The Bond Indenture, Loan Agreement, Bond Guarantees, 2017 Bond Credit Agreement, Bond Security Agreement, Bond Deeds of Trust, Bond Tax Agreement, and any other document or agreement delivered as security for, or in respect to, the Bonds or the Obligated Parties' obligations under any of such documents are collectively referred to herein as the "2017 Bond Documents."

D. Events of Default have occurred and continue pursuant to the 2017 Bond Documents as a result of, among other things, certain of the Credit Parties' failure to make debt service payments as required by the Bond Documents, the commencement by certain of the Credit Parties of bankruptcy proceedings under Chapter 11 of the title 11 of the United States Code (the "Chapter 11 Cases") in the United States Bankruptcy Court for the Western District of Washington (the "Bankruptcy Court"), and the breach by certain of the Credit Parties of numerous covenants under the 2017 Bond Documents, including covenants relating to financial reporting, financial covenants, the incurrence of additional indebtedness, and the incurrence of liens (collectively, the "2017 Bond Indenture Specified Defaults").

E. Pursuant to a Credit Agreement entered into as of January 18, 2019 (as amended, modified and supplemented, the "Senior Secured Credit Agreement"), Astria, Sunnyside, the other persons from time to time party to the Senior Secured Credit Agreement as borrowers or credit

parties (collectively, “Senior Secured Borrowers” and each, a “Senior Secured Borrower”), those persons from time to time party to the Senior Secured Credit Agreement as lenders (collectively, the “Senior Secured Lenders” and, individually, each a “Senior Secured Lender”), and LAPIS ADVISERS, LP, as Agent for the Senior Secured Lenders (in such capacity, the “Senior Secured Agent”), the Senior Secured Lenders made loans to the Senior Secured Borrowers in an aggregate principal amount of \$10,000,000, with the outstanding principal amount thereof, plus all accrued and unpaid interest thereon and other fees and amounts due and payable thereunder, which has been allowed under the Plan of Reorganization in the amount of up to \$[\_\_\_\_\_] (the “Senior Secured Credit Agreement Claims”).

F. Pursuant to a Senior Secured, Super-Priority Debtor-In-Possession Loan and Security Agreement (the “DIP Loan Agreement”), entered into as of December 26, 2019, by and among the Senior Secured Borrowers, the guarantors signatory thereto and together with the Senior Secured Borrowers, the “DIP Loan Parties”), and those persons from time to time party to the DIP Loan Agreement as lenders (collectively, the “DIP Lenders”; individually, each a “DIP Lender”), and Lapis Advisers, LP, as Agent for the DIP Lenders (in such capacity, the “DIP Agent”) has made available to the DIP Loan Parties loans in the aggregate principal amount of to \$43,100,100, with the outstanding principal amount thereof, plus all accrued and unpaid interest thereon and other fees and amounts due and payable thereunder, which has been allowed under the Plan of Reorganization in the amount of up to \$[\_\_\_\_\_] (the “DIP Claim”).

G. On July 30, 2020, the DIP Lenders, with Parent entered into a Promissory Note pursuant to which the DIP Lenders my advance up to \$2,000,000.00 to Parent, the proceeds of have been used by Parent for costs and expenses incurred in connection with the Plan of Reorganization, pursuant to a Promissory Note dated as of July 28, 2020 (the “AH System Note”).

H. The Borrowers are willing to issue (i) to the DIP Lenders in exchange for the DIP Claim and the outstanding principal amount and all accrued and unpaid interest and other amounts due and payable under the AH System Note, the Series A-1 Notes (as defined below), (ii) to the Senior Secured Lenders in exchange for the Senior Secured Credit Agreement Claims, the Series A-2 Notes (as defined below) upon the terms and conditions set forth in this Agreement, and (iii) to the holders of the 2017 Bonds, with respect to a portion of the 2017 Bond Claims certain claims relating to remedial action associated with the 2017 Bonds, the Series A-3 Notes (as defined below);

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

### ARTICLE I

#### DEFINITIONS

1.01 Certain Defined Terms. The following terms have the following meanings:

“2017 Bonds” has the meaning specified in the Recitals.

“2017 Bond Claims” has the meaning specified in the Recitals.

“2017 Bond Documents” has the meaning specified in the Recitals.

“2017 Bond Indenture” has the meaning specified in the Recitals.

“2017 Bond Indenture Specified Defaults” has the meaning specified in the Recitals.

“2017 Bond Forbearance Agreement” means the agreement, among other things, reinstating the 2017 Bonds in accordance with the Plan of Reorganization.

“2017 Bond Trustee” has the meaning specified in the Recitals.

“2017 Bonds and Lapis ICA” means the Intercreditor Agreement by and among the 2017 Bond Trustee and the Agent.

“Account Control Agreement” means an agreement in form and substance satisfactory to Agent among Agent, the applicable Credit Party, and each bank, securities intermediary, or other depository institution at which any Depository Account is maintained pursuant to which such bank, securities intermediary, or institution agrees that it has no lien upon or right of set off against any funds in such Depository Account (other than customary exceptions for overdrafts and account fees) and provides for Agent to have control (within the meaning of the UCC) of such Depository Account (subject to the Credit Party’s right to use funds in the Depository Account until such time as Agent delivers a notice revoking such right) and that contains such other provisions as Agent shall reasonably require.

“Affiliate” means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, membership interests, by contract, or otherwise.

“Agent” means Lapis Advisers, LP, in its capacity as administrative agent and collateral agent for the Lenders, and any successor administrative agent and collateral agent appointed pursuant to **Section 8.08**.

“Agreement” has the meaning specified in the introductory paragraph.

“AHCIN” has the meaning specified in the introductory paragraph hereof.

“AH System Cash Accounts” means [\_\_\_\_\_].

“AH System Note” has the meaning set forth in the Recitals.

“AH System Indebtedness” means the outstanding principal balance of and all accrued and unpaid interest and other amounts due and payable under the AH System Note.

“Assignee” has the meaning specified in **Section 9.08(a)**.

“Astria Debtors” means the Debtors in the Bankruptcy Cases.

“Attorney Costs” means and includes all fees and disbursements actually incurred by one or more counsel to the Agent in the preparation and negotiation of the Loan Documents and any other matters arising out of or in connection with the administration of this Agreement, the exercise or any rights and remedies of the Agent and Lenders under any of the Loan Documents.

“Bankruptcy Cases” means the voluntary petitions for relief under Chapter 11 of the Bankruptcy Code commenced on May 6, 2019 by Astria Health, a Washington nonprofit public benefit corporation, and its affiliated debtors and debtors in possession in the United States Bankruptcy Court for the Eastern District of Washington, which are jointly administered under lead bankruptcy case number 19-01189-11.

“Bankruptcy Code” means the Federal Bankruptcy Reform Act of 1978, as amended (11 U.S.C. §101, et seq.).

“Benefit Plan” means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Credit Party incurs or otherwise has any obligation or liability, contingent or otherwise.

“Borrower” or “Borrowers” has the meaning specified in the introductory paragraph hereof.

“Business Day” means any day other than a Saturday, Sunday or other day on which banks in New York City are authorized or required by law to close.

“Capital Lease Obligations” means, for any Person, all monetary obligations of such Person under any leasing or similar arrangement which, in accordance with GAAP, is classified as a capital lease.

“Capitalized Interest” means interest on Indebtedness that accordance with the terms of this Agreement is not paid in cash when due and payable and is added to the principal amount of such Indebtedness.

“CARES Act” means the the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136) (2020), as amended.

“Cash Operating Expenses” means, for any period, as determined for any of the Credit Parties, the aggregate of all expenses calculated under GAAP, required for the health and safety of the patients, employees, doctors and nurses and other professionals of the applicable Borrower, including expenses for required capital improvements and wages, benefits, supplies, contract labor costs, marketing, utilities, purchased services, maintenance costs, management fees, and property, sales, business and other taxes other than any taxes based on income, incurred during such period; provided that no calculation of Expenses shall take into account: (a) any unrealized loss resulting from changes in the value of, investment securities (b) extraordinary or nonrecurring losses including any losses on the sale or other disposition of assets, (c) any losses on the extinguishment of Indebtedness (including any termination payments received on Hedging Obligations or other hedges or derivatives related to or integrated with the Indebtedness being extinguished and any

losses concerning the repayment of the Loans with proceeds of tax-exempt bonds) (d) any losses resulting from discontinued operations or any reappraisal, revaluation or write-down of any asset, facility or good-will, and any loss or expense resulting from adjustments to prior periods, (e) any unrealized losses on or related to, including marking to market, any Hedging Obligations or other hedges or derivatives, (f) any accounting reserves or losses or expenses or other items that would be considered to be non-cash items such as depreciation and amortization, and (g) any non-cash expenses and losses attributable to transactions between any member of the Credit Party; provided, however, Cash Operating Expense shall not include any non-recurring restructuring expenses incurred by any of the Credit Parties in connection with this Agreement and any related agreements with respect to this Agreement or the 2017 Bonds.

“Causes of Action” means any action, claim, cause of action, controversy, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertible directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law, or in equity or pursuant to any other theory of law. For the avoidance of doubt, “Cause of Action” includes (i) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (ii) the right to object to Claims; (iii) any Claim pursuant to § 362; (iv) any claim or litigation not expressly assigned to the Litigation Trust held by the Astria Debtors.

“CERCLA” has the meaning specified in the definition of “Environmental Laws.”

“CHAMPVA” means, collectively, the Civilian Health and Medical Program of the Department of Veterans Affairs, a program of medical benefits covering retirees and dependents of former members of the armed services administered by the United States Department of Veterans Affairs, and all laws, rules, regulations, manuals, orders, or requirements pertaining to such program.

“Change of Control” means (a) Parent fails to be the sole member of each of Astria, (b) Astria fails to be the sole member of Intermediate Holdco, Sunnyside or Glacier Canyon, or (c) either Sunnyside or Intermediate Holdco fails to be the sole direct or indirect member of each other Credit Party not listed in clause (a).

“Closing Date” means the date on which all conditions precedent set forth in **Section 3.01** or otherwise established by Agent are satisfied or waived by Agent and all Lenders.

“CMS” means The Center for Medicare and Medicaid Services, which administers the Medicare and Medicaid programs under the Department of Health and Human Services, and any successor thereto.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all property and interests in property and proceeds thereof now owned or hereafter acquired by any Credit Party or any Subsidiary of a Credit Party in or upon which a

Lien now or hereafter exists in favor of the Lenders, or Agent on behalf of the Lenders, whether under this Agreement or under any other documents executed by any such Person and delivered to Agent or the Lenders.

“Collateral Documents” means, collectively, (a) each Security Agreement, each Mortgage, each Account Control Agreement, and all patent and trademark assignments, lease assignments, guarantees and other similar agreements between any Credit Party and the Lenders, or Agent for the benefit of the Lenders, now or hereafter delivered to the Lenders or Agent pursuant to or in connection with the transactions contemplated hereby, and all financing statements (or comparable documents now or hereafter filed in accordance with the Uniform Commercial Code or comparable law) against any Credit Party as debtor in favor of the Lenders, or Agent for the benefit of the Lenders, as secured party, and (b) any amendments, supplements, modifications, renewals, replacements, consolidations, substitutions and extensions of any of the foregoing.

“Compliance Certificate” means a certificate executed by a Responsible Officer of Borrowers, in substantially the form of **Exhibit C**.

“Confirmation Order” means the Order of the Bankruptcy Court approving the Plan or Reorganization and the Borrowers’ entry into this Agreement and the other Loan Documents, in form and substance satisfactory to Agent in its sole discretion.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument, document or agreement to which such Person is a party or by which it or any of its property is bound.

“Credit Party” or “Credit Parties” has the meaning specified in the introductory paragraph hereof.

“Days Cash on Hand” means as of any relevant date and with respect to any relevant entity, the quotient obtained by dividing (a) the balance of Unrestricted Cash as of such date, by (b) an amount equal to (i) Cash Operating Expenses for the immediately preceding 12-month period, divided by (ii) 365.

“Days of Trade Accounts Payable” means as of any date of determination thereof, the product of (a) the ratio (i) the numerator of which is the trade accounts payable on the date of determination, and (ii) the denominator of which is the annualized Trailing Cash Operating Expense based on the immediately preceding three month period, multiplied by (b) 365 days.

“Debt Service Coverage Ratio” means the ratio of (a) EBITDA to (b) Debt Service Requirements for the 12-month period ending on the date of calculation.

“Debt Service Requirements” means, with respect to the period of time for which calculated, the aggregate of the payments required to be made [in cash] during such period in respect of principal (whether at maturity, as a result of mandatory sinking fund redemption or mandatory prepayment) and interest on outstanding Indebtedness; provided that payments of principal required as a result of the scheduled maturity date of any Indebtedness shall not be included if such principal was refinanced by Indebtedness permitted by this Agreement.

“Default” means any event or circumstance which, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

“Default Rate” means a rate of interest that is three percent (3.0%) higher than the otherwise applicable interest rate.

“Defaulting Lender” shall mean any Lender that has failed to pay to Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due.

“Depository Account” means a bank account, deposit account, securities account, commodities account, or a similar type of account in which any funds or investments are held.

“DIP Claims” has the meaning specified in the Recitals, which as of the date hereof is \$[\_\_\_\_\_].

“DIP Loan Agreement” has the meaning specified in the Recitals.

“DIP Lenders” has the meaning specified in the Recitals.

“Disclosure Schedule” means the disclosure schedule attached hereto as **Exhibit B**.

“Dollars,” “dollars” and “\$” each mean lawful money of the United States.

“EBITDA” means, with respect to the period of time for which calculated, and computed and calculated in accordance with GAAP, the amount by which Revenues for such period exceed Cash Operating Expenses excluding interest expense for such period.

“Effective Date” means the date when all conditions to the effectiveness of the Plan have occurred in accordance with its terms.

“Environmental Claims” means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or threat to public health, personal injury (including sickness, disease or death), property damage, natural resources damage, or otherwise alleging liability or responsibility for damages (punitive or otherwise), cleanup, removal, remedial or response costs, restitution, civil or criminal penalties, injunctive relief, or other type of relief, resulting from or based upon the presence, placement, discharge, emission or release (including intentional and unintentional, negligent and non-negligent, sudden or non-sudden, accidental or non-accidental, placement, Spills, leaks, discharges, emissions or releases) of any Hazardous Material at, in, or from property, owned, leased, subleased or operated by a Credit Party.

“Environmental Laws” means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authorities, in each case relating to environmental, health and safety matters; including the Comprehensive

Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Solid Waste Disposal Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Emergency Planning and Community Right-to-Know Act, and the Washington State Environmental Policy Act.

“Environmental Liabilities” means all liabilities (including costs of Remedial Actions, natural resource damages and costs and expenses of investigation and feasibility studies, including the cost of environmental consultants and Attorney Costs) that may be imposed on, incurred by or asserted against any Credit Party or any Subsidiary of any Credit Party as a result of, or related to, any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law or otherwise, arising under any Environmental Law or in connection with any environmental, health or safety condition or with any Release and resulting from the ownership, lease, sublease or other operation or occupation of property by any Credit Party or any Subsidiary of any Credit Party, whether on, prior or after the date hereof.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and regulations promulgated thereunder.

“ERISA Affiliate” means, collectively, any Credit Party and any Person under common control or treated as a single employer with, any Credit Party, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“ERISA Event” means any of the following: (a) a reportable event described in Section 4043(b) of ERISA (or, unless the 30-day notice requirement has been duly waived under the applicable regulations, Section 4043(c) of ERISA) with respect to a Title IV Plan; (b) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any ERISA Affiliate from any Multiemployer Plan; (d) with respect to any Multiemployer Plan, the filing of a notice of reorganization, insolvency or termination (or treatment of a plan amendment as termination) under Section 4041A of ERISA; (e) the filing of a notice of intent to terminate a Title IV Plan (or treatment of a plan amendment as termination) under Section 4041 of ERISA; (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC; (g) the failure to make any required contribution to any Title IV Plan or Multiemployer Plan when due; (h) the imposition of a lien under Section 412 or 430(k) of the Code or Section 303 or 4068 of ERISA on any property (or rights to property, whether real or personal) of any ERISA Affiliate; (i) the failure of a Benefit Plan or any trust thereunder intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law to qualify thereunder; (j) a Title IV plan is in “at risk” status within the meaning of Code Section 430(i); (k) a Multiemployer Plan is in “endangered status” or “critical status” within the meaning of Section 432(b) of the Code; and (l) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of any material liability upon any ERISA Affiliate under Title IV of ERISA other than for PBGC premiums due but not delinquent.

“Event of Default” means any of the events or circumstances specified in **Section 7.01**.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Depository Account” means (a) any payroll account so long as such payroll account is a zero balance account, (b) petty cash accounts, amounts on deposit in which do not exceed Five Thousand Dollars (\$5,000) in the aggregate at any one time and (c) withholding tax and fiduciary accounts.

“Excluded Taxes” shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (i) Taxes imposed on or measured by net income (however denominated), franchise taxes, and branch profits Taxes, in each case, (a) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (b) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (a) such Lender acquires such interest in the Loan or commitment or (b) such Lender changes its lending office, (iii) Taxes attributable to such Recipient’s failure to comply with any provision of this Agreement concerning Taxes, and (iv) any U.S. federal withholding Taxes imposed under FATCA.

“FATCA” shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Rate” means, for any day, the rate set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Federal Reserve Bank of New York (including any such successor, “H.15(519)”) on the preceding Business Day opposite the caption “Federal Funds (Effective)”; or, if for any relevant day such rate is not so published on any such preceding Business Day, the rate for such day will be the arithmetic mean as determined by Agent of the rates for the last transaction in overnight Federal funds arranged prior to 9:00 a.m. (New York City time) on that day by each of three leading brokers of Federal funds transactions in New York City selected by Agent.

“Fiscal Quarter” means each calendar quarter commencing on January 1, April 1, July 1 and October 1 of each calendar year.

“GAAP” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

“Governmental Account” means a Depository Account of a Credit Party into which proceeds of any federal or state healthcare program, including Medicare and Medicaid payments, are made by Governmental Payors.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

“Governmental Payor” means Medicare, Medicaid, TRICARE, CHAMPVA, any state health plan adopted pursuant to Title XIX of the Social Security Act, any other state or federal health care program and any other Governmental Authority which presently or in the future maintains a Third Party Payor Program.

“GUC Distribution Trust” means the trust established in accordance with the Plan pursuant to the GUC Distribution Trust Agreement dated as of \_\_\_\_\_, 2020 by and between Astria and the other debtors in possession and \_\_\_\_\_, as the trustee, for the administration and disposition of the GUC Distribution Trust Assets (as defined therein).

“Hazardous Materials” means all those substances that are regulated by, or which may form the basis of liability under, any Environmental Law, including any substance identified under any Environmental Law as a pollutant, contaminant, hazardous waste, hazardous constituent, special waste, hazardous substance, hazardous material, or toxic substance, or petroleum or petroleum derived substance or waste.

“Health Care Laws” means all Requirements of Law relating to (a) fraud and abuse (including the following statutes, as amended, modified or supplemented from time to time and any successor statutes thereto and regulations promulgated from time to time thereunder: the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)); the Stark Law (42 U.S.C. § 1395nn and § 1395(q)); the civil False Claims Act (31 U.S.C. § 3729 et seq.); Sections 1320a-7 and 1320a-7a and 1320a-7b of Title 42 of the United States Code; the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173)); (b) Medicare, Medicaid, CHAMPVA, TRICARE or other Third Party Payor Programs; (c) the licensure or regulation of healthcare providers, suppliers, professionals, facilities or payors; (d) the provision of, or payment for, health care services, items or supplies; (e) patient health care; (f) quality, safety certification and accreditation standards and requirements; (g) the billing, coding or submission of claims or collection of accounts receivable or refund of overpayments; (h) HIPAA; (i) the practice of medicine; (j) fee-splitting prohibitions; (k) requirements for maintaining federal, state and local tax-exempt status of any Credit Party or any Subsidiary of any Credit Party; (l) charitable trusts or charitable solicitation laws; (m) health planning or rate-setting laws, including laws regarding certificates of need and certificates of exemption; (n) certificates of operations and authority; (o) laws regulating the provision of free or discounted care or services; and (p) any and all other applicable federal, state or local health care laws, rules, codes, statutes, regulations, manuals, orders, ordinances, statutes, policies, professional or ethical rules, administrative guidance and requirements, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

“Health Care Permits” means any and all Permits issued or required under applicable Health Care Laws.

“Hedging Obligation” means an obligation being entered into in order to hedge the interest payable on all or a portion of any Indebtedness, which agreement may include, without limitation, an interest rate swap, a basis swap, a yield curve swap, a currency swap, a forward or futures contract or an option (*e.g.*, a call, put, cap, floor or collar) and which arrangement does not constitute an obligation to repay money borrowed, credit extended or the equivalent thereof.

“HIPAA” means the (a) Health Insurance Portability and Accountability Act of 1996; (b) the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009); and (c) any state and local laws regulating the privacy and/or security of individually identifiable information, including state laws providing for notification of breach of privacy or security of individually identifiable information, in each case with respect to the laws described in clauses (a), (b) and (c) of this definition, as the same may be amended, modified or supplemented from time to time, any successor statutes thereto, any and all rules or regulations promulgated from time to time thereunder.

“Hospitals” means Sunnyside Community Hospital and Toppenish Hospital.

“Indebtedness” of any Person means (i) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (including reimbursement and all other obligations with respect to surety bonds, letters of credit and bankers’ acceptances, whether or not matured, but excluding obligations to trade creditors incurred in the ordinary course of business), (ii) all obligations evidenced by notes, bonds, debentures or similar instruments, (iii) all indebtedness created or arising under any conditional sale or other title retention agreements with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (iv) all Capital Lease Obligations, (v) all guaranteed Indebtedness of the type described in clauses (i) through (iv) above, (without duplication of the Indebtedness of any other Credit Party), (vi) all Indebtedness referred to in clauses (i) through (v) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, and (vii) the Obligations.

“Indemnified Liabilities” has the meaning specified in **Section 9.05**.

“Indemnified Person” has the meaning specified in **Section 9.05**.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Independent Auditor” has the meaning specified in **Section 5.01(a)**.

“Insolvency Proceeding” means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement

in respect of its creditors generally or any substantial portion of its creditors; in each case, undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

“Intermediate Holdco” has the meaning specified in the introductory paragraph hereof.

“IRS” means the Internal Revenue Service, and any Governmental Authority succeeding to any of its principal functions under the Code.

“Lead Borrower” means Astria.

“Lender” has the meaning specified in the introductory clause hereto and shall include each Person who owns or holds any of the Notes hereunder, whether as an original signatory or pursuant to assignment.

“Licensed Personnel” means any Person (including any physician) involved in the delivery of health care or medical items, services or supplies, and employed by any Credit Party or any Subsidiary of any Credit Party, but excluding independent contractors.

“Lien” means any security interest, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance, lien (consensual, statutory or other) or preferential arrangement of any kind or nature whatsoever in respect of any property (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of any financing statement naming the owner of the asset to which such lien relates as debtor, under the Uniform Commercial Code or any comparable law), but not including the interest of a lessor under an operating lease.

“Liquidation Trust” has the meaning specified in the introductory paragraph hereof.

“Liquidation Trustee” means [\_\_\_\_\_] and any successor trustee thereto appointed in accordance with the Liquidation Trust Agreement.

“Liquidation Trust Agreement” means the agreement governing, among other things, the retention of the Liquidating Trustee and the disposition of the Liquidation Trust Assets.

“Liquidation Trust Assets” means all assets contributed to the Liquidation Trust in accordance with the Plan of Reorganization, including, but not limited to, (i) if unsold as of the Effective Date, Yakima Medical Office Building (excluding the operations within); (ii) if unsold as of the Effective Date, SHC Medical Center-Yakima; (iii) any other unused buildings or real property currently owned by the Debtors that is set forth on **Schedule 1.1(a)**; (iv) the accounts receivable collections of SHC Medical Center-Yakima; (v) all accounts receivable of Sunnyside and Toppenish that are 180 days or older as of the Effective Date; (vi) any other Causes of Action held by the Debtors, and proceeds thereof, to the extent not expressly assigned to the GUC Distribution Trust and not otherwise released pursuant to Section VII.F.1 of the Plan; and (vii) any amounts payable to the Liquidation Trust pursuant to the D&O Cause of Action Agreement as defined in Section III(H) of the Plan.

“Liquidation Trust Assets Proceeds” means for any period the amount of any revenue derived from the Liquidation Trust Assets from the proceeds from any sale of any to the Liquidation Trust Proceeds available for distribution to the Agent in accordance with the Liquidation Trust Agreement.

“Loan Documents” means this Agreement, the Notes, the Collateral Documents, any guaranty of the Obligations, and all other documents delivered to Agent or any Lender in connection with the transactions contemplated by this Agreement.

“Loans” means at any time the aggregate principal amounts outstanding under the Series A-1 Notes, Series A-2 Notes and Series A-3 Notes.

“Majority Lenders” means at any time Lenders then holding more than 50% of the then aggregate unpaid principal amount of the Notes; provided, that to the extent that any Lender is a Defaulting Lender, such Defaulting Lender and all of its Notes shall be excluded for purposes of determining Majority Lenders.

“Mandatory Prepayments” means the mandatory repayments specified in **Section 2.04**.

“Margin Stock” means “margin stock” as such term is defined in Regulation T, U or X issued by the Board of Governors of the Federal Reserve System, or any Governmental Authority succeeding to any of its principal functions.

“Material” and “Materially” means material in relation to the business, operations, affairs, financial condition, assets or properties of either, as the context requires, (a) the Credit Parties taken as a whole, or (b) any Borrower or Credit Party.

“Material Adverse Effect” means (a) a material adverse change in the operations, business, properties, prospects or financial condition of any Credit Party (but excluding any adverse change in the economy in general or any downturn in financial markets); (b) a material impairment of the ability of any Credit Party to perform under any Loan Document; or (c) a material adverse change or impairment in (i) the legality, validity, binding effect or enforceability against any Credit Party of any Loan Document, or (ii) the perfection or priority of any Lien granted under any of the Collateral Documents.

“Material Environmental Liabilities” means Environmental Liabilities exceeding Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate.

“Maturity Date” means the earlier of (a) [\_\_\_\_\_], 2022 and (b) the date that the Obligations otherwise become due and payable under this Agreement whether through acceleration or otherwise.

“Medicaid” means, collectively, the health care assistance program established by Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and any statutes succeeding thereto, and all laws, rules, regulations, manuals, orders or requirements pertaining to such program, including (a) all federal statutes affecting such program; (b) all state statutes and plans for medical assistance enacted in connection with such program and federal rules and regulations promulgated in connection with such program; and (c) all applicable provisions of all rules, regulations, manuals,

orders and administrative, reimbursement, and requirements of all Governmental Authorities promulgated in connection with such program (whether or not having the force of law), in each case as the same may be amended, supplemented or otherwise modified from time to time.

“Medicare” means, collectively, the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and any statutes succeeding thereto, and all laws, rules, regulations, manuals, orders or requirements pertaining to such program including (a) all federal statutes (whether set forth in Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) or elsewhere) affecting such program; and (b) all applicable provisions of all rules, regulations, manuals, orders, administrative, reimbursement and requirements of all Governmental Authorities promulgated in connection with such program (whether or not having the force of law), in each case as the same may be amended, supplemented or otherwise modified from time to time.

“Mortgages” means any deed of trust, leasehold deed of trust, mortgage, leasehold mortgage, deed to secure debt, leasehold deed to secure debt or other document creating a Lien on any of the Mortgaged Properties.

“Mortgaged Properties” means any real property of any Credit Party subject to a mortgage, deed of trust, or similar encumbrance in favor of Agent to secure any portion of the Obligations.

“Multiemployer Plan” means any multiemployer plan, as defined in Section 3(37) or 4001(a)(3) of ERISA, as to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“Non-Governmental Account” means a Depository Account of a Borrower that does not receive deposits of any federal or state healthcare program, including Medicare or Medicaid payments, from any Governmental Payor.

“Notes” means the Series A-1 Notes, Series A-2 Notes and Series A-3 Notes, collectively.

“Obligations” means all advances, debts, liabilities, obligations, covenants and duties arising under any Loan Document owing by any Credit Party to any Lender, Agent, or any Indemnified Person, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising.

“Organization Documents” means: (a) for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation, any shareholder rights agreement, and all applicable resolutions or written consents of the board of directors (or any committee thereof) of such corporation; (b) for any limited liability company, the articles of organization, operating agreement, and all applicable resolutions or written consents of the members or managers (or any committee thereof) of such limited liability company; and (c) for any partnership, any partnership agreement or other agreement creating and/or governing such partnership.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax.

“Other Taxes” means any present or future stamp, court or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, this Agreement or any other Loan Documents, except any such Taxes that are Other Connection Taxes.

“Parent” has the meaning specified in the introductory paragraph.

“Participant” has the meaning specified in **Section 9.08(c)**.

“PBGC” means the Pension Benefit Guaranty Corporation, or any Governmental Authority succeeding to any of its principal functions under ERISA.

“Permits” means, with respect to any Person, any permit, approval, consent, authorization, license, registration, accreditation, certificate, certification, certificate of need, concession, grant, franchise, variance or permission from, and any other Contractual Obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, including all Health Care Permits.

“Permitted Liens” has the meaning specified in **Section 6.01**.

“Permitted Working Capital Indebtedness” means Indebtedness incurred for working capital purposes that is on standard market terms and conditions, that has been approved by Agent (such approval not to be unreasonably withheld), and that is subject to an intercreditor agreement between Agent and the holder of such Indebtedness if requested by Agent or such holder.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or Governmental Authority.

“Plan of Reorganization or Plan” means the *Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and its Debtor Affiliates, Lead Case No. 10-01189-11 Jointly Administered*, filed in the United States Bankruptcy Court Eastern District of Washington on July \_\_, 2020, as further amended, supplemented or modified, from time to time.

“Pro Rata Share” means, as to any Lender at any time, such Lender’s pro rata percentage of the aggregate amount of any Series of Notes as set forth initially on Exhibit A hereto.

“Proceeding” means any investigation, inquiry, litigation, review, hearing, suit, claim, audit, arbitration, proceeding or action (in each case, whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Property” means, collectively, each Credit Party’s chief executive office, any site owned, leased, operated or otherwise utilized by any Credit Party, and any other location where any Credit Party conducts its business, grows any crops, or stores any of its inventory or other tangible assets.

“Recipient” shall mean, as applicable, the Administrative Agent and any Lender.

“Related Persons” means Lapis Advisers, LP in its capacity as Agent, any successor agent arising under **Section 8.08** and any successor Agent hereunder, together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

“Release” means any release, Spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material into or through the environment.

“Remaining Toppenish Waterfall Proceeds” has the meaning specified in **Section 2.04(c)(iv)**.

“Remedial Action” means any remedial action or series of related actions that a Credit Party is required to take pursuant to any Environmental Law.

“Reportable Event” means, any of the events set forth in Section 4043(c) of ERISA or the regulations thereunder, other than any such event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC.

“Requirement of Law” means, as to any Person, the certificate of incorporation and bylaws or other organizational or governing documents of such Person and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property is subject.

“Responsible Officer” shall mean the Chief Financial Officer of each of Parent, Sunnyside and Intermediate Holdco or other executive officer acceptable to Agent.

“Restricted Payment” has the meaning specified in **Section 6.08**.

“Revenues” means, for any period, (a) in the case of any entity providing health care services, the sum of (i) all gross patient service revenues less contractual allowances plus (ii) all other operating revenues, plus (iii) gifts, grants, bequests, donations and contributions heretofore or hereafter made that are legally available to meet any of the obligations of a Credit Party incurred in the financing, operation, maintenance or repair of any of the Hospitals or their facilities and ancillary operations, plus (iv) to the extent legally allowed to be used to pay operating expenses and unless such payments constitute a loan, all government payments received and related to the COVID-19 pandemic (including but not limited to accelerated Medicare/Medicaid payments, federal and state subsidies and eligible CARES Act funding), and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, investment property or other rights, and the proceeds of such rights, whether now existing or hereafter coming into existence or whether now owned or held or hereafter acquired, plus (v) all non-operating revenues, and plus (vi) any governmental payments related to the COVID-19 pandemic and excluded from the foregoing definition because they constitute a loan shall be included in the definition of Revenues if such loan is forgiven or otherwise converted into a grant; provided that no calculation of Revenues shall take into account: (i) any unrealized gain resulting from changes in the value of investment securities, (ii) extraordinary or nonrecurring

gains or revenues (including any gains on the sale or other disposition of assets or facilities not in the ordinary course of business), provided that for such purpose any revenues that represent payments of incentive payments or shared savings amounts from payors, accountable care organizations or similar entities, any charitable donations and grants and any dividends or other equity distributions from entities in which such entity owns an interest shall not be considered to be extraordinary or non-recurring, (iii) any gains on the extinguishment of Indebtedness (including any termination payments received on Hedging Obligations or other hedges or derivatives related to or integrated with the Indebtedness being extinguished), (iv) any gains resulting from discontinued operations or any reappraisal, revaluation or write-up of any asset, facility or goodwill, and any gain or revenue resulting from adjustments to prior periods, (v) any unrealized gains on or related to any Hedging Obligations or other hedges or derivatives, (vi) any revenue or income or other items that would be considered to be non-cash items, and (vii) earnings which constitute Capitalized Interest or earnings on amounts which are irrevocably deposited in escrow to pay the principal of or interest on Indebtedness); and (viii) any non-cash gains or revenues attributable to transactions between any member of the Credit Part.

“Schedule of Documents” means a schedule containing information regarding documents to be delivered pursuant to the Agreement, in form and substance satisfactory to Agent.

“Senior Secured Borrowers” has the meaning specified in the Recitals.

“Senior Secured Credit Agreement” has the meaning specified in the Recitals.

“Senior Secured Lenders” has the meaning specified in the Recitals.

“Senior Secured Credit Agreement Claims” has the meaning specified in the Recitals, which as of the date hereof is \$[\_\_\_\_\_].

“Security Agreement” means any Security Agreement between any Credit Party, as grantor, and Agent, as secured party.

“Series A-1 Notes” means the Series A-1 Notes issued pursuant to **Section 2.01(a)**, in exchange for (i) the DIP Claims in the principal amount thereof, and (ii) all amounts due and payable by AH System, Inc. pursuant to the AH Systems Note.

“Series A-2 Notes” means the Series A-2 Notes issued pursuant to **Section 2.01(b)**, in exchange for the Senior Secured Credit Agreement Claims in the principal amount thereof.

“Series A-1 Notes Interest Rate” means an interest rate of 12.00% per annum.

“Series A-2 Cash Payment Interest Rate” means as interest rate of 8% per annum.

“Series A-2 Notes PIK Interest Rate” means a compounding interest rate of 13.50% per annum.

“Series A-3 Notes” means the Series A-3 Notes issued pursuant to **Section 2.01(c)**, in the principal amount of \_\_\_\_\_.

“Series A-3 Notes Interest Rate” means an interest rate of 10% per annum.

“SHC-Yakima” means SHC Medical Center-Yakima, formerly d/b/a Astria Regional Medical Center in Yakima, Washington.

“Solvent” means, as to any Person at any time, that (a) the fair value of the property of such Person is greater than the amount of such Person’s liabilities (including disputed, contingent and unliquidated liabilities as they become absolute and matured) as such value is established and liabilities evaluated for purposes of Section 101(31) of the Bankruptcy Code and, in the alternative, for purposes of the Washington Uniform Fraudulent Transfer Act; (b) the present fair saleable value of the property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to realize upon its property and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital.

“Spill” means any significant discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products, or Hazardous Materials at, under, or within any real property which a Person owns or leases.

“Stock” means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting.

“Stock Equivalents” means all securities convertible into or exchangeable for Stock or any other Stock Equivalent and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable.

“Subsidiary” means, with respect to any Person, any corporation, partnership, joint venture, limited liability company, association or other entity, the management of which is, directly or indirectly, controlled by, or of which an aggregate of more than 50% of the voting Stock is, at the time, owned or controlled directly or indirectly by, such Person or one or more Subsidiaries of such Person.

“Sunnyside” has the meaning specified in the introductory paragraph.

“Sunnyside Clinical Affiliates” means Sunnyside Community Hospital Home Medical Supply, Sunny Side Home Health and Sunnyside Professional Services [Others]

“Sunnyside Community Hospital” means that certain hospital owned by Sunnyside and located in Sunnyside, Washington commonly known as Sunnyside Community Hospital, together with any ancillary businesses operated in conjunction therewith.

“Sunnyside Net Cash Flow” means for any month, the difference between (i) all Revenue of Sunnyside Hospital and the Sunnyside Clinical Affiliates for such month, *minus* (ii) the Sunnyside Hospital and Sunnyside Hospital Clinical Affiliates Cash Operating Expenses during such month.

“Surety Instruments” means all letters of credit (including standby and commercial), banker’s acceptances, bank guaranties, shipside bonds, surety bonds, and similar instruments.

“Sweep Agreement” has the meaning set forth in **Section 5.14**.

“Tax” or “Taxes” means any and all present or future taxes, levies, assessments, imposts, duties, deductions, fees, withholdings, taxes paid by the members of a limited liability company on account of such limited liability company’s net income, or similar charges, and all liabilities with respect thereto, excluding, in the case of each Lender and Agent, such taxes (including income taxes or franchise taxes) as are imposed on or measured by each Lender’s net income by the jurisdiction (or any political subdivision thereof) under the laws of which such Lender or Agent, as the case may be, is subject to.

“Tax Affiliate” means, (a) each Credit Party and its Subsidiaries and (b) any Affiliate of a Credit Party with which a Credit Party files or is eligible to file consolidated, combined or unitary tax returns.

“Third Party Payor” means any Governmental Payor, Blue Cross and/or Blue Shield, private insurers, managed care plans, and any other person or entity which presently or in the future maintains Third Party Payor Programs.

“Third Party Payor Programs” means all payment or reimbursement programs, sponsored or maintained by any Third Party Payor, in which any Credit Party or any Subsidiary or a Credit Party participates.

“Third Party Payor Authorizations” means all participation agreements, provider or supplier agreements, enrollments, accreditations and billing numbers necessary to participate in and receive reimbursement from a Third Party Payor Program, including all Medicare and Medicaid participation agreements.

“Title Company” shall mean First American Title Insurance Company or such other nationally recognized title insurance company acceptable to Agent.

“Title Insurance Policy” means an ALTA loan title insurance policy, issued by the Title Company with respect to all or a portion of each Mortgaged Property and insuring Agent (in an amount satisfactory to Agent) of the validity and priority of the Lien of the Mortgages, with all endorsements thereto as reasonably required by Agent.

“Title IV Plan” means a pension plan subject to Title IV of ERISA, other than a Multiemployer Plan, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“Toppenish” has the meaning specified in the introductory paragraph hereof.

“Toppenish Clinical Affiliates” means [To Be Identified].

“Toppenish Hospital” means the hospital operated by Toppenish, in Toppenish, Washington.

“Toppenish Net Cash Flow” means for any month, the difference between (i) all Revenue of Toppenish Hospital and Toppenish Clinical Affiliates for such month, *minus* (ii) the Toppenish Hospital and Toppenish Clinical Affiliates Cash Operating Expenses during such month.

“Trailing Cash Operating Expense” means with respect to the Credit Parties on a consolidated basis as of any date of determination thereof, the expenses of the Credit Parties in operating the Hospitals and their respective ancillary business reflected in the then most recent financial statements for the trailing three month period provided pursuant to financial statements provided pursuant to Section \_\_\_\_, other than depreciation, amortization, debt service, salaries or wages, all as determined in accordance with generally accepted accounting principles.

“TRICARE” means, collectively, a program of medical benefits covering former and active members of the uniformed services and certain of their dependents, financed and administered by the United States Departments of Defense, Health and Human Services and Transportation, and all laws applicable to such programs.

“UCC” means the Uniform Commercial Code as in effect in the State of Washington; provided, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Washington, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

“United States” and “U.S.” each means the United States of America.

“United States Governmental Security” means any direct obligation of, or obligation guaranteed by, the United States of America, or any agency controlled or supervised by or acting as an instrumentality of the United States of America pursuant to authority granted by the Congress of the United States of America, so long as such obligation or guarantee shall have the benefit of the full faith and credit of the United States of America which shall have been pledged pursuant to authority granted by the Congress of the United States of America.

“Unrestricted Cash” means, with respect to any Credit Party, the aggregate amount of unrestricted cash, unrestricted marketable securities, and unrestricted investments of the applicable entity (but only to the extent such cash, securities, and investments are in a deposit account subject to an Account Control Agreement and which shall not include any funds in any Excluded Deposit Account).

“Vendor Litigation” means any lawsuit initiated by or on behalf of the Astria Debtors against its vendor, which provided revenue cycle, billing and collection services pre-petition, based on the Astria Debtors’ significant decline in cash flow from collections on accounts receivable.

1.02 UCC. Any terms used in this Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided, that to the extent that the UCC is used to define any term herein and such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern.

1.03 Other Interpretive Positions.

(a) All terms defined in **Section 1.01** or otherwise in this Agreement shall, unless otherwise defined therein, have the same meanings when used in any other Loan Document or any certificate or other document made or delivered pursuant hereto.

(b) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(c) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(e) The words “include” and “including” are not limiting and mean “include(s) without limitation” or “including but not limited to,” as the case may be.

(f) The words “approval” or “approved,” as the context requires, means an approval in writing given to the Person seeking approval after full and fair disclosure to the Person giving approval of all material facts necessary in order to determine whether approval should be granted.

(g) When used in this Agreement and the other Loan Documents, the phrases “satisfactory to Agent,” “satisfactory to Lenders,” and “satisfactory to Majority Lenders,” shall mean “in form and substance satisfactory to the applicable Person in all respects”, the phrases “with Agent’s consent,” “with Lenders’ consent,” and “with Majority Lenders’ consent,” or “with Agent’s approval,” “with Lenders’ approval,” and “with Majority Lenders’ approval” shall mean such consent or approval at such Person’s sole discretion, and the phrases “acceptable to Agent,” “acceptable to Lenders,” and “acceptable to Majority Lenders” shall mean “acceptable to such Person at such Person’s sole discretion” unless otherwise specified in this Agreement. Unless otherwise expressly provided, any reference to any action of Agent or the Lenders by way of consent, approval or waiver shall be deemed modified by the phrase “in its or their sole discretion.”

(h) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(i) The term “property” includes any kind of property or asset, real, personal or mixed, tangible or intangible.

(j) Unless the context otherwise clearly requires, the terms “member” or “members” refers to a member, or the members, of any Credit Party that is a limited liability company.

(k) Unless otherwise expressly provided herein, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(l) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(m) This Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms.

(n) This Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to Agent, Borrowers and the other parties, and are the products of all parties. Accordingly, they shall not be construed against Borrower, any other Credit Party, Lenders or Agent merely because of Agent’s or Lenders’ involvement in their preparation.

(o) The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

(p) Unless otherwise expressly provided herein, references to any Requirements of Law shall include all statutory and regulatory provisions consolidating, amendment, replacing, supplementing or interpreting such Requirements of Law.

(q) A reference to any Person includes its permitted successors and permitted assigns

(r) A reference to any formation document, governing document, agreement or other contractual instrument, including the Loan Documents and, shall include such document, agreement or instrument as amended, restated, modified or supplemented from time to time in accordance with its terms and the terms of this Agreement.

#### 1.04 Accounting Principles.

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP, consistently applied.

(b) In the event of any change in GAAP after the Closing Date which would affect the computation of any financial covenant, ratio or other requirement set forth in any Loan Document, then upon the request of Borrowers or Agent, Borrowers, Agent and Majority Lenders shall negotiate promptly, diligently and in good faith in order to amend the provisions of the Loan

Documents such that such financial covenant, ratio or other requirement shall continue to provide substantially the same financial tests or restrictions as in effect prior to such accounting change, as determined by the Majority Lenders in their good faith judgment. Until such time as such amendment shall have been executed and delivered by Borrowers and Majority Lenders (or Agent, at the direction of Majority Lenders), such financial covenants, ratio and other requirements, and all financial statements and other documents required to be delivered under the Loan Documents, shall be calculated and reported as if such change had not occurred.

(c) References herein to “fiscal year” and “fiscal quarter” refer to such fiscal periods of Credit Parties. Each fiscal year and each fiscal quarter shall be the calendar year and the each calendar quarter unless otherwise approved by Agent.

## **ARTICLE II** **THE NOTES**

### 2.01 The Notes.

(a) Series A-1 Notes. On or about the Closing Date, subject to the terms and conditions hereof, in exchange for the DIP Claims and the AH System Note Indebtedness, the Borrowers are issuing to the DIP Lenders, the Series A-1 Notes in an aggregate principal amount of the DIP Claims and the AH System Note Indebtedness, which shall be due and payable as set forth in this Agreement. Borrowers shall execute and deliver to each DIP Lender a Series A-1 Note in their respective pro rata portion of the DIP Claims and the AH System Note Indebtedness. Each Series A-1 Note shall represent the joint and several obligations of Borrowers to pay to the applicable Lender the amount set forth in such Series A-1 Note together with interest and other amounts due thereon as prescribed in this Agreement.

(b) Series A-2 Notes. On or about the Closing Date, subject to the terms and conditions hereof, in exchange for the Senior Secured Creditor Claims, the Borrowers are issuing to the Senior Secured Lenders, the Series A-2 Notes in an aggregate principal amount of the Senior Secured Creditor Claims, which shall be due and payable as set forth in this Agreement. Borrowers shall execute and deliver to each Senior Secured Lender a Series A-2 Note in their respective pro rata portion of the Senior Secured Creditor Claims. Each Series A-2 Note shall represent the joint and several obligations of Borrowers to pay to the applicable Lender the amount set forth in such Series A-2 Note together with interest and other amounts due thereon as prescribed in this Agreement.

(c) Series A-3 Notes. On or about the Closing Date, subject to the terms and conditions hereof, the Borrowers are issuing to the beneficial owners of the Series 2017 Bonds, the Series A-3 Notes in an aggregate principal amount of \$\_\_\_\_\_, in connection with certain actions needed to maintain the tax exempt nature of the Series 2017 Bonds that will reduce the go-forward principal amount of the Series 2017 Bonds by an equivalent amount. Borrowers shall execute and deliver to each beneficial owner of the Series 2017 Bonds a Series A-3 Note representing its Pro Rata Share of 2017 Bonds. Each Series A-3 Note shall represent the joint and several obligations of Borrowers to pay to the applicable Lender the amount set forth in such Series A-3 Note together with interest and other amounts due thereon as prescribed in this Agreement.

(d) 2017 Bonds. As a condition to the issuance of the Notes pursuant to this Agreement, the 2017 Bonds shall have been reinstated pursuant to the 2017 Bonds Forbearance Agreement.

2.02 Loan Maturity. Principal and all accrued and unpaid interest on the Series A-1 Notes, the Series A-2 Notes and the Series A-3 Notes and all other Obligations, shall be due and payable on the Maturity Date.

2.03 Interest.

(a) *Series A-1 Notes*. Interest on the Series A-1 Notes shall accrue at the Series A-1 Notes Interest Rate and shall be due and payable (i) on the first day of each month (each an “Interest Payment Date”, commencing on January 1, 2021, with respect to all interest accrued on the Series A-1 Notes during the immediately preceding month, and (ii) on the Maturity Date with respect to all interest accrued and unpaid through the Maturity Date.

(b) *Series A-2 Notes*. Interest on the Series A-2 Notes shall accrue at the Series A-2 PIK Interest Rate and such accrued amount shall be capitalized and added to the principal amount of the Series A-2 Notes on each Interest Payment Date, commencing on January 1, 2021, as Capitalized Interest. From and after each Interest Payment Date, interest will accrue on the principal amount of the Series A-2 Notes, as increased by the amount of any Capitalized Interest; provided that to the extent that interest on the Series A-2 Note is paid in cash at the Series A-2 Cash Payment Interest Rate on any Interest Payment Date, the amount of any accrued interest at the Series A-2 PIK Interest Rate shall be reduced. The outstanding principal amount of the Series A-2 Notes and all accrued and unpaid interest on the Series A-2 Notes shall be due and payable in cash on the Maturity Date.

(c) *Series A-3 Notes*. Interest on the Series A-3 Notes shall accrue at the Series A-3 Notes Interest Rate and such accrued amount shall be capitalized and added to the principal amount of the Series A-3 Notes on each Interest Payment Date, commencing on January 1, 2021, as Capitalized Interest. From and after each Interest Payment Date, interest will accrue on the principal amount of the Series A-3 Notes, as increased by the amount of any Capitalized Interest; provided that to the extent that interest on the Series A-3 Note is paid in cash at the Series A-3 Note Interest Rate on any Interest Payment Date, the amount of any Capitalized Interest shall be reduced. The outstanding principal amount of the Series A-3 Notes and all accrued and unpaid interest on the Series A-3 Notes shall be due and payable in cash on the Maturity Date.

(d) At the option of Agent or Majority Lenders (and automatically upon an Event of Default described in **Section 7.01(a)(i), (f) or (g)**), while any Event of Default exists or after maturity or acceleration, interest shall accrue (after as well as before entry of judgment thereon to the extent permitted by law) on the principal amount of all outstanding Obligations at the Default Rate.

(e) All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360-day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue.

(f) In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. The Credit Parties, Agent and Lenders, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, ipso facto, as of the date of this Agreement, the Credit Parties are and shall be liable only for the payment of such maximum as allowed by law, and payment received from the Credit Parties in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

#### 2.04 Mandatory Repayment of Notes.

(a) Commencing on January 1, 2021, and continuing on the first day of each month thereafter until the Notes have been paid in full, the Borrowers shall deliver to Agent by wire transfer of immediately available funds, to an account of the Agent, designated in writing by Agent to Borrowers, an amount equal to: (i) the Toppenish Net Cash Flow for the immediately preceding month, and (ii) the Sunnyside Net Cash Flow for the immediately preceding month. The Liquidating Trustee shall, at the times and in the manner specified in the Liquidation Trust Agreement, deliver to the Account of the Agent, designated in writing by Agent to the Liquidation Trustee, all Liquidation Trust Assets Proceeds available for distribution pursuant to the Liquidation Trust Agreement and on the twentieth (20<sup>th</sup>) day of each month a schedule of the amount of the Liquidation Trust Assets Proceeds for the preceding month, which shall be in a form acceptable to Agent.

(b) The Borrowers shall also deliver to the Agent on the twentieth (20<sup>th</sup>) day of each month, the following schedules and statements, all of which shall be in a form acceptable to Agent:

(i) A financial statement setting forth in detail the calculation of the Toppenish Net Cash Flow for the preceding month, along with such supporting schedules and documentation as may be requested by the Agent;

(ii) A financial statement setting forth in detail the calculation of the Sunnyside Net Cash Flow for the preceding month, along with such supporting schedules and documentation as may be requested by the Agent; and

(iii) A schedule showing the balance of Unrestricted Cash in the AH System Cash Accounts, along with such supporting schedules and documentation as may be requested by the Agent .

(c) The revenue and proceeds from the Liquidation Trust Assets received by the Agent and the Toppenish Net Cash Flow shall, to the extent thereof, be allocated in the following order:

(i) First, Agent shall remit to the Series 2017 Bond Trustee any funds

received under the Liquidation Trust Agreement that are designated by the Liquidating Trustee as proceeds of assets that were financed with proceeds of the 2017 Bonds for application under the documents that evidence and otherwise secure the 2017 Bonds;

(ii) Second, Agent shall deposit into the AH System Cash Accounts previously designated by the Borrowers an amount such that the balance in all the AH System Cash Accounts will be equal to the lesser of (A) \$10,000,000, and (B) Unrestricted Cash of thirty (30) Days Cash on Hand;

(iii) Third, to the extent not previously funded pursuant to this **Section 2.04(c)**, Agent shall, on a *pari passu* basis, transfer to the account designated by the 2017 Bond Trustee to fund the next payment of interest that is due and payable on the 2017 Bonds and the holders of the Series A-3 Notes to the extent of accrued interest on the Series A-3 Notes;

(iv) Fourth, to the extent not previously paid pursuant to this **Section 2.04(c)**, Agent shall, on a *pari passu* basis, transfer to the account designated by the 2017 Bond Trustee and the holders of the Series A-3 Notes to the extent of outstanding principal on the 2017 Bonds and Series A-3 Notes; and

(v) Fifth, to the extent that there is any remaining amount of revenue and proceeds from the Liquidation Trust Assets and the Toppenish Net Cash Flow (the "Remaining Toppenish Waterfall Proceeds"), such funds shall be allocated in accordance with **Section 2.04(d)**.

(d) The Sunnyside Net Cash Flow and the Remaining Toppenish Waterfall Proceeds shall, to the extent thereof, be allocated in the following order:

(i) First, Agent shall deposit into the AH System Cash Accounts previously designated by the Borrowers an amount such that the balance in all of the AH System Cash Account(s) will be equal to the lesser of (A) \$10,000,000, and (B) Unrestricted Cash of thirty (30) Days Cash on Hand;

(ii) Second, to the extent not previously funded pursuant to **Section 2.04(d)**, Agent shall fund the next payment of interest that is due and payable on the Series A-1 Notes;

(iii) Third, Agent shall repay the outstanding principal amount of the Series A-1 Notes;

(iv) Fourth, once the Series A-1 Notes have been paid in full, Agent shall fund the next payment of interest that is due and payable on the Series A-2 Notes at the Series A-2 Cash Payment Interest;

(v) Fifth, to the remaining extent thereof, the Agent shall repay the outstanding principal amount of the Series A-2 Notes; and

(vi) Sixth, to the remaining extent thereof, the Agent shall deposit such

funds into the AH System Cash Accounts as previously designated by Borrowers. To the extent that there is any remaining amount of revenue and proceeds from the Sunnyside Net Cash Flow, such funds shall be allocated in accordance with **Section 2.04(c)**.

2.05 Payments by Borrowers.

(a) All payments to be made by Borrowers shall be made without set-off, recoupment or counterclaim. Except as otherwise expressly provided herein, all payments by Borrowers shall be made to Agent for the account of the Lenders via wire transfer, and shall be made in dollars and in immediately available funds, no later than 11:00 a.m. (California time) on the date specified herein, and Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as expressly provided herein) of such payment in like funds as received. Any payment received by Agent later than 11:00 a.m. (California time) shall be deemed to have been received on the following Business Day and any applicable interest shall continue to accrue.

(b) Whenever any payment is due on a day other than a Business Day, such payment shall be made on the following Business Day, and such extension of time shall in such case be included in the computation of interest.

(c) Unless Agent receives notice from Borrowers prior to the date on which any payment is due that Borrowers will not make such payment in full as and when required, Agent may assume that Borrowers have made such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrowers have not made such payment in full to Agent, each Lender shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Lender until the date repaid.

2.06 Allocation of Payments After Event of Default. Notwithstanding any other provisions of this Agreement to the contrary, after the occurrence and during the continuance of an Event of Default, all amounts collected or received by Agent, or any Lender on account of the Obligations or any other amounts outstanding under any of the Loan Documents or in respect of the Collateral shall be paid over or delivered as follows unless otherwise determined by Agent in its sole discretion:

(a) First, to the payment of all out-of-pocket costs and expenses (including Attorney Costs) of Agent in connection with enforcing the rights of Agent and the Lenders under the and any protective advances made by Agent with respect to the Collateral under or pursuant to the terms of the Collateral Documents;

(b) Second, to payment of fees, if any, owed to Agent in its capacity as Agent;

(c) Third, to the Series 2017 Bond Trustee any funds received under the Liquidation Trust Agreement that are designated by the Liquidating Trustee as proceeds of assets that were financed with proceeds of the 2017 Bonds for application under the documents that evidence and otherwise secure the 2017 Bonds;

(d) Fourth, to the payment of out-of-pocket costs and expenses (including Attorney Costs) of each Lender in connection with enforcing its rights under the Loan Documents or otherwise with respect to the Obligations owing to such Lender;

(e) Fifth, *pari passu* to the payment of all of the Obligations consisting of accrued interest and principal balance due and payable with respect to the Series A-3 Notes and the 2017 Bonds;

(f) Sixth, to the payment of all of the Obligations consisting of all accrued interest and the principal balance due and payable with respect to the Series A-1 Notes;

(g) Seventh, to the payment of all of the Obligations consisting of all accrued interest and the principal balance due and payable with respect to the Series A-2 Notes;

(h) Eight, to payment of all other of the Obligations and other obligations which shall have become due and payable under the Loan Documents or otherwise and not repaid pursuant to clauses “First” through “Seventh” above; and

(i) Ninth, to the payment of the surplus, if any, to the applicable Credit Party or such persons as are lawfully entitled to receive such surplus.

2.07 Sharing of Payments, Return of Payments, Etc. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the Obligations in its favor any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its Pro Rata Share (or other share contemplated hereunder), such Lender shall immediately (a) notify Agent of such fact, and (b) purchase from the other Lenders such participations in the Notes as shall be necessary to cause such purchasing Lender to share the excess payment pro rata with each of them; provided, that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender, such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender’s Pro Rata Share (according to the proportion of (i) the amount of such paying Lender’s required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. Borrowers agree that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off). Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this **Section 2.10** and will in each case notify the Lenders following any such purchases or repayments. If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from Borrowers and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind. If Agent determines at any time that any amount received by Agent under this Agreement or any other Loan Document must be returned to any Credit Party or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has

distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to Borrowers or such other Person, without setoff, counterclaim or deduction of any kind, and Agent will be entitled to set-off against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

2.08 Security. All Obligations of the Credit Parties (and their Subsidiaries, if applicable) under this Agreement and all other Loan Documents shall be secured in accordance with the Security Agreement and the other Collateral Documents.

2.09 Defaulting Lenders. Notwithstanding anything set forth herein to the contrary, including **Section 9.01**, a Defaulting Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a “Lender” (or be, or have its Pro Rata Share of the Notes included in the determination of “Majority Lenders” pursuant to **Section 9.01**) for any voting or consent rights under or with respect to any Loan Document, provided that (a) the principal of a Defaulting Lender’s Pro Rata Share of the Notes may not be reduced or forgiven, and (b) the interest rate applicable to Obligations owing to a Defaulting Lender may not be reduced in such a manner that by its terms affects such Defaulting Lender more adversely than other Lenders, in each case without the consent of such Defaulting Lender.

2.10 Taxes.

(a) Any and all payments by Borrowers to each Lender or Agent under this Agreement and any other Loan Document shall be made free and clear of, and without deduction or withholding for any Indemnified Taxes. In addition, Borrowers shall pay all Other Taxes. Each Borrower agrees to indemnify and hold harmless each Lender and Agent for the full amount of the indemnified Taxes paid by the Lender or Agent and any liability (including penalties, interest, additions to tax and expenses) arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted. A certificate setting forth the amount of such payment or liability shall be delivered to a Borrower by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, and payment under this indemnification shall be made within 30 days after the date the Lender or Agent delivers such certificate.

(b) If a Borrower shall be required by law to deduct or withhold any Taxes or Other Taxes from or in respect of any sum payable hereunder to any Lender or Agent, then (i) the sum payable shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section) such Lender or Agent, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made; and (ii) such Borrower shall make such deductions and withholdings.

### ARTICLE III

#### CONDITIONS PRECEDENT

3.01 Conditions of Effectiveness. The effectiveness of this Agreement is subject to delivery by Credit Parties of all documents specified in the Schedule of Documents as required to

be delivered before the Closing Date and any other steps specified in such Schedule of Documents and, in addition:

(a) Restructure of Astria Ownership. Pursuant to the Plan and documentation acceptable in form and substance to the Agent, (i) AH NP 2 a Washington nonprofit corporation and currently a wholly owned non-debtor subsidiary of Astria, will become the sole member of Astria; and Astria will have amended its articles of incorporation and bylaws to change from a nonprofit corporation without members to a single member nonprofit corporation on terms acceptable to the Agent; and (ii) Parent shall have assumed the non-discharged debt of the Debtors under the Plan in exchange for AH NP 2's transfer of its sole membership interest in Astria to Parent.

(b) Reinstatement of 2017 Bonds. The 2017 Bond Debts shall have been reinstated pursuant to the 2017 Bond Forbearance Agreement.

(c) Formation of Liquidation Trust. The Liquidation Trust shall have been established and the Liquidation Trust Assets shall have been transferred to the Liquidation Trust in accordance with the Plan of Reorganization.

(d) Guaranty. Agent shall have received a guaranty of all Obligations from each of the Credit Parties that is not a Borrower.

(e) Cash Management System. Borrowers shall have established a cash management system acceptable to the Agent.

(f) Mortgages. Each of the Credit Parties that owns any of the Mortgaged Properties shall have executed and delivered a Mortgage with respect to such Mortgaged Properties and the Title Company have issued a title policy with respect to such Mortgaged Properties in form and substance acceptable to Agent.

(g) Liens on Collateral. Pursuant to the Collateral Documents, Agent shall have received Liens on all personal property of each Credit Party.

(h) Cooperation Agreement with 2017 Bond Trustee. The 2017 Bond Trustee shall have entered into an agreement with Agent in which it agrees to provide Agent with such information as the Agent may reasonably request from time to time with respect to the administration of this Agreement.

(i) Loan Documents. Each of the Loan Documents, including the Intercreditor Agreements, in form and substance satisfactory to Agent, and each of the documents and instruments on the Schedule of Documents shall have been executed by all parties thereto (where necessary) and delivered.

(j) Payment of Fees. Agent shall have received evidence of payment by Borrowers of all accrued and unpaid fees, costs and expenses of Agent and the Lenders to the extent then due and payable on the Closing Date, together with Attorney Costs of Agent to the extent invoiced prior to or on the Closing Date, which may include an estimate for reasonable additional

Attorneys Costs, (provided that such estimate shall not thereafter preclude final settling of accounts between Borrowers and Agent).

(k) Absence of Material Misstatements. There shall be no material misstatements in or material omissions from the materials, including financial statements and projections, previously furnished to, or for the benefit of, Agent for its review in connection with the transactions contemplated by the Loan Documents, but excluding projections and general economic or specific industry information developed by or obtained from third-party sources. Agent shall be reasonably satisfied that any financial statements and projections delivered to it fairly present the business and financial condition of the Credit Parties and that there has been no (i) Material Adverse Effect or (ii) material adverse change in the assets, business, financial condition, income of Borrowers.

(l) No Violation of Laws. The issuance of the Notes shall not contravene in any material respect any Requirement of Law applicable to any Credit Party, Agent or any Lender.

(m) No Actions or Proceedings. No action, proceeding, licensure issue, investigation, regulation or legislation shall have been instituted, or, to Borrowers' knowledge, threatened or proposed before any court, governmental agency or legislative body which might reasonably be expected to have a Material Adverse Effect.

(n) Material Contracts. No default shall have occurred and be continuing under any material agreement or contract to which any Credit Party, or any Subsidiary thereof, is a party or by which it or its properties are bound.

(o) Approvals. Agent shall have received (i) satisfactory evidence that the Credit Parties have obtained all required consents and approvals, including, but not limited to, those of the Bankruptcy Court, of all Persons including all requisite Governmental Authorities, to the execution, delivery and performance of this Agreement and the other Loan Documents or (ii) an officer's certificate in form and substance reasonably satisfactory to Agent affirming that no such consents or approvals are required.

(p) Capital Structure. Credit Parties shall have provided evidence of their capital structure satisfactory to the Agent in its sole discretion.

(q) Closing Date Balance Sheet and Projections Agent shall have received a pro forma consolidated closing date balance sheets for the Parent, Sunnyside and Intermediate Holdco and detailed monthly projections of Parent, Sunnyside and Intermediate Holdco from the projected closing date through the end of the following three-year fiscal periods that are satisfactory to the Agent.

(r) No Material Adverse Effect. No event shall have occurred that has resulted in Material Adverse Effect with respect to any of the Borrowers, individually, or collectively, taken as a whole, since October 1, 2020.

(s) Plan Effective. All conditions to the occurrence of the Effective Date under the Plan shall have been satisfied, other than the closing hereunder.

(t) Representations and Warranties. The representations and warranties of Borrowers contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of this Agreement, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date).

(u) Insurance Policies. Agent shall be satisfied with the Borrowers' insurance profile and insurance policies and all insurance endorsements as required by Agent shall be in place.

(v) Legal Opinions. Agent shall have received opinions of outside legal counsel to the Credit Parties covering subjects acceptable to the Agent.

(w) Other Actions and Documents. All such other actions, documents, and agreements that the Agent determines are necessary to implement the Plan shall have been effected or executed.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

Each of the Credit Parties hereby represents and warrants to Agent and each Lender that as of the Closing Date and, other than those representations and warranties that by their terms are limited to the Closing Date, at all times while any Obligations remain outstanding as follows:

4.01 Corporate Existence and Power. Each of the Credit Parties:

(a) is a corporation, limited liability company, or limited partnership, as the case may be, duly formed, existing and in good standing under the laws of the jurisdiction of its formation or incorporation and, if such entity is a non-profit corporation, is duly formed, existing, and in good standing as non-profit corporation;

(b) has the power and authority and all governmental licenses, authorizations, consents and approvals to own its assets, carry on its business and to execute, deliver, and perform its obligations under the Loan Documents;

(c) is duly qualified and is licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification or license; and

(d) is in compliance in all material respects with all Requirements of Law;

except, in each case referred to in clauses (b), (c) or (d), to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

4.02 Corporate Authorization; No Contravention. Subject to the entry of the Confirmation Order, the execution, delivery and performance by the Credit Parties of this

Agreement and each other Loan Document to which each is party have been duly authorized by all necessary corporate or limited liability company action, and do not and will not:

- (a) contravene the terms of the Organization Documents of any Credit Party;
- (b) conflict with or result in any material breach or contravention of, or the creation of any Lien under, any document evidencing any Contractual Obligation to which any Credit Party is a party or any order, injunction, writ or decree of any Governmental Authority to which any Credit Party or its property is subject; or
- (c) violate any Requirement of Law in any material respect.

4.03 Governmental Authorization. Other than the approval of the Bankruptcy Court pursuant to the Confirmation Order, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority (except for recordings or filings in connection with the Liens granted to Agent under the Collateral Documents) is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Credit Parties of this Agreement or any other Loan Document other than those that would not reasonably be expected to have a Material Adverse Effect or those listed on the Disclosure Schedule, each of which has been obtained. As of the Closing Date, no Credit Party is the subject of a pending or, to its knowledge, threatened audit or, to each Credit Party's knowledge, any review or investigation by any Governmental Authority concerning the violation or possible violation of any Requirement of Law except as may be set forth in the Disclosure Schedule.

4.04 Binding Effect. Subject to the entry of the Confirmation Order, this Agreement and each other Loan Document to which any Credit Party is party constitute the legal, valid and binding obligations of such Credit Party, as applicable, enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

4.05 Litigation. Except as specifically disclosed in the Disclosure Schedule, as of the Closing Date there are no actions, suits, proceedings, claims or disputes pending, or to the knowledge of the Credit Parties, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against any Credit Party or Subsidiary of a Credit Party, or any of their respective properties which:

- (a) purport to affect or pertain to the validity or enforceability of this Agreement or any other Loan Document, or any of the transactions contemplated hereby or thereby; or
- (b) if determined adversely to any Credit Party or its Subsidiaries, as the case may be, would reasonably be expected to have a Material Adverse Effect or result in equitable relief or monetary judgments, individually, in excess of One Hundred Thousand Dollars (\$100,000) over any applicable insurance coverage.
- (c) No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the

execution, delivery or performance of this Agreement or any other Loan Document, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided.

4.06 No Default. After giving effect to the transactions occurring on the Closing Date, no Default or Event of Default would exist or would result from the incurring of any Obligations by any Credit Party or from the grant or perfection of the Liens of Agent and the Lenders on the Collateral. As of the Closing Date neither any Credit Party nor any Subsidiary of any Credit Party is in default under or with respect to any Contractual Obligation in any respect which, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect, or that would, if such default had occurred after the Closing Date, create an Event of Default under **Section 7.01(e)**.

4.07 ERISA Compliance. Except for those that would not reasonably be expected to result in liabilities in excess of One Hundred Thousand Dollars (\$100,000) in the aggregate, (a) each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law so qualifies, (b) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Requirements of Law (except where noncompliance would not reasonably be expected to have a Material Adverse Effect), (c) there are no existing or pending (or to the knowledge of any Credit Party, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Credit Party incurs or otherwise has or could have an obligation or any liability not reflected in the financial statements and (d) no ERISA Event is reasonably expected to occur. On the Closing Date, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding.

4.08 Margin Regulations. Neither the Credit Parties nor any Subsidiary of the Credit Parties is generally engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock.

4.09 Real Property/Operations. The Disclosure Schedule includes a complete list of each Mortgaged Property on the Closing Date. To each Credit Party's knowledge, as of the Closing Date (a) there are no Liens affecting any Mortgaged Property other than those reflected in the applicable Title Insurance Policy, (b) any material permits required for any Mortgaged Property to be lawfully used for its current use are in full force and effect, and (c) each Credit Party's use of any such Mortgaged Property is in material compliance with all applicable Requirements of Law.

4.10 Taxes. Each Tax Affiliate has filed all Federal and other material tax returns and reports required to be filed, and has paid all Federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided by the appropriate Tax Affiliate in accordance with GAAP. To the knowledge of each Credit Party, there is no proposed tax assessment against the Credit Parties or any of their Subsidiaries or members that would, if made, have a Material Adverse Effect. To the extent that any Credit Party employs employees, proper

and adequate amounts have been withheld from the payments made to its employees for all periods in material compliance with the tax, social security and unemployment withholding provisions of applicable Requirements of Law and such withholdings have been timely paid to the respective Governmental Authorities.

#### 4.11 Financial Condition.

(a) To the knowledge of each Credit Party, (i) all financial statements of any Credit Party covering periods within three years prior to the Closing Date fairly present the financial condition of such Person in all material respects, (ii) as of the Closing Date, there has been no material adverse change in the business, condition (financial or otherwise), operations, performance or properties of any Credit Party since the date of the most recent set of such financial statements, and (iii) as of the Closing Date, to the knowledge of the Credit Parties, there has been no material adverse change in the business operations of any of the Acquired Business.

(b) All financial statements of the Credit Parties delivered pursuant to this Agreement:

(i) fairly present in all material respects (and on the basis disclosed in any footnotes to such financial statements) the financial condition of the applicable Credit Parties and their Subsidiaries as of the date thereof and results of operations for the period covered thereby; and

(ii) show all material indebtedness and other liabilities, direct or contingent, of the Credit Parties and their Subsidiaries as of the date thereof that are required to be disclosed in financial statements prepared in accordance with GAAP, including liabilities for taxes, material commitments and contingent obligations, which are required to be included in financial statements prepared in accordance with GAAP.

(c) All financial performance projections delivered to Agent, whether before or after the Closing Date, represent Borrowers' best good faith estimate of future financial performance and are based on assumptions believed by Borrowers to be fair and reasonable in light of current market conditions, it being acknowledged and agreed by Agent and Lenders that projections as to future events are not to be viewed as facts and that the actual results during the period or periods covered by such projects may differ from the projected results.

4.12 Environmental Matters. To the knowledge of the Credit Parties, as of the Closing Date, except as disclosed to Agent before the Closing Date, and except where any failures to comply would not reasonably be expected to result in, either individually or in the aggregate, Material Environmental Liabilities to the Credit Parties and their Subsidiaries, (a) the operations of each Credit Party and each Subsidiary of each Credit Party are and have been in compliance with all applicable Environmental Laws, including obtaining, maintaining and complying with all Permits required by any applicable Environmental Law, (b) no Credit Party and no Subsidiary of any Credit Party is party to, and no Credit Party and no Subsidiary of any Credit Party and no Property currently (or to the knowledge of any Credit Party previously) owned, leased, subleased, operated or otherwise occupied by or for any such Person is subject to or the subject of, any Contractual Obligation or any pending (or, to the knowledge of any Credit Party, threatened) order,

action, investigation, suit, proceeding, audit, claim, demand, dispute or notice of violation or of potential liability or similar notice relating in any manner to any Environmental Laws, (c) no Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities has attached to any Property of any Credit Party or any Subsidiary of any Credit Party and, to the knowledge of any Credit Party, no facts, circumstances or conditions exist that could reasonably be expected to result in any such Lien attaching to any such Property, (d) no Credit Party and no Subsidiary of any Credit Party has caused or suffered to occur a Release of Hazardous Materials at, to or from any Property, (e) all Property currently (or to the knowledge of any Credit Party previously) owned, leased, subleased, operated or otherwise occupied by or for any such Credit Party and each Subsidiary of each Credit Party is free of contamination by any Hazardous Materials, and (f) no Credit Party and no Subsidiary of any Credit Party (i) is or has been engaged in, or has permitted any current or former tenant of such Credit Party to engage in, operations in violation of any Environmental Law or (ii) knows of any facts, circumstances or conditions reasonably constituting notice of a violation of any Environmental Law, including receipt of any information request or notice of potential responsibility under the Comprehensive Environmental Response, Compensation and Liability Act or similar Environmental Laws. Each Credit Party has made available to Agent copies of all existing environmental reports, reviews and audits and all documents pertaining to actual or potential Environmental Liabilities, in each case to the extent such reports, reviews, audits and documents are in their possession, custody, control or otherwise reasonably available to the Credit Parties.

4.13 Collateral Documents. The provisions of each of the Collateral Documents are effective to create in favor of Agent for the benefit of the Lenders, a legal, valid and enforceable security interest in all right, title and interest of the Credit Parties and their Subsidiaries in the collateral described therein.

4.14 Regulated Entities. No Credit Party nor any Person controlling any Credit Party or any Subsidiary of any Credit Party, is an “Investment Company” within the meaning of the Investment Company Act of 1940. The Credit Parties are not subject to regulation under the Public Utility Holding Company Act of 2005, the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other Federal or state statute or regulation limiting its ability to incur Indebtedness.

4.15 No Burdensome Restrictions. As of the Closing Date, none of the Credit Parties nor any of their Subsidiaries is a party to or bound by any Contractual Obligation, or subject to any restriction in any Organization Document, or to such Credit Party’s knowledge any Requirement of Law, which could reasonably be expected to have a Material Adverse Effect.

4.16 Copyrights, Patents, Trademarks and Licenses, Etc. As of the Closing Date, each Credit Party or its Subsidiaries owns or is licensed or otherwise have the right to use all of the patents, trademarks, service marks, trade names, copyrights, contractual franchises, authorizations and other rights that are reasonably necessary for the operation of their respective businesses, and without conflict with the rights of any other Person which could reasonably be expected to have a Material Adverse Effect. As of the Closing Date, to the knowledge of the Credit Parties, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Credit Parties or any of their Subsidiaries infringes upon any rights held by any other Person in a manner that would have a Material Adverse

Effect. As of the Closing Date, no claim or litigation regarding any of the foregoing is pending or, to its knowledge threatened, and no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or, to the knowledge of the Credit Parties, proposed, which, in either case, could reasonably be expected to have a Material Adverse Effect.

4.17 Subsidiaries. The Disclosure Schedule sets forth the name of, the ownership interest of the applicable Credit Party in, the jurisdiction of incorporation or organization of, and the type of each Subsidiary of a Borrower and the other Credit Parties and identifies each Subsidiary that is a Subsidiary Credit Party, in each case as of the Closing Date.

4.18 Insurance. The Disclosure Schedule lists all insurance policies of any nature maintained, as of the Closing Date, for current occurrences by each Credit Party, including issuers, coverages and deductibles. Each of the Credit Parties and each of their respective Subsidiaries and their respective Properties are insured with financially sound and reputable insurance companies that are not Affiliates of any Credit Party, in such amounts, after giving effect to any self-insurance with respect to workers' compensation and any other instances of self-insurance with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses of the same size and character as the business of the Credit Parties and, to the extent relevant, owning similar properties in localities where such Person operates.

4.19 Solvency. After giving effect to the transactions occurring on the Closing Date, each Credit Party is Solvent.

4.20 Full Disclosure. None of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of the Credit Parties or any of their Subsidiaries in connection with the Loan Documents, contains any untrue statement of a material fact or omits any material fact necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered; provided that, with respect to projected financial information, the Credit Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

4.21 Depository Accounts. The Disclosure Schedule lists each Depository Account of the Credit Parties as of the Closing Date.

4.22 Brokers' Fees. Except as set forth in the Disclosure Schedule, none of the Credit Parties or any of their respective Subsidiaries has any obligation to any Person in respect of any and finder's or broker's fee in connection with the transactions contemplated hereby.

4.23 Foreign Assets Control Regulations and Anti-Money Laundering. Each Credit Party and each of their Subsidiaries is and will remain in compliance in all material respects with all U.S. economic sanctions laws, executive orders and implementing regulations as promulgated by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), and all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. No Credit Party and no Subsidiary or Affiliate of a Credit Party (a) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List") with which a U.S. Person cannot deal with or otherwise

engage in business transactions, (b) is a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person or (c) is controlled by (including by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. law.

4.24 Patriot Act. The Credit Parties, each of their Subsidiaries and each of their Affiliates are in compliance with (a) each of the foreign assets control regulations of the United States Treasury Department and any other enabling legislation or executive order relating thereto, (b) the Patriot Act and (c) other federal or state laws relating to “*know your customer*” and anti-money laundering rules and regulations. No part of the proceeds of the Notes will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

4.25 Corporate Structure. On the Closing Date, the Credit Parties’ ownership interests are as set forth in the Disclosure Schedule.

4.26 Healthcare Matters.

(a) Compliance with Health Care Laws. Each Credit Party and each of their respective Subsidiaries is as of the Closing Date, and at all times during the three calendar years immediately preceding the Closing Date has been, in material compliance with all Health Care Laws and requirements of Third Party Payor Programs applicable to it, its assets, business or operations. As of the Closing Date, to the Credit Parties’ knowledge, no circumstance exists or event has occurred which could reasonably be expected to result in a material violation of any Health Care Law or any requirement of any Third Party Payor Program.

(b) Health Care Permits. Each Credit Party and each of their respective Subsidiaries holds as of the Closing Date, and at all times during the three calendar years immediately preceding the Closing Date has held, all Health Care Permits necessary for it to own, lease, sublease or operate its assets or to conduct its business or operations as presently conducted (including to participate in and obtain reimbursement under all Third Party Payor Programs in which such Persons participate). All such Health Care Permits are, and at all times during the three calendar years immediately preceding the Closing Date have been, in full force and effect and there is and has been no material default under, violation of, or other material noncompliance with the terms and conditions of any such Health Care Permit. As of the Closing Date, to the knowledge of each Credit Party, no condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, has resulted or would reasonably be expected to result in the suspension, revocation, termination, restriction, limitation, modification or non-renewal of any Health Care Permit. As of the Closing Date, no Governmental Authority has taken, or to the knowledge of any Credit Party intends to take, action to suspend, revoke, terminate, place on probation, restrict, limit, modify or not renew any Health Care Permit of any Credit Party or any Subsidiary of any Credit Party.

(c) Third Party Payor Authorizations. Each Credit Party and each of their respective Subsidiaries holds as of the Closing Date, in full force and effect, all Third Party Payor Authorizations necessary to participate in and be reimbursed by all Third Party Payor Programs in which any Credit Party or any Subsidiary of any Credit Party participates. As of the Closing Date, there is no investigation, audit, claim review, or other action pending, or to the knowledge of any Credit Party, threatened, which could result in a suspension, revocation, termination, restriction, limitation, modification or non-renewal of any Third Party Payor Authorization or result in any Credit Party's or any of their Subsidiaries' exclusion from any Third Party Payor Program.

(d) Licensed Personnel. As of the Closing Date, to the knowledge of each Credit Party, the Licensed Personnel have complied and currently are in compliance with all applicable Health Care Laws, and hold and, at all times that such Persons have been Licensed Personnel of any Credit Party or any Subsidiary of any Credit Party, have held, all professional licenses and other Health Care Permits and all Third Party Payor Authorizations required in the performance of such Licensed Personnel's duties for such Credit Party or such Subsidiary, and, each such Health Care Permit and Third Party Payor Authorization is in full force and effect and, to the knowledge of each Credit Party, no suspension, revocation, termination, impairment, modification or non-renewal of any such Permit or Third Party Payor Authorization is pending or threatened, in each case, except to the extent the failure to so hold or maintain such Health Care Permit or Third Party Payor Authorization, in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(e) Licenses. Each Credit Party has obtained and maintains licenses in good standing and without limitation or impairment by all applicable licensing organizations, to the extent prudent and customary in the industry in which it is engaged or required by law (including any foreign law or equivalent regulation), except where the failure to have or maintain such licensure in good standing or imposition of limitation or impairment would not reasonably be expected to have, in the aggregate, a Material Adverse Effect.

(f) Proceedings; Audits. As of the Closing Date, there are no pending (or, to the knowledge of any Credit Party, threatened) Proceedings against or affecting any Credit Party or any Subsidiary of any Credit Party or, to the knowledge of any Credit Party, any Licensed Personnel, relating to any actual or alleged non-compliance with any Health Care Law or requirement of any Third Party Payor Program other than those Proceedings that would not reasonably be expected to have, in the aggregate, a Material Adverse Effect. As of the Closing Date, to the knowledge of any Credit Party, there are no facts, circumstances or conditions that would reasonably be expected to form the basis for any such Proceeding against or affecting any Credit Party or any Subsidiary of any Credit Party or, to the knowledge of any Credit Party, any Licensed Personnel. As of the Closing Date, there currently exist no restrictions, deficiencies, required plans of correction or other such remedial measures with respect to any Health Care Permit of any Credit Party or any Subsidiary of any Credit Party, or any of their participation in any Third Party Payor Program. Without limiting the foregoing, as of the Closing Date, no validation review, program integrity review, audit or other investigation related to any Credit Party or any Subsidiary of any Credit Party or their respective operations, or the consummation of the transactions contemplated in the Loan Documents or related to the Collateral (i) to the knowledge of any Credit Party, has been conducted by or on behalf of any Governmental Authority, or (ii) is

scheduled, pending or, to the knowledge of any Credit Party, threatened, in each case, other than those that would not reasonably be expected to have, in the aggregate, a Material Adverse Effect.

(g) Overpayments. As of the Closing Date, no Credit Party and no Subsidiary of any Credit Party (i) has retained an overpayment received from, or failed to refund any amount due to, any Third Party Payor in violation of any Health Care Law or contract; and (ii) except for claims adjustments and repayments to the applicable Medicare Administration Contractor or Third Party Payor claims system in the ordinary course of patient claims management, has received notice of, or has knowledge of, any overpayment or refunds due to any Third Party Payor.

(h) Material Statements. No Credit Party and no Subsidiary of any Credit Party, nor to the knowledge of any Credit Party, any officer, affiliate, employee or agent of any Credit Party or any Subsidiary of any Credit Party, has made an untrue statement of a material fact or fraudulent statement to any Governmental Authority, failed to disclose a material fact that must be disclosed to any Governmental Authority, or committed an act, made a statement or failed to make a statement that, at the time such statement, disclosure or failure to disclose occurred, would reasonably be expected to constitute a violation of any Health Care Law and have a Material Adverse Effect.

(i) Prohibited Transactions. No Credit Party and no Subsidiary of any Credit Party, nor any officer, affiliate, employee or agent of any Credit Party or any Subsidiary of any Credit Party, directly or indirectly, has (i) offered or paid or solicited or received any remuneration, in cash or in kind, or made any financial arrangements, in violation of any Health Care Law; (ii) given or agreed to give, or is aware that there has been made or that there is any agreement to make, any gift or gratuitous payment of any kind, nature or description (whether in money, property or services) in violation of any Health Care Law; (iii) made or agreed to make, or is aware that there has been made or that there is any agreement to make, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift is or was illegal under the laws of any Governmental Authority having jurisdiction over such payment, contribution or gift; (iv) established or maintained any unrecorded fund or asset for any purpose or made any misleading, false or artificial entries on any of its books or records for any reason; or (v) made, or agreed to make, or is aware that there has been made or that there is any agreement to make, any payment to any person with the intention or understanding that any part of such payment would be in violation of any Health Care Law or used or was given for any purpose other than that described in the documents supporting such payment. To the knowledge of each Credit Party, no person has filed or has threatened to file against any Credit Party or any of their Affiliates an action under any federal or state whistleblower statute, including without limitation, under the False Claims Act of 1863 (31 U.S.C. § 3729 et seq.).

(j) Exclusion. No Credit Party and no Subsidiary of any Credit Party, nor any owner, officer, director, partner, agent, managing employee or Person with a “direct or indirect ownership interest” (as that phrase is defined in 42 C.F.R. § 420.201) in any Credit Party or any Subsidiary of any Credit Party, nor, to the knowledge of any Credit Party, any Licensed Personnel of any Credit Party or any Subsidiary of any Credit Party, has been (or, has been threatened to be) (i) excluded from any Third Party Payor Program pursuant to 42 U.S.C. § 1320a-7 and related regulations, (ii) “suspended” or “debarred” from selling products to the U.S. government or its

agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (42 C.F.R. Subpart 9.4), or other applicable laws or regulations, (iii) debarred, disqualified, suspended or excluded from participation in any Third Party Payor Program or is listed on the General Services Administration list of excluded parties, nor is any such debarment, disqualification, suspension or exclusion threatened or pending, or (iv) made a party to any other action by any Governmental Authority that may prohibit it from selling products or providing services to any governmental or other purchaser pursuant to any federal, state or local laws or regulations.

(k) Corporate Integrity Agreement. No Credit Party and no Subsidiary of any Credit Party, nor, to the knowledge of any Credit Party, any owner, officer, director, partner, agent, managing employee or Person with a “direct or indirect ownership interest” (as that phrase is defined in 42 C.F.R. §1001.1001) in any Credit Party or any Subsidiary of any Credit Party is a party to, or bound by, any order, individual integrity agreement, corporate integrity agreement, corporate compliance agreement, deferred prosecution agreement, or other formal or informal agreement with any Governmental Authority concerning compliance with Health Care Laws.

## ARTICLE V

### AFFIRMATIVE COVENANTS

So long as the Notes shall remain outstanding, unless Agent waives compliance in writing:

5.01 Financial Statements. Lead Borrower shall deliver to Agent, in form and detail satisfactory to Agent:

(a) as soon as available, but not later than one hundred twenty (120) days after the end of each fiscal year, (i) a copy of the consolidated balance sheet of Parent and its Subsidiaries as at the end of such year and the related consolidated statements of income or operations and cash flows for such year, setting forth in each case in comparative form the figures for the previous fiscal year, accompanied by the opinion of a nationally or regionally recognized independent public accounting firm reasonably acceptable to Agent (“Independent Auditor”) (Agent hereby agrees that Moss Adams LLP is acceptable to Agent to serve as the Independent Auditor) which opinion shall state that such consolidated financial statements present fairly the financial position for the periods indicated in accordance with GAAP applied on a basis consistent in all material respects with prior years (except as otherwise disclosed in the financial statements), (ii) a copy of the consolidated balance sheet of Sunnyside and its Subsidiaries as at the end of such year and the related consolidated statements of income or operations and cash flows for such year, setting forth in each case in comparative form the figures for the previous fiscal year, accompanied by the opinion of the Independent Auditor, which opinion shall state that such consolidated financial statements present fairly the financial position for the periods indicated in accordance with GAAP applied on a basis consistent in all material respects with prior years (except as otherwise disclosed in the financial statements), (iii) a copy of the consolidated balance sheet of Intermediate Holdco and its Subsidiaries as at the end of such year and the related consolidated statements of income or operations and cash flows for such year, setting forth in each case in comparative form the figures for the previous fiscal year, accompanied by the opinion of the Independent Auditor, which opinion shall state that such consolidated financial statements present fairly the financial position for the

periods indicated in accordance with GAAP applied on a basis consistent in all material respects with prior years (except as otherwise disclosed in the financial statements), and (iv) a completed Compliance Certificate executed by a Responsible Officer of Lead Borrower. Such opinion shall not be qualified or limited by a “going concern” or like qualification because of a limited or restricted examination by the Independent Auditor of any material portion of the records of any Credit Party or its Subsidiaries other than any qualification or limitation that is expressly with respect to, or expressly resulting from, an upcoming maturity under any Indebtedness of Borrowers under this Agreement;

(b) as soon as available, but not later than thirty (30) days after the end of each fiscal quarter, copies of (i) the unaudited consolidated balance sheet of Parent and its Subsidiaries as of the end of such fiscal quarter, and (ii) the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such fiscal quarter, in each case subject to audit, normal year-end adjustments and the absence of footnotes;

(c) as soon as available, but not later than thirty (30) days after the end of each fiscal quarter, copies of (i) the unaudited consolidated balance sheet of Sunnyside and its Subsidiaries as of the end of such fiscal quarter, and (ii) the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such fiscal quarter, in each case subject to audit, normal year-end adjustments and the absence of footnotes;

(d) as soon as available, but not later than thirty (30) days after the end of each fiscal quarter, copies of (i) the unaudited consolidated balance sheet of Intermediate Holdco and its Subsidiaries as of the end of such fiscal quarter, and (ii) the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such fiscal quarter, in each case subject to audit, normal year-end adjustments and the absence of footnotes;

(e) as soon as available, but not later than thirty (30) days after the end of each fiscal quarter, a Compliance Certificate, executed by a Responsible Officer of Lead Borrower;

(f) as soon as available, but not later than twenty (20) days after the end of each calendar month, copies of (i) the unaudited consolidated balance sheet of Parent and its Subsidiaries as of the end of such month, and (ii) the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such month;

(g) as soon as available, but not later than twenty (20) days after the end of each calendar month, copies of (i) the unaudited consolidated balance sheet of Sunnyside and its Subsidiaries as of the end of such month, and (ii) the related consolidated statements of income and cash flows for the period commencing on the first day and ending on the last day of such month;

(h) as soon as available, but not later than twenty (20) days after the end of each calendar month, copies of (i) the unaudited balance sheet of Intermediate Holdco as of the end of such month, and (ii) the related statements of income and cash flows for the period commencing on the first day and ending on the last day of such month, in each case subject to audit, normal year-end adjustments and the absence of footnotes;

(i) as soon as available, but not later than twenty (20) days after the end of each calendar month, (A) an operating report, in substantially the form of Exhibit D hereto, with respect to Sunnyside for the period commencing on the first day and ending on the last day of such month, and (B) an operating report detailing by physician revenue statistics produced for Sunnyside;

(j) as soon as available, but not later than twenty (20) days after the end of each calendar month, (A) an operating report, in substantially the form of Exhibit D hereto, with respect to Toppenish for the period commencing on the first day and ending on the last day of such month, and (B) an operating report detailing by physician revenue statistics produced for Toppenish;

(k) as soon as available, but not later than twenty (20) days after the end of each calendar month, for each of Sunnyside and its Subsidiaries and Toppenish and its Subsidiaries (A) an accounts receivable aging report as of the last day of such month, and (B) an accounts payable aging report as of the last day of such month;

(l) as soon as available, but not later than December 15, 2020 for the calendar year ending November 15, 2020 and forty-five (45) days prior to the end of the calendar year for all calendar years commencing after November 15, 2020, separate projections of the financial statements of each of Parent and its Subsidiaries, Sunnyside and its Subsidiaries and Intermediate Holdco and its Subsidiaries, including monthly projected balance sheet and statement of income and cash flow and unrestricted cash balances, which projections shall (i) state the material assumptions used in the preparation thereof, (ii) with respect to Sunnyside and Toppenish, provide operating statistics and departmental information as per Exhibit D, and (iii) contain such other information as reasonably requested by Agent; and

(m) as soon as available, but not later than December 15, 2020, for the calendar year ending November 15, 2021 and forty-five (45) days prior to the end of the calendar year, commencing after November 15, 2021, a detailed capital expenditures plan for each of Parent and its Subsidiaries, Sunnyside and its Subsidiaries and Intermediate Holdco and its Subsidiaries.

5.02 Certificates; Other Information. Borrowers shall furnish to Agent:

(a) concurrently with the delivery of the financial statements referred to in **Sections 5.01(a) and (b)**, a Compliance Certificate executed by a Responsible Officer of Lead Borrower;

(b) promptly upon receipt thereof, copies of any reports submitted by the Credit Parties' certified public accountants in connection with each annual, interim or special audit or review of any type of the financial statements or internal control systems of any Credit Party made by such accountants, including any comment letters submitted by such accountants to management of any Credit Party in connection with their services; and

(c) promptly, such additional information regarding the business, financial or corporate affairs of the Credit Parties or regarding any of the Collateral as Agent, at the request of any Lender, may from time to time reasonably request.

5.03 Notices. Lead Borrower shall promptly notify Agent and each Lender (and in no event later than five (5) Business Days after the chief executive officer, executive or senior vice

president, chief financial officer, controller, or chief legal officer of any Credit Party becomes aware thereof):

(a) of the occurrence of any Default or Event of Default;

(b) of (i) any breach or non-performance of, or any default under, any Contractual Obligation of any Credit Party which could reasonably be expected to result in a Material Adverse Effect, or (ii) any dispute, litigation, investigation, proceeding or suspension which to the knowledge of any Credit Party exist at any time between any Credit Party or any of its Subsidiaries and any Governmental Authority which, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) of the commencement of, or any material development in, any litigation or proceeding affecting any Credit Party or any of its Subsidiaries (i) in which the amount of damages claimed exceeds One Hundred Thousand Dollars (\$100,000) (or its equivalent in another currency or currencies) in excess of any applicable insurance coverage, (ii) in which injunctive or similar relief is sought and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (iii) in which the relief sought is an injunction or other stay of the performance of this Agreement or any Loan Document;

(d) the occurrence of any casualty loss, or of the actual or threatened commencement of any condemnation or eminent domain proceeding, affecting any of their properties if the amount of the loss or the value of the property being condemned exceeds One Million Dollars (\$1,000,000);

(e) of (i) (A) the receipt by any Credit Party of any notice of violation of or potential liability or similar notice under Environmental Law, (B) the occurrence of any unpermitted Releases, (C) the existence of any condition that could reasonably be expected to result in violations of or liabilities under, any Environmental Law or (D) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, demand, dispute alleging a violation of or liability under any Environmental Law which in the case of clauses (A), (B), (C), and (D) above, in the aggregate for all such clauses, would reasonably be expected to result in Material Environmental Liabilities of such Credit Party, (ii) the receipt by any Credit Party of notification that any Property of any Credit Party is subject to any Lien (other than a Permitted Lien) in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities and (iii) any proposed acquisition or lease of Property, if such acquisition or lease would have a reasonable likelihood of resulting in Material Environmental Liabilities of the Credit Party proposing to acquire or lease the Property;

(f) of any material change in accounting policies or financial reporting practices by any Credit Party or any of its consolidated Subsidiaries;

(g) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other labor disruption against or involving any Credit Party or any Subsidiary of any Credit Party if the same would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect; and

(h) (1) the voluntary disclosure by any Credit Party or any Subsidiary of any Credit Party to the Office of the Inspector General of the United States Department of Health and Human Services, any Third Party Payor Program (including to any intermediary, carrier or contractor of such Program), of an actual or potential overpayment matter involving the submission of claims to a Third Party Payor in an amount greater than Two Hundred Fifty Thousand Dollars (\$250,000); (2) that any Credit Party or any Subsidiary of any Credit Party, an owner, officer, manager, employee or Person with a “direct or indirect ownership interest” (as that phrase is defined in 42 C.F.R. §420.201) in any Credit Party or any Subsidiary of any Credit Party: (A) has had a civil monetary penalty assessed against him or her pursuant to 42 U.S.C. §1320a-7a or is the subject of a proceeding seeking to assess such penalty; (B) has been excluded from participation in a Federal Health Care Program (as that term is defined in 42 U.S.C. §1320a-7b) or is the subject of a proceeding seeking to assess such penalty; (C) has been convicted (as that term is defined in 42 C.F.R. §1001.2) of any of those offenses described in 42 U.S.C. §1320a-7b or 18 U.S.C. §§669, 1035, 1347, 1518; or (D) has been named in a U.S. Attorney complaint made or any other action taken pursuant to the False Claims Act under 31 U.S.C. §§3729-3731 or in any qui tam action brought pursuant to 31 U.S.C. §3729 et seq.; (3) receipt by any Credit Party or any Subsidiary of any Credit Party of any written notice or written communication from an accrediting organization that such Person is in immediate jeopardy of losing its accreditation due to a failure to comply with a plan of correction; (4) any findings by a governmental agency of material licensure violations or fraudulent acts or omissions involving any Credit Party or any Subsidiary of any Credit Party, or, to the knowledge of any Credit Party, any Licensed Personnel; (5) the pending or threatened in writing imposition of any material fine or penalty by any Governmental Authority under any Health Care Law against any Credit Party or any Subsidiary of any Credit Party, or, to the knowledge of any Credit Party, any Licensed Personnel; and (6) notice of the occurrence of any reportable event as defined in any corporate integrity agreement, corporate compliance agreement or deferred prosecution agreement pursuant to which any Credit Party or any Subsidiary of any Credit Party has to make a submission to any Governmental Authority or other Person under the terms of such agreement, if any.

Each notice under this Section shall be accompanied by a written statement by a Responsible Officer setting forth details of the occurrence referred to therein, and stating what action the Credit Party or any affected Subsidiary proposes to take with respect thereto.

5.04 Preservation of Corporate Existence, Etc. Each Credit Party shall, and each Credit Party shall cause each Subsidiary of such Credit Party to:

(a) preserve and maintain in full force and effect its existence and good standing under the laws of its state or jurisdiction of formation or incorporation;

(b) preserve and maintain in full force and effect all material governmental rights, privileges, qualifications, permits, licenses and franchises necessary or desirable in the normal conduct of its business except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect;

(c) use reasonable efforts, in the ordinary course of business, to preserve its business organization and goodwill; and

(d) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

5.05 Maintenance of Property. Each Credit Party shall maintain, and shall cause each Subsidiary to maintain, and preserve all its property which is used or useful in its business in good working order and condition, ordinary wear and tear excepted and make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.06 Insurance. In addition to insurance requirements set forth in the Collateral Documents, each Credit Party shall maintain, and shall cause each of its Subsidiaries to maintain, with financially sound independent insurers having an A.M. Best rating of “A-” or better (or such other rating as Agent may approve in its discretion), insurance with respect to its properties and business against loss or damage of the kinds within the coverage ranges customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, including workers’ compensation insurance, public liability and property and casualty insurance, all in form, substance and content reasonably acceptable to Agent. If requested by Agent, all such insurance policies shall name Agent as lender’s loss payee, mortgagee or as additional insured, for the benefit of the Lenders, as their interests may appear. Upon request of Agent, Borrowers shall furnish Agent, with sufficient copies for each Lender, at reasonable intervals (but not more than once per calendar year) a certificate of a Responsible Officer of Lead Borrower (and, if requested by Agent, any insurance broker of Borrowers) setting forth the nature and extent of all insurance maintained by each Credit Party and its respective Subsidiaries in accordance with this Section or any Collateral Documents (and which, in the case of a certificate of a broker, were placed through such broker).

5.07 Payment of Obligations. Each Credit Party shall, and shall cause each Subsidiary to, pay and discharge before the same become delinquent, all their respective obligations and liabilities, including:

(a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by the Credit Party or such Subsidiary;

(b) unless the same are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by the Credit Party or such Subsidiary, all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness; and

(c) the performance of all obligations under any Contractual Obligation to such Credit Party or any of its Subsidiaries is bound, or to which it or any of its Property is subject, including the Related Agreements, except where the failure to perform would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect; and

(d) payments to the extent necessary to avoid the imposition of a Lien with respect to, or the involuntary termination of any underfunded Benefit Plan.

5.08 Compliance with Laws. Each Credit Party shall comply, and shall cause each of its Subsidiaries to comply, in all material respects with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including the Federal Fair Labor Standards Act), except such as may be contested in good faith or as to which a bona fide dispute may exist, including those laws and regulations relating to licensing, environmental, consumer credit, truth-in-lending, ERISA and labor matters.

5.09 Compliance with ERISA. Except where the failure to do so would not reasonably be expected to cause a Material Adverse Effect, each Credit Party shall, and shall cause each of its ERISA Affiliates to: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law; (b) cause each Benefit Plan which is qualified under Section 401(a) of the Code to maintain such qualification; and (c) make all required contributions to any Plan subject to Section 412 of the Code.

5.10 Inspection of Property and Books and Records. Each Credit Party shall maintain and shall cause each Subsidiary to maintain proper books of record and account, in which full, true and correct entries shall be made of all financial transactions and matters involving the assets and business of the Credit Party and Subsidiary to the extent necessary to maintain books and records in conformity with GAAP consistently applied. Each Credit Party shall permit, and shall cause each Subsidiary to permit, representatives and independent contractors of Agent or any Lender to visit any of their respective properties to examine such property or any corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss their respective affairs, finances and accounts with their respective directors, officers, and independent public accountants, which shall be at the expense of Lenders, and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Credit Party; provided, that when an Event of Default exists Agent or any Lender may do any of the foregoing at the expense of the Credit Party at any time during normal business hours and without advance notice. Agent and each Lender has no duty to examine, audit or copy any Credit Party's or any Subsidiary's books and records and Agent and each Lender shall not incur any obligation or liability by reason of not making any such examination or inquiry. If Agent or any Lender examines, audits or copies books and records, Agent or such Lender will be acting solely for the purposes of protecting its security and preserving its rights under this Agreement. Neither any Credit Party nor any other party is entitled to rely on any examination or other inquiry by Agent or any Lender. Agent and each Lender owes no duty of care to protect any Credit Party or any other party against, or to inform Borrowers or any other party of, any adverse condition that may be observed as affecting the Credit Party or any Subsidiary. Agent and each Lender may in its discretion disclose to the Credit Party any findings made as a result of, or in connection with, any inspection of the Credit Party's books and records.

5.11 Environmental Laws. Each Credit Party shall, and shall cause each of its Subsidiaries to, comply with, and maintain its properties, whether owned, leased, subleased or otherwise operated or occupied, in compliance with, all applicable Environmental Laws (including by implementing any Remedial Action necessary to achieve such compliance) or that is required

by orders and directives of any Governmental Authority except where the failure to comply would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect.

5.12 Further Assurances. Promptly upon request by Agent, each Credit Party shall (and shall cause any of its Subsidiaries to) do, execute, acknowledge, deliver, record, re-record, file, refile, register and reregister, any and all such further acts, deeds, conveyances, security agreements, mortgages, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments Agent or such Lenders, as the case may be, may reasonably require from time to time in order (a) to carry out more effectively the purposes of this Agreement or any other Loan Document, (b) to subject to the Liens created by any of the Collateral Documents any of the properties, rights or interests covered by any of the Collateral Documents, (c) to perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Liens intended to be created thereby, and (d) to better assure, convey, grant, assign, transfer, preserve, protect and confirm to Agent and Lenders the rights granted or now or hereafter intended to be granted to the Lenders under any Loan Document or under any other document executed in connection therewith.

5.13 Cash Management Systems. At all times, Borrowers shall cause each Depository Account (other than an Excluded Depository Account), maintained for the benefit of any Credit Party, to at all times be subject to an Account Control Agreement (which, if such Credit Party is obligated for any Permitted Working Capital Indebtedness, shall be junior in priority to the interests of the holder of such Permitted Working Capital Indebtedness). With respect to each Governmental Account, each Credit Party shall enter into, and cause each applicable depository to enter into, a “sweep” agreement (a “Sweep Agreement”) with respect to such Governmental Account pursuant to which such depository will agree to sweep amounts deposited therein on daily basis to a Non-Governmental Account of the Credit Party, as and when funds clear and become available in accordance with such depository’s customary procedures, each with such financial institution and each in form and substance reasonably acceptable to Agent. No Credit Party may change any sweep instruction set forth in such Sweep Agreement without the prior written consent of Agent. Agent agrees and confirms that the Credit Party will have dominion and “control” (within the meaning of Section 9-104 of the UCC) over each Governmental Account and all funds therein and Agent disclaims any right of any nature whatsoever to control or otherwise direct or make any claim against the funds held in any Governmental Account from time to time

5.14 Compliance with Health Care Laws. Except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect, each Credit Party and each of their respective Subsidiaries shall (i) obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all material Health Care Permits (including, as applicable, Health Care Permits necessary for it to be eligible to receive payment and compensation from and to participate in Medicare, Medicaid or any other Third Party Payor programs) which are necessary or useful in the proper conduct of its business; (ii) be and remain in material compliance with all requirements for participation in, and for licensure required to provide the goods or services that are reimbursable under, Medicare, Medicaid and other Third Party Payor Programs; (iii) cause all Licensed Personnel to comply with all applicable Health Care Laws in the performance of their duties to or for any Credit Party or any Subsidiary of any Credit Party, and to maintain in full force and effect all professional licenses and

other Health Care Permits required to perform such duties; and (iv) keep and maintain all records required to be maintained by any Governmental Authority or otherwise under any Health Care Law.

5.15 Post-Closing Covenants. The Borrowers shall deliver the following to the Agent after the Closing Date:

[TBD]

## ARTICLE VI

### NEGATIVE AND FINANCIAL COVENANTS

So long as the Notes shall remain outstanding, unless Agent waives compliance in writing:

6.01 Limitation on Liens. No Credit Party shall directly or indirectly, make, create, incur, assume or suffer to exist any Lien upon or with respect to any part of its property, whether now owned or hereafter acquired, other than the following ("Permitted Liens"):

- (a) (i) easements, rights-of-way, and similar typical real estate encumbrances on real property owned by any Credit Party, (ii) any real estate mortgage lien existing on the Closing Date and set forth in the Disclosure Schedule and any refinancing thereof, and (iii) any mortgage lien on real property incurred after the Closing Date securing Indebtedness used to finance the acquisition of such real property so long as such indebtedness is permitted by this Agreement;
- (b) any other Lien existing on the Closing Date and set forth in the Disclosure Schedule;
- (c) security interests in equipment and Capital Lease Obligations affecting equipment incurred in the ordinary course of business;
- (d) any Lien created under any Loan Document;
- (e) Liens for taxes, fees, assessments or other governmental charges which are not delinquent or remain payable without penalty, or to the extent that non-payment thereof is permitted by this Agreement;
- (f) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings diligently prosecuted, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto and for which adequate reserves in accordance with GAAP are being maintained;
- (g) Liens consisting of pledges or deposits required in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation;

(h) any interest or title of a lessor or sublessor under any lease permitted by this Agreement;

(i) Liens arising from the filing of precautionary uniform commercial code financing statements with respect to any lease permitted by this Agreement;

(j) Liens in favor of collecting banks arising by operation of law under Section 4-210 of the Uniform Commercial Code or, with respect to collecting banks located in the State of New York, under 4-208 of the Uniform Commercial Code;

(k) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;

(l) Liens securing Permitted Working Capital Indebtedness covering accounts receivable and certain related assets and proceeds thereof;

(m) any other Liens so long as the aggregate amount secured thereby does not exceed as to Sunnyside and its Subsidiaries on a consolidated basis, \$100,000 outstanding at any particular time; and

(n) extensions, renewals, or replacements of any Lien referred to in subsection (b) of this Section; provided that the principal amount of the Indebtedness secured thereby is not increased and that any such extension, renewal or replacement is limited to the assets originally encumbered thereby.

6.02 Disposition of Assets. No Credit Party shall directly or indirectly, other than the Liquidation Trust, sell, assign, lease, convey, transfer or otherwise dispose of any of its accounts in any bulk transaction, its primary line of business or operating assets, or substantially all its assets. No Credit Party shall make any disposition of assets outside the ordinary course of business unless such disposition is disposed of in an arm's length transaction on fair-market terms and the proceeds from such sale shall be delivered to Agent for application to the Obligations in accordance with **Section 2.4**.

6.03 Formation of Subsidiaries; Consolidations and Mergers. No Credit Party shall form any Subsidiary without the prior written consent of the Agent. No Credit Party shall merge or consolidate with or into any Person.

6.04 Acquisitions; Investments. No Credit Party shall purchase or acquire any real property or personal property other than purchases of personal property necessary of the Credit Parties in the ordinary course of operating its business. No Credit Party shall make any loans to or guaranty any Indebtedness or provide any collateral security for any Indebtedness of any Person, other than the Indebtedness incurred under this Agreement or purchase any shares of any class of capital stock or any membership interest or other equity investment or purchase, in any Person.

6.05 Limitation on Indebtedness. No Credit Party shall create, incur, assume, suffer to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

- (a) The Obligations;
- (b) Indebtedness existing on the Closing Date and set forth on the Disclosure Schedule;
- (c) Indebtedness incurred solely for the purposes of financing premiums for insurance policies of the Credit Parties; and
- (d) Unsecured intercompany Indebtedness not prohibited by this Agreement.

6.06 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any transaction with any other Loan Party or any Affiliate of any Loan Party, except for transactions that are in the Ordinary Course of such Loan Party's business, including intercompany transactions among Loan Parties and their Affiliates. .

6.07 Use of Proceeds. No Credit Party shall use any portion of the proceeds of the Notes directly or indirectly, (a) to purchase or carry Margin Stock, (b) to repay or otherwise refinance indebtedness of any Credit Party or others incurred to purchase or carry Margin Stock, (c) to extend credit for the purpose of purchasing or carrying any Margin Stock, or (d) to acquire any security in any transaction that is subject to Section 13 or 14 of the Exchange Act.

6.08 Restricted Payments. No Credit Party shall declare or make any dividend, payment, or other distribution of assets, properties, cash, rights, obligations, or securities on account of any shares of any class of its capital stock or any membership interest or other equity investment or purchase, redeem, or otherwise acquire for value any shares of its capital stock or any membership or other equity interest or any warrants, rights or options to acquire such shares or membership or other equity interest, now or hereafter outstanding (each a "Restricted Payment"); provided, however, that any wholly owned Subsidiary of a Borrower may declare and pay dividends to such Borrower or any wholly owned Subsidiary of such Borrower (or any Credit Party may make other payments or distributions to another Credit Party).

6.09 Compliance with ERISA. No ERISA Affiliate shall cause or suffer to exist (a) any event that could result in the imposition of a Lien on any asset of a Credit Party with respect to any Title IV Plan or Multiemployer Plan or (b) any other ERISA Event, that would, in the aggregate, have a Material Adverse Effect. No Credit Party shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan.

6.10 Change in Business. No Credit Party shall engage in any line of business that is not healthcare related.

6.11 Accounting Changes. No Credit Party shall make any significant change in accounting treatment or reporting practices, except as required by GAAP, or change the fiscal year of the Borrower or Credit Party or of any of their Subsidiaries.

6.12 No Negative Pledges. No Credit Party shall directly or indirectly, enter into, assume or become subject to any Contractual Obligation prohibiting or otherwise restricting the existence of any Lien upon any of its assets in favor of Agent.

6.13 Depository Account. No Credit Party shall open or maintain any Depository Account, other than an Excluded Depository Account, unless such Depository Account is subject to an Account Control Agreement in favor of Agent (which, if such Credit Party is obligated for any Permitted Working Capital Indebtedness, shall be junior in priority to the interests of the holder of such Permitted Working Capital Indebtedness). Agent agrees that, unless an Event of Default shall have occurred and be continuing, the Credit Parties may withdraw or otherwise use funds in their Depository Accounts and that Agent will not exercise its right to control funds in any Depository Account except after the occurrence and during the continuance of an Event of Default.

6.14 OFAC; Patriot Act. No Credit Party shall fail to comply with the laws, regulations and executive orders referred to in **Section 4.23** and **Section 4.24**.

6.15 Tax Issues. No Credit Party that is a non-profit corporation shall perform any act or enter into any agreement which shall adversely affect its federal income tax status as a Section 501(c)(3) organization or a 509(a)(3) organization, and each shall conduct its operations in the manner which will conform to the standards necessary to retain its status as a Section 501(c)(3) organization or a 509(a)(3) organization. Borrowers shall immediately advise Agent in the event that any Credit Party shall have received a letter or other notification from the IRS indicating that its status as a Section 501(c)(3) organization or a 509(a)(3) organization has been modified, limited or revoked.

6.16 Financial Covenants.

(a) Minimum Debt Service Coverage Ratio. As of each date listed below, the Debt Service Coverage Ratio for the Credit Parties on a consolidated basis shall be not less than the ratio set forth below.

<u>Applicable Date</u>	<u>Required Ratio</u>
March 31, 2021 and on the last day of each fiscal quarter thereafter	1.5 to 1

(b) Minimum EBITDA. As of each date listed below, Credit Parties on a consolidated basis shall have EBITDA for the fiscal quarter ending on such date of not less than the amount set forth below.

<u>Applicable Date</u>	<u>Required EBITDA</u>
March 31, 2021	\$3,000,000
June 30, 2021 and the last day of each quarter thereafter	\$3,500,000

(c) Maximum Days of Trade Accounts Payable. As of the last day of each calendar month, commencing with the month ended March 31, 2021, the amount of the Days of Trade Accounts Payable of the Credit Parties on a consolidated basis shall not exceed forty-five (45) days.

(d) Minimum Days Cash on Hand. The Credit Parties on a consolidated basis, shall have for the Fiscal Quarter ending March 31, 2021 and on the last day of each Fiscal Quarter ending thereafter, Unrestricted Cash in the AHS Systems Accounts of not less than fifteen (15) Days Cash on Hand.

## **ARTICLE VII**

### **EVENTS OF DEFAULT**

7.01 Event of Default. Any of the following shall constitute an “Event of Default”:

(a) Non-Payment. Borrowers (i) fail to make payment on account of principal or interest on the Notes as and when the same is due and payable, or (ii) fails to make payment of any other amount owed to Agent or Lenders under any Loan Document if such nonpayment continues for three (3) or more Business Days after the notice of such late payment is provided to such Credit Party; provided that Agent and Lenders shall have no obligation to notify such Credit Party of any such late payment on more than one (1) occasion during any year; or

(b) Representations and Warranties. Any representation or warranty by any Credit Party or any of its Subsidiaries made or deemed made herein, in any other Loan Document, or which is contained in any certificate, document or financial or other statement by the Credit Party, any of its Subsidiaries, or any Responsible Officer, furnished at any time under this Agreement, or in or under any other Loan Document, is incorrect in any material respect on or as of the date made or deemed made; or

(c) Breach of Certain Covenants. Any Credit Party fails to perform or observe any covenant set forth in **Article VI** or in Section 5.04, 5.06, 5.13 or 5.14; or

(d) Other Defaults. Any Credit Party fails to perform or observe any term or covenant contained in this Agreement or any other Loan Document (other than those referred to in **Sections 7.01(a), (b), and (c)**) and, if such failure is by its nature capable of being cured or remedied, such failure shall not have been cured or remedied within five (5) days after the date of such breach in the case of Sections 5.01, 5.02, and 5.03, or thirty (30) days after the earlier of (i) the date upon which the chief executive officer, executive or senior vice president, chief financial officer, controller, or chief legal officer of a Credit Party becomes aware of such failure or (ii) the date upon which written notice thereof is given to the Credit Party by Agent or any Lender in all other cases; or

(e) Cross-Default. Any Credit Party or any of its Subsidiaries (A) fails to make any payment in respect of (i) the 2017 Bonds, or (iii) any Indebtedness (other than, in the case of this clause (iii), any Indebtedness that is subordinated to the Obligations and under the terms of such subordination, the holder thereof is precluded from exercising remedies) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than One Hundred Thousand Dollars (\$100,000) when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure; or (B)

fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness, and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure if the effect of such failure, event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause such Indebtedness to be declared to be due and payable prior to its stated maturity; or

(f) Insolvency; Voluntary Proceedings. Any Credit Party (i) generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) voluntarily ceases to conduct its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing; or

(g) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against a Credit Party, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of the properties of a Credit Party and any such proceeding or petition is not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process is not be released, vacated or fully bonded within sixty (60) days after commencement, filing or levy; (ii) a Credit Party files an answer admitting the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) a Credit Party acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar Person for itself or a substantial portion of its property or business; or

(h) Monetary Judgments. One or more non-interlocutory judgments, non-interlocutory orders, decrees or arbitration awards for the payment of money is entered against a Credit Party or any of its Subsidiaries involving in the aggregate a liability (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage) as to any single or related series of transactions, incidents or conditions, of Twenty-Five Thousand Dollars (\$25,000) or more, and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of ten (10) days after the entry thereof; or

(i) Non-Monetary Judgments. Any non-monetary judgment, order or decree is entered against any Credit Party of any of its Subsidiaries which does or would reasonably be expected to have a Material Adverse Effect, and there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(j) Loss of Licenses. Any Governmental Authority revokes or fails to renew any material license, permit or franchise of any Credit Party if the result thereof prevents the Credit Party from being able to conduct its primary business; or

(k) Material Adverse Change. There occurs a Material Adverse Effect; or

(l) Loan Documents. (i) any material provision of any Loan Document or any of the Loan Documents in its entirety shall for any reason cease to be valid and binding on or enforceable against any Credit Party or any Subsidiary party thereto or the Credit Party or any of its Subsidiaries shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or (ii) any Collateral Document shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in the Collateral purported to be covered thereby or such security interest shall for any reason cease to be a perfected security interest; or

(m) Guarantor Defaults. Any guaranty of the Obligations shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect (other than in accordance with its terms), or any guarantor, or any other Person shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder; or

(n) Change of Control. A Change of Control shall occur; or

(o) Damage; Casualty. Any event occurs, whether or not insured or insurable, as a result of which revenue-producing activities cease or are substantially curtailed at Sunnyside Community Hospital, and such cessation or curtailment continues for more than thirty (30) days; or

(p) Intercreditor Debt. Any Credit Party shall make a payment on account of indebtedness that is not permitted by the terms of the Intercreditor Agreement; or

(q) HIPAA Business Associate Agreement. Any Credit Party terminates its HIPAA Business Associate Agreement with Agent.

7.02 Remedies. If any Event of Default occurs, Agent may, or shall if directed by the Majority Lenders, during the continuation of such Event of Default:

(a) declare the unpaid principal amount of the Notes, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Credit Parties;

(b) without regard to any waste, adequacy of the security or solvency of any Credit Party, apply for the appointment of a receiver of the Collateral (which application and appointment may be on an *ex parte* basis to the extent permitted by applicable law), to which appointment such Credit Party hereby consents, whether or not foreclosure proceedings have been commenced under the Collateral Documents and whether or not a foreclosure sale has occurred; and

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law;

provided, that upon the occurrence of any Event of Default event specified in **Section 7.01(f)** or **(g)**, the unpaid principal amount of the Notes and all interest and other amounts as aforesaid shall automatically become due and payable without further act of Agent or any Lender.

7.03 Rights Not Exclusive. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

## ARTICLE VIII

### AGENT

8.01 Appointment and Authorization; "Agent". Each Lender hereby irrevocably appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

8.02 Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

8.03 Liability of Agent. No Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by any Credit Party or any Subsidiary or Affiliate of a Credit Party, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or for the value of or title to any Collateral, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of a Credit Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Credit Party or any Subsidiaries or Affiliates of any Credit Party.

8.04 Reliance by Agent. Agent and shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, email, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Credit Parties), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Majority Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Majority Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

8.05 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of the Lenders, unless Agent shall have received written notice from a Lender or a Credit Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” Agent will notify the Lenders of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by the Majority Lenders in accordance with the terms of this Agreement; provided, that unless and until Agent has received any such request, it may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Lenders.

8.06 Credit Decision. Each Lender acknowledges that no Related Person has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of any Credit Party or any of its Subsidiaries, shall be deemed to constitute any representation or warranty by any Related Person to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon any Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties and their Subsidiaries, the value of and title to any Collateral, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers hereunder. Each Lender also represents that it will, independently and without reliance upon any Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties. Except for notices, reports and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Credit Parties which may come into the possession of any Related Person.

8.07 Indemnification of Related Persons. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so), based on its Pro Rata Share, from and against any and all Indemnified Liabilities; provided, that no Lender shall be liable for the payment to Related Persons of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's Pro Rata Share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of the Credit Parties. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

8.08 Successor Agent. Agent may, at its sole discretion, resign as Agent upon 30 days' notice to the Lenders. If Agent resigns under this Agreement, the Majority Lenders shall appoint from among the Lenders a successor agent for the Lenders. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and the Credit Parties, a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, such resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Majority Lenders appoint a successor agent as provided for above.

8.09 Collateral Matters.

(a) Agent is authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action with respect to any Collateral or the Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and Liens upon the Collateral granted pursuant to the Collateral Documents.

(b) The Lenders irrevocably authorize Agent, at its option and in its discretion, to release any Lien granted to or held by Agent upon any Collateral (i) upon payment in full of the Notes and all other Obligations known to Agent and payable under this Agreement or any other Loan Document; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any disposition permitted hereunder; (iii) constituting property in which any Credit Party or any of its Subsidiaries owned no interest at the time the Lien was granted or at any time thereafter; (iv) constituting property leased to any Credit Party or any of its Subsidiaries under a lease which has expired or been terminated in a transaction permitted under this Agreement or is

about to expire and which has not been, and is not intended by the Credit Party or such Subsidiary to be, renewed or extended; (v) consisting of an instrument evidencing Indebtedness or other debt instrument, if the indebtedness evidenced thereby has been paid in full; or (vi) if approved, authorized or ratified in writing by the Majority Lenders or all the Lenders, as the case may be, as required by this Agreement. Upon request by Agent at any time, the Lenders will confirm in writing Agent's authority to release particular types or items of Collateral pursuant to this section, provided that the absence of any such confirmation for whatever reason shall not affect Agent's rights under this section.

## ARTICLE IX

### MISCELLANEOUS

9.01 Amendments and Waivers. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Credit Party or any applicable Subsidiary therefrom, shall be effective unless the same shall be in writing and signed by the Majority Lenders (or by Agent at the written request of the Majority Lenders) and Borrowers and acknowledged by Agent, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, that no such waiver, amendment, or consent shall, unless in writing and signed by all the Lenders and Borrowers and acknowledged by Agent, do any of the following:

(a) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document;

(b) reduce the principal of, or the rate of interest on the Notes;

(c) change the percentage of the Notes which is required for the Lenders or any of them to take any action hereunder;

(d) amend this **Section 9.01**; or

(e) discharge any guarantor of all or any portion of the Obligations, or release all or substantially all of the Collateral except as otherwise may be provided in the Collateral Documents;

and, provided further, that no amendment, waiver or consent shall, unless in writing and signed by Agent in addition to the Majority Lenders or all the Lenders, as the case may be, affect the rights or duties of Agent under this Agreement or any other Loan Document.

Notwithstanding anything to the contrary herein, Agent may, with the consent of Borrowers only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency so long as, in each case, the Lenders shall have received at least five (5) Business Days' prior written notice thereof and Agent shall not have received, within five (5) Business Days' of the date of such notice to the Lenders, a written notice from the majority Lenders stating that the Majority Lenders object to such amendment.

9.02 Notices. All notices, requests, consents, approvals, waivers and other communications shall be in writing and mailed, faxed or delivered, to the address or facsimile number specified for notices on the signature pages to this Agreement; or, as directed to the Credit Parties or Agent, to such other address as shall be designated by such party in a written notice to the other parties, and as directed to any other party, at such other address as shall be designated by such party in a written notice to the Credit Parties and Agent. All such notices, requests and communications shall, when transmitted by overnight delivery, or faxed, be effective when delivered by overnight (next-day) delivery, or transmitted in legible form by facsimile machine, respectively, or if mailed, upon the third Business Day after the date deposited into the U.S. mail, or if delivered, upon delivery or, if delivered by email, when actually received by the recipient.

9.03 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

9.04 Costs and Expenses. Borrowers agree to pay or reimburse upon demand (a) Agent for all reasonable costs and expenses incurred by it or any Related Persons, in connection with the investigation, development, preparation, negotiation, execution, interpretation or administration of, any modification of any term of or termination of, any Loan Document, any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein, in each case including Attorney Costs of Agent, Collateral audits, and similar expenses, and in connection with any third-party valuation of the Notes, (b) Agent for all reasonable costs and expenses incurred by it or any Related Person in connection with field examinations and Collateral examinations (which shall be reimbursed, in addition to the out-of-pocket costs and expenses of such examiners), (c) each of Agent and its Related Persons for all reasonable costs and expenses incurred by Agent or such Related Persons, including, but not limited to, Attorney Costs, in connection with (i) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out,” (ii) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy or (iii) the commencement, defense, conduct of, intervention in, or the taking of any other action (including preparation for and/or response to any subpoena or request for document production relating thereto) with respect to, any proceeding (including any bankruptcy or insolvency proceeding) related to any Credit Party, any Subsidiary of any Credit Party, Loan Document or Obligation, including Attorney Costs, and (d) reasonable fees and disbursements of Attorney Costs of one law firm on behalf of all Lenders (other than Agent) incurred in connection with any of the matters referred to in clause (c) above.

9.05 Indemnity.

(a) Each Credit Party agrees to indemnify, hold harmless and defend Agent, each Lender, and each of their respective Related Persons (each such Person being an “Indemnified Person”) from and against all Liabilities (including brokerage commissions, fees and other compensation) that may be imposed on, incurred by or asserted against any such Indemnified Person in any matter relating to or arising out of, in connection with or as a result of (i) any Loan Document, any Obligation (or the repayment thereof), the use or intended use of the proceeds of

the Notes or any securities filing of, or with respect to, any Credit Party, (ii) any commitment letter, proposal letter or term sheet with any Person or any Contractual Obligation, arrangement or understanding with any broker, finder or consultant, in each case entered into by or on behalf of any Credit Party or any Affiliate of any of them in connection with any of the foregoing, (iii) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnified Person or any of its Related Persons, any holders of securities or creditors (and including Attorney Costs in any case), whether or not any such Indemnified Person, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Requirement of Law or theory thereof, including common law, equity, contract, tort or otherwise or (iv) any other act, event or transaction related, contemplated in or attendant to any of the foregoing (collectively, the “Indemnified Matters”); provided, however, that no Credit Party shall have any liability under this **Section 9.05** to any Indemnified Person with respect to any Indemnified Matter, to the extent such liability has resulted from (x) primarily from the gross negligence or willful misconduct of such Indemnified Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order, or (y) a material breach of the obligations of such Indemnified Person under this Agreement or the Loan Documents, as determined by a court of competent jurisdiction by final and non-appealable judgment. Furthermore, each Borrower and each other Credit Party executing this Agreement waives and agrees not to assert against any Indemnified Person, and shall cause each other Credit Party to waive and not assert against any Indemnified Person, any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Related Person.

(b) Without limiting the foregoing, “Indemnified Matters” includes all Environmental Liabilities, including those arising from, or otherwise involving, any Property of any Credit Party on or contiguous to any Property of any Credit Party, whether or not, with respect to any such Environmental Liabilities, any Indemnitee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor-in-interest to any Credit Party or the owner, lessee or operator of any Property of any Related Person through any foreclosure action, in each case except to the extent such Environmental Liabilities (i) are incurred solely following foreclosure by Agent or following Agent or any Lender having become the successor-in-interest to any Credit Party or any Related Person of any Credit Party and (ii) are attributable solely to acts of such Indemnitee.

(c) The obligations in this Section shall survive payment of all other Obligations. All amounts owing under this Section shall be paid within 30 days after demand.

9.06 **Marshalling; Payments Set Aside.** Neither Agent nor the Lenders shall be under any obligation to marshal any assets in favor of the Credit Parties or any other Person or against or in payment of any or all of the Obligations. To the extent that the Credit Parties make a payment to Agent or the Lenders, or Agent or the Lenders exercise their right of set-off, and such payment or the proceeds of such set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and

(b) each Lender severally agrees to pay to Agent upon demand its Pro Rata Share of any amount so recovered from or repaid by Agent.

9.07 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that no Credit Party may assign or transfer any of its rights or obligations under this Agreement or any of the Loan Documents to which it is a party without the prior written consent of Agent and each Lender.

9.08 Assignments, Participations, Etc.

(a) Any Lender may, with the written consent of Agent, which consent shall not be unreasonably withheld, at any time assign and delegate to one or more Persons (each an “Assignee”) (i) all of the Notes and the other rights and obligations of such Lender hereunder, or (ii) any ratable part thereof in a minimum amount of Five Million Dollars (\$5,000,000); provided, that Borrowers and Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (A) written notice of such assignment, together with payment instructions, addresses and related information with respect to the Assignee, shall have been given to Borrowers and Agent by such Lender and the Assignee; (B) such Lender and its Assignee shall have delivered to Borrowers and Agent an Assignment and Acceptance in a form acceptable to Agent (“Assignment and Acceptance”), and (C) the assignor Lender or Assignee has paid to Agent a processing fee in the amount of Two Thousand Five Hundred Dollars (\$2,500) unless the Assignee is an existing Lender.

(b) From and after the date that Agent notifies the assignor Lender that it has received (and provided its consent with respect to) an executed Assignment and Acceptance, payment of the above-referenced processing fee if required, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder and under the Loan Documents have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assignor Lender (unless such assignor Lender is a Defaulting Lender or the Assignee is an Affiliate or Related Person of such assignor Lender) shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Documents. Immediately upon the giving of Agent’s notice above, this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the changes resulting thereby.

(c) Any Lender may at any time sell to one or more commercial Lenders or other Persons not Affiliates of any Credit Party (a “Participant”) participating interests in its portion of a Loan (the “originating Lender”) hereunder and under the other Loan Documents; provided, that (i) the originating Lender’s obligations under this Agreement shall remain unchanged, (ii) the originating Lender shall remain solely responsible for the performance of such obligations, and (iii) Borrowers, and Agent shall continue to deal solely and directly with the originating Lender in connection with the originating Lender rights and obligations under this Agreement and the other Loan Documents.

(d) Notwithstanding any other provision in this Agreement, any Lender may grant a security interest in, or otherwise assign as collateral, any of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Notes), to (A) any federal reserve bank (pursuant to Regulation A of the Federal Reserve Board), without notice to Agent or (B) any holder of, or trustee for the benefit of the holders of, such Lender's Indebtedness or equity securities, by notice to Agent; provided, however, that no such holder or trustee, whether because of such grant or assignment or any foreclosure thereon (unless such foreclosure is made through an assignment in accordance with this Agreement), shall be entitled to any rights of such Lender hereunder and no such Lender shall be relieved of any of its obligations hereunder.

9.09 Set-off. In addition to any rights and remedies of the Lenders provided by law, if an Event of Default exists or the Notes have been accelerated, each Borrower hereby authorizes each Lender, at any time and from time to time, without prior notice to Borrowers, any such notice being waived by Borrowers to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender to or for the credit or the account of Borrowers against any and all Obligations owing to such Lender, now or hereafter existing, irrespective of whether or not Agent or such Lender shall have made demand under this Agreement or any Loan Document and although such Obligations may be contingent or unmatured. Each Lender agrees promptly to notify Borrowers and Agent after any such set-off and application made by such Lender; provided, that the failure to give such notice shall not affect the validity of such set-off and application.

9.10 Actions in Concert. Notwithstanding any provision in this Agreement to the contrary, no Lender shall take any action to protect or enforce its rights arising out of this Agreement or the Notes (including exercising any rights of setoff) without first obtaining the prior written consent of Agent.

9.11 Lender Notifications to Agent. Each Lender shall notify Agent in writing of any changes in the address to which notices to the Lender should be directed, of payment instructions in respect of all payments to be made to it hereunder, and of such other administrative information as Agent may reasonably request.

9.12 Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

9.13 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of the Credit Parties, the Lenders, Agent and their respective Related Persons, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents.

9.14 Governing Law. THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE

OF WASHINGTON; PROVIDED THAT AGENT AND THE LENDERS SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

9.15 Waiver of Jury Trial. THE CREDIT PARTIES, THE LENDERS AND AGENT EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY RELATED PERSON, PARTICIPANT OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. THE CREDIT PARTIES, THE LENDERS AND AGENT EACH AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

9.16 USA Patriot Act Notice. Each Lender and Agent (each for itself and not on behalf of any Lender) hereby notifies the Credit Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of the Credit Parties and other information that will allow such Lender or Agent, as applicable, to identify the Credit Parties in accordance with the Act.

9.17 Entire Agreement. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the Credit Parties, the Lenders and Agent, and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

9.18 Counterparts; Facsimile Signatures. This Agreement and the other Loan Documents may be executed in any number of counterparts, each of which where so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement or any of the other Loan Documents to produce or account for more than one such counterpart. Executed signature pages of the Agreement and the other Loan Documents may be delivered to the parties by facsimile or electronic transmission, and the parties may rely on any such signature page for all purposes; provided, that any party so delivering shall promptly deliver one or more original signature pages containing such party's signature at the request of the other party.

9.19 Release. Each Credit Party hereby releases, remises, acquits and forever discharges Agent and Lenders and their respective employees, agents, representatives, consultants, attorneys,

fiduciaries, officers, directors, partners, predecessors, successors and assigns, subsidiary corporations, parent corporations, and related corporate divisions (collectively, the "Released Parties"), from any and all actions and causes of action, judgments, executions, suits, debts, claims, demands, liabilities, obligations, damages and expenses of any and every character, known or unknown, direct and/or indirect, at law or in equity, of whatsoever kind or nature, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties prior to and including the Closing Date, and in any way directly or indirectly arising out of or in any way connected to this Agreement or the Loan Documents (collectively, the "Released Matters"). Each Credit Party acknowledges that the agreements in this paragraph are intended to be in full satisfaction of all or any alleged injuries or damages arising in connection with the Released Matters. Each Credit Party hereby waives the provisions of any statute or doctrine to the effect that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. Without limiting the generality of the foregoing, each Credit Party hereby waives the provisions of any statute that prevents a general release from extending to claims unknown by the releasing party.

Each Credit Party acknowledges and understands the rights and benefits conferred by such a statute or doctrine and the risks associated with waiver thereof, and after receiving advice of counsel, hereby consciously and voluntarily waives, relinquishes and releases any and all rights and benefits available thereunder, insofar as they apply, or may be construed to apply, to each release set forth herein or contemplated hereby. In so doing, each Credit Party expressly acknowledges and understands that it may hereafter discover facts in addition to or different from those that it now believes to be true with respect to the subject matter of the disputes, claims and other matters released herein, but expressly agrees that it has taken these facts and possibilities into account in electing to make and to enter into this release, and that the releases given herein shall be and remain in effect as full and complete releases notwithstanding the discovery or existence of any such additional or different facts or possibilities.

This release may be pleaded as a full and complete defense and/or as a cross-complaint or counterclaim against any action, suit, or other proceeding that may be instituted, prosecuted or attempted in breach of this release. Each Credit Party acknowledges that the release contained herein constitutes a material inducement to Agent and each of the Lenders to enter into this Agreement and that Agent and those Lenders would not have done so but for Agent's and each Lender's expectation that such release is valid and enforceable in all events.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

**Borrowers:**

**AH SYSTEM, INC.** a Washington nonprofit corporation

By: \_\_\_\_\_  
Name:  
Title:

**ASTRIA HEALTH,**  
a Washington nonprofit corporation

By: \_\_\_\_\_  
Name:  
Title:

**SUNNYSIDE COMMUNITY HOSPITAL ASSOCIATION,**  
a Washington nonprofit corporation

By: \_\_\_\_\_  
Name:  
Title:

**SHC MEDICAL CENTER – TOPPENISH,** a  
Washington non-profit corporation

By: \_\_\_\_\_  
Name:  
Title:

**SHC HOLDCO, LLC,** a Washington non-profit  
Limited Liability Company

By: \_\_\_\_\_  
Name:  
Title:

**SUNNYSIDE COMMUNITY HOSPITAL HOME  
MEDICAL SUPPLY, LLC,**  
a Washington limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**SUNNYSIDE HOME HEALTH,**  
a Washington nonprofit corporation

By: \_\_\_\_\_  
Name:  
Title:

**SUNNYSIDE PROFESSIONAL SERVICES, LLC,**  
a Washington limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**OXBOW SUMMIT, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**KITCHEN AND BATH FURNISHINGS, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**GLACIER CANYON, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**YAKIMA HOME CARE HOLDINGS, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**YAKIMA HOME CARE HOLDINGS, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**Guarantors:**

**SUNNYSIDE MEDICAL CENTER, LLC,** a  
Washington for-profit limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**SUNNYSIDE HOSPITAL SERVICE CORP.,** a  
Washington for-profit corporation

By: \_\_\_\_\_  
Name:  
Title:

**WEDDED BLISS, LLC,** a Delaware for-profit limited  
liability company

By: \_\_\_\_\_  
Name:  
Title:

**BRIDAL DREAMS, LLC,** a Delaware for-profit  
limited liability company

By: \_\_\_\_\_  
Name:  
Title: Authorized Signatory

**HOME SUPPLY, LLC**, a Delaware for-profit limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**KITCHEN APPLIANCE, LLC**, a Delaware for-profit limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**DEPOT PLUS, LLC**, a Delaware for-profit limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**NORTHWEST HEALTH, LLC**, a Delaware for-profit limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**PACIFIC NORTHWEST ASC MANAGEMENT, LLC**, a Delaware for-profit limited liability company

By: \_\_\_\_\_  
Name:  
Title:

Address for notices to Credit Parties:

1806 Yakima Valley Hwy

Sunnyside, WA 98944

Attn:

[THE LIQUIDATION TRUST], solely with respect to **Sections 2.04(a)**

By: \_\_\_\_\_

Name:

Title: Trustee

**Agent:**

LAPIS ADVISERS, LP, a Delaware limited partnership

By: LAPIS GP, LLC, a Delaware limited liability company

By: \_\_\_\_\_

Name: Kjerstin Hatch

Title: Managing Member

Address for notices:

Lapis Advisers, LP  
265 Magnolia Avenue, Suite A  
Larkspur, CA 94939  
Attention: Kjerstin Hatch  
Email: khatch@lapisadvisers.com

and

Lapis Advisers, LP  
265 Magnolia Avenue, Suite A  
Larkspur, CA 94939  
Attention: Basia Terrell  
Email: bterrell@lapisadvisers.com

**Lenders:**

MILLENNIUM TRUST COMPANY LLC  
CUSTODIAN FBO LAPIS MUNICIPAL  
OPPORTUNITIES FUND III LP

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notices:

Attn: Millennium Trust Securities Operations  
115153231  
2001 Spring Road, Suite 700  
Oak Brook, IL 60523

**EXHIBIT A**  
to the Credit Agreement  
PRO RATA SHARES

<b><u>Lender</u></b>	<b><u>Loan Amount – Loan A</u></b>	<b><u>Pro Rata Share</u></b>
MILLENNIUM TRUST COMPANY LLC CUSTODIAN FBO LAPIS MUNICIPAL OPPORTUNITIES FUND III LP	\$	100%
Total	\$	100%

**EXHIBIT B**  
to the Credit Agreement  
DISCLOSURE SCHEDULE  
See attached.

B-1

**EXHIBIT C**  
**FORM OF COMPLIANCE CERTIFICATE**

**COMPLIANCE CERTIFICATE**  
**[Astria Health and its affiliates]**

Date: \_\_\_\_\_, 201\_

This Compliance Certificate (this “*Certificate*”) is delivered by Astria Health, a Washington non-profit corporation, on behalf of themselves and the other Credit Parties to that certain Credit Agreement, dated as of December \_\_, 2020 (as extended, renewed, amended or restated from time to time, the “Credit Agreement”), among Borrowers, the credit parties party thereto, the several financial institutions from time to time party thereto as “Lenders”, and Lapis Advisers, LP, as Agent. Capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement.

The officer executing this Certificate is a Responsible Officer of Lead Borrower and is duly authorized to execute and deliver this Certificate on behalf of Borrowers. Such officer hereby certifies to Agent and Lenders on behalf of Borrowers, that:

(a) the financial statements delivered with this Certificate in accordance with Section 5.01 of the Credit Agreement fairly present, in all material respects, in accordance with GAAP the financial condition and the results of operations of the relevant Persons as of the dates of and for the periods covered by such financial statements (subject, in the case of interim financial statements, to normal year-end adjustments and the absence of footnote disclosure);

(b) to the best of such officer’s knowledge, no Default or Event of Default exists on the date hereof [**except as specified on the written attachment hereto**]; and

(c) *Exhibit A* contains correct calculations of each of the financial covenants contained in the Credit Agreement.

[Signature Page Follows]

**ASTRIA HEALTH,**  
a Washington nonprofit corporation

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit A to Compliance Certificate**

**EXHIBIT D**  
**FORM OF OPERATING REPORT**  
See attached.

Exhibit D-1

## Forbearance Agreement

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**FORBEARANCE AGREEMENT  
DATED AS OF [\_\_\_\_\_], 2020**

**BY AND AMONG:**

**AH SYSTEM, INC.**

**ASTRIA HEALTH,**

**SUNNYSIDE COMMUNITY HOSPITAL ASSOCIATION**

**SHC HOLDCO, LLC,**

**SHC MEDICAL CENTER—TOPPENISH**

**THE AFFILIATED PARTIES REFLECTED HEREIN**

**- AND -**

**UMB BANK, N.A, AS BOND TRUSTEE**

**- AND -**

**LAPIS ADVISERS, LP, AS AGENT**

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## FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (“Forbearance Agreement”) is executed as of [\_\_\_\_], 2020 (the “Agreement Date”) by and among **AH System, Inc., Astria Health, Sunnyside Community Hospital Association, SHC Medical Center—Toppenish, SHC Holdco, LLC, Sunnyside Community Hospital Home Medical Supply, LLC, Sunnyside Home Health, Sunnyside Professional Services, LLC, Oxbow Summitt, LLC, Kitchen and Bath Furnishings LLC, Glacier Canyon, LLC, Yakima Home Care Holdings, LLC, Yakima HMA Home Health, LLC, Sunnyside Hospital Service Corp., Sunnyside Medical Center, LLC, Wedded Bliss, LLC, Bridal Dreams, LLC, Home Supply, LLC, Kitchen Appliances, LLC, Depot Plus, LLC, Northwest Health, LLC, and Pacific Northwest ASC Management, LLC** (collectively, the “Obligated Parties”, each an “Obligated Party”), **UMB Bank, N.A.**, as bond trustee for the Bonds described more fully below (the “Trustee”), and **Lapis Advisers, LP**, as agent for the holders of the Bonds (“Lapis” and collectively with the Trustee, the “Lapis Parties”). The Obligated Parties, Trustee and Lapis may be referred to in the Forbearance Agreement as a “Party” and, collectively, as the “Parties”.

### RECITALS

The Obligated Parties have obligations with respect to those certain Washington Health Care Facilities Authority Health Care Facilities Revenue Bonds, Series 2017A (the “Series 2017A Bonds”) and Series 2017B (the “Series 2017B Bonds” and, together with the Series 2017A Bonds, collectively the “Bonds”).

The obligations of the Obligated Parties with respect to the Bonds are evidenced and secured by, among other documents, a Bond Indenture, dated as of November 1, 2017 (the “Bond Indenture”), a Loan and Security Agreement, dated as of November 1, 2017 (the “Loan Agreement”), two Continuing Guaranty agreements, dated as of November 1, 2017 (each, as amended, a “Guaranty”, collectively, the “Guarantees”), a Credit Agreement, dated as of November 1, 2017 (the “2017 Bond Credit Agreement”), a Security Agreement, dated as of November 1, 2017 (the “Security Agreement”), two Amended and Restated Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing agreements, dated as of November 1, 2017 (each a “Deed of Trust”, collectively the “Deeds of Trust”), and a Tax Certificate and Agreement, dated as of November 30, 2017 (the “Tax Agreement”). The Bond Indenture, Loan Agreement, Guarantees, 2017 Bond Credit Agreement, Security Agreement, Deeds of Trust, Tax Agreement, and any other document or agreement delivered as security for, or in respect to, the Bonds or the Obligated Parties’ obligations under any of such documents are collectively referred to herein as the “Bond Documents.”

Events of Default have occurred and continue pursuant to the Bond Documents as a result of, among other things, the Obligated Parties’ failure to make debt service payments as required by the Bond Documents, the commencement by thirteen of the Obligated Parties of bankruptcy proceedings under Chapter 11 of the title 11 of the United States Code (the “Chapter 11 Cases”) in the United States Bankruptcy Court for the Eastern District of Washington (the “Bankruptcy Court”), and the Obligated Parties’ breach of numerous covenants under the Bond Documents, including covenants relating to financial reporting, financial covenants, the incurrence of additional indebtedness, and the incurrence of liens (collectively, the “Specified Defaults”).

*A Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and its Debtor Affiliates* was filed in the Chapter 11 Cases (as amended, supplemented or modified, from time to time, the “Plan”) contemplating, among other things, a forbearance by the Lapis Parties with respect to the

Specified Defaults and certain additional defaults that may occur under the Bond Documents during the Forbearance Period specified below. The Plan also contemplates a Credit Agreement to implement Plan terms related to other funded indebtedness incurred by some or all of the Obligated Parties both prior to and during the Chapter 11 Cases (the "Credit Agreement").

The Trustee, at the direction of Lapis, has agreed to forbear as provided in the Plan, subject to and upon the conditions set forth herein and in reliance upon the truth of the foregoing recitals, and of the promises, conditions and covenants herein contained.

**NOW THEREFORE**, in consideration of the consummation of the transactions contemplated by this Forbearance Agreement, the mutual covenants and commitments set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## **ARTICLE I: GENERAL REPRESENTATIONS**

**1.1. RECITALS.** The recitals set forth above are incorporated herein and form an integral part of this Forbearance Agreement.

**1.2. CERTAIN DEFINED TERMS.** Capitalized terms not specifically defined in this Forbearance Agreement shall have the meanings used in the Bond Indenture.

**1.3. REPRESENTATIONS, ACKNOWLEDGEMENTS CONCERNING THE BONDS.** Each Obligated Party acknowledges, agrees and affirms, upon which representations the Lapis Parties have relied in entering into this Forbearance Agreement, that as of the Agreement Date: (i) the recitals set forth in the beginning of this Forbearance Agreement are true and accurate; (ii) the Bond Documents to which any Obligated Party is a party constitute the valid and binding obligations of such Obligated Party; (iii) the Bond Documents are in full force and effect; (iv) the outstanding principal amount of the Bonds is \$[\_\_\_]; (v) the accrued and unpaid interest on the Bonds is \$[\_\_\_] (vi) all of the real and personal property owned by each Obligated Party is subject to liens granted to the Trustee under the Bond Documents; (vii) each Obligated Party's obligations under the Bond Documents are not subject to any defense, set-off, reduction, claim or counterclaim of any kind or nature whether at law or in equity; and (viii) a complete list of the Specified Defaults, and the additional Events of Default that are expected to occur during the Forbearance Period (collectively, the "Known Anticipated Defaults") is set forth in Schedule 1.3 to this Forbearance Agreement. Each Obligated Party hereby ratifies and confirms its grant of a security interest those assets pledged as collateral under the Bond Documents in favor of the Trustee to secure the Bonds and amounts owing under the Bond Documents. Each Obligated Party hereby warrants that there are no material assets of such Obligated Party not subject to the lien of the Trustee.

**1.4. REPRESENTATIONS, ACKNOWLEDGEMENTS CONCERNING EVENTS OF DEFAULT.** Each Obligated Party stipulates that each Specified Default and Known Anticipated Default can only be resolved on a permanent basis by a written waiver delivered by the Lapis Parties, and waives all terms of the Bond Documents that contemplate or require any notice or passage of time in connection with the foregoing. Each Obligated Party represents and warrants that as of the Agreement Date to the best of its knowledge there is no other default or Event of Default, or any event which, with notice or lapse of time or both, would constitute a default or Event of Default under any of the Bond Documents, other than the Specified Defaults and the Known Anticipated Defaults.

**1.5. MUTUAL REPRESENTATIONS OF THE PARTIES.** Each Party represents to the other Parties that: (i) all of its representations and warranties in this Forbearance Agreement are true and correct as of the date hereof, and shall survive the expiration or termination of this Forbearance Agreement; (ii) it has the legal right, power and authority to enter into this Forbearance Agreement and, (iii) upon the occurrence of the Effective Date (as defined in the Plan) following the entry of an order confirming the Plan (the “Confirmation Order”), this Forbearance Agreement will be a legal and binding obligation of such Party, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors’ rights generally).

## **ARTICLE II: FORBEARANCE**

**2.1. FORBEARANCE.** The period of this forbearance (the “Forbearance Period”) shall commence on the Effective Date and shall continue until the earlier of (i) a Termination Event, or (ii) the two (2) year anniversary of the Effective Date. During the Forbearance Period, the Lapis Parties hereby agree to forbear from exercising remedies under the Bond Documents arising by reason of the Specified Defaults and Known Anticipated Defaults. Upon the termination of the Forbearance Period, all forbearances, deferrals and indulgences granted by the Lapis Parties pursuant to this Forbearance Agreement shall automatically terminate, and the Lapis Parties shall thereupon have, and shall be entitled to exercise, any and all of their respective rights and remedies under the Bond Documents or otherwise.

**2.2. STIPULATIONS REGARDING FORBEARANCE.** The agreements by the Lapis Parties in this Forbearance Agreement: (i) are not a waiver, release, forgiveness, amendment and/or restructuring of any payment, covenant or other obligations of any Obligated Party under any Bond Document; (ii) are not a waiver by the Lapis Parties of any existing and continuing defaults under the Bond Documents, it being acknowledged and agreed that no such waiver shall be effected hereby; and (iii) are only an agreement to forbear from exercising rights to otherwise pursue its remedies under the Bond Documents based on the occurrence of Specified Defaults and Known Anticipated Defaults. This Forbearance Agreement shall not limit any rights or remedies the Lapis Parties may have based on any default or Event of Default that is not a Specified Default or Known Anticipated Default or, upon a Termination Event, based on any default or Event of Default that is otherwise a Specified Default or Known Anticipated Default. Nothing in this Forbearance Agreement shall obligate the Lapis Parties to deliver any consent or waiver relating to the Bond Documents. The parties acknowledge that, subject to the terms of this Forbearance Agreement and the Lapis Parties’ agreement to forbear as more particularly set forth herein, all terms of the Bond Documents and obligations thereunder remain in full force and effect. All references in this Forbearance Agreement to the Trustee’s agreeing with or agreement to, consenting to or consent to, acknowledging or acknowledgement of, or any like action by the Trustee, shall refer to such entity having been directed so to agree, consent, acknowledge or take like action pursuant to a direction from Lapis.

## **ARTICLE III: RELEASE**

**3.1. RELEASE.** In order to induce the Lapis Parties to enter into this Forbearance Agreement, each Obligated Party and its officers, directors, and employees (each a “Releasing Party”) hereby release and forever discharge each of the Lapis Parties and their respective employees, directors, officers, attorneys, professionals and advisors (collectively, the “Released Group”) of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which is has had or may now have against any such member of the Released

**Group, whether presently known or unknown, and of every nature and extent whatsoever arising out of, founded upon, relating in any way to or resulting from, the Bond Documents or the administration thereof, including without limitation, any and all claims based upon or relying on any allegations or assertions of duress, illegality, unconscionability, bad faith, breach of contract, regulatory violations, negligence, misconduct, or any other tort, contract, or regulatory claim of any kind or nature. This release is intended to be final and irrevocable and is not subject to the satisfaction of conditions of any kind.**

**3.2. BINDING NATURE.** The provisions set forth in this **Article III** are binding upon each Releasing Party, assigns and successors in interest. The provisions, waivers and releases of this **Article III** shall inure to the benefit of the Released Group. Each Releasing Party represents that it is the sole and lawful owners of all right, title and interest in and to all of the claims released by it hereby and it has not heretofore voluntarily, by operation of law or otherwise, assigned or transferred or purported to assign or transfer to any person any such claim or any portion thereof. Each Obligated Party hereby indemnifies and holds harmless each member of the Released Parties from and against any claim, demand, damage, debt, liability (including payment of reasonable attorneys' fees and costs actually incurred whether or not litigation is commenced) based on or arising out of any assignment or transfer of any released claims made by the Releasing Parties hereunder. The provisions of this **Article III** shall survive full performance of all the terms of the Bond Documents, and any exercise of the Trustee's remedial actions under the Bond Documents following the occurrence of a Termination Event.

#### **ARTICLE IV: COVENANTS AND AGREEMENTS OF THE BORROWER**

To further induce the Lapis Parties to enter into this Forbearance Agreement and to forbear, as and to the extent provided in this Forbearance Agreement, each Obligated Party further covenants and agrees, and represents and warrants to the Lapis Parties as follows:

**4.1. FEES AND EXPENSES.** The Obligated Parties shall pay all reasonable fees and expenses of the Lapis Parties (including, but not limited to, reasonable fees and expenses of its attorneys) in connection with the negotiation, execution and enforcement of this Forbearance Agreement and any foregoing fees and expenses upon presentment thereof on a current basis in accordance with the provisions for payment of fees and expenses of the Lapis Parties as set forth in the Bond Documents; provided, however, that nothing herein modifies, alters or amends the Lapis Parties respective rights under the Plan or rights under the Bond Documents to receive payment of its fees and expenses from the Trust Estate. Each Obligated Party reaffirms the Lapis Parties' right to payment of fees and expenses and to the liens securing the same, all as set forth in the Bond Documents. Each Obligated Party acknowledges and agrees that nothing in this Forbearance Agreement shall act in derogation of such right to payment or such liens.

**4.2 PAYMENTS UNDER CREDIT AGREEMENT.** During the Forbearance Period, the Agent as defined in the Credit Agreement shall remit payments to the Trustee at the times, on the terms, and in the amounts specified in the Credit Agreement. The Trustee shall apply all such funds as received in accordance with the Bond Documents.

**4.3 LIENS, INDEBTEDNESS, SALE OR AFFILIATION.** Unless (i) contemplated by the Plan or Credit Agreement or (ii) otherwise approved in advance by the Lapis Parties, no Obligated Party shall engage in any material transaction outside the ordinary course of business, or incur additional indebtedness, including without limitation, affiliation, merger, sale or similar transactions, granting

of a lien, mortgage or security interest in any of its property or encumber any assets or enter into any partnership, joint venture, monetization or similar transaction with respect to the programs or assets of such Obligated Party.

**4.4 COMPLIANCE WITH THE PLAN AND CONFIRMATION ORDER.** Each Obligated Party, as applicable, shall comply with the terms, conditions, and obligations under the Plan and Confirmation Order.

**4.5 COMPLIANCE WITH THE CREDIT AGREEMENT.** Each Obligated Party, as applicable, shall comply with the terms, conditions, and obligations under the Credit Agreement.

**4.6 COMPLIANCE WITH TAX REGULATORY REQUIREMENTS.** Each Obligated Party, as applicable, shall comply with the tax regulatory requirements under the Bond Documents, including, without limitation, the requirements set forth in the Tax Agreement.

**4.7 COMPLIANCE WITH FINANCIAL AND INFORMATIONAL REPORTING REQUIREMENTS.**

(A) During the Forbearance Period, the Obligated Parties shall provide or cause to be provided to the Lapis Parties for posting to the Municipal Securities Rulemaking Board (“MSRB”) EMMA Service, not less than thirty (30) days prior to the commencement of each Fiscal Year, an annual budget for such Fiscal Year for the Obligated Parties on a consolidated and consolidating basis.

(B) During the Forbearance Period, each Obligated Party shall provide or cause to be provided to the Lapis Parties for posing to the MSRB EMMA Service, within thirty (30) days of the end of each fiscal quarter: (i) unaudited monthly and Fiscal Year to date financial statements for the Obligated Parties, in each case prepared on a consolidated and consolidating basis along with combining entries eliminating material inter-company balances and transactions, for the periods ending the on the last day of the applicable quarter, including a balance sheet, a statement of revenue and expenditure, a statement of changes in fund balances; (ii) a comparison of year to date revenues and expenses to the budget furnished pursuant to Section 4.7(A) and a management discussion and analysis of such statements with respect to material variances from the budget; and (iii) operating data.

(C) Each Obligated Party shall, unless otherwise approved in advance by the Lapis Parties, comply with all reporting requirements under the Plan, the Confirmation Order, and the Credit Agreement. Each Obligated Party acknowledges and agrees that it shall in addition provide the Lapis Parties copies of any and all information that each Obligated Party is required to provide pursuant to the Credit Agreement to the parties thereto upon the terms and conditions described therein.

(D) The Agent shall provide the Trustee such information as the Trustee may reasonably request from time to time in the administration of this Forbearance Agreement.

**4.8 COOPERATION WITH LAPIS PARTIES.** In addition to those materials required to be provided herein, each Obligated Party hereby agrees to cooperate with, and provide materials as reasonably requested by, the Lapis Parties and to engage in such discussions regarding the operation of any Obligated Party as reasonably requested by the Lapis Parties. Each Obligated Party shall provide the Lapis Parties, upon reasonable request, all other financial and other information related to such Obligated Party, within ten (10) Business Days of such request.

## ARTICLE VI: CONDITIONS TO EFFECTIVENESS

Notwithstanding any provision of this Forbearance Agreement, the Lapis Parties' obligations under this Forbearance Agreement are expressly conditioned upon, and this Forbearance Agreement shall not be effective until, (i) the occurrence of the Effective Date; and (ii) the Lapis Parties' receipt of a fully executed copy of the Credit Agreement.

## ARTICLE VII: FORBEARANCE TERMINATION EVENTS

**7.1. TERMINATION EVENTS.** The Trustee's obligations under this Forbearance Agreement shall terminate immediately, without any further action, upon the occurrence of any Termination Events set forth below:

(i) If any of the representations made under this Forbearance Agreement or any other report or certificate delivered by any Obligated Party hereunder shall not have been true, accurate or complete in any material respect when made; or

(ii) The occurrence of any Event of Default under any Bond Document that is not a Specified Default or Known Anticipated Default, upon written notice from the Trustee to the Obligated Parties; or

(iii) A breach by any Obligated Party of any covenant under this Forbearance Agreement that is not subject to a specific Termination Event described in this Forbearance Agreement that remains uncured fifteen (15) days after receipt of written notice from the Trustee thereof; or

(iv) A breach by any Obligated Party of any term, condition, or obligation under the Plan, or the Confirmation Order; or

(v) The occurrence of any Event of Default under the Credit Agreement, upon written notice from the Trustee to the Obligated Parties; or

(vi) The Credit Agreement ceases to be effective or the indebtedness evidenced by the Credit Agreement is defeased or otherwise paid in full in cash; or

(vii) The failure by any Obligated Party to comply with the tax regulatory requirements under the Bond Documents, including, but not limited to, those set forth in the Tax Agreement; or

(viii) The commencement after the Effective Date of: (a) proceedings naming any Obligated Party as a debtor under any chapter of the United States Bankruptcy Code, 11 U.S.C. § 101 *et. seq.*, (b) receivership proceedings naming any Obligated Party or involving a substantial part of its property, (c) an assignment for the benefit of creditors by any Obligated Party, or (d) any substantially similar event or proceeding involving any Obligated Party or a substantial part of its property; or

(ix) Any assertion by any Obligated Party of the existence of any defense, setoff, reduction, claim or counterclaim, at law or in equity, with respect to the Bonds, this Forbearance Agreement, or any Bond Documents; or

(x) Any Obligated Party suspends all or a material portion of its operations; or

(xi) Any material license relating to any Obligated Party is suspended or terminated or the an Obligated Party is suspended, disqualified or terminated from participation in any federal or state program and is not reinstated within fifteen days; or

(xii) Any material adverse change with respect to any Obligated Party or its business, including, without limitation, its financial condition or its ability to perform its obligations under Bond Documents, the Plan, the Confirmation Order, or the Credit Agreement (collectively, the “Definitive Documents”), the rights and remedies of the Trustee under the Definitive Documents or the legality, validity or enforceability against an Obligated Party of any Definitive Documents to which it is a party.

**7.2. EFFECT OF OCCURRENCE OF TERMINATION EVENT.** Upon the occurrence of a Termination Event, (a) the Lapis Parties’ obligations under this Forbearance Agreement shall automatically terminate; and (b) the Lapis Parties may immediately commence enforcing rights and remedies pursuant to the Bond Documents, applicable law and otherwise, in such order and manner as the Trustee may determine appropriate in its discretion.

## **ARTICLE VIII: ADDITIONAL TERMS**

**8.1 CERTAIN DISCLOSURES.** Each Obligated Party acknowledges that: (a) it has read and understands the contents of this Forbearance Agreement and any documents delivered in connection herewith, (b) it has had the opportunity to consult with counsel of its choice throughout all of the negotiations that preceded the execution of this Forbearance Agreement, and (c) it has acted voluntarily and without duress in connection with the execution and delivery of this Forbearance Agreement after reviewing and understanding each provision of such documents and without reliance upon any promise or representation of any person or persons acting for or on behalf of any Creditor Party. Each Obligated Party acknowledges that the agreement by the Lapis Parties set forth herein is given at the request of the Obligated Parties and each Obligated Party warrants to and for the benefit of the Lapis Parties that such agreement shall not have the effect of releasing any person or entity from liability for repayment of the indebtedness or performance of the obligations evidenced and/or secured by any of the other Bond Documents. Each Obligated Party hereby waives all notices of default and rights to cure as provided in the Bond Documents or otherwise with respect to the Specified Defaults.

**8.2. CERTAIN RIGHTS AND PROTECTIONS.** With respect to any action taken, permitted or required to be taken, or not taken by the Lapis Parties under this Forbearance Agreement, the standard of conduct, scope of obligations, and duty to act (or refrain from acting) of the Lapis Parties shall be governed by the Bond Documents. The Lapis Parties shall have the same rights and be entitled to the same protections and immunities as are set forth in the Bond Documents with respect to actions or inaction by the Trustee under this Forbearance Agreement.

**8.3. NOTICES.** All notices, demands, requests, consents, approvals and other communications (“Notice” or “Notices”) under this Forbearance Agreement shall be in writing and delivered by: (i) courier or messenger service, (ii) express or overnight mail, or (iii) certified mail, return receipt requested and postage prepaid, addressed to the Parties as set forth in , or to such other addresses any Party may hereafter designate in writing. Notice by courier or messenger service or express or overnight mail shall be effective upon receipt. Notice by certified mail shall be effective three (3) business days after deposit in the U.S. mail system. Except where notice is specifically required by this Forbearance Agreement, no notice to or demand on any Obligated Party in any case

shall entitle an Obligated Party to any other or further notice or demand in similar or other circumstances.

**8.4. MODIFICATION.** No amendment, modification, supplement, or waiver of any provision of this Forbearance Agreement shall be effective unless in writing and signed by each Party.

**8.6. ASSIGNMENT; BINDING EFFECT.** No Obligated Party shall assign any rights or obligations under this Forbearance Agreement without the express prior written consent of the Lapis Parties. This Forbearance Agreement shall continue in full force and effect and be binding upon each Obligated Party, its representatives, administrators, successors and assigns and shall inure to the benefit of and be enforceable by the Lapis Parties, their successors, endorsers and assigns.

**8.7. GOVERNING LAW.** All rights, duties, benefits, and privileges under this Forbearance Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington, without regards to its conflict of laws principles.

**8.8. RIGHTS CUMULATIVE.** The rights of the Lapis Parties under this Forbearance Agreement shall not exclude any other legal or equitable rights of the Lapis Parties against any Obligated Party not expressly set forth herein, but shall be understood as being cumulative to all other legal and equitable rights of the Lapis Parties arising out of such parties' obligations. No failure on the part of the Lapis Parties to exercise and no delay in exercising any right under this Forbearance Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Forbearance Agreement preclude any other or further exercise thereof or the exercise of any other rights. Except as expressly set forth herein, all rights of the Lapis Parties described in this Forbearance Agreement shall be exercised by the Lapis Parties in their sole discretion.

**8.9. BANKRUPTCY MATTERS.** This Forbearance Agreement shall constitute a contract to extend financial accommodations for the purposes of the United States Bankruptcy Code, including but not limited to 11 U.S.C. § 365. Each Obligated Party acknowledges and agrees that all amounts on deposit in each Bond Fund and Reserve Fund established under the Bond Documents are held in trust by the Trustee for the benefit of the owners of the Bonds and no Obligated Party has any right, title or interest in such funds. Each Obligated Party further hereby acknowledges and agrees that the Bond Funds and the Reserve Funds are not "property of the debtor's estate" under 11 U.S.C. § 541, are not protected by the automatic stay under 11 U.S.C. § 362, and are not "cash collateral" under 11 U.S.C. § 363.

**8.10. CONSTRUCTION / HEADINGS.** Each Party has been represented by counsel of its choice in negotiating this Forbearance Agreement; this Forbearance Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the Parties, at arm's length, and be interpreted without favor to any Party. The headings contained in this Forbearance Agreement are for convenience and reference only and shall not define, limit or otherwise affect the meaning of any terms or provisions hereof.

**8.11. FURTHER ASSURANCES.** Each Party shall perform all acts and execute all documents reasonably requested by any other Party to this Forbearance Agreement from time to time reasonably necessary to carry out the provisions and purposes of this Forbearance Agreement.

**8.12. TIME IS OF THE ESSENCE.** Time shall be of the essence with respect to each and every one of the various undertakings and obligations set forth in this Forbearance Agreement.

**8.13. NON-INTERFERENCE.** Upon the occurrence of a Termination Event, each Obligated Party agrees not to interfere with the lawful exercise by the Trustee of any of its rights and remedies. Each Obligated Party further agrees that in the event of such occurrence it shall not seek to distrain or otherwise hinder, delay or impair the Trustee's efforts to realize upon any Collateral pursuant to the Bond Documents, or otherwise to enforce its rights and remedies thereunder.

**8.14. EXECUTION.** This Forbearance Agreement and any amendments, waivers, consents or supplements hereto may be executed in counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement. Facsimile or PDF signatures on this Forbearance Agreement shall be treated as original signatures for all purposes.

*[signature page follows]*

IN WITNESS WHEREOF, the Parties have executed this Forbearance Agreement as of the date first above written.

<p><b>AH SYSTEM, INC.</b></p> <p><b>BY:</b> _____</p> <p><b>NAME:</b> _____</p> <p><b>TITLE:</b> _____</p>	<p><b>ASTRIA HEALTH</b></p> <p><b>BY:</b> _____</p> <p><b>NAME:</b> _____</p> <p><b>TITLE:</b> _____</p>
<p><b>SUNNYSIDE COMMUNITY HOSPITAL ASSOCIATION</b></p> <p><b>BY:</b> _____</p> <p><b>NAME:</b> _____</p> <p><b>TITLE:</b> _____</p>	<p><b>SHC HOLDCO, LLC</b></p> <p><b>BY:</b> _____</p> <p><b>NAME:</b> _____</p> <p><b>TITLE:</b> _____</p>
<p><b>SHC MEDICAL CENTER—TOPPENISH</b></p> <p><b>BY:</b> _____</p> <p><b>NAME:</b> _____</p> <p><b>TITLE:</b> _____</p>	<p><b>SUNNYSIDE COMMUNITY HOSPITAL HOME MEDICAL SUPPLY, LLC</b></p> <p><b>BY:</b> _____</p> <p><b>NAME:</b> _____</p> <p><b>TITLE:</b> _____</p>
<p><b>SUNNYSIDE HOME HEALTH</b></p> <p><b>BY:</b> _____</p> <p><b>NAME:</b> _____</p> <p><b>TITLE:</b> _____</p>	<p><b>SUNNYSIDE PROFESSIONAL SERVICES</b></p> <p><b>BY:</b> _____</p> <p><b>NAME:</b> _____</p> <p><b>TITLE:</b> _____</p>
<p><b>OXBOW SUMMITT, LLC</b></p> <p><b>BY:</b> _____</p> <p><b>NAME:</b> _____</p> <p><b>TITLE:</b> _____</p>	<p><b>KITCHEN AND BATH FURNISHINGS, LLC</b></p> <p><b>BY:</b> _____</p> <p><b>NAME:</b> _____</p> <p><b>TITLE:</b> _____</p>

<b>GLACIER CANYON, LLC</b> <b>BY:</b> _____ <b>NAME:</b> _____ <b>TITLE:</b> _____	<b>YAKIMA HOME CARE HOLDINGS, LLC</b> <b>BY:</b> _____ <b>NAME:</b> _____ <b>TITLE:</b> _____
<b>YAKIMA HMA HOME HEALTH, LLC</b> <b>BY:</b> _____ <b>NAME:</b> _____ <b>TITLE:</b> _____	<b>SUNNYSIDE HOSPITAL SERVICE CORP</b> <b>BY:</b> _____ <b>NAME:</b> _____ <b>TITLE:</b> _____
<b>SUNNYSIDE MEDICAL CENTER, LLC</b> <b>BY:</b> _____ <b>NAME:</b> _____ <b>TITLE:</b> _____	<b>WEDDED BLISS, LLC</b> <b>BY:</b> _____ <b>NAME:</b> _____ <b>TITLE:</b> _____
<b>BRIDAL DREAMS, LLC</b> <b>BY:</b> _____ <b>NAME:</b> _____ <b>TITLE:</b> _____	<b>HOME SUPPLY, LLC</b> <b>BY:</b> _____ <b>NAME:</b> _____ <b>TITLE:</b> _____
<b>KITCHEN APPLIANCES, LLC</b> <b>BY:</b> _____ <b>NAME:</b> _____ <b>TITLE:</b> _____	<b>DEPOT PLUS, LLC</b> <b>BY:</b> _____ <b>NAME:</b> _____ <b>TITLE:</b> _____
<b>NORTHWEST HEALTH, LLC</b> <b>BY:</b> _____ <b>NAME:</b> _____ <b>TITLE:</b> _____	<b>PACIFIC NORTHWEST ASC MANAGEMENT, LLC</b> <b>BY:</b> _____ <b>NAME:</b> _____ <b>TITLE:</b> _____

<p><b>UMB BANK, NATIONAL ASSOCIATION,</b> as Trustee for the Bonds</p> <p><b>BY:</b> _____</p> <p><b>NAME:</b> _____</p> <p><b>TITLE:</b> _____</p>	<p><b>LAPIS ADVISERS, LP,</b> AS AGENT FOR THE HOLDERS OF THE BONDS AND AS AGENT UNDER THE CREDIT AGREEMENT</p> <p><b>BY:</b> _____</p> <p><b>NAME:</b> _____</p> <p><b>TITLE:</b> _____</p>
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**Schedule 1.3**  
**Specified Defaults and Known Anticipated Defaults**

**Schedule 8.3  
Notice Parties**

If to the Trustee to:	UMB Bank, National Association Attention: Lorna Gleason 120 South Sixth Street #1400 Minneapolis, MN 55402  with a copy to:  William W. Kannel Mintz Levin Cohn Ferris Glovsky and Popeo, P.C. One Financial Center Boston, MA 02111
If to Lapis to:	Lapis Advisers, LP Attention: Kjerstin Hatch 265 Magnolia Avenue, Suite 100 Larkspur, CA 94939
If to any Obligated Party:	

**Exhibit E**

## GUC DISTRIBUTION TRUST AGREEMENT

This GUC Distribution Trust Agreement (“GUC Distribution Trust Agreement” or “Agreement”), dated as of [\*], 2020, by and between Astria Health, *et al.*, debtors and debtors in possession (the “Debtors”), and [\*] (the “GUC Distribution Trustee” or “Trustee”), is hereby being executed to facilitate the implementation of the Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and Its Debtor Affiliates (as amended, modified or supplemented, the “Plan”), which provides for the establishment of the GUC Distribution Trust (as defined below) created by this GUC Distribution Trust Agreement and the administration and disposition of the GUC Distribution Trust Assets (as defined below), all for the benefit of the holders of certain General Unsecured Claims<sup>1</sup> as set forth in the Plan. The GUC Distribution Trustee’s powers and duties are as set forth herein.

WHEREAS, on May 6, 2019 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Washington (the “Bankruptcy Court” or “Court”);

WHEREAS, on November 11, 2020, the Debtors filed the Plan with the Bankruptcy Court;

WHEREAS, on December [\*], 2020, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”);

WHEREAS, the Plan will become effective on the Effective Date;

WHEREAS, [\*] is hereby being appointed GUC Distribution Trustee;

WHEREAS, a post-effective date committee (the “POC”) has been appointed effective as of the Effective Date to advise the GUC Distribution Trustee in the performance of the GUC Distribution Trustee’s duties and obligations under the Plan for the benefit of the Holders of Allowed Class 4 General Unsecured Claims, currently consisting of the persons and/or entities identified on Schedule 1 attached hereto; and

WHEREAS, the Plan provides, inter alia, for:

- (a) the transfer to the GUC Distribution Trust, on the Effective Date (or thereafter as specified in the Plan), of all GUC Distribution Trust Assets free and clear of all Claims and interests in accordance with section 1141 of the Bankruptcy Code (collectively with such additional or different corpus as the GUC Distribution Trustee may from time to time acquire and hold pursuant to this Agreement or the Plan, the “GUC Distribution Trust Assets”);

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<sup>1</sup> Unless otherwise defined, all capitalized terms contained in this GUC Distribution Trust Agreement have the meanings ascribed to them in the Plan. To the extent that a definition of a term in the text of this GUC Distribution Trust Agreement and the definition of such term in the Plan are inconsistent, the definition in the Plan shall control.

- (b) the distribution of the GUC Distribution Trust Assets and/or their proceeds in accordance with the terms of the Plan, including for the benefit of the Holders of Allowed Class 4 General Unsecured Claims (collectively with all parties entitled to receive distributions from the GUC Distribution Trust under the terms of the Plan, the “Beneficiaries;” provided, however, that to the extent any Claim is not an Allowed Claim, the Holder of such Claim shall not be deemed a Beneficiary hereunder);
- (c) the federal income tax treatment (i) of the Beneficiaries as the grantors of the GUC Distribution Trust and the owners of the GUC Distribution Trust Assets and (ii) of the transfer of the GUC Distribution Trust Assets to the GUC Distribution Trust as a deemed transfer from the Debtors to the Beneficiaries followed by a deemed transfer by the Beneficiaries to the GUC Distribution Trust;
- (d) the establishment of reserves necessary to effectuate the terms of the Plan, including the establishment of (i) the GUC Distribution Reserve, from which payments may be made to Holders of Class 4 General Unsecured Claims that become Allowed and (ii) such reserves as reasonably necessary and appropriate to account for and pay all Post-Effective Date Expenses (including the fees and expenses of the GUC Distribution Trustee; the fees and expenses of the professionals employed by the GUC Distribution Trustee (subject to any approvals required under the Plan); and other costs, expenses, and obligations of the GUC Distribution Trust); and
- (e) the administration of the GUC Distribution Trust and the GUC Distribution Trust Assets by the GUC Distribution Trustee for the purposes and in the manner set forth in this GUC Distribution Trust Agreement, subject to the Plan; and

WHEREAS, the GUC Distribution Trust is intended to be treated as a GUC Distribution Trust pursuant to Treasury Regulations, Sec. 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 124, and as a grantor trust subject to the provisions of Subtitle A, Chapter 1, Subchapter J, Part 1, Subpart E of the Tax Code (hereinafter defined) owned by the Beneficiaries as grantors;

NOW, THEREFORE, pursuant to the Plan and in consideration of the premises, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereby agree as follows:

## ARTICLE 1

### DECLARATION OF TRUST

**1.1 Purpose of the GUC Distribution Trust.** The Debtors and the GUC Distribution Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the Bankruptcy Code, applicable tax statutes, rules, and regulations, to the extent incorporated in this Agreement, hereby constitute and create a trust (the “GUC Distribution Trust”) for the purpose of effectuating certain aspects of the Plan and liquidating and administering the GUC Distribution Trust Assets for the benefit of the Beneficiaries, with no objective to continue or engage in the conduct of a trade or business. In particular, the GUC Distribution Trust, through the GUC Distribution Trustee, shall (i) pending the reduction to Cash of the GUC Distribution Trust Assets (and any non-Cash proceeds thereof), manage, and collect and obtain proceeds from, the GUC Distribution Trust Assets, with the goal of reducing the GUC Distribution Trust Assets (and any non-Cash proceeds thereof) to Cash; (ii) make distributions pursuant to this Agreement, the Plan, and the Confirmation Order; and (iii) take such steps as are reasonably necessary to accomplish such purposes, all as more fully provided in, and subject to the terms and provisions of, the Plan, the Confirmation Order, and this Agreement. The GUC Distribution Trust shall not have authority to engage in a trade or business, and no portions of the GUC Distribution Trust Assets shall be used in the conduct of a trade or business, except as is reasonably necessary for the prompt and orderly collection and reduction to Cash of the GUC Distribution Trust Assets (and any non-Cash proceeds thereof) and effectuate the applicable provisions of the Plan, with the goal of maximizing such assets for the benefit of the Beneficiaries.

**1.2 Name of the GUC Distribution Trust.** The GUC Distribution Trust established hereby shall be known as the “Astria Health GUC Distribution Trust.” In connection with the exercise of his or her powers, the GUC Distribution Trustee may use such name or such variation thereof as they see fit and may transact the business and affairs of the GUC Distribution Trust in such name.

**1.3 Transfer of Assets to Create GUC Distribution Trust.** Pursuant to the Plan and the Confirmation Order, the Debtors and the Estates hereby irrevocably grant, release, assign, transfer, convey, and deliver to the Trustee: (i) as of the Effective Date, all GUC Distribution Trust Assets available for transfer on that date; and (ii) from time to time after the Effective Date, (x) on such terms and at such times set forth in the Plan, any GUC Distribution Trust Assets that are not available for transfer on the Effective Date and (y) such additional or different corpus as the GUC Distribution Trustee may from time to time acquire and hold in trust pursuant to the Plan or this GUC Distribution Trust Agreement, to have and to hold by the GUC Distribution Trustee and the GUC Distribution Trustee’s successors in trust and to be applied as specified in the Plan and this Agreement. Upon the transfer of each GUC Distribution Trust Asset to the GUC Distribution Trust, the Debtors shall retain no interest in such GUC Distribution Trust Asset. On the Effective Date and from time to time thereafter, the Debtors shall execute and deliver or cause to be executed and delivered to or upon the direction of the GUC Distribution Trustee any and all such documents, in recordable form where necessary or appropriate, and the Debtors shall take or cause to be taken such further or other action, as the GUC Distribution Trustee may reasonably deem appropriate, to vest or perfect in or confirm to

the GUC Distribution Trustee, title to and possession of all of the GUC Distribution Trust Assets. In connection herewith, the GUC Distribution Trustee shall be responsible for establishing and maintaining such accounts as the GUC Distribution Trustee shall deem necessary or appropriate to carry out the provisions of this GUC Distribution Trust Agreement, and to perform all obligations specified for the GUC Distribution Trustee under the Plan, the Confirmation Order, and this Agreement.

**1.4 Acceptance by GUC Distribution Trustee.** The GUC Distribution Trustee hereby accepts: (i) the appointment to serve as GUC Distribution Trustee; (ii) the transfer of the GUC Distribution Trust Assets on behalf of the GUC Distribution Trust; and (iii) the trust imposed by this GUC Distribution Trust Agreement. The GUC Distribution Trustee agrees to receive, hold, administer, and distribute the GUC Distribution Trust Assets and the income or other proceeds derived therefrom, if any, pursuant to the terms of the Plan, the Confirmation Order, and this Agreement. The GUC Distribution Trustee agrees to perform all activities reasonably necessary to ensure the transfer of the GUC Distribution Trust Assets on behalf of the GUC Distribution Trust.

## ARTICLE 2

### GUC DISTRIBUTION TRUSTEE - GENERALLY

**2.1 Appointment.** The initial GUC Distribution Trustee shall be [\*].

**2.2 Term of Service.** The GUC Distribution Trustee shall serve until (i) the termination of the GUC Distribution Trust in accordance with article 9 of this Agreement, or (ii) the GUC Distribution Trustee's resignation, death, or removal, all in accordance with the provisions hereof.

**2.3 Services.** The GUC Distribution Trustee shall be entitled to engage in such other activities as the GUC Distribution Trustee deems appropriate that are not in conflict with the Plan, the Confirmation Order, this Agreement, the GUC Distribution Trust, or the interests of the Beneficiaries resulting from this Agreement. The GUC Distribution Trustee shall devote such time as is necessary to fulfill all the GUC Distribution Trustee's duties as GUC Distribution Trustee.

**2.4 Resignation, Death, or Removal of GUC Distribution Trustee.** The GUC Distribution Trustee may resign at any time upon ninety (90) days' written notice to the POC. Such resignation may become effective prior to the expiration of such ninety (90) day notice period upon the appointment of a successor GUC Distribution Trustee by Order of the Bankruptcy Court. Any appointment of a successor GUC Distribution Trustee requires that such successor GUC Distribution Trustee execute an instrument accepting such appointment and shall file such acceptance with the GUC Distribution Trust records. The GUC Distribution Trustee may be removed by the Bankruptcy Court upon application for good cause shown, which application may be brought by any party in interest. In the event the GUC Distribution Trustee position becomes vacant, the vacancy shall be filled as determined by the Bankruptcy Court upon submissions from any interested party or parties. Upon appointment pursuant to this

section 2.4, the successor GUC Distribution Trustee, without any further act, shall become fully vested with all the rights, powers, duties, and obligations of his, her, their, or its predecessor.

**2.5 Trust Continuance.** The death, resignation, or removal of the GUC Distribution Trustee shall not terminate the GUC Distribution Trust or revoke any existing agency (other than any agency of such GUC Distribution Trustee as a GUC Distribution Trustee) created pursuant to this GUC Distribution Trust Agreement or invalidate any action theretofore taken by the GUC Distribution Trustee, and the successor GUC Distribution Trustee agrees that the provisions of this GUC Distribution Trust Agreement shall be binding upon and inure to the benefit of any successor GUC Distribution Trustee and all the GUC Distribution Trustee's heirs and legal and personal representatives, successors, or assigns.

**2.6 Compensation and Expenses of GUC Distribution Trustee.** The GUC Distribution Trustee shall be entitled to receive reimbursement of reasonable, actual, and necessary costs, fees (including attorneys' fees), and expenses incurred by the GUC Distribution Trustee in connection with the performance of his or her duties hereunder, and compensation in accordance with the rates generally charged by the GUC Distribution Trustee for his or her services. In the normal course of business, the GUC Distribution Trustee may revise his or her hourly rates periodically.

**2.7 Retention of Professionals.** The GUC Distribution Trustee may retain and engage such attorneys, accountants, and other professionals and persons as may be necessary to carry out the GUC Distribution Trustee's duties under this Agreement, including any law or accounting firm of which the GUC Distribution Trustee is a partner or otherwise affiliated from time to time, any law or accounting firm that was retained as a professional in the Debtors' bankruptcy cases (which shall charge the GUC Distribution Trustee the rates they generally charged in the Debtors' bankruptcy cases), and any law firm or other professional retained by the GUC Distribution Trustee pursuant to the D&O Cause of Action Agreement (compensation for which shall be determined consistent with the terms of the D&O Cause of Action Agreement). The fees and expenses of all such professionals shall be borne exclusively by the GUC Distribution Trust, and such professionals may be compensated monthly upon submission of invoices to the GUC Distribution Trustee without review or approval of the Bankruptcy Court or any other party. All fees and expenses of administration of the GUC Distribution Trust, including pursuant to this section 2.7, shall be paid from the GUC Distribution Trust.

**2.8 Court Approval for Payment.** The foregoing sections 2.6 and 2.7 notwithstanding, the GUC Distribution Trustee or any professional may, but is not required to, seek Bankruptcy Court authorization from time to time before the payment of any fees to the GUC Distribution Trustee or the GUC Distribution Trustee's professionals.

## ARTICLE 3

### POWERS AND LIMITATIONS OF GUC DISTRIBUTION TRUSTEE

**3.1 General Powers of GUC Distribution Trustee.** In connection with the administration of the GUC Distribution Trust, except as otherwise set forth herein, the GUC Distribution Trustee is authorized to perform those acts necessary or desirable to accomplish the

purposes of the GUC Distribution Trust. Subject to the limitations set forth in this Agreement, the Plan, and the Confirmation Order, and in addition to any powers and authority conferred by law, by the Plan, and the Confirmation Order, or by any other section or provision of this Agreement, the GUC Distribution Trustee may exercise all powers granted hereunder related to, or in connection with, the administration and liquidation of GUC Distribution Trust Assets and distribution of Cash and other net proceeds derived therefrom in accordance with this Agreement, the Plan, and the Confirmation Order. Without limiting, but subject to the foregoing, the GUC Distribution Trustee shall be expressly authorized to:

- (a) collect, sell, lease, license, abandon, or otherwise dispose of all assets of the GUC Distribution Trust subject to the terms of the Plan; including, notwithstanding section 9.1 of this Agreement, abandonment and/or destruction of books, records, and files of the GUC Distribution Trust prior to two (2) years after the Final Distribution Date (defined below) in the event that the GUC Distribution Trustee concludes that such books, records, and files are of no benefit to the GUC Distribution Trust;
- (b) effect distributions to Class 4 General Unsecured Claims pursuant to the terms of the Plan;
- (c) effect any other distributions or disbursements from the GUC Distribution Trust as may be consistent with the terms of the Plan;
- (d) pay all costs and expenses of administering the GUC Distribution Trust from and after the Effective Date (including the Post-Effective Date Expenses) and other powers necessary or incidental thereto, including, without limitation, the power to employ and compensate Persons and Entities to assist the GUC Distribution Trustee in carrying out the duties hereunder and under the Plan, and obtain and pay premiums for necessary insurance;
- (e) implement the Plan including any other powers necessary or incidental thereto;
- (f) prosecute objections to General Unsecured Claims and prosecute Avoidance Actions transferred to the GUC Distribution Trust consistent with the terms of the Plan;
- (g) settle General Unsecured Claims and Avoidance Actions transferred to the GUC Distribution Trust consistent with the terms of the Plan;
- (h) seek an estimation of contingent or unliquidated General Unsecured Claims pursuant to 11 U.S.C. 502(c);
- (i) participate in any post-Effective Date motions to amend or modify the Plan or this Agreement, or appeals from the Confirmation Order;
- (j) participate in actions to enforce or interpret the Plan;
- (k) bind the GUC Distribution Trust;

(l) open and maintain bank accounts on behalf of or in the name of the GUC Distribution Trust, calculate and make distributions, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves, in the name of the GUC Distribution Trust;

(m) receive, conserve, and manage the GUC Distribution Trust Assets;

(n) if the GUC Distribution Trustee determines that any of the Beneficiaries or the GUC Distribution Trust may, will, or has become subject to adverse tax consequences, take such actions that the GUC Distribution Trustee, in his or her reasonable discretion, determines are intended to alleviate such adverse tax consequences, including, without limitation, dividing the GUC Distribution Trust Assets into several trusts or other structures;

(o) file, if necessary, any and all tax and information returns of the GUC Distribution Trust;

(p) hold legal title to any and all GUC Distribution Trust Assets;

(q) establish, fund, and administer the GUC Distribution Reserve and such other reserves provided for in, or otherwise consistent with, the terms of the Plan, the Confirmation Order, or this Agreement;

(r) enter into contracts and other business arrangements on behalf of the GUC Distribution Trust;

(s) represent the GUC Distribution Trust before governmental and other regulatory bodies;

(t) remove GUC Distribution Trust Assets or the situs of administration of the GUC Distribution Trust from one jurisdiction to another at any time or from time to time;

(u) make decisions regarding the retention or engagement of professionals, employees, and consultants by the GUC Distribution Trust and pay, from the GUC Distribution Trust, the fees and charges incurred by the GUC Distribution Trust on or after the Effective Date, including for fees of professionals, disbursements, expenses, or related support services relating to the implementation of the Plan and this Agreement, without application to the Bankruptcy Court;

(v) pay all lawful expenses, debts, charges, and liabilities of the GUC Distribution Trust;

(w) withhold from the amount distributable to any Person or Entity such amount as may be sufficient to pay any tax or other charge that the GUC Distribution Trustee has determined, in the GUC Distribution Trustee's sole discretion, may be required to be withheld therefrom under the income tax laws of the United States or of any state or political subdivision thereof; and in the exercise of its discretion and judgment, the GUC Distribution Trustee may enter into agreements with taxing or other governmental authorities for the payment of such amounts as may be withheld in accordance with the provisions of this section;

(x) enter into any agreement or execute any document required by or consistent with the Plan, the Confirmation Order, or this Agreement and the purposes of the GUC Distribution Trust, and perform all obligations under all the foregoing;

(y) abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of its choice, any assets the GUC Distribution Trustee concludes are of no benefit to the GUC Distribution Trust; including, notwithstanding section 9.1 of this Agreement, abandonment and/or destruction of books, records, and files of the GUC Distribution Trust prior to two (2) years after the Final Distribution Date;

(z) if any performance under this Agreement by the GUC Distribution Trustee is subject to the laws of any state or other jurisdiction in which the GUC Distribution Trustee is not qualified to act as trustee, nominate and appoint a Person or Entity duly qualified to act as trustee in such state or jurisdiction and require from each such trustee such security as designated by the GUC Distribution Trustee; confer upon such trustee any and all of the rights, powers, privileges, and duties of GUC Distribution Trustee, subject to the conditions and limitations of this Agreement and applicable law; require such trustee to be answerable to the GUC Distribution Trustee for all monies, assets, and other property that may be received in connection with the administration of all property; and remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the GUC Distribution Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal;

(aa) invest Cash as deemed appropriate by the GUC Distribution Trustee in Cash equivalents; provided, however, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a "liquidating trust," within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise; provided, however, that any investment of Cash must be with institutions and in investment vehicles covered by Federal Deposit Insurance Corporation ("FDIC") insurance.

(bb) hold title to any investment in its name as GUC Distribution Trustee or in a nominee's name;

(cc) to the extent consistent with this Agreement, the Plan, and the Confirmation Order, sue and be sued, and participating in proceedings with respect to the Agreement, the Confirmation Order, General Unsecured Claims, or the GUC Distribution Trust;

(dd) take all actions necessary to administer and effectuate an orderly wind down of the GUC Distribution Trust;

(ee) delegate any or all the discretionary power and authority herein conferred at any time with respect to any portion of the GUC Distribution Trust Assets or other powers enumerated herein to any one or more reputable individuals or recognized institutional advisors or investment managers or consultants without any liability for any action taken or omission

made because of such delegation, except for liability specifically provided for in this GUC Distribution Trust Agreement;

(ff) take all actions and exercise all power and authority enumerated in Sections III.E-G and L of the Plan, Section V of the Plan, and any other section of the Plan pertaining to the GUC Distribution Trust; and

(gg) take all other actions consistent with the provisions of this Agreement, the Plan, and the Confirmation Order that the GUC Distribution Trustee deems reasonably necessary or desirable to administer the GUC Distribution Trust.

**3.2 Limitations on the GUC Distribution Trustee.** Anything in this Agreement to the contrary notwithstanding, the GUC Distribution Trustee shall not do or undertake any of the following:

- (a) take any action in contravention of the Plan, the Confirmation Order, or this Agreement;
- (b) take any action that would significantly jeopardize treatment of the GUC Distribution Trust as a “liquidating trust” for federal income tax purposes;
- (c) lend any GUC Distribution Trust Assets to the GUC Distribution Trustee;
- (d) purchase GUC Distribution Trust Assets from the GUC Distribution Trust;
- (e) transfer GUC Distribution Trust Assets to another trust with respect to which the GUC Distribution Trustee serves as trustee;
- (f) grant liens on any of the GUC Distribution Trust Assets; or
- (g) guarantee any debt incurred by any third party.

**3.3 GUC Distribution Trustee Conflicts of Interest.** If the GUC Distribution Trustee determines, in the exercise of the GUC Distribution Trustee’s discretion, that the GUC Distribution Trustee has a conflict of interest with respect to any matter, the GUC Distribution Trustee may, after notice to the U.S. Trustee, request the Bankruptcy Court to approve the GUC Distribution Trustee’s choice of a designee to act on behalf of the GUC Distribution Trust solely with respect to such matter, with such designee’s authority to so act on behalf of the GUC Distribution Trust to terminate upon the matter’s conclusion.

## ARTICLE 4

### LIABILITY OF GUC DISTRIBUTION TRUSTEE

**4.1 Trustee Standard of Care; Exculpation; Limitation on Liability; Indemnification.** The GUC Distribution Trustee shall not be liable for any act the GUC Distribution Trustee may do or omit to do as GUC Distribution Trustee under the Plan and this Agreement while acting in good faith and in the exercise of his reasonable business judgment;

nor will the GUC Distribution Trustee be liable in any event except for an act or omission that is determined by Final Order to have constituted fraud, willful misconduct, or gross negligence. The foregoing limitation on liability also will apply to any Person or Entity employed by the GUC Distribution Trustee and acting on behalf of the GUC Distribution Trustee in the fulfillment of the GUC Distribution Trustee's duties hereunder or under the Plan. In addition, the GUC Distribution Trustee and any Person or Entity employed by the GUC Distribution Trustee and acting on behalf of the GUC Distribution Trustee shall be entitled to indemnification and defense out of the assets of the GUC Distribution Trust against any losses, liabilities, expenses (including attorneys' fees and disbursements), damages, taxes, suits, or claims that they may incur or sustain by reason of being or having been employed by the GUC Distribution Trust or the GUC Distribution Trustee of the GUC Distribution Trust or for performing any functions incidental to such service; *provided, however*, that the foregoing shall not relieve the GUC Distribution Trustee or any Person or Entity employed by the GUC Distribution Trustee from liability, nor entitle any of the foregoing entities to indemnification pursuant to the Plan or this Agreement, for fraud, willful misconduct, or gross negligence as determined by a Final Order of the Bankruptcy Court. Persons or Entities dealing with the GUC Distribution Trustee or any of the foregoing parties in their respective capacities as such, or seeking to assert claims against the GUC Distribution Trustee or any of the foregoing parties in their capacities as such, shall have recourse only to the GUC Distribution Trust Assets (excluding any fund to pay administrative costs) to satisfy any liability incurred by the GUC Distribution Trustee or any of the foregoing parties in their respective capacities as such to such Persons or Entities in carrying out the terms of this Agreement. Satisfaction of any obligation of the GUC Distribution Trust arising pursuant to the terms of this section shall be payable only from the GUC Distribution Trust Assets, and such right to payment shall be prior and superior to any other rights to receive on behalf of any Beneficiary any distribution of GUC Distribution Trust Assets or proceeds thereof. The GUC Distribution Trust shall have the right to control the defense and settlement of claims as to which it is obligated to indemnify.

**4.2 Bond.** The GUC Distribution Trustee shall not be obligated to give any bond or surety for the performance of any of its duties unless otherwise ordered by the Bankruptcy Court; if so ordered, all costs and expenses of procuring a bond shall be deemed expenses of and payable from the GUC Distribution Trust..

**4.3 No Liability for Acts of Predecessor GUC Distribution Trustees.** No successor GUC Distribution Trustee shall be in any way liable for the acts or omissions of any predecessor GUC Distribution Trustee unless a successor GUC Distribution Trustee expressly in writing assumes such responsibility.

**4.4 Reliance by GUC Distribution Trustee on Documents, Mistake of Fact, or Advice of Counsel.** Except as may be otherwise provided in this Agreement, the GUC Distribution Trustee may rely, and shall be protected from liability for acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the GUC Distribution Trustee to be genuine and to have been presented by an authorized party. Also, the GUC Distribution Trustee shall not be liable if the GUC Distribution Trustee acts in good faith based on a mistake of fact before having actual knowledge of such mistake. The GUC Distribution Trustee shall not be liable for any action taken or suffered by the GUC Distribution Trustee in reasonably relying upon the advice

of counsel or other professionals engaged by the GUC Distribution Trustee in accordance with this Agreement.

**4.5 Insurance.** The GUC Distribution Trustee may cause the GUC Distribution Trust to purchase errors and omissions insurance with regard to any liabilities, losses, damages, claims, costs, and expenses the GUC Distribution Trustee may incur, including but not limited to attorneys' fees, arising out of or due to his or her actions or omissions, or consequences of such actions or omissions, other than as a result of his or her fraud, gross negligence, or willful misconduct, with respect to the implementation and administration of the Plan, the GUC Distribution Trust, and this Agreement.

## ARTICLE 5

### DUTIES OF GUC DISTRIBUTION TRUSTEE

**5.1 General.** The GUC Distribution Trustee shall have all the duties specified in the Plan, the Confirmation Order, and this Agreement.

**5.2 Books and Records.** The GUC Distribution Trustee shall maintain, in respect of the GUC Distribution Trust, books and records relating to the GUC Distribution Trust Assets and income and proceeds realized therefrom, and the payment of expenses of and claims against or assumed by the GUC Distribution Trust, in such detail and for such period of time as may be necessary to enable him or her to make full and proper reports in respect thereof. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, nothing in this Agreement is intended to require the GUC Distribution Trustee to file any accounting or seek approval of any court with respect to the administration of the GUC Distribution Trust, or as a condition for making any payment or distribution out of the GUC Distribution Trust Assets or proceeds therefrom.

### **5.3 Establishment of Accounts and Reserves.**

(a) On the Effective Date or as soon as practicable thereafter, the GUC Distribution Trustee shall establish an account which shall consist of all Cash belonging to the GUC Distribution Trust, including all Cash transferred to the GUC Distribution Trust pursuant to the Plan (the "General Account"); provided, however, that all Cash must be deposited with institutions covered by FDIC insurance.

(b) On the Effective Date or as soon as practicable thereafter, the GUC Distribution Trustee may, but is not required to, establish from and within the General Account a GUC Distribution Reserve for the purposes of making distributions to any Holder of a Class 4 General Unsecured Claim that is Disputed or has otherwise not been Allowed in the event that such Claim becomes Allowed or, if such Claim becomes Disallowed, then to Holders of Allowed Class 4 General Unsecured Claims pursuant to the terms of the Plan or for such other purposes described in the Plan. The GUC Distribution Trustee shall have sole discretion to determine the amount to be funded into the GUC Distribution Reserve provided that such discretion is not exercised in a manner that is inconsistent with the express provisions of the Plan. Unless otherwise provided in the Plan or this Agreement, when such a Class 4 General Unsecured Claim

is Allowed or Disallowed (and thus becomes an Allowed Claim or a Disallowed Claim, in whole or in part), the funds set aside on account of such Claim shall be released from the reserve and shall be treated as funds available for distribution in accordance with the terms of the Plan and this Agreement.

(c) The GUC Distribution Trustee shall create from and within the General Account a reserve in an amount sufficient to pay for the Post-Effective Date Expenses of the GUC Distribution Trust (including compensation to the GUC Distribution Trustee and its professionals). Consistent with the Plan, the GUC Distribution Trustee, in the GUC Distribution Trustee's sole discretion, on and after the Effective Date, shall have authority to increase or decrease such reserve as appropriate.

(d) Except as otherwise provided in the Plan, Confirmation Order, and this Agreement, the GUC Distribution Trustee shall make distributions to Holders of Allowed Class 4 General Unsecured Claims in accordance with the terms of the Plan in the exercise of the GUC Distribution Trustee's sound discretion, based on, among other things, the amount of Cash on hand, whether there remain any other unpaid obligations of the GUC Distribution Trust under the Plan, the time and status of pending or potential litigation or contested matters involving or affecting the GUC Distribution Trust, the amount of any necessary reserves, and any other factors that are relevant to the ability to make distributions from the GUC Distribution Trust Assets.

## ARTICLE 6

### BENEFICIARIES

**6.1 Effect of Death, Incapacity, or Bankruptcy of Beneficiary.** The death, incapacity, or bankruptcy of a Beneficiary during the term of the GUC Distribution Trust shall not operate to terminate the GUC Distribution Trust during the term of the GUC Distribution Trust nor shall it entitle the representatives or creditors of the deceased, incapacitated, or bankrupt Beneficiary to an accounting, or to take any action in any court or elsewhere for the distribution of the GUC Distribution Trust Assets or for a petition thereof, nor shall it otherwise affect the rights and obligations of the Beneficiary's representatives and creditors (in such capacity) under this GUC Distribution Trust Agreement or in the GUC Distribution Trust.

**6.2 Standing of Beneficiary.** Except as may be expressly provided in this GUC Distribution Trust Agreement, the Plan, or the Confirmation Order, a Beneficiary does not have standing to direct the GUC Distribution Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party (other than the GUC Distribution Trustee) upon or with respect to the GUC Distribution Trust Assets.

**6.3 Release of Liability by Beneficiary.** A Beneficiary shall not relieve the GUC Distribution Trustee from any duty, responsibility, restriction, or liability as to such Beneficiary that would otherwise be imposed under this GUC Distribution Trust Agreement unless such relief is approved by Final Order of the Bankruptcy Court.

## ARTICLE 7

### DISTRIBUTIONS

**7.1 Distributions from GUC Distribution Trust Assets.** All payments to be made by the GUC Distribution Trustee to any Person or Entity shall be made only in accordance with the Plan, the Confirmation Order, and this Agreement, and from the Cash or Cash proceeds of GUC Distribution Trust Assets, and only to the extent that the GUC Distribution Trust has sufficient Cash to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order, and this GUC Distribution Trust Agreement. Any distribution made by the GUC Distribution Trustee in good faith shall be binding and conclusive on all interested parties, absent manifest error.

**7.2 Distributions; Withholding.** The GUC Distribution Trustee shall make distributions at such times, consistent with the terms of the Plan, the Confirmation Order, and this Agreement, as the GUC Distribution Trustee deems appropriate from all net Cash income and all other Cash proceeds received by the GUC Distribution Trust; provided, however that the GUC Distribution Trust may retain such amounts (i) as are reasonably necessary to meet known and contingent liabilities and to maintain the value of the GUC Distribution Trust Assets during the term of the GUC Distribution Trust, (ii) to pay reasonable administrative expenses, including, without limitation, the compensation and the reimbursement of reasonable costs, fees (including attorneys' and other professional fees), and expenses of the GUC Distribution Trustee in connection with the performance of their duties in connection with this GUC Distribution Trust Agreement and under the Plan and Confirmation Order, and (iii) to satisfy all other liabilities incurred or assumed by the GUC Distribution Trust (or to which the GUC Distribution Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order, and this Agreement. All such distributions shall be made, subject to any withholding or reserve, as provided in this Agreement, the Plan, or the Confirmation Order. Additionally, the GUC Distribution Trustee may withhold from amounts otherwise distributable on behalf of Beneficiaries any and all amounts, determined in the GUC Distribution Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive, or other governmental requirement. The GUC Distribution Trustee may withhold the entire distribution to any Holder of an Allowed Claim until such time as the Holder provides the GUC Distribution Trustee with the necessary information to comply with any withholding requirements of any governmental unit.

Notwithstanding any other provision of the Plan, (i) each Holder of an Allowed Class 4 General Unsecured Claim that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution; and (ii) no distribution shall be made to or on behalf of such Holder pursuant to this Agreement or the Plan unless and until such Holder has made arrangements satisfactory to the GUC Distribution Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon any disbursing agent in connection with such distribution. Any property to be distributed pursuant to this Agreement or the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution under this Agreement or the Plan.

**7.3 Non-Cash Property.** Any non-Cash property of the GUC Distribution Trust may be sold, transferred, or abandoned by the GUC Distribution Trustee. If, in the GUC Distribution Trustee's judgment, such property cannot be sold in a commercially reasonable manner, the GUC Distribution Trustee shall have the right to abandon or otherwise dispose of such property, including by donation of such property to a charity designated by the GUC Distribution Trustee. Except in the case of willful misconduct, no party in interest shall have a cause of action against the GUC Distribution Trust; the GUC Distribution Trustee; or any partner, director, officer, employee, consultant, or professional of the GUC Distribution Trust or GUC Distribution Trustee arising from or related to the disposition of non-Cash property in accordance with this section.

**7.4 Method of Cash Distributions.** Any Cash payment to be made by the GUC Distribution Trust pursuant to the Plan will be in U.S. dollars and may be made, at the sole discretion of the GUC Distribution Trustee, by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law. Mailed distributions shall be sent to the address provided for the Holder of an Allowed Class 4 General Unsecured Claim in its respective proof of claim filed with the Court or Claims agent provided for in the Plan, if any, or if no proof of claim was filed, at the address provided on the Schedules or such Holder's last address known to the Debtor. The GUC Distribution Trustee shall not be required to locate the current address for any Holder of an Allowed Claim whose distribution is returned to the GUC Distribution Trustee as undeliverable, in accordance with section 7.11 hereof.

**7.5 Distributions on Non-Business Days.** Any payment or distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day. As used in this Agreement, the term "Business Day" shall mean any day other than a Saturday, Sunday, or any other day on which commercial banks in New York, New York are required or authorized to close by law or executive order.

**7.6 Objections to Claims.**

(a) Claim Objection Procedures. From and after the Effective Date, subject to the terms of Section V of the Plan, the GUC Distribution Trustee shall have the right, standing, and authority to (i) object to and contest the allowance of General Unsecured Claims; (ii) compromise and settle Disputed General Unsecured Claims or General Unsecured Claims that have not otherwise been Allowed; and (iii) litigate to final resolution objections to General Unsecured Claims. No distribution shall be made pursuant to the Plan to a Holder of Claim, Disputed or otherwise, unless and until such Claim is or becomes an Allowed Claim. All objections to Claims shall be filed with the Bankruptcy Court, and served upon the Holders of such Claims, on or before the Claims Objection Bar Date.

(b) Resolution of Claims. Subject to the terms of Section V of the Plan, the GUC Distribution Trustee shall have the right to (i) compromise and settle any Disputed General Unsecured Claim or General Unsecured Claim that has not otherwise been Allowed, upon agreement with the Holder of such Disputed General Unsecured Claim or General Unsecured Claim that has not otherwise been Allowed, without further Order or approval of the Bankruptcy Court; and litigate to final resolution objections to General Unsecured Claims.

(c) Until such time as an unliquidated Claim, contingent Claim, or a contingent portion of a Claim becomes Allowed or is Disallowed, such Claim will be treated as a Disputed Claim for all purposes related to distributions. The Holder of an unliquidated or contingent Claim will be entitled to a distribution under the Plan only when and if such unliquidated or contingent Claim becomes an Allowed Claim.

**7.7 Minimum Distributions.** If the amount of Cash to be distributed to the Holder of an Allowed Claim is less than \$50 on a particular distribution date or otherwise so small that the cost of making the distribution exceeds the dollar amount of the distribution, the GUC Distribution Trustee may hold the Cash distributions to be made to such Holder until the aggregate amount of Cash to be distributed to such Holder is in an amount equal to or greater than \$50 or such amount that exceeds the cost of making the Distribution. Notwithstanding the preceding sentence, if the aggregate amount of Cash distribution owed to any Holder of an Allowed Class 4 General Unsecured Claim never equals or exceeds \$50 or such amount that exceeds the cost of making the Distribution, then the GUC Distribution Trustee shall not be required to distribute Cash to any such Holder, and such funds shall revert to the GUC Distribution Trust for distribution in accordance with the terms of the Plan and this Agreement.

**7.8 Rounding.** Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent, with one-half cent being rounded up to the nearest whole cent.

**7.9 Setoff and Recoupment.** Subject to and consistent with the terms of the Plan, the GUC Distribution Trustee may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, exercise the right of setoff or recoupment against any Allowed Class 4 General Unsecured Claim and the distributions to be made pursuant to the Plan on account of such Claim (before distribution is made on account of such Claim), the claims, rights, and causes of action of any nature that the Debtors' Estates may hold against the Holder of such Claim; provided, however, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim under the Plan shall constitute a waiver or release by the GUC Distribution Trustee or any other party in interest of any such claims, rights, and causes of action that the GUC Distribution Trust or the Debtors' Estates may possess against such Holder.

### **7.11 Undeliverable Distributions.**

If any Allowed Class 4 General Unsecured Claim Holder's distribution is returned as undeliverable, no further distributions shall be made to such Holder unless and until the GUC Distribution Trustee is notified in writing of such Holder's then-current address. Undeliverable distributions shall remain in the possession of the GUC Distribution Trustee until such time as a distribution becomes undeliverable, as set forth below. Undeliverable Cash shall not be entitled to any interest, dividends or other accruals of any kind. Any check that is not cashed or otherwise deposited within three months after the check's date shall be deemed an undeliverable distribution.

Any Holder of an Allowed Class 4 General Unsecured Claim who does not assert a Claim in writing for an undeliverable distribution within one year after the date such distribution was due shall no longer have any Claim to or interest in such undeliverable distribution, and shall be forever barred from receiving any distributions under the Plan, or from asserting a Claim against the GUC Distribution Trust or its assets, and the Claim giving rise to the undeliverable distribution will be discharged.

Nothing contained in the Plan, the Confirmation Order, or this Agreement shall require the GUC Distribution Trustee to attempt to locate any Holder of an Allowed Claim.

## **ARTICLE 8**

### **TAXES**

#### **8.1 Income Tax Status.**

(a) It is intended that the GUC Distribution Trust be classified for federal income tax purposes as a "liquidating trust" pursuant to Treasury Regulations Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 124 and as a "grantor trust" subject to the provisions of Subtitle A, Chapter 1, Subchapter J, Part I, Subpart E of the Tax Code that is owned by its Beneficiaries. Accordingly, the parties hereto intend that the Beneficiaries of the GUC Distribution Trust be treated as if they had received a distribution of the applicable assets transferred to the GUC Distribution Trust and then contributed such assets to the GUC Distribution Trust. As such, notwithstanding anything set forth herein, the transfer of assets to the GUC Distribution Trust shall be treated for all purposes of the Tax Code as a transfer from the Estates to creditors to the extent the creditors are Beneficiaries of the GUC Distribution Trust followed by a deemed transfer by the Beneficiaries to the GUC Distribution Trust. The Beneficiaries will be treated as grantors and deemed owners of the GUC Distribution Trust.

(b) All parties, including the Debtors, the GUC Distribution Trustee, and all Beneficiaries of the GUC Distribution Trust, must value all assets transferred to the GUC Distribution Trust consistently, and those valuations must be used for all federal, state, and local income tax purposes. The GUC Distribution Trustee must file returns for the GUC Distribution Trust (if otherwise required by the Treasury Regulations) as a grantor trust pursuant to Treasury

Regulation Section 1.671-4(a). The assets shall be valued based upon the Liquidation Trustee's good faith determination of their fair market value.

(c) Anything set forth herein to the contrary notwithstanding, the GUC Distribution Trust shall not receive or retain Cash or Cash equivalents in excess of a reasonable amount to meet claims and contingent liabilities or to maintain the value of GUC Distribution Trust Assets during liquidation. All income of the GUC Distribution Trust must be subject to tax on a current basis as otherwise applicable pursuant to the Treasury Regulations, including income retained in any reserves. The taxable income of the GUC Distribution Trust will be allocated to and among Beneficiaries who are grantors of the GUC Distribution Trust as required by virtue of their being grantors and deemed owners of the GUC Distribution Trust, and they shall each be responsible to report and pay taxes due on their appropriate share of GUC Distribution Trust income.

(d) The GUC Distribution Trust shall be classified as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 124, and in the event of any inconsistency between any term or provision herein, in the Plan, or in the Confirmation Order necessary for the GUC Distribution Trust to be deemed at all times a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 124 and any other term or provision herein, in the Plan, or in the Confirmation Order, the term(s) and provision(s) necessary for the GUC Distribution Trust to be deemed a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 124 shall govern. Similarly, anything to the contrary set forth herein, in the Plan, or in the Confirmation Order notwithstanding, to the extent any term or provision herein, in the Plan, in the Confirmation Order would result in the GUC Distribution Trust not being classified as a liquidating trust at all times pursuant to Treasury Regulations Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 124, such term or provision shall be ineffective and reformed to the extent necessary for the GUC Distribution Trust to be classified at all times as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 124.

(e) As used in this Agreement, the following terms shall have the following meanings:

“Tax Code” shall mean the Internal Revenue Code of 1986, 26 U.S.C. § 1 et seq., as amended from time to time, and corresponding provisions of any subsequent federal revenue act. A reference to a section of the Tax Code shall include a reference to any and all Treasury Regulations interpreting, limiting or expanding such section of the Tax Code; and

“Treasury Regulations” shall mean regulations promulgated under the Tax Code, including, but not limited to the Procedure and Administration Regulations, as such regulations may be amended from time to time.

**8.2 Tax Returns.** The Trustee shall prepare and provide to, or file with, the appropriate parties such notices, tax returns, information returns, and other filings as may be required by the Tax Code and may be required by applicable law of other jurisdictions. The Trustee shall be responsible for filing all federal, state, and local tax returns and information

returns of the GUC Distribution Trust. The Trustee shall, when specifically requested by a Beneficiary in writing, make such tax information available to the Beneficiary for inspection and copying at the Beneficiary's expense, as is necessary for the preparation by such Beneficiary of its income tax return.

## ARTICLE 9

### TERMINATION OF TRUST

**9.1 Term.** The GUC Distribution Trust shall terminate upon the earlier of (a) the date on which all of the GUC Distribution Trust Assets are liquidated in accordance with the Plan, the funds in the GUC Distribution Trust have been completely distributed in accordance with the Plan, all tax returns and any other filings or reports have been filed with the appropriate state or federal regulatory authorities, and the Order closing the Chapter 11 Cases is a Final Order or (b) five (5) years from the date of creation of the GUC Distribution Trust, unless extended by the Bankruptcy Court as provided herein. The GUC Distribution Trustee shall at all times endeavor to liquidate expeditiously the GUC Distribution Trust Assets (or any non-Cash proceeds thereof), and in no event shall the GUC Distribution Trustee unduly prolong the duration of the GUC Distribution Trust. The foregoing notwithstanding, in the event that the GUC Distribution Trustee determines that all of the GUC Distribution Trust Assets and/or proceeds thereof will not, despite reasonable efforts, be distributed by the date which is five (5) years from the date of creation of the GUC Distribution Trust, or for any other reason consistent with this Agreement and the Plan, and if warranted by the facts and circumstances, the Trustee may petition the Bankruptcy Court to extend the term of the GUC Distribution Trust. Each and every such extension must be for a reasonable finite period based on the particular facts and circumstances, must be subject to the approval of the Bankruptcy Court and approved upon a finding that the extension is necessary to the liquidating purpose of the GUC Distribution Trust and must be approved by the Bankruptcy Court within six (6) months of the beginning of the extended term. At such time as the GUC Distribution Trust has been fully administered (*i.e.*, when all things requiring action by the GUC Distribution Trustee have been done, and the Plan has been substantially consummated) and in all events within sixty (60) days after the Final GUC Distribution Date, the GUC Distribution Trustee will file a notice of the final distribution from the GUC Distribution Trust with the Court. Subject to the other provisions of this Agreement, upon final distribution pursuant to this Agreement, the GUC Distribution Trustee shall retain the books, records, and files that shall have been delivered to or created by the GUC Distribution Trustee, and at the GUC Distribution Trustee's discretion, all such records and documents may be destroyed at any time after two (2) years after the Final GUC Distribution Date.

**9.2 Event Upon Termination.** Upon the termination of the GUC Distribution Trust, the GUC Distribution Trustee shall distribute the remaining GUC Distribution Trust Assets (including any proceeds thereof), if any, consistent with the terms of the Plan, the Confirmation Order, or another order of the Bankruptcy Court.

**9.3 Winding Up and Discharge of the GUC Distribution Trustee.** For the purposes of winding up the affairs of the GUC Distribution Trust at its termination, the GUC Distribution Trustee shall continue to act as GUC Distribution Trustee until the GUC Distribution Trustee's duties have been fully discharged. After doing so, the GUC Distribution

Trustee, and the GUC Distribution Trustee's agents, employees, and professionals shall have no further duties or obligations hereunder, except as required by this Agreement, the Plan, the Confirmation Order, or applicable law concerning the termination of a trust. Upon a motion by the GUC Distribution Trustee, the Bankruptcy Court may enter an order relieving and discharging the GUC Distribution Trustee, and the GUC Distribution Trustee's agents, employees, and professionals of any further duties.

## ARTICLE 10

### ADMINISTRATIVE EXPENSES

**10.1 Funding.** The costs and expenses of the GUC Distribution Trust, including, without limitation, the compensation to and the reimbursement of reasonable, actual, and necessary costs, fees (including attorneys' and other professional fees (including for any attorney or other professional retained by the GUC Distribution Trustee pursuant to the D&O Cause of Action Agreement)), and expenses of the GUC Distribution Trustee in connection with the performance of the GUC Distribution Trustee's duties in connection with the Plan and this Agreement, including the Post-Effective Date Expenses, shall be paid from the applicable reserves without the necessity for any approval by the Bankruptcy Court (the "Trustee's Administrative Expense Fund"). The Trustee's Administrative Expense Fund shall not be subject to charge for claims against the GUC Distribution Trust or the GUC Distribution Trust Assets (including any proceeds thereof), including, without limitation, any claims under section 4.1 of this Agreement.

## ARTICLE 11

### THE POC

**11.1 POC Members.** On the Effective Date, the Committee shall be replaced by the POC that shall consist of not less than three (3) Persons or Entities that are beneficiaries of the GUC Distribution Trust. The identities of the Persons and/or Entities that will serve on the POC as of the Effective Date are listed on Schedule 1 hereto. The POC's sole function and responsibility shall be to advise the GUC Distribution Trustee in the performance of the GUC Distribution Trustee's duties and obligations under the Plan for the benefit of the Holders of Allowed Class 4 General Unsecured Claims entitled to distribution from the GUC Distribution Trust. The members of the POC shall serve without compensation but may be reimbursed for reasonable expenses incurred in the performance of their duties as members of the POC.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

**12.1 Amendments.** The GUC Distribution Trustee may propose to the Bankruptcy Court the modification, supplementing, or amendment of this Agreement. Such proposed modification, supplementing, or amendment shall be in writing and filed with the Bankruptcy Court. No modification, supplementing, or amendment of this Agreement shall be effective except upon a Final Order of the Bankruptcy Court.

**12.2 Waiver.** No failure by the GUC Distribution Trustee to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

**12.3 Cumulative Rights and Remedies.** The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity.

**12.4 Irrevocability.** The GUC Distribution Trust is irrevocable.

**12.5 Division of Trust.** Under no circumstances shall the GUC Distribution Trustee have the right or power to divide the GUC Distribution Trust unless authorized to do so by the Bankruptcy Court.

**12.6 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Washington, without giving effect to rules governing the conflict of laws.

**12.7 Retention of Jurisdiction.** To the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the GUC Distribution Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits, and issues that may arise in connection therewith, or this Agreement, or any entity's obligations incurred in connection therewith or herewith, including, without limitation, any action against the GUC Distribution Trustee or any professional retained by the GUC Distribution Trustee or the GUC Distribution Trust, in each case in its capacity as such. Each party to this Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret, or construe any provision of this Agreement, or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, forum non conveniens, or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that (i) any action to enforce, interpret, or construe any provision of this Agreement will be brought only in the Bankruptcy Court and (ii) all determinations, decisions, rulings, and holdings of the Bankruptcy Court shall be final and non-appealable and not subject to reargument or reconsideration. Each party hereby irrevocably consents to the service as set forth in section 12.10 of this Agreement or such other address as such party may designate from time to time by notice given in the manner provided above, of any process in any action to enforce, interpret, or construe any provision of this Agreement.



If to the Committee:

Sills Cummis & Gross P.C.  
Attn: Andrew H. Sherman, Esq.  
Boris I. Mankovetskiy  
One Riverfront Plaza  
Newark, NJ 07102  
Tel.: (973) 643-7000  
Fax: (973) 643-6500  
asherman@sillscummis.com  
bmankovetskiy@sillscummis.com

The parties may designate in writing from time to time other and additional places to which notices may be sent. All demands, requests, consents, notices, and communications shall be deemed to have been given (i) at the time of actual delivery thereof if by facsimile or electronic mail; (ii) if given by certified or registered mail, five (5) business days after being deposited in the United States mail, postage prepaid, and properly addressed; or (iii) if given by overnight courier, the next business day after being sent, charges prepaid, and properly addressed.

**12.11 Further Assurances.** From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Agreement, and to consummate the transactions contemplated hereby.

**12.12 Integration.** This Agreement, the Plan, and the Confirmation Order constitute the entire agreement, by and among the parties with respect to the subject matter hereof, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan, or in the Confirmation Order. This Agreement, together with the Plan and the Confirmation Order, supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder.

**12.13 Successors or Assigns.** The terms of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**12.14 Interpretation.** The enumeration and section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Agreement, the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations, and corporations. The words herein, hereby, and hereunder, and words with similar import, refer to this Agreement as a whole and not to any particular section or subsection hereof unless the context requires otherwise.

**12.15 Relationship to the Plan.** The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this

Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order shall control.

**12.16 Counterparts.** This Agreement may be signed by the parties hereto in counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same document. Delivery of any executed counterpart may be in “wet ink” form, via telecopy, or via electronic transmission attaching a copy in pdf format or the like.

IN WITNESS WHEREOF, the parties hereto have either executed this Agreement, or caused it to be executed on its behalf by its duly authorized officer, all as of the date first above written.

**DEBTOR:**

ASTRIA HEALTH, *et al.*

By: \_\_\_\_\_

Name: Michael Lane

Title: Chief Restructuring Officer

**GUC DISTRIBUTION TRUSTEE:**

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[\*]

**Schedule 1**

**Members of the  
Post-Effective Date Oversight Committee (the “POC”)**

CHSPSC, LLC

Community Health of Central Washington

LocumTenens.com, LLC

Medtronic USA, Inc.

Morrison Management Specialists, Inc.

**Exhibit F**

## LIQUIDATION TRUST AGREEMENT

This **LIQUIDATION TRUST AGREEMENT**, dated [\_\_\_\_], 2020 (the “Agreement”) is entered into by and among Astria Health and certain of its affiliates, all debtors and debtors in possession in the Chapter 11 Cases described more fully below (collectively, the “Debtors”),<sup>1</sup> and UMB Bank, N.A., not individually but as liquidation trustee (the “Liquidation Trustee”) of the Liquidation Trust defined below, is executed to facilitate implementation of the *Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and its Debtor Affiliates*, dated as of [\_\_\_\_], 2020 (as amended, modified, or supplemented from time to time, the “Plan”), and is made effective as of the Effective Date of the Plan. Each of the Debtors and the Liquidation Trustee are referred individually as a “Party” and collectively as the “Parties.”

### **RECITALS**

WHEREAS, on May 6, 2019, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Washington (the “Bankruptcy Court”), commencing their chapter 11 cases, which are jointly administered under Case No. 19-01189 (WLH11);

WHEREAS, on [\_\_\_\_], 2020, the Debtors filed the Plan [Docket No. \_\_\_\_]

WHEREAS, on [\_\_\_\_], 2020, the Bankruptcy Court entered its *Findings of Fact, Conclusions of Law, and Order Confirming the Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and its Debtor Affiliates* (the “Confirmation Order”) [Docket No. \_\_\_\_], confirming the Plan;

WHEREAS, this Agreement is the “Liquidation Trust Agreement” contemplated by Articles I.A.1.107 and III.G of the Plan, executed to effectuate, supplement, complement and facilitate the implementation of the Plan;

WHEREAS, the trust established hereby (the “Liquidation Trust”) is created pursuant to the Confirmation Order and Plan for the creation of a post-confirmation liquidation trust to hold and administer assets of the Debtors not necessary for the operation of the core health care businesses of the Debtors or constituting GUC Distribution Trust Assets under the Plan, including, but not be limited to (i) if unsold as of the Effective Date (as defined in the Plan), Yakima Medical Office Building (excluding the operations within); (ii) if unsold as of the Effective Date, SHC Medical Center-Yakima; (iii) any other unused buildings or real property currently owned by the Debtors other than Sunnyside Community Hospital Association; (iv) A/R Collections of SHC Medical Center-Yakima; (v) all 180 day and older days aged accounts receivable of Sunnyside Community Hospital Association and SHC – Medical Center Toppenish; (vi) any other Causes of Action held by the Debtors, and proceeds thereof, to the extent not expressly assigned to the GUC Distribution Trust

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<sup>1</sup> The Debtors in the chapter 11 Cases (the “Chapter 11 Cases”), along with their case numbers, are as follows: Astria Health (“Astria”) (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 (“Sunnyside”) (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).

and not otherwise released pursuant to Article VII.F.1 of the Plan (the “Liquidation Trust Causes of Action”); and (vii) any amounts payable to the Liquidation Trust pursuant to the *D&O Cause of Action Agreement* described in the Plan (collectively, the “Liquidation Trust Assets”). This Agreement is executed to establish the Liquidation Trust and to facilitate the Confirmation Order and the Plan;

WHEREAS, the Effective Date of the Plan occurred on [\_\_\_\_\_] (the “Effective Date”);

WHEREAS, under the Plan, the Liquidation Trust is to be established on the Effective Date;

WHEREAS, the Liquidation Trust is established for the primary purposes of liquidating the Liquidation Trust Assets and, in the event the Liquidation Trust Assets are liquidated, to facilitate the distribution of the proceeds of such liquidation as described in the Plan, as well as the credit agreements, guaranties, security agreements, forbearance instruments and other documents evidencing or otherwise securing the Exchange Debt on the terms and in the forms included in the Plan Supplement (the “Exchange Debt Documents”);

WHEREAS, the respective powers, authority, responsibilities and duties of the Liquidation Trustee shall be governed by this Agreement, as well as the Plan, the Confirmation Order, and other applicable orders issued by the Bankruptcy Court (collectively, the “Underlying Documents”);

WHEREAS, the Liquidation Trust has no objective to continue or engage in the conduct of a trade or business, except to the extent consistent with its liquidating purpose described in the Plan and set forth in this Agreement;

WHEREAS, the Liquidation Trust is intended to be treated for federal income tax purposes as a “liquidating trust” under the United States Internal Revenue Code of 1986 (as amended, the “IRC”) and under United States Treasury Regulations Section 301.7701-4(d), and thus is intended to qualify as a “grantor trust” for U.S. federal income tax purposes with the Beneficiaries (defined herein) treated as the grantors and owners of the assets thereof; and

WHEREAS, under the Confirmation Order and Plan, the Bankruptcy Court retains jurisdiction over the Liquidation Trust.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the Debtors and the Liquidation Trustee, agree as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

*Section 1.1* **Definitions.** Capitalized terms used but not otherwise defined in this Agreement will have the meanings ascribed to them in the Plan, a copy of which is attached here as Exhibit 1. In addition, the following capitalized terms will have the respective meanings ascribed to them herein:

(a) “**Beneficiaries**” means AH System and the lenders of the Exchange Debt, as identified in the Exchange Debt Documents.

(b) “**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended from time to time.

(c) “**Treasury Regulations**” means the income tax regulations promulgated by the U.S. Department of Treasury pursuant to the Internal Revenue Code.

(d) “**Trust Accounts**” means any trust accounts established and maintained by the Liquidation Trustee to hold Liquidation Trust Assets and the proceeds thereof.

*Section 1.2*    **Interpretation.**

(a)    **Certain References.** Unless the context otherwise requires: (a) all references in this Agreement to Sections, Articles, or Schedules are to Sections, Articles, or Schedules of or to this Agreement; (b) words in the singular include the plural and vice versa; and (c) the verb “will” will have a mandatory connotation concerning the parties’ respective obligations hereunder. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” All references to “\$” or dollar amounts are to lawful currency of the United States.

(b)    **Titles and Headings.** Titles and headings to Sections, Articles, and Schedules in or to this Agreement are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

**ARTICLE II**

**ESTABLISHMENT OF THE LIQUIDATION TRUST**

*Section 2.1*    **Creation of the Liquidation Trust.** The Debtors hereby create the Liquidation Trust as contemplated by the Confirmation Order and Plan, and the Liquidation Trustee shall serve as the Trustee thereof.

*Section 2.2*    **Appointment of the Liquidation Trustee.** Lorna Gleason of UMB Bank, N.A. is appointed as the initial Liquidation Trustee of the Liquidation Trust, upon the Effective Date of the Plan. The Liquidation Trustee agrees to accept and hold the Liquidation Trust Assets in trust for the Beneficiaries subject to the terms and conditions of the Underlying Documents and this Agreement. The initial Liquidation Trustee and each successor Liquidation Trustee serving from time to time hereunder shall have all the rights, powers, and duties set forth herein.

*Section 2.3*    **The Purpose of the Liquidation Trust.**

(a)    The Liquidation Trust is established for the purposes set forth in Article III.G of the Plan, particularly liquidating the Liquidation Trust Assets and facilitating the distribution of the proceeds thereof to the Beneficiaries in accordance with Article III.G of the Plan and this Agreement and, in accordance with Treasury Regulations Section 301.7701-4(d), and with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to,

and consistent with, the liquidating purpose of the Liquidation Trust, for the benefit of the Beneficiaries and otherwise implementing the Plan. The activities of the Liquidation Trust shall be limited to those activities set forth in this Agreement and as otherwise contemplated by the Plan. For U.S. federal income tax purposes, the Liquidation Trust is intended to qualify as a “grantor trust” and the Beneficiaries shall be treated as the grantors of the Liquidation Trust and the owners of the assets thereof. The Liquidation Trust and the Liquidation Trustee will each be a “representative of the estate” under section 1123(b)(3)(B) of the Bankruptcy Code and shall each be vested with the rights, powers, and benefits afforded to a “trustee” under sections 704 and 1106 of the Bankruptcy Code.

(b) The principal purpose of this Agreement is to supplement, complement and implement the Plan and, therefore, this Agreement incorporates the provisions of the Plan and the Confirmation Order (which may amend or supplement the Plan). To the extent that there is conflict between the provisions of this Agreement, the provisions of the Plan, or the Confirmation Order, each document shall have controlling effect in the following rank order: (i) this Agreement; (ii) the Confirmation Order; and (iii) the Plan.

#### *Section 2.4*    **Transfer of Assets to the Liquidation Trust.**

(a) On the Effective Date, the Debtors irrevocably transfer, assign, and deliver all Liquidation Trust Assets to the Liquidation Trust (free and clear of any Claims, Liens, encumbrances, Interests, and contractually-imposed restrictions) for and on behalf of the Beneficiaries.

(b) From and after the Effective Date, prosecution and settlement of all Liquidation Trust Causes of Action shall be the sole responsibility of the Liquidation Trust, except as set forth in Article III.C of the Plan with regard to Vendor Claims, and all rights, powers, and interests of the Debtors’ Estates in respect thereof shall be transferred to and vest exclusively in the Liquidation Trust, pursuant to the Plan, the Confirmation Order and this Agreement. From and after the Effective Date, the Liquidation Trustee shall have exclusive rights, powers, and interests to pursue, settle, or abandon such claims, subject to the terms set forth herein and in the Underlying Documents.

(c) All Liquidation Trust Causes of Action are reserved and preserved and shall not be impacted or affected in any way by any deemed consolidation of the Estates. No Person or Entity may rely on the absence of a specific reference in any Underlying Document to any Vendor Claims Liquidation Trust Cause of Action against them as any indication that the Liquidation Trust will not pursue any and all available claims against them. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such claims as a consequence of the Confirmation or Consummation.

(d) For the avoidance of doubt, on the Effective Date and in connection with the Liquidation Trust Assets, any attorney-client privilege, work-product privilege, joint interest privilege, or other privilege or immunity (collectively, the “Privileges”) attaching to any documents or communications (in any form, including, without limitation, written, electronics or oral) related to the Liquidation Trust Assets are transferred and vest in the Liquidation Trust and may be enforced by the Liquidation Trustee and their representatives. The Liquidation Trust’s receipt of the Privileges associated with the Liquidation Trust Assets shall not operate as a waiver of other privileges possessed or retained by the Debtors, if any. For the further avoidance of doubt, because the

Liquidation Trustee and the GUC Distribution Trustee, as defined in the Plan, shall each accede to the Debtors' and Estates' claims to attorney-client privilege, work product doctrine, and any other applicable privilege pursuant to this Agreement and the GUC Distribution Trust Agreement, as defined in the Plan, respectively, any communications between the Liquidation Trustee, the GUC Distribution Trustee, and/or their respective attorneys and other advisors shall not be deemed to waive any such privileges.

*Section 2.5* **Liquidation Trustee's Acceptance.** The Liquidation Trustee hereby accepts the duties as trustee imposed on them by the Underlying Documents and agrees to observe and perform such duties, on and subject to the terms and conditions set forth in the Underlying Documents.

### ARTICLE III

#### BENEFICIARIES

*Section 3.1* **Incidents of Ownership.** The Beneficiaries shall be the sole beneficiaries of the Liquidation Trust and the Liquidation Trust Assets, and the Liquidation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in this Agreement, the Plan, the Confirmation Order, and any other Underlying Documents.

*Section 3.2* **Rights of Beneficiaries.** Each Beneficiary shall be entitled to participate in the rights and benefits due to such Beneficiary according to this Agreement, the Plan, the Confirmation Order, and any other Underlying Documents. The interest of a Beneficiary is hereby declared and shall be in all respects personal property.

*Section 3.3* **Beneficial Interest Only.** Except as expressly provided hereunder, each Beneficiary's interest in the Liquidation Trust shall be beneficial only. As such, a Beneficiary shall have no title to, right to, possession of, or control of the Liquidation Trust or the Liquidation Trust Assets, nor any right to seek partition or division of such assets or to an accounting, except as specifically provided in this Agreement, the Plan, the Confirmation Order, and any other Underlying Documents.

*Section 3.4* **Evidence of Liquidation Trust Interest.** Ownership of an interest in the Liquidation Trust ("Liquidation Trust Interest") shall not be evidenced by any certificate, security or receipt, or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidation Trust by the Liquidation Trustee. The death, incapacity or bankruptcy of any Beneficiary during the term of the Liquidation Trust shall not (i) operate to terminate the Liquidation Trust, (ii) entitle the representatives or creditors of the deceased, incapacitated or bankrupt party to an accounting, (iii) entitle the representatives or creditors of the deceased, incapacitated or bankrupt party to take any action in the Bankruptcy Court or elsewhere for the distribution of the Liquidation Trust Assets or for a partition or division thereof, or (iv) otherwise affect the rights and obligations of any of the Beneficiaries hereunder.

*Section 3.5* **No Transfers of Liquidation Trust Interests.** A beneficial interest in the Liquidation Trust shall not be assignable or transferable, except by operation of law. An assignment or transfer shall not be effective until appropriate notice and proof thereof is submitted to the Liquidation Trustee, and the Liquidation Trustee may continue to pay all amounts to or for the

benefit of the assigning or transferring Beneficiary until receipt of proper notification and proof of assignment or transfer. The Liquidation Trustee may rely upon such proof without the requirement of any further investigation. Any purported assignment or transfer of a Liquidation Trust Interest or any part thereof, except as set forth herein, shall constitute a violation of this Section 3.5 and shall be void *ab initio*.

**Section 3.6 Conflicting Claims.** If any conflicting claims or demands are made or asserted with respect to a Liquidation Trust Interest, the Liquidation Trustee shall be entitled, in their sole discretion, to refuse to comply with any such conflicting claims or demands. In so refusing, the Liquidation Trustee may elect to make no payment or distribution with respect to the Liquidation Trust Interest represented by the claims or demands involved, or any part thereof, and the Liquidation Trustee shall refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. In so doing, the Liquidation Trustee shall not be or become liable to any party for its refusal to comply with any of such conflicting claims or demands. The Liquidation Trustee shall be entitled to refuse to act until either (a) the rights of the adverse claimants have been adjudicated or all differences resolved by a final and non-appealable order of the Bankruptcy Court or (b) all differences have been resolved by a written agreement among all of such parties and the Liquidation Trustee, which agreement shall include a complete release of the Liquidation Trust and the Liquidation Trustee with respect to the subject matter of the dispute (the occurrence of either (a) or (b) being referred to as a “Dispute Resolution” in this Section 3.6). Until a Dispute Resolution is reached with respect to such conflicting claims or demands, if the Liquidation Trustee has elected to make no payment or distribution with respect to the Liquidation Trust Interest represented by the claims or demands involved, the Liquidation Trustee shall hold in a segregated account any payments or distributions from the Liquidation Trust to be made with respect to the Liquidation Trust Interest at issue. Promptly after a Dispute Resolution is reached, and in no event later than seven (7) Business Days following such resolution, the Liquidation Trustee shall transfer the payments and distributions, if any, held in the segregated account, together with any interest and income generated thereon, in accordance with the terms of such Dispute Resolution. Each party shall bear its own costs in relation to any Dispute Resolution, and any expenses incurred by the Liquidation Trust shall be entitled to reimbursement pursuant to Section 8.3(b) of this Agreement.

**Section 3.7 Limited Liability.** No provision of this Agreement, and no mere enumeration herein of the rights or privileges of any Beneficiary, shall give rise to any liability of such Beneficiary solely in its capacity as such. Beneficiaries are deemed to receive their beneficial interests in the Liquidation Trust as set forth in this Agreement and the Underlying Documents, in exchange for their transfer of the assets of the Liquidation Trust (net of any applicable liabilities), without further obligation or liability of any kind, but subject to the provisions of this Agreement and the Underlying Documents.

## ARTICLE IV

### TRUST ACCOUNTS

**Section 4.1 Creation of the Trust Accounts.** The Liquidation Trustee will establish the Trust Accounts in accordance with Section 5.2(a) herein.

*Section 4.2*     **Use of Cash and Other Property.** The Trust Accounts shall be maintained for the administration of the Liquidation Trust and the net benefit of the Beneficiaries.

## ARTICLE V

### DUTIES AND POWERS OF THE LIQUIDATION TRUSTEE

*Section 5.1*     **Generally.**

(a) The Liquidation Trustee is appointed to assume their responsibilities as of the Effective Date. The Liquidation Trustee shall, in an expeditious and orderly manner, manage, liquidate and convert the Liquidation Trust Assets to Cash, make timely distributions in accordance with the terms of the Plan and this Agreement, and not unduly prolong the existence of the Liquidation Trust. The Liquidation Trustee shall exercise reasonable business judgment and liquidate the Liquidation Trust Assets to maximize net recoveries for the Beneficiaries; *provided that* the Liquidation Trustee shall be entitled to take into consideration the risks, timing, and costs of potential actions in making determinations as to the maximization of such recoveries. The Liquidation Trustee shall have the authority to bind the Liquidation Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of Liquidation Trustee and not individually.

(b) The Liquidation Trustee shall be the exclusive trustee of the Liquidation Trust for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 601(b)(3) pursuant to this Agreement and the Underlying Documents, until death, resignation, or discharge of the Liquidation Trustee and the appointment of a successor Liquidation Trustee in accordance with the terms of this Agreement.

*Section 5.2*     **Scope of Authority and Responsibilities of the Liquidation Trustee.**

(a) The Liquidation Trustee will have only the rights, powers, and privileges to act on behalf of the Liquidation Trust expressly provided herein and in the Underlying Documents, and as provided by law in the event that this Agreement or the Underlying Documents do not reference any such right, power, or privilege. Unless otherwise expressly limited or restricted by this Agreement or the Underlying Documents, and subject to approval of the Liquidation Trust Board, as required pursuant to Section 6.6 herein, and so long as such actions are, in the Liquidation Trustee's best judgment (subject to the discretion of the Liquidation Trust Board), necessary to manage the affairs of the Liquidation Trust and safeguard the interest of the Beneficiaries, the Liquidation Trustee will have the right, power, privilege, and obligation, to:

- (i) be expressly authorized to hold title to and/or exercise control over (on behalf of the Liquidation Trust as Liquidation Trustee, and not individually) all Liquidation Trust Assets;
- (ii) execute all agreements, instruments, and other documents and effect all other actions necessary to implement the Plan, including the effectuation of the transactions and payments under the Plan contemplated to occur in connection with the Effective Date or as soon as reasonably practicable thereafter;
- (iii) establish, maintain, and administer the Trust Accounts;

- (iv) accept, preserve, receive, collect, manage, invest, supervise, and protect the Liquidation Trust Assets (directly or through one or more third-party agents), each in accordance with this Agreement and the Underlying Documents, including, without limitation, by judicial proceedings;
- (v) purchase such insurance coverage as the Liquidation Trustee deems necessary and appropriate with respect to the liabilities and obligations of the Liquidation Trustee and the Liquidation Trust Board and pay all insurance premiums and costs the Liquidation Trustee deems necessary or advisable, which insurance premiums and costs shall be paid exclusively from the Liquidation Trust and Liquidation Trust Assets;
- (vi) establish holding entities for the purpose of holding certain Liquidation Trust Assets as may be appropriate, provided that such action does not jeopardize the status of the Liquidation Trust as a "liquidating trust" for federal income tax purposes within the meaning of Treasury Regulation section 301.7701-4(d);
- (vii) reduce to Cash or otherwise liquidate, use, sell, lease, transfer, or otherwise abandon or dispose of the Liquidation Trust Assets or any part thereof or any interest therein upon such terms as the Liquidation Trustee determines to be necessary, appropriate, or desirable (including, without limitation, filing, prosecuting, and settling the Liquidation Trust Causes of Action);
- (viii) investigate, commence, prosecute, abandon or settle Liquidation Trust Causes of Action in accordance with the terms of this Agreement, for the benefit of Beneficiaries, and exercise, participate in or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction and participate as a party or otherwise in any administrative, arbitrate or other nonjudicial proceeding and pursue to settlement or judgment such Liquidation Trust Causes of Action;
- (ix) with respect to the Liquidation Trust Causes of Action, exercise, in a manner not inconsistent with the Plan, all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any member, officer, director or shareholder of the Debtors, with like effect as if authorized, exercised, and taken by unanimous action of such officers, directors, and shareholders;
- (x) investigate, commence, prosecute, abandon or settle any and all Vendor Claims, subject to any requirements specified in the Plan;
- (xi) pay the obligations, expenses, fees, and charges incurred by the Liquidation Trustee on the Liquidation Trust's behalf on or after the Effective Date for fees and expenses of professionals (including those retained by the Liquidation Trustee), disbursements, expenses, or related support services relating to the Liquidation Trust or as otherwise provided in this Agreement and the fees and expenses incurred by the Liquidation Trustee and their professionals prior to the Effective Date to negotiate and memorialize this Agreement and any other documents related to the vesting of the Liquidation Trust Assets, and to obtain Court approval thereof; *provided* that any

such professionals shall be compensated solely from the Liquidation Trust and in no event shall the Liquidation Trustee or any of its professionals have or make any claim for reimbursement of fees or expenses against any Person other than the Liquidation Trustee (not individually, but solely in its capacity as the Liquidation Trustee) or any property other than the Liquidation Trust and the Liquidation Trust Assets;

- (xii) remit GUC Vendor Recovery in the possession or control of the Liquidation Trust, if any, to the GUC Distribution Trust as specified in the Plan;
- (xiii) receive any amounts payable to the Liquidation Trust pursuant to the *D&O Cause of Action Agreement* described in the Plan;
- (xiv) abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of his choice, any Liquidation Trust Assets if the Liquidation Trustee concludes they are no benefit to the Liquidation Trust or the Beneficiaries;
- (xv) calculate and make distributions of the proceeds of the liquidation of the Liquidation Trust Assets to Beneficiaries in accordance with the Plan;
- (xvi) after the Effective Date, to adjust Liquidation Trust Interests in accordance with the Underlying Documents or this Agreement, without supervision or approval of the Bankruptcy Court and free of any restriction of the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the Bankruptcy Court, other than those restrictions expressly imposed by the Underlying Documents or this Agreement;
- (xvii) comply with the Plan and exercise the rights and fulfill the obligations thereunder;
- (xviii) file all required tax returns for the Liquidation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a);
- (xix) determine the manner of ascertainment of income and principal of the Liquidation Trust Assets, and the apportionment of income and principal among such Liquidation Trust Assets;
- (xx) appear and participate in any proceeding before the Bankruptcy Court with respect to any matter regarding or relating to the Plan, this Agreement, the Liquidation Trust, or the Liquidation Trust Assets;
- (xxi) defend and participate, as a party or otherwise, in any judicial, administrative, arbitrative, or other proceeding relating to the Plan, this Agreement, the Liquidation Trust, or the Liquidation Trust Assets;
- (xxii) make decisions, without further Bankruptcy Court approval, regarding the retention or engagement of professionals, employees and consultants by the Liquidation Trust and the Liquidation Trustee and to pay the fees and charges incurred by the Liquidation Trust on or after the Effective Date for fees and expenses of professionals, disbursements, expenses, or related support services relating to the

implementation of the Confirmation Order and Plan without application to the Bankruptcy Court;

- (xxiii) to raise additional funding for the Liquidation Trust in order to (A) liquidate the Liquidation Trust Assets, (B) pursue the Liquidation Trust Causes of Action and/or support distributions to Beneficiaries provided for or contemplated in the Plan; and (C) support or facilitate any other function, duty or responsibility of the Liquidation Trust or the Liquidation Trustee that is contemplated by this Agreement and/or any Underlying Agreement;
- (xxiv) execute, deliver, and perform such other agreements and documents, or exercise such other powers and duties as the Liquidation Trustee determines, in their reasonable discretion, to be necessary, appropriate, or desirable to accomplish and implement the purposes and provisions of the Liquidation Trust as set forth in this Agreement and the Underlying Documents;
- (xxv) consult with the Liquidation Trust Board in accordance with this Agreement;
- (xxvi) terminate the Liquidation Trust, subject to the provisions of this Agreement; and
- (xxvii) exercise such other powers as may be vested in or assumed by the Liquidation Trustee pursuant to this Agreement and the Underlying Documents, and to take all other actions not inconsistent with the provisions of the Plan which the Liquidation Trustee deems reasonably necessary or desirable with respect to implementing the Plan.

**(b)** From and after the Effective Date, the Liquidation Trustee, its respective firms, companies, partners, officers, directors, employees, professionals, representatives, agents, successors, and assigns (collectively, the “Trust Indemnified Parties” and each a “Trust Indemnified Party”) shall be, and hereby are, indemnified and held harmless by the Liquidation Trust, to the fullest extent permitted by applicable law, from and against any and all claims, debts, losses, dues, penalties, costs, expenses, accounts, actions, suits, causes of action, bonds, covenants, judgments, damages, attorneys’ fees, defense costs, investigations (whether civil or administrative and whether sounding in tort, contract or otherwise) and other assertions of liability arising out of any such Trust Indemnified Party’s good faith exercise of what such Trust Indemnified Party reasonably understands to be its powers or the discharge of what such Trust Indemnified Party reasonably understands to be its duties conferred by this Agreement, the Plan, the Confirmation Order, or any other Underlying Document, applicable law, or otherwise (except only for actions or omissions to act to the extent determined by a final and non-appealable order to be due to such Trust Indemnified Party’s actual fraud or willful misconduct), including but not limited to, acts or omissions concerning pursuing or not pursuing any Liquidation Causes of Action, on and after the Effective Date. The foregoing indemnification shall also extend to matters directly or indirectly in connection with, arising out of, based on, or in any way related to (i) this Agreement or the Plan; (ii) the services to be rendered pursuant to this Agreement or the Plan; (iii) any document or information, whether verbal or written, referred to herein or supplied to the Trust Indemnified Party; or (iv) proceedings by or on behalf of any creditor. Every act taken or omitted, power exercised or obligation assumed by the Liquidation Trust or any Trust Indemnified Party pursuant to the provisions of this Agreement shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Liquidation Trust and not

otherwise; *provided, however*, that no Trust Indemnified Party shall be deemed responsible for any other such Trust Indemnified Party's actions or inactions. The Liquidation Trust shall, on demand, advance or pay promptly out of the Liquidation Trust Assets, on behalf of any Trust Indemnified Party, reasonable attorneys' fees and other expenses and disbursements to which such Trust Indemnified Party would be entitled pursuant to the foregoing indemnification obligation; *provided, however*, that any Trust Indemnified Party receiving any such advance shall execute a written undertaking to repay such advance if a court of competent jurisdiction ultimately determines, by a final and non-appealable order, that such Trust Indemnified Party is not entitled to indemnification hereunder due to the fraud or willful misconduct of such Trust Indemnified Party. In any matter covered by the first two sentences of this subsection, any person entitled to indemnification shall have the right to employ such person's own separate counsel reasonably acceptable to the Liquidation Trustee, at the Liquidation Trust's reasonable expense, subject to the foregoing terms and conditions. Except as provided in the second proviso set forth in this Section 5.2(b), every Person, firm, corporation, or other Entity contracting or otherwise dealing with or having any relationship with the Liquidation Trust or any Trust Indemnified Party shall have recourse only to the Liquidation Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings or relationships and the Liquidation Trust and the Trust Indemnified Parties shall not be individually liable therefore. In no event shall the Liquidation Trustee or any Trust Indemnified Party be liable for any indirect, punitive, special, incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Liquidation Trustee or any Trust Indemnified Party has been informed of the likelihood of such loss or damages and regardless of the form of action. Notwithstanding anything to the contrary herein, in no event shall the liability of the Liquidation Trustee or any Trust Indemnified Party under this Agreement exceed the total amount of fees paid to the Liquidation Trustee or any Trust Indemnified Party under this Agreement.

(c) Upon (i) final distributions from the Liquidation Trust, (ii) the final accounting of the Liquidation Trust, and (iii) notice to the Beneficiaries and the Liquidation Trust Board (which can be achieved by filing on the docket of the Chapter 11 Cases or such other manner determined by the Liquidation Trustee in its sole discretion), the Liquidation Trustee shall be released and discharged of all duties under this Agreement, the Plan, the Confirmation Order, and any other order of the Bankruptcy Court entered pursuant to, or in furtherance of, the Plan, applicable law, or otherwise.

### *Section 5.3*    **Limitations on the Liquidation Trustee.**

(a) For U.S. federal income tax purposes, the Liquidation Trustee shall not be authorized to engage in any activities with respect to the Liquidation Trust Assets or any proceeds therefrom except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust. The Liquidation Trustee shall, on behalf of the Liquidation Trust, hold the Liquidation Trust out as a trust in the process of liquidation. The Liquidation Trustee shall not hold any assets, make or hold any investments or engage in any activities inconsistent with the treatment of the Liquidation Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) while the Liquidation Trust qualifies as a liquidation trust; *provided, however*, that if the Liquidation Trust shall be classified as a partnership for U.S. federal tax purposes under Treasury Regulations 301.7701-3 (but not a "publicly traded partnership" subject to Section 7704(a) of the IRC), the foregoing restrictions shall not apply. The Liquidation Trustee shall not become a market-maker for the Liquidation Trust Interests or otherwise attempt to create a secondary market for such interests. The Liquidation Trustee shall be restricted to the liquidation of the Liquidation Trust

Assets on behalf of, and for the benefit of, the Beneficiaries, the distribution and application of the Liquidation Trust Assets for the purposes set forth in this Agreement and the Underlying Documents, and the conservation and protection of the Liquidation Trust Assets and the administration thereof in accordance with the provisions of this Agreement and the Underlying Documents.

(b) Only the Liquidation Trustee shall have authority to settle or compromise Liquidation Trust Causes of Action, except as to the Vendor Claims, as set forth in Article III.C of the Plan. No such settlement or compromise shall require the review or approval of the Bankruptcy Court. Prior to entering into any such settlement or compromise of Liquidation Trust Causes of Action, the Liquidation Trustee shall comply with the requirements of Article VI of this Agreement, as applicable.

## ARTICLE VI

### ADMINISTRATION OF THE LIQUIDATION TRUST

*Section 6.1* **Agents and Professionals.** Except as otherwise provided in this Agreement and the Underlying Documents: (a) the Liquidation Trustee may consult with independent legal counsel to be selected by the Liquidation Trustee and the advice or opinion of such counsel will be full and complete personal protection to the Liquidation Trustee and the agents of the Liquidation Trustee in respect of any action taken or suffered by the Liquidation Trustee or the agents of the Liquidation Trustee in good faith and in reliance on, or in accordance with, such advice or opinion; and (b) Persons (including any professionals retained by the Liquidation Trustee or current or former principals of the Debtors) dealing with the Liquidation Trustee will look only to the Liquidation Trust Assets to satisfy any liability incurred by the Liquidation Trustee to such Person in carrying out the terms of the Underlying Documents, and the Liquidation Trustee will have no personal or individual obligation to satisfy any such liability.

*Section 6.2* **Retention of Professionals.** The Liquidation Trustee may retain and compensate such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, auctioneers, or other professionals as they may deem necessary, in the Liquidation Trustee's discretion and at the sole expense of the Liquidation Trust, to aid in the performance of the Liquidation Trustee's responsibilities without Bankruptcy Court approval. The Liquidation Trustee may retain any professional who represented parties in interest in the Chapter 11 Cases.

*Section 6.3* **Authentication of Documents.** The Liquidation Trustee will not be responsible for the title, validity, or genuineness of any property or evidence of title thereto received by the Liquidation Trustee or delivered by the Liquidation Trustee pursuant to this Agreement in acting upon any document believed by the Liquidation Trustee to be genuine and delivered by the proper party or parties.

*Section 6.4* **Investment Guidelines.**

(a) The Liquidation Trustee will invest the Liquidation Trust Assets only in investments that a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d) and Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684 may be permitted to hold, pursuant to any amendment or addition to the Internal Revenue Code or to the Treasury Regulations, or any modification in Internal Revenue Service guidelines whether set forth in Internal Revenue

Service rulings, other Internal Revenue Service pronouncements, or otherwise. Subject to the foregoing, investments (i) shall be administered in view of the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs, and (ii) shall be limited to demand and time deposits, such as certificates of deposit, having maturities of not more than one year, and U.S. Treasury bills or other temporary liquid investments that are readily convertible to cash.

(b) The Beneficiaries will be responsible for reporting their share of the income on investments of the assets in the Trust Account and paying the applicable taxes thereon. The Liquidation Trustee shall not be required or under any duty to accrue interest or produce other income on any monies received by him pursuant to the Plan and held for distribution or payment to the Beneficiaries, except as such interest is actually received by the Liquidation Trustee.

*Section 6.5* **No Trade or Business.** The Liquidation Trustee will not at any time, on behalf of the Liquidation Trust or the Beneficiaries, operate as a business entity within the meaning of Treasury Regulation section 301.7701-2, or engage in any trade or business as set forth in Treasury Regulation section 301.7701-4(d), other than to the extent consistent with the Liquidation Trust's liquidating purpose described in the Plan and set forth in this Agreement, and the Liquidation Trustee will not use or dispose of any part of the Liquidation Trust Assets in furtherance of any trade or business. Notwithstanding the foregoing, the Liquidation Trustee will not be prohibited from engaging in any trade or business unrelated to the Debtors or the Liquidation Trust Assets for their own personal account, provided that such activity does not interfere with the Liquidation Trustee's administration of the Liquidation Trust. In no event shall the Liquidation Trustee take any action which would jeopardize the status of the Liquidation Trust as a "liquidating trust" for federal income tax purposes within the meaning of Treasury Regulation section 301.7701-4(d).

*Section 6.6* **Court Approval of Liquidation Trustee Actions.** Except as otherwise provided in this Agreement or in the Underlying Documents, the Liquidation Trustee will not be required to obtain the order or approval of the Bankruptcy Court or any other court of competent jurisdiction in, or account to the Bankruptcy Court or any other court of competent jurisdiction for, the exercise of any right, power, or privilege conferred hereunder. Nevertheless, the Liquidation Trustee may seek an order of the Bankruptcy Court in connection with the exercise of any right, power, or privilege conferred hereunder.

*Section 6.7* **Liquidation Trust Board.**

(a) **Composition.** The Liquidation Trust Board shall be composed of a three (3) Person board (each, a "Liquidation Trust Board Member") comprised of: (i) one member selected by Lapis Advisers, LP, in its capacity as DIP Agent; (ii) one member selected by Lapis Advisers, LP, as agent under the Credit Agreement; and (iii) one member selected by the Bond Trustee.

The initial Liquidation Trust Board Members, as selected pursuant to the terms set forth above, are as follows:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

(b) **Resignation/Incapacitation.** A Liquidation Trust Board Member may immediately resign following written notice to the Liquidation Trustee and the other Liquidation Trust Board Members. Upon the resignation or incapacity of a member of the Liquidation Trust Board, the Person who selected such member of the Liquidation Trust Board, whether the DIP Agent, the Lapis Agent, or the Bond Trustee, shall select a replacement member of the Liquidation Trust Board to fill such vacancy. In the event a Liquidation Trust Board Member resigns or is removed, and is not replaced within thirty (30) days in accordance with this Section 6.6(b), the Liquidation Trustee shall be entitled to select the replacement of such Liquidation Trust Board Member with consent of the remaining Liquidation Trust Board Member(s). In the event of any disagreement, the Liquidation Trustee and such remaining Liquidation Trust Board Member(s) shall resolve such disagreement with the Bankruptcy Court which shall retain exclusive jurisdiction over the issue.

(c) **Authority.** The Liquidation Trust Board shall have a role analogous to that of a board of directors and shall have the authority to review, approve, and direct (upon the vote of a simple majority of its members, except as expressly provided in this Section 6.6(c), Section 6.6(g), and in the Underlying Documents) all material aspects of the administration of the Liquidation Trust.

(d) **Duties of the Liquidation Trust Board.** The Liquidation Trust Board shall oversee the implementation and administration of the Liquidation Trust and shall operate in accordance with the terms set forth in this Agreement and any Underlying Documents. Specifically, the Liquidation Trust Board shall have, among other things, the following rights, obligations and duties:

- (i) Approve the Liquidation Trustee's compensation terms; provided, however, that the Liquidation Trust Board approved the Liquidation Trustee's rates set forth on **Exhibit A** hereto;
- (ii) Approve the Liquidation Trustee's retention of counsel and other professionals, as well as the terms governing the engagement of such counsel and professionals, including retainer terms, conditions and budgets;
- (iii) Approve any distributions made by the Liquidation Trustee to the Beneficiaries and the amounts thereof;
- (iv) Review and approve the time, manner and method for the prosecution and disposition of any Liquidation Trust Causes of Action where the amount in controversy is reasonably expected to be greater than \$[50,000]; and
- (v) Review and approve any sale, abandonment, or other disposition of Liquidation Trust Assets, including any Liquidation Trust Cause of Action, where the amount at issues is reasonably expected to be greater than \$[50,000].

(e) **Compensation.** The Liquidation Trust Board Members shall not be compensated, but shall be reimbursed for reasonable expenses.

(f) **Manner of Notice to and Approval by the Liquidation Trust Board.**

- (i) Where this Agreement requires the Liquidation Trustee to provide notice to or obtain approval from the Liquidation Trust Board prior to taking any action under this Agreement, such notice shall be provided in accordance with Section 13.2 herein at least five (5) Business Days in advance of the date on which the Liquidation Trustee proposes to take the action that is the subject of such notice (the "Notice Date").
- (ii) Where this Agreement requires the Liquidation Trust Board to approve any action proposed to be taken by the Liquidation Trustee, the Liquidation Trust Board Members shall have five (5) Business Days from the Notice Date to provide the Liquidation Trustee written notice of any objection to the proposed action. If any Liquidation Trust Board Member fails to provide timely written objection to the Liquidation Trustee, the action shall be deemed to be approved by the Liquidation Trust Board.

(g) **Meetings.** The Liquidation Trustee or any Liquidation Trust Board Member may call a meeting of the Liquidation Trust Board for purposes of conducting the business of the Liquidation Trust Board. The Liquidation Trustee shall provide written notice of the place, date, time and agenda of all meetings, not less than two (2) business days before the date on which the meeting is to be held, to each Liquidation Trust Board Member at the address set forth in section 6.6(a) above, which shall include notice by email and/or telephone as appropriate to provide adequate notice of upcoming meetings to all Liquidation Trust Board Members. Any Liquidation Trust Board Member may designate by proxy another Liquidation Trust Board Member to act for it at any meeting, which designation may be oral. Any Liquidation Trust Board Member may attend meetings telephonically. The Liquidation Trust Board Members may, by unanimous written consent, waive or reduce the notice period for any meetings of the type described herein.

(h) **Voting.** A majority of the Liquidation Trust Board shall constitute a quorum qualified to act at any meeting called pursuant to section 6.6(g). The vote of a majority of the Liquidation Trust Board Members present at the time of the vote, if a quorum was present at the outset of the meeting, shall be the act of the Liquidation Trust Board. The Liquidation Trust Board may act on the unanimous written consent of the Liquidation Trust Board Members without a meeting.

(i) **Petition to Bankruptcy Court.** The Liquidation Trustee or any Liquidation Trust Board Member may petition the Bankruptcy Court to resolve matters concerning the administration of the Liquidation Trust, including in the event of a voting deadlock.

(j) **Standard of Care; Exculpation.** None of the Liquidation Trust Board Members, nor any of their duly designated professionals, agents or representatives, shall be liable for the act or omission of any other Liquidation Trust Board Member, or its professionals, agents or representatives, nor shall the Liquidation Trust Board Members be liable for any act or omission taken or omitted to be taken by the Liquidation Trust Board, other than for acts or omissions resulting from a Liquidation Trust Board Member's or any such professional's, agent's or representative's actual fraud or willful misconduct. The Liquidation Trust Board Members may, in connection with the performance of their functions, and in their sole and absolute discretion, consult with any attorneys, accountants, financial advisors and agents retained by the Liquidation Trust Board, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Persons, other than for acts or omissions

constituting actual fraud or willful misconduct. Notwithstanding such authority, none of the Liquidation Trust Board Members shall be under any obligation to consult with the such attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Liquidation Trust Board Member or, as applicable, any of their professionals, agents or representatives, unless such determination is based on actual fraud or willful misconduct.

(k) **Indemnification.** The Liquidation Trust Board Members, their respective companies, partners, officers, directors, employees, professionals, representatives, successors, and assigns (collectively, the "Liquidation Trust Board Indemnified Parties" and each a "Liquidation Trust Board Indemnified Party") shall be, and hereby are, indemnified by the Liquidation Trust, to the fullest extent permitted by applicable law, from and against any and all claims, debts, dues, accounts, actions, suits, causes of action, bonds, covenants, judgments, damages, attorneys' fees, defense costs, and other assertions of liability arising out of any such Liquidation Trust Board Indemnified Party's exercise of what such Liquidation Trust Board Indemnified Party reasonably understands to be its powers or the discharge of what such Liquidation Trust Board Indemnified Party reasonably understands to be its duties conferred by this Agreement, the Plan, or any order of the Bankruptcy Court entered pursuant to, or in furtherance of, the Plan, applicable law, or otherwise (except only for actions or omissions to act to the extent determined by a final and non-appealable order to be due to its own actual fraud or willful misconduct). The foregoing indemnification shall also extend to matters directly or indirectly in connection with, arising out of, based on, or in any way related to (i) this Agreement or any Underlying Documents; (ii) the services to be rendered pursuant to this Agreement or any Underlying Documents; or (iii) any document or information, whether verbal or written, referred to herein or supplied to the Liquidation Trustee. The Liquidation Trust shall, on demand, advance or pay promptly out of the Liquidation Trust Assets, on behalf of the Liquidation Trust Board Indemnified Party, reasonable attorneys' fees and other expenses and disbursements to which such Liquidation Trust Board Indemnified Party would be entitled pursuant to the foregoing indemnification obligation; *provided, however*, that any Liquidation Trust Board Indemnified Party receiving any such advance shall execute a written undertaking to repay such advance if a court of competent jurisdiction ultimately determines that such Liquidation Trust Board Indemnified Party is not entitled to indemnification hereunder due to the actual fraud or willful misconduct of such Liquidation Trust Board Indemnified Party. In any matter covered by the first two sentences of this subsection, any person entitled to indemnification shall have the right to employ such person's own separate counsel reasonably acceptable to the Liquidation Trustee, at the Liquidation Trust's expense, subject to the foregoing terms and conditions.

(l) **Duration.** The Liquidation Trust Board shall continue in existence for so long as the Liquidation Trust remains in existence.

## ARTICLE VII

### LIMITATION OF LIABILITY AND EXCULPATION PROVISIONS

*Section 7.1* **Reliance.** Except as otherwise provided in this Agreement or any Underlying Document:

(a) The Liquidation Trustee may rely and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or

document reasonably believed by the Liquidation Trustee to be genuine and to have been signed or presented by the proper party or parties;

(b) The Liquidation Trustee may absolutely and unconditionally presume that any other parties purporting to give notice of instructions in writing have been duly authorized to do so, and may rely on such notice; and

(c) Persons (including any of the Liquidation Trust's professionals) engaged in transactions with the Liquidation Trustee shall look only to the Liquidation Trust Assets to satisfy any liability incurred by the Liquidation Trustee to such Persons in carrying out the terms of this Agreement, the Plan, or the Confirmation Order, and the Liquidation Trustee shall have no personal or individual obligation to satisfy such liability.

*Section 7.2* **Limitation of Liability to Third Persons.** Notwithstanding any other provision of this Agreement, the Liquidation Trustee and the Liquidation Trust Board Members shall not be liable for any error of judgment, or any action taken or omitted to be taken hereunder or any action taken in good faith in reliance upon the advice of the Liquidation Trustee's professionals retained by the Liquidation Trustee in accordance with this Agreement. The liability of the Liquidation Trustee and the Liquidation Trust Board Members shall be limited as provided herein. No provision of this Agreement or any Underlying Document shall be construed to relieve the Liquidation Trustee and the Liquidation Trust Board Members from liability for their own respective actual fraud or willful misconduct.

*Section 7.3* **Non-liability for Acts of Others.** Nothing contained in this Agreement or the Underlying Documents shall be deemed to be an assumption by the Liquidation Trustee or the Liquidation Trust Board Members of any of the liabilities, obligations or duties of the Debtors or the Beneficiaries and shall not be deemed to be or contain a covenant or agreement by the Liquidation Trustee or any Liquidation Trust Board Member to assume or accept any such liability, obligation, or duty. Any successor Liquidation Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Liquidation Trustee hereunder, and any statement or representation made as to the assets comprising the Liquidation Trust Assets or as to any other fact bearing upon the prior administration of the Liquidation Trust, so long as it has a good faith basis to do so. A successor Liquidation Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. A Liquidation Trustee or successor Liquidation Trustee shall not be liable for any act or omission or any predecessor Liquidation Trustee, nor have a duty to enforce any claims against any predecessor Liquidation Trustee on account of any such act or omission.

*Section 7.4* **Exculpation.** The Liquidation Trustee and the Liquidation Trust Board Members, together with any and all of their respective officers, directors, professionals, employees, agents, and representatives, are exculpated by all holders of claims against and equity interests in the Debtors and all other parties in interest, from any and all Causes of Action arising out of the discharge of the powers and duties conferred upon the Liquidation Trustee by this Agreement, any Underlying Document, or applicable law, except solely for actions or omissions arising out of the Liquidation Trustee's or any Liquidation Trust Board Member's respective actual fraud or willful misconduct. No Person shall have or pursue any Cause of Action (i) against the Liquidation Trustee or the Liquidation Trust's officers, directors, professionals, employees, agents, and representatives for making distributions in accordance with the Plan, this Agreement, or any other Underlying

Documents; (ii) against the Liquidation Trust Board Members or their respective professionals, employees, agents, and representatives for making distributions in accordance with the Plan, this Agreement, or any other Underlying Documents; or (iii) against any Beneficiary for receiving or retaining distributions as provided for by the Plan, this Agreement, or any other Underlying Documents.

*Section 7.5* **Indemnity.** The Liquidation Trustee, Trust Indemnified Parties, the Liquidation Trust Board Members, and the Liquidation Trust Board Indemnified Parties are indemnified by the Liquidation Trust in accordance with Sections 5.2(b) and 6.6(k) hereof.

## ARTICLE VIII

### DISTRIBUTIONS FROM THE LIQUIDATION TRUST

*Section 8.1* **Generally.** The Liquidation Trustee shall, to the extent of sufficient funds as determined in consultation with the Liquidation Trust Board Members, make distributions at least semi-annually to the Beneficiaries from the liquidation of the Liquidation Trust Assets in accordance with the terms of this Agreement, the Plan, and Confirmation Order.

*Section 8.2* **Timing and Amount of Distributions.**

(a) Beneficiaries shall receive distributions of proceeds of the Liquidation Trust Assets as monetized pursuant to this Agreement that are remaining after payment of amounts in accordance with Section 8.2(b) and reserving for amounts set forth in this Section 8.2(a); *provided, however*, the distributions shall be made annually to the extent necessary for the Liquidation Trust to maintain its status as a “liquidating trust” for U.S. federal income tax purposes. Notwithstanding anything in this Agreement to the contrary, the Liquidation Trustee shall cause the Liquidation Trust, at all times, to retain sufficient funds as the Liquidation Trustee shall determine are reasonably necessary for the Liquidation Trust to (i) meet contingent liabilities and maintain the value of the Liquidation Trust Assets during liquidation; (ii) make the payments and satisfy all obligations and liabilities described in Section 5.2 of this Agreement as well as satisfy all obligations to remit amounts pursuant to applicable U.S. and non-U.S. laws relating to taxes; and (iii) fund the reasonable, documented out-of-pocket fees and expenses of both (x) the Liquidation Trustee in accordance with the terms of the Liquidation Trustee’s engagement, and (y) the Liquidation Trustee’s professionals. For the avoidance of doubt, the Liquidation Trustee shall not be deemed to be an “underwriter” in connection with its distribution of any Liquidation Trust Assets, as such term is defined in section 1145(b) of the Bankruptcy Code, and no employees, agents, or representatives of the Liquidation Trustee shall be deemed to be a “broker-dealer” as such term is defined in the Securities Exchange Act of 1934, as amended, or any rules promulgated thereunder.

(b) **Priority of Distribution of Liquidation Trust Assets and Proceeds.** Any Liquidation Trust Assets or proceeds thereof available for distribution shall be applied (a) first, to pay or reimburse, as applicable, the reasonable, documented out-of-pocket fees, costs, expenses, and liabilities of the Liquidation Trust and the Liquidation Trustee, as provided in this Agreement; (b) second, to pay or reimburse, as applicable, the reasonable, documented out-of-pocket costs, expenses, and liabilities of the Liquidation Trust Board and Liquidation Trust Board Members, as provided in this Agreement; (c) third, to establish appropriate reserves for the continued operation of

the Liquidation Trust; (d) fourth, to repay any additional funding for the Liquidation Trust raised by the Liquidation Trustee pursuant to Section 5.2(a)(xxii) of this Agreement; and (e) fifth, to fund payments of any balance to the Agent for application pursuant to the Credit Agreement.

(c) **Distribution of Liquidation Trust Asset Proceeds Upon Termination.** Promptly upon complete liquidation of the Liquidation Trust Assets, the Liquidation Trustee shall distribute any Liquidation Trust Assets available for distribution not yet distributed from the Liquidation Trust in the same manner as described in paragraph (b) of this Section 8.3 and in accordance with the terms of this Agreement and the Underlying Documents.

*Section 8.3* **Withholding.** The Liquidation Trustee may withhold from amounts distributable to any Beneficiary any and all amounts, determined in the Liquidation Trustee's reasonable and sole discretion, to be required by any law, regulation, rule, ruling, directive or other government equivalent of the United States or any political subdivision thereof. To the extent that amounts are so withheld and paid over to the appropriate governmental entity, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made.

*Section 8.4* **Tax Identification Numbers.** The Liquidation Trustee may require any Beneficiary to furnish to the Liquidation Trustee its social security number or employer or taxpayer identification number as assigned by the IRS, and/or complete a Form W-8BEN or W-9 as a condition to any distribution to any Beneficiary under the Plan.

*Section 8.5* **Delivery of Distributions.** Subject to the provisions of Federal Rule of Bankruptcy Procedure 2002(g), and except as otherwise provided herein, distributions and deliveries to the Beneficiaries shall be made at the address of each such Beneficiary set forth on the Debtors' books and records unless superseded by the address provided in writing to the Liquidation Trustee by any such Beneficiary.

*Section 8.6* **Undeliverable and Unclaimed Distributions.**

(a) If any distribution of the proceeds of the Liquidation Trust Assets to an Beneficiary is returned to the Liquidation Trustee as undeliverable, no further distribution to such Beneficiary shall be made unless and until the Liquidation Trustee is notified in writing of such Beneficiary's then-current address, at which time all missed distributions shall be made to such Beneficiary without interest. Undeliverable distributions shall remain in the possession of the Liquidation Trustee until the relevant distribution becomes practicably deliverable (in which event it shall be distributed to such Beneficiary), subject to Section 8.7(b) hereof.

(b) Any Beneficiary that does not assert a claim for an undeliverable distribution of proceeds of the Liquidation Trust Assets held by the Liquidation Trust within 180 days from the date such distribution was returned shall no longer have any further claim to or interest of any kind or nature in such undeliverable distribution(s) and all title to such undeliverable distribution(s) shall revert to the Liquidation Trust (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary), and shall be redistributed to the remaining Beneficiaries in accordance with Section 8.3(b) hereof. Any distributions of the proceeds of the Liquidation Trust Assets that are returned as undeliverable following the completed liquidation of the Liquidation Trust shall either be redistributed to the remaining Beneficiaries or may, at the election of the Liquidation

Trustee, upon notice to the Liquidation Trust Board, be donated to a charity selected by the Liquidation Trustee.

(c) Checks issued to any Beneficiary on account of any distribution of the proceeds of the Liquidation Trust Assets shall be null and void if not negotiated within one hundred and eighty (180) days after the issuance of such check. Requests for reissuance of any check shall be made directly to the issuer of such check. Any Beneficiary holding an un-negotiated check that does not request reissuance of such un-negotiated check within one hundred and eighty (180) days after the issuance of such check shall have its Claim for such un-negotiated check discharged and shall be forever barred, estopped, and enjoined from asserting any such Claim against the Liquidation Trust. In such cases, any Cash held for payment on account of such Claims shall be property of the Liquidation Trust, free of any Claims of such Holder with respect thereto. Nothing contained herein shall require the Liquidation Trustee to attempt to locate any Beneficiary.

*Section 8.7* **Minimum; De Minimis Distributions**. In the reasonable judgment of the Liquidation Trustee, the Liquidation Trustee shall not be required to make distributions in an amount less than \$50.00. To the extent that the aggregate of such distributions never exceeds \$50.00, and in the reasonable judgment of the Liquidation Trustee are in an aggregate amount insufficient to make an additional distribution to the Beneficiaries, such funds may be donated to a 501(c)(3) charity, such as the American Bankruptcy Institute.

*Section 8.8* **Securities Exchange Act**. It is intended that the Liquidation Trust Interests shall not constitute “securities” and none of the Liquidation Trust Interests shall be certificated. If the Liquidation Trustee determines, with the advice of counsel, that the Liquidation Trust is required to comply with registration and reporting requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or the Investment Company Act of 1940, as amended (the “Investment Company Act”), then the Liquidation Trustee shall take any and all actions to comply with such registration and reporting requirements, if any, and file periodic reports with the Securities and Exchange Commission (the “SEC”). Notwithstanding the foregoing procedure, nothing herein shall be deemed to preclude the Liquidation Trustee from amending this Agreement to make such changes as are deemed necessary or appropriate by the Liquidation Trustee, with the advice of counsel, to ensure that the Liquidation Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act.

*Section 8.9* **Fiscal Year**. Except for the first and last years of the Liquidation Trust, the fiscal year of the Liquidation Trust shall be the calendar year. For the first and last years of the Liquidation Trust, the fiscal year of the Liquidation Trust shall be such portion of the calendar year that the Liquidation Trust is in existence

*Section 8.10* **Cash Payments**. All Cash distributions required to be made by the Liquidation Trustee to the holders of Liquidation Trust Interests shall be made in Cash denominated in U.S. dollars. All Cash of the Liquidation Trust shall be maintained in a United States financial institution.

## ARTICLE IX

### SELECTION, REMOVAL, AND COMPENSATION OF THE LIQUIDATION TRUSTEE

*Section 9.1* **Term of Service.** The Liquidation Trustee will serve until: (a) the completion of all the Liquidation Trustee's duties, responsibilities, and obligations under this Agreement and the Underlying Documents; (b) termination of the Liquidation Trust; (c) removal by the majority vote of the Liquidation Trust Board; or (d) the Liquidation Trustee's resignation, or removal pursuant to a Final Order of the Bankruptcy Court concluding that the Liquidation Trustee acted in a grossly negligent manner or otherwise committed willful misconduct.

*Section 9.2* **Resignation of the Liquidation Trustee.** The Liquidation Trustee may resign at any time by giving the Liquidation Trust Board at least 30 days' written notice of their intention to do so. In the event of a resignation, the resigning Liquidation Trustee (or the successor Liquidation Trustee) will file with the Bankruptcy Court a full and complete accounting of monies and assets received, disbursed, and held during the term of office of the resigning Liquidation Trustee. The resignation will be effective on the latest of: (a) the date specified in the notice; (b) the date that is 30 days after the date the notice is delivered; (c) the date the accounting described in the preceding sentence is filed with the Bankruptcy Court; and (d) the date the successor Liquidation Trustee accepts the appointment as such.

*Section 9.3* **Removal of the Liquidation Trustee.** The Liquidation Trust Board may remove the Liquidation Trustee upon thirty (30) days' prior written notice delivered to the Liquidation Trustee, and the Liquidation Trust Board shall appoint any replacement Liquidation Trustee in their sole discretion. For the avoidance of doubt, during the pendency of any dispute before the Bankruptcy Court regarding removal of the Liquidation Trustee and any appeals therefrom, the Liquidation Trustee shall (i) continue to discharge the rights, obligations and duties of the A Liquidation Trustee set forth in the this Agreement the Underlying Documents and (ii) continue to receive payment of reasonable fees and expenses accrued prior to the entry of a final order authorizing the removal of the Liquidation Trustee, subject to the terms of this Agreement.

*Section 9.4* **Appointment of Successor Liquidation Trustee.** In the event the Liquidation Trustee resigns or is removed pursuant to Sections 9.2 and 9.3 herein, the Liquidation Trust Board shall appoint a successor Liquidation Trustee, and file notice of such appointment with the Bankruptcy Court.

*Section 9.5* **Powers and Duties of Successor Liquidation Trustee.** A successor Liquidation Trustee will have all the rights, powers, privileges, and duties of the predecessor Liquidation Trustee.

*Section 9.6* **Trust Continuance.** The resignation or removal of the Liquidation Trustee will not terminate the Liquidation Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Liquidation Trustee.

*Section 9.7* **Trustee and Professional Compensation.** The Liquidation Trustee shall not be required to file fee applications to receive compensation. The initial Liquidation Trustee and any professional retained by the Liquidation Trustee shall be compensated at their usual professional rates from the Liquidation Trust Assets, after twenty (20) days' notice to and non-objection by the

Liquidation Trust Board. Any objection must be articulated with reasonable specificity and any time entries or line items not specifically objected to may be paid notwithstanding a pending objection as to other entries or items. Any objection not consensually resolved shall be resolved by the Bankruptcy Court.

*Section 9.8* **Discharge, and Release of the Liquidation Trustee.** The Liquidation Trustee shall seek a release and discharge from the Bankruptcy Court in accordance with the Bankruptcy Code and the Bankruptcy Rules once (i) the Liquidation Trust has terminated in accordance with this Agreement and the Underlying Documents and (ii) all remaining Liquidation Trust Assets have been distributed in accordance with this Agreement and the Underlying Documents. For the purpose of winding up the affairs of the Liquidation Trust at the conclusion of its term, the Liquidation Trustee shall continue to act as Liquidation Trustee until its duties under this Agreement have been fully discharged or its role as Liquidation Trustee is otherwise terminated under this Agreement and the Underlying Documents. Upon a motion by the Liquidation Trustee, the Bankruptcy Court may enter an order relieving the Liquidation Trustee, its agents and employees of any further duties, discharging, and releasing the Liquidation Trustee.

## ARTICLE X

### MAINTENANCE OF RECORDS; REPORTING

*Section 10.1* **Books and Records.** The Liquidation Trustee will maintain books and records containing a description of all Liquidation Trust Assets from time to time held by the Liquidation Trust (which Liquidation Trust Assets will be valued consistently for all federal income tax purposes) and an accounting of all receipts and disbursements. Such books and records shall include information relating to the Liquidation Trust Assets held, income received, and the payment of expenses of, and liabilities against, the Liquidation Trust. The books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Liquidation Trust and the Beneficiaries in their capacity as such. Such books and records will be open to inspection by any Beneficiary and the Liquidation Trust Board at any reasonable time during normal business hours with advance notice.

*Section 10.2* **Accounting.** Any and all reserves maintained by the Liquidation Trustee in connection with distributions may be maintained by bookkeeping entries alone; the Liquidation Trustee need not (but may) establish separate Trust Accounts for such purposes.

## ARTICLE XI

### TAX MATTERS

*Section 11.1* **Tax Returns and Statements.**

(a) **Tax Treatment.** The Debtors, the Liquidation Trustee, and Beneficiaries, as applicable, will treat the Liquidation Trust as a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d) and any comparable provision of state or local law. The Liquidation Trust shall be considered a “grantor trust” and is intended to comply with the requirements of a liquidating trust, which is a grantor trust, as set forth in Revenue Procedure 94-45, 1994-2 C.B. 684. Consistent with this treatment, for all U.S. federal, state, and local income tax

purposes, the Beneficiaries shall be treated as if they had received a distribution from the Debtors' Estates of an undivided interest in each of the assets of the Liquidation Trust (to the extent of the value of their respective shares therein) and then contributed such interests to the Liquidation Trust. The Beneficiaries will be treated for U.S. federal, state, and local income tax purposes as the grantors of the Liquidation Trust and the owners of the assets thereof, and the Debtors, the Liquidation Trustee, and the Beneficiaries shall treat the transfer of assets (net of any applicable liabilities) to the Liquidation Trust for the benefit of the Beneficiaries as (a) a transfer by the Debtors of the assets of the Liquidation Trust (net of any applicable liabilities) directly to the Beneficiaries (to the extent of the value of their respective shares in the assets of the Liquidation Trust), followed by (b) the transfer of the assets of the Liquidation Trust (net of any applicable liabilities) by the Beneficiaries (to the extent of the value of their respective shares in the assets of the Liquidation Trust) to the Liquidation Trust in exchange for the beneficial interests in the Liquidation Trust. The Beneficiaries thus will be treated as grantors and deemed owners of the Liquidation Trust. The Debtors, the Liquidation Trustee, and the Beneficiaries agree (in the absence of an administrative pronouncement or judicial ruling to the contrary) to report the establishment of the Liquidation Trust consistently with such tax treatment and that each taxable year, all taxable income recognized by the Liquidation Trust will be allocated to the Beneficiaries in accordance with and to the extent provided in the Plan. Each Beneficiary will be required each taxable year to recognize its share (taking account of the provisions of the Plan) of all taxable income recognized by the Liquidation Trust. The Liquidation Trustee shall be authorized to take any action necessary to maintain compliance with Treasury Regulations Section 301.7701-4(d) or any successor regulation thereto that does not contradict the terms of this Agreement, the Plan, or the Confirmation Order. In the event the Liquidation Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulation Sections 301.7701-4(d), the Liquidation Trustee shall take such action as it shall deem appropriate to have the Liquidation Trust classified as a partnership for U.S. federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a "publicly traded partnership" subject to Section 7704(a) of the IRC), including, if necessary, creating or converting it into a limited liability partnership or limited liability company that is so classified.

(b) **Tax Years.** The taxable years of the Liquidation Trust shall end on December 31 unless the Liquidation Trustee deems it advisable to establish some other date as the date on which the taxable year shall end.

(c) **Tax Returns.**

- (i) The Liquidation Trustee will timely file (or cause to be filed) federal income tax returns for the Liquidation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) following the close of the taxable year of the Liquidation Trust.
- (ii) The Liquidation Trustee will file (or cause to be filed) all other statements, returns, or disclosures relating to the Liquidation Trust that are required by any law, regulation, rule, ruling, directive, or other governmental requirement, or at the behest of any governmental unit, including state and local tax returns, as appropriate for the Liquidation Trust.
- (iii) The Liquidation Trustee is authorized to request extensions of time to file any required tax returns.

**(d) Reports to Beneficiaries.** Within ninety (90) days following the end of each calendar year, the Liquidation Trustee will mail to each Person who was a Beneficiary at the close of the year, a separate statement regarding the receipts and expenditures of the Liquidation Trust as relevant for each Beneficiary to determine its share of items of income, gain, loss, deduction or credit for U.S. federal income tax purposes. Unless specifically required under applicable law, the Liquidation Trustee may provide each such Beneficiary with a copy of the Form 1041 for the Liquidation Trust (without attaching any other holder's Schedule K-1 or other applicable information form) along with such Beneficiary's Schedule K-1 or other applicable information form in order to satisfy the foregoing requirement, or in any other manner reasonably determined by the Liquidation Trustee. Such reporting shall also occur within a reasonable time after the dissolution of the Liquidation Trust. The Liquidation Trustee shall allocate the taxable income, gain, loss, deduction, and credit of the Liquidation Trust with respect to each Beneficiary to the extent required by the IRC and applicable law. The Liquidation Trustee may, in its sole discretion, request an expedited determination of the tax obligations of the Liquidation Trust, under section 505(b) of the Bankruptcy Code, for all returns filed for, or on behalf of, the Liquidation Trust for all taxable periods from the Effective Date through the Termination Date. As soon as possible after the Effective Date, the Liquidation Trust shall make a good faith valuation of the assets of the Liquidation Trust, and the Debtors, the Liquidation Trustee, and the Beneficiaries shall use such valuation consistently for all U.S. federal income tax purposes. The Beneficiaries shall be treated as the owners of their respective share of the Liquidation Trust pursuant to Sections 671 through 679 of the IRC and any analogous provision of state or local law and shall be taxed on their respective share of the Liquidation Trust's taxable income (including both ordinary income and capital gains) pursuant to Section 671 of the IRC and any analogous provision of state or local law.

**(e) Tax Withholdings.** The Liquidation Trustee shall comply with all withholding and reporting requirements imposed by any U.S. federal, state, local, or non-U.S. taxing authority, and all distributions made by the Liquidation Trust to the Beneficiaries shall be subject to any such withholding and reporting requirements. The Liquidation Trustee shall take reasonable steps, including requesting appropriate forms from the Beneficiaries, to reduce or eliminate any such withholding tax. All such amounts withheld, and paid to the appropriate taxing authority, shall be treated as amounts distributed to such Beneficiaries for all purposes of this Agreement. The Liquidation Trustee shall be authorized to collect such tax information from the Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as it in its reasonable discretion deems necessary to effectuate the Plan and this Agreement.

**(f) Foreign Tax Matters.** The Liquidation Trustee shall take all reasonable steps, including the filing of any necessary documentation or elections with any non-U.S. tax authority, to minimize, under non-U.S. law: (i) the liabilities of the Liquidation Trust and the Beneficiaries for non-U.S. taxes, interest, penalties, and other amounts; (ii) the obligations of the Liquidation Trust to file non-U.S. tax or information returns or other documentation; and (iii) the obligations of the Liquidation Trust to withhold and remit amounts to any non-U.S. taxing authority in respect of payments or distributions of income or property by the Liquidation Trust. The Liquidation Trustee shall duly comply on a timely basis with all obligations, and satisfy all liabilities, imposed on the Liquidation Trustee or the Liquidation Trust under non-U.S. law relating to taxes. The Liquidation Trustee, or any other legal representative of the Liquidation Trust, shall not distribute Liquidation Trust Assets or any proceeds thereof without first having obtained all certificates required to have been obtained under applicable non-U.S. law relating to taxes.

## ARTICLE XII

### DURATION OF THE LIQUIDATION TRUST

*Section 12.1* **Duration.** The Liquidation Trust will become effective upon the Effective Date. The Liquidation Trust and its provisions herein shall only remain and continue in full force and effect until the Termination Date. The "Termination Date" shall occur at such time as (a) all assets of the Liquidation Trust have been liquidated as determined by the Liquidation Trustee in consultation with the Liquidation Trust Board; and (b) all distributions required to be made by the Liquidation Trustee under the Plan and this Agreement have been made (subject to reservation of any Liquidation Trust Assets reasonably necessary to facilitate winding up of the affairs of the Liquidation Trust as set forth in this Agreement), in accordance with this Agreement. The initial term of the Liquidation Trust shall be five (5) years from the Effective Date; *provided, however*, if warranted by facts and circumstances, the initial term may be extended for a finite term by the Liquidation Trustee upon approval of the Liquidation Trust Board and with the approval of the Bankruptcy Court, upon a finding that such extension is necessary to the liquidating purpose of the Liquidation Trust. Such approval by the Bankruptcy Court shall be obtained by the Liquidation Trustee within six months of the beginning of the extended term. Notwithstanding anything to the contrary in this Agreement, in no event shall the Liquidation Trustee unduly prolong the duration of the Liquidation Trust, and the Liquidation Trustee shall, in the exercise of its reasonable business judgment and in the interests of the Beneficiaries, at all times pursue the liquidation of the Liquidation Trust Assets and prosecute the Liquidation Trust Causes of Action in a manner reasonably calculated to maximize net recoveries to the Beneficiaries. Notwithstanding the foregoing or any other provision of the Plan or this Agreement, the Liquidation Trustee may make distributions of Cash held by the Liquidation Trust to the Beneficiaries at such times as required by the Plan or otherwise, as the Liquidation Trustee shall determine and in accordance with this Agreement.

*Section 12.2* **Continuance of Liquidation Trust for Winding Up.** After the Termination Date, and solely for the purpose of winding up the affairs of the Liquidation Trust, the Liquidation Trustee shall continue to act as such until their duties have been fully performed. The Liquidation Trustee shall retain the books, records, and files that shall have been delivered to or created by the Liquidation Trustee until such time that the Liquidation Trustee determines, in their sole discretion, that such books, records, and files may be destroyed (unless such records and documents are necessary to fulfill the Liquidation Trustee's obligations pursuant to this Agreement), subject to the terms of any joint prosecution and common interest agreement(s) to which the Liquidation Trustee may be a party. Except as otherwise specifically provided herein, upon the final distribution of the Liquidation Trust Assets, the Liquidation Trustee shall be deemed discharged and have no further duties or obligations hereunder, and the interests of the Beneficiaries shall be cancelled and the Liquidation Trust will be deemed to have been dissolved.

## ARTICLE XIII

### MISCELLANEOUS

*Section 13.1* **No Assignment.** The Liquidation Trustee may not assign this Agreement without the prior written consent of the Liquidation Trust Board.

*Section 13.2* **Notices.** Any notice or other communication required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally, by facsimile or other telegraphic means, sent by nationally recognized overnight delivery service, mailed by United States certified mail, or electronic mail. The date of receipt of such notice shall be the earliest of (a) the date of actual receipt by the receiving party, (b) the date of personal delivery (or refusal upon presentation for delivery), (c) the date of the transmission confirmation, or (d) three (3) Business Days after service by United States certified mail, to the receiving party's address(es) reflected in **Schedule 13.2** hereof until a change of address is communicated pursuant to the terms of this Agreement.

*Section 13.3* **No Bond.** Notwithstanding any state law to the contrary, the Liquidation Trustee (including any successor) and any disbursing agent will be exempt from giving any bond or other security in any jurisdiction.

*Section 13.4* **Entire Agreement; No Waiver.** The entire agreement of the parties relating to the subject matter of this Agreement is contained in this Agreement and the Underlying Documents and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights under law or in equity.

*Section 13.5* **Headings.** The headings used in this Agreement are inserted for convenience only and do not constitute a portion of this Agreement, nor in any manner affect the construction of the provisions of this Agreement.

*Section 13.6* **Governing Law; Jurisdiction.** This Agreement will be construed in accordance with and governed by the internal substantive law of the state of Washington, regardless of the laws that might otherwise govern under principles of conflicts of law applicable thereto. The Parties agree that the Bankruptcy Court shall have continued jurisdiction over the Liquidation Trust and the Liquidation Trustee, including, without limitation, the administration and activities of the Liquidation Trust and the Liquidation Trustee. Notwithstanding the foregoing, the Bankruptcy Court shall not have exclusive jurisdiction over Liquidation Trust Causes of Action, which the Liquidation Trustee may prosecute in any court of appropriate jurisdiction in accordance with applicable law.

*Section 13.7* **Successors and Assigns.** This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and permitted assigns.

*Section 13.8* **No Execution.** All funds in the Liquidation Trust will be deemed in *custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and

no Beneficiary or any other Person can execute upon, garnish, or attach the Liquidation Trust Assets or the Liquidation Trust in any manner or compel payment from the Liquidation Trust except by order of the Bankruptcy Court. Payment will be solely governed by this Agreement and the Underlying Documents.

*Section 13.9* **Confidentiality**. The Liquidation Trustee and each successor trustee and each Liquidation Trust Board Member (each a “Covered Person”) shall, during the period that they serve in such capacity under this Agreement and following either the termination of this Agreement or such individual’s removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Liquidation Trust Assets (the “Information”), except to the extent disclosure is required by applicable law, order, regulation or legal process or to the extent such disclosure is made in connection with their services as a Covered Person. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person shall notify the Liquidation Trustee or other Liquidation Trust Board Member, as applicable, and reasonably promptly (unless prohibited by law) so that the Liquidation Trustee or Liquidation Trust Board Member, as applicable, may seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section 13.9 (and if the Liquidation Trust Board Member or Liquidation Trustee, as applicable, seeks such an order, the relevant Covered Person will provide cooperation as the Liquidation Trustee or Liquidation Trust Board Member shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Liquidation Trustee or Liquidation Trust Board Member, as applicable, waive compliance with the terms of this Section 13.9 and that any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the Liquidation Trustee and the Liquidation Trust Board Member written notice (unless prohibited by law) of the Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

*Section 13.10* **Cooperation**. Upon the Effective Date, the Debtors and their respective Professionals, shall turn over to the Liquidation Trustee or their professionals copies of all books and records related to the Liquidation Trust Assets (the “Books and Records”), including all books and records reasonably required by the Liquidation Trustee to investigate, prosecute, compromise, and/or settle the Liquidation Trust Causes of Action. Notwithstanding the foregoing, the Liquidation Trustee, subject to approval by the Liquidation Trust Board, may elect to enter into one or more agreements with the Debtors and their respective Professionals regarding access to the Books and Records (the “Books and Records Agreements”). Following the Effective Date, the Debtors and their respective Professionals shall cooperate with the Liquidation Trustee and its professionals, as applicable, solely in relation to the activities of the Liquidation Trustee authorized under the Plan, the Confirmation Order, any other applicable orders of the Bankruptcy Court, and this Agreement, including, without limitation, by providing reasonable, good faith access to personnel (in the case of the Debtors, if any), systems, and books and records to the extent and at such times as providing such access will not interfere with the primary obligations of the Debtors and their respective personnel. Except as to copies of books and records to be turned over to the Liquidation Trustee or its professionals upon the Effective Date, to the extent that the Debtors determine that responding to any particular information request from the Liquidation Trustee requires the Debtors or their personnel to

expend material time or resources outside the ordinary course of their operations or responsibilities, the Debtors or their personnel shall communicate the same to the Liquidation Trustee, together with a range of expected costs to satisfy such information request, and the Debtors and the Liquidation Trustee shall work in good faith to address any disputes arising in connection with such cost analysis. Except as to copies of books and records to be turned over to the Liquidation Trustee or its professionals upon the Effective Date, the Liquidation Trust shall satisfy, exclusively from Liquidation Trust Assets, any agreed-upon cost expenditures; in the absence of such agreement, the Liquidation Trustee may withdraw its information request, the Debtors may determine not to satisfy such request, and all parties' rights to raise any such disputes with the Bankruptcy Court are reserved.

*Section 13.11 **Amendment.*** The Liquidation Trustee, with the consent of the Liquidation Trust Board, may modify, supplement, or amend this Agreement in any way that is not inconsistent with the Plan or the Confirmation Order. Any material modification to this Agreement requires Bankruptcy Court approval.

*Section 13.12 **Severability.*** If any term, provision, covenant, or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable, or against its regulatory policy, the remainder of the terms, provisions, covenants, and restrictions contained in this Agreement will remain in full force and effect and will in no way be affected, impaired, or invalidated, and this Agreement shall be interpreted in accordance with its original intent to the fullest extent possible.

*Section 13.13 **Effectiveness.*** Notwithstanding prior execution, this Agreement shall not be effective until the Effective Date.

*Section 13.14 **Counterpart Signatures.*** This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement (or are deemed to have so executed this Agreement) on the date first written above and effective as of the Effective Date of the Plan.

**Astria Health**  
**Glacier Canyon, LLC**  
**Kitchen and Bath Furnishings, LLC**  
**Oxbow Summit, LLC**  
**SHC Holdco, LLC**  
**SHC Medical Center – Toppenish**  
**SHC Medical Center – Yakima**  
**Sunnyside Community Hospital Association**  
**Sunnyside Community Hospital Home Medical Supply, LLC**  
**Sunnyside Home Health**  
**Sunnyside Professional Services, LLC**  
**Yakima Home Care Holdings, LLC**  
**Yakima HMA Home Health, LLC**

By: \_\_\_\_\_  
Name: [\_\_\_\_\_] \_\_\_\_\_  
Title: [\_\_\_\_\_] \_\_\_\_\_

**UMB Bank, N.A. as  
Liquidation Trustee**

By: \_\_\_\_\_  
Lorna Gleason

**Exhibit G**

**[FILED UNDER SEAL]**

**Exhibit H**

## D&O CAUSE OF ACTION AGREEMENT

This D&O Cause of Action Agreement (the “Agreement”), dated as of November [\*], 2020, is entered into by and between the Lapis Parties,<sup>1</sup> the Committee, and the Debtors pursuant to Section III.H of the Plan to establish the mechanisms for (i) the vesting, revesting, and/or transfer of the D&O Causes of Action and any related insurance policies (including the D&O Policies), (ii) the prosecution and/or settlement or other resolution of the D&O Causes of Action (including the funding of the fees and costs attendant to such prosecution and/or settlement or other resolution), and (iii) the sharing of any proceeds of the D&O Causes of Action.

WHEREAS, on May 6, 2019, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Court;

WHEREAS, on November 11, 2020, the Debtors filed the Plan;

WHEREAS, Section III.H of the Plan provides as follows:

The D&O Causes of Action shall be preserved for the benefit of the Debtors’ Estates and their creditors. The mechanism for (a) the vesting, revesting, and/or transfer of the D&O Causes of Action and any related insurance policies (including the D&O Insurance Policies), (b) the prosecution and/or settlement or other resolution of the D&O Causes of Action (including the funding of the fees and costs attendant to such prosecution and/or settlement or other resolution), and (c) the sharing of any proceeds of the D&O Causes of Action shall be subject to further agreement between the Lapis Parties and the Committee (the “D&O Cause of Action Agreement”), which shall be filed as part of the Plan Supplement[; and]

WHEREAS, the Lapis Parties, the Committee, and the Debtors have engaged in good faith, arm’s-length negotiations regarding the foregoing and wish to provide for the preservation and administration of the D&O Causes of Action according to the terms of this Agreement;

NOW, THEREFORE, pursuant to the Plan, and in consideration of the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereby agree as follows:

1. Preservation of D&O Causes of Action. Consistent with Section VII.K of the Plan, the D&O Causes of Action and D&O Policies shall revert in the Reorganized Debtors upon the occurrence of the Effective Date.

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<sup>1</sup> Capitalized terms otherwise undefined in this Agreement shall have the meanings ascribed to them in Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and Its Debtor Affiliates [Docket No. 1986] (as may be subsequently amended, modified, or supplemented, the “Plan”).

2. Grant of Standing. Upon the occurrence of the Effective Date, the GUC Distribution Trustee shall automatically be granted, have, and be vested with exclusive standing and authority to (i) bring the D&O Causes of Action in any court of competent jurisdiction, (ii) prosecute the D&O Causes of Action through final judgment, (iii) settle the D&O Causes of Action, and/or (iv) otherwise resolve the D&O Causes of Action; provided, however, notwithstanding such exclusive standing, the GUC Distribution Trustee shall (a) regularly consult with the Lapis Parties with respect to the D&O Causes of Action, and (b) obtain the express written consent of the Lapis Parties prior to initiating, settling or otherwise resolving any of the D&O Causes of Action, which consent shall not be unreasonably withheld; provided further, however, that to the extent the GUC Distribution Trustee and the Lapis Parties, after good faith negotiation, cannot reach agreement regarding the GUC Distribution Trustee's initiating, settling and/or otherwise resolving the D&O Causes of Action, the GUC Distribution Trustee may seek a resolution of such dispute by the Court and, with respect to any proposed settlement or other resolution of the D&O Causes of Action, may file a motion with the Court seeking approval of the settlement or other resolution pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and the standards applicable thereto. Upon the occurrence of the Effective Date, the GUC Distribution Trustee shall automatically be (a) deemed a representative of the Reorganized Debtors with respect to the D&O Causes of Action and the D&O Policies, and (b) granted and have the right to control any and all privileges and protections on behalf of the Reorganized Debtors with respect to the D&O Causes of Action.

3. Retention and Compensation of Counsel. Any selection of counsel and/or other professionals to represent the GUC Distribution Trustee with respect to the D&O Causes of Action and the terms of such counsel's and/or other professionals' compensation shall be jointly determined by the GUC Distribution Trustee and the Lapis Parties. Subject to section four (4) below, ongoing costs and expenses of the GUC Distribution Trustee and the GUC Distribution Trustee's counsel and/or other professionals incurred with respect to the D&O Causes of Action and payable prior to the receipt of any proceeds of the D&O Causes of Action (the "Ongoing Costs") shall be paid from the GUC Distribution Trust.

4. Sharing of Proceeds. Any net proceeds of the D&O Causes of Action and/or any related D&O Policies, after accounting for all costs and expenses of the GUC Distribution Trustee (including all fees and expenses of counsel and other professionals retained pursuant to section three (3) above and all Ongoing Costs paid by the GUC Distribution Trust pursuant to section three (3) above), in asserting the D&O Causes of Action in a court of competent jurisdiction, prosecuting the D&O Causes of Action through final judgment, settling the D&O Causes of Action, and/or otherwise resolving the D&O Causes of Action (the "Net Proceeds"), shall be divided evenly between the GUC Distribution Trust and the Liquidation Trust (*i.e.*, the GUC Distribution Trust shall receive fifty percent (50%) of any Net Proceeds and the Liquidation Trust shall receive fifty percent (50%) of any Net Proceeds).

5. Confirmation Order. The foregoing sections one (1) through four (4) shall be deemed incorporated in their entirety into the Confirmation Order.

6. Authority to Execute. Each person who executes this Agreement represents that they are duly authorized to execute this Agreement on behalf of their respective party hereto and that such party has full knowledge of and has consented to the terms of this Agreement.

7. Binding Nature. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

8. Execution and Counterparts. This Agreement may be executed in as many counterparts as may be required, which counterparts may be delivered by facsimile, electronic mail, or other electronic means, and it shall not be necessary that the signature on behalf of each party appear on each counterparty, but it shall be sufficient that the signature of or on behalf of each party, or that the signatures of the persons required to bind each party, appear on one or more such counterparts. All such counterparts when taken together shall constitute a single and legally binding agreement.

[Signature page follows.]

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

One Financial Center  
Boston, MA 02111

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One Riverfront Plaza  
Newark, NJ 07102

*Attorneys for the Committee*

---

Andrew H. Sherman, Esq.

**DENTONS US LLP**

601 South Figueroa Street, Ste. 2500  
Los Angeles, CA 90017

*Attorneys for the Debtors*

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Samuel R. Maizel, Esq.

**Exhibit I**

Aetna Health - Consolidated  
Income Statement

Item	2020				2019				2018				2017				2016				2015								
	Actual FY19	Actual FY20	Forecast FY21	Forecast FY22	Actual FY19	Actual FY20	Forecast FY21	Forecast FY22	Actual FY18	Actual FY19	Actual FY20	Actual FY21	Actual FY17	Actual FY18	Actual FY19	Actual FY20	Actual FY21	Actual FY22	Actual FY16	Actual FY17	Actual FY18	Actual FY19	Actual FY20	Actual FY21	Actual FY22				
<b>Net revenue</b>	114,360	141,327	151,651	151,616	164,068	165,847	167,864	168,844	118,291	118,110	120,078	110,361	123,574	123,036	112,119	111,841	105,050	125,253	125,548	37,684	37,684	38,142	38,142	151,616	164,068	165,847	167,864		
<b>Revenue deductions</b>	285,999	293,018	309,152	321,598	304,022	312,440	321,132	329,212	20,008	19,156	20,031	23,199	26,202	23,257	24,205	24,353	22,656	24,460	24,353	22,656	24,460	24,353	22,656	24,460	24,353	22,656	24,460	24,353	
<b>Net revenue</b>	85,361	111,609	122,499	129,018	134,046	133,407	136,732	139,632	98,283	99,054	100,047	87,162	96,872	98,839	87,936	87,488	82,394	101,097	101,197	12,028	13,228	13,789	13,789	126,957	139,610	136,193	143,208	143,511	
<b>Operating expenses</b>	436,546	471,976	478,871	489,580	485,097	496,061	507,363	514,328	44,328	43,292	37,279	34,612	43,960	41,979	41,176	36,804	37,155	37,064	36,096	38,231	120,303	118,021	118,804	120,743	486,580	485,097	486,061	507,363	
<b>Net revenue</b>	41,815	39,633	43,628	44,438	48,949	37,346	29,369	25,264	53,955	55,762	62,768	52,550	52,912	54,893	46,760	46,684	45,330	64,033	65,101	23,797	25,027	25,585	25,585	20,377	25,585	25,585	25,585	25,585	
<b>Operating expenses</b>	436,546	471,976	478,871	489,580	485,097	496,061	507,363	514,328	44,328	43,292	37,279	34,612	43,960	41,979	41,176	36,804	37,155	37,064	36,096	38,231	120,303	118,021	118,804	120,743	486,580	485,097	486,061	507,363	
<b>Net revenue</b>	130,554	160,472	160,728	162,814	166,681	170,396	174,228	180,127	126,816	119,915	120,991	109,112	126,816	126,816	126,816	126,816	126,816	126,816	126,816	126,816	126,816	126,816	126,816	126,816	126,816	126,816	126,816	126,816	126,816
<b>Change in Gross Revenue (Same Period, Prior Year)</b>	10.6%	8.3%	1.4%	2.2%	-0.9%	2.2%	2.2%	13.7%	32.6%	4.2%	-2.1%	20.4%	29.6%	12.5%	-4.9%	-1.6%	1.6%	0.0%	-3.6%	-2.1%	0.0%	-3.6%	8.4%	2.2%	-0.9%	2.2%	2.2%		
<b>Change in Gross Revenue (Period over Period)</b>	10.6%	8.3%	1.4%	2.2%	-0.9%	2.2%	2.2%	13.7%	32.6%	4.2%	-2.1%	20.4%	29.6%	12.5%	-4.9%	-1.6%	1.6%	0.0%	-3.6%	-2.1%	0.0%	-3.6%	8.4%	2.2%	-0.9%	2.2%	2.2%		
<b>Revenue deductions as % of Revenue</b>	-69.9%	-69.0%	-68.4%	-67.7%	-65.6%	-65.6%	-65.6%	-67.9%	-70.7%	-69.6%	-69.4%	-68.3%	-67.0%	-68.0%	-68.0%	-68.0%	-68.0%	-68.0%	-68.0%	-68.0%	-68.0%	-68.0%	-68.0%	-68.0%	-68.0%	-68.0%	-68.0%	-68.0%	
<b>Change in Net Revenue (Same Period, Prior Year)</b>	9.1%	18.2%	0.1%	1.3%	2.3%	2.2%	2.5%	24.5%	21.7%	2.7%	-4.1%	17.8%	60.9%	7.5%	26.0%	2.4%	17.7%	3.8%	7.4%	5.4%	-13.4%	8.2%	1.0%	1.3%	2.3%	2.3%	2.3%		
<b>Change in Net Revenue (Period over Period)</b>	9.1%	18.2%	0.1%	1.3%	2.3%	2.2%	2.5%	24.5%	-10.8%	-6.0%	-1.1%	72.9%	-10.9%	7.2%	6.2%	6.2%	6.2%	6.2%	6.2%	6.2%	6.2%	6.2%	6.2%	6.2%	6.2%	6.2%	6.2%	6.2%	
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,268	53,742	55,035	56,350	57,591		
<b>Operating expenses</b>	46,399	47,299	52,336	53,742	55,035	56,350	57,591	5,052	4,176	4,444	3,535	3,328	3,718	3,897	3,624	4,126	3,998	4,233	4,168	12,925	12,976	13,167	13,2						



Astria Health - Consolidated  
Cash Flow

In \$000's	Note	Forecast FY20	Forecast FY21	Forecast FY22	Forecast FY23	Forecast FY24	Forecast FY25	Actual Jan-20	Actual Feb-20	Actual Mar-20	Actual Apr-20	Actual May-20	Actual Jun-20	Actual Jul-20	Actual Aug-20	Forecast Sep-20	Forecast Oct-20	Forecast Nov-20	Forecast Dec-20	Forecast Q1-21	Forecast Q2-21	Forecast Q3-21	Forecast Q4-21	Forecast FY22	Forecast FY23	Forecast FY24	Forecast FY25	
<b>Cash Flow from Operating Activities</b>																												
Net Income		26,921	12,128	11,761	15,082	16,982	19,592	2,662	1,218	(365)	1,099	8,631	5,987	1,641	1,605	1,568	4,106	1,282	(2,514)	4,599	2,312	2,479	2,737	11,761	15,082	16,982	19,592	
Depreciation & Amortization		4,069	4,279	4,279	4,279	4,279	4,279	341	338	338	337	337	337	337	337	337	303	365	365	1,070	1,070	1,070	1,070	4,279	4,279	4,279	4,279	
Changes in A/R		5,423	5,741	4,893	(636)	(611)	(630)	(3,502)	(1,025)	2,274	4,152	1,617	3,485	(1,452)	1,919	(1,860)	(595)	702	(293)	3,121	(880)	3,771	(270)	4,893	(636)	(611)	(630)	
Changes in Inventory		(1,104)	-	-	-	-	-	(71)	(60)	(42)	(95)	(87)	(71)	(48)	(106)	(56)	(467)	-	-	-	-	-	-	-	-	-	-	
Changes in Other Receivables	1	32,337	-	-	-	-	-	(1,529)	(1,701)	(1,326)	(723)	(289)	(12,618)	(1,652)	(2,593)	(1,539)	(3,817)	-	60,124	-	-	-	-	-	-	-	-	
Changes in Prepaids & other current / LT assets		(17)	-	-	-	-	-	51	(161)	(145)	231	170	(24)	11	(437)	276	11	-	-	-	-	-	-	-	-	-	-	
Changes in Reserve Balances		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Changes in A/P	2	(11,941)	1,683	95	56	148	152	959	2,123	1,804	(1,577)	(436)	534	(239)	1,004	(275)	(1,853)	-	(13,985)	1,500	12	114	57	95	56	148	152	
Changes in Accrued Expenses		1,676	-	-	-	-	-	286	(102)	934	(478)	(198)	306	1,469	(1,007)	180	286	-	-	-	-	-	-	-	-	-	-	
Changes in Other current liabilities		(6,039)	(3,823)	(270)	-	-	-	(116)	(450)	483	(1,334)	(816)	(944)	6,284	(1,689)	(116)	5,084	-	(12,424)	(3,013)	(270)	(270)	(270)	(270)	-	-	-	
Changes in Intercompany Accounts	1	(12,481)	-	-	-	-	-	989	(747)	(2,190)	1,432	(3,513)	(6,199)	(3,602)	(566)	408	1,378	-	129	-	-	-	-	-	-	-	-	
<b>Cash Flow from Operating Activities</b>		<b>38,843</b>	<b>20,008</b>	<b>20,757</b>	<b>18,781</b>	<b>20,798</b>	<b>23,393</b>	<b>70</b>	<b>(567)</b>	<b>1,765</b>	<b>3,045</b>	<b>5,417</b>	<b>(9,208)</b>	<b>2,747</b>	<b>(1,535)</b>	<b>(1,078)</b>	<b>4,436</b>	<b>2,350</b>	<b>31,401</b>	<b>7,276</b>	<b>2,244</b>	<b>7,164</b>	<b>3,324</b>	<b>20,757</b>	<b>18,781</b>	<b>20,798</b>	<b>23,393</b>	
<b>Cash Flow from Investing Activities</b>																												
Net Proceeds from Sale of Assets		-	3,532	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	500	1,000	1,000	1,032	-	-	-	-	
Capex		(1,569)	(5,441)	(5,778)	(6,117)	(6,460)	(6,804)	(37)	(79)	(74)	(1)	(85)	(146)	(288)	(42)	(52)	(15)	(258)	(492)	(1,360)	(1,360)	(1,360)	(1,360)	(5,778)	(6,117)	(6,460)	(6,804)	
<b>Total Cash Flow from Investing Activities</b>		<b>(1,569)</b>	<b>(1,909)</b>	<b>(5,778)</b>	<b>(6,117)</b>	<b>(6,460)</b>	<b>(6,804)</b>	<b>(37)</b>	<b>(79)</b>	<b>(74)</b>	<b>(1)</b>	<b>(85)</b>	<b>(146)</b>	<b>(288)</b>	<b>(42)</b>	<b>(52)</b>	<b>(15)</b>	<b>(258)</b>	<b>(492)</b>	<b>(860)</b>	<b>(360)</b>	<b>(360)</b>	<b>(329)</b>	<b>(5,778)</b>	<b>(6,117)</b>	<b>(6,460)</b>	<b>(6,804)</b>	
<b>Cash Flow from Financing Activities</b>																												
Liquidating Trust		(528)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(528)	-	-	-	-	-	-	-	-
Non-Cash Component of Restructuring Adj.		(74,727)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(74,727)	-	-	-	-	-	-	-	-
Issuance of Debt		78,016	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Issuance / Cash Restructuring Costs		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Retirement of Debt		(24,414)	-	-	-	-	-	(2)	(2)	(9)	(1)	(0)	2,359	601	(2)	(2)	1	(0)	(27,356)	-	-	-	-	-	-	-	-	
Amortization / Change in LT Debt (incl. PIK)		(4,206)	(18,099)	(14,980)	(12,664)	(14,338)	(13,730)	-	-	-	-	-	-	-	-	-	-	-	(4,206)	(6,416)	(1,884)	(6,804)	(2,995)	(14,980)	(12,664)	(14,338)	(13,730)	
<b>Total Cash Flow from Financing Activities</b>		<b>(25,858)</b>	<b>(18,099)</b>	<b>(14,980)</b>	<b>(12,664)</b>	<b>(14,338)</b>	<b>(13,730)</b>	<b>(2)</b>	<b>(2)</b>	<b>(9)</b>	<b>(1)</b>	<b>(0)</b>	<b>2,359</b>	<b>601</b>	<b>(2)</b>	<b>(2)</b>	<b>1</b>	<b>(0)</b>	<b>(28,800)</b>	<b>(6,416)</b>	<b>(1,884)</b>	<b>(6,804)</b>	<b>(2,995)</b>	<b>(14,980)</b>	<b>(12,664)</b>	<b>(14,338)</b>	<b>(13,730)</b>	
<b>Change in Cash</b>		<b>11,416</b>	<b>(0)</b>	<b>(0)</b>	<b>(0)</b>	<b>(0)</b>	<b>2,859</b>	<b>30</b>	<b>(649)</b>	<b>1,683</b>	<b>3,042</b>	<b>5,332</b>	<b>(6,995)</b>	<b>3,060</b>	<b>(1,578)</b>	<b>(1,132)</b>	<b>4,422</b>	<b>2,091</b>	<b>2,109</b>	<b>-</b>	<b>(0)</b>	<b>-</b>	<b>(0)</b>	<b>(0)</b>	<b>(0)</b>	<b>(0)</b>	<b>2,859</b>	
Beginning Cash		3,850	10,000	10,000	10,000	10,000	10,000	3,850	3,880	3,231	4,914	7,956	13,289	6,299	10,081	8,276	6,912	5,800	7,891	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	
<b>Ending Cash</b>		<b>15,265</b>	<b>10,000</b>	<b>10,000</b>	<b>10,000</b>	<b>10,000</b>	<b>12,859</b>	<b>3,880</b>	<b>3,231</b>	<b>4,914</b>	<b>7,956</b>	<b>13,289</b>	<b>6,294</b>	<b>9,359</b>	<b>8,502</b>	<b>7,143</b>	<b>11,334</b>	<b>7,891</b>	<b>10,000</b>	<b>10,000</b>	<b>10,000</b>	<b>10,000</b>	<b>10,000</b>	<b>10,000</b>	<b>10,000</b>	<b>10,000</b>	<b>12,859</b>	

1. Elimination of inter-company receivables and payables from the Balance Sheet, at confirmation; these are non-cash entries.

2. Reduction in Accounts Payable is a combination of claims paid at confirmation and non-cash reduction in liabilities; remaining balance is current, post-petition balance owing.