

**THIS DISCLOSURE STATEMENT  
HAS NOT YET BEEN APPROVED BY THE COURT**

**This proposed Disclosure Statement is not a solicitation of acceptance or rejection of the Debtors' Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code. Acceptances or rejections may not be solicited until the Bankruptcy Court has approved this Disclosure Statement under Bankruptcy Code section 1125. This proposed Disclosure Statement is being submitted for approval only, and has not yet been approved by the Bankruptcy Court.**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GULF COAST HEALTH CARE, LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 21-11336 (KBO)
Debtors.	)	
	)	Jointly Administered
	)	

**DISCLOSURE STATEMENT WITH RESPECT  
TO THE DEBTORS' JOINT PLAN OF LIQUIDATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Dated: Wilmington, Delaware  
October 28, 2021

<sup>1</sup> The last four digits of Gulf Coast Health Care, LLC's federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, which cases are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/GulfCoastHealthCare>. The location of Gulf Coast Health Care, LLC's corporate headquarters and the Debtors' service address is 40 South Palafox Place, Suite 400, Pensacola, FL 32502.

**DISCLAIMER<sup>2</sup>**

THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE DEBTORS' JOINT PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY PROVIDE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL HOLDERS OF CLAIMS AND INTERESTS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETIES BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT WITH RESPECT TO THE PLAN ARE QUALIFIED IN THEIR ENTIRETIES BY REFERENCE TO THE PLAN, THE EXHIBITS ATTACHED TO THE PLAN, AND ANY PLAN SUPPLEMENT(S). THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT ANY TIME AFTER THE DATE HEREOF.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND RULE 3016(b) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-APPLICABLE BANKRUPTCY LAWS. THIS DISCLOSURE STATEMENT HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), AND THE SEC HAS NOT PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING SECURITIES OR CLAIMS OF THE DEBTORS SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSES FOR WHICH THEY WERE PREPARED.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO CONSTITUTE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE PLAN AS IT RELATES TO HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS.

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<sup>2</sup> Terms used in this Disclaimer that are not otherwise defined shall have the meanings ascribed to such terms elsewhere in the Disclosure Statement.

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**TABLE OF EXHIBITS**

<b><u>Exhibit</u></b>	<b><u>Title</u></b>
A	Debtors' Joint Plan of Liquidation under Chapter 11 of the Bankruptcy Code
B	List of Debtors
C	Debtors' Organizational Structure
D	Liquidation Analysis

## ARTICLE I. INTRODUCTION

### A. Purpose of the Disclosure Statement

On October 14, 2021, Gulf Coast Health Care, LLC (“**Gulf Coast**”) and 61 of its affiliates (collectively, the “**Debtors**”)<sup>3</sup> filed voluntary petitions for relief (collectively, the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

The Debtors have filed the *Debtors’ Joint Plan of Liquidation under Chapter 11* of the Bankruptcy Code (including all exhibits thereto, and as may be amended, altered, modified, or supplemented from time to time, the “**Plan**”) with the Court. A copy of the Plan is attached hereto as **Exhibit A**.

**Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Plan; provided, however, that any capitalized term used herein that is not defined herein or in the Plan, but is defined in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) will have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.**

The Debtors submit this disclosure statement (as may be amended, altered, modified, or supplemented from time to time, the “**Disclosure Statement**”) pursuant to Bankruptcy Code section 1125 to Holders of Claims against and Interests in the Debtors in connection with (a) the solicitation of acceptances of the Plan; and (b) the hearing to consider Confirmation of the Plan.

The purpose of the Disclosure Statement is to describe the Plan and its provisions and to provide certain information, as required under Bankruptcy Code section 1125, to Creditors who will have the right to vote on the Plan so they can make informed decisions in doing so. Creditors entitled to vote to accept or reject the Plan will receive a Ballot (as defined herein) together with the Disclosure Statement to enable them to vote on the Plan.

The Disclosure Statement includes, among other things, information pertaining to the Debtors’ prepetition business operations and financial history and the events leading to the filing of the Chapter 11 Cases. The Disclosure Statement also contains information regarding significant events that have occurred during the Chapter 11 Cases. In addition, an overview of the Plan is included, which overview sets forth certain terms and provisions of the Plan, the effects of Confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which Distributions will be made under the Plan. The Disclosure Statement also discusses the Confirmation process and the procedures for voting, which procedures must be followed by the Holders of Claims entitled to vote under the Plan for their votes to be counted.

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<sup>3</sup> A complete list of the Debtors is attached hereto as **Exhibit B**.

**The Plan provides that Holders of Impaired Claims that vote in favor of the Plan will grant the releases set forth in Article X.D.3 of the Plan. Holders of such Claims are advised to review Article X.D.3 and Article X.E of the Plan.**

**B. Disclosure Statement Enclosures**

Accompanying the Disclosure Statement are:

**1. Order Approving the Disclosure Statement**

A copy of the Court's order (the "**Solicitation Procedures Order**") approving the Disclosure Statement and, among other things, establishing procedures for voting on the Plan, setting the deadline for objecting to the Plan, and scheduling the Confirmation Hearing.

**2. Ballot**

A ballot (the "**Ballot**") for voting to accept or reject the Plan, if you are the record Holder of a Claim in a Class entitled to vote on the Plan (each, a "**Voting Class**").

**3. Notice**

A notice setting forth: (a) the deadline for casting Ballots either accepting or rejecting the Plan; (b) the deadline for filing objections to confirmation of the Plan; and (c) the date, time, and location of the Confirmation Hearing (the "**Notice**").

**C. Final Approval of the Disclosure Statement and Confirmation of the Plan**

**1. Requirements**

The requirements for Confirmation of the Plan are set forth in Bankruptcy Code section 1129. The requirements for the Disclosure Statement are set forth in Bankruptcy Code section 1125.

**2. Approval of the Plan and Confirmation Hearing**

To confirm the Plan, the Court must hold a hearing to determine whether the Plan meets the requirements of Bankruptcy Code section 1129.

**3. Effect of Confirmation**

Except as otherwise provided in the Plan or in the order confirming the Plan (the "**Confirmation Order**"), Confirmation will effect the distribution of the Debtors' remaining assets. Confirmation serves to make the Plan binding upon the Debtors and all Creditors, Interest Holders, and other parties-in-interest, regardless of whether they cast a Ballot to accept or reject the Plan.



#### 4. Only Impaired Classes Vote

Pursuant to the provisions of the Bankruptcy Code, only classes of claims or interests that are “impaired” under a plan may vote to accept or reject such plan. Generally, a claim or interest is impaired under a plan if the holder’s legal, equitable, or contractual rights are changed under such plan. In addition, if the holders of claims or interests in an impaired class do not receive or retain any property under a plan on account of such claims or interests, such impaired class is deemed to have rejected such plan under Bankruptcy Code section 1126(g) and, therefore, such holders do not need to vote on such plan.

Under the Plan, Holders of Claims in Class 2 and Class 3 are Unimpaired and therefore presumed to accept the Plan.

Under the Plan, the Holders of Claims in Class 1, Class 4, Class 5, Class 6, and Class 7 are Impaired and are entitled to vote on the Plan.

Under the Plan, the Holders of Claims in Class 8 are deemed to reject the Plan and are not entitled to vote on the Plan.

Under the Plan, Holders of Interests in Class 9 are deemed to reject the Plan or presumed to accept the Plan and are not entitled to vote on the Plan.

ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE PLAN IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASSES 1, 4, 5, 6, AND 7.

#### D. Treatment and Classification of Claims and Interests; Impairment

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, Confirmation, and Distribution pursuant to the Plan and pursuant to Bankruptcy Code sections 1122 and 1123(a)(1). For a summary of the treatment of each Class of Claims and Interests, see Article IV, “Summary of Plan,” below.

Class Description	Status	Proposed Treatment
DIP Facility Claim	Unclassified	On the Effective Date, each Holder of an Allowed DIP Facility Claim will receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, its Pro Rata share of the Liquidating Trust Assets, after (i) satisfaction of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Other Secured Claims, and (ii) paying, reserving against, or satisfying, among other things, the operating and administrative expenses of the Liquidating Trust, including but not limited to all reasonable and documented costs, expenses, and obligations incurred by the Liquidating Trustee (or professionals who may be employed by the Liquidating Trustee in administering the Liquidating Trust with the reasonable consent of the Omega Entities) in carrying out their responsibilities under the Liquidating Trust Agreement, or in any manner connected, incidental, or related thereto.

		For the avoidance of doubt, to the extent that the Liquidating Trust Assets are insufficient to satisfy the DIP Lender in full on account of the DIP Facility Claim, the DIP Lender will receive no additional consideration on account of the DIP Facility Claim, subject to Consummation of the Plan.
Administrative Claims Estimated Recovery: 100%	Unclassified	<p>Unless a Holder agrees to less favorable treatment, each Holder of an Allowed Administrative Claim (including all Professional Fee Claims) will have such Claim satisfied in full, in Cash, which payments will be made in the ordinary course of business or on the later of the Effective Date and the date on which such Claim becomes an Allowed Claim (or as soon as reasonably practicable thereafter), or otherwise receive treatment consistent with the provisions of Bankruptcy Code section 1129(a)(9)(2).</p> <p>Notwithstanding the foregoing, and subject to consummation of the Plan, (a) if the Omega MOTA Order is entered, the Omega Entities will not receive any recovery on account of any Administrative Claim of which an Omega Entity is the Holder, and (b) New Ark will waive any Administrative Claim of which New Ark is the Holder; <i>provided, however</i>, that for the avoidance of doubt, clause (a) of the foregoing sentence does not include or cover Allowed Administrative Claims of any New Omega Operator(s) or the assignee of such claims, including an Omega Entity (in its capacity as assignee).</p>
Priority Tax Claims Estimated Recovery: 100%	Unclassified	Unless a Holder agrees to less favorable treatment, each Holder of an Allowed Priority Tax Claim will receive treatment consistent with the provisions of Bankruptcy Code section 1129(a)(9)(C).
Class 1: New Ark Secured Claim Estimated Recovery: [●]%	Impaired	On the Effective Date, the Holder of the New Ark Secured Claim will receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, payment from the Prepetition A/R Reserve in Cash in the amount of the New Ark Secured Claim, less the amount of the New Ark Funding; <i>provided, however</i> , that if there are insufficient funds in the Prepetition A/R Reserve to provide payment in full of the New Ark Secured Claim (less the amount of the New Ark Funding), New Ark (or its designees) will waive any such deficiency, subject to and upon Consummation of the Plan.
Class 2: Other Secured Claims Estimated Recovery: 100%	Unimpaired	On the Effective Date (or as promptly thereafter as reasonably practicable), each Holder of an Allowed Other Secured Claim will receive, in the sole discretion of the Liquidating Trust and in full and final satisfaction of such Claim, (a) payment in full by the Liquidating Trust in Cash, including the payment of any interest Allowed and payable under Bankruptcy Code section 506(b); (b) delivery of the collateral securing such Allowed Other Secured Claim; or (c) treatment of such Allowed Other Secured Claim in any other matter that renders the Claim Unimpaired.

Class 3: Other Priority Claims Estimated Recovery: 100%	Unimpaired	On the Effective Date, each Holder of an Allowed Other Priority Claim will receive treatment in a manner consistent with Bankruptcy Code section 1129(a)(9).
Class 4: Omega Unsecured Claim Estimated Recovery: [●]%	Impaired	On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, the Holders of the Omega Unsecured Claim will receive Pro Rata Distribution with Class 5, Class 6, and Class 7 of the GUC Trust Interests; <i>provided, however</i> , that notwithstanding the foregoing, pursuant to the Omega/Delta Subordination Agreement, any Cash Distribution received by the Holders of Subordinated Seller Note Claims on account of their GUC Trust Interests will be paid to the Holders of the Omega Unsecured Claim until the Omega Unsecured Claim is paid in full; <i>provided further, however</i> , that if Class 7 votes to accept the Plan, then the Holders of the Omega Unsecured Claim will contribute to the Holders of Class 7 General Unsecured Claims (i) their Pro Rata Distribution of the GUC Trust Interests and (ii) any Cash Distribution received from the Holders of Subordinated Seller Note Claims pursuant to the Omega/Delta Subordination Agreement, to be shared by the Holders of Class 7 General Unsecured Claims on a Pro Rata basis.
Class 5: Subordinated Seller Note Claims Estimated Recovery: [●]%	Impaired	On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, each Holder of a Subordinated Seller Note Claim will receive a Pro Rata Distribution with Class 4, Class 6, and Class 7 of the GUC Trust Interests.  Notwithstanding the foregoing, pursuant to the Omega/Delta Subordination Agreement and Bankruptcy Code section 510, the Cash Distributions received from the GUC Trust by the Holders of Subordinated Seller Note Claims will be paid to the Holders of the Omega Unsecured Claim until the Omega Unsecured Claim is paid in full.
Class 6: Service Provider Claims Estimated Recovery: [●]%	Impaired	On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claims, the Holders of Allowed Service Provider Claims will receive Pro Rata Distribution with Class 4, Class 5, and Class 7 of the GUC Trust Interests; <i>provided, however</i> , that if Class 7 votes to accept the Plan, then the Holders of Service Provider Claims will contribute their Pro Rata Distribution of the GUC Trust Interests to the Holders of Class 7 General Unsecured Claims, each of whom will receive their respective Pro Rata Distribution of all such amounts.
Class 7: General Unsecured Claims Estimated Recovery: [●]%	Impaired	On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, each Holder of a General Unsecured Claim will receive a Pro Rata Distribution with Class 4, Class 5, and Class 6 of the GUC Trust Interests; <i>provided, however</i> , that if Class 7 votes to accept the Plan, then (a) the Holders of the Omega Unsecured Claim will contribute (i) their Pro Rata Distribution of the GUC Trust Interests and (ii) any Cash Distribution received from the

		Holders of Subordinated Seller Note Claims pursuant to the Omega/Delta Subordination Agreement to the Holders of Class 7 General Unsecured Claims, and (b) the Holders of the Service Provider Claims will contribute their Pro Rata Distribution of the GUC Trust Interests to the Holders of Class 7 General Unsecured Claims, and each Holder of a Class 7 General Unsecured Claim will receive their respective Pro Rata Distribution of all such contributed GUC Trust Interests and amounts.
Class 8: Intercompany Claims Estimated Recovery: 0%	Impaired	On the Effective Date, each Intercompany Claim will be cancelled, released, and extinguished, and each Holder of an Intercompany Claim will not be entitled to, and will not receive or retain, any property or interest in property on account of such Intercompany Claim.
Class 9: Existing Equity Interests Estimated Recovery: N/A	Unimpaired/Impaired	On the Effective Date, all Existing Equity Interests in the Top Level Debtors will be cancelled, released, and extinguished, and each such Holder of an Existing Equity Interest will not be entitled to, and will not receive or retain, any property or interest in property on account of such Existing Equity Interest.  On the Effective Date, all Existing Equity Interests in the Debtors other than the Top Level Debtors will be (a) reinstated solely to the extent necessary to maintain the Debtors' corporate structure post-Effective Date or (b) cancelled, released, or extinguished, as determined by the Debtors in their business judgment.

#### **E. Voting Procedures and Voting Deadline**

If you are entitled to vote to accept or reject the Plan, a Ballot is enclosed for the purpose of voting on the Plan. To ensure your vote is counted, you must (a) complete the Ballot; (b) indicate your decision either to accept or reject the Plan in the boxes provided; and (c) sign and return the Ballot(s) in the envelope provided.

**TO BE COUNTED, YOUR BALLOT WITH YOUR ORIGINAL SIGNATURE INDICATING YOUR ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED NO LATER THAN 4:00 P.M. (EASTERN TIME) ON JANUARY 13, 2022 (THE "VOTING DEADLINE").**

The following Ballots will not be counted or considered for any purposes in determining whether the Plan has been accepted or rejected:

1. any Ballot received after the Voting Deadline (as extended by the Debtors as provided herein);
2. any Ballot that is illegible or contains insufficient information to permit the identification of the claimant;
3. any Ballot cast by a Person or Entity that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan;

4. any Ballot cast for a Claim designated as contingent, unliquidated, or disputed or as zero or unknown in amount and for which no Rule 3018(a) Motion has been filed by the Rule 3018(a) Motion Deadline;
5. any Ballot that indicates neither an acceptance nor a rejection, or indicates both an acceptance and rejection, of the Plan;
6. any Ballot that casts part of its vote in the same Class to accept the Plan and part to reject the Plan;
7. any form of Ballot other than the official form sent by Epiq Corporate Restructuring, LLC as the voting agent (the “**Voting Agent**”), or a copy thereof;
8. any Ballot received that the Voting Agent cannot match to an existing database record;
9. any Ballot that does not contain an original signature; *provided, however*, that for the avoidance of doubt, a Ballot submitted via the Voting Agent’s Ballot portal will be deemed to contain an original signature; or
10. any Ballot that is submitted by facsimile, email, or by other electronic means other than through the Voting Agent’s Ballot portal.

In order for the Plan to be accepted by an Impaired Class of Claims, a majority in number and two-thirds in dollar amount of the Claims voting in such Class must vote to accept the Plan. At least one Voting Class, excluding the votes of insiders, must actually vote to accept the Plan.

YOU ARE URGED TO COMPLETE, DATE, SIGN, AND PROMPTLY MAIL THE BALLOT ENCLOSED WITH THE NOTICE. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND LEGIBLY, AND IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE CREDITOR. IF YOU ARE A HOLDER OF A CLAIM ENTITLED TO VOTE ON THE PLAN AND YOU DID NOT RECEIVE A BALLOT, YOU RECEIVED A DAMAGED BALLOT, YOU LOST YOUR BALLOT, OR IF YOU HAVE ANY QUESTIONS CONCERNING THE DISCLOSURE STATEMENT, THE PLAN, OR PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT THE VOTING AGENT, EPIQ CORPORATE RESTRUCTURING, LLC, AT (855) 675-2840 OR AT GCHCINFO@EPIQGLOBAL.COM. THE VOTING AGENT IS NOT AUTHORIZED TO AND WILL NOT PROVIDE LEGAL ADVICE.

#### **F. Confirmation Hearing**

The Court has scheduled a hearing to consideration Confirmation of the Plan for January 20, 2022 at 10:00 a.m. (Eastern Time) in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801 (the “**Confirmation Hearing**”). The Court has directed that objections, if any, to Confirmation of the Plan be filed and served on or before January 13, 2022, at 4:00 p.m. (Eastern Time) in the manner described in the Notice accompanying the Disclosure Statement. The Confirmation

hearing may be adjourned from time to time by way of announcement of such continuance in open Court or otherwise, without further notice to parties-in-interest.

**THE DEBTORS URGE ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT THE PLAN.**

**ARTICLE II.  
GENERAL INFORMATION REGARDING THE DEBTORS**

**A. The Debtors' Corporate History**

The Debtors' business was formed in 2008 in connection with the acquisition of 44 skilled nursing facilities and related assets. In the years following its formation, the Debtors expanded and, at the height of their operations, operated more than 50 facilities in the Southeastern United States. In recent years, however, the Debtors have divested or closed a number of their facilities, including the divestiture of 20 facilities in November 2020 previously leased from Argent Properties 2012, LLC and certain of its subsidiaries (collectively, the "**Argent Sellers**")<sup>4</sup>. As of October 14, 2021 (the "**Petition Date**"), the Debtors operate 28 Facilities located in Florida, Georgia, and Mississippi, as depicted in the map below.

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<sup>4</sup> Fifty percent of the indirect beneficial owners of the Debtors own 37.8 percent of the Argent Sellers. The other 50 percent of the indirect beneficial owners of the Debtors own 62.2 percent of the Argent Sellers.



## B. The Debtors' Business Operations

### 1. General

The Debtors are a leader among skilled nursing facility operators in the United States and provide post-acute skilled nursing services in each of their Facilities, which have cultivated a reputation for excellence in resident care. In February 2021, the Debtors received an average care quality rating from CMS of 3.50 stars, above the national average of 3.35 stars. In 2020, five of the Debtors' Facilities were named by *Newsweek* magazine as among the best 54 nursing homes in Florida and two of the Debtors' Facilities were included on U.S. News & World Report's "Best Nursing Homes" for 2020-2021, recognizing each as "high performing" (the publication's highest rating).

An individual interested in occupying a unit in one of the Facilities must first enter into an admission agreement (an "**Admission Agreement**") with one of the Debtors, which establishes the terms and conditions under which a resident will reside in a Facility and gain access to a number of services. The services and accommodations covered by the daily room rate include meals, utilities, laundry, assistance with daily living (including dressing, bathing, and grooming), housekeeping, planned activities, nursing services, and local transportation for

private appointments. As of the Petition Date, the Facilities have approximately 3,343 licensed beds and approximately 2,244 residents.

The Debtors lease 24 Facilities (the “**Omega Facilities**”) from certain indirect affiliates and subsidiaries of Omega Healthcare Investors, Inc. (“**Omega**” and, collectively, the “**Omega Landlords**”) and four Facilities (the “**Blue Mountain Facilities**”) from certain affiliates and subsidiaries of Eagle Arc Partners LLC (f/k/a Blue Mountain Holdings) (“**Blue Mountain**” and, collectively, the “**Blue Mountain Landlords**”).

The Debtors receive revenue from several sources, including: (a) Medicare reimbursements, (b) Medicaid reimbursements, and (c) other third-party and private payors. The Debtors use the revenue generated by the receipt of daily basic rates and service fees to fund their daily operations, pay rent to the Omega Landlords and the Blue Mountain Landlords, service their legacy liabilities and other debt obligations, and make capital improvements to the Facilities.

In operating and managing their Facilities, the Debtors employ approximately 3,100 employees, including nurses, certified nursing assistants, other caregivers, maintenance workers, and corporate and administrative personnel. Due to the COVID-19 pandemic, the Debtors experienced an unprecedented labor shortage at their Facilities and, as a result, the Debtors were forced to turn to employment agencies to supplement their workforce, and in particular to help staff their Facilities and provide care to their residents. Like other skilled nursing facility operators, the Debtors have continued to combat staffing shortages and employee retention issues in 2021 due to, among other things, increased COVID positivity rates among their current employees, federal government vaccine mandates,<sup>5</sup> and increased competition from other industries for the Debtors’ workers. Accordingly, the Debtors sought, and the Court granted, authority to continue utilizing employment agencies throughout the Chapter 11 Cases to supplement the Debtors’ workforce as necessary on an interim [Docket No. 54] and final basis [Docket No. [●]].

## 2. Intercompany Arrangements

As is typical in the skilled nursing industry, the Debtors rely on various intercompany service agreements to achieve economies of scale by consolidating certain key functions necessary for operating the Facilities. In order to provide for the management of their day-to-day operations, the Operating Debtors (as defined below) are party to various intercompany management service agreements (collectively, the “**Debtor Management Service Agreements**”) with Debtor Gulf Coast. Under the Debtor Management Service Agreements, Gulf Coast provides the Operating Debtors with certain management and administrative services, respectively. In exchange for these services, Gulf Coast receives an annual management fee

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<sup>5</sup> As of September 30, 2021, all staff in Medicare and Medicaid participating long-term care facilities are required to be vaccinated against COVID-19 in order for facilities to continue to receive funding from Medicare and Medicaid. See *New CMS Regulation Will Require Vaccination for Nursing Home Staff*, THE NATIONAL LAW REVIEW (Aug. 24, 2021), <https://www.natlawreview.com/article/new-cms-regulation-will-require-vaccination-nursing-home-staff>; *Nursing Homes Face Quandary: Vaccinate Staff or Don’t Get Paid*, THE NEW YORK TIMES (Aug. 19, 2021), <https://www.nytimes.com/2021/08/19/health/coronavirus-nursing-homes-vaccination.html>.



from each of the Operating Debtors equal to 5% of the adjusted gross revenue of the applicable Facilities.

The Debtors also rely on certain non-Debtor affiliates to provide critical services to the Debtors. Specifically, and as discussed more fully below, the Debtors rely on (a) Health Care Navigator LLC (“**HCN**”) for certain consulting and advisory services; (b) Halcyon Rehabilitation, LLC (“**Halcyon**”) to provide physical therapy, occupational therapy, and speech language pathology services to the Facilities; and (c) HMS Purchasing, LLC (“**HMS**” and collectively with HCN and Halcyon, the “**Service Providers**”), which functions as a group purchasing organization on behalf of the Debtors. The Debtors intend to pay their post-petition obligations to the Service Providers in the ordinary course of business but did not seek approval to pay outstanding amounts owing to such Service Providers as of the Petition Date.

Non-Debtor affiliate HCN provides a myriad of essential consulting and advisory services, including back-office administrative support to the Debtors, pursuant to the Consulting and Advisory Services Agreement, dated as of July 1, 2010 by and between Gulf Coast and HCN (the “**HCN Consulting Agreement**”). These services include, but are not limited to, (a) strategic planning; (b) compliance review and support; (c) billing and collections; (d) operations assessment and review; (e) vendor and third party relations assessment and monitoring; (f) accounting and financial services, including cash management, tax services, and financial reporting; (g) insurance procurement, monitoring, maintenance, and management services; (h) legal services, including contract review, litigation management, and dispute resolution; (i) information and technology services; (j) human resources, including employee training and development; (k) benefits administration and payroll services; and (l) credit and treasury management services, along with any other additional services upon agreement between the parties from time to time. Historically, HCN has received a flat monthly fee of \$1,380,000 in exchange for these critical services. As of the Petition Date, HCN is owed approximately \$2.4 million.

Non-Debtor affiliate Halcyon and each of the Facility Debtors (as defined below) are party to a Therapy and Administrative Services Agreement (each, a “**Therapy and Services Agreement**”), whereby Halcyon provides physical therapy, occupational therapy, and speech language pathology services to the Facilities. Under the Therapy and Services Agreements, Halcyon provides qualified therapists to each of the Facilities to perform therapy services for the Debtors’ residents. As of the Petition Date, the Debtors owe approximately \$3.7 million to Halcyon.

Non-Debtor affiliate HMS is party to an agreement (each, a “**Membership Agreement**”) with each of the Facility Debtors to perform the function of a “Group Purchasing Organization” for purchasing medical supplies, dietary food items, medical equipment, and a variety of products used by long-term care facilities. HMS provides a program to its members whereby it negotiates pricing with vendors so that its members can purchase a broad selection of products in bulk at a more favorable rate from suppliers. In exchange for participating in the program, each of the Facility Debtors pays a monthly membership fee calculated based on the number of licensed beds in a Facility, which has historically totaled approximately \$45,630 per month. As of the Petition Date, the Debtors owe approximately \$340,000 to HMS.

### C. Regulatory Agencies

Operators of skilled nursing facilities, including the Debtors' Facilities, are heavily regulated by various state and federal agencies. In particular, nearly every aspect of the Debtors' operation of the Facilities, including the services provided to residents as well as billing and collections, is subject to rules and regulations promulgated by (a) the United States Department of Health and Human Services' Centers for Medicare & Medicaid Services, (b) the Department of Aging, Office of Health Assurance and Licensing, Bureau of Long Term Care, Bureau of Regulatory Enforcement, and (c) the Department of Medicaid, Department of Health, and Division of Health Services Regulation in each state in which the Facilities operate.

### D. Operational Composition

The Debtors' footprint has ebbed and flowed throughout the years, depending on the landscape of the skilled nursing industry generally, as well as the composition of the facilities within their portfolio. Specifically, a variety of factors have contributed to the Debtors' desire for various acquisitions or divestitures, including aging demographics, market dynamics, occupancy trends, geographical concentration, regulatory changes impacting reimbursements, payor mix, and average length of stay variables.

The Omega Landlords initially leased their facilities to Delta Health Group, LLC ("**Delta**"), Cordova Rehab, LLC ("**Cordova**"), and Pensacola Health Trust, LLC (together with Delta and Cordova, the "**Delta Group**"). The Delta Group assigned their leasehold interests to the Debtors in 2008, who subsequently entered into a consolidated master lease with the Omega Landlords to operate, at that time, 17 facilities owned by the Omega Landlords. In the years that followed, the Debtors acquired certain additional facilities under the Omega Master Lease (as defined below), including Arcadia Health & Rehabilitation Center in 2013 and the Southern Lifestyle Senior Living Center in 2014. In addition, in 2017, 2019, and 2020, the Debtors and the Omega Landlords partnered on the construction and opening of four state-of-the-art Facilities, including Olive Branch Health and Rehabilitation Center, De Luna Health and Rehabilitation Center, Viera del Mar Health & Rehabilitation Center, and The Rehabilitation Center of Lake City.<sup>6</sup> In October 2018, two of the Omega Facilities, Chipola Health & Rehabilitation Center and Panama City Health and Rehabilitation Center, sustained significant damage from Hurricane Michael, which was the first Category 5 hurricane on record to impact the Florida panhandle. Hurricane repairs are nearly complete on Panama City Health & Rehabilitation Center, which will allow it to reopen in 2022.

The four Blue Mountain Facilities currently operated by the Debtors, on the other hand, originate from the sale of certain of the Debtors' former facilities and related assets in November 2020. Prior to November 2020, in addition to the Debtors' current Facilities, Gulf Coast also operated 20 facilities that were owned by the Argent Sellers and operated pursuant to a lease between Argent and Debtor Gulf Coast Master Tenant II, LLC. On November 2, 2020, Argent closed the sale of its facilities, which resulted in the (a) sale and transfer of 17 of the Debtors' former skilled nursing facilities to new owners, (b) a new lease with affiliates of Blue Mountain,

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<sup>6</sup> In 2020, De Luna Health and Rehabilitation Center and Viera del Mar Health & Rehabilitation Center were designated by the state of Florida as COVID-19 recovery centers.

as purchaser, for three facilities contracted to be operated by the Debtors, and (c) the acquisition by the Debtors of the operations of one new facility in Georgia (the “**Argent Transaction**”).<sup>7</sup> In connection with the Argent Transaction, the Debtors transferred the operations of those facilities to 17 new operators and received approximately \$13 million in consideration.

## E. The Debtors’ Organization Structure

The Chapter 11 Cases comprise 62 debtor entities as reflected in the organizational chart attached hereto as **Exhibit C**. Together, the Debtors’ organizational structure is typical of the skilled nursing care industry. The activities and business affairs of the Debtors generally fall into five categories: (a) holding companies that directly or indirectly hold a portfolio of certain assets (the “**HoldCo Debtors**”);<sup>8</sup> (b) entities that are tenants (the “**Tenant Debtors**”)<sup>9</sup> under master leases with the Omega Landlords and the Blue Mountain Landlords; (c) entities that oversee the operations of the Debtors’ Facilities (the “**Operating Debtors**”);<sup>10</sup> (d) entities that provide administrative and management services to the Operating Debtors (the “**Manager Debtors**”);<sup>11</sup> and (e) entities which are either currently subtenants under the subleases with the Tenant Debtors and operate the Facilities (the “**Facility Debtors**”)<sup>12</sup> or previously were involved with the operations of facilities that have been divested in recent years.<sup>13</sup> Each of the Facility Debtors holds a license to operate a skilled nursing facility and is certified to participate in Medicare and Medicaid programs.

Certain family trusts, for which members of the Schwartzberg family acted as settlors, maintain 50% of the indirect beneficial ownership of each of the Debtors, and certain limited

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<sup>7</sup> A component of the Argent Transaction was the sale by the Argent Sellers of three Facilities operated by the Debtors, which were subsequently leased back to the Debtors by affiliates of Blue Mountain as purchasers.

<sup>8</sup> The HoldCo Debtors are Pensacola Administrative Holdings, LLC and Gulf Coast Master Tenant Holdings, LLC.

<sup>9</sup> The Tenant Debtors are Gulf Coast Master Tenant I, LLC; Gulf Coast Master Tenant II, LLC; and Gulf Coast Master Tenant III, LLC.

<sup>10</sup> The Operating Debtors are HUD Facilities, LLC; Gulf Coast Facilities, LLC; and Florida Facilities, LLC.

<sup>11</sup> The Manager Debtors are Gulf Coast Health Care, LLC; GCH Management Services, LLC; and Pensacola Administrative Services, LLC.

<sup>12</sup> The Facility Debtors are FL HUD Baybreeze, LLC; FL HUD Bayside, LLC; FL HUD Destin, LLC; FL HUD Margate, LLC; FL HUD Pensacola, LLC; FL HUD Rosewood, LLC; FL HUD Silvercrest, LLC; MS HUD Boyington, LLC; MS HUD Dixie, LLC; MS HUD Ocean Springs, LLC; MS HUD Pine View, LLC; NF Chipola, LLC; NF Panama, LLC; NF Pensacola Manor, LLC; NF Suwannee, LLC; Brevard Oaks Center, LLC; MS Greenbough, LLC; NF Nine Mile, LLC; NF Escambia, LLC; SF Carnegie, LLC; SF Lake Placid ALF, LLC; MF Winter Park, LLC; MF Lake Eustis, LLC; SF Brevard, LLC; MS Lakeside, LLC; MS Shelby, LLC; MS Singing, LLC; and SC-GA2018 Cobblestone Rehabilitation and Healthcare Center, LLC.

<sup>13</sup> The remaining Debtors are NF Brynwood, LLC; NF Glen Cove, LLC; NF Manor, LLC; NF River Chase, LLC; NF Windsor, LLC; AL Citronelle, LLC; AL Willow Tree, LLC; SF Berkshire, LLC; MF Halifax, LLC; SF Boynton, LLC; SF Glen Oaks, LLC; SF Kissimmee, LLC; MF Oakwood, LLC; SF Lake Placid, LLC; SF Oakbrook, LLC; SF Tampa, LLC; SF Royal Manor, LLC; SF Salerno, LLC; MF Flagler, LLC; MF Debary, LLC; MF Longwood, LLC; MF Heritage, LLC; and SF Fountainhead, LLC.

liability companies and limited partnerships owned by funds affiliated with Barrow Street Capital LLC maintain the other 50% of the indirect beneficial ownership of each of the Debtors.

As reflected in the organizational chart attached hereto as **Exhibit C**, Gulf Coast is a wholly-owned subsidiary of non-Debtor Gulf Coast Health Care Holdings, LLC (“**Holdings**”), which is a non-operating holding company. Historically, Gulf Coast has been manager-managed, with Holdings acting as its sole manager. Pensacola Administrative Holdings, LLC is a wholly-owned subsidiary of non-Debtor PAH II, LLC (“**PAH**”), which is a non-operating holding company. Historically, Pensacola Administrative Holdings, LLC has been manager-managed, with PAH acting as its sole manager. Gulf Coast Master Tenant Holdings, LLC is a wholly-owned subsidiary of non-Debtor GCMTH II, LLC (“**GCMTH**”), which is a non-operating holding company. Historically, Gulf Coast Master Tenant Holdings, LLC has been manager-managed, with GCMTH acting as its sole manager. Any significant decision to be made by Holdings, PAH, and GCMTH is made by a management committee comprising of five members (the “**Management Committee**”).

On October 8, 2021, the Management Committee amended the limited liability company agreements of Gulf Coast, Pensacola Administrative Holdings, LLC, and Gulf Coast Master Tenant Holdings, LLC to provide for the appointment of Scott Vogel as independent manager at those entities. Prior to his appointment as independent manager, Mr. Vogel had served as a consultant to Gulf Coast since July 12, 2021. As independent manager, Mr. Vogel has sole authority to take any “Restructuring Actions” (as defined in the limited liability company agreements of Gulf Coast, Pensacola Administrative Holdings, LLC, and Gulf Coast Master Tenant Holdings, LLC).

## **F. The Debtors’ Secured Debt Obligations**

Because the Debtors do not own the underlying real property, but rather only hold leasehold interests in their Facilities, the primary collateralized assets owned by the Debtors are cash and accounts receivable. Although other assets of the Debtors are secured, with respect to the cash and accounts receivable, New Ark Capital, LLC (“**New Ark**”)<sup>14</sup> holds a first-priority security interest in the Debtors’ cash and accounts receivable held by the Omega Facility Debtors (as defined below). In addition, the Omega Landlords hold a second-priority security interest in the Debtors’ cash and accounts receivable held by the Omega Facility Debtors. Lastly, the HUD Lender (as defined below) holds a first-priority security interest in the Debtors’ cash and accounts receivable held by the Debtors at the Blue Mountain HUD Facilities (as defined below). The accounts receivable generated at the two Blue Mountain Non-HUD Facilities (as defined below) are unencumbered as of the Petition Date.

### **1. New Ark Obligations**

On July 6, 2018, Gulf Coast and certain other Debtors as borrowers, certain other parties designated as guarantors thereto, the lenders from time to time party thereto (the “**Prepetition Lenders**”), and Wells Fargo Bank, N.A. as administrative agent for the Prepetition Lenders (“**Wells Fargo**”), executed that certain Credit Agreement (as amended, modified, renewed, or

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<sup>14</sup> New Ark is an affiliated entity with some common indirect beneficial ownership with the Debtors.

restated from time to time, and all documents entered into in connection therewith, the “**Credit Agreement**”), which provided for a revolving credit facility in an amount up to \$15 million. On November 2, 2020, Wells Fargo and New Ark executed that certain Loan, Commitment and Agency Assignment Agreement (the “**Assignment Agreement**”), through which Wells Fargo assigned its interests and obligations under the Credit Agreement to New Ark.

As of the Petition Date, the outstanding principal balance owed to New Ark under the Credit Agreement is approximately \$14 million (such principal amount, together with all other amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the Credit Agreement, the “**New Ark Obligations**”).

The New Ark Obligations are secured by senior secured liens in favor of New Ark (the “**New Ark Liens**”) encumbering the applicable Debtors’ cash, accounts, and other assets (collectively, the “**New Ark Collateral**”).

On August 31, 2021, New Ark issued a notice of default to the Debtors, identifying certain events of default under the Credit Agreement, including failure to maintain the minimum Fixed Charge Coverage Ratio (as defined in the Credit Agreement) and the failure to make required payments under the Subordinated Seller Note and under the Master Lease. In connection with the notice, New Ark did not exercise any rights or remedies, but reserved all such rights and remedies it may have under the Credit Agreement.

## 2. Omega Master Lease Obligations

Twenty-four of the Debtors’ Facilities are currently subject to (a) that certain Second Consolidated Amended and Restated Master Lease Agreement dated as of July 18, 2013 (as amended, modified, renewed, or restated from time to time, the “**Omega Master Lease**”), by and among Debtor Gulf Coast Master Tenant I (“**Master Tenant I**”) and certain Omega Landlords; and (b) certain subleases between Master Tenant I and each Facility Debtor that operates an Omega Facility (collectively, the “**Omega Facility Debtors**”). Information regarding the Omega Facilities is summarized below:

<b>Omega Landlord</b>	<b>Facility Name</b>	<b>Facility Debtor</b>	<b># of Licensed Beds</b>
CSE Pine View LLC	Pine View Health and Rehabilitation Center	MS HUD Pine View, LLC	90
Dixie White Nursing Home, LLC	Pass Christian Health and Rehabilitation Center	MS HUD Dixie, LLC	60
Ocean Springs Nursing Home, LLC	Ocean Springs Health and Rehabilitation Center	MS HUD Ocean Springs, LLC	115
Pensacola Real-Estate Holdings I, LLC	Specialty Health and Rehabilitation Center	FL HUD Pensacola, LLC	120
Pensacola Real-Estate Holdings II, LLC	Bayside Health and Rehabilitation Center	FL HUD Bayside, LLC	120
Pensacola Holdings III, LLC	Bay Breeze Senior Living and Rehabilitation Center	FL HUD Baybreeze, LLC	120 SNF / 60 ALF

<b>Omega Landlord</b>	<b>Facility Name</b>	<b>Facility Debtor</b>	<b># of Licensed Beds</b>
Pensacola Holdings IV, LLC	Grand Boulevard Health and Rehab Center	FL HUD Destin, LLC	97 SNF / 16 ALF
Pensacola Holdings V, LLC	Silvercrest Health and Rehabilitation Center	FL HUD Silvercrest, LLC	60
Skyler Boyington, LLC	Boyington Health and Rehabilitation Center	MS HUD Boyington, LLC	180
Skyler Florida, LLC	Rosewood Healthcare and Rehabilitation Center	FL HUD Rosewood, LLC	155
Skyler Pensacola, LLC	Margate Health and Rehabilitation Center	FL HUD Margate, LLC	170
Carnegie Gardens, LLC	Wave Crest Health and Rehabilitation Center	SF Carnegie, LLC	138
Greenbough, LLC	Greenbough Health and Rehabilitation Center	MS Greenbough, LLC	66
Marianna Holdings, LLC	Chipola Health and Rehabilitation Center	NF Chipola, LLC	60 SNF / 76 ALF
Panama City Nursing Center, LLC	Panama City Health and Rehabilitation Center	NF Panama, LLC	120
Skyler Maitland, LLC	The Rehabilitation Center of Winter Park	MF Winter Park, LLC	180
Suwanee, LLC	Suwannee Health and Rehabilitation Center	NF Suwannee, LLC	180
OHI Asset (FL) Lake Placid, LLC	Southern Lifestyle Senior Living Center	SF Lake Placid ALF, LLC	97 ALF
OHI Asset (FL) Pensacola – Hillview, LLC	Arcadia Health & Rehabilitation Center	NF Pensacola Manor, LLC	150
OHI Asset (FL) Eustis, LLC	Lake Eustis Health and Rehabilitation Center	MF Lake Eustis, LLC	90
OHI Asset (FL) Pensacola, LLC	Olive Branch Health and Rehabilitation Center	NF Escambia, LLC	90
OHI Asset (FL) Melbourne, LLC	Viera del Mar Health and Rehabilitation Center	Brevard Oaks Center, LLC	131
OHI Asset (FL) Pensacola – Nine Mile, LLC	De Luna Health and Rehabilitation Center	NF Nine Mile, LLC	90
OHI Asset (FL) Lake City, LLC	The Rehabilitation Center of Lake City	SF Brevard, LLC	113

The Omega Master Lease's initial term expires on June 30, 2028, with two ten-year renewal options. Current monthly rent under the Omega Master Lease is approximately \$2.4 million.

The obligations under the Omega Master Lease (the “**Omega Master Lease Obligations**”) are secured by liens in favor of the Omega Landlords (the “**Prepetition Omega Liens**”) encumbering the applicable Debtors’ cash, accounts, and other assets (collectively, the “**Omega Master Lease Collateral**”).

On July 8, 2021, Omega issued a notice of default based upon a failure to timely pay rent and certain other charges. The notice provided that Omega had applied a portion of its security deposit to the outstanding rent amounts, and demanded replenishment of the security deposit in the amount of \$2,457,827.43 within ten days. No other remedies were taken, and Omega reserved all other rights and remedies it may have under the Omega Master Lease.

On August 10, 2021, Omega issued a second notice of default (the “**Rent Acceleration Letter**”), identifying certain events of default under the Omega Master Lease, including non-payment of rent and failure to replenish the security deposit as demanded in the July 8, 2021 letter. Under the Rent Acceleration Letter, Omega accelerated all rent due and owing under the Omega Master Lease and demanded payment of \$216,920,493.55, and reserved all other rights and remedies it may have under the Omega Master Lease.

### 3. Blue Mountain Master Lease Obligations

Two of the Blue Mountain Facilities, Shelby Health and Rehabilitation Center and Cobblestone Rehabilitation and Healthcare Center (together, the “**Blue Mountain Non-HUD Facilities**”), are subject to that certain Master Lease dated as of November 2, 2020 (as amended, modified, renewed, or restated from time to time, the “**Blue Mountain Non-HUD Master Lease**”) by and among Debtor Gulf Coast Master Tenant III, LLC (“**Master Tenant III**”) and certain landlords (the “**Blue Mountain Non-HUD Landlords**”). Additionally, two of the Blue Mountain Facilities, Singing River Health and Rehabilitation Center and Lakeside Health and Rehabilitation Center (together, the “**Blue Mountain HUD Facilities**”), are subject to that certain Master Lease dated as of April 6, 2021 (as amended, modified, renewed, or restated from time to time, the “**Blue Mountain HUD Master Lease**” and, together with the Blue Mountain Non-HUD Master Lease, the “**Blue Mountain Master Leases**”), by and among Debtor Gulf Coast Master Tenant II, LLC (“**Master Tenant II**”) and certain landlords (the “**Blue Mountain HUD Landlords**”).

In turn, Debtors Master Tenant II and Master Tenant III, as applicable, are party to subleases with each Facility Debtor that operates a Blue Mountain Facility (collectively, the “**Blue Mountain Facility Debtors**”).<sup>15</sup> Information regarding the Blue Mountain Facilities is summarized below:

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<sup>15</sup> The Blue Mountain Non-HUD Facilities also entered into subordination, non-disturbance, and attornment agreements dated November 22, 2020 (the “**SDNA Agreements**”) with Capital Funding, LLC to secure the obligations of the Blue Mountain Non-HUD Landlords owed under certain loan agreements between the Blue Mountain Non-HUD Landlords and Capital Funding, LLC.

<b>Blue Mountain Landlord</b>	<b>Facility Name</b>	<b>Facility Debtor</b>	<b># of Licensed Beds</b>	<b>HUD Facility</b>
1108 Church Street MS LLC	Shelby Health and Rehabilitation Center	MS Shelby, LLC	60	No
101 Cobblestone Trace GA LLC	Cobblestone Rehabilitation and Healthcare Center	SC-GA2018 Cobblestone Rehabilitation and Healthcare Center, LLC	59	No
3401 Main Street MS LLC	Singing River Health and Rehabilitation Center	MS Singing, LLC	160	Yes
191 Highway 511 East MS LLC	Lakeside Health and Rehabilitation Center	MS Lakeside, LLC	120	Yes

The Blue Mountain Master Leases' initial terms expire on October 31, 2035, with one ten-year renewal option. In addition, the Blue Mountain Landlords have the option to terminate the leases at any time after August 1, 2022, upon 90 days' written notice to the applicable Debtors, upon which the Landlords owe the Debtors a termination fee as set forth in the Blue Mountain Master Leases. Monthly rent under the Blue Mountain Master Leases is approximately \$333,333 in the aggregate.<sup>16</sup>

As of the Petition Date, the outstanding rent owed to the Blue Mountain Landlords under the Blue Mountain Master Leases was approximately \$376,000 (such rent amount, together with all other amounts incurred or accrued but unpaid prior to the Petition Date, the "**Blue Mountain Master Lease Obligations**"), although the Debtors have been advised that the applicable landlords have applied their security deposit(s) to pay such amount.

#### **4. Prepetition HUD Obligations**

A portion of the Argent Transaction was structured as a sale and leaseback to allow certain of the Debtors to continue operating the Blue Mountain Facilities. In connection with that transaction, Master Tenant II entered into those certain Master Tenant Security Agreements dated as of April 6, 2021 (the "**Prepetition HUD Security Agreements**") in favor of Housing & Healthcare Finance, LLC (the "**HUD Lender**") to secure, among others, (a) obligations of Master Tenant II and the Blue Mountain HUD Landlords owed to the HUD Lender under the Prepetition HUD Security Agreements (together with all other amounts incurred or accrued but

<sup>16</sup> In contrast to the Blue Mountain Non-HUD Master Lease, the Blue Mountain HUD Master Lease is subject to a lease addendum (the "**HUD Addendum**") as long as the U.S. Department of Housing and Urban Development ("**HUD**") is the holder or insurer of any indebtedness secured by the Blue Mountain HUD Facilities. Under the HUD Addendum, the Blue Mountain HUD Master Lease Documents are expressly made subject to the applicable statutes and regulations issued by HUD and all current requirements in HUD handbooks and guides, notices, and mortgagee letters (the "**HUD Program Obligations**"). The HUD Addendum also places certain restrictions on the transfer of the Blue Mountain HUD Facilities, including that prior written approval from HUD is required for (a) any assignment of the Blue Mountain HUD Master Lease and the related subleases; (b) any change in or transfer of the management, operation, or control of the Blue Mountain HUD Facilities; or (c) any changes in the ownership that requires HUD approval under any HUD Program Obligations



unpaid prior to the Petition Date in accordance with the Prepetition HUD Loan Documents, the **“Prepetition HUD Obligations”**) and (b) obligations of Master Tenant II owed to the Blue Mountain HUD Landlords under the Blue Mountain HUD Security Agreements. As of the Petition Date, the Debtors do not believe that any amounts are due and owing under the Prepetition HUD Obligations.

The Prepetition HUD Obligations are secured by liens in favor of the HUD Lender (the **“HUD Liens”**) encumbering substantially all of the assets of Master Tenant II and those assets located in or related to the Blue Mountain HUD Facilities, including first-priority security interests in the applicable Debtors’ cash, accounts receivable, and other assets, as described in greater detail in the Prepetition HUD Security Agreements.

## 5. Subordinated Seller Note Obligations

In connection with the Debtors’ acquisition of certain Facilities in 2008, certain Debtors (collectively, the **“Subordinated Seller Note Obligors”**) entered into that certain Loan Agreement dated as of December 4, 2008 (as amended, restated, consolidated, superseded, modified, or supplemented from time to time, the **“Subordinated Seller Note Agreement”**), with the Delta Group, pursuant to which the Subordinated Seller Note Obligors obtained \$62,800,000 to fund the acquisition and related legal and closing costs.

On July 6, 2018, the Subordinated Seller Note Obligors executed an Amended and Consolidating Promissory Note, issued pursuant to the Subordinated Seller Note Agreement, which amends, restates, consolidates, and supersedes in their entirety the amounts outstanding under the Subordinated Seller Note Agreement, in the principal amount of \$44,124,638.94.

As of the Petition Date, the entire principal balance owed to the Delta Group under the Subordinated Seller Note Agreement remains outstanding, plus additional interest, fees, and other charges due and owing under the Subordinated Seller Note, in the aggregate amount of approximately \$49,402,516 (the **“Subordinated Seller Note Obligations”**).

The Subordinated Seller Note Obligations are secured by liens in favor of the Delta Group (the **“Subordinated Seller Note Liens”**) encumbering 100% of the equity interests in the following Debtors: (a) Master Tenant I; (b) Master Tenant II; (c) HUD Facilities, LLC; (d) Gulf Coast Facilities, LLC; and (e) Florida Facilities, LLC.

## 6. Subordination Agreements

The Debtors’ secured lenders (other than those relating to the Blue Mountain Facilities) executed three separate Subordination and Intercreditor Agreements, dated as of July 6, 2018, which provide that (in each case, subject to the terms of the applicable agreements), among other things: (a) the Prepetition Omega Liens are subordinated to the New Ark Liens; (b) the Subordinated Seller Note Obligations are subordinated in right of payment to the New Ark Obligations; and (c) the Subordinated Seller Note Obligations are subordinated in right of payment to the Omega Master Lease Obligations.

## **G. Unsecured Debt Obligations**

In addition to the secured debt obligations described above, the Debtors are liable for other unsecured debt obligations, which include, among other things (a) general liability tort claims (including those subject to settlements, those currently in pending litigation, and other incurred but not yet reported claims); (b) amounts owing to the Service Providers; (c) funds previously received through the Medicare Accelerated and Advanced Payment Program amounts (“**MAAP Payments**”) currently being recovered by the Centers for Medicare and Medicaid Services (“**CMS**”); and (iv) other trade and vendor claims.

## **H. Summary of Events Leading to the Chapter 11 Filings**

### **1. COVID-19 Pandemic**

Like other skilled nursing facility operators, the COVID-19 pandemic severely impacted (and continues to impact) the Debtors’ operations, liquidity, and cash flows, as it caused both a sharp decrease in resident occupancy levels and an increase in operating expenses. While prior to the pandemic occupancy levels at most of the Debtors’ facilities hovered above 90%, the collective resident occupancy levels of the Debtors’ Facilities now has dipped below 80%. At the same time, expenses have increased by tens of millions of dollars on an annual basis due to, among other things, dramatically higher labor costs and costs for additional personal protective equipment. What’s more, neither of these trends appear to be reversing, notwithstanding the improved (but cautious) outlook for the broader economy. Although the Debtors have taken steps in recent months to improve resident occupancy levels, maximize staffing efficiencies, and reduce their operational costs, these efforts have not come close to addressing the Debtors’ operating shortfalls. And, even more troubling, labor pressures not only persist, but appear to be worsening.<sup>17</sup>

Most recently, on August 18, 2021, President Biden announced plans to require all nursing homes to mandate staff COVID-19 vaccinations as a condition for facilities to receive ongoing funding from Medicare and Medicaid. This announcement came as the highly contagious Delta variant caused a dramatic rise in COVID-19 cases in recent months, which has only led to additional uncertainty within the industry regarding the long-term effects of the COVID-19 pandemic. As of the Petition Date, while approximately 79% of Facility residents were fully vaccinated, only approximately 45% of the Debtors’ employees were vaccinated. Given the reluctance of many employees to receive COVID-19 vaccinations, the Debtors expect that the Biden administration’s vaccination mandate may drive further attrition. Even before news of the vaccination mandates, the Debtors had been forced to turn to employment agencies to help staff their Facilities and provide care to their residents. Going forward, the Debtors likely will be forced to rely even more heavily on employment agencies to obtain the labor necessary to

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<sup>17</sup> According to a June 2021 American Healthcare Association survey, 94% of nursing homes are currently facing staffing shortages, with 73% reporting that the situation has worsened since the end of 2020. *See* State of Nursing Home and Assisted Living Industry: Facing Workforce Challenges, AHCA/NCAL (June 2021), <https://www.ahcancal.org/News-and-Communications/Fact-Sheets/FactSheets/Workforce-Survey-June2020.pdf>.

provide appropriate patient care, and maintain staffing ratios in compliance with applicable regulatory requirements.

In addition to these challenges, the Debtors—like all other operators in the industry—have been reliant upon governmental relief to counteract the effects of the COVID-19 pandemic. And while some federal relief was forthcoming in the early stages of the pandemic, additional stimulus has not materialized and the Debtors have received very limited state stimulus funds. In the event that the Debtors receive additional stimulus relief,<sup>18</sup> it may provide additional liquidity to help transition the operations, but it would not entirely offset the substantial operating losses that the Debtors currently face. What’s more, in April 2021, CMS began to recover the approximately \$25 million in MAAP Payments that the Debtors received throughout 2020 by reducing each payment of Medicare receivables payable to the Debtors by 25%. This action by CMS has further exacerbated the Debtors’ already dire liquidity position.

In light of these developments and continuing liquidity constraints beginning in Spring 2021, the Debtors retained McDermott Will & Emery LLP as legal counsel, and Ankura Consulting Group as financial advisors, to assist the Debtors in assessing their strategic options, including potential restructurings in-court and out-of-court.<sup>19</sup>

## **2. Negotiations with Key Stakeholders**

In June 2021, the Debtors informed the Omega Landlords that they no longer had sufficient liquidity to continue payment of rent to the Omega Landlords. In light of this development, the Debtors and their advisors proposed a potential lease restructuring to the Omega Landlords. The Debtors initially proposed reorganizing around (a) 13 of the Omega Facilities in Florida and Mississippi pursuant to a new master lease with the Omega Landlords and (b) the four Blue Mountain Facilities, with the remaining 11 Omega Facilities to be transitioned to new operators designated by the Omega Landlords. The success of this initial lease restructuring proposal was contingent upon agreement among the Debtors, New Ark, and the Omega Landlords on the terms of a modified lease.

During the summer months, the operating performance of the Facilities worsened and the extent and timing of the Facilities’ rebound from COVID-19 became less clear. Ultimately, based upon the increased funding necessary to bridge to recovery, the Debtors concluded that their initial lease restructuring proposal was no longer viable. As a result, the Debtors determined that they should work with their landlords to effectuate the smooth transition of their Facilities to protect the health and well-being of their residents.

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<sup>18</sup> On September 10, the Department of Health and Human Services announced that it will distribute an additional \$17 billion in “Phase 4” distribution from the Provider Relief Fund, based upon providers’ lost revenues and expenditures from July 1, 2020 through March 31, 2021. The application process recently opened on September 29, 2021, and the Debtors expect to apply for such funds during the Chapter 11 Cases.

<sup>19</sup> The Company also retained Houlihan Lokey in connection with a proposed lease restructuring transaction or other reinvestment in the Company. However, because the agreements reached under the Restructuring Support Agreement contemplate a transition and wind-down of the Debtors, the Debtors do not, at this time, intend to engage Houlihan Lokey as investment banker in the Chapter 11 Cases.

Following the Rent Acceleration Letter and based on the Debtors' determination that the operations of the Omega Facilities needed to be transitioned to protect the health and well-being of their residents, the Debtors and the Omega Landlords concluded that the most cost effective and time sensitive means for such transition involved the transition of the operations of the Omega Facilities to one or more new operators designated by Omega, pursuant to "management and operations transfer agreements" (the "**MOTAs**") between the Debtors and the new operator(s). The Debtors received Court approval of the terms of the MOTAs and the transfer of the management and operations of the Omega Facilities on [November [●]], 2021 [Docket No [●]]. In addition, the Debtors are in ongoing discussions with the Blue Mountain Landlords regarding the transition of the Blue Mountain Facilities to new operators. In connection with the transfer of the Debtors' Provider Agreements, Omega Facilities, and the Blue Mountain Facilities, the New Omega Operator(s) and New Blue Mountain Operator(s) will expressly assume all of the Existing Operators' obligations under the assumed contracts with respect to events or periods on or after the "License Transfer Date" under the MOTAs, including any and all liabilities related to the funds that the Existing Operators previously received pursuant to the Medicare Accelerated and Advance Payment Program, including without limitation, all outstanding repayments or recoupments owing to the Centers for Medicare & Medicaid Services under applicable law.

Concurrently with the Debtors' negotiations with the Omega Landlords, the Debtors engaged in parallel discussions with New Ark (as senior secured lender) regarding potential financing options for the transition of the Debtors' facilities and residents, and the ultimate wind down of the Debtors' business. On September 18, 2021, the Omega Landlords delivered to the Debtors a DIP term sheet providing for a senior secured DIP facility in an amount of up to \$12 million, which would prime New Ark as senior secured lender. Because such a facility would require the consent of New Ark,<sup>20</sup> and New Ark would not consent to be primed, the Omega Landlords' initial funding proposal was not viable. On September 23, 2021, New Ark submitted a DIP term sheet to the Debtors which provided sufficient funding for the Debtors to transition their Facilities to new operators, followed by the wind-down of the Debtors through a chapter 11 plan. New Ark's proposal required the Omega Landlords to contribute a negotiated amount of funding to offset the operating costs associated with the Omega Facilities through the transition of those facilities to new operators pursuant to a MOTA. This proposal was rejected by the Omega Landlords.

However, on September 24, 2021, the Omega Landlords provided another DIP funding proposal, this time on a junior basis to the prepetition liens of New Ark, in a maximum amount of \$25 million. Under this proposal, which in concept was acceptable to New Ark and ultimately formed the basis for the DIP Facility, (a) an indirect affiliate of Omega acting as DIP lender (the "**DIP Lender**") would provide up to \$25 million to fund the operations of the Debtors relating to both the Omega Facilities and the Blue Mountain Facilities during transition, and fund other costs as further outlined under the DIP Budget determined by the DIP Lender, and (b) New Ark would provide (i) availability to the Debtors to use up to \$7 million of its Cash Collateral to fund operations prior to the implementation of the MOTAs related to the Omega Facilities to reduce

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<sup>20</sup> Because Omega and New Ark are parties to an intercreditor and subordination agreement, any DIP financing proposal by either Omega or New Ark likely would require the consent of the other party.

the DIP Lender's initial DIP funding requirement (subject to reimbursement by the DIP Lender following implementation of the MOTAs); and (ii) funding of the professional fees and other process costs incurred during the Chapter 11 Cases as further outlined in a budget determined by New Ark (the "**New Ark Financing**").

### 3. Restructuring Support Agreement

In the weeks leading up to the Petition Date, the Debtors engaged in extensive negotiations with the Omega Landlords and New Ark, as proposed lenders, regarding not only the proposed financing structures, but also a global settlement among the parties to provide a pathway to a prompt and efficient transfer of the Omega Facilities and wind-down of the Debtors through a plan process. Given the complexity of the financing structures, numerous competing interests, and dwindling liquidity, all in the face of the stark reality that the health and well-being of the Debtors' residents was at stake, these negotiations proved lengthy, intense, delicate, and complex.<sup>21</sup> These negotiations—which were completed immediately before the commencement of the Chapter 11 Cases—culminated in the agreements memorialized in the Restructuring Support Agreement among the Debtors, the Omega Landlords, New Ark, the Service Providers, and the Debtors' equity sponsors, which provides for a comprehensive process to fund, implement, and consummate the transition of the Debtors' Facilities through MOTAs and the Debtors' chapter 11 plan process.

The Debtors have determined, after extensive diligence and in consultation with their advisors and key stakeholders, that the transactions contemplated by the Restructuring Support Agreement are in the best interests of the Debtors and their creditors. In the Debtors' view, the transactions memorialized in the Restructuring Support Agreement, including the DIP Facility, the transfer of the Debtors' Facilities through MOTAs, and the proposed Plan, represent the only option available to transition the Facilities in a manner that safeguards the health and safety of the Debtors' residents. This global resolution among the Debtors, the Omega Landlords, the DIP Lender, New Ark, the Service Providers, and the Debtors' equity sponsors represents the best, value-maximizing alternative available for the Debtors and their creditors and, most significantly, will enable the Debtors to continue to provide quality care for the Debtors' residents through the transition of operations. The various transactions outlined in the Restructuring Support Agreement are inextricably interwoven, and reflect months of extensive, arm's-length, and good faith negotiations among the parties, recognizing the substantial stakes for all of the Debtors' stakeholders. Accordingly, the Debtors believe that the effectuation of transactions as memorialized in the Restructuring Support Agreement represents the best option for the Debtors to maximize the value of their Estates and ensure the safety and continued care of the Debtors' residents.

On October 22, 2021, the Debtors filed a motion to assume the Restructuring Support Agreement and perform all obligations thereunder [Docket No. 107]. On [●], 2021, the Court

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<sup>21</sup> In order to provide several weeks of additional runway to reach resolution on the DIP Financing and Restructuring Support Agreement, and to ensure a more seamless transition into chapter 11 for the benefit of the Debtors' residents and employees, on September 23, 2021, the Argent Sellers provided for an additional \$3,250,000 in cash liquidity to the Debtors.

entered an order approving the Debtors' assumption of the Restructuring Support Agreement [Docket No. [●]].

All rights, including consent rights, provided under the Restructuring Support Agreement are not affected, modified, or vacated by the terms of the Plan and will remain in full force and effect until the termination of the Restructuring Support Agreement or as otherwise provided by the Restructuring Support Agreement.

### **ARTICLE III.**

#### **THE CHAPTER 11 CASES**

##### **A. Commencement of the Chapter 11 Cases**

On the Petition Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Court. By order dated October 15, 2021 [Docket No. 43], the Debtors' cases are being jointly administered for procedural purposes only. No trustee or examiner has been appointed in the Chapter 11 Cases.

Since the Petition Date, the Debtors have continued to operate their businesses and manage their properties as debtors and debtors-in-possession.

##### **B. "First-Day" Motions and Related Applications**

On the Petition Date, the Debtors filed a number of "first-day" motions and applications designed to ease the Debtors' transition into chapter 11, maximize the Debtors' assets, and minimize the effects of the commencement of the Chapter 11 Cases. On October 15, 2021, October 18, 2021, and [●], 2021, the Court entered orders providing various first-day relief, including:

1. authorizing the Debtors to pay prepetition wages, commissions and employee benefits; and continue certain employee benefit programs in the ordinary course on an interim [Docket No. 54] and final basis [Docket No. [●]];
2. authorizing the Debtors to maintain, administer, and modify their refund programs and practices on an interim [Docket No. 58] and final basis [Docket No. [●]];
3. authorizing the Debtors to pay certain prepetition taxes and related obligations on an interim [Docket No. 56] and final basis [Docket No. [●]];
4. authorizing the Debtors to continue use of their existing cash management system and bank accounts, business forms and deposit, and investment practices, and continue intercompany transactions on an interim [Docket No. 67] and final basis [Docket No. [●]];
5. authorizing the Debtors to (a) maintain their existing insurance policies and pay the obligations arising thereunder; and (b) renew, revise, extend, supplement, change, or enter into new insurance policies on an interim [Docket No. 55] and final basis [Docket No. [●]]; and

6. establishing procedures for resolving objections by utility companies and prohibiting utility companies from altering, refusing or discontinuing service on an interim [Docket No. 57] and final basis [Docket No. [●]].

### **C. Retention of Professionals**

#### **1. Retention of Debtors' Professionals**

The Debtors were authorized to retain the following bankruptcy professionals in the Chapter 11 Cases: (a) McDermott Will & Emery LLP as their bankruptcy counsel [Docket No. [●]]; and (b) M. Benjamin Jones and Russell A. Perry as their Chief Restructuring Officer and Assistant Chief Restructuring Officer, respectively [Docket No. [●]].

The Debtors were also authorized to retain certain professionals utilized by the Debtors in the ordinary course prior to the Petition Date pursuant to an order of the Court [Docket No. [●]].

#### **2. Retention of Claims and Noticing Agent and Administrative Agent**

The Court authorized the Debtors to retain Epiq Corporate Restructuring, LLC ("**Epiq**" or the "**Claims Agent**") as their claims and noticing agent in the Chapter 11 Cases [Docket No. 53]. The Court also authorized the Debtors to retain Epiq as their administrative agent [Docket No. [●]].

### **D. Debtor-in-Possession Financing**

A substantial majority of the Debtors' existing assets, including Cash Collateral, are encumbered under the Credit Agreement. Moreover, even if the Debtors had been given free access to their cash, they would not have had sufficient liquidity to conduct the Chapter 11 Cases and liquidate their assets for the benefit of creditors. Accordingly, at the Debtors' request, the DIP Lender extended post-petition financing to the Debtors, which financing contemplated up to \$25 million of funding secured by superpriority Liens on all of the Debtors' assets, subordinate only to (a) the Liens provided in connection with the Credit Agreement; (b) Liens provided to the Prepetition HUD Lender; and (c) certain other permitted liens set forth in the Final DIP Order, to provide the Debtors with stability and funding for a process of transitioning Facilities with no interruption to resident care.

On October 14, 2021, the Debtors filed a motion seeking authority to, among other things, obtain post-petition secured financing from the DIP Lender, use Cash Collateral, and grant adequate protection to prepetition secured parties [Docket No. 14] (the "**DIP Financing Motion**"). The Court approved the DIP Financing Motion on an interim basis on October 18, 2021 [Docket No. 72] and on a final basis on November [●], 2021 [Docket No. [●]] (the "**Final DIP Order**").

### **E. Bar Dates**

On October 22, 2021, the Debtors filed a motion seeking to establish certain bar dates in the Chapter 11 Cases [Docket No. 109]. On [●], 2021, the Court entered an order [Docket No. [●]] establishing the following bar dates:

1. December 10, 2021 at 5:00 p.m. (Eastern Time) as the deadline for all Persons and Entities, other than a Governmental Unit, holding a prepetition Claim against the Debtors to file a Proof of Claim (the “**General Bar Date**”);
2. April 12, 2022 at 5:00 p.m. (Eastern Time) as the deadline for Governmental Units holding a prepetition Claim against the Debtors to file a Proof of Claim (the “**Governmental Bar Date**”);
3. the later of (a) the General Bar Date; and (b) 21 days from the date notice is served alerting a Creditor of the amendment to the Debtors’ Schedules affecting such Creditor’s Claim as the deadline for filing a Proof of Claim with respect to such amended Claim; and
4. the later of (a) 30 days after the effective date of the rejection of an Executory Contract or Unexpired Lease; (b) any date set by an order of the Court; or (c) the General Bar Date or the Governmental Bar Date, as applicable, as the deadline for filing a Proof of Claim for any rejection damages arising from the rejection of an Executory Contract or Unexpired Lease.

#### **ARTICLE IV. SUMMARY OF PLAN**

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE AND MEANS FOR IMPLEMENTATION OF THE PLAN AND THE CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN. THIS SECTION IS QUALIFIED IN ITS ENTIRETY BY AND IS SUBJECT TO THE PLAN AS WELL AS THE EXHIBITS THERETO AND DEFINITIONS THEREIN. THE PLAN IS ATTACHED TO THE DISCLOSURE STATEMENT AS **EXHIBIT A**.

THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN DOCUMENTS REFERRED TO THEREIN. THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL THE TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO THEREIN. REFERENCE IS MADE TO THE PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS.

THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN CONTROL THE ACTUAL TREATMENT OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS UNDER THE PLAN. UPON THE OCCURRENCE OF THE EFFECTIVE DATE, THE PLAN AND ALL SUCH DOCUMENTS SHALL BE BINDING UPON ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS AND THEIR ESTATES AND ALL OTHER PARTIES-IN-INTEREST. IN THE EVENT OF ANY CONFLICT BETWEEN THE DISCLOSURE STATEMENT, ON THE ONE HAND, AND THE PLAN, THE LIQUIDATING TRUST AGREEMENT, THE GUC TRUST AGREEMENT, OR ANY OTHER OPERATIVE DOCUMENT, ON THE OTHER HAND, THE TERMS OF THE PLAN, THE LIQUIDATING TRUST AGREEMENT, THE GUC TRUST AGREEMENT, OR SUCH OTHER OPERATIVE DOCUMENT WILL CONTROL.



**A. Classification and Treatment of Claims and Interests**

Bankruptcy Code section 1123 provides that a plan must classify the claims and interests of a debtor's creditors and equity interest holders. In accordance with Bankruptcy Code section 1123, the Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than the DIP Facility Claim, Administrative Claims, and Priority Tax Claims, which pursuant to Bankruptcy Code section 1123(a)(1) need not be and have not been classified). The Debtors also are required, under Bankruptcy Code section 1122, to classify Claims against and Interests in the Debtors (except for certain Claims classified for administrative convenience) into Classes that contain Claims and Interests that are substantially similar to the other Claims and Interests in such Class.

The Bankruptcy Code also requires that a plan provide the same treatment for each claim or interest of a particular class unless the claim holder or interest holder agrees to a less favorable treatment of its claim or interest. The Debtors believe that they have complied with such standard. If the Court finds otherwise, however, it could deny Confirmation of the Plan if the Claim Holders and Interest Holders affected do not consent to the treatment afforded them under the Plan.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim also is placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

The Debtors believe that the Plan has classified all Claims and Interests in compliance with the provisions of Bankruptcy Code section 1122 and applicable case law. It is possible that a Holder of a Claim or Interest may challenge the Debtors' classification of Claims and Interests and that the Court may find that a different classification is required for the Plan to be confirmed. If such a situation develops, the Debtors intend, in accordance with the terms of the Plan, to make such permissible modifications to the Plan as may be necessary to permit its Confirmation. Any such reclassification could adversely affect Holders of Claims by changing the composition of one or more Classes and the vote required of such Class or Classes for approval of the Plan. UNLESS SUCH MODIFICATION OF CLASSIFICATION MATERIALLY ADVERSELY AFFECTS THE TREATMENT OF A HOLDER OF A CLAIM AND REQUIRES RESOLICITATION, ACCEPTANCE OF THE PLAN BY ANY HOLDER OF A CLAIM PURSUANT TO THIS SOLICITATION WILL BE DEEMED TO BE A CONSENT TO THE PLAN'S TREATMENT OF SUCH HOLDER OF A CLAIM REGARDLESS OF THE CLASS AS TO WHICH SUCH HOLDER ULTIMATELY IS DEEMED TO BE A MEMBER.

The amount of any Impaired Claim that ultimately is Allowed by the Court may vary from any estimated Allowed amount of such Claim and, accordingly, the total Claims that are ultimately Allowed by the Court with respect to each Impaired Class of Claims may also vary from any estimates contained herein with respect to the aggregate Claims in any Impaired Class. Thus, the value of property that ultimately will be received by a particular Holder of an Allowed

Claim may be adversely or favorably affected by the aggregate amount of Claims Allowed in the applicable Class.

The classification of Claims and Interests and the nature of Distributions to members of each Class are summarized below. The Debtors believe that the consideration, if any, provided under the Plan to holders of Claims and Interests reflects an appropriate resolution of their Claims and Interests, taking into account the differing nature and priority (including applicable contractual subordination) of such Claims and Interests. The Court must find, however, that a number of statutory tests are met before it may confirm the Plan. Many of these tests are designed to protect the interests of Holders of Claims or Interests who are not entitled to vote on the Plan, or do not vote to accept the Plan, but who will be bound by the provisions of the Plan if it is confirmed by the Court.

## **2. Unclassified Claims**

### **a. DIP Facility Claim**

On the Effective Date, each Holder of an Allowed DIP Facility Claim will receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, its Pro Rata share of the Liquidating Trust Assets, after (i) satisfaction of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Other Secured Claims, and (ii) paying, reserving against, or satisfying, among other things, the operating and administrative expenses of the Liquidating Trust, including but not limited to all reasonable and documented costs, expenses, and obligations incurred by the Liquidating Trustee (or professionals who may be employed by the Liquidating Trustee in administering the Liquidating Trust with the reasonable consent of the Omega Entities) in carrying out their responsibilities under the Liquidating Trust Agreement, or in any manner connected, incidental or related thereto.

For the avoidance of doubt, to the extent that the Liquidating Trust Assets are insufficient to satisfy the DIP Lender in full on account of the DIP Facility Claim, the DIP Lender will receive no additional consideration on account of the DIP Facility Claim, subject to Consummation of the Plan.

### **b. Administrative Claims**

Unless a Holder agrees to less favorable treatment, each Holder of an Allowed Administrative Claim (including all Professional Fee Claims) will have such Claim satisfied in full, in Cash, which payments will be made in the ordinary course of business or on the later of the Effective Date and the date on which such Claim becomes an Allowed Claim (or as soon as reasonably practicable thereafter), or otherwise receive treatment consistent with the provisions of Bankruptcy Code section 1129(a)(9)(2).

Notwithstanding the foregoing, and subject to consummation of the Plan, (a) if the Omega MOTA Order is entered, the Omega Entities will not receive any recovery on account of any Administrative Claim of which an Omega Entity is the Holder; and (b) New Ark will waive any Administrative Claim of which New Ark is the Holder; *provided, however*, that, for the avoidance of doubt, clause (a) of the foregoing sentence does not include or cover Allowed

Administrative Claims of any New Omega Operator(s) or the assignee of such claims, including an Omega Entity (in its capacity as assignee).

**c. Priority Tax Claims**

Unless a Holder agrees to less favorable treatment, each Holder of an Allowed Priority Tax Claim will receive treatment consistent with the provisions of Bankruptcy Code section 1129(a)(9)(C).

**3. Treatment of Claims and Interests**

**a. Introduction**

All Claims and Interests, except the DIP Facility Claim, Administrative Claims, and Priority Tax Claims, are placed in the Classes set forth below. In accordance with Bankruptcy Code section 1123(a)(1), Administrative Claims and Priority Tax Claims, as described above, have not been classified.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim also is placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

**b. Summary**

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including, without limitation, for voting, confirmation, and distribution pursuant hereto and pursuant to Bankruptcy Code sections 1122 and 1123(a)(1).

<b>Class</b>	<b>Claim/Interest</b>	<b>Status</b>	<b>Voting Rights</b>
1	New Ark Secured Claim	Impaired	<i>Entitled to Vote</i>
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Other Priority Claims	Unimpaired	Deemed to Accept
4	Omega Unsecured Claims	Impaired	<i>Entitled to Vote</i>
5	Subordinated Seller Note Claims	Impaired	<i>Entitled to Vote</i>
6	Service Provider Claims	Impaired	<i>Entitled to Vote</i>
7	General Unsecured Claims	Impaired	<i>Entitled to Vote</i>
8	Intercompany Claims	Impaired	Deemed to Reject
9	Existing Equity Interests	Unimpaired/Impaired	Deemed to Accept/ Deemed to Reject

**c. Classification and Treatment of Claims and Interests**

**i. Class 1: New Ark Secured Claim**

Classification. Class 1 consists of the New Ark Secured Claim.

Treatment. On the Effective Date, the Holder of the New Ark Secured Claim will receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, payment from the Prepetition A/R Reserve in Cash in the amount of the New Ark Secured Claim, less the amount of the New Ark Funding; *provided, however*, that if there are insufficient funds in the Prepetition A/R Reserve to provide payment in full of the New Ark Secured Claim (less the amount of the New Ark Funding), New Ark (or its designees) will waive any such deficiency, subject to and upon Consummation of the Plan.

Voting. Class 1 is Impaired, and Holders of Claims in Class 1 are entitled to vote to accept or reject the Plan.

**ii. Class 2: Other Secured Claims**

Classification. Class 2 consists of the Other Secured Claims.

Treatment. On the Effective Date (or as promptly thereafter as reasonably practicable), each Holder of an Allowed Other Secured Claim will receive, in the sole discretion of the Liquidating Trust and in full and final satisfaction of such Claim, (a) payment in full by the Liquidating Trust in Cash, including the payment of any interest Allowed and payable under Bankruptcy Code section 506(b); (b) delivery of the collateral securing such Allowed Other Secured Claim; or (c) treatment of such Allowed Other Secured Claim in any other matter that renders the Claim Unimpaired.

Voting. Class 2 is Unimpaired, and the Holders of Claims in Class 2 will be conclusively deemed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f). Therefore, Holders of Claims in Class 2 are not entitled to vote to accept or reject the Plan.

**iii. Class 3: Other Priority Claims**

Classification. Class 3 consists of the Other Priority Claims.

Treatment. On the Effective Date, each Holder of an Allowed Other Priority Claim will receive treatment in a manner consistent with Bankruptcy Code section 1129(a)(9).

Voting. Class 3 is Unimpaired, and the Holders of Claims in Class 3 will be conclusively deemed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f). Therefore, Holders of Claims in Class 3 are not entitled to vote to accept or reject the Plan

**iv. Class 4: Omega Unsecured Claim**

Classification. Class 4 consists of the Omega Unsecured Claim.

Treatment. On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, the Holders of the Omega Unsecured Claim will receive Pro Rata Distribution with Class 5, Class 6, and Class 7 of the GUC Trust Interests; *provided, however*, that notwithstanding the foregoing, pursuant to the Omega/Delta Subordination Agreement, any Cash Distribution received by the Holders of Subordinated Seller Note Claims on account of their GUC Trust Interests will be paid to the Holders of the Omega

Unsecured Claim until the Omega Unsecured Claim is paid in full; *provided further, however*, that if Class 7 votes to accept the Plan, then the Holders of the Omega Unsecured Claim will contribute to the Holders of Class 7 General Unsecured Claims (i) their Pro Rata Distribution of the GUC Trust Interests and (ii) any Cash Distribution received from the Holders of Subordinated Seller Note Claims pursuant to the Omega/Delta Subordination Agreement, to be shared by the Holders of Class 7 General Unsecured Claims on a Pro Rata basis.

Voting. Class 4 is Impaired, and Holders of Claims in Class 4 are entitled to vote to accept or reject the Plan.

**v. Class 5: Subordinated Seller Note Claims**

Classification. Class 5 consists of Subordinated Seller Note Claims.

Treatment. On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, each Holder of a Subordinated Seller Note Claim will receive a Pro Rata Distribution with Class 4, Class 6, and Class 7 of the GUC Trust Interests.

Notwithstanding the foregoing, pursuant to the Omega/Delta Subordination Agreement and Bankruptcy Code section 510, the Cash Distributions received from the GUC Trust by the Holders of Subordinated Seller Note Claims will be paid to the Holders of the Omega Unsecured Claim until the Omega Unsecured Claim is paid in full.

Voting. Class 5 is Impaired, and Holders of Claims in Class 5 are entitled to vote to accept or reject the Plan.

**vi. Class 6: Service Provider Claims**

Classification. Class 6 consists of Service Provider Claims.

Treatment. On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, the Holders of Allowed Service Provider Claims will receive Pro Rata Distribution with Class 4, Class 5, and Class 7 of the GUC Trust Interests; *provided, however*, that if Class 7 votes to accept the Plan, then the Holders of Service Provider Claims will contribute their Pro Rata Distribution of the GUC Trust Interests to the Holders of Class 7 General Unsecured Claims, each of whom will receive their respective Pro Rata Distribution of all such amounts.

Voting. Class 6 is Impaired, and Holders of Claims in Class 6 are entitled to vote to accept or reject the Plan.

**vii. Class 7: General Unsecured Claims**

Classification. Class 7 consists of General Unsecured Claims.

Treatment. On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, each Holder of a General Unsecured

Claim will receive a Pro Rata Distribution with Class 4, Class 5, and Class 6 of the GUC Trust Interests; *provided, however*, that if Class 7 votes to accept the Plan, then (a) the Holders of the Omega Unsecured Claim will contribute (i) their Pro Rata Distribution of the GUC Trust Interests and (ii) any Cash Distribution received from the Holders of Subordinated Seller Note Claims pursuant to the Omega/Delta Subordination Agreement to the Holders of Class 7 General Unsecured Claims, and (b) the Holders of the Service Provider Claims will contribute their Pro Rata Distribution of the GUC Trust Interests to the Holders of Class 7 General Unsecured Claims, and each Holder of a Class 7 General Unsecured Claim will receive their respective Pro Rata Distribution of all such contributed GUC Trust Interests and amounts.

Voting. Class 7 is Impaired, and Holders of Claims in Class 7 are entitled to vote to accept or reject the Plan.

#### **viii. Class 8: Intercompany Claims**

Classification. Class 8 consists of Intercompany Claims.

Treatment. On the Effective Date, each Intercompany Claim will be cancelled, released, and extinguished, and each Holder of an Intercompany Claim will not be entitled to, and will not receive or retain, any property or interest in property on account of such Intercompany Claim.

Voting. Class 8 is Impaired. Because the Holders of such Intercompany Claims will not receive any distributions pursuant to the Plan, they are therefore conclusively deemed, pursuant to Bankruptcy Code section 1126(g), to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

#### **ix. Class 9: Existing Equity Interests**

Classification. Class 9 consists of Existing Equity Interests.

Treatment. On the Effective Date, all Existing Equity Interests in the Top Level Debtors will be cancelled, released, and extinguished, and each such Holder of an Existing Equity Interest will not be entitled to, and will not receive or retain, any property or interest in property on account of such Existing Equity Interest.

On the Effective Date, all Existing Equity Interests in the Debtors other than the Top Level Debtors will be (a) reinstated solely to the extent necessary to maintain the Debtors' corporate structure post-Effective Date or (b) cancelled, released, or extinguished, as determined by the Debtors in their business judgment.

Voting. Holders of Existing Equity Interests are conclusively presumed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f) or deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g). Holders of Existing Equity Interests are not entitled to vote to accept or reject the Plan.

#### **4. Special Provision Regarding Unimpaired Claims**

Except as otherwise provided in the Plan, the Confirmation Order, any other order of the Court, or any document or agreement enforceable pursuant to the terms of the Plan, nothing will affect the rights and defenses, both legal and equitable, of the Debtors and/or the Liquidating Trust with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

#### **5. Allowed Claims**

Notwithstanding any provision in the Plan to the contrary, the Disbursing Agent will only make Distributions to Holders of Allowed Claims. No Holder of a Disputed Claim will receive any Distribution on account thereof until (and then only to the extent that) its Disputed Claim becomes an Allowed Claim. The Liquidating Trustee and the GUC Trustee may, in their discretion, withhold Distributions otherwise due hereunder to any Holder of a Claim until the Claims Objection Deadline, to enable a timely objection thereto to be Filed. Any Holder of a Claim that becomes an Allowed Claim after the Effective Date will receive its Distribution in accordance with the terms and provisions of the Plan, the Liquidating Trust Agreement, and/or the GUC Trust Agreement, as applicable.

#### **6. Special Provisions Regarding Insured Claims**

Distributions under the Plan to each Holder of an Insured Claim will be in accordance with the treatment provided under the Plan for the Class in which such Insured Claim is classified; *provided, however*, that the maximum amount of any Distribution under the Plan on account of an Allowed Insured Claim will be limited to an amount equal to: (a) the applicable deductible or self-insured retention under the relevant insurance policy minus (b) any reimbursement obligations of the Debtors to the insurance carrier for sums expended by the insurance carrier on account of such Claim (including defense costs); *provided further, however*, that, to the extent that a Holder of a Claim has an Allowed Insured Claim, the amount of which exceeds the total coverage available from the relevant insurance policies of the Debtors, such Holders of Claims will have an Allowed General Unsecured Claim in the amount by which such Allowed Insured Claim exceeds the coverage available from the relevant Debtor's insurance policies. Nothing in Article III.F of the Plan will constitute a waiver of any Cause of Action the Debtors may hold against any Person or Entity, including the Debtors' insurance carriers, or is intended to, will, or will be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery from any insurer of the Debtors in addition to any Distribution such Holder may receive under the Plan; *provided, however*, that the Debtors do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled.

The Plan will not expand the scope of, or alter in any other way, the obligations of the Debtors' insurers under their policies, and the Debtors' insurers will retain any and all defenses to coverage that such insurers may have. The Plan will not operate as a waiver of any other Claims the Debtors' insurers have asserted or may assert in any Proof of Claim or the Debtors' rights and defenses to such Proofs of Claim.

## **B. Provisions Covering Distributions**

### **1. Distributions on Allowed Claims**

Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date or became Allowed Claims thereafter will be made by the Disbursing Agent pursuant to the terms and conditions of the Plan, the Liquidating Trust Agreement, and the GUC Trust Agreement. Notwithstanding any other provision of the Plan to the contrary, no Distribution will be made on account of any Allowed Claim or portion thereof that (a) has been satisfied after the Petition Date; (b) is listed in the Schedules as contingent, unliquidated, disputed, or in a zero amount, and for which a Proof of Claim has not been timely Filed; or (c) is evidenced by a Proof of Claim that has been amended by a subsequently Filed Proof of Claim.

### **2. Disbursing Agent**

The Disbursing Agent will make all Distributions required under the Plan, subject to the terms and provisions of the Plan, the Liquidating Trust Agreement, and the GUC Trust Agreement. If the Disbursing Agent is an independent third party designated to serve in such capacity, such Disbursing Agent will receive, without further Court approval, reasonable compensation from the Liquidating Trust and/or GUC Trust for distribution services rendered pursuant to the Plan and reimbursement of reasonable out-of-pocket expenses. No Disbursing Agent will be required to give any bond or surety or other security for the performance of its duties. The Disbursing Agent will be authorized and directed to rely upon the Debtors' Books and Records and the representatives and professionals of the Liquidating Trust and the GUC Trust in determining Allowed Claims not entitled to Distributions under the Plan in accordance with the terms and conditions of the Plan.

### **3. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

#### **a. Delivery of Distributions in General**

Distributions to Holders of Allowed Claims will be made by the Disbursing Agent (a) at the addresses set forth on the Proofs of Claim Filed by such Holders (or at the last known addresses of such Holders if no Proof of Claim is Filed or if the Debtors have been notified of a change of address); (b) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related Proof of Claim, after sufficient evidence of such addresses as may be requested by the Disbursing Agent is provided; (c) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Disbursing Agent has not received a written notice of a change of address; (d) at the addresses set forth in the other records of the Debtors or the Disbursing Agent at the time of the Distribution or (e) in the case of the Holder of a Claim that is governed by an agreement and is administered by an agent or servicer, at the addresses contained in the official records of such agent or servicer.

In making Distributions under the Plan, the Disbursing Agent may rely upon the accuracy of the Claims register maintained by the Claims Agent in the Chapter 11 Cases, as modified by any Final Order of the Court disallowing Claims in whole or in part.



**b. Undeliverable and Unclaimed Distributions**

If the Distribution to any Holder of an Allowed Claim is returned to the Disbursing Agent as undeliverable or is otherwise unclaimed, no further Distributions will be made to such Holder unless and until the Disbursing Agent is notified in writing of such Holder's then-current address and such Holder provides sufficient evidence of such address as may be requested by the Disbursing Agent, at which time all missed Distributions will be made to such Holder without interest, subject to the time limitations set forth below. Amounts in respect of undeliverable Distributions made by the Disbursing Agent will be returned to the Disbursing Agent until such Distributions are claimed. The Disbursing Agent will segregate and, with respect to Cash, deposit in a segregated account designated as an unclaimed Distribution reserve undeliverable and unclaimed Distributions for the benefit of all such similarly-situated Persons or Entities until such time as a Distribution becomes deliverable or is claimed, subject to the time limitations set forth below.

Any Holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable or unclaimed Distribution within three months after the date such Distribution was returned undeliverable will be deemed to have forfeited its Claim for such undeliverable or unclaimed Distribution and will be forever barred and enjoined from asserting any such Claim for an undeliverable or unclaimed Distribution against the Debtors or the Liquidating Debtors, as applicable, and the Debtors' Estates, the Liquidating Trustee, the Liquidating Trust, the GUC Trust, the GUC Trustee, and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its or their property. Nothing contained in the Plan, the Liquidating Trust Agreement, or the GUC Trust Agreement will require the Debtor, the Liquidating Trust, the Liquidating Trustee, the GUC Trust, the GUC Trustee, or any Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

**4. Means of Cash Payment**

Cash payments made pursuant to the Plan will be in U.S. dollars and will be made at the option and in the sole discretion of the Disbursing Agent by (a) checks drawn on or (b) wire transfers from a domestic bank selected by the Disbursing Agent. In the case of foreign creditors, Cash payments may be made, at the option of the Disbursing Agent, in such funds and by such means as are necessary or customary in a particular jurisdiction; *provided* that the Disbursing Agent receives a signed receipt or otherwise verifiable record of any such Cash payment.

**5. Interest on Claims**

Unless otherwise specifically provided for in the DIP Orders, the Plan, or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest will not accrue or be paid on any Claims, and no Holder of a Claim will be entitled to interest accruing on or after the Petition Date on any Claim. Interest will not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

## 6. Withholding and Reporting Requirements

In accordance with Bankruptcy Code section 346 and in connection with the Plan and all Distributions hereunder, the Disbursing Agent will, to the extent applicable, comply with all withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority. The Disbursing Agent will be authorized to take any and all actions necessary and appropriate to comply with such requirements.

All Distributions hereunder will be subject to withholding and reporting requirements. As a condition of making any Distribution under the Plan, each Person and Entity holding an Allowed Claim is required to provide any information necessary in writing, including returning W-9 statements, to effect the necessary information reporting and withholding of applicable taxes with respect to Distributions to be made under the Plan as the Disbursing Agent may request. The Disbursing Agent will be entitled in its sole discretion to withhold any Distributions to a Holder of an Allowed Claim who fails to provide tax identification or social security information within the timeframe requested in writing by the Disbursing Agent to such Holder of an Allowed Claim, which timeframe will not be less than 30 days. **The Distribution to any Holder of an Allowed Claim that fails to timely respond to the Disbursing Agent will be treated as an undeliverable or unclaimed Distribution pursuant to Article VI.C.2 of the Plan.**

Notwithstanding any other provision of the Plan, each Person and Entity receiving a Distribution pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of tax obligations on account of any such Distribution.

## 7. Setoffs

Subject to the terms and conditions of the Liquidating Trust Agreement and the GUC Trust Agreement, the Debtors, the GUC Trust, and/or the Liquidating Trust may, but will not be required to, setoff against any Claim and the payments or other Distributions to be made under the Plan on account of the Claim, claims of any nature whatsoever that the Debtors may have against the Holder thereof, *provided that* any such right of setoff that is exercised will be allocated, first, to the principal amount of the related Claim, and thereafter to any interest portion thereof, but neither the failure to do so nor the allowance of any Claim hereunder will constitute a waiver or release by the Debtors, the GUC Trust, and/or the Liquidating Trust of any such claim that the Debtors may have against such Holder.

## 8. Procedure for Treating and Resolving Disputed, Contingent, and/or Unliquidated Claims

### a. Objection Deadline; Prosecution of Objection

Except as set forth in the Plan with respect to Professional Fee Claims and Administrative Claims, all objections to Claims must be Filed and served on the Holders of such Claims by the Claims Objection Deadline, as the same may be extended by the Court. If an objection has not been Filed to a Proof of Claim or the Schedules have not been amended with respect to a Claim that (a) was Scheduled by the Debtors but (b) was not Scheduled as contingent, unliquidated, and/or disputed, by the Claims Objection Deadline, as the same may be extended by order of the

Court, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been Allowed earlier. Notice of any motion for an order extending the Claims Objection Deadline will be required to be given only to those Persons or Entities that have requested notice in the Chapter 11 Cases in accordance with Bankruptcy Rule 2002.

Notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, on and after the Effective Date, the GUC Trust (with respect to General Unsecured Claims) and the Liquidating Trust (for all other Claims) will have the authority to: (a) File, withdraw, or litigate to judgment objections to and requests for estimation of Claims; (b) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Court; and (c) administer and adjust the Claims register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Court; *provided, however*, that the objection to and settlement of Professional Fee Claims will not be subject to Article VI.H of the Plan, but rather will be governed by Article IX.A of the Plan. In the event that any objection Filed by the Committee or the Debtors remains pending as of the Effective Date, the GUC Trustee (with respect to General Unsecured Claims) and the Liquidating Trustee (for all other Claims) will be deemed substituted for the Committee or the Debtor, respectively, as the objecting party.

Except as otherwise provided under the Plan, the Liquidating Trust will be entitled to assert all of the Debtors' rights, claims, defenses, offsets, rights of recoupment, setoffs, rights of disallowance, subrogation, recharacterization, and/or equitable subordination and counter-claims with respect to Claims.

**b. No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, the Liquidating Trust Agreement, or the GUC Trust Agreement, no payments or Distributions will be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtor on account of a Cause of Action, no payments or Distributions will be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Court or such other court having jurisdiction over the matter.

**c. Disputed Claims Reserve**

On the Distribution Date and on each subsequent Periodic Distribution Date, the GUC Trust will withhold on a Pro Rata basis from property that would otherwise be distributed to Holders of General Unsecured Claims entitled to Distributions under the Plan on such date, in a separate Disputed Claims Reserve, such amounts or property as may be necessary to equal 100% of Distributions to which Holders of such Disputed General Unsecured Claims would be entitled under the Plan if such Disputed General Unsecured Claims were allowed in their Disputed Claim Amount. The GUC Trust may request, if necessary, estimation for any Disputed General Unsecured Claim that is contingent or unliquidated, or for which the GUC Trust determines to

reserve less than the face amount. If the GUC Trust elects not to request such an estimation from the Court with respect to a Disputed General Unsecured Claim that is contingent or unliquidated, the GUC Trust will withhold the applicable Disputed Claims Reserve based upon the good faith estimate of the amount of such General Unsecured Claim by the GUC Trust. If practicable, the GUC Trust will invest any Cash that is withheld as the Disputed Claims Reserve in an appropriate manner to ensure the safety of the investment, in accordance with the GUC Trust Agreement. Nothing in the Plan, the Disclosure Statement, or the GUC Trust Agreement will be deemed to entitle the Holder of a Disputed General Unsecured Claim to postpetition interest on such Claim, however.

**d. Distributions After Allowance**

Payments and Distributions to Holders of Disputed Claims that ultimately become Allowed Claims will be made in accordance with provisions of the Liquidating Trust Agreement and GUC Trust Agreement that govern Distributions to Holders of Allowed Claims.

**e. De Minimis Distributions**

The Liquidating Trust and GUC Trust will not be required to make any distributions to Holders of Allowed Claims aggregating less than \$50.00. Liquidating Trust Assets and GUC Trust Assets that would be payable under the Plan to Holders of Claims but for Article VI.H.5 of the Plan will remain Liquidating Trust Assets or GUC Trust Assets, as applicable, to be used in accordance with the Liquidating Trust Agreement or GUC Trust Agreement, as applicable.

**f. Fractional Dollars**

Any other provision of the Plan notwithstanding, the Disbursing Agent will not be required to make Distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down.

**g. Allocation of Plan Distributions Between Principal and Interest**

To the extent that any Allowed Claim entitled to a Distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such Distribution will, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

**h. Distribution Record Date**

The Disbursing Agent will have no obligation to recognize the transfer of or sale of any participation in any Allowed Claim that occurs after the close of business on the Distribution Record Date. Instead, the Disbursing Agent will be entitled to recognize and deal for all purposes under the Plan with only those record Holders stated on the official Claims register or the Debtors' Books and Records, as applicable, as of the close of business on the Distribution Record Date.

## **C. Means for Implementation of the Plan**

### **1. Substantive Consolidation**

#### **a. Consolidation of the Chapter 11 Estates**

The Plan contemplates and is predicated upon entry of an order substantively consolidating the Debtors' Estates and Chapter 11 Cases for all purposes, including voting, Distribution, and Confirmation.

The doctrine of substantive consolidation is a construct of federal common law, which has been accepted in the Third Circuit, *see In re Owens Corning*, 419 F.3d 195, 211 (3d Cir. 2005), and other circuits. *See, e.g., Reider v. F.D.I.C. (In re Reider)*, 31 F.3d 1102, 1107-08 (11th Cir. 1994); *Woburn Assoc. v. Kahn (In re Hemingway Transport Inc.)*, 954 F.2d 1, 11-12 (1st Cir. 1992); *First Nat'l Bank of El Dorado v. Giller (In re Giller)*, 962 F.2d 796, 798-99 (8th Cir. 1992); *Union Sav. Bank v. Augie/Restivo Banking Co. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515, 518 (2d Cir. 1988); *Drabkin v. Midland-Ross Corp. (In re Auto-Trian Corp.)*, 810 F.2d 270, 276 (D.C. Cir. 1987). A bankruptcy court's statutory authority to effect a substantive consolidation derives from its general equitable powers under Bankruptcy Code section 105(a).

In function, substantive consolidation “treats separate legal entities as if they were merged into a single survivor left with all cumulative assets and liabilities (save for inter-entity liabilities, which are erased). The result is that claims of creditors against separate debtors morph to claims against the consolidated survivor.” *Owens Corning*, 419 F.3d at 205 (quoting *Genesis Health Ventures, Inc. v. Stapleton (In re Genesis Health Ventures, Inc.)*, 402 F.3d 416, 423 (3d Cir. 2005)). Thus, on the Effective Date, (a) all Intercompany Claims between the Debtors will be eliminated; (b) all assets and liabilities of the Affiliate Debtors will be merged or treated as if they were merged with the assets and liabilities of Gulf Coast; (c) any obligation of a Debtor and any guarantee thereof by another Debtor will be deemed to be one obligation of Gulf Coast, and any such guarantee will be eliminated; (d) each Claim Filed or to be Filed against any Debtor will be deemed Filed only against Gulf Coast and will be deemed a single Claim against and a single obligation of Gulf Coast; and (e) any joint or several liability of the Debtors will be deemed one obligation of Gulf Coast. On the Effective Date, and in accordance with the terms of the Plan and the consolidation of the assets and liabilities of the Debtors, all Claims based upon guarantees of collection, payment, or performance made by one Debtor as to the obligations of another Debtor will be released and of no further force and effect.

Importantly, however, the substantive consolidation effected pursuant to Article V.A.1 of the Plan (a) will not affect the rights of any Holder of a secured Claim; and (b) will not, and will not be deemed to, prejudice the Causes of Action and the Avoidance Actions (subject to the releases set forth in Article X.D of the Plan), which will survive entry of the Substantive Consolidation Order, as if there had been no substantive consolidation.

#### **b. Substantive Consolidation Order**

The Plan will serve as, and will be deemed to be, a motion for entry of an order substantively consolidating the Debtors' Chapter 11 Cases. If no objection to substantive consolidation is timely Filed and served by any Holder of an Impaired Claim affected by the Plan

as provided in the Plan on or before the deadline to object to Confirmation of the Plan, or such other date as may be fixed by the Court, the Substantive Consolidation Order (which may be the Confirmation Order) may be approved by the Court. If any such objections are timely Filed and served, a hearing with respect to the substantive consolidation of the Chapter 11 Cases and the objections thereto will be scheduled by the Court, which hearing may, but is not required to, coincide with the Confirmation Hearing.

## **2. Corporate Action**

### **a. Distribution of New Membership Interests**

On the Effective Date, (a) all membership interests in Debtors Gulf Coast, Pensacola Administrative Holdings, LLC, and Gulf Coast Master Tenant Holdings, LLC (collectively, the “**Top Level Debtors**”) will be cancelled; (b) the Top Level Debtors’ managers, and all of the Debtors’ officers, will be deemed to have resigned; (c) each of the Top Level Debtors will issue one membership interest (collectively, the “**New Membership Interests**”) to the Liquidating Trust and the Liquidating Trust will be the sole member of each Top Level Debtor; (d) the Liquidating Trustee will serve as the sole manager of each Top Level Debtor, and the sole officer of each of the Liquidating Debtors.

### **b. Continued Corporate Existence**

The Debtors will continue to exist after the Effective Date for the limited purposes of disposing of the assets of the Debtors’ Estates, to the extent necessary, and complying with and fulfilling their obligations under the Liquidating Trust Agreement and the Plan. The organizational documents of the Debtors will be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy Code and will include, among other things, pursuant to Bankruptcy Code section 1123(a)(6), a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by Bankruptcy Code section 1123(a)(6).

The Debtors, the Liquidating Debtors, and the Liquidating Trustee acting pursuant to the terms and conditions of the Liquidating Trust Agreement, as applicable, will be authorized to execute, deliver, file, or record such documents, instruments, releases, and other agreements and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

### **c. Dissolution**

As soon as practicable after the Liquidating Trust exhausts the assets of the Debtors’ Estates by making the final Distribution under the Plan and the Liquidating Trust Agreement and has complied with and fulfilled its obligations under the Plan, the Liquidating Trustee will, (a) destroy the Books and Records, as authorized by Confirmation Order; (b) File a certification stating that the assets of the Debtors’ Estates have been exhausted and final Distributions have been made under the Plan; (c) file the necessary paperwork to effectuate the dissolution of the Liquidating Debtors in accordance with the laws of their respective states of organization; (d) resign as the sole manager and/or sole officer of the Liquidating Debtors. Upon the Filing of the certificate described in section (b) of the preceding sentence, the Liquidating Debtors will be deemed dissolved for all purposes without the necessity for any other or further actions to be

taken by or on behalf of the Liquidating Debtors or payments to be made in connection therewith.

**d. Cancellation of Old Securities and Agreements**

Except as otherwise provided in the Plan, and in any contract, instrument, or other agreement or document created in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Article III of the Plan, any promissory notes, share certificates, whether for preferred or common stock (including treasury stock), other instruments evidencing any Claims or Interests, other than a Claim or Interest that is being reinstated and rendered unimpaired, and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire such Interests will be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order, or rule.

**e. No Further Action**

Each of the matters provided for under the Plan involving the organizational structure of the Debtors or corporate or limited liability company action to be taken by or required of the Debtors will, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan, and will be authorized and approved in all respects without any requirement of further action by any Person or Entity, including but not limited to, the Liquidating Trustee, Holders of Claims or Interests against or in the Debtors, or directors, managers, or officers of the Debtors or Liquidating Debtors.

**3. Books and Records; Privilege Matters**

**a. Access to Debtors' Books and Records**

On or as reasonably practicable after the Effective Date, the Liquidating Debtors will transfer non-privileged Books and Records related to Claims to be liquidated by the GUC Trust to the GUC Trust.

**b. Transfer of Privilege**

On the Effective Date, the Liquidating Trust will succeed to the evidentiary privileges (including attorney-client, joint-client, joint-defense, common interest and other privileges) formerly held by the Debtors. Accordingly, to the extent that documents are requested from current counsel to the Debtors by any Person or Entity, after the Effective Date, only the Liquidating Trust will have the ability to waive such attorney-client privilege. Current counsel to the Debtors will have no obligation to produce any documents currently in their possession as a result of or arising in any way out of their representation of the Debtors unless (a) the Person or Entity requesting such documents serves their request on the Liquidating Trust; and (b) the Liquidating Trust consents in writing to such production and any waiver of the attorney-client privilege such production might cause. Upon the third anniversary of the termination of the Liquidating Trust Agreement, any and all documents in the possession of the Debtors' current counsel as a result of or arising in any way out of their representation of the Debtors,

respectively, will be deemed destroyed and no Person or Entity will be entitled to obtain such documents.

On the Effective Date, the GUC Trust will succeed to the evidentiary privileges (including attorney-client, joint-client, joint-defense, common interest and other privileges) formerly held by the Committee. Accordingly, to the extent that documents are requested from current counsel to the Committee by any Person or Entity, after the Effective Date, only the GUC Trust will have the ability to waive such attorney-client privilege. Current counsel to the Committee will have no obligation to produce any documents currently in their possession as a result of or arising in any way out of their representation of the Committee unless (a) the Person or Entity requesting such documents serves their request on the GUC Trust; and (b) the GUC Trust consents in writing to such production and any waiver of the attorney-client privilege such production might cause. Upon the third anniversary of the termination of the GUC Trust Agreement, any and all documents in the possession of the Committee's current counsel as a result of or arising in any way out of their representation of the Committee will be deemed destroyed and no Person or Entity will be entitled to obtain such documents.

#### **4. Dissolution of the Committee**

Any Committee will continue in existence until the Effective Date to exercise those powers and perform those duties specified in Bankruptcy Code section 1103 and will perform such other duties as it may have been assigned by the Court prior to the Effective Date. On the Effective Date, the Committee will be dissolved and its members will be deemed released of all their duties, responsibilities, and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Committee's attorneys, financial advisors, and other agents will terminate, except with respect to (a) all Professional Fee Claims; and (b) any appeals of the Confirmation Order. All expenses of Committee members and the reasonable fees and expenses of their Professionals through the Effective Date will be paid in accordance with the terms and conditions of the Professional Fee Order. For the avoidance of doubt, and notwithstanding anything in the Plan, no member of the Committee will be reimbursed for any attorneys' fees and expenses incurred by such member except by order of the Court upon a separate application Filed by such member and following a hearing upon proper notice.

#### **5. Liquidating Trust**

On the Effective Date, the Liquidating Debtors will enter into the Liquidating Trust Agreement to establish the Liquidating Trust in form and substance satisfactory to the Omega Entities (including the DIP Agent) for the purposes of, among other things, collecting all accounts receivable outstanding as of the Effective Date, liquidating and distributing the Liquidating Trust Assets as required under the Plan and the Liquidating Trust Agreement, and winding down the Liquidating Debtors, with no objective to continue or engage in the conduct of a trade of business.

The Liquidating Trust Agreement may provide powers, duties, and authorities in addition to those explicitly stated in the Plan, but only to the extent that such powers, duties, and



authorities do not affect the status of the Liquidating Trust as a “liquidating trust” for United States federal income tax purposes.

The Liquidating Trust will be administered by the Liquidating Trustee, who will be selected by the Omega Entities (including the DIP Agent) in consultation with the Debtor. The DIP Agent may remove and replace the Liquidating Trustee at any time and for any reason with or without cause. In the event of an inconsistency between the Plan and the Liquidating Trust Agreement as such conflict relates to anything other than the establishment of the Liquidating Trust, the Liquidating Trust Agreement will control. All compensation for the Liquidating Trustee and other costs of administration will be paid from the Liquidating Trust Assets in accordance with the Liquidating Trust Agreement.

In his or her sole discretion, the Liquidating Trustee may enter into one or more transition services agreements with the Service Providers on terms to be mutually agreed upon by the Liquidating Trustee and the Service Providers with the consent of the Omega Entities.

## **6. GUC Trust**

### **a. Establishment and Administration of the GUC Trust**

On the Effective Date, the GUC Trust will be established pursuant to the GUC Trust Agreement for the purpose of, among other things, (a) holding and administering the GUC Trust Assets; (b) prosecuting any objections to Claims that the GUC Trustee deems appropriate and resolving such objections; (c) retaining professionals or other advisors to assist in the performance of its duties; and (d) making Distributions from the GUC Trust to Holders of Allowed Omega Unsecured Claims, Allowed Subordinated Seller Note Claims, Allowed Service Provider Claims, and Allowed General Unsecured Claims as provided for in the Plan and/or the GUC Trust Agreement.

Upon execution of the GUC Trust Agreement, the GUC Trustee will be authorized to take all steps necessary to complete the formation of the GUC Trust. The GUC Trust will be administered by the GUC Trustee in accordance with the GUC Trust Agreement.

### **b. Assets of the GUC Trust**

On the Effective Date, or as soon as reasonably practicable thereafter, the Debtors or Liquidating Debtors, as applicable, will transfer and assign to the GUC Trust all of their right, title, and interest in and to all of the GUC Trust Assets, and in accordance with Bankruptcy Code section 1141, all such assets will automatically vest in the GUC Trust free and clear of all Claims and Liens, subject only to the Allowed Claims of the Holders of GUC Trust Interests as set forth in the Plan and the expenses of the GUC Trust as set forth in the Plan and in the GUC Trust Agreement. Thereupon, neither the Debtors nor the Liquidating Debtors will have any interest in or with respect to the GUC Trust Assets.

### **c. GUC Trust Interests**

On the Effective Date, each Holder of an Allowed Omega Unsecured Claim, Subordinated Seller Note Claim, Service Provider Claim, and General Unsecured Claim will, by

operation of the Plan, be deemed to have received its uncertificated Pro Rata share of the GUC Trust Interests pursuant to the terms of the Plan. GUC Trust Interests will be reserved for Holders of Disputed Claims and issued by the GUC Trust to, and held by the GUC Trustee in, the Disputed Claims Reserve pending allowance or disallowance of such Claims. No other Person or Entity will have any interest, legal, beneficial, or otherwise, in the GUC Trust Assets upon the assignment and transfer of such assets to the GUC Trust.

As set forth in the GUC Trust Agreement, Distributions from the GUC Trust on account of GUC Trust Interests will be made from the GUC Trust Assets after paying, reserving against or satisfying, among other things, the operating and administrative expenses of the GUC Trust, including but not limited to all costs, expenses and obligations incurred by the GUC Trustee (or professionals who may be employed by the GUC Trustee in administering the GUC Trust) in carrying out their responsibilities to the GUC Trust under the GUC Trust Agreement, or in any manner connected, incidental or related thereto.

The GUC Trust Interests will be uncertificated and will be nontransferable except upon death of the Holder or by operation of law. Holders of GUC Trust Interests, in such capacity, will have no voting rights or any authority over the activities of the GUC Trust. The GUC Trust will have a term of three years from the Effective Date, without prejudice to the rights of the GUC Trust to request extension of such term from the Court for good cause shown.

**d. Appointment of a GUC Trustee**

The identity of the GUC Trustee will be disclosed pursuant to a notice filed not less than five Business Days prior to the Voting Deadline. The appointment of the GUC Trustee will be approved in the Confirmation Order, and such appointment will be effective as of the Effective Date. The GUC Trustee will have and perform all of the duties, responsibilities, rights and obligations set forth in the Plan and GUC Trust Agreement.

**e. Creation of GUC Trust Committee and Procedures Related Thereto**

The GUC Trust Committee will consist of three members, the identities of which will be disclosed pursuant to a notice filed not less than five Business Days prior to the Voting Deadline. Each member of the GUC Trust Committee will be entitled to vote on certain matters related to objections to Claims the Holders of which hold GUC Trust Interests and the settlement, resolution, or other disposition of GUC Trust Assets, as provided for in the GUC Trust Agreement. Members of the GUC Trust Committee will serve without compensation, but will be entitled to reimbursement of reasonable expenses.

**f. Standing of the GUC Trust**

The GUC Trust will have independent standing to appear and be heard in the Court as to any matter relating to the Debtors, the Plan, or the GUC Trust Agreement, including any matter as to which the Court has retained jurisdiction pursuant to Article XI.A of the Plan.

**g. Function and Duration of the GUC Trust Committee**

The GUC Trust Committee will have the rights and responsibilities set forth in the Plan and the GUC Trust Agreement. The GUC Trust Committee will remain in existence until such time as the final Distributions under the GUC Trust Agreement have been made, as set forth more fully in the GUC Trust Agreement.

**h. Recusal of GUC Trust Committee Members**

A GUC Trust Committee member will recuse himself or herself from any decisions or deliberations regarding actions taken or proposed to be taken by the GUC Trust with respect to the Claims, Causes of Action, or rights of such GUC Trust Committee member, the entity appointing such GUC Trust Committee member, or any affiliate of the foregoing.

**7. Sources of Consideration for Plan Distributions**

The Liquidating Trust will make Distributions under the Plan from (a) the Liquidating Trust Assets; (b) the Prepetition A/R Reserve; and (c) the New Ark Funding. The Liquidating Trust Assets will be used to pay the costs of administration of the Liquidating Trust (including the compensation of the Liquidating Trustee and any professionals retained by the Liquidating Trust), and to satisfy DIP Facility Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Other Secured Claims as set forth in the Plan. The GUC Trust will make Distributions under the Plan with the Unsecured Claims Cash Amount. The GUC Trust Assets will be used to pay the costs of administration of the GUC Trust (including the compensation of the GUC Trustee and any professionals retained by the GUC Trust), and to satisfy Allowed General Unsecured Claims and Allowed Subordinated Seller Note Claims and, in the event Class 7 votes to reject the Plan, the Allowed Omega Unsecured Claim and the Allowed Service Provider Claims. The New Ark Funding will be used to fund the New Ark Reserve Account to reserve for Professional Fee Claims and other expenses set forth in the New Ark Budget.

Each Distribution referred to in Article III of the Plan will be governed by the terms and conditions set forth in the Plan applicable to such Distribution and by the terms and conditions of the instruments or other documents evidencing or relating to such Distribution, and which terms and conditions will bind each Person or Entity receiving such Distribution.

**8. Revesting of Assets in Liquidating Debtors**

The property of the Debtors' Estates will be vested in the Liquidating Debtors on or following the Effective Date and continue to be subject to the jurisdiction of the Court following Confirmation of the Plan until such property is distributed to Holders of Allowed Claims in accordance with the provisions of the Plan, the Liquidating Trust Agreement, and the Confirmation Order; *provided, however*, that the GUC Trust Assets will not be vested in the Liquidating Debtors on or following the Effective Date, but will vest in the GUC Trust until such property is distributed to Holders of Allowed Claims in accordance with the provisions of the Plan, the GUC Trust Agreement, and the Confirmation Order.

## **9. Exemption from Certain Transfer Taxes**

Pursuant to Bankruptcy Code section 1146(a), any transfers of property pursuant to the Plan will not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and the Confirmation Order will direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents without the payment of any such tax or governmental assessment.

## **10. Applicability of Bankruptcy Code Sections 1145 and 1125(e)**

Under Bankruptcy Code section 1145, the issuance of any securities under the Plan will be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Liquidating Trustee or GUC Trustee determines, with the advice of counsel, that the Liquidating Trust or GUC Trust, respectively, is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, in connection with the distribution of any securities, then the Liquidating Trustee or GUC Trustee, as applicable, will take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

## **11. Preservation of Causes of Action**

In accordance with Bankruptcy Code section 1123(b), the Liquidating Trust will retain and may enforce all rights to commence and pursue, as appropriate, the Retained Causes of Action and the Liquidating Trust's rights to commence, prosecute, or settle such Retained Causes of Action will be preserved notwithstanding the occurrence of the Effective Date or the dissolution of the Liquidating Debtors. The Liquidating Trust may pursue such Retained Causes of Action, as appropriate, in accordance with the best interests of the Liquidating Trust beneficiaries; *provided, however*, that the Debtors retain the right to resolve and settle all such Retained Causes of Action prior to Confirmation of the Plan. No Person or Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Retained Causes of Action against them as any indication that the Liquidating Trust will not pursue any and all available Retained Causes of Action against them. Unless any Retained Causes of Action against a Person or Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Court order, the Liquidating Trust expressly reserves all Retained Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppels (judicial, equitable, or otherwise), or laches, will apply to such Retained Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The substantive consolidation of the Debtors and their Estates pursuant to the Confirmation Order and Article V.A of the Plan will not, and will not be deemed to, prejudice any of the Retained Causes of Action, which will survive entry of the Confirmation Order for the benefit of the Liquidating Debtors and the Liquidating Trust

**D. Conditions Precedent to Confirmation and Consummation of the Plan**

**1. Conditions to Confirmation**

The following are conditions precedent to Confirmation of the Plan, each of which must be satisfied or waived in accordance with Article VIII.C of the Plan.

1. The Confirmation Order will have been entered by the Court.
2. The Restructuring Support Agreement will not have been terminated and will remain in full force and effect.
3. The DIP Orders will have been entered by the Court and will not have been stayed, modified, or vacated on appeal.
4. The Definitive Documents will be in form and substance reasonably acceptable to the Debtors, the DIP Lender, New Ark, the Equity Sponsors, and the Service Providers.
5. The Omega MOTA Order will have been entered by the Court and will not have been stayed, modified, or vacated on appeal; and the Operations Transfer Date for the Omega Facilities will have occurred.
6. The Blue Mountain MOTA Order will have been entered by the Court and will not have been stayed, modified, or vacated on appeal; and the Operations Transfer Date for the Blue Mountain Facilities will have occurred.

**2. Conditions to Effective Date**

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in accordance with Article VIII.C of the Plan.

1. The Confirmation Order will have become a Final Order.
2. The Restructuring Support Agreement will not have been terminated and will remain in full force and effect.
3. The Omega MOTA Order will not have been stayed, modified, or vacated on appeal.
4. The Blue Mountain MOTA Order will not have been stayed, modified, or vacated on appeal.
5. The “License Transfer Date” under both the Omega MOTA(s) and the Blue Mountain MOTA(s) will have occurred.
6. The Debtors will have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan.

7. The Liquidating Trust Agreement will have been executed and the Liquidating Trustee will have been appointed.

8. The GUC Trust Agreement will have been executed and the GUC Trustee and GUC Trust Committee members will have been appointed.

### **3. Waiver of Conditions**

Each of the conditions to Confirmation set forth in Article VIII.A of the Plan and each of the conditions to the Effective Date set forth in Article VIII.B of the Plan may be waived, with the consent of the Omega Entities, in whole or in part by the Debtors without any other notice to parties-in-interest or the Court (other than with respect to the Omega Entities in connection with obtaining the Omega Entities' consent). The failure to satisfy or waive any condition to Confirmation or the Effective Date may be asserted by the Omega Entities or the Debtors regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of any party to exercise any of its foregoing rights will not be deemed a waiver of any of its other rights, and each such right will be deemed an ongoing right that may be asserted thereby at any time.

### **4. Consequences of Non-Occurrence of Effective Date**

If the Effective Date does not occur within 90 days following the Confirmation Date, or by such later date after notice and hearing, as is proposed by the Debtors, then upon motion by the Debtors and upon notice to such parties-in-interest as the Court may direct, (a) the Plan will be null and void in all respects; (b) any settlement of Claims will be null and void without further order of the Court; and (c) the time within which the Debtors may assume and assign or reject all Executory Contracts will be extended for a period of 30 days after such motion is granted.

## **E. Effects of Confirmation**

### **1. Compromise and Settlement of Claims and Controversies**

Pursuant to Bankruptcy Code section 1123 and Bankruptcy Rule 9019 and in consideration for the classification, Distributions, releases, and other benefits provided pursuant to the Plan, on the Effective Date, the provisions of the Plan will constitute a good faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan or relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Claim or Interest, or any Distribution to be made on account of such Claim or Interest. The entry of the Confirmation Order will constitute the Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable.

### **2. Binding Effect**

The Plan will be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, whether or not such Holders will receive or retain any

property or interest in property under the Plan, and their respective successors and assigns, including, but not limited to, the Liquidating Trust, the GUC Trust, and all other parties-in-interest in the Chapter 11 Cases.

### **3. Discharge of the Debtors**

Pursuant to Bankruptcy Code section 1141(d)(3), Confirmation will not discharge Claims against the Debtors; *provided, however*, that no Holder of a Claim or Interest may, on account of such Claim or Interest, seek or receive any payment or other Distribution from, or seek recourse against, any Debtor or its respective successors, assigns, and/or property, except as expressly provided in the Plan.

### **4. Releases**

#### **a. Releases by the Debtors**

**As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, and any Person or Entity seeking to exercise the rights of the Debtors' Estates, including, without limitation, any successor to the Debtors, any Estate representative appointed or selected pursuant to Bankruptcy Code section 1123(b)(3), the Liquidating Trust, or the GUC Trust, whether pursuing an action derivatively or otherwise, will be deemed to forever release, waive, and discharge each of the Released Parties for all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever in connection with or related to the Debtors, the Credit Agreement, the Omega Master Lease, the Omega MOTA(s), the Blue Mountain Non-HUD Master Lease, the Blue Mountain HUD Master Lease, the Blue Mountain MOTA(s), any contract between a Debtor and a Service Provider, the Restructuring Support Agreement, the DIP Credit Agreement, the Definitive Documents, the Chapter 11 Cases, or the Plan (other than the rights of the Debtors, the Liquidating Trustee, and the GUC Trustee to enforce the Plan and the contracts, instruments, releases, and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date; *provided, however*, that nothing in Article X.D.1 of the Plan will be a waiver of any defense, offset or objection to any Claim filed against the Debtors and their Estates by any Person or Entity.**

#### **b. Mutual Releases by the Released Parties**

**As of the Effective Date, to the maximum extent permitted by applicable law, for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party will be deemed to forever release, waive, and discharge each of the other Released Parties for all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever in connection with or**

related to the Debtors, the Credit Agreement, the Omega Master Lease, the Omega MOTA(s), the Blue Mountain Non-HUD Master Lease, the Blue Mountain HUD Master Lease, the Blue Mountain MOTA(s), any contract between a Debtor and a Service Provider, the Restructuring Support Agreement, the DIP Credit Agreement, the Definitive Documents, the Chapter 11 Cases, or the Plan (other than the rights of the Holders of Claims and Interests to enforce the Plan and the contracts, instruments, releases, and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date.

Entry of the Confirmation Order shall constitute the Court's approval, pursuant to Bankruptcy Rule 9019, of the release described in Article X.D.2 of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, will constitute its finding that each release described in Article X.D.2 of the Plan is: (a) in exchange for good and valuable consideration provided by the Released Parties, a good-faith settlement and compromise of such Claims and Interests; (b) in the best interests of the Debtors and all Holders of Claims and Interests; (c) fair, equitable, and reasonable; (d) given and made after due notice and opportunity for hearing; and (e) a bar to any of the Releasing Parties asserting any claim, cause of action, or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ARTICLE X.D.2 OF THE PLAN, NO PARTY SHALL BE RELEASED FROM ITS OBLIGATIONS UNDER THE OMEGA MOTA(S) THAT EXPRESSLY SURVIVE CONFIRMATION AND CONSUMMATION OF A CHAPTER 11 PLAN IN ACCORDANCE WITH THE TERMS OF THE OMEGA MOTA(S).**

**c. Releases by Third-Party Releasing Parties**

As of the Effective Date, to the maximum extent permitted by applicable law, for good and valuable consideration, the adequacy of which is hereby confirmed, each Third-Party Releasing Party will be deemed to forever release, waive, and discharge each of the Released Parties from all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever in connection with or related to the Debtors, the Credit Agreement, the Omega Master Lease, the Omega MOTA(s), the Blue Mountain Non-HUD Master Lease, the Blue Mountain HUD Master Lease, the Blue Mountain MOTA(s), any contract between a Debtor and a Service Provider, the Restructuring Support Agreement, the DIP Credit Agreement, the Definitive Documents, the Chapter 11 Cases, or the Plan (other than the rights of the Holders of Claims and Interests to enforce the Plan and the contracts, instruments, releases, and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in



whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date.

Entry of the Confirmation Order will constitute the Court's approval, pursuant to Bankruptcy Rule 9019, of the release described in Article X.D.3 of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, will constitute its finding that each release described in Article X.D.3 of the Plan is: (a) in exchange for good and valuable consideration provided by the Released Parties, a good-faith settlement and compromise of such Claims and Interests; (b) in the best interests of the Debtors and all Holders of Claims and Interests; (c) fair, equitable, and reasonable; (d) given and made after due notice and opportunity for hearing; and (e) a bar to any of the Releasing Parties asserting any claim, cause of action, or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ARTICLE X.D.3 OF THE PLAN, NO PARTY SHALL BE RELEASED FROM ITS OBLIGATIONS UNDER THE OMEGA MOTA(S) THAT EXPRESSLY SURVIVE CONFIRMATION AND CONSUMMATION OF A CHAPTER 11 PLAN IN ACCORDANCE WITH THE TERMS OF THE OMEGA MOTA(S).**

**5. Exculpation and Limitation of Liability**

None of (a) the Debtors, (b) the managers, officers, or employees of any of the Debtors serving at any time during the pendency of the Chapter 11 Cases, (c) the Professionals or Court-retained agents of the Debtors, (d) the Committee and its Professionals and, solely in their respective capacities as members or representatives of the Committee, each member of the Committee, or (e) the Patient Care Ombudsman and its Professionals will have or incur any liability to any Holder of a Claim or an Interest, or any other party-in-interest, or any of their respective members, directors, managers, officers, employees, advisors, attorneys, professionals, agents, partners, stockholders, or affiliates, or any of their respective successors or assigns, for any act or omission in connection with, relating to or arising out of, the Chapter 11 Cases, the DIP Facility, the Omega MOTA(s), the Blue Mountain MOTA(s), the Restructuring Support Agreement, the formulation, negotiation, or implementation of the Plan, the solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the Consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions which are the result of fraud, gross negligence, or willful misconduct (in each case as determined by a Final Order entered by a court of competent jurisdiction), and such parties in all respects will be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. For the avoidance of doubt, nothing contained in this paragraph will exculpate prepetition or post-Effective Date acts or omissions.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ARTICLE X.E OF THE PLAN, NO PARTY SHALL BE RELEASED FROM ITS OBLIGATIONS UNDER THE OMEGA MOTA(S) THAT EXPRESSLY SURVIVE CONFIRMATION AND**

**CONSUMMATION OF A CHAPTER 11 PLAN IN ACCORDANCE WITH THE TERMS OF THE OMEGA MOTA(S).**

**6. Injunction**

Confirmation of the Plan will have the effect of, among other things, permanently enjoining (a) all Persons and Entities that have held, hold, or may hold or have asserted, assert, or may assert Claims against or Interests in the Debtors with respect to any such Claim or Interest, and (b) respecting (vi)(A), (vi)(B), and (vi)(C) of Article X.F of the Plan, the Liquidating Debtors, the Liquidating Trust, and the GUC Trust, from and after the Effective Date, from taking any of the following actions (other than actions to enforce any rights or obligations under the Plan): (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting the Liquidating Debtors, the Liquidating Trust, or the GUC Trust or any of its or their property; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Liquidating Debtors, the Liquidating Trust, or the GUC Trust or any of its or their property; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Liquidating Debtors, the Liquidating Trust, or the GUC Trust or any of its or their property; (iv) asserting any right of setoff, directly or indirectly, against any obligation due the Liquidating Debtors, the Liquidating Trust, the GUC Trust or any of its or their property, except with respect to any right of setoff asserted prior to the entry of the Confirmation Order, whether asserted in a Proof of Claim or otherwise, or as otherwise contemplated or allowed by the Plan; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan; and (vi) prosecuting or otherwise asserting (A) any Claim or Interest, including any right, claim, or Cause of Action released pursuant to the Plan, (B) any form of objection to any Claim that is Allowed by the Plan, or (C) Avoidance Actions against any Holder of a Claim that is Allowed by the Plan. Additionally, unless otherwise explicitly stated in the Plan, the injunction contemplated by Article X.F of the Plan will prohibit the assertion against the Liquidating Trust, the Liquidating Trustee, the GUC Trust, and the GUC Trustee of all Claims or Interests, if any, related to the Debtors.

Confirmation of the Plan will further have the effect of permanently enjoining all Persons and Entities from obtaining (a) any documents or other materials from current counsel for the Debtors that are in the possession of such counsel as a result of or arising in any way out of its representation of the Debtors, (b) any documents or other materials from current counsel for the Committee that are in the possession of such counsel as a result of or arising in any way out of its representation of the Committee, or (c) Books and Records, except in accordance with Article V.C of the Plan.

**7. Compromises and Settlements**

Pursuant to Bankruptcy Rule 9019(a), the Debtors may compromise and settle (a) Claims against them and (b) claims that they have against other Persons or Entities. The Debtors

expressly reserve the right (with Court approval, following appropriate notice and opportunity for a hearing) to compromise and settle Claims against them and claims that they may have against other Persons and Entities at any time up to and including the Effective Date.

After the Effective Date, such right will pass to the Liquidating Trust and the GUC Trust (solely for Claims by Holders of GUC Trust Interests) and will be governed by the terms of Article VI.H of the Plan, the Liquidating Trust Agreement, and GUC Trust Agreement, as applicable.

## **8. Satisfaction of Subordination Rights**

Except as otherwise set forth in the Restructuring Support Agreement or in the Plan, all Claims against the Debtors and all rights and claims between or among Holders of Claims relating in any manner whatsoever to Distributions on account of Claims against the Debtors based upon any subordination rights, whether asserted or unasserted, legal or equitable, will be deemed satisfied by the Distributions under the Plan to Holders of Claims having such subordination rights, and such subordination rights will be deemed waived, released, and terminated as of the Effective Date. Distributions to the various Classes of Claims hereunder will not be subject to levy, garnishment, attachment, or like legal process by any Holder of Claims by reason of any subordination rights or otherwise, so that each Holder of Claims will have and receive the benefit of the Distributions in the manner set forth in the Plan.

## **F. Other Matters**

### **1. Treatment of Executory Contracts and Unexpired Leases**

#### **a. Rejected Contracts and Leases**

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, each of the Executory Contracts and Unexpired Leases to which any Debtor is a party will be deemed automatically rejected by the applicable Debtor as of the Effective Date, unless such contract or lease (a) previously has been assumed or rejected by the Debtors; (b) expired or terminated pursuant to its own terms; (c) is the subject of a motion to assume or reject pending before the Court as of the Confirmation Date; or (d) is identified in the Plan Supplement as an Executory Contract or Unexpired Lease to be assumed; *provided, however*, that nothing contained in the Plan will constitute an admission by any Debtor that any such contract or lease is an Executory Contract or Unexpired Lease or that any Debtor or its successors and assigns has any liability thereunder; and, *provided further*, that the Debtors reserve their right, at any time before the Confirmation Date, to assume any Executory Contract or Unexpired Lease that was not already rejected prior to the Confirmation Date. The Confirmation Order will constitute an order of the Court approving the rejections described in Article VII.A of the Plan, pursuant to Bankruptcy Code section 365, as of the Effective Date.

#### **b. Rejection Damages Bar Date**

If the rejection of an Executory Contract or Unexpired Lease pursuant to Article VII.A of the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Claim

will be forever barred and will not be enforceable against the applicable Debtor or its Estate, the Liquidating Trust, the GUC Trust or their respective successors or properties unless a Proof of Claim is filed with the Court and served on counsel for the Liquidating Trust or the GUC Trust, as applicable, by the Rejection Bar Date.

**c. Indemnification Obligations**

Subject to the last sentence of Article VII.C of the Plan, any obligations of the Debtors pursuant to their organizational documents, including amendments, entered into any time prior to the Effective Date, to indemnify, reimburse, or limit the liability of any Person pursuant to the Debtors' organizational documents, policy of providing employee indemnification, applicable state law, or specific agreement in respect of any claims, demands, suits, causes of action, or proceedings against such Persons based upon any act or omission related to such Persons' service with, for, or on behalf of the Debtors prior to the Effective Date with respect to all present and future actions, suits, and proceedings relating to the Debtors will survive Confirmation of the Plan and except as set forth in the Plan, remain unaffected thereby, and will not be discharged, irrespective of whether such defense, indemnification, reimbursement, or limitation of liability accrued or is owed in connection with an occurrence before or after the Petition Date; *provided, however*, that all monetary obligations under Article VII.C of the Plan will be limited solely to available insurance coverage and neither the Liquidating Trust, the Liquidating Trustee, the GUC Trust, the GUC Trustee, nor any of their assets will be liable for any such obligations. Any Claim based on the Debtors' obligations set forth in Article VII.C of the Plan will not be a Disputed Claim or subject to any objection in either case by reason of Bankruptcy Code section 502(e)(1)(B). This provision for indemnification obligations will not apply to or cover any Claims, suits, or actions against a Person that result in a Final Order determining that such Person is liable for fraud, willful misconduct, gross negligence, bad faith, self-dealing, or breach of the duty of loyalty.

**2. Allowance and Payment of Certain Administrative Claims**

**a. Professional Fee Claims**

**i. Final Fee Applications**

All final requests for payment of Professional Fee Claims (the "**Final Fee Applications**") must be Filed no later than the Professional Fee Bar Date. Objections, if any, to Final Fee Applications of such Professionals must be Filed and served on the Liquidating Trust, the requesting Professional, and the U.S. Trustee no later than 21 days from the date on which each such Final Fee Application is served and Filed. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Court, the Allowed amounts of such Professional Fee Claims will be determined by the Court.

The Professionals will be entitled to reasonable compensation and reimbursement of actual, necessary expenses for post-Effective Date activities, including the preparation, filing, and prosecution of Final Fee Applications. Any time or expenses incurred in the preparation, filing, and prosecution of Final Fee Applications will be disclosed by each Professional in its Final Fee Application and will be subject to approval of the Bankruptcy Court.

**ii. Employment of Professionals after the Confirmation Date**

From and after the Effective Date, any requirement that Professionals comply with Bankruptcy Code sections 327 through 331 or any order previously entered by the Court in seeking retention or compensation for services rendered or expenses incurred after such date will terminate.

**b. Substantial Contribution Compensation and Expenses Bar Date**

Any Person or Entity that wishes to make a Substantial Contribution Claim based on facts or circumstances arising after the Petition Date must File an application with the Clerk of the Court, on or before the Administrative Claims Bar Date, and serve such application on the Liquidating Trust, the U.S. Trustee, and as otherwise required by the Court and the Bankruptcy Code, or be forever barred from seeking such compensation or expense reimbursement. Objections, if any, to the Substantial Contribution Claim must be Filed no later than the Administrative Claims Objection Deadline, unless otherwise extended by order of the Court.

**c. Other Administrative Claims**

All other requests for payment of an Administrative Claim arising after the Petition Date, other than Professional Fee Claims, must be Filed with the Court and served on the Liquidating Trust no later than the Administrative Claims Bar Date. Unless the Liquidating Trust or any other party-in-interest objects to an Administrative Claim by the Administrative Claims Objection Deadline, such Administrative Claim will be deemed Allowed in the amount requested. In the event that the Liquidating Trust or any other party-in-interest objects to an Administrative Claim, the Court will determine the Allowed amount of such Administrative Claim.

**d. Modifications and Amendments**

The Debtors may, with the consent of the Omega Entities, alter, amend, or modify the Plan or any Exhibits thereto under Bankruptcy Code section 1127(a) and/or Bankruptcy Rule 3019 at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan as defined in Bankruptcy Code section 1101(2), the Debtors may, with the consent of the Omega Entities, under Bankruptcy Code section 1127(b), institute proceedings in the Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan; *provided, however*, that prior notice of such proceedings will be served in accordance with the Bankruptcy Rules or order of the Court.

**e. Payment of Statutory Fees**

All fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 will be paid on or as soon as practicable after the Effective Date by the Liquidating Trust.

After the Effective Date, quarterly fees will continue to accrue and be timely paid until the Liquidating Debtors' cases are closed, dismissed, or converted. Subject to the following paragraph, such fees will be allocated between the parties as follows: the Liquidating Trust will fund the quarterly fees payable on account of the Liquidating Trust's and the Liquidating Debtors' disbursements, and the GUC Trust will fund any additional incremental fees payable on account of the GUC Trust's disbursements; the GUC Trust will timely transfer its portion of the quarterly fees to the Liquidating Trust when such fees become due. In addition, and subject to the following paragraph, the Liquidating Trust and Liquidating Debtors will File post-confirmation quarterly reports or any pre-confirmation monthly operating reports not Filed as of the Confirmation Hearing in conformance with the U.S. Trustee Guidelines. The U.S. Trustee will not be required to File a request for payment of its quarterly fees, which will be deemed an Administrative Claim against the Debtors and their Estates.

If the GUC Trust requests in writing that the Liquidating Debtors delay in the Filing of a motion to close the Chapter 11 Cases, the GUC Trust will fund any additional quarterly fees and the costs incurred by the Liquidating Debtors for the preparation and filing of any additional post-confirmation quarterly reports required solely as a consequence of the delayed closure of the Chapter 11 Cases; the GUC Trust will timely transfer such amounts to the Liquidating Trust when such quarterly fees become due.

Notwithstanding the foregoing, the Liquidating Debtors will remain responsible for the payment of U.S. Trustee fees subject to 28 U.S.C. § 1930 until the earlier of the time the Chapter 11 Cases are closed, dismissed, or converted.

**f. Revocation, Withdrawal, or Non-Consummation**

Subject to the Restructuring Support Agreement, the Debtors reserve the right to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date and to File subsequent plans. If the Debtors revoke or withdraw the Plan as to any or all of the Debtors, or if Confirmation or Consummation of the Plan as to any or all of the Debtors does not occur, then, with respect to such Debtors, (a) the Plan will be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, will be deemed null and void; and (c) nothing contained in the Plan, and no acts taken in preparation for Consummation of the Plan, will (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person or Entity; (ii) prejudice in any manner the rights of such Debtors or any other Person or Entity; or (iii) constitute an admission of any sort by such Debtors or any other Person or Entity.

**g. Plan Supplement(s)**

Exhibits to the Plan not attached hereto will be Filed in one or more Plan Supplements by the Plan Supplement Filing Date. Any Plan Supplement (and amendments thereto) Filed by the Debtors will be deemed an integral part of the Plan and will be incorporated by reference as if fully set forth in the Plan. Substantially contemporaneously with their Filing, the Plan Supplements may be viewed at the Debtors' case website (<https://dm.epiq11.com/>)

GulfCoastHealthCare) or the Court's website (<http://www.deb.uscourts.gov>). Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, the Plan Supplement will control. The documents considered in the Plan Supplement are an integral part of the Plan and will be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

#### **G. Retention of Jurisdiction**

Under Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order, substantial Consummation of the Plan, and occurrence of the Effective Date, the Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases, the Plan, the Liquidating Trust Agreement, the Liquidating Trust, the GUC Trust Agreement, and the GUC Trust to the fullest extent permitted by law, including, among other things, jurisdiction:

1. To the extent not otherwise determined by the Plan, to determine (a) the allowance, classification, or priority of Claims upon objection by any party-in-interest entitled to file an objection, or (b) the validity, extent, priority, and nonavoidability of consensual and nonconsensual Liens and other encumbrances against assets of the Estates, the Liquidating Debtors, the Liquidating Trust, or the GUC Trust;
2. To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with the Plan or its execution or implementation by any Person or Entity, to construe and to take any other action to enforce and execute the Plan, the Confirmation Order, or any other order of the Court, to issue such orders as may be necessary for the implementation, execution, performance, and Consummation of the Plan and all matters referred to herein, and to determine all matters that may be pending before the Court in the Chapter 11 Cases on or before the Effective Date with respect to any Person or Entity;
3. To protect the assets or property of the Estates, the Liquidating Debtors, the Liquidating Trust, and/or the GUC Trust, including Causes of Action, from claims against, or interference with, such assets or property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning Liens or other encumbrances on any assets of the Estates, the Liquidating Debtors, the Liquidating Trust, and/or the GUC Trust;
4. To determine any and all applications for allowance of Professional Fee Claims;
5. To determine any Priority Tax Claims, Other Priority Claims, or Administrative Claims, entitled to priority under Bankruptcy Code section 507(a);
6. To resolve any dispute arising under or related to the implementation, execution, Consummation, or interpretation of the Plan and the making of Distributions hereunder;
7. To determine any and all motions related to the rejection, assumption, or assignment of Executory Contracts or Unexpired Leases or determine any issues arising from the

deemed rejection of Executory Contracts and Unexpired Leases set forth in Article VII of the Plan;

8. To resolve any dispute related to the Omega MOTA(s) or the Blue Mountain MOTA(s);

9. Except as otherwise provided herein, to determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted in and prior to the closing of the Chapter 11 Cases, including any remands;

10. To enter a Final Order closing each the Chapter 11 Cases;

11. To modify the Plan under Bankruptcy Code section 1127, remedy any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order so as to carry out their intent and purposes;

12. To issue such orders in aid of consummation of the Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Person or Entity, to the full extent authorized by the Bankruptcy Code;

13. To determine any tax liability pursuant to Bankruptcy Code section 505;

14. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

15. To resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Cases, the applicable bar date, the hearing to consider approval of the Disclosure Statement, or the Confirmation Hearing, or for any other purpose;

16. To resolve any dispute or matter arising under or in connection with any order of the Court entered in the Chapter 11 Cases;

17. To authorize, as may be necessary or appropriate, sales of assets as necessary or desirable and resolve objections, if any, to such sales;

18. To resolve any disputes concerning, or to otherwise interpret, any release, injunction, exculpation, or other waiver or protection provided in the Plan, including the releases set forth in Article X.D of the Plan;

19. To approve, if necessary, any Distributions, or objections thereto, under the Plan;

20. To approve, as may be necessary or appropriate, any Claims settlement entered into or setoff exercised by the Liquidating Trust or the GUC Trust;

21. To resolve any dispute or matter arising under or in connection with the Liquidating Trust or the GUC Trust;



22. To order the production of documents, disclosures or information, or to appear for deposition demanded pursuant to Bankruptcy Rule 2004; and

23. To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code.

## **ARTICLE V.**

### **VOTING REQUIREMENTS; ACCEPTANCE AND CONFIRMATION OF THE PLAN**

#### **A. General**

The Bankruptcy Code requires that, in order to confirm the Plan, the Court must make a series of findings concerning the Plan and the Debtors, including that (a) the Plan has classified Claims in a permissible manner; (b) the Plan complies with applicable provisions of the Bankruptcy Code; (c) the Plan has been proposed in good faith and not by any means forbidden by law; (d) the disclosure required by Bankruptcy Code section 1125 has been made; (e) the Plan has been accepted by the requisite votes of Holders of Claims (except to the extent that cramdown is available under Bankruptcy Code section 1129(b)); (f) the Plan is feasible and Confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors unless such liquidation or reorganization is proposed in the Plan; (g) the Plan is in the “best interests” of all Holders of Claims in an Impaired Class by providing to such Holders on account of their Claims property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holders would receive or retain in a chapter 7 liquidation, unless each Holder of a Claim in such Class has accepted the Plan; and (h) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of such fees on the Effective Date.

#### **B. Parties-in-Interest Entitled to Vote**

Pursuant to the Bankruptcy Code, only Classes of Claims that are Impaired under the Plan are entitled to vote to accept or reject the Plan. A Class is Impaired if the legal, equitable, or contractual rights of the Holders of such Claims are modified, other than by curing defaults and reinstating the Claims. Classes that are not Impaired are not entitled to vote on the Plan and are conclusively presumed to have accepted the Plan. In addition, Classes that receive no distributions under the Plan are not entitled to vote on the Plan and are deemed to have rejected the Plan.

#### **C. Classes Impaired and Entitled to Vote under the Plan**

The following Classes are Impaired under the Plan and entitled to vote on the Plan:

<b><u>Class</u></b>	<b><u>Claim</u></b>	<b><u>Status</u></b>	<b><u>Voting Right</u></b>
1	New Ark Secured Claim	Impaired	Entitled to Vote
4	Omega Unsecured Claim	Impaired	Entitled to Vote
5	Subordinated Seller Note Claims	Impaired	Entitled to Vote
6	Service Provider Claims	Impaired	Entitled to Vote
7	General Unsecured Claims	Impaired	Entitled to Vote

Acceptances of the Plan are being solicited only from Holders of Claims in Classes 1, 4, 5, 6, and 7 that will or may receive consideration under the Plan. Holders of Claims in Classes 2 and 3 are deemed to accept the Plan and are not entitled to vote. Holders of Claims in Class 8 are deemed to reject the Plan and are not entitled to vote. Holders of Interests in Class 9 are either presumed to accept the Plan or deemed to reject the Plan and are not entitled to vote.

## **D. Voting Procedures and Requirements**

### **1. Ballots**

The Solicitation Procedures Order sets December 10, 2021 as the record date for voting on the Plan (the “**Record Date**”). Accordingly, only Holders of record as of the Record Date that are otherwise entitled to vote under the Plan will receive a Ballot and may vote on the Plan.

In voting for or against the Plan, please use only the Ballot sent to you with the Disclosure Statement. If you are a Holder of a Claim in Classes 1, 4, 5, 6, or 7 and did not receive a Ballot, your Ballot is damaged or lost, or you have any questions concerning voting procedures, please contact the Voting Agent by telephone at (855) 675-2840 (toll-free) or (503) 924-5427 (if calling from outside the U.S. or Canada) or by email at [GCHCInfo@epiqglobal.com](mailto:GCHCInfo@epiqglobal.com).

**If you are a Holder of a Claim in Classes 1, 5, 6, or 7, casting your Ballot in favor of accepting the Plan will signify your consent to the release set forth in Article X.D.3 of the Plan. Any Holder of such Claims should refer directly to Article X.D.3 and Article X.E of the Plan.**

### **2. Returning Ballots**

If you are entitled to vote to accept or reject the Plan, you should read carefully, complete, sign, and return your Ballot, with original signature, in the enclosed envelope.

**TO BE COUNTED, YOUR BALLOT WITH YOUR ORIGINAL SIGNATURE INDICATING YOUR ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED NO LATER THAN 4:00 p.m. (EASTERN TIME) ON JANUARY 13, 2022 (THE “VOTING DEADLINE”).**

### **3. Voting**

For purposes of voting, the Debtors will propose that the amount of a Claim used to calculate acceptance or rejection of the Plan under Bankruptcy Code section 1126 will be determined in accordance with the following hierarchy, and the following conditions will apply to determine the amount and/or classification of a Claim, solely for purposes of voting to accept or reject the Plan and not for the purpose of the allowance of, or distribution on account of, any claim, and without prejudice to the Debtors’ rights in any other context:

1. if an order has been entered by the Court determining the amount of such Claim, whether pursuant to Bankruptcy Rule 3018 or otherwise, then in the amount prescribed by the order;
2. if no such order has been entered, then in the liquidated amount contained in a timely-Filed Proof of Claim that is not the subject of an objection as of the claims objection deadline for the purposes of voting; and
3. if no such Proof of Claim has been timely Filed, then in the liquidated, noncontingent and undisputed amount contained in the Debtors' Schedules.

The Debtors are seeking entry of a Solicitation Procedures Order setting the deadline for Filing and serving motions pursuant to Bankruptcy Rule 3018(a) seeking temporary allowance of Claims for the purpose of accepting or rejecting the Plan for December 30, 2021 at 4:00 p.m. (Eastern Time) (the "**Rule 3018(a) Motion Deadline**").

#### **E. Acceptance of Plan**

As a condition to Confirmation, the Bankruptcy Code requires that each class of Impaired Claims vote to accept the Plan, except under certain circumstances. *See* "Confirmation Without Necessary Acceptances; Cramdown" below. A plan is accepted by an impaired class of claims if holders of at least two-thirds in dollar amount and more than one-half in number of claims of those that vote in such class vote to accept the plan. Only those holders of claims who actually vote count in these tabulations. Holders of claims who fail to vote are not counted as either accepting or rejecting a plan.

In addition to this voting requirement, Bankruptcy Code section 1129 requires that a plan be accepted by each holder of a claim or interest in an impaired class or that the plan otherwise be found by a court to be in the best interests of each holder of a claim or interest in such class. *See* "Best Interests Test" below. Moreover, each impaired class must accept the plan for the plan to be confirmed without application of the "fair and equitable" and "unfair discrimination" tests set forth in Bankruptcy Code section 1129(b) discussed below. *See* "Confirmation Without Necessary Acceptances; Cramdown" below.

#### **F. Confirmation Without Necessary Acceptances; Cramdown**

In the event that any impaired class of claims or interests does not accept a plan, a debtor nevertheless may move for confirmation of the plan. A plan may be confirmed, even if it is not accepted by all impaired classes, if the plan has been accepted by at least one impaired class of claims, and the plan meets the "cramdown" requirements set forth in Bankruptcy Code section 1129(b). Bankruptcy Code section 1129(b) requires that a court find that a plan (a) "does not discriminate unfairly" and (b) is "fair and equitable," with respect to each non-accepting impaired class of claims or interests.

Here, because Class 8 is deemed to reject the Plan, the Debtors will seek Confirmation of the Plan from the Court by satisfying the "cramdown" requirements set forth in Bankruptcy Code section 1129(b). The Debtors believe that the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfies the requirements for cramdown and the Debtors will be

prepared to meet their burden to establish that the Plan can be confirmed pursuant to Bankruptcy Code section 1129(b) as part of Confirmation of the Plan.

### **1. No Unfair Discrimination**

A plan “does not discriminate unfairly” if (a) the legal rights of a nonaccepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are similar to those of the nonaccepting class, and (b) no class receives payments in excess of that which it is legally entitled to receive for its claims or interests. The Debtors believe that under the Plan all Impaired Classes of Claims and Interests are treated in a manner that is consistent with the treatment of other Classes of Claims and Interests that are similarly situated, if any, and no class of Claims or Interests will receive payments or property with an aggregate value greater than the aggregate value of the Allowed Claims or Allowed Interests in such Class. Accordingly, the Debtors believe the Plan does not discriminate unfairly as to any Impaired Class of Claims or Interests.

### **2. Fair and Equitable Test**

With respect to a dissenting class of claims or interests, the “fair and equitable” standard requires that a plan provide that either the claims or interests in each class received everything to which they are legally entitled or that classes junior in priority to the class receive nothing. The strict requirement of the allocation of full value to dissenting classes before any junior class can receive distribution is known as the “absolute priority rule.”

The Bankruptcy Code establishes different “fair and equitable” tests for holders of secured claims, unsecured claims and interests, which may be summarized as follows:

1. Secured Claims. Either (a) each holder of a claim in an impaired class of secured claims retains its liens securing its secured claim and it receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim; (b) each holder of a claim in an impaired class of secured claims realizes the indubitable equivalent of its allowed secured claim; or (c) the property securing the claim is sold free and clear of liens, with such liens to attach to the proceeds and the treatment of such liens on proceeds as provided in clause (a) or (b) of this subparagraph.

2. Unsecured Claims. Either (a) each holder of a claim in an impaired class of unsecured claims receives or retains under the plan property of a value equal to the amount of its allowed claim or (b) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the chapter 11 plan, subject to the applicability of the judicial doctrine of contributing new value.

3. Equity Interests. Either (a) each holder of an equity interest in an impaired class of interests will receive or retain under the chapter 11 plan property of a value equal to the greater of (i) the fixed liquidation preference or redemption price, if any, of such stock or (ii) the value of the stock or (b) the holders of interests that are junior to the stock will not receive any property under the chapter 11 plan, subject to the applicability of the judicial doctrine of contributing new value.

The Debtors believe that the Distributions provided under the Plan satisfy the absolute priority rule with respect to parties that may not accept the Plan.

## **ARTICLE VI. FEASIBILITY AND BEST INTERESTS OF CREDITORS**

### **A. Best Interests Test**

Before the Plan may be confirmed, the Court must find the Plan provides, with respect to each Impaired Class, that each Holder of a Claim in such Class either (a) has accepted the Plan or (b) will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount such Holder would receive or retain if the Debtors liquidated under chapter 7 of the Bankruptcy Code.

Under the Plan, Classes 1, 4, 5, 6, 7, and 8 are Impaired. Class 8 will not receive or retain any property under either the Plan or in a chapter 7 liquidation. Class 9 will not receive or retain any property under either the Plan or in a chapter 7 liquidation, although the Debtors may reinstate certain Interests purely for administrative purposes to maintain their corporate structure for the Liquidating Debtors. Class 1 is Impaired, but will likely receive a Distribution under both the Plan and in a chapter 7 liquidation. Classes 4, 5, 6, and 7 may receive a Distribution under the Plan, but would not in a chapter 7 liquidation. To the extent that one or more of these Classes does not unanimously vote in favor of the Plan, the Holders in such Class must receive at least as much value under the Plan as they would in a chapter 7 liquidation in order for the Plan to be confirmable by the Court.

As discussed in Article II.H.3 above, the parties to the Restructuring Support Agreement agreed to support a plan of liquidation consistent with the terms of the Restructuring Support Agreement and Plan Term Sheet. As such, it is anticipated that the Holders of the Class 1, Class, 4, and Class 6 Claims will vote in favor of the Plan, thereby making it unnecessary to establish that such Holders would receive at least as much value under the Plan as they would receive in a chapter 7 liquidation.

The Debtors anticipate that the Holders of Class 5—Subordinated Seller Note Claims will not vote in favor of the Plan and, accordingly, the Debtors must establish that the Claim Holders in such Class will receive at least as much value under the Plan as they would in a chapter 7 liquidation. Although the Holders of Class 5—Subordinated Seller Note Claims may receive a recovery under the Plan, they would receive the same or a lower recovery in a chapter 7, as no funds would be available for Subordinated Seller Note Claims in a chapter 7 liquidation.

Although the Debtors anticipate that most Holders of Class 7—General Unsecured Claims will vote in favor of the Plan, it is doubtful that every such Holder will do so. As such, in order to confirm the Plan, the Debtors must establish that the Claim Holders in such Class will receive at least as much value under the Plan as they would in a chapter 7 liquidation. As with Class 5 Claims, although the Holders of Class 7—General Unsecured Claims may receive a recovery under the Plan, they would receive the same or a lower recovery in a chapter 7, as no funds would be available for General Unsecured Claims in a chapter 7 liquidation.

A comparison of the relative recoveries to Holders of Claims under the Plan and in a chapter 7 liquidation is attached hereto as **Exhibit D**.

In sum, for the reasons set forth above and in **Exhibit D**, the Debtors believe that Holders of Claims and Interests in Classes 1, 4, 5, 6, 7, 8, and 9 will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such Holders would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

**B. Feasibility**

Bankruptcy Code section 1129(a)(11) requires that Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successors to the Debtors under the Plan, *unless* such liquidation or reorganization is proposed in the Plan. The Plan provides for the liquidation and eventual dissolution of the Debtors, and the transfer of the Debtors' assets to the Liquidating Trust and GUC Trust for the benefit of Creditors. The Debtors will not be conducting any business operations after the Effective Date. Accordingly, the Debtors believe that the Plan is feasible and meets the requirements of Bankruptcy Code section 1129(a)(11).

**ARTICLE VII.  
EFFECT OF CONFIRMATION**

**A. Binding Effect of Confirmation**

Confirmation will bind the Debtors and all Holders of Claims and Interests to the provisions of the Plan, whether or not the Claim or Interest of any such Holder is Impaired under the Plan and whether or not any such Holder of a Claim or Interest has accepted the Plan.

**B. Good Faith**

Confirmation of the Plan will constitute a finding that: (a) the Plan has been proposed in good faith in compliance with applicable provisions of the Bankruptcy Code; and (b) all solicitations of acceptances or rejections of the Plan have been in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

**ARTICLE VIII.  
CERTAIN RISK FACTORS TO BE CONSIDERED**

THE PLAN AND ITS IMPLEMENTATION ARE SUBJECT TO CERTAIN RISKS, INCLUDING, BUT NOT LIMITED TO, THE RISK FACTORS SET FORTH BELOW. HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS, AS WELL AS THE OTHER INFORMATION SET FORTH IN THE DISCLOSURE STATEMENT AND THE PLAN, BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation. No representations concerning or related to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Court or the

Bankruptcy Code, other than as set forth in the Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, the Disclosure Statement should not be relied upon by you in arriving at your decision.

**A. Plan May Not be Accepted**

There can be no assurance that the requisite acceptances to confirm the Plan will be obtained. Thus, while the Debtors believe the Plan is confirmable under the standards set forth in Bankruptcy Code section 1129, there is no guarantee that the Plan will be accepted by the requisite Classes entitled to vote on the Plan.

**B. Certain Bankruptcy Law Considerations**

Even if the Holders of Claims who are entitled to vote accept the Plan, the Court, which may exercise substantial discretion as a court of equity, may choose not to confirm the Plan. Bankruptcy Code section 1129 requires, among other things, that the value of Distributions to dissenting Holders of Claims or Interests may not be less than the value such Holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Although the Debtors believe the Plan meets such requirement, there can be no assurance the Court will reach the same conclusion.

**C. Distributions to Holders of Allowed Claims under the Plan**

Certain recoveries provided for under the Plan require the prosecution of the Retained Causes of Action. Litigation is inherently speculative and uncertain in nature and there is no guarantee that the Liquidating Trust will be able to obtain any recoveries on account of such actions. If the Liquidating Trust is not successful in obtaining recoveries on the Retained Causes of Action transferred to it by the Debtors, there likely will be a more limited recovery for Creditors from the Liquidating Trust.

In any case, a substantial amount of time may elapse between the Effective Date and the receipt of Distributions because of the time required to achieve recovery of certain assets and final resolution of Disputed Claims.

**D. Conditions Precedent to Consummation of the Plan**

The Plan provides for certain conditions that must be satisfied (or waived) prior to Confirmation of the Plan and for certain other conditions that must be satisfied (or waived) prior to the Effective Date. As of the date of the Disclosure Statement, there can be no assurance that any or all of the conditions in the Plan will be satisfied (or waived). Accordingly, there can be no assurance that the Plan will be confirmed by the Court. Further, if the Plan is confirmed, there can be no assurance that the Plan will be consummated.

**E. Amount or Classification of Claims**

Except as otherwise provided in the Plan, the Debtors, the Liquidating Trust, and the GUC Trust reserve the right to object to the amount or classification of any Claim under the

Plan, as applicable. The estimates set forth in the Disclosure Statement cannot be relied on by any Holder of a Claim where such Claim is or may become subject to an objection. Any Holder of a Claim that is or may become subject to an objection thus may not receive its expected share of the estimated distributions described in the Disclosure Statement.

#### **F. Releases, Injunction, and Exculpations**

The Plan provides for certain releases, injunctions, and exculpations. However, such releases, injunctions, and exculpations are subject to objection by parties-in-interest and may not be approved. If the releases are not approved, certain Released Parties may not support the Plan.

#### **G. Certain Tax Considerations**

There are a number of material income tax considerations, risks, and uncertainties associated with Consummation of the Plan. Holders of Claims and other interested parties should read carefully the discussion of certain federal income tax consequences of the Plan set forth below.

#### **H. Allowed Claims May Exceed Estimates**

The projected distributions set forth in the Disclosure Statement are based upon, among other things, good faith estimates of the total amounts of Claims that will ultimately be Allowed. The actual amount of Allowed Claims, including Administrative Claims, could be greater than anticipated, which will impact the Distributions to be made to Holders of Claims.

#### **I. The Restructuring Support Agreement May Be Terminated**

To the extent that events giving rise to termination of the Restructuring Support Agreement occur, the Restructuring Support Agreement may terminate prior to Confirmation or the Effective Date, which could result in the loss of support for the Plan by important constituencies. Any such loss of support could adversely affect the Debtors' ability to confirm and consummate the Plan.

#### **J. The DIP Facility May Be Terminated**

The DIP Facility is intended to provide liquidity to the Debtors during the pendency of the Chapter 11 Cases. In the event of an event of default or other event giving rise to termination of the DIP Facility under the DIP Term Sheet or the DIP Orders, the Debtors may exhaust or lose access to their financing. In such event, there is no assurance that the Debtors would be able to obtain additional financing, and the Debtors may lack the liquidity necessary for the orderly wind down of the Debtors' business.

#### **K. Impacts of the COVID-19 Pandemic**

The COVID-19 pandemic severely impacted (and continues to impact) the Debtors' operations, liquidity, cash flows, and resident occupancy levels. The pandemic has caused certain physical and economic uncertainties that could further negatively impact the Debtors'



operations, financial performance, and ability to find New Operators, all of which could affect the Debtors' ability to consummate the Plan.

**L. The MOTA(s) May Not be Consummated**

The Debtors may be unable to consummate the MOTA(s) or find New Operators for all of their Facilities. If the Debtors are unable to consummate the MOTA(s), they will bear operating expenses beyond their expectations and the Chapter 11 Cases may be prolonged, which may impact their ability to fund the Chapter 11 Cases and consummate the Plan.

**ARTICLE IX.  
CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan to the Debtors and to Holders of Claims. This discussion is based on the Internal Revenue Code of 1986, as amended (the "**Tax Code**"), Treasury Regulations promulgated and proposed thereunder, judicial decisions, and published administrative rules and pronouncements of the Internal Revenue Service ("**IRS**"), all as in effect on the date hereof.

Due to the complexity of certain aspects of the Plan, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims, each Holder's status and method of accounting, and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are uncertain. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to the any of the issues discussed below. Further, legislative, judicial or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Debtors and the Holders of Claims and Interests.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or the Holders of Claims or Interests in light of their personal circumstances, nor does the discussion deal with tax issues with respect to taxpayers subject to special treatment under the U.S. federal income tax laws (including, for example, insurance companies, financial institutions, real estate investment trusts, tax-exempt organizations, small business investment companies, regulated investment companies, foreign taxpayers, persons whose functional currency is not the U.S. dollar, persons subject to the alternative minimum tax, and persons holding Claims or Interests as part of a "straddle," "hedge," "constructive sale," or "conversion transaction" with other investments). This discussion does not address the tax consequences to Holders of Claims who did not acquire such Claims at the issue price on original issue. No aspect of foreign, state, local, or estate and gift taxation is addressed.

**EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE PLAN.**

## A. Tax Consequences to the Debtors

Pursuant to the Tax Code and subject to certain exceptions, a taxpayer generally must recognize income from the cancellation of indebtedness (“**COD Income**”) to the extent that such taxpayer’s indebtedness is discharged for an amount less than the indebtedness’ adjusted issue price determined in the manner described below. Generally, the amount of COD Income, subject to certain statutory and judicial exceptions, is the excess of (a) the adjusted issue price of the discharged indebtedness less (b) the sum of the fair market value (determined at the date of the exchange) of the consideration, if any, given in exchange for such discharged indebtedness.

Section 108(a)(1)(A) of the Tax Code provides an exception to the recognition of COD Income where a taxpayer discharging indebtedness is under the jurisdiction of a court in a case under title 11 of the Bankruptcy Code and where the discharge is granted, or is effected pursuant to a plan approved, by a U.S. Bankruptcy Court (the “**Bankruptcy Exception**”). Under the Bankruptcy Exception, instead of recognizing COD Income, the taxpayer is required, pursuant to Section 108(b) to reduce certain of that taxpayer’s tax attributes to the extent of the amount of COD Income. The attributes of the taxpayer generally are reduced in the following order: net operating losses, general business and minimum tax credit carryforwards, capital loss carryforwards, the basis of the taxpayer’s assets and, finally, foreign tax credit carryforwards (collectively, “**Tax Attributes**”). If the amount of COD Income exceeds the amount of Tax Attributes available to be reduced, the excess still is excluded from income. Pursuant to Section 108(b)(4)(A), the reduction of Tax Attributes does not occur until the end of the taxable year after such Tax Attributes have been applied to determine the tax in the year of discharge or, in the case of asset basis reduction, the first day of the taxable year following the taxable year in which the COD Income is realized. Section 108(e)(2) provides a further exception to the recognition of COD Income upon the discharge of debt, providing that a taxpayer will not recognize COD Income to the extent that the taxpayer’s satisfaction of the debt would have given rise to a deduction for United States federal income tax purposes.

## B. Tax Consequences to Creditors

### 1. Holders of Claims

Generally, a Holder of a Claim should in most, but not all circumstances, recognize gain or loss equal to the difference between the “amount realized” by such Holder in exchange for its Claim and such Holder’s adjusted tax basis in the Claim. The “amount realized” is equal to the sum of the cash and the fair market value of any other consideration received under a plan of reorganization in respect of a Holder’s Claim. The tax basis of a Holder in a Claim will generally be equal to the Holder’s cost. To the extent applicable, the character of any recognized gain or loss (*e.g.*, ordinary income, or short-term or long-term capital gain or loss) will depend upon the status of the Holder, the nature of the Claim in the Holder’s hands, the purpose and circumstances of its acquisition, the Holder’s holding period of the Claim, and the extent to which the Holder previously claimed a deduction for the worthlessness of all or a portion of the Claim. Generally, if the Claim is a capital asset in the Holder’s hands, any gain or loss realized generally will be characterized as capital gain or loss, and will constitute long-term capital gain or loss if the Holder has held such Claim for more than one year.

A Holder who received Cash (or potentially other consideration) in satisfaction of its Claims may recognize ordinary income or loss to the extent that any portion of such consideration is characterized as accrued interest. A Holder who did not previously include in income accrued but unpaid interest attributable to its Claim, and who receives a distribution on account of its Claim pursuant to the Plan, will be treated as having received interest income to the extent that any consideration received is characterized for United States federal income tax purposes as interest, regardless of whether such Holder realizes an overall gain or loss as a result of surrendering its Claim. A Holder who previously included in its income accrued but unpaid interest attributable to its Claim should recognize an ordinary loss to the extent that such accrued but unpaid interest is not satisfied, regardless of whether such Holder realizes an overall gain or loss as a result of the distribution it may receive under the Plan on account of its Claim.

## **2. Non-United States Person**

A Holder of a Claim that is a non-United States Person generally will not be subject to United States federal income tax with respect to property (including money) received in exchange for such Claim pursuant to the Plan, unless (i) such Holder is engaged in a trade or business in the United States to which income, gain, or loss from the exchange is “effectively connected” for United States federal income tax purposes, or (ii) if such Holder is an individual, such Holder is present in the United States for 183 days or more during the taxable year of the exchange, and certain other requirements are met.

## **C. Tax Treatment of the GUC Trust**

Upon the Effective Date, the GUC Trust will be established for the purpose of Distributions to Holders of Subordinated Seller Note Claims and General Unsecured Claims, and, if Class 7 does not vote to accept the Plan, Omega Unsecured Claims and Service Provider Claims (collectively, the “**GUC Trust Claims**”), whether Allowed on or after the Effective Date.

### **1. Classification of the GUC Trust**

The GUC Trust is intended to qualify as a liquidating trust for federal income tax purposes. In general, a liquidating trust is not a separate taxable entity but rather is treated for federal income tax purposes as a “grantor” trust (*i.e.*, a pass-through entity). The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The GUC Trust has been structured with the intention of complying with such general criteria. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, all parties (including the GUC Trustee and the Holders of GUC Trust Interests) are required to treat for United States federal income tax purposes the GUC Trust as a grantor trust of which the Holders of Allowed GUC Trust Claims are the owners and grantors. While the following discussion assumes that the GUC Trust would be so treated for United States federal income tax purposes, no ruling has been requested from the IRS concerning the tax status of the GUC Trust as a grantor trust. Accordingly, there can be no assurance that the IRS would not take a contrary position to the classification of the Liquidating Trust as a grantor trust. If the IRS were to challenge successfully such classification, the United States federal income tax consequences to the GUC Trust and the Holders of Allowed GUC Trust Claims could vary from those discussed herein.

## **2. General Tax Reporting by the Trust and Beneficiaries**

For all United States federal income tax purposes, all parties (including the GUC Trustee and the Holders of GUC Trust Interests) will be required to treat the transfer of assets to the GUC Trust, in accordance with the terms of the Plan, as a transfer of those assets directly to the Holders of Allowed GUC Trust Claims followed by the transfer of such assets by such Holders to the GUC Trust. Consistent therewith, all parties are required to treat the GUC Trust as a grantor trust of which such Holders are to be owners and grantors. Thus, such Holders (and any subsequent Holders of GUC Trust Interests) will be treated as the direct owners of an undivided beneficial interest in the assets of the GUC Trust for all federal income tax purposes. Accordingly, each Holder of a GUC Trust Interest will be required to report on its federal income tax return(s) the Holder's allocable share of all income, gain, loss, deduction, or credit recognized or incurred by the GUC Trust.

The United States federal income tax reporting obligation of a Holder of a GUC Trust Interest is not dependent upon the GUC Trust distributing any Cash or other proceeds. Therefore, a Holder of a GUC Trust Interest may incur a United States federal income tax liability regardless of the fact that the GUC Trust has not made, or will not make, any concurrent or subsequent Distributions to the Holder. If a Holder incurs a federal tax liability but does not receive Distributions commensurate with the taxable income allocated to it in respect of its GUC Trust Interests, the Holder may be allowed a subsequent or offsetting loss.

The GUC Trustee will file tax returns with the IRS for the GUC Trust as a grantor trust pursuant to Treasury Regulations section 1.671-4(a). The GUC Trustee will also send to each Holder of a GUC Trust Interest a separate statement setting forth the Holder's share of items of income, gain, loss, deduction, or credit and will instruct the Holder to report such items on its federal income tax return.

All payments to Creditors are subject to any applicable withholding (including employment tax withholding). Under the Tax Code, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" then in effect. Backup withholding generally applies if the holder (a) fails to furnish his or her social security number or other taxpayer identification number ("**TIN**"), (b) furnishes an incorrect TIN, (c) fails to properly report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is his correct number and that he is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax if an appropriate refund claim is filed with the IRS. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

## **3. Allocations of Taxable Income and Loss**

Allocations of taxable income of the GUC Trust among Holders of GUC Trust Claims will be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (were such Cash permitted to be distributed at such time) if, immediately prior to such deemed Distribution, the GUC Trust had distributed all of its respective assets to the Holders of the GUC Trust Interests, adjusted for prior taxable income and

loss and taking into account all prior and concurrent distributions from the GUC Trust. Similarly, taxable loss of the GUC Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating Distribution of the remaining GUC Trust Assets.

After the Effective Date, any amount a Holder receives as a Distribution from the GUC Trust in respect of its GUC Trust Interests should not be included, for United States federal income tax purposes, in the Holder's amount realized in respect of its Allowed Claim but should be separately treated as a Distribution received in respect of such Holder's GUC Trust Interests.

In general, a Holder's aggregate tax basis in its undivided beneficial interest in the assets transferred to the GUC Trust will equal the fair market value of such undivided beneficial interest as of the Effective Date and the Holder's holding period in such assets will begin the day following the Effective Date. Distributions to any Holder of an Allowed Claim will be allocated first to the original principal portion of such Claim as determined for United States federal income tax purposes, and then, to the extent the consideration exceeds such amount, to the remainder of such Claim. However, there is no assurance that the IRS will respect such allocation for United States federal income tax purposes.

The tax book value of the GUC Trust Assets for this purpose will equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements. Uncertainties with regard to United States federal income tax consequences of the Plan may arise due to the inherent nature of estimates of value that will impact tax liability determinations.

As soon as practicable after the Effective Date, the GUC Trustee (to the extent that it deems it necessary or appropriate in the reasonable exercise of its discretion) will, in good faith, value the GUC Trust Assets, and, as appropriate, will apprise the Holders of GUC Trust Interests of such valuation. The valuation is required to be used consistently by all parties (including the Debtors, the Liquidating Debtors, the GUC Trustee, and the Holders of GUC Trust Interests) for all United States federal income tax purposes. The Court will resolve any dispute regarding the valuation of the assets. No valuation will be deemed an admission or be admissible in any cause of action.

The GUC Trust's taxable income will be allocated to the Holders of GUC Trust Interests in accordance with each such Holder's pro rata share of the GUC Trust Interests. The character of items of income, deduction, and credit to any Holder and the ability of such Holder to benefit from any deductions or losses may depend on the particular situation of such Holder.

Events subsequent to the date of the Disclosure Statement, such as the enactment of additional tax legislation, could also change the United States federal income tax consequences of the Plan and the transactions contemplated thereunder.

#### **D. Importance of Obtaining Professional Tax Assistance**

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN. THE ABOVE DISCUSSION

IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, CLAIM HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE, AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

**ARTICLE X.  
RECOMMENDATION AND CONCLUSION**

The Disclosure Statement was approved by the Court after notice and a hearing. The Court has determined that the Disclosure Statement contains information adequate to permit holders of Claims to make an informed judgment about the Plan. Such approval, however, does not mean that the Court recommends either acceptance or rejection of the Plan.

The Debtors believe that Confirmation and Consummation of the Plan is in the best interests of the Debtors, their Estates, and their Creditors. The Plan provides for an equitable distribution to Creditors. The Debtors believe that any alternative to Confirmation of the Plan, such as liquidation under chapter 7 of the Bankruptcy Code, could result in significant delay, litigation, and additional costs, as well as a reduction in the Distributions to Holders of Claims in certain Classes. Consequently, the Debtors urge all eligible Holders of Impaired Claims to vote to ACCEPT the Plan, and to complete and return their Ballots so that they will be RECEIVED by the Voting Agent on or before the Voting Deadline.

Dated: Wilmington, Delaware  
October 28, 2021

GULF COAST HEALTH CARE, LLC, *et al.*,  
Debtors and Debtors-in-Possession

By: DRAFT  
M. Benjamin Jones  
Chief Restructuring Officer

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**EXHIBIT A TO DISCLOSURE STATEMENT**

**Joint Plan Of Liquidation**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
GULF COAST HEALTH CARE, LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 21-11336 (KBO)
Debtors.	)	
	)	Jointly Administered
	)	
	)	

**DEBTORS' JOINT PLAN OF LIQUIDATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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*Proposed Counsel for Debtors and  
Debtors-in-Possession*

Dated: Wilmington, Delaware  
October 28, 2021

**THIS IS NOT A SOLICITATION OF AN ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DRAFT PLAN HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT, AND REMAINS SUBJECT TO MATERIAL REVIEW AND REVISION IN ALL RESPECTS.**

<sup>1</sup> The last four digits of Gulf Coast Health Care, LLC's federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, which cases are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/GulfCoastHealthCare>. The location of Gulf Coast Health Care, LLC's corporate headquarters and the Debtors' service address is 40 South Palafox Place, Suite 400, Pensacola, FL 32502.

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## **INTRODUCTION**<sup>2</sup>

Gulf Coast Health Care, LLC and the 61 of its affiliates that are debtors and debtors-in-possession in the above-captioned Chapter 11 Cases propose the following plan of liquidation. The Plan contemplates the liquidation of the Debtors and the resolution of outstanding Claims against and Interests in the Debtors pursuant to Bankruptcy Code section 1121(a). The Debtors are the proponents of the Plan within the meaning Bankruptcy Code section 1129.

For a discussion of the Debtors' history, businesses, properties, operations, the Chapter 11 Cases, risk factors, a summary of the Plan, and certain other related matters, reference is made to the Disclosure Statement that is being distributed herewith. In the event of any inconsistencies between the Plan and the Disclosure Statement, the terms and provisions of the Plan shall control.

All Holders of Claims that are eligible to vote on the Plan are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan. Subject to certain restrictions and requirements set forth in Bankruptcy Code section 1127, Bankruptcy Rule 3019, and Article XII.A, the Debtors reserve the right to alter, amend, modify (one or more times), revoke, or withdraw the Plan prior to its substantial consummation.

## **ARTICLE I. DEFINITIONS AND RULES OF INTERPRETATION**

### **A. Rules of Construction**

For purposes of the Plan, except as expressly provided herein or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I of the Plan. Any term used in the Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. Whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

### **B. Definitions**

**1.1 “503(b)(9) Claim”** means a Claim arising under Bankruptcy Code section 503(b)(9) against the Debtors.

**1.2 “A/R Working Capital Line”** means the revolving credit facility of up to \$15 million provided through the Credit Agreement.

**1.3 “Administrative Claim”** means a Claim (other than a DIP Facility Claim) for payment of an administrative expense of a kind specified in Bankruptcy Code sections 503(b) or 1111(e)(2) and entitled to priority in payment under Bankruptcy Code sections 507(a)(2) or 507(b), including (a) the actual and necessary costs and expenses incurred after the Petition Date

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<sup>2</sup> Capitalized terms used in this Introduction shall have the meanings ascribed to such terms in Article I hereof.

of preserving the Estates and operating the businesses of the Debtors (such as wages, salaries, or commissions for services and payments for goods and other services and leased premises) and Claims by Governmental Units for taxes accruing after the Petition Date (but excluding Claims related to taxes accruing on or before the Petition Date); (b) Professional Fee Claims; (c) all fees and charges assessed against the Estates under 28 U.S.C. § 1930; (d) obligations designated as Administrative Claims pursuant to an order of the Court; and (e) 503(b)(9) Claims.

**1.4 “Administrative Claims Bar Date”** means the deadline for Filing Proofs of Claim for payment of Administrative Claims, which shall be the earlier of (a) the bar date established for any Administrative Claims by separate order of the Court; and (b) 30 days after the Effective Date, unless otherwise ordered by the Court.

**1.5 “Administrative Claims Objection Deadline”** means the deadline for Filing objections to requests for payment of Administrative Claims Filed on or before the Administrative Claims Bar Date, which deadline shall be 180 days after the Effective Date, unless otherwise ordered by the Court.

**1.6 “Affiliate”** has the meaning ascribed to such term in Bankruptcy Code section 101(2).

**1.7 “Affiliate Debtor”** means all of the Debtors, except Gulf Coast.

**1.8 “Allowed”** means, when used in reference to a Claim or Interest within a particular Class, an Allowed Claim or Interest in the specified Class or of a specified type.

**1.9 “Allowed Claim”** means a Claim or any portion thereof (a) that has been allowed by a Final Order of the Court; (b) that has been Scheduled as a liquidated, non-contingent, and undisputed Claim in an amount greater than zero in the Schedules, and the Schedules have not been amended with respect to such Claim on or before the Claims Objection Deadline or the expiration of such other applicable period fixed by the Court; (c) that is the subject of a timely Filed Proof of Claim and either (i) no objection to its allowance has been Filed on or before the Claims Objection Deadline or the expiration of such other applicable period fixed by the Court or (ii) any objection to its allowance has been settled, waived through payment, or withdrawn, or has been denied by a Final Order; or (d) that is expressly allowed in a liquidated amount (x) in the Plan or (y) after the Effective Date, by the Liquidating Trustee or GUC Trustee, as applicable, in writing; *provided, however*, that with respect to an Administrative Claim, “Allowed Claim” means an Administrative Claim as to which a timely written request for payment has been made in accordance with applicable bar dates for such requests set by the Court (if such written request is required) in each case as to which (a) the Debtors or the Liquidating Trustee, as applicable, or any other party-in-interest (x) has not Filed an objection on or before the Administrative Claims Objection Deadline or the expiration of such other applicable period fixed by the Court or (y) has interposed a timely objection and such objection has been settled, waived through payment, or withdrawn, or has been denied by a Final Order; or (b) after the Effective Date, the Liquidating Trustee has expressly allowed in a liquidated amount in writing. For purposes of computing Distributions under the Plan, a Claim that has been deemed “Allowed” shall not include interest, fees, costs, or charges on such Claim from and after the Petition Date, except as provided in Bankruptcy Code section 506(b) or as otherwise expressly set forth in the Plan.

**1.10 “Assignment Agreement”** means that certain Loan, Commitment and Agency Assignment Agreement among New Ark and Wells Fargo, dated November 2, 2020, through which Wells Fargo assigned its interests and obligations under the Credit Agreement to New Ark.

**1.11 “Avoidance Actions”** means any and all claims and causes of action of the Debtors arising under chapter 5 of the Bankruptcy Code, including, without limitation, sections 544, 545, 547, 548, 549, and 550 thereof, or their state law analogs.

**1.12 “Ballot”** means each of the ballot forms distributed with the Disclosure Statement to Holders of Impaired Claims entitled to vote under Article IV.D hereof in connection with the solicitation of acceptances of the Plan.

**1.13 “Bankruptcy Code”** means title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as such title has been, or may be, amended from time to time, to the extent that any such amendment is applicable to the Chapter 11 Cases.

**1.14 “Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure, the Official Bankruptcy Forms, and the Local Rules, as each has been, or may be, amended from time to time, to the extent that any such amendment is applicable to the Chapter 11 Cases.

**1.15 “Blue Mountain”** means Eagle Arc Partners LLC (f/k/a Blue Mountain Holdings).

**1.16 “Blue Mountain Facilities”** means, collectively, the Blue Mountain Non-HUD Facilities and the Blue Mountain HUD Facilities.

**1.17 “Blue Mountain HUD Facilities”** means Singing River Health and Rehabilitation Center and Lakeside Health and Rehabilitation Center.

**1.18 “Blue Mountain HUD Landlords”** means those parties identified as “Landlords” in the Blue Mountain HUD Master Lease.

**1.19 “Blue Mountain HUD Master Lease”** means that certain Master Lease (as may be amended, modified, renewed, or restated from time to time) dated as of April 6, 2021 by and among Gulf Coast Master Tenant II, LLC and the Blue Mountain HUD Landlords.

**1.20 “Blue Mountain Landlords”** means, collectively, the Blue Mountain Non-HUD Landlords and the Blue Mountain HUD Landlords.

**1.21 “Blue Mountain Leased Property”** means all of any portion or portions of the property subject to the Blue Mountain Non-HUD Master Lease or Blue Mountain HUD Master Lease.

**1.22 “Blue Mountain MOTA Order”** means an order or, collectively, orders, in form and substance satisfactory to the DIP Agent, of the Court approving, among other things, the Debtors’ entry into the Blue Mountain MOTA(s).

**1.23 “Blue Mountain MOTA(s)”** means one or more management and operations transfer agreements satisfactory to the Debtors and one or more New Blue Mountain Operator(s) and



reasonably acceptable to New Ark, and customary for similar transactions, and under which New Blue Mountain Operator(s) shall be responsible for funding all operating costs of and shall be entitled to all payments generated by the Blue Mountain Leased Property on and after the date the New Blue Mountain Operator(s) assume responsibility for operating the Blue Mountain Leased Property.

**1.24 “Blue Mountain Non-HUD Facilities”** means Shelby Health and Rehabilitation Center and Cobblestone Rehabilitation and Healthcare Center.

**1.25 “Blue Mountain Non-HUD Landlords”** means those parties identified as “Landlords” in the Blue Mountain Non-HUD Master Lease.

**1.26 “Blue Mountain Non-HUD Master Lease”** means that certain Master Lease dated as of November 2, 2020 (as may be amended, modified, renewed, or restated from time to time) by and among Gulf Coast Master Tenant III, LLC and the Blue Mountain Non-HUD Landlords.

**1.27 “Blue Mountain Portfolio”** means the real estate, operations, and related assets of the Blue Mountain Facilities.

**1.28 “Books and Records”** means any and all books and records of any of the Debtors, including any and all documents and any and all computer generated or computer maintained books and records and computer data, as well as electronically generated or maintained books and records or data, along with books and records of any Debtor maintained by or in the possession of third parties, wherever located.

**1.29 “Borrowers”** has the meaning ascribed to such term in the DIP Term Sheet.

**1.30 “Business Day”** means any day, other than a Saturday, Sunday, or legal holiday (as that term is defined in Bankruptcy Rule 9006(a)).

**1.31 “Cash”** means legal tender of the United States of America or equivalents thereof.

**1.32 “Cash Collateral”** has the meaning ascribed to it under Bankruptcy Code section 363(a).

**1.33 “Causes of Action”** means any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to Bankruptcy Code sections 362, 510, 542, 543, 544 through 550, or 553; and (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in Bankruptcy Code section 558.

**1.34 “Chapter 11 Cases”** means the chapter 11 cases commenced by the Debtors and jointly administered under case number 21-11336 (KBO) in the Court.

**1.35 “Claim”** means a claim against any Debtor, whether or not asserted, as such term is defined in Bankruptcy Code section 101(5).

**1.36 “Claims Agent”** means Epiq Corporate Restructuring, LLC or any successor thereto.

**1.37 “Claims Objection Deadline”** means the last day for filing objections to Claims (other than Disallowed Claims for which no objection or request for estimation is required or Administrative Claims for which the deadline is the Administrative Claims Objection Deadline), which day shall be 180 days after the Effective Date, or such other date as may be ordered by the Court.

**1.38 “Class”** means each category or group of Holders of Claims or Interests that has been designated as a class in Article III of the Plan.

**1.39 “Collateral”** means any property or interest in property of a Debtor’s Estate subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law.

**1.40 “Committee”** means any statutory committee appointed in the Chapter 11 Cases.

**1.41 “Confirmation”** means the entry of the Confirmation Order, subject to all conditions specified in Article VIII.A having been satisfied or waived pursuant to Article VIII.C.

**1.42 “Confirmation Date”** means the date of entry of the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

**1.43 “Confirmation Hearing”** means the hearing(s) before the Court to consider Confirmation of the Plan and related matters pursuant to Bankruptcy Code section 1128, as such hearing(s) may be adjourned or continued from time to time.

**1.44 “Confirmation Order”** means the order entered by the Court confirming the Plan pursuant to Bankruptcy Code section 1129.

**1.45 “Consummation”** means the occurrence of the Effective Date.

**1.46 “Contingent”** means, with reference to a Claim, a Claim that has not accrued or is not otherwise payable and the accrual of which, or the obligation to make payment on which, is dependent upon a future event that may or may not occur.

**1.47 “Court”** means the United States Bankruptcy Court for the District of Delaware or such other court as may have jurisdiction over the Chapter 11 Cases.

**1.48 “Credit Agreement”** means that certain Credit Agreement, effective July 6, 2018 (as amended, modified, renewed, or restated from time to time, including by the Assignment Agreement) among Gulf Coast, certain of its subsidiaries, and Wells Fargo.

**1.49 “Creditor”** means any Person or Entity that holds a Claim against one or more of the Debtors.

**1.50 “Debtors”** means, together, Gulf Coast and the Affiliate Debtors.

**1.51 “Definitive Documents”** means, collectively, (a) all first-day pleadings; (b) the Plan; (c) the Confirmation Order and any motion or other pleading related to the Plan or to Confirmation of the Plan; (d) the Disclosure Statement; (e) the motion seeking approval of the Disclosure Statement and the related solicitation materials; (f) the Solicitation Procedures Order; (g) the DIP Orders; (h) the DIP Credit Agreement; (i) the Omega MOTA, the Omega MOTA Order, and any motion or other pleadings related to seeking entry of the Omega MOTA Order; (j) the Debtors’ organizational documents as modified to satisfy the requirements of the Bankruptcy Code; and (k) any documents included in the Plan Supplement.

**1.52 “Delta Group”** means, collectively, Delta Health Group, LLC, Cordova Rehab, LLC, and Pensacola Health Trust, LLC.

**1.53 “DIP Agent”** means OHI Asset Funding (DE), LLC, as administrative agent and collateral agent of the DIP Facility.

**1.54 “DIP Budget”** means the budget depicting on a 13-week basis cash revenue, receipts, expenses, and disbursements in connection with the DIP Facility, which must be approved in accordance with the terms of the DIP Term Sheet.

**1.55 “DIP Credit Agreement”** means that certain debtor-in-possession credit agreement (as amended, restated, supplemented, or otherwise modified in accordance with its terms), by and among Borrowers, each of the guarantors named therein, and the lenders from time to time party thereto, consistent in all respects with the terms set forth in DIP Term Sheet and otherwise reasonably acceptable to the Debtors and the DIP Lender.

**1.56 “DIP Facility”** means the \$25 million debtor-in-possession credit facility provided to the Borrowers by the DIP Lender on the terms of, and subject to the conditions set forth in, the DIP Credit Agreement and DIP Term Sheet.

**1.57 “DIP Facility Claim”** means the Allowed Claim by the DIP Lender arising under or as a result of the DIP Term Sheet, DIP Credit Agreement, and/or Final DIP Order.

**1.58 “DIP Lender(s)”** has the meaning set forth in the DIP Term Sheet and, after the DIP Credit Agreement has been consummated, the DIP Credit Agreement.

**1.59 “DIP Orders”** means the Interim DIP Order and Final DIP Order.

**1.60 “DIP Term Sheet”** means that certain term sheet labeled “Gulf Coast Health Care, LLC and Certain Affiliates and Subsidiaries Thereof Summary of Terms and Conditions up to \$25 Million Secured Debtor-in-Possession Credit Facility”, dated as of October 14, 2021, and originally filed at Docket No. 16-1, as amended, modified, restated, or supplemented.

**1.61 “Disallowed”** means, when used in reference to a Claim, a Claim or any portion thereof that (a) has been disallowed by a Final Order; (b) is Scheduled at zero or as contingent, disputed, or unliquidated and as to which no Proof of Claim has been Filed by the applicable bar date or deemed timely Filed with the Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law; (c) is not Scheduled, and as to which (i) no Proof of Claim has been Filed by the applicable bar date or under applicable law; and (ii) no request for payment of an Administrative Claim has been Filed by the Administrative Claims Bar Date or deemed timely Filed with the Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law, or (d) after the Effective Date, has been disallowed in a written agreement by and between the Liquidating Trustee or the GUC Trustee, as applicable, and the Holder of such Claim.

**1.62 “Disbursing Agent”** means (a) on or prior to the Effective Date, the Debtors, and (b) after the Effective Date, (i) the GUC Trustee, with respect to Distributions on General Unsecured Claims, and (ii) the Liquidating Trustee, with respect to all other Distributions made under the Plan; *provided, however*, that the Debtors, the Liquidating Trustee, or the GUC Trustee may, in their discretion, retain a third party to act as Disbursing Agent.

**1.63 “Disclosure Statement”** means the written disclosure statement (including all exhibits and schedules thereto) that relates to the Plan, as the same may be amended, supplemented, revised, or modified from time to time, as approved by the Court pursuant to the Solicitation Procedures Order.

**1.64 “Disputed”** means, when used in reference to a Claim, a Claim or any portion thereof, that is neither an Allowed Claim nor a Disallowed Claim.

**1.65 “Disputed Claim Amount”** means (a) if a liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) the liquidated amount set forth in the Proof of Claim relating to a Disputed Claim; (ii) an amount agreed to by the Debtors, the Liquidating Trustee, or the GUC Trustee, as applicable, and the Holder of such Disputed Claim; or (iii) if a request for estimation is Filed by any party, the amount at which such Claim is estimated by the Court; (b) if no liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) an amount agreed to by the Debtors, the Liquidating Trustee, or the GUC Trustee, as applicable, and the Holder of such Disputed Claim; or (ii) the amount estimated by the Court with respect to such Disputed Claim; or (c) if the Claim is a Disallowed Claim, zero.

**1.66 “Disputed Claims Reserve”** means the reserve established and maintained by the GUC Trust pursuant to and in accordance with the GUC Trust Agreement for the payment of Disputed Claims that become Allowed Claims after the Effective Date. The Disputed Claims Reserve need not be maintained by the GUC Trust in a segregated account.

**1.67 “Distribution”** means the distributions to be made by the Disbursing Agent in accordance with the Plan of, as the case may be: (a) Cash or (b) any other consideration or residual value distributed to Holders of Allowed Claims under the terms and provisions of the Plan.

**1.68 “Distribution Date”** means the Effective Date or the date, occurring as soon as practicable after the Effective Date, on which the initial Distributions are made to Holders of Allowed Claims.

**1.69 “Distribution Record Date”** means the record date for the purpose of determining Holders of Allowed Claims entitled to receive Distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date designated in the Confirmation Order or any subsequent Court order.

**1.70 “Effective Date”** means the first Business Day on which all conditions to the Consummation of the Plan set forth in Article VIII.B have been satisfied or waived in accordance with Article VIII.C.

**1.71 “Entity”** has the meaning ascribed to such term in Bankruptcy Code section 101(15).

**1.72 “Equity Sponsors”** means, collectively, (a)(i) Gulf Coast Health Care Holdings, LLC, PAH II, LLC, and GCMTH II, LLC, as the existing direct Holders of equity interests in the Debtors, and (ii) their direct and indirect equity owners, including BSREF III Parallel Investor I, LLC, BSREF III Parallel Investor II, L.P., BSREF III Parallel Investor III, L.P., BSREF III Parallel Investor IV, LLC, BSREF III Parallel Investor V, L.P., and Barrow Street Real Estate Fund III, L.P., and (b) Argent Properties 2012, LLC and Barrow Agent LLC, as affiliates of the foregoing equity sponsors.

**1.73 “Estate(s)”** means, individually, the estate of any Debtor in the Chapter 11 Cases and, together, the estates of the Debtors created under Bankruptcy Code section 541 upon the commencement of the Chapter 11 Cases on the Petition Date.

**1.74 “Executory Contract”** means a contract to which a Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365.

**1.75 “Exhibit”** means an exhibit attached either to the Plan or the Disclosure Statement.

**1.76 “Existing Equity Interests”** means any and all Interests in the Debtors.

**1.77 “Existing Operators”** means the subsidiaries of Gulf Coast currently operating the Facilities.

**1.78 “Face Amount”** means (a) when used in referenced to a Disputed Claim or Disallowed Claim, the Disputed Claim Amount; and (b) when used in reference to an Allowed Claim, the Allowed amount of such Claim.

**1.79 “Facilities”** means various skilled nursing or similar facilities operated by the Existing Operators.

**1.80 “File”, “Filed”, or “Filing”** means, respectively, file, filed, or filing with the Court or its authorized designee in the Chapter 11 Cases.

**1.81 “Final DIP Order”** means the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Docket No. [●]].

**1.82 “Final Fee Applications”** has the meaning ascribed to such term in Article IX.A.1 of the Plan.

**1.83 “Final Order”** means an order of the Court (a) as to which the time to appeal, petition for certiorari, or move for reargument, rehearing, or new trial has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument, rehearing, or new trial shall then be pending; (b) as to which any right to appeal, petition for certiorari, reargue, rehear, or retry shall have been waived in writing; or (c) in the event that an appeal, writ of certiorari, reargument, rehearing, or new trial has been sought, as to which (i) such order of the Court shall have been affirmed by the highest court to which such order is appealed; (ii) certiorari has been denied as to such order; or (iii) reargument or rehearing or new trial from such order shall have been denied, and the time to take any further appeal, petition for certiorari, or move for reargument, rehearing, or new trial shall have expired without such actions having been taken.

**1.84 “General Bar Date”** means the deadline for Filing Proofs of Claim for payment of Claims other than Administrative Claims set by order of the Court.

**1.85 “General Unsecured Claim”** means a Claim against any or all of the Debtors that is not a DIP Facility Claim, Administrative Claim, Priority Tax Claim, New Ark Secured Claim, Other Secured Claim, Other Priority Claim, Omega Unsecured Claim, Subordinated Seller Note Claim, Service Provider Claim, or Intercompany Claim.

**1.86 “Governmental Unit”** has the meaning ascribed to such term in Bankruptcy Code section 101(27).

**1.87 “GUC Trust”** means the trust described in Article V.F of the Plan to be established under Delaware trust law that, among other things, may make Distributions to Holders of Omega Unsecured Claims, Subordinated Seller Note Claims, Service Provider Claims, and General Unsecured Claims pursuant to the terms of the Plan and the GUC Trust Agreement. With respect to any action required or permitted to be taken by the GUC Trust, the term includes the GUC Trustee or any other Person or Entity authorized to take such action in accordance with the GUC Trust Agreement.

**1.88 “GUC Trust Agreement”** means the agreement establishing the GUC Trust in conformity with the provisions of the Plan, which shall be reasonably acceptable to the Omega Entities (unless Class 7 votes to accept the Plan) and approved in the Confirmation Order and entered into by the Debtors, on behalf of the beneficiaries, and the GUC Trustee on the Effective Date pursuant to the terms of the Plan.

**1.89 “GUC Trust Assets”** means the Unsecured Claims Cash Amount.

**1.90 “GUC Trust Committee”** means the committee created hereunder and appointed pursuant to the terms of the GUC Trust Agreement, the initial members of whom shall be reasonably acceptable to the Omega Entities.

**1.91 “GUC Trust Interests”** means the uncertificated beneficial interests in the GUC Trust representing the right of Holders of Omega Unsecured Claims, Subordinated Seller Note Claims, Service Provider Claims, and General Unsecured Claims in accordance with the terms of the Plan and the GUC Trust Agreement.

**1.92 “GUC Trustee”** means the Person or Entity appointed by the Committee to administer the GUC Trust in accordance with the terms of the Plan and the GUC Trust Agreement.

**1.93 “Gulf Coast”** means Gulf Coast Health Care, LLC.

**1.94 “Holder”** means a Person or Entity holding a Claim or Interest.

**1.95 “Impaired”** means, when used in reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of Bankruptcy Code section 1124.

**1.96 “Impaired Class”** means a Class of Claims or Interests that is Impaired.

**1.97 “Insured Claim”** means any Claim or portion of a Claim that is insured under the Debtors’ insurance policies, but only to the extent of such coverage.

**1.98 “Intercompany Claims”** means any Claim held by a Debtor against another Debtor, including, without limitation, (a) any account reflecting intercompany book entries with respect to another Debtor; (b) any Claim not reflected in such book entries that is held by a Debtor against another Debtor; and (c) any derivative Claim asserted by or on behalf of one Debtor against another Debtor.

**1.99 “Interests”** means the legal interests, equitable interests, contractual interests, equity interests or ownership interests, or other rights of any Person or Entity in the Debtors, including all capital stock, stock certificates, common stock, preferred stock, partnership interests, limited liability company or membership interests, rights, treasury stock, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtors, partnership interests in the Debtors’ stock appreciation rights, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights, subscription rights and liquidation preferences, puts, call, awards, or commitments of any character whatsoever relating to any such equity, common stock, preferred stock, ownership interests or other shares of capital stock of the Debtors or obligating the Debtors to issue, transfer, or sell any shares of capital stock whether or not certificated, transferable, voting, or denominated stock or a similar security.

**1.100 “Interim DIP Order”** means *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 72].

**1.101 “Lien”** has the meaning ascribed to such term in Bankruptcy Code section 101(37).

**1.102 “Liquidating Debtors”** means the Debtors on or after the Effective Date.

**1.103 “Liquidating Trust”** means the trust described in Article V.E of the Plan to be established under Delaware trust law that shall effectuate the wind down of the Liquidating Debtors and make Distributions pursuant to the terms of the Plan and the Liquidating Trust Agreement. With respect to any action required or permitted to be taken by the Liquidating Trust, the term includes the Liquidating Trustee or any other person authorized to take such action in accordance with the Liquidating Trust Agreement.

**1.104 “Liquidating Trust Agreement”** means the agreement establishing the Liquidating Trust in conformity with the provisions of the Plan, which shall be reasonably acceptable to the Omega Entities and approved in the Confirmation Order and entered into by the Debtors, on behalf of the beneficiaries, and the Liquidating Trustee on the Effective Date pursuant to the terms of the Plan.

**1.105 “Liquidating Trust Assets”** means, collectively, (a) the Debtors’ Cash on the Effective Date; (b) the Debtors’ accounts receivable existing as of the Effective Date; (c) proceeds of the Retained Causes of Action; and (d) all other assets of the Debtors, including all prepetition accounts receivable, except the Prepetition A/R Reserve and the Unsecured Claims Cash Amount; *provided, however*, that any funds remaining in the Prepetition A/R Reserve after payment in full of the New Ark Secured Claim shall be Liquidating Trust Assets.

**1.106 “Liquidating Trustee”** means the Person or Entity determined by the DIP Agent to be appointed in consultation with the Debtors in accordance with Article V.E hereof to administer the Liquidating Trust in accordance with the terms of the Plan and the Liquidating Trust Agreement.

**1.107 “Local Rules”** means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

**1.108 “Master Tenant I”** means Gulf Coast Master Tenant I, LLC.

**1.109 “New Ark”** means New Ark Capital, LLC.

**1.110 “New Ark Budget”** means the budget associated with the New Ark Funding.

**1.111 “New Ark Funding”** means the use of Cash Collateral of the Prepetition Lenders solely to the extent necessary to provide funding for those amounts and during the applicable period set forth in the New Ark Budget, subject to permitted variances thereto, which amounts shall be withdrawn from the Prepetition Loan Account and deposited into the New Ark Reserve Account on a weekly basis to reserve for Professional Fee Claims and other expenses set forth in the New Ark Budget and disbursed by the Debtors or the Liquidating Trust, as applicable, to the respective beneficiaries thereof on the terms and subject to the conditions substantially set forth in the DIP Term Sheet and the DIP Orders.



**1.112 “New Ark Reserve Account”** means the segregated escrow account maintained for the New Ark Funding that serves as a reserve for Professional Fee Claims and other expenses set forth in the New Ark Budget.

**1.113 “New Ark Secured Claim”** means New Ark’s Allowed secured Claim against the Debtors for amounts owed under the Credit Agreement, which the Debtors stipulate and agree is an allowed senior secured Claim for the outstanding obligations under the A/R Working Capital Line in an amount equal to \$14,343,316.85 as of October 13, 2021, inclusive of fees, interest, and attorneys’ fees (in each case accrued prior to the Petition Date) due and owing under the Credit Agreement, plus interest accruing postpetition.

**1.114 “New Blue Mountain Operator(s)”** means the party or parties designated by the Blue Mountain Landlords, in their sole and absolute discretion, to effectuate the Blue Mountain MOTA(s) and the transactions contemplated thereunder.

**1.115 “New Membership Interests”** has the meaning ascribed to such term in Article V.B.1 of the Plan.

**1.116 “New Omega Operator(s)”** means the party or parties designated by the Omega Landlords (or any successor thereof), in their sole and absolute discretion, to effectuate the Omega MOTA(s) and the transactions contemplated thereunder.

**1.117 “Objection(s)”** means any objection, application, motion, complaint, or other legal proceeding seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify, or establish the priority, expunge, subordinate, or estimate any Claim (including the resolution of any request for payment of any Administrative Claim).

**1.118 “Official Bankruptcy Forms”** means the Official Bankruptcy Forms, prescribed by the Judicial Conference of the United States, the observance and use of which is required pursuant to Bankruptcy Rule 9009, as such forms may be amended, revised, or supplemented from time to time.

**1.119 “Omega Entities”** means, collectively, the DIP Agent and the Omega Landlords.

**1.120 “Omega Facilities”** means the Facilities leased from the Omega Landlords.

**1.121 “Omega Landlords”** means the affiliates of the DIP Agent identified as “Landlords” under the Master Lease.

**1.122 “Omega Leased Property”** means all or any portion or portions of the property subject to the Omega Master Lease.

**1.123 “Omega Master Lease”** means, collectively, that certain Second Consolidated Amended and Restated Master Lease Agreement, effective July 1, 2013, as amended by that certain First Amendment to Second Consolidated Amended and Restated Master Lease Agreement, dated as of October 2, 2013, that certain Second Amendment to Second Consolidated Amended and Restated Master Lease Agreement, dated as of October 1, 2014, that certain Third Amendment to Second Consolidated Amended and Restated Master Lease Agreement, dated as of September

29, 2015, that certain Fourth Amendment to Second Consolidated Amended and Restated Master Lease Agreement, dated as of February 25, 2016, that certain Fifth Amendment to Second Consolidated Amended and Restated Master Lease Agreement, dated as of May 26, 2016, that certain Sixth Amendment to Second Consolidated Amended and Restated Master Lease Agreement, dated as of December 15, 2016, that certain Seventh Amendment to Second Consolidated Amended and Restated Master Lease Agreement, dated as of January 26, 2017, that certain Eighth Amendment to Second Consolidated Amended and Restated Master Lease Agreement, dated as of June 8, 2017, that certain Ninth Amendment to Second Consolidated Amended and Restated Master Lease Agreement, dated as of December 19, 2017, that certain Tenth Amendment to Second Consolidated Amended and Restated Master Lease Agreement, dated as of July 6, 2018, and that certain Eleventh Amendment to Second Consolidated Amended and Restated Master Lease Agreement, dated as of August 19, 2019 between Master Tenant I and the Omega Landlords.

**1.124 “Omega MOTA Order”** means an order or, collectively, orders, in form and substance satisfactory to the Omega Entities (including the DIP Agent), of the Court approving, among other things, the Debtors’ entry into the Omega MOTA(s).

**1.125 “Omega MOTA(s)”** means one or more management and operations transfer agreements satisfactory to the Debtors, the Omega Entities (including the DIP Agent), and one or more New Omega Operator(s) and reasonably acceptable to New Ark, and customary for similar transactions, and under which New Omega Operator(s) shall be, in accordance with the terms of the Omega MOTA(s), responsible for funding all operating costs of and shall be entitled to all payments generated by the Omega Leased Property on and after the date the New Omega Operator(s) assume responsibility for operating the Omega Leased Property.

**1.126 “Omega Portfolio”** means the real estate, operations, and related assets of the Omega Facilities.

**1.127 “Omega Prepetition Rent Claim”** means a claim in the amount of \$237,711,978, which is the amount of accrued prepetition rent and other payments, charges, and impositions due and owing under the Omega Master Lease as of the Petition Date.

**1.128 “Omega Rejection Damages Claim”** means a claim in the amount of \$35,904,343, which is the amount of rejection damages arising upon the rejection of the Omega Master Lease, as capped under Bankruptcy Code section 502(b)(6).

**1.129 “Omega Unsecured Claim”** means the Omega Entities’ Allowed Claim against the Debtors in the amount of \$48,996,164 for amounts owed under the Omega Master Lease, comprising (a) an Allowed unsecured Claim for the Omega Prepetition Rent Claim; and (b) an Allowed unsecured Claim for the Omega Rejection Damages Claim. For the avoidance of doubt, the Omega Unsecured Claim is an Allowed Claim in the amount of \$48,996,164.

**1.130 “Omega/Delta Subordination Agreement”** that certain Amended and Restated Subordination Agreement between certain of the Debtors, Omega Healthcare Investors, Inc., and the Delta Group dated as of July 6, 2018.

**1.131 “Operations Transfer Date”** means the earliest date upon which a management and operations transfer agreement between (i) the Existing Operators and (ii) the New Blue Mountain Operator(s) or the New Omega Operator(s), as applicable, becomes effective. For the avoidance of doubt, the Operations Transfer Date with respect to the New Omega Operator(s) may occur before, on, or after the Operations Transfer Date with respect to the New Blue Mountain Operator(s), and vice versa.

**1.132 “Ordinary Course Professionals”** means those professionals authorized to be paid by the Debtors pursuant to a Final Order of the Court authorizing the payment and employment of professionals used in the ordinary course of business.

**1.133 “Other Priority Claims”** means any Claim accorded priority in right of payment under Bankruptcy Code section 507(a), other than a Priority Tax Claim or an Administrative Claim.

**1.134 “Other Secured Claim”** means a Claim, other than a DIP Facility Claim, New Ark Secured Claim, or Subordinated Seller Note Claim, (a) that is secured by a Lien on property in which an Estate has an interest, which Lien is valid, perfected, and enforceable under applicable law or by reason of a Final Order; or (b) that is subject to setoff under Bankruptcy Code section 553 and such right of setoff has been asserted by the holder of such right prior to the Confirmation Date in a properly Filed motion for relief from the automatic stay, to the extent of the value of the Holders’ interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Bankruptcy Code section 506(a).

**1.135 “Patient Care Ombudsman”** means Daniel McMurray, who was appointed to serve as the patient care ombudsman in these Chapter 11 Cases by order of the Bankruptcy Court.

**1.136 “Periodic Distribution Date”** means the date selected by the Liquidating Trustee or the GUC Trustee, as applicable, for making a Distribution to Holders of Allowed Claims in accordance with the Liquidating Trust Agreement or the GUC Trust Agreement, respectively.

**1.137 “Person”** has the meaning ascribed to such term in Bankruptcy Code section 101(41).

**1.138 “Petition Date”** means October 14, 2021, the date on which the Debtors Filed their petitions for relief commencing the Chapter 11 Cases.

**1.139 “Plan”** means this chapter 11 plan of liquidation proposed by the Debtors, including all exhibits and schedules attached hereto or otherwise incorporated herein, as such Plan may be altered, amended, modified, or supplemented from time to time, including in accordance with its terms, the Bankruptcy Code, and the Bankruptcy Rules.

**1.140 “Plan Supplement”** means the compilation(s) of documents and forms of documents, including any exhibits to the Plan not included herewith, that the Debtors shall file with the Court on or before the Plan Supplement Filing Date and may be amended from time to time prior to the Effective Date.

**1.141 “Plan Supplement Filing Date”** means the date on which the Plan Supplement shall be filed with the Court, which date shall be at least five days prior to the Voting Deadline or such other date as may be approved by the Court without further notice to parties-in-interest.

**1.142 “Portfolio”** means, collectively, the Omega Portfolio and Blue Mountain Portfolio.

**1.143 “Prepetition A/R Reserve”** means Cash in the amount of all accounts receivable collected by the Debtors on or after the Petition Date on account of services rendered prior to the Petition Date, including, without limitation, cash in the Prepetition Loan Account and any excess funds in the New Ark Reserve Account.

**1.144 “Prepetition Lenders”** means the lenders from time to time party to the Credit Agreement.

**1.145 “Prepetition Loan Account”** means a segregated account acceptable to New Ark in its sole discretion, holding accounts receivable collected by the Debtors on or after the Petition Date on account of services rendered prior to the Petition Date.

**1.146 “Priority Tax Claim”** means any Claim accorded priority in right of payment under Bankruptcy Code section 507(a)(8).

**1.147 “Pro Rata”** means, at any time, the proportion that the Face Amount of a Claim in a particular Class bears to the aggregate Face Amount of all Claims (including Disputed Claims, but excluding Disallowed Claims) in such Class, unless the Plan provides otherwise.

**1.148 “Professional”** means any professional employed by the Debtors, the Committee, or the Patient Care Ombudsman in the Chapter 11 Cases pursuant to Bankruptcy Code sections 327, 328, 363, or 1103 and professionals seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to Bankruptcy Code section 503(b)(4), other than Ordinary Course Professionals.

**1.149 “Professional Fee Bar Date”** means the deadline for Filing all applications for Professional Fee Claims, which shall be 45 days the Effective Date, as set forth in Article IX.A.1 of the Plan.

**1.150 “Professional Fee Claim”** means a Claim of a Professional pursuant to Bankruptcy Code sections 327, 328, 330, 331, or 503(b) for compensation or reimbursement of costs and expenses relating to services performed after the Petition Date and prior to and including the Effective Date.

**1.151 “Professional Fee Order”** means the Final Order establishing procedures for the interim compensation and reimbursement of Professionals.

**1.152 “Proof of Claim”** means the proof of claim that must be Filed before the applicable bar date, which term shall include a request for payment of an Administrative Claim.

**1.153 “Rejection Bar Date”** means the deadline by which a counterparty to a rejected Executory Contract or Unexpired Lease of the Debtor must File a Proof of Claim for damages

resulting from the rejection of such Executory Contract or Unexpired Lease by the Debtor, which deadline shall be the later of: (a) the General Bar Date; (b) 30 days after the entry of an order by the Court authorizing such rejection; or (c) such other date, if any, as the Court may fix in the order authorizing such rejection.

**1.154 “Related Parties”** means, each of the following, in each case only in its capacity as such: predecessors, successors, affiliates, subsidiaries, direct and indirect equity holders, members (including managing members), directors, managers, officers, principals, employees, partners, trusts, trustees, independent contractors, agents, representatives, managed accounts or funds, agents, professionals, consultants, financial advisors, attorneys, accountants, investment bankers, and other professional advisors.

**1.155 “Released Parties”** means (a) the Debtors; (b) New Ark; (c) the DIP Lender; (d) the Omega Entities; (e) the Equity Sponsors; (f) the Service Providers; and (g) each of the Related Parties of each Person or Entity in the foregoing clauses (a) through (f).

**1.156 “Restructuring Support Agreement”** means that certain Restructuring Support Agreement, and all of the schedules, documents, and exhibits contained therein and attached thereto, entered into on October 14, 2021 by and among the Debtors, the Omega Entities, the Equity Sponsors, the Service Providers, and New Ark, as filed at Docket No. 16-1.

**1.157 “Restructuring Transactions”** means the transactions described in Article V of the Plan.

**1.158 “Retained Causes of Action”** means all Causes of Action, other than those released by Article X.D.1.

**1.159 “Scheduled”** means, with respect to any Claim, the status and amount, if any, of that Claim as set forth in the Schedules.

**1.160 “Schedules”** means the schedules of assets and liabilities, schedules of executory contracts, and statements of financial affairs Filed by each Debtor pursuant to Bankruptcy Code section 521, Bankruptcy Rule 1007, and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statements have been or may be supplemented or amended from time to time in accordance with Bankruptcy Rule 1009 or any orders of the Court.

**1.161 “Service Provider Claims”** means, collectively, (a) the Allowed unsecured Claim of Health Care Navigator, LLC in the amount of \$2,405,990.80, (b) the Allowed unsecured Claim of Halcyon Rehabilitation, LLC in the amount of \$3,662,733.53, and (c) the Allowed unsecured Claim of HMS Purchasing, LLC in the amount of \$339,194.15.

**1.162 “Service Providers”** means, collectively, Health Care Navigator, LLC, Halcyon Rehabilitation, LLC, and HMS Purchasing, LLC.

**1.163 “Solicitation Procedures Order”** means the *Order (A) Approving Disclosure Statement; (B) Scheduling Hearing on Confirmation of Plan; (C) Establishing Deadlines and Procedures for (I) Filing Objections to Confirmation of Plan, (II) Claim Objections, and (III) Temporary Allowance of Claims for Voting Purposes; (D) Determining Treatment of Certain Unliquidated*

*Contingent, or Disputed Claims for Notice, Voting, and Distribution Purposes; (E) Setting Record Date; (F) Approving (I) Solicitation Packages and Procedures for Distribution, (II) Form of Notice of Hearing on Confirmation and Related Matters, and (III) Forms of Ballots; (G) Establishing Voting Deadline and Procedures for Tabulation of Votes; and (H) Granting Related Relief [Docket No. [●]].*

**1.164 “Subordinated Seller Note”** means that certain promissory note, dated as of July 6, 2018, by and between certain of the Debtors and the Delta Group (as amended, restated, consolidated, superseded, modified, or supplemented from time to time).

**1.165 “Subordinated Seller Note Claims”** means Claims arising under the Subordinated Seller Note.

**1.166 “Substantial Contribution Claim”** means a Claim under Bankruptcy Code subsections 503(b)(3), (b)(4), or (b)(5) for compensation or reimbursement of expenses incurred in making a substantial contribution in the Chapter 11 Cases.

**1.167 “Substantive Consolidation Order”** means the order of the Court, which may be the Confirmation Order, authorizing substantive consolidation of the Estates pursuant to Article V.A.

**1.168 “Tax” or “Taxes”** means all income, gross receipts, sales, use, transfer, payroll, employment, franchise, profits, property, excise or other similar taxes, estimated import duties, fees, stamp taxes and duties, value added taxes, levies, assessments or charges of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, additions to tax, or additional amounts imposed by any taxing authority with respect thereto.

**1.169 “Third-Party Releasing Parties”** means the Holders of Claims who vote to accept the Plan; *provided, however*, that the Omega Entities shall not be Third-Party Releasing Parties.

**1.170 “Top Level Debtors”** has the meaning ascribed to such term in Article V.B.1 of the Plan.

**1.171 “U.S. Trustee”** means the Office of the United States Trustee for the District of Delaware.

**1.172 “U.S. Trustee Fees”** means fees payable pursuant to 28 U.S.C. § 1930.

**1.173 “Unexpired Lease(s)”** means a lease to which any Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365.

**1.174 “Unimpaired”** means, when used in reference to a Claim or a Class, a Claim or a Class that is not impaired within the meaning of Bankruptcy Code section 1124.

**1.175 “Unsecured Claims Cash Amount”** means \$[●] in Cash, which will be contributed on the Effective Date to the Debtors by one or more of New Ark and the Equity Sponsors.

**1.176 “Voting Deadline”** means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted, as set forth by the Solicitation Procedures Order.

**1.177 “Wells Fargo”** means Wells Fargo Bank, N.A.

**C. Rules of Interpretation**

For purposes of the Plan, (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (b) any reference in the Plan to an existing document or exhibit Filed or to be Filed means such document or exhibit as it may have been or may be amended, modified, or supplemented; (c) unless otherwise specified, all references in the Plan to Sections, Articles, schedules, and Exhibits are references to Sections, Articles, schedules, and Exhibits of or to the Plan; (d) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan in its entirety rather than to a particular portion of the Plan; (e) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; and (f) the rules of construction set forth in Bankruptcy Code section 102 and in the Bankruptcy Rules shall apply.

**D. Computation of Time**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

**E. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) and except as otherwise provided herein or therein, the laws of (a) the State of Delaware shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan and (b) the laws of the state of organization of each Debtor shall govern corporate governance matters with respect to such Debtor, in either case without giving effect to the principles of conflicts of law thereof.

**F. Consent Rights**

All rights, including consent rights, provided under the Restructuring Support Agreement are not affected, modified, or vacated by the terms of the Plan and shall remain in full force and effect until the termination of the Restructuring Support Agreement or as otherwise provided by the Restructuring Support Agreement.

**ARTICLE II.  
UNCLASSIFIED CLAIMS**

**A. DIP Facility Claim**

On the Effective Date, each Holder of an Allowed DIP Facility Claim shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, its Pro Rata share of the Liquidating Trust Assets, after (i) satisfaction of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Other Secured Claims, and (ii) paying, reserving against, or satisfying, among other

things, the operating and administrative expenses of the Liquidating Trust, including but not limited to all reasonable and documented costs, expenses, and obligations incurred by the Liquidating Trustee (or professionals who may be employed by the Liquidating Trustee in administering the Liquidating Trust with the reasonable consent of the Omega Entities) in carrying out their responsibilities under the Liquidating Trust Agreement, or in any manner connected, incidental or related thereto.

For the avoidance of doubt, to the extent that the Liquidating Trust Assets are insufficient to satisfy the DIP Lender in full on account of the DIP Facility Claim, the DIP Lender shall receive no additional consideration on account of the DIP Facility Claim, subject to Consummation of the Plan.

## **B. Administrative Claims**

Unless a Holder agrees to less favorable treatment, each Holder of an Allowed Administrative Claim (including all Professional Fee Claims) shall have such Claim satisfied in full, in Cash, which payments shall be made in the ordinary course of business or on the later of the Effective Date and the date on which such Claim becomes an Allowed Claim (or as soon as reasonably practicable thereafter), or otherwise receive treatment consistent with the provisions of Bankruptcy Code section 1129(a)(9)(2).

Notwithstanding the foregoing, and subject to consummation of the Plan, (a) if the Omega MOTA Order is entered, the Omega Entities shall not receive any recovery on account of any Administrative Claim of which an Omega Entity is the Holder; and (b) New Ark shall waive any Administrative Claim of which New Ark is the Holder; *provided, however*, that, for the avoidance of doubt, clause (a) of the foregoing sentence does not include or cover Allowed Administrative Claims of any New Omega Operator(s) or the assignee of such claims, including an Omega Entity (in its capacity as assignee).

## **C. Priority Tax Claims**

Unless a Holder agrees to less favorable treatment, each Holder of an Allowed Priority Tax Claim shall receive treatment consistent with the provisions of Bankruptcy Code section 1129(a)(9)(C).

# **ARTICLE III. TREATMENT OF CLAIMS AND INTERESTS**

## **A. Introduction**

All Claims and Interests, except the DIP Facility Claim, Administrative Claims, and Priority Tax Claims, are placed in the Classes set forth below. In accordance with Bankruptcy Code section 1123(a)(1), Administrative Claims and Priority Tax Claims, as described above, have not been classified.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A



Claim also is placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

## B. Summary

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including, without limitation, for voting, confirmation, and distribution pursuant hereto and pursuant to Bankruptcy Code sections 1122 and 1123(a)(1).

Class	Claim/Interest	Status	Voting Rights
1	New Ark Secured Claim	Impaired	<i>Entitled to Vote</i>
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Other Priority Claims	Unimpaired	Deemed to Accept
4	Omega Unsecured Claims	Impaired	<i>Entitled to Vote</i>
5	Subordinated Seller Note Claims	Impaired	<i>Entitled to Vote</i>
6	Service Provider Claims	Impaired	<i>Entitled to Vote</i>
7	General Unsecured Claims	Impaired	<i>Entitled to Vote</i>
8	Intercompany Claims	Impaired	Deemed to Reject
9	Existing Equity Interests	Unimpaired/Impaired	Deemed to Accept/ Deemed to Reject

## C. Classification and Treatment of Claims and Interests

### 1. Class 1: New Ark Secured Claim

Classification. Class 1 consists of the New Ark Secured Claim.

Treatment. On the Effective Date, the Holder of the New Ark Secured Claim shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, payment from the Prepetition A/R Reserve in Cash in the amount of the New Ark Secured Claim, less the amount of the New Ark Funding; *provided, however*, that if there are insufficient funds in the Prepetition A/R Reserve to provide payment in full of the New Ark Secured Claim (less the amount of the New Ark Funding), New Ark (or its designees) shall waive any such deficiency, subject to and upon Consummation of the Plan.

Voting. Class 1 is Impaired, and the Holder of the Claim in Class 1 is entitled to vote to accept or reject the Plan.

### 2. Class 2: Other Secured Claims

Classification. Class 2 consists of the Other Secured Claims.

Treatment. On the Effective Date (or as promptly thereafter as reasonably practicable), each Holder of an Allowed Other Secured Claim shall receive, in the sole discretion of the Liquidating Trust and in full and final satisfaction of such Claim, (a) payment in full by the Liquidating Trust in Cash, including the payment of any interest Allowed and payable under

Bankruptcy Code section 506(b); (b) delivery of the collateral securing such Allowed Other Secured Claim; or (c) treatment of such Allowed Other Secured Claim in any other matter that renders the Claim Unimpaired.

Voting. Class 2 is Unimpaired, and the Holders of Claims in Class 2 shall be conclusively deemed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f). Therefore, Holders of Claims in Class 2 are not entitled to vote to accept or reject the Plan.

### **3. Class 3: Other Priority Claims**

Classification. Class 3 consists of the Other Priority Claims.

Treatment. On the Effective Date, each Holder of an Allowed Other Priority Claim shall receive treatment in a manner consistent with Bankruptcy Code section 1129(a)(9).

Voting. Class 3 is Unimpaired, and the Holders of Claims in Class 3 shall be conclusively deemed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f). Therefore, Holders of Claims in Class 3 are not entitled to vote to accept or reject the Plan.

### **4. Class 4: Omega Unsecured Claim**

Classification. Class 4 consists of the Omega Unsecured Claim.

Treatment. On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, the Holders of the Omega Unsecured Claim shall receive Pro Rata Distribution with Class 5, Class 6, and Class 7 of the GUC Trust Interests; *provided, however*, that notwithstanding the foregoing, pursuant to the Omega/Delta Subordination Agreement, any Cash Distribution received by the Holders of Subordinated Seller Note Claims on account of their GUC Trust Interests will be paid to the Holders of the Omega Unsecured Claim until the Omega Unsecured Claim is paid in full; *provided further, however*, that if Class 7 votes to accept the Plan, then the Holders of the Omega Unsecured Claim shall contribute to the Holders of Class 7 General Unsecured Claims (i) their Pro Rata Distribution of the GUC Trust Interests and (ii) any Cash Distribution received from the Holders of Subordinated Seller Note Claims pursuant to the Omega/Delta Subordination Agreement, to be shared by the Holders of Class 7 General Unsecured Claims on a Pro Rata basis.

Voting. Class 4 is Impaired, and Holders of Claims in Class 4 are entitled to vote to accept or reject the Plan.

### **5. Class 5: Subordinated Seller Note Claims**

Classification. Class 5 consists of Subordinated Seller Note Claims.

Treatment. On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, each Holder of a Subordinated Seller Note Claim shall receive a Pro Rata Distribution with Class 4, Class 6, and Class 7 of the GUC Trust Interests.

Notwithstanding the foregoing, pursuant to the Omega/Delta Subordination Agreement and Bankruptcy Code section 510, the Cash Distributions received from the GUC Trust by the Holders of Subordinated Seller Note Claims will be paid to the Holders of the Omega Unsecured Claim until the Omega Unsecured Claim is paid in full.

Voting. Class 5 is Impaired, and Holders of Claims in Class 5 are entitled to vote to accept or reject the Plan.

#### **6. Class 6: Service Provider Claims**

Classification. Class 6 consists of Service Provider Claims.

Treatment. On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, the Holders of Allowed Service Provider Claims shall receive Pro Rata Distribution with Class 4, Class 5, and Class 7 of the GUC Trust Interests; *provided, however*, that if Class 7 votes to accept the Plan, then the Holders of Service Provider Claims shall contribute their Pro Rata Distribution of the GUC Trust Interests to the Holders of Class 7 General Unsecured Claims, each of whom shall receive their respective Pro Rata Distribution of all such amounts.

Voting. Class 6 is Impaired, and Holders of Claims in Class 6 are entitled to vote to accept or reject the Plan.

#### **7. Class 7: General Unsecured Claims**

Classification. Class 7 consists of General Unsecured Claims.

Treatment. On the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for such Claim, each Holder of a General Unsecured Claim shall receive a Pro Rata Distribution with Class 4, Class 5, and Class 6 of the GUC Trust Interests; *provided, however*, that if Class 7 votes to accept the Plan, then (a) the Holders of the Omega Unsecured Claim shall contribute (i) their Pro Rata Distribution of the GUC Trust Interests and (ii) any Cash Distribution received from the Holders of Subordinated Seller Note Claims pursuant to the Omega/Delta Subordination Agreement to the Holders of Class 7 General Unsecured Claims, and (b) the Holders of the Service Provider Claims shall contribute their Pro Rata Distribution of the GUC Trust Interests to the Holders of Class 7 General Unsecured Claims, and each Holder of a Class 7 General Unsecured Claim shall receive their respective Pro Rata Distribution of all such contributed GUC Trust Interests and amounts.

Voting. Class 7 is Impaired, and Holders of Claims in Class 7 are entitled to vote to accept or reject the Plan.

#### **8. Class 8: Intercompany Claims**

Classification. Class 8 consists of Intercompany Claims.

Treatment. On the Effective Date, each Intercompany Claim shall be cancelled, released, and extinguished, and each Holder of an Intercompany Claim shall not be entitled to, and shall

not receive or retain, any property or interest in property on account of such Intercompany Claim.

Voting. Class 8 is Impaired. Because the Holders of such Intercompany Claims will not receive any distributions pursuant to the Plan, they are therefore conclusively deemed, pursuant to Bankruptcy Code section 1126(g), to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

## **9. Class 9: Existing Equity Interests**

Classification. Class 9 consists of Existing Equity Interests.

Treatment. On the Effective Date, all Existing Equity Interests in the Top Level Debtors will be cancelled, released, and extinguished, and each such Holder of an Existing Equity Interest shall not be entitled to, and shall not receive or retain, any property or interest in property on account of such Existing Equity Interest.

On the Effective Date, all Existing Equity Interests in the Debtors other than the Top Level Debtors shall be (a) reinstated solely to the extent necessary to maintain the Debtors' corporate structure post-Effective Date or (b) cancelled, released, or extinguished, as determined by the Debtors in their business judgment.

Voting. Holders of Existing Equity Interests are conclusively presumed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f) or deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g). Holders of Existing Equity Interests are not entitled to vote to accept or reject the Plan.

## **D. Special Provision Regarding Unimpaired Claims**

Except as otherwise provided in the Plan, the Confirmation Order, any other order of the Court, or any document or agreement enforceable pursuant to the terms of the Plan, nothing shall affect the rights and defenses, both legal and equitable, of the Debtors and/or the Liquidating Trust with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

## **E. Allowed Claims**

Notwithstanding any provision herein to the contrary, the Disbursing Agent shall only make Distributions to Holders of Allowed Claims. No Holder of a Disputed Claim shall receive any Distribution on account thereof until (and then only to the extent that) its Disputed Claim becomes an Allowed Claim. The Liquidating Trustee and the GUC Trustee may, in their discretion, withhold Distributions otherwise due hereunder to any Holder of a Claim until the Claims Objection Deadline, to enable a timely objection thereto to be Filed. Any Holder of a Claim that becomes an Allowed Claim after the Effective Date shall receive its Distribution in accordance with the terms and provisions of the Plan, the Liquidating Trust Agreement, and/or the GUC Trust Agreement, as applicable.

**F. Special Provisions Regarding Insured Claims**

Distributions under the Plan to each Holder of an Insured Claim shall be in accordance with the treatment provided under the Plan for the Class in which such Insured Claim is classified; *provided, however*, that the maximum amount of any Distribution under the Plan on account of an Allowed Insured Claim shall be limited to an amount equal to: (a) the applicable deductible or self-insured retention under the relevant insurance policy minus (b) any reimbursement obligations of the Debtors to the insurance carrier for sums expended by the insurance carrier on account of such Claim (including defense costs); *provided further, however*, that, to the extent that a Holder of a Claim has an Allowed Insured Claim, the amount of which exceeds the total coverage available from the relevant insurance policies of the Debtors, such Holders of Claims shall have an Allowed General Unsecured Claim in the amount by which such Allowed Insured Claim exceeds the coverage available from the relevant Debtor's insurance policies. Nothing in this Section shall constitute a waiver of any Cause of Action the Debtors may hold against any Person or Entity, including the Debtors' insurance carriers, or is intended to, shall, or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery from any insurer of the Debtors in addition to any Distribution such Holder may receive under the Plan; *provided, however*, that the Debtors do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled.

The Plan shall not expand the scope of, or alter in any other way, the obligations of the Debtors' insurers under their policies, and the Debtors' insurers shall retain any and all defenses to coverage that such insurers may have. The Plan shall not operate as a waiver of any other Claims the Debtors' insurers have asserted or may assert in any Proof of Claim or the Debtors' rights and defenses to such Proofs of Claim.

**ARTICLE IV.  
ACCEPTANCE OR REJECTION OF THE PLAN**

**A. Acceptance by an Impaired Class**

In accordance with Bankruptcy Code section 1126(c) and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the Holders of at least 2/3 in dollar amount and more than 1/2 in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan.

**B. Presumed Acceptances by Unimpaired Classes**

Class 2 and Class 3 are Unimpaired by the Plan. Under Bankruptcy Code section 1126(f), such Holders of Claims are conclusively presumed to accept the Plan, and the votes of Holders of such Claims shall not be solicited.

**C. Class Deemed to Reject Plan**

Holders of Claims in Class 8 are not entitled to receive or retain any property under the Plan. Under Bankruptcy Code section 1126(g), such Claim Holders are deemed to reject the Plan, and the votes of such Holders of Claims shall not be solicited.

**D. Impaired Classes of Claims Entitled to Vote**

Because Claims in Class 1, Class 4, Class 5, Class 6, and Class 7 are Impaired under the Plan and Holders of such Claims shall receive or retain property under the Plan, Holders of Claims in such Classes are entitled to vote and shall be solicited with respect to the Plan.

**E. Class Presumed to Accept or Deemed to Reject**

Holders of Interests in Class 9 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) or deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g). Holders of Interests in Class 9 are not entitled to vote on the Plan.

**F. Vacant Classes**

Any Class or sub-Class of Claims or Interests that is not occupied as of the date of the commencement of the Confirmation Hearing by at least one Allowed Claim or Allowed Interest, as applicable, or at least one Claim or Interest, as applicable, temporarily Allowed under Bankruptcy Rule 3018, shall not be included for purposes of (a) voting on the acceptance or rejection of the Plan and (b) determining acceptance or rejection of the Plan by such Class under Bankruptcy Code section 1129(a)(8).

**G. Confirmation Pursuant to Bankruptcy Code Section 1129(b)**

Because Class 8 is deemed to reject the Plan, the Debtors shall (a) seek Confirmation of the Plan from the Court by employing the “cramdown” procedures set forth in Bankruptcy Code section 1129(b) and/or (b) modify the Plan in accordance with Article XII.A hereof. The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan or any Plan Exhibit or schedule, including to amend or modify the Plan or such Exhibits or schedules to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary.

**H. Existing Equity Interests**

To the extent reinstated under the Plan, distributions on account of Existing Equity Interests are not being received by Holders of such Existing Equity Interests on account of their Existing Equity Interests, but for the purposes of administrative convenience, in order to maintain the Debtors’ corporate structure as the Liquidating Debtors post-Effective Date.

**ARTICLE V.  
MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. Substantive Consolidation**

**1. Consolidation of the Chapter 11 Estates**

The Plan contemplates and is predicated upon entry of an order substantively consolidating the Debtors' Estates and Chapter 11 Cases for all purposes, including voting, Distribution, and Confirmation. On the Effective Date, (a) all Intercompany Claims between the Debtors shall be eliminated; (b) all assets and liabilities of the Affiliate Debtors shall be merged or treated as if they were merged with the assets and liabilities of Gulf Coast; (c) any obligation of a Debtor and any guarantee thereof by another Debtor shall be deemed to be one obligation of Gulf Coast, and any such guarantee shall be eliminated; (d) each Claim Filed or to be Filed against any Debtor shall be deemed Filed only against Gulf Coast and shall be deemed a single Claim against and a single obligation of Gulf Coast; and (e) any joint or several liability of the Debtors shall be deemed one obligation of Gulf Coast. On the Effective Date, and in accordance with the terms of the Plan and the consolidation of the assets and liabilities of the Debtors, all Claims based upon guarantees of collection, payment, or performance made by one Debtor as to the obligations of another Debtor shall be released and of no further force and effect.

The substantive consolidation effected pursuant to this Article V.A.1 of the Plan (a) shall not affect the rights of any Holder of a secured Claim; and (b) shall not, and shall not be deemed to, prejudice the Causes of Action and the Avoidance Actions (subject to the releases set forth in Article X.D), which shall survive entry of the Substantive Consolidation Order, as if there had been no substantive consolidation.

**2. Substantive Consolidation Order**

The Plan shall serve as, and shall be deemed to be, a motion for entry of an order substantively consolidating the Debtors' Chapter 11 Cases. If no objection to substantive consolidation is timely Filed and served by any Holder of an Impaired Claim affected by the Plan as provided herein on or before the deadline to object to Confirmation of the Plan, or such other date as may be fixed by the Court, the Substantive Consolidation Order (which may be the Confirmation Order) may be approved by the Court. If any such objections are timely Filed and served, a hearing with respect to the substantive consolidation of the Chapter 11 Cases and the objections thereto shall be scheduled by the Court, which hearing may, but is not required to, coincide with the Confirmation Hearing.

**B. Corporate Action**

**1. Distribution of New Membership Interests**

On the Effective Date, (a) all membership interests in Debtors Gulf Coast, Pensacola Administrative Holdings, LLC, and Gulf Coast Master Tenant Holdings, LLC (collectively, the "**Top Level Debtors**") shall be cancelled; (b) the Top Level Debtors' managers, and all of the Debtors' officers, shall be deemed to have resigned; (c) each of the Top Level Debtors shall issue one membership interest (collectively, the "**New Membership Interests**") to the

Liquidating Trust and the Liquidating Trust shall be the sole member of each Top Level Debtor; (d) the Liquidating Trustee shall serve as the sole manager of each Top Level Debtor, and the sole officer of each of the Liquidating Debtors.

## **2. Continued Corporate Existence**

The Debtors shall continue to exist after the Effective Date for the limited purposes of disposing of the assets of the Debtors' Estates, to the extent necessary, and complying with and fulfilling their obligations under the Liquidating Trust Agreement and the Plan. The organizational documents of the Debtors shall be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy Code and shall include, among other things, pursuant to Bankruptcy Code section 1123(a)(6), a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by Bankruptcy Code section 1123(a)(6).

The Debtors, the Liquidating Debtors, and the Liquidating Trustee acting pursuant to the terms and conditions of the Liquidating Trust Agreement, as applicable, shall be authorized to execute, deliver, file, or record such documents, instruments, releases, and other agreements and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

## **3. Dissolution**

As soon as practicable after the Liquidating Trust exhausts the assets of the Debtors' Estates by making the final Distribution under the Plan and the Liquidating Trust Agreement and has complied with and fulfilled its obligations under the Plan, the Liquidating Trustee shall, (a) destroy the Books and Records, as authorized by Confirmation Order; (b) File a certification stating that the assets of the Debtors' Estates have been exhausted and final Distributions have been made under the Plan; (c) file the necessary paperwork to effectuate the dissolution of the Liquidating Debtors in accordance with the laws of their respective states of organization; (d) resign as the sole manager and/or sole officer of the Liquidating Debtors. Upon the Filing of the certificate described in section (b) of the preceding sentence, the Liquidating Debtors shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Liquidating Debtors or payments to be made in connection therewith.

## **4. Cancellation of Old Securities and Agreements**

Except as otherwise provided in the Plan, and in any contract, instrument, or other agreement or document created in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Article III hereof, any promissory notes, share certificates, whether for preferred or common stock (including treasury stock), other instruments evidencing any Claims or Interests, other than a Claim or Interest that is being reinstated and rendered unimpaired, and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to acquire such Interests shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order, or rule.



## **5. No Further Action**

Each of the matters provided for under the Plan involving the organizational structure of the Debtors or corporate or limited liability company action to be taken by or required of the Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement of further action by any Person or Entity, including but not limited to, the Liquidating Trustee, Holders of Claims or Interests against or in the Debtors, or directors, managers, or officers of the Debtors or Liquidating Debtors.

## **C. Books and Records; Privilege Matters**

### **1. Access to Debtors' Books and Records**

On or as reasonably practicable after the Effective Date, the Liquidating Debtors shall transfer non-privileged Books and Records related to Claims to be liquidated by the GUC Trust to the GUC Trust.

### **2. Transfer of Privilege**

On the Effective Date, the Liquidating Trust shall succeed to the evidentiary privileges (including attorney-client, joint-client, joint-defense, common interest and other privileges) formerly held by the Debtors. Accordingly, to the extent that documents are requested from current counsel to the Debtors by any Person or Entity, after the Effective Date, only the Liquidating Trust shall have the ability to waive such attorney-client privilege. Current counsel to the Debtors shall have no obligation to produce any documents currently in their possession as a result of or arising in any way out of their representation of the Debtors unless (a) the Person or Entity requesting such documents serves their request on the Liquidating Trust; and (b) the Liquidating Trust consents in writing to such production and any waiver of the attorney-client privilege such production might cause. Upon the third anniversary of the termination of the Liquidating Trust Agreement, any and all documents in the possession of the Debtors' current counsel as a result of or arising in any way out of their representation of the Debtors, respectively, shall be deemed destroyed and no Person or Entity shall be entitled to obtain such documents.

On the Effective Date, the GUC Trust shall succeed to the evidentiary privileges (including attorney-client, joint-client, joint-defense, common interest and other privileges) formerly held by the Committee. Accordingly, to the extent that documents are requested from current counsel to the Committee by any Person or Entity, after the Effective Date, only the GUC Trust shall have the ability to waive such attorney-client privilege. Current counsel to the Committee shall have no obligation to produce any documents currently in their possession as a result of or arising in any way out of their representation of the Committee unless (a) the Person or Entity requesting such documents serves their request on the GUC Trust; and (b) the GUC Trust consents in writing to such production and any waiver of the attorney-client privilege such production might cause. Upon the third anniversary of the termination of the GUC Trust Agreement, any and all documents in the possession of the Committee's current counsel as a

result of or arising in any way out of their representation of the Committee shall be deemed destroyed and no Person or Entity shall be entitled to obtain such documents.

#### **D. Dissolution of the Committee**

Any Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in Bankruptcy Code section 1103 and shall perform such other duties as it may have been assigned by the Court prior to the Effective Date. On the Effective Date, the Committee shall be dissolved and its members shall be deemed released of all their duties, responsibilities, and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Committee's attorneys, financial advisors, and other agents shall terminate, except with respect to (a) all Professional Fee Claims; and (b) any appeals of the Confirmation Order. All expenses of Committee members and the reasonable fees and expenses of their Professionals through the Effective Date shall be paid in accordance with the terms and conditions of the Professional Fee Order. For the avoidance of doubt, and notwithstanding anything in the Plan, no member of the Committee shall be reimbursed for any attorneys' fees and expenses incurred by such member except by order of the Court upon a separate application Filed by such member and following a hearing upon proper notice.

#### **E. Liquidating Trust**

On the Effective Date, the Liquidating Debtors shall enter into the Liquidating Trust Agreement to establish the Liquidating Trust in form and substance satisfactory to the Omega Entities (including the DIP Agent) for the purposes of, among other things, collecting all accounts receivable outstanding as of the Effective Date, liquidating and distributing the Liquidating Trust Assets as required under the Plan and the Liquidating Trust Agreement, and winding down the Liquidating Debtors, with no objective to continue or engage in the conduct of a trade of business.

The Liquidating Trust Agreement may provide powers, duties, and authorities in addition to those explicitly stated herein, but only to the extent that such powers, duties, and authorities do not affect the status of the Liquidating Trust as a "liquidating trust" for United States federal income tax purposes.

The Liquidating Trust shall be administered by the Liquidating Trustee, who shall be selected by the Omega Entities (including the DIP Agent) in consultation with the Debtor. The DIP Agent may remove and replace the Liquidating Trustee at any time and for any reason with or without cause. In the event of an inconsistency between the Plan and the Liquidating Trust Agreement as such conflict relates to anything other than the establishment of the Liquidating Trust, the Liquidating Trust Agreement shall control. All compensation for the Liquidating Trustee and other costs of administration shall be paid from the Liquidating Trust Assets in accordance with the Liquidating Trust Agreement.

In his or her sole discretion, the Liquidating Trustee may enter into one or more transition services agreements with the Service Providers on terms to be mutually agreed upon by the Liquidating Trustee and the Service Providers with the consent of the Omega Entities.

## **F. GUC Trust**

### **1. Establishment and Administration of the GUC Trust**

On the Effective Date, the GUC Trust shall be established pursuant to the GUC Trust Agreement for the purpose of, among other things, (a) holding and administering the GUC Trust Assets; (b) prosecuting any objections to Claims that the GUC Trustee deems appropriate and resolving such objections; (c) retaining professionals or other advisors to assist in the performance of its duties; and (d) making Distributions from the GUC Trust to Holders of Allowed Omega Unsecured Claims, Allowed Subordinated Seller Note Claims, Allowed Service Provider Claims, and Allowed General Unsecured Claims as provided for in the Plan and/or the GUC Trust Agreement.

Upon execution of the GUC Trust Agreement, the GUC Trustee shall be authorized to take all steps necessary to complete the formation of the GUC Trust. The GUC Trust shall be administered by the GUC Trustee in accordance with the GUC Trust Agreement.

### **2. Assets of the GUC Trust**

On the Effective Date, or as soon as reasonably practicable thereafter, the Debtors or Liquidating Debtors, as applicable, shall transfer and assign to the GUC Trust all of their right, title, and interest in and to all of the GUC Trust Assets, and in accordance with Bankruptcy Code section 1141, all such assets shall automatically vest in the GUC Trust free and clear of all Claims and Liens, subject only to the Allowed Claims of the Holders of GUC Trust Interests as set forth in the Plan and the expenses of the GUC Trust as set forth herein and in the GUC Trust Agreement. Thereupon, neither the Debtors nor the Liquidating Debtors shall have any interest in or with respect to the GUC Trust Assets.

### **3. GUC Trust Interests**

On the Effective Date, each Holder of an Allowed Omega Unsecured Claim, Subordinated Seller Note Claim, Service Provider Claim, and General Unsecured Claim shall, by operation of the Plan, be deemed to have received its uncertificated Pro Rata share of the GUC Trust Interests pursuant to the terms of the Plan. GUC Trust Interests shall be reserved for Holders of Disputed Claims and issued by the GUC Trust to, and held by the GUC Trustee in, the Disputed Claims Reserve pending allowance or disallowance of such Claims. No other Person or Entity shall have any interest, legal, beneficial, or otherwise, in the GUC Trust Assets upon the assignment and transfer of such assets to the GUC Trust.

As set forth in the GUC Trust Agreement, Distributions from the GUC Trust on account of GUC Trust Interests shall be made from the GUC Trust Assets after paying, reserving against or satisfying, among other things, the operating and administrative expenses of the GUC Trust, including but not limited to all costs, expenses, and obligations incurred by the GUC Trustee (or professionals who may be employed by the GUC Trustee in administering the GUC Trust) in carrying out their responsibilities to the GUC Trust under the GUC Trust Agreement, or in any manner connected, incidental, or related thereto.

The GUC Trust Interests shall be uncertificated and shall be nontransferable except upon death of the Holder or by operation of law. Holders of GUC Trust Interests, in such capacity, shall have no voting rights or any authority over the activities of the GUC Trust. The GUC Trust shall have a term of three years from the Effective Date, without prejudice to the rights of the GUC Trust to request extension of such term from the Court for good cause shown.

**4. Appointment of a GUC Trustee**

The identity of the GUC Trustee shall be disclosed pursuant to a notice filed not less than five Business Days prior to the Voting Deadline. The appointment of the GUC Trustee shall be approved in the Confirmation Order, and such appointment shall be effective as of the Effective Date. The GUC Trustee shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Plan and GUC Trust Agreement.

**5. Creation of GUC Trust Committee and Procedures Related Thereto**

The GUC Trust Committee shall consist of three members, the identities of which shall be disclosed pursuant to a notice filed not less than five Business Days prior to the Voting Deadline. Each member of the GUC Trust Committee shall be entitled to vote on certain matters related to objections to Claims the Holders of which hold GUC Trust Interests and the settlement, resolution, or other disposition of GUC Trust Assets, as provided for in the GUC Trust Agreement. Members of the GUC Trust Committee shall serve without compensation, but shall be entitled to reimbursement of reasonable expenses.

**6. Standing of the GUC Trust**

The GUC Trust shall have independent standing to appear and be heard in the Court as to any matter relating to the Debtors, the Plan, or the GUC Trust Agreement, including any matter as to which the Court has retained jurisdiction pursuant to Article XI.A of the Plan.

**7. Function and Duration of the GUC Trust Committee**

The GUC Trust Committee shall have the rights and responsibilities set forth in the Plan and the GUC Trust Agreement. The GUC Trust Committee shall remain in existence until such time as the final Distributions under the GUC Trust Agreement have been made, as set forth more fully in the GUC Trust Agreement.

**8. Recusal of GUC Trust Committee Members**

A GUC Trust Committee member shall recuse himself or herself from any decisions or deliberations regarding actions taken or proposed to be taken by the GUC Trust with respect to the Claims, Causes of Action, or rights of such GUC Trust Committee member, the entity appointing such GUC Trust Committee member, or any affiliate of the foregoing.

**G. Sources of Consideration for Plan Distributions**

The Liquidating Trust shall make Distributions under the Plan from (a) the Liquidating Trust Assets; (b) the Prepetition A/R Reserve; and (c) the New Ark Funding. The Liquidating

Trust Assets shall be used to pay the costs of administration of the Liquidating Trust (including the compensation of the Liquidating Trustee and any professionals retained by the Liquidating Trust), and to satisfy DIP Facility Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Other Secured Claims as set forth in the Plan. The GUC Trust shall make Distributions under the Plan with the Unsecured Claims Cash Amount. The GUC Trust Assets shall be used to pay the costs of administration of the GUC Trust (including the compensation of the GUC Trustee and any professionals retained by the GUC Trust), and to satisfy Allowed General Unsecured Claims and Allowed Subordinated Seller Note Claims and, in the event Class 7 votes to reject the Plan, the Allowed Omega Unsecured Claim and the Allowed Service Provider Claims. The New Ark Funding shall be used to fund the New Ark Reserve Account to reserve for Professional Fee Claims and other expenses set forth in the New Ark Budget.

Each Distribution referred to in Article III hereof shall be governed by the terms and conditions set forth in the Plan applicable to such Distribution and by the terms and conditions of the instruments or other documents evidencing or relating to such Distribution, and which terms and conditions shall bind each Person or Entity receiving such Distribution.

#### **H. Revesting of Assets in Liquidating Debtors**

The property of the Debtors' Estates shall be vested in the Liquidating Debtors on or following the Effective Date and continue to be subject to the jurisdiction of the Court following Confirmation of the Plan until such property is distributed to Holders of Allowed Claims in accordance with the provisions of the Plan, the Liquidating Trust Agreement, and the Confirmation Order; *provided, however*, that the GUC Trust Assets shall not be vested in the Liquidating Debtors on or following the Effective Date, but shall vest in the GUC Trust until such property is distributed to Holders of Allowed Claims in accordance with the provisions of the Plan, the GUC Trust Agreement, and the Confirmation Order.

#### **I. Exemption from Certain Transfer Taxes**

Pursuant to Bankruptcy Code section 1146(a), any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents without the payment of any such tax or governmental assessment.

#### **J. Applicability of Bankruptcy Code Sections 1145 and 1125(e)**

Under Bankruptcy Code section 1145, the issuance of any securities under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Liquidating Trustee or GUC Trustee determines, with the advice of counsel, that the Liquidating Trust or GUC Trust, respectively, is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as

amended, in connection with the distribution of any securities, then the Liquidating Trustee or GUC Trustee, as applicable, shall take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

#### **K. Preservation of Causes of Action**

In accordance with Bankruptcy Code section 1123(b), the Liquidating Trust shall retain and may enforce all rights to commence and pursue, as appropriate, the Retained Causes of Action and the Liquidating Trust's rights to commence, prosecute, or settle such Retained Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date or the dissolution of the Liquidating Debtors. The Liquidating Trust may pursue such Retained Causes of Action, as appropriate, in accordance with the best interests of the Liquidating Trust beneficiaries; *provided, however*, that the Debtors retain the right to resolve and settle all such Retained Causes of Action prior to Confirmation of the Plan. No Person or Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Retained Causes of Action against them as any indication that the Liquidating Trust shall not pursue any and all available Retained Causes of Action against them. Unless any Retained Causes of Action against a Person or Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Court order, the Liquidating Trust expressly reserves all Retained Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppels (judicial, equitable, or otherwise), or laches, shall apply to such Retained Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The substantive consolidation of the Debtors and their Estates pursuant to the Confirmation Order and Article V.A of the Plan shall not, and shall not be deemed to, prejudice any of the Retained Causes of Action, which shall survive entry of the Confirmation Order for the benefit of the Liquidating Debtors and the Liquidating Trust.

### **ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS**

#### **A. Distributions on Allowed Claims**

Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date or became Allowed Claims thereafter shall be made by the Disbursing Agent pursuant to the terms and conditions of the Plan, the Liquidating Trust Agreement, and the GUC Trust Agreement. Notwithstanding any other provision of the Plan to the contrary, no Distribution shall be made on account of any Allowed Claim or portion thereof that (a) has been satisfied after the Petition Date; (b) is listed in the Schedules as contingent, unliquidated, disputed, or in a zero amount, and for which a Proof of Claim has not been timely Filed; or (c) is evidenced by a Proof of Claim that has been amended by a subsequently Filed Proof of Claim.

#### **B. Disbursing Agent**

The Disbursing Agent shall make all Distributions required under the Plan, subject to the terms and provisions of the Plan, the Liquidating Trust Agreement, and the GUC Trust Agreement. If the Disbursing Agent is an independent third party designated to serve in such

capacity, such Disbursing Agent shall receive, without further Court approval, reasonable compensation from the Liquidating Trust and/or GUC Trust for distribution services rendered pursuant to the Plan and reimbursement of reasonable out-of-pocket expenses. No Disbursing Agent shall be required to give any bond or surety or other security for the performance of its duties. The Disbursing Agent shall be authorized and directed to rely upon the Debtors' Books and Records and the representatives and professionals of the Liquidating Trust and the GUC Trust in determining Allowed Claims not entitled to Distributions under the Plan in accordance with the terms and conditions of the Plan.

## **C. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

### **1. Delivery of Distributions in General**

Distributions to Holders of Allowed Claims shall be made by the Disbursing Agent (a) at the addresses set forth on the Proofs of Claim Filed by such Holders (or at the last known addresses of such Holders if no Proof of Claim is Filed or if the Debtors have been notified of a change of address); (b) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related Proof of Claim, after sufficient evidence of such addresses as may be requested by the Disbursing Agent is provided; (c) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Disbursing Agent has not received a written notice of a change of address; (d) at the addresses set forth in the other records of the Debtors or the Disbursing Agent at the time of the Distribution or (e) in the case of the Holder of a Claim that is governed by an agreement and is administered by an agent or servicer, at the addresses contained in the official records of such agent or servicer.

In making Distributions under the Plan, the Disbursing Agent may rely upon the accuracy of the Claims register maintained by the Claims Agent in the Chapter 11 Cases, as modified by any Final Order of the Court disallowing Claims in whole or in part.

### **2. Undeliverable and Unclaimed Distributions**

If the Distribution to any Holder of an Allowed Claim is returned to the Disbursing Agent as undeliverable or is otherwise unclaimed, no further Distributions shall be made to such Holder unless and until the Disbursing Agent is notified in writing of such Holder's then-current address and such Holder provides sufficient evidence of such address as may be requested by the Disbursing Agent, at which time all missed Distributions shall be made to such Holder without interest, subject to the time limitations set forth below. Amounts in respect of undeliverable Distributions made by the Disbursing Agent shall be returned to the Disbursing Agent until such Distributions are claimed. The Disbursing Agent shall segregate and, with respect to Cash, deposit in a segregated account designated as an unclaimed Distribution reserve undeliverable and unclaimed Distributions for the benefit of all such similarly-situated Persons or Entities until such time as a Distribution becomes deliverable or is claimed, subject to the time limitations set forth below.

Any Holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable or unclaimed Distribution within three months after the date such Distribution was returned undeliverable shall be deemed to have forfeited its Claim for such undeliverable or

unclaimed Distribution and shall be forever barred and enjoined from asserting any such Claim for an undeliverable or unclaimed Distribution against the Debtors or the Liquidating Debtors, as applicable, the Debtors' Estates, the Liquidating Trustee, the Liquidating Trust, the GUC Trust, the GUC Trustee, and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its or their property. Nothing contained in the Plan, the Liquidating Trust Agreement, or the GUC Trust Agreement shall require the Debtor, the Liquidating Trust, the Liquidating Trustee, the GUC Trust, the GUC Trustee, or any Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

#### **D. Means of Cash Payment**

Cash payments made pursuant to the Plan shall be in U.S. dollars and shall be made at the option and in the sole discretion of the Disbursing Agent by (a) checks drawn on or (b) wire transfers from a domestic bank selected by the Disbursing Agent. In the case of foreign creditors, Cash payments may be made, at the option of the Disbursing Agent, in such funds and by such means as are necessary or customary in a particular jurisdiction; *provided* that the Disbursing Agent receives a signed receipt or otherwise verifiable record of any such Cash payment.

#### **E. Interest on Claims**

Unless otherwise specifically provided for in the DIP Orders, the Plan, or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

#### **F. Withholding and Reporting Requirements**

In accordance with Bankruptcy Code section 346 and in connection with the Plan and all Distributions hereunder, the Disbursing Agent shall, to the extent applicable, comply with all withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority. The Disbursing Agent shall be authorized to take any and all actions necessary and appropriate to comply with such requirements.

All Distributions hereunder shall be subject to withholding and reporting requirements. As a condition of making any Distribution under the Plan, each Person and Entity holding an Allowed Claim is required to provide any information necessary in writing, including returning W-9 statements, to effect the necessary information reporting and withholding of applicable taxes with respect to Distributions to be made under the Plan as the Disbursing Agent may request. The Disbursing Agent shall be entitled in its sole discretion to withhold any Distributions to a Holder of an Allowed Claim who fails to provide tax identification or social security information within the timeframe requested in writing by the Disbursing Agent to such Holder of an Allowed Claim, which timeframe shall not be less than 30 days. **The Distribution to any Holder of an Allowed Claim that fails to timely respond to the Disbursing Agent**



**shall be treated as an undeliverable or unclaimed Distribution pursuant to Article VI.C.2 of the Plan.**

Notwithstanding any other provision of the Plan, each Person and Entity receiving a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations on account of any such Distribution.

#### **G. Setoffs**

Subject to the terms and conditions of the Liquidating Trust Agreement and the GUC Trust Agreement, the Debtors, the GUC Trust, and/or the Liquidating Trust may, but shall not be required to, setoff against any Claim and the payments or other Distributions to be made under the Plan on account of the Claim, claims of any nature whatsoever that the Debtors may have against the Holder thereof, *provided that* any such right of setoff that is exercised shall be allocated, first, to the principal amount of the related Claim, and thereafter to any interest portion thereof, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, the GUC Trust, and/or the Liquidating Trust of any such claim that the Debtors may have against such Holder.

#### **H. Procedure for Treating and Resolving Disputed, Contingent, and/or Unliquidated Claims**

##### **1. Objection Deadline; Prosecution of Objection**

Except as set forth in the Plan with respect to Professional Fee Claims and Administrative Claims, all objections to Claims must be Filed and served on the Holders of such Claims by the Claims Objection Deadline, as the same may be extended by the Court. If an objection has not been Filed to a Proof of Claim or the Schedules have not been amended with respect to a Claim that (a) was Scheduled by the Debtors but (b) was not Scheduled as contingent, unliquidated, and/or disputed, by the Claims Objection Deadline, as the same may be extended by order of the Court, the Claim to which the Proof of Claim or Scheduled Claim relates shall be treated as an Allowed Claim if such Claim has not been Allowed earlier. Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those Persons or Entities that have requested notice in the Chapter 11 Cases in accordance with Bankruptcy Rule 2002.

Notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, on and after the Effective Date, the GUC Trust (with respect to General Unsecured Claims) and the Liquidating Trust (for all other Claims) shall have the authority to: (a) File, withdraw, or litigate to judgment objections to and requests for estimation of Claims; (b) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Court; and (c) administer and adjust the Claims register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Court; *provided, however,* that the objection to and settlement of Professional Fee Claims shall not be subject to this Article VI.H, but rather shall be governed by Article IX.A of the Plan. In the event that any objection Filed by the Committee or the Debtors remains pending as of the Effective Date, the GUC Trustee (with respect to General Unsecured Claims) and the Liquidating Trustee (for all

other Claims) shall be deemed substituted for the Committee or the Debtor, respectively, as the objecting party.

Except as otherwise provided under the Plan, the Liquidating Trust shall be entitled to assert all of the Debtors' rights, claims, defenses, offsets, rights of recoupment, setoffs, rights of disallowance, subrogation, recharacterization, and/or equitable subordination and counter-claims with respect to Claims.

## **2. No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, the Liquidating Trust Agreement, or the GUC Trust Agreement, no payments or Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtor on account of a Cause of Action, no payments or Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Court or such other court having jurisdiction over the matter.

## **3. Disputed Claims Reserve**

On the Distribution Date and on each subsequent Periodic Distribution Date, the GUC Trust shall withhold on a Pro Rata basis from property that would otherwise be distributed to Holders of General Unsecured Claims entitled to Distributions under the Plan on such date, in a separate Disputed Claims Reserve, such amounts or property as may be necessary to equal 100% of Distributions to which Holders of such Disputed General Unsecured Claims would be entitled under the Plan if such Disputed General Unsecured Claims were allowed in their Disputed Claim Amount. The GUC Trust may request, if necessary, estimation for any Disputed General Unsecured Claim that is contingent or unliquidated, or for which the GUC Trust determines to reserve less than the face amount. If the GUC Trust elects not to request such an estimation from the Court with respect to a Disputed General Unsecured Claim that is contingent or unliquidated, the GUC Trust shall withhold the applicable Disputed Claims Reserve based upon the good faith estimate of the amount of such General Unsecured Claim by the GUC Trust. If practicable, the GUC Trust shall invest any Cash that is withheld as the Disputed Claims Reserve in an appropriate manner to ensure the safety of the investment, in accordance with the GUC Trust Agreement. Nothing in the Plan, the Disclosure Statement, or the GUC Trust Agreement shall be deemed to entitle the Holder of a Disputed General Unsecured Claim to postpetition interest on such Claim, however.

## **4. Distributions After Allowance**

Payments and Distributions to Holders of Disputed Claims that ultimately become Allowed Claims shall be made in accordance with provisions of the Liquidating Trust Agreement and GUC Trust Agreement that govern Distributions to Holders of Allowed Claims.

**5. De Minimis Distributions**

The Liquidating Trust and GUC Trust shall not be required to make any distributions to Holders of Allowed Claims aggregating less than \$50.00. Liquidating Trust Assets and GUC Trust Assets that would be payable under the Plan to Holders of Claims but for this Article VI.H.5 shall remain Liquidating Trust Assets or GUC Trust Assets, as applicable, to be used in accordance with the Liquidating Trust Agreement or GUC Trust Agreement, as applicable.

**6. Fractional Dollars**

Any other provision of the Plan notwithstanding, the Disbursing Agent shall not be required to make Distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down.

**7. Allocation of Plan Distributions Between Principal and Interest**

To the extent that any Allowed Claim entitled to a Distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

**8. Distribution Record Date**

The Disbursing Agent shall have no obligation to recognize the transfer of or sale of any participation in any Allowed Claim that occurs after the close of business on the Distribution Record Date. Instead, the Disbursing Agent shall be entitled to recognize and deal for all purposes under the Plan with only those record Holders stated on the official Claims register or the Debtors' Books and Records, as applicable, as of the close of business on the Distribution Record Date.

**ARTICLE VII.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Rejected Contracts and Leases**

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, each of the Executory Contracts and Unexpired Leases to which any Debtor is a party shall be deemed automatically rejected by the applicable Debtor as of the Effective Date, unless such contract or lease (a) previously has been assumed or rejected by the Debtors; (b) expired or terminated pursuant to its own terms; (c) is the subject of a motion to assume or reject pending before the Court as of the Confirmation Date; or (d) is identified in the Plan Supplement as an Executory Contract or Unexpired Lease to be assumed; *provided, however*, that nothing contained in the Plan shall constitute an admission by any Debtor that any such contract or lease is an Executory Contract or Unexpired Lease or that any Debtor or its successors and assigns has any liability thereunder; and, *provided further*,

that the Debtors reserve their right, at any time before the Confirmation Date, to assume any Executory Contract or Unexpired Lease that was not already rejected prior to the Confirmation Date. The Confirmation Order shall constitute an order of the Court approving the rejections described in this Article VII.A, pursuant to Bankruptcy Code section 365, as of the Effective Date.

**B. Rejection Damages Bar Date**

If the rejection of an Executory Contract or Unexpired Lease pursuant to Article VII.A gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the applicable Debtor or its Estate, the Liquidating Trust, the GUC Trust or their respective successors or properties unless a Proof of Claim is filed with the Court and served on counsel for the Liquidating Trust or the GUC Trust, as applicable, by the Rejection Bar Date.

**C. Indemnification Obligations**

Subject to the last sentence of this Article VII.C, any obligations of the Debtors pursuant to their organizational documents, including amendments, entered into any time prior to the Effective Date, to indemnify, reimburse, or limit the liability of any Person pursuant to the Debtors' organizational documents, policy of providing employee indemnification, applicable state law, or specific agreement in respect of any claims, demands, suits, causes of action, or proceedings against such Persons based upon any act or omission related to such Persons' service with, for, or on behalf of the Debtors prior to the Effective Date with respect to all present and future actions, suits, and proceedings relating to the Debtors shall survive Confirmation of the Plan and except as set forth herein, remain unaffected thereby, and shall not be discharged, irrespective of whether such defense, indemnification, reimbursement, or limitation of liability accrued or is owed in connection with an occurrence before or after the Petition Date; *provided, however*, that all monetary obligations under this Article VII.C shall be limited solely to available insurance coverage and neither the Liquidating Trust, the Liquidating Trustee, the GUC Trust, the GUC Trustee, nor any of their assets shall be liable for any such obligations. Any Claim based on the Debtors' obligations set forth in this Article VII.C shall not be a Disputed Claim or subject to any objection in either case by reason of Bankruptcy Code section 502(e)(1)(B). This provision for indemnification obligations shall not apply to or cover any Claims, suits, or actions against a Person that result in a Final Order determining that such Person is liable for fraud, willful misconduct, gross negligence, bad faith, self-dealing, or breach of the duty of loyalty.

**ARTICLE VIII.  
CONDITIONS PRECEDENT TO CONFIRMATION AND  
CONSUMMATION OF THE PLAN**

**A. Conditions to Confirmation**

The following are conditions precedent to Confirmation of the Plan, each of which must be satisfied or waived in accordance with Article VIII.C of the Plan.

1. The Confirmation Order shall have been entered by the Court.

2. The Restructuring Support Agreement shall not have been terminated and shall remain in full force and effect.

3. The DIP Orders shall have been entered by the Court and shall not have been stayed, modified, or vacated on appeal.

4. The Definitive Documents shall be in form and substance reasonably acceptable to the Debtors, the DIP Lender, New Ark, the Equity Sponsors, and the Service Providers.

5. The Omega MOTA Order shall have been entered by the Court and shall not have been stayed, modified, or vacated on appeal; and the Operations Transfer Date for the Omega Facilities shall have occurred.

6. The Blue Mountain MOTA Order shall have been entered by the Court and shall not have been stayed, modified, or vacated on appeal; and the Operations Transfer Date for the Blue Mountain Facilities shall have occurred.

#### **B. Conditions to Effective Date**

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in accordance with Article VIII.C of the Plan.

1. The Confirmation Order shall have become a Final Order.

2. The Restructuring Support Agreement shall not have been terminated and shall remain in full force and effect.

3. The Omega MOTA Order shall not have been stayed, modified, or vacated on appeal.

4. The Blue Mountain MOTA Order shall not have been stayed, modified, or vacated on appeal.

5. The “License Transfer Date” under both the Omega MOTA(s) and the Blue Mountain MOTA(s) shall have occurred.

6. The Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan.

7. The Liquidating Trust Agreement shall have been executed and the Liquidating Trustee shall have been appointed.

8. The GUC Trust Agreement shall have been executed and the GUC Trustee and GUC Trust Committee members shall have been appointed.

#### **C. Waiver of Conditions**

Each of the conditions to Confirmation set forth in Article VIII.A and each of the conditions to the Effective Date set forth in Article VIII.B of the Plan may be waived, with the

consent of the Omega Entities, in whole or in part by the Debtors without any other notice to parties-in-interest or the Court (other than with respect to the Omega Entities in connection with obtaining the Omega Entities' consent). The failure to satisfy or waive any condition to Confirmation or the Effective Date may be asserted by the Omega Entities or the Debtors regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of any party to exercise any of its foregoing rights shall not be deemed a waiver of any of its other rights, and each such right shall be deemed an ongoing right that may be asserted thereby at any time.

#### **D. Consequences of Non-Occurrence of Effective Date**

If the Effective Date does not occur within 90 days following the Confirmation Date, or by such later date after notice and hearing, as is proposed by the Debtors, then upon motion by the Debtors and upon notice to such parties-in-interest as the Court may direct, (a) the Plan shall be null and void in all respects; (b) any settlement of Claims shall be null and void without further order of the Court; and (c) the time within which the Debtors may assume and assign or reject all Executory Contracts shall be extended for a period of 30 days after such motion is granted.

### **ARTICLE IX.**

#### **ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS**

##### **A. Professional Fee Claims**

###### **1. Final Fee Applications**

All final requests for payment of Professional Fee Claims (the "**Final Fee Applications**") must be Filed no later than the Professional Fee Bar Date. Objections, if any, to Final Fee Applications of such Professionals must be Filed and served on the Liquidating Trust, the requesting Professional, and the U.S Trustee no later than 21 days from the date on which each such Final Fee Application is served and Filed. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Court, the Allowed amounts of such Professional Fee Claims shall be determined by the Court.

The Professionals shall be entitled to reasonable compensation and reimbursement of actual, necessary expenses for post-Effective Date activities, including the preparation, filing, and prosecution of Final Fee Applications. Any time or expenses incurred in the preparation, filing, and prosecution of Final Fee Applications shall be disclosed by each Professional in its Final Fee Application and shall be subject to approval of the Bankruptcy Court.

###### **2. Employment of Professionals after the Effective Date**

From and after the Effective Date, any requirement that Professionals comply with Bankruptcy Code sections 327 through 331 or any order previously entered by the Court in seeking retention or compensation for services rendered or expenses incurred after such date shall terminate.

**B. Substantial Contribution Compensation and Expenses Bar Date**

Any Person or Entity that wishes to make a Substantial Contribution Claim based on facts or circumstances arising after the Petition Date must File an application with the Clerk of the Court, on or before the Administrative Claims Bar Date, and serve such application on the Liquidating Trust, the U.S. Trustee, and as otherwise required by the Court and the Bankruptcy Code, or be forever barred from seeking such compensation or expense reimbursement. Objections, if any, to the Substantial Contribution Claim must be Filed no later than the Administrative Claims Objection Deadline, unless otherwise extended by order of the Court.

**C. Other Administrative Claims**

All other requests for payment of an Administrative Claim arising after the Petition Date, other than Professional Fee Claims, must be Filed with the Court and served on the Liquidating Trust no later than the Administrative Claims Bar Date. Unless the Liquidating Trust or any other party-in-interest objects to an Administrative Claim by the Administrative Claims Objection Deadline, such Administrative Claim shall be deemed Allowed in the amount requested. In the event that the Liquidating Trust or any other party-in-interest objects to an Administrative Claim, the Court shall determine the Allowed amount of such Administrative Claim.

**ARTICLE X.  
EFFECTS OF CONFIRMATION**

**A. Compromise and Settlement of Claims and Controversies**

Pursuant to Bankruptcy Code section 1123 and Bankruptcy Rule 9019 and in consideration for the classification, Distributions, releases, and other benefits provided pursuant to the Plan, on the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan or relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Claim or Interest, or any Distribution to be made on account of such Claim or Interest. The entry of the Confirmation Order shall constitute the Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable.

**B. Binding Effect**

The Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, whether or not such Holders shall receive or retain any property or interest in property under the Plan, and their respective successors and assigns, including, but not limited to, the Liquidating Trust, the GUC Trust, and all other parties-in-interest in the Chapter 11 Cases.

### **C. Discharge of the Debtors**

Pursuant to Bankruptcy Code section 1141(d)(3), Confirmation shall not discharge Claims against the Debtors; *provided, however*, that no Holder of a Claim or Interest may, on account of such Claim or Interest, seek or receive any payment or other Distribution from, or seek recourse against, any Debtor or its respective successors, assigns, and/or property, except as expressly provided in the Plan.

### **D. Releases**

#### **1. Releases by the Debtors**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, and any Person or Entity seeking to exercise the rights of the Debtors' Estates, including, without limitation, any successor to the Debtors, any Estate representative appointed or selected pursuant to Bankruptcy Code section 1123(b)(3), the Liquidating Trust, or the GUC Trust, whether pursuing an action derivatively or otherwise, shall be deemed to forever release, waive, and discharge each of the Released Parties for all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever in connection with or related to the Debtors, the Credit Agreement, the Omega Master Lease, the Omega MOTA(s), the Blue Mountain Non-HUD Master Lease, the Blue Mountain HUD Master Lease, the Blue Mountain MOTA(s), any contract between a Debtor and a Service Provider, the Restructuring Support Agreement, the DIP Credit Agreement, the Definitive Documents, the Chapter 11 Cases, or the Plan (other than the rights of the Debtors, the Liquidating Trustee, and the GUC Trustee to enforce the Plan and the contracts, instruments, releases, and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date; *provided, however*, that nothing in this Article X.D.1 shall be a waiver of any defense, offset or objection to any Claim filed against the Debtors and their Estates by any Person or Entity.

#### **2. Mutual Releases by Released Parties**

As of the Effective Date, to the maximum extent permitted by applicable law, for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party shall be deemed to forever release, waive, and discharge each of the other Released Parties for all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever in connection with or related to the Debtors, the Credit Agreement, the Omega Master Lease, the Omega MOTA(s), the Blue Mountain Non-HUD Master Lease, the Blue Mountain HUD Master Lease, the Blue Mountain MOTA(s), any contract between a Debtor and a Service Provider, the Restructuring Support Agreement, the DIP Credit Agreement, the Definitive Documents, the Chapter 11 Cases, or the Plan (other than the rights of the Holders of Claims and Interests to enforce the Plan and the contracts, instruments,



releases, and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date.

Entry of the Confirmation Order shall constitute the Court's approval, pursuant to Bankruptcy Rule 9019, of the release described in this Article X.D.2, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute its finding that each release described in this Article X.D.2 is: (a) in exchange for good and valuable consideration provided by the Released Parties, a good-faith settlement and compromise of such Claims and Interests; (b) in the best interests of the Debtors and all Holders of Claims and Interests; (c) fair, equitable, and reasonable; (d) given and made after due notice and opportunity for hearing; and (e) a bar to any of the Releasing Parties asserting any claim, cause of action, or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ARTICLE X.D.2 OF THE PLAN, NO PARTY SHALL BE RELEASED FROM ITS OBLIGATIONS UNDER THE OMEGA MOTA(S) THAT EXPRESSLY SURVIVE CONFIRMATION AND CONSUMMATION OF A CHAPTER 11 PLAN IN ACCORDANCE WITH THE TERMS OF THE OMEGA MOTA(S).

### **3. Releases by Third-Party Releasing Parties**

As of the Effective Date, to the maximum extent permitted by applicable law, for good and valuable consideration, the adequacy of which is hereby confirmed, each Third-Party Releasing Party shall be deemed to forever release, waive, and discharge each of the Released Parties from all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever in connection with or related to the Debtors, the Credit Agreement, the Omega Master Lease, the Omega MOTA(s), the Blue Mountain Non-HUD Master Lease, the Blue Mountain HUD Master Lease, the Blue Mountain MOTA(s), any contract between a Debtor and a Service Provider, the Restructuring Support Agreement, the DIP Credit Agreement, the Definitive Documents, the Chapter 11 Cases, or the Plan (other than the rights of the Holders of Claims and Interests to enforce the Plan and the contracts, instruments, releases, and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date.

Entry of the Confirmation Order shall constitute the Court's approval, pursuant to Bankruptcy Rule 9019, of the release described in this Article X.D.3, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute its finding that each release described in this Article X.D.3 is: (a) in exchange for good and valuable consideration provided by the Released Parties, a good-faith settlement and

compromise of such Claims and Interests; (b) in the best interests of the Debtors and all Holders of Claims and Interests; (c) fair, equitable, and reasonable; (d) given and made after due notice and opportunity for hearing; and (e) a bar to any of the Releasing Parties asserting any claim, cause of action, or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ARTICLE X.D.3 OF THE PLAN, NO PARTY SHALL BE RELEASED FROM ITS OBLIGATIONS UNDER THE OMEGA MOTA(S) THAT EXPRESSLY SURVIVE CONFIRMATION AND CONSUMMATION OF A CHAPTER 11 PLAN IN ACCORDANCE WITH THE TERMS OF THE OMEGA MOTA(S).

#### **E. Exculpation and Limitation of Liability**

None of (a) the Debtors, (b) the managers, officers, or employees of any of the Debtors serving at any time during the pendency of the Chapter 11 Cases, (c) the Professionals or Court-retained agents of the Debtors, (d) the Committee and its Professionals and, solely in their respective capacities as members or representatives of the Committee, each member of the Committee, or (e) the Patient Care Ombudsman and its Professionals shall have or incur any liability to any Holder of a Claim or an Interest, or any other party-in-interest, or any of their respective members, directors, managers, officers, employees, advisors, attorneys, professionals, agents, partners, stockholders, or affiliates, or any of their respective successors or assigns, for any act or omission in connection with, relating to or arising out of, the Chapter 11 Cases, the DIP Facility, the Omega MOTA(s), the Blue Mountain MOTA(s), the Restructuring Support Agreement, the formulation, negotiation, or implementation of the Plan, the solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the Consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions which are the result of fraud, gross negligence, or willful misconduct (in each case as determined by a Final Order entered by a court of competent jurisdiction), and such parties in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. For the avoidance of doubt, nothing contained in this paragraph shall exculpate prepetition or post-Effective Date acts or omissions.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ARTICLE X.E OF THE PLAN, NO PARTY SHALL BE RELEASED FROM ITS OBLIGATIONS UNDER THE OMEGA MOTA(S) THAT EXPRESSLY SURVIVE CONFIRMATION AND CONSUMMATION OF A CHAPTER 11 PLAN IN ACCORDANCE WITH THE TERMS OF THE OMEGA MOTA(S).

#### **F. Injunction**

Confirmation of the Plan shall have the effect of, among other things, permanently enjoining (a) all Persons and Entities that have held, hold, or may hold or have asserted, assert, or may assert Claims against or Interests in the Debtors with respect to any such Claim or Interest, and (b) respecting (vi)(A), (vi)(B), and (vi)(C) of this Article X.F, the Liquidating Debtors, the Liquidating Trust, and the GUC Trust, from and after the Effective Date, from

taking any of the following actions (other than actions to enforce any rights or obligations under the Plan): (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting the Liquidating Debtors, the Liquidating Trust, or the GUC Trust or any of its or their property; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Liquidating Debtors, the Liquidating Trust, or the GUC Trust or any of its or their property; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Liquidating Debtors, the Liquidating Trust, or the GUC Trust or any of its or their property; (iv) asserting any right of setoff, directly or indirectly, against any obligation due the Liquidating Debtors, the Liquidating Trust, the GUC Trust or any of its or their property, except with respect to any right of setoff asserted prior to the entry of the Confirmation Order, whether asserted in a Proof of Claim or otherwise, or as otherwise contemplated or allowed by the Plan; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan; and (vi) prosecuting or otherwise asserting (A) any Claim or Interest, including any right, claim, or Cause of Action released pursuant to the Plan, (B) any form of objection to any Claim that is Allowed by the Plan, or (C) Avoidance Actions against any Holder of a Claim that is Allowed by the Plan. Additionally, unless otherwise explicitly stated in the Plan, the injunction contemplated by this Article X.F shall prohibit the assertion against the Liquidating Trust, the Liquidating Trustee, the GUC Trust, and the GUC Trustee of all Claims or Interests, if any, related to the Debtors.

Confirmation of the Plan shall further have the effect of permanently enjoining all Persons and Entities from obtaining (a) any documents or other materials from current counsel for the Debtors that are in the possession of such counsel as a result of or arising in any way out of its representation of the Debtors, (b) any documents or other materials from current counsel for the Committee that are in the possession of such counsel as a result of or arising in any way out of its representation of the Committee, or (c) Books and Records, except in accordance with Article V.C of the Plan.

## **G. Compromises and Settlements**

Pursuant to Bankruptcy Rule 9019(a), the Debtors may compromise and settle (a) Claims against them and (b) claims that they have against other Persons or Entities. The Debtors expressly reserve the right (with Court approval, following appropriate notice and opportunity for a hearing) to compromise and settle Claims against them and claims that they may have against other Persons and Entities at any time up to and including the Effective Date.

After the Effective Date, such right shall pass to the Liquidating Trust and the GUC Trust (solely for Claims by Holders of GUC Trust Interests) and shall be governed by the terms of Article VI.H of the Plan, the Liquidating Trust Agreement, and GUC Trust Agreement, as applicable.

## **H. Satisfaction of Subordination Rights**

Except as otherwise set forth in the Restructuring Support Agreement or herein, all Claims against the Debtors and all rights and claims between or among Holders of Claims relating in any manner whatsoever to Distributions on account of Claims against the Debtors based upon any subordination rights, whether asserted or unasserted, legal or equitable, shall be deemed satisfied by the Distributions under the Plan to Holders of Claims having such subordination rights, and such subordination rights shall be deemed waived, released, and terminated as of the Effective Date. Distributions to the various Classes of Claims hereunder shall not be subject to levy, garnishment, attachment, or like legal process by any Holder of Claims by reason of any subordination rights or otherwise, so that each Holder of Claims shall have and receive the benefit of the Distributions in the manner set forth in the Plan.

## **ARTICLE XI. RETENTION OF JURISDICTION**

### **A. Retention of Jurisdiction by the Court**

Under Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order, substantial Consummation of the Plan, and occurrence of the Effective Date, the Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases, the Plan, the Liquidating Trust Agreement, the Liquidating Trust, the GUC Trust Agreement, and the GUC Trust to the fullest extent permitted by law, including, among other things, jurisdiction to:

1. To the extent not otherwise determined by the Plan, to determine (a) the allowance, classification, or priority of Claims upon objection by any party-in-interest entitled to file an objection, or (b) the validity, extent, priority, and nonavoidability of consensual and nonconsensual Liens and other encumbrances against assets of the Estates, the Liquidating Debtors, the Liquidating Trust, or the GUC Trust;
2. To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with the Plan or its execution or implementation by any Person or Entity, to construe and to take any other action to enforce and execute the Plan, the Confirmation Order, or any other order of the Court, to issue such orders as may be necessary for the implementation, execution, performance, and Consummation of the Plan and all matters referred to herein, and to determine all matters that may be pending before the Court in the Chapter 11 Cases on or before the Effective Date with respect to any Person or Entity;
3. To protect the assets or property of the Estates, the Liquidating Debtors, the Liquidating Trust, and/or the GUC Trust, including Causes of Action, from claims against, or interference with, such assets or property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning Liens or other encumbrances on any assets of the Estates, the Liquidating Debtors, the Liquidating Trust, and/or the GUC Trust;
4. To determine any and all applications for allowance of Professional Fee Claims;

5. To determine any Priority Tax Claims, Other Priority Claims, or Administrative Claims, entitled to priority under Bankruptcy Code section 507(a);
6. To resolve any dispute arising under or related to the implementation, execution, Consummation, or interpretation of the Plan and the making of Distributions hereunder;
7. To determine any and all motions related to the rejection, assumption, or assignment of Executory Contracts or Unexpired Leases or determine any issues arising from the deemed rejection of Executory Contracts and Unexpired Leases set forth in Article VII of the Plan;
8. To resolve any dispute related to the Omega MOTA(s) or the Blue Mountain MOTA(s);
9. Except as otherwise provided herein, to determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted in and prior to the closing of the Chapter 11 Cases, including any remands;
10. To enter a Final Order closing each the Chapter 11 Cases;
11. To modify the Plan under Bankruptcy Code section 1127, remedy any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order so as to carry out their intent and purposes;
12. To issue such orders in aid of consummation of the Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Person or Entity, to the full extent authorized by the Bankruptcy Code;
13. To determine any tax liability pursuant to Bankruptcy Code section 505;
14. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
15. To resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Cases, the applicable bar date, the hearing to consider approval of the Disclosure Statement, or the Confirmation Hearing, or for any other purpose;
16. To resolve any dispute or matter arising under or in connection with any order of the Court entered in the Chapter 11 Cases;
17. To authorize, as may be necessary or appropriate, sales of assets as necessary or desirable and resolve objections, if any, to such sales;
18. To resolve any disputes concerning, or to otherwise interpret, any release, injunction, exculpation, or other waiver or protection provided in the Plan, including the releases set forth in Article X.D of the Plan;
19. To approve, if necessary, any Distributions, or objections thereto, under the Plan;

20. To approve, as may be necessary or appropriate, any Claims settlement entered into or setoff exercised by the Liquidating Trust or the GUC Trust;

21. To resolve any dispute or matter arising under or in connection with the Liquidating Trust or the GUC Trust;

22. To order the production of documents, disclosures or information, or to appear for deposition demanded pursuant to Bankruptcy Rule 2004; and

23. To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code.

**B. Retention of Non-Exclusive Jurisdiction by the Court**

Notwithstanding anything else in the Plan, the Court shall retain non-exclusive jurisdiction over all Retained Causes of Action prosecuted by the Liquidating Trust.

**C. Failure of Court to Exercise Jurisdiction**

If the Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in Article XI.A of the Plan, the provisions of this Article XI shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

**ARTICLE XII.  
MISCELLANEOUS PROVISIONS**

**A. Modifications and Amendments**

The Debtors may, with the consent of the Omega Entities, alter, amend, or modify the Plan or any Exhibits thereto under Bankruptcy Code section 1127(a) and/or Bankruptcy Rule 3019 at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan as defined in Bankruptcy Code section 1101(2), the Debtors may, with the consent of the Omega Entities, under Bankruptcy Code section 1127(b), institute proceedings in the Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan; *provided, however*, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Court.

**B. Severability of Plan Provisions**

If, prior to Confirmation, any term or provision of the Plan is held by the Court to be invalid, void, or unenforceable, then the Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to

be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**C. Successors and Assigns**

The rights, benefits, and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and inure to the benefit of, any heir, executor, administrator, successor, or assign of that Person or Entity.

**D. Payment of Statutory Fees**

All fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid on or as soon as practicable after the Effective Date by the Liquidating Trust.

After the Effective Date, quarterly fees shall continue to accrue and be timely paid until the Liquidating Debtors' cases are closed, dismissed, or converted. Subject to the following paragraph, such fees shall be allocated between the parties as follows: the Liquidating Trust shall fund the quarterly fees payable on account of the Liquidating Trust's and the Liquidating Debtors' disbursements, and the GUC Trust shall fund any additional incremental fees payable on account of the GUC Trust's disbursements; the GUC Trust shall timely transfer its portion of the quarterly fees to the Liquidating Trust when such fees become due. In addition, and subject to the following paragraph, the Liquidating Trust and Liquidating Debtors shall File post-confirmation quarterly reports or any pre-confirmation monthly operating reports not Filed as of the Confirmation Hearing in conformance with the U.S. Trustee Guidelines. The U.S. Trustee shall not be required to File a request for payment of its quarterly fees, which shall be deemed an Administrative Claim against the Debtors and their Estates.

If the GUC Trust requests in writing that the Liquidating Debtors delay in the Filing of a motion to close the Chapter 11 Cases, the GUC Trust shall fund any additional quarterly fees and the costs incurred by the Liquidating Debtors for the preparation and filing of any additional post-confirmation quarterly reports required solely as a consequence of the delayed closure of the Chapter 11 Cases; the GUC Trust shall timely transfer such amounts to the Liquidating Trust when such quarterly fees become due.

Notwithstanding the foregoing, the Liquidating Debtors shall remain responsible for the payment of U.S. Trustee fees subject to 28 U.S.C. § 1930 until the earlier of the time the Chapter 11 Cases are closed, dismissed, or converted.

**E. Revocation, Withdrawal, or Non-Consummation**

Subject to the Restructuring Support Agreement, the Debtors reserve the right to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date and to File subsequent plans. If the Debtors revoke or withdraw the Plan as to any or all of the Debtors, or if

Confirmation or Consummation of the Plan as to any or all of the Debtors does not occur, then, with respect to such Debtors, (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (c) nothing contained in the Plan, and no acts taken in preparation for Consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person or Entity; (ii) prejudice in any manner the rights of such Debtors or any other Person or Entity; or (iii) constitute an admission of any sort by such Debtors or any other Person or Entity.

**F. Service of Documents**

Any notice, request or demand required or permitted to be made or provided to or upon a Debtor or Liquidating Debtor, the Liquidating Trust, or the GUC Trust shall be (a) in writing; (b) served by (i) certified mail, return receipt requested; (ii) hand delivery; (iii) overnight delivery service; (iv) first class mail; or (v) facsimile transmission; (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed; and (d) addressed as follows:

***The Debtors and Liquidating Debtors***

Gulf Coast Health Care, LLC  
c/o Ankura Consulting Group, LLC  
485 Lexington Avenue, 10th Floor  
New York, NY 10017  
Attn: M. Benjamin Jones (ben.jones@ankura.com)

with copies to:

McDermott Will & Emery LLP  
444 West Lake Street, Suite 4000  
Chicago, IL 60606  
Attn: Daniel M. Simon (dmsimon@mwe.com) and Emily C. Keil (ekeil@mwe.com)

and

McDermott Will & Emery  
1007 North Orange Street, 10th Floor  
Wilmington, DE 19801  
Attn: David R. Hurst (dhurst@mwe.com)

***The DIP Agent or Omega Entities***

Omega Healthcare Investors, Inc.  
303 International Circle, Suite 200  
Hunt Valley, MD 21030



Attn: Daniel J. Booth (dbooth@omegahealthcare.com)

with a copy to:

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

Attn: Gary Holtzer (gary.holtzer@weil.com), Robert Lemons (robert.lemons@weil.com), and  
Jason Hufendick (jason.hufendick@weil.com)

***The Liquidating Trust***

[TO COME]

***The GUC Trust***

[TO COME]

**G. Plan Supplement(s)**

Exhibits to the Plan not attached hereto shall be Filed in one or more Plan Supplements by the Plan Supplement Filing Date. Any Plan Supplement (and amendments thereto) Filed by the Debtors shall be deemed an integral part of the Plan and shall be incorporated by reference as if fully set forth herein. Substantially contemporaneously with their Filing, the Plan Supplements may be viewed at the Debtors' case website (<https://dm.epiq11.com/GulfCoastHealthCare>) or the Court's website (<http://www.deb.uscourts.gov>). Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, the Plan Supplement shall control. The documents considered in the Plan Supplement are an integral part of the Plan and shall be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

Dated: Wilmington, Delaware  
October 28, 2021

GULF COAST HEALTH CARE, LLC, *et al.*,  
Debtors and Debtors-in-Possession

By: DRAFT  
M. Benjamin Jones  
Chief Restructuring Officer

MCDERMOTT WILL & EMERY LLP

By: DRAFT  
David R. Hurst (I.D. No. 3743)  
1007 North Orange Street, 10th Floor  
Wilmington, DE 19801  
Telephone: (302) 485-3900

-and-

Daniel M. Simon (admitted *pro hac vice*)  
Emily C. Keil (admitted *pro hac vice*)  
444 West Lake Street, Suite 4000  
Chicago, IL 60606  
Telephone: (312) 372-2000

*Proposed Counsel for the Debtors and  
Debtors-in-Possession*

**EXHIBIT B TO DISCLOSURE STATEMENT**

**List of Debtors**

1. Gulf Coast Health Care, LLC
2. Pensacola Administrative Holdings, LLC
3. Gulf Coast Master Tenant Holdings, LLC
4. AL Citronelle, LLC
5. AL Willow Tree, LLC
6. Brevard Oaks Center, LLC
7. FL HUD Baybreeze, LLC
8. FL HUD Bayside, LLC
9. FL HUD Destin, LLC
10. FL HUD Margate, LLC
11. FL HUD Pensacola, LLC
12. FL HUD Rosewood, LLC
13. FL HUD Silvercrest, LLC
14. Florida Facilities, LLC
15. GCH Management Services, LLC
16. Gulf Coast Facilities, LLC
17. Gulf Coast Master Tenant I, LLC
18. Gulf Coast Master Tenant II, LLC
19. Gulf Coast Master Tenant III, LLC
20. HUD Facilities, LLC
21. MF Debary, LLC
22. MF Flagler, LLC
23. MF Halifax, LLC
24. MF Heritage, LLC
25. MF Lake Eustis, LLC
26. MF Longwood, LLC
27. MF Oakwood, LLC
28. MF Winter Park, LLC
29. MS Greenbough, LLC
30. MS HUD Boyington, LLC
31. MS HUD Dixie, LLC
32. MS HUD Ocean Springs, LLC
33. MS HUD Pine View, LLC
34. MS Lakeside, LLC
35. MS Shelby, LLC
36. MS Singing, LLC
37. NF Brynwood, LLC
38. NF Chipola, LLC
39. NF Escambia, LLC
40. NF Glen Cove, LLC
41. NF Manor, LLC
42. NF Nine Mile, LLC
43. NF Panama, LLC
44. NF Pensacola Manor, LLC
45. NF River Chase, LLC
46. NF Suwannee, LLC

47. NF Windsor, LLC
48. Pensacola Administrative Services, LLC
49. SC-GA2018 Cobblestone Rehabilitation and Healthcare Center, LLC
50. SF Berkshire, LLC
51. SF Boynton, LLC
52. SF Brevard, LLC
53. SF Carnegie, LLC
54. SF Fountainhead, LLC
55. SF Glen Oaks, LLC
56. SF Kissimmee, LLC
57. SF Lake Placid ALF, LLC
58. SF Lake Placid, LLC
59. SF Oakbrook, LLC
60. SF Royal Manor, LLC
61. SF Salerno, LLC
62. SF Tampa, LLC

**EXHIBIT C TO DISCLOSURE STATEMENT**

**Debtors' Organizational Chart**



- Holding Companies** ■
- Administrative Services Companies** ■
- Omega Facilities** ■
- BME Facilities** ■
- Divested Facilities** ■
- Non-Debtor Subsidiary** ■

**Operating Portfolio**

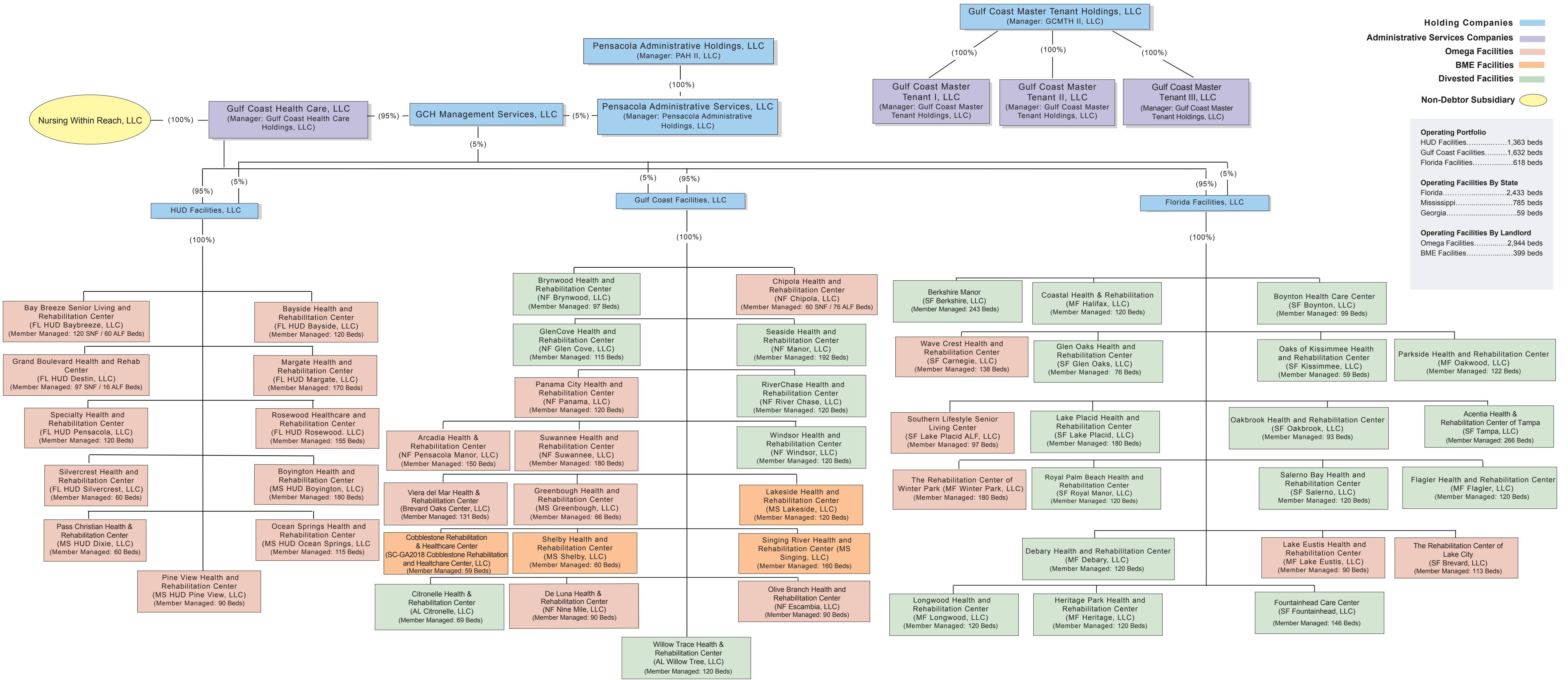
HUD Facilities.....	1,363 beds
Gulf Coast Facilities.....	1,632 beds
Florida Facilities.....	618 beds

**Operating Facilities By State**

Florida.....	2,433 beds
Mississippi.....	785 beds
Georgia.....	59 beds

**Operating Facilities By Landlord**

Omega Facilities.....	2,944 beds
BME Facilities.....	399 beds



**EXHIBIT D TO DISCLOSURE STATEMENT**

**Liquidation Analysis**

*[To be Filed Prior to Hearing on Disclosure Statement]*