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**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In Re:	:	Chapter 11
	:	
AMBULATORY ENDOSCOPIC	:	Case No. 16-13517
SURGICAL CENTER OF BUCKS	:	
COUNTY, LLC, et al.	:	
	:	
Debtor s.	:	Jointly Administered

**AMENDED DISCLOSURE STATEMENT OF DEBTOR REGIONAL  
GASTROINTESTINAL CONSULTANTS, P.C. IN RESPECT OF DEBTOR'S  
AMENDED PLAN OF REORGANIZATION**

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Approved by the Court, this \_\_\_\_ day of \_\_\_\_\_, 2017.

Regional Gastrointestinal Consultants, P.C. ("Debtor" or "Plan Proponent") provides this ~~aAmended disclosure~~ Disclosure statement (the "Disclosure Statement"<sup>1</sup>) with respect to the Debtor's Amended Plan of Reorganization (the "Plan"). A true and correct copy of the Plan, filed on December 23, 2016, ~~2017~~ [Docket No. 301] is incorporated herein by reference in its entirety.

*This is a solicitation by the Plan Proponent only, and the representations made herein are those of the Plan Proponent. The information contained herein has not been subject to a certified audit.*

## **DISCLAIMERS**

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN, AND NOTHING CONTAINED IN IT SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE PLAN OR OTHER LEGAL EFFECTS OF THE REORGANIZATION ON DEBTOR, HOLDERS OF CLAIMS OR INTERESTS, OR THE REORGANIZED DEBTOR. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF. THE STATEMENTS AND REPRESENTATIONS CONTAINED HEREIN ARE MADE SOLELY BY OR AT THE INSTANCE OF THE DEBTOR.

NO REPRESENTATIONS CONCERNING THE PLAN ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. THE DEBTOR DOES NOT WARRANT OR PRESENT THAT THE INFORMATION CONTAINED HEREIN IS ACCURATE.

CERTAIN OF THE INFORMATION PROVIDED, BY ITS NATURE, IS FORWARD-LOOKING, CONTAINS ESTIMATES AND ASSUMPTIONS THAT MAY PROVE TO BE FALSE OR INACCURATE, AND CONTAINS PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL FUTURE EXPERIENCES. SUCH ESTIMATES AND ASSUMPTIONS ARE MADE FOR INFORMATIONAL PURPOSES ONLY. THE FRUITION OF THE DEBTOR'S PLAN OF REORGANIZATION IS SUBJECT TO MANY RISKS THAT ARE NOT SUBJECT TO QUANTIFICATION OR ACCURATE PREDICTION INCLUDING, BUT NOT LIMITED TO, THE CHANGES IN THE MARKET AND OWNERSHIP OF DEBTOR WHETHER FROM THE RETIREMENT OR DEATH OF DR. ANDREW FANELLI.

### **1. INTRODUCTION**

This Disclosure Statement is provided to the United States Trustee, creditors of the Debtor's Estate and other parties-in-interest for the purpose of soliciting acceptances to the Plan, which Plan was filed on December 23, 2016 and which is incorporated herein. The Debtor strongly urges you to read this Disclosure Statement because it contains important information.

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<sup>1</sup> All capitalized and defined terms not otherwise defined herein shall have the meanings ascribed to them in the Plan, filed simultaneously herewith.

The Disclosure Statement summarizes and analyzes the Plan. You are encouraged to read the Plan in full and obtain independent professional advice if you deem it necessary or appropriate.

Unless otherwise indicated herein, defined terms contained in this Disclosure Statement shall have the meaning ascribed in the Plan, and if not in the Plan, then in the Bankruptcy Code (the "Code"). All terms used in this Disclosure Statement that are not defined in the Plan or in the Code, but that are defined in the Federal Rules of Bankruptcy Procedure or the local rules of this Court, shall have the respective meanings assigned to such terms by those rules. All parties-in-interest should carefully review the Plan in conjunction with their review of this Disclosure Statement.

**The Plan Proponent believes that the Plan represents the best possible alternative to creditors holding Allowed Claims, since it provides for the most effective and efficient means of resolving the Case, and because it proposes a distribution to all Allowed General Unsecured Creditors in an amount that is substantially higher than that the amount the Plan Proponent believes would be available if the Case were dismissed or converted to Chapter 7 and the Debtor's Assets liquidated.**

## **2. PURPOSE OF A DISCLOSURE STATEMENT**

The purpose of this Disclosure Statement is to provide adequate information to enable creditors to make an informed decision regarding the Plan.

## **3. CONFIRMATION OF THE PLAN**

### **Requirements for Confirmation**

The requirements for confirmation of a chapter 11 plan of reorganization are set forth in Code §1129. The following is a summary of some pertinent requirements:

### **Acceptance by Impaired Classes**

Each creditor and Interest Holder must: (i) be in a Class of Claim or Interest Holders which vote to accept or reject a plan of reorganization; (ii) be in a Class of Claims or Interest Holders that is deemed to have accepted the plan of reorganization; or (iii) be in a Class of Claims or Interest Holders deemed to reject a plan of reorganization. Only impaired Classes of Claims and Interest Holders may vote to accept or reject a plan of reorganization. Classes of Claims and Interest Holders that are not impaired by a plan of reorganization may not vote to accept or reject the Plan, since such Classes are deemed to accept the treatment afforded such Classes under the Plan. A Class of Claims shall be deemed to have accepted a plan of reorganization if it is accepted by creditors of such Class that hold at least two-thirds of the aggregate dollar amount and more than one-half of the number of the Allowed Claims of creditors of such Class that vote to accept or reject the Plan. A Class of Claims or Interest Holders shall be deemed to have rejected a Plan if the Plan provides that the Holders of Claims or Interests in such Classes are not entitled to receive or retain any property under the Plan on account of such Claims or Interests.

### **Feasibility**

A Bankruptcy Court is required to find that confirmation of a plan of reorganization is not likely to be followed by the need for further financial reorganization or liquidation of the Debtor, unless contemplated by the plan of reorganization. The Bankruptcy Court must find that a Plan addresses a Debtor's needs for reorganization and that it is reasonably likely that the parties required to perform under the Plan will be able to do so. The Bankruptcy Court must find only that there is a reasonable likelihood that the Plan is feasible, not that consummation of the Plan is guaranteed.

### **Cramdown**

In the event all Classes of Claims and Interest Holders do not vote, or are not deemed to accept a Plan, but at least one Class of Claims, impaired by a Plan has voted to accept the Plan, excluding the accepting votes of insiders, the Bankruptcy Court may confirm the Plan over the non-acceptance of Claim and Interest Holders who voted or are deemed not to accept the Plan. In order for a Plan Proponent to invoke the "cramdown" provisions of Code §1129(b), at least one Class of Claims impaired by the plan of reorganization must vote to accept the Plan, excluding the votes of insiders. In addition, in order for the Bankruptcy Court to confirm a Plan over the non-acceptance of a Class of Claims or Interest Holders, the Bankruptcy Court must find that the Plan is fair and equitable and does not unfairly discriminate as to each non-accepting Class.

## **4. PROCEDURE**

To confirm a plan of reorganization, the Court must hold a hearing to determine, among others things, whether a plan of reorganization satisfies the requirements of confirmation. *The Court has scheduled the Confirmation Hearing for \_\_\_\_\_, 2017 at \_\_\_\_\_ .m., prevailing local time. The Confirmation Hearing will be held before the Honorable Jean K. FitzSimon at the United States Bankruptcy Court for the Eastern District of Pennsylvania, 900 Market Street, Courtroom 3, Philadelphia, PA 19107. The Confirmation Hearing may be adjourned from time to time without further notice to interested parties by announcement of such adjournment in Court on the date scheduled herein.*

## **5. OBJECTIONS TO CONFIRMATION**

Any creditor or other party-in-interest may object to the confirmation of the Plan and appear at the Confirmation Hearing to pursue such objection. *Any and all objections to confirmation of the Plan must be filed on or before \_\_\_\_\_, 2017 at 12:00 noon prevailing local time with the Clerk of the Bankruptcy Court, United States Bankruptcy Court for the Eastern District of Pennsylvania, 900 Market Street, Suite 400, Philadelphia, PA 19107, with a copy served on WEIR & PARTNERS LLP, 1339 Chestnut Street, Suite 500, Philadelphia, PA 19107, Attention: Jeffrey S. Cianciulli, Esquire or Lauren N. Schwimmer, Esquire.*

## **6. EFFECT OF CONFIRMATION**

Confirmation of the Plan revests title to all of the Assets in the Reorganized Debtor free and clear of all Liens, claims, interests and encumbrances, except as otherwise provided for in

the Plan or in the Confirmation Order, and will bind all creditors and the Interest Holder to the terms and conditions of the Plan, notwithstanding that a creditor or Interest Holder voted, or is deemed, to reject the Plan, or did not vote to accept or reject the Plan.

**7. VOTING ON THE PLAN**

**Impaired Classes of Claims or Interests**

Pursuant to Code §1126, only those Classes impaired by the Plan may vote to accept or reject the Plan. Classes which are not impaired by the Plan are presumed to vote to accept the Plan and do not have the right to vote to accept or reject the Plan. Classes impaired by the Plan which are not to receive distributions or retain property under the Plan are presumed to reject the Plan and do not have the right to vote on the Plan. Under the Plan, Class 1 (Priority Claims-Non Tax), Class 2 (Univest Secured Claim), Class 3 (EBF Partners Secured Claim) and Class 7 (Interest Holder) are not impaired under the Plan, are deemed to accept the Plan and therefore are not entitled to vote to accept or reject the Plan. Creditors who are not entitled to vote to accept or who are deemed to reject the Plan are being provided with a copy of this Disclosure Statement for **informational purposes only**.

Class 4 (Unsecured Claims), Class 5 (TD Bank Secured Claim) and Class 6 (Olympus America Secured Claim) are impaired under the Plan and are entitled to vote to accept or reject the Plan. In the event of a cram-down pursuant to 11 U.S.C. § 1129, the votes of Holders of Claims who are determined to be insiders of the Debtor shall not be counted for that purpose.

<b>CLAIMS SUMMARY</b>		
<b>Proposed Classes</b>	<b>Creditor Class</b>	<b>Proposed Treatment</b>
<b>Class 1</b>	<b>Priority Claims-Non Tax Priority Claims</b>	<b>Not Impaired</b>
<b>Class 2</b>	<b>Univest Secured Claim</b>	<b>Not Impaired</b>
<b>Class 3</b>	<b>EBF Partners Secured Claim</b>	<b>Not Impaired</b>
<b>Class 4</b>	<b>Unsecured Claims</b>	<b>Impaired</b>
<b>Class 5</b>	<b>TD Bank Secured Claim</b>	<b>Impaired</b>
<b>Class 6</b>	<b>Olympus America Secured Claim</b>	<b>Impaired</b>
<b>Class 7</b>	<b>Interest Holder</b>	<b>Not Impaired</b>

**Procedures for Voting**

Generally, in order for a vote to be counted, a Claim Holder or an Interest Holder must complete, date, sign and properly return a ballot to the Plan Proponent’s counsel.

### **Eligibility**

In order to vote to accept or reject a Plan, a Claim Holder or Interest Holder must hold an Allowed Claim or Interest that is being impaired by the Plan. Except as specifically provided in the Plan, a Claim is Allowed if: (i) a proof of claim was timely filed with the Court and no objection to the Claim is filed within the time fixed either by the Court or this Plan for such objections, or (ii) a proof of claim is deemed filed pursuant to Code §1111(a) and no objection to the Claim is filed within the time fixed either by the Court or this Plan for such objections, and the Schedules have not been amended to list the Claim as disputed, contingent, or unliquidated or has been expunged or removed, or (iii) is, or is deemed to be, an Allowed Claim pursuant to a Final Order or this Plan. Creditors holding Claims in more than one Class may vote in each Class by casting separate ballots in each such Class. If a Holder of a Claim holds more than one Claim in any one Class, all Claims of such Holder in such Class shall be aggregated and deemed to be one Claim for purposes of determining the number and amount of Claims in such Class voting on this Plan. Creditors, absent some affirmative act constituting a vote, will not be included in the balloting for purposes of accepting or rejecting a Plan or for purposes of determining the number of Persons voting on the Plan.

### **Binding Effect**

Whether or not a Claim Holder or an Interest Holder votes to accept or reject the Plan, all Claim Holders and Interest Holders will be bound by the terms of the Plan if the Plan is confirmed by the Court.

## **8. SOURCES OF INFORMATION**

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN OBTAINED FROM THE DEBTOR'S BOOKS AND RECORDS, SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS AND OTHER INFORMATION IN THE POSSESSION OF THE DEBTOR. THE INFORMATION CONTAINED HEREIN HAS NOT BEEN INDEPENDENTLY VERIFIED IN EVERY INSTANCE OR SUBJECTED TO A CERTIFIED AUDIT. REASONABLE EFFORTS HAVE BEEN MADE TO PRESENT ACCURATE INFORMATION AND SUCH INFORMATION IS BELIEVED TO BE CORRECT AS OF THE DATE HEREOF. YOU ARE STRONGLY URGED TO CONSULT WITH YOUR FINANCIAL AND LEGAL ADVISORS FULLY TO UNDERSTAND THE PLAN AND DISCLOSURE STATEMENT.

THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS MADE AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFIED, AND DELIVERY OF THIS DISCLOSURE STATEMENT DOES NOT, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS NOT BEEN ANY CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE HEREOF. THIS DISCLOSURE STATEMENT IS INTENDED, AMONG OTHER THINGS, TO SUMMARIZE THE PLAN AND MUST BE READ IN CONJUNCTION WITH THE PLAN. IF ANY CONFLICTS EXIST BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE PLAN SHALL CONTROL.

## **9. ADDITIONAL INFORMATION**

Additional information or clarifications regarding the Plan or the Disclosure Statement may be obtained by contacting WEIR & PARTNERS LLP, 1339 Chestnut Street, Suite 500, Philadelphia, PA 19107, Attention: Jeffrey S. Cianciulli, Esquire or Lauren N. Schwimmer, Esquire, Telephone: 215-665-8181, Facsimile: 215-665-8464, email: jcianciulli@weirpartners.com or lschwimmer@weirpartners.com.

## **10. BACKGROUND**

### **10.1 Introduction; Description of Debtor and its affiliate**

The Debtor is a Pennsylvania professional corporation that offers medical diagnostic services to patients in the area of gastroenterology. The Debtor is the corporate entity through which Dr. Andrew T. Fanelli (“Dr. Fanelli”) provides consultative and diagnostic services to the patients. The Debtor was formed on May 21, 1993 and has been in constant operation since that time.

The Debtor’s affiliate, Ambulatory Endoscopic Surgical Center, LLC (“AESC”) is the entity through which Dr. Fanelli provides ambulatory surgical services to his patients, such as colonoscopy and endoscopy. AESC has been in continuous operation since August 7, 2003.

The Debtor and AESC are both located in the same office building, though in separate suites, at Makefield Executive Quarters, 301 Oxford Valley Road in Yardley, PA (the “Location”). Debtor is located in Suite 804 and AESC in Suite 805.

Debtor’s sole shareholder and AESC’s sole member is Dr. Fanelli. He is also the sole practitioner. After the Effective Date, Fanelli will remain the Debtor’s sole shareholder and AESC’s sole member.

### **10.2 Events Leading to the Commencement of the Case**

On August 30, 2007, Dr. Fanelli executed a Term Loan Note in the amount of \$2,450,000.00 in favor of Commerce Bank, N.A (the “TD Loan”). As further security for the TD Loan, which was for the purchase of a boat, not for the operation of the Debtor or AESC, the Debtor and AESC each executed a Guaranty and Surety Agreement on August 30, 2007, which both contained a warrant of attorney to confess judgment. The documentation evidencing the Loan was subsequently amended several times. Despite making all required payments, TD Bank, successor to Commerce Bank, N.A., called the Loan, which was due on demand.

On July 22, 2014, TD Bank filed a Complaint in Confession of Judgment in the amount of \$2,188,655.56 plus interest against Dr. Fanelli, his wife, Angela Fanelli, AESC and RGC (the “Judgment”). Thereafter, TD Bank served Writs of Attachment against garnishees, including Independence Blue Cross (“IBC”) and Cigna. Approximately sixty-five (65%) percent of the Debtor’s and AESC’s revenue is from patients insured by IBC and Cigna. As a result of the garnishment, the Debtor did not receive the funds necessary to operate and pay creditors. The loss of funds from IBC greatly impaired the financial capability of the Debtor and AESC to

conduct procedures and caused a reduction of procedures from over 20 procedures a day to only 10-14 per day, which further negatively impacted Debtor's revenue.

Debtor suffered another financial set back when its billing company, Medical Management Associates, unexpectedly ended operations in November of 2015. The need to transition billing caused a period of several months in which no services were billed and no funds received. As a bill to an insurance company is usually not paid for at least six weeks following submission of a claim, this resulted in additional problems for the Debtor and AESC.

The Debtor simply could not afford to continue operating and paying creditors without receiving payments from IBC, so it filed for relief under the bankruptcy code and is now seeking to normalize operations through the Plan.

### **10.3 Events Following the Petition Date**

Debtor filed for relief under Chapter 11 of the Code on May 17, 2016 ("Petition Date") commencing Case No. 16-13516. AESC also filed for bankruptcy on the Petition Date. The Court entered an order on May 19, 2016, granting Debtor's motion for joint administration of Debtor's bankruptcy with AESC's bankruptcy case at Case No. 16-13517. [Doc. No. 24].

The Debtor has continued to manage its affairs as Debtor in possession since the Petition Date.

Debtor, with Court approval, then engaged the law firm of Weir & Partners LLP to represent it in the Case. Debtor with Court approval, also engaged Hugo Brandts, CPA as accountant.

On June 15, 2016, the Debtor filed its Schedules and Statement of Financial Affairs. On June 23, 2016, the Debtor appeared at the scheduled Code §341 meeting presided over by the Office of the United States Trustee. Debtor filed an Amendment to its Schedules on July 7, 2016.

On August 2, 2016, Debtor filed a Motion for the Entry of Order Establishing Bar Dates for Filing Proofs of Claims, which was granted on August 16, 2016 [Doc. No. 186] and it was ordered that all proofs of claims be filed by September 30, 2016.

On July 29, 2016 and August 2, 2016, the Debtor began receiving payments from IBC and, thereafter, has continued to provide services to patients and bill IBC and receive payment from IBC for services rendered to patients after filing a Motion to Compel IBC [Doc. No. 167]. Debtor has not yet received payments from Cigna, but Cigna has promised to begin making payments. If Cigna does not comply with its promise, Debtor will seek an order from the Court compelling payment from Cigna.

On July 29, 2016, Debtor filed a Motion to Determine that TD Bank, N.A.'s Claim is Not Secured by Debtors' Unsubmitted and Post-Petition Insurance Reimbursement Claims [Doc. No. 180]. TD Bank filed an objection to the Motion on August 25, 2016 [Doc. No. 207]. Debtor and



TD Bank resolved this Motion, and other issues through a settlement described more fully in this Disclosure Statement as the “TD Bank Settlement”.<sup>2</sup> The TD Bank Settlement was approved by the Court on December 28, 2016. [Doc. Nos. 295, 297, 302]

Currently, pending before the Court is Philadelphia Medical Billing’s Motion for an Administrative Claim relating to services provided to Debtor and AESC post-Petition Date.

Debtor has also prosecuted and defended several other motions during the case, and now proposes this Disclosure Statement and the Plan for consideration by parties in interest. The Debtor is ready, willing and able to move forward in a manner that it believes will be in the best interest of the estate and its creditors.

### **10.3 Description of Assets**

Debtor’s assets are described in Debtor’s Schedules, as amended, and Debtor’s Monthly Operating Reports. Post-petition, Debtor continued operations and transferred all funds in its bank accounts into its Debtor-In-Possession Accounts. As a result of the filing of the bankruptcy and Debtor filing a Motion to Compel against IBC, Debtor received payments from IBC for services conducted pre-petition that reduced the scheduled amount of accounts receivables. A large portion of the amount collected was put in a Debtor-In-Possession Escrow Account. Debtor increased the amounts of accounts receivable, however, by correcting certain billing errors. As of the end of November 2016, Debtor had accounts receivables in the amount of \$345,900<sup>3</sup>.

## **11. THE PROPOSED PLAN OF REORGANIZATION**

### **11.1 DEBTOR’S NARRATIVE SUMMARY OF PLAN**

The purpose of the Plan is to reorganize the Debtor and allow the Debtor to continue operations while providing payment to holders of claims over a period of thirty-six (36) months or, in the case of TD Bank’s Secured Claim, twenty-four (24) months, such that all creditors will receive more under the Plan than the same creditors would receive if the Debtor ceased operations and liquidated. If successful, Debtor will be able to eliminate its secured obligations to the TD Bank, Univest Bank and EBF Partners, LLC and also provide a distribution on account of its obligations to pre-Petition Date unsecured creditors. To accomplish this reorganization, it will be necessary for the Debtor to continue to operate and provide payment of ~~all~~ net income, after payment of ordinary and necessary operating expenses and payment of Secured Creditors, to the Holders of Allowed Unsecured Claims over a period of thirty-six (36) months, as provided in the budget attached to the Plan as Plan Attachment “A”.

Beginning on the first Business Day of the first month after the Effective Date and on the first Business Day of each successive month for a total of 36 monthly payments, the Debtor shall pay \$3,000.00 to be distributed to Class 4 Claimants on a *Pro Rata* basis to all Class 4 Holders of Allowed Unsecured Claims. The total amount of such payments to Class 4 Claimants whose

<sup>2</sup> The TD Settlement also involves IBC.

<sup>3</sup> This amount is calculated assuming a 55% collection rate on accounts receivables that are 90 days or less old and a 25% collection rate for accounts receivables that are older than 90 days.

claims are Allowed, over the life of the Plan, is \$108,000.00. This distribution equates to an approximate 5% *pro rata* distribution to the Holders of Allowed Class 4 claims based on total claims of \$ 2,104,061.34, when taking into consideration TD Bank's agreement to receive a distribution on account of a unsecured claim in the amount of \$200,000, rather than in the amount of its actual Allowed Class 4 Unsecured Claim, which is substantially higher at \$1,292,008.75. The Debtor believes that if its assets were liquidated on the Effective Date of the Plan, there would not be sufficient assets to pay Allowed Secured Claims in full, let alone any distribution to the Holders of Allowed Unsecured Claims.

Under the Plan, Dr. Fanelli will continue to work allowing for the distributions proposed in the Plan to Holders of Allowed Claims and will retain ownership of the Debtor. Unless otherwise provided for under the Plan, on the Effective Date, the Reorganized Debtor will be revested with all of the Assets of the Debtor.

## 11.2 Treatment of Unclassified Claims

Administrative Claims and Priority Tax Claims shall be treated in accordance with the Plan, but are not required to be classified pursuant to Code §1123(a)(1). The following is a statement of the treatment of Unclassified Claims:

**Allowed Administrative Claims.** By acceptance of the Plan, each Holder of an Allowed Administrative Claim, including Debtor's counsel, Philadelphia Medical Billing ("PMB"), if any part of PMB's claim is approved by the Court, and the Accountant for the Debtor, will have agreed to be paid over time in accordance with the projections contained on Plan Attachment "A" rather than in full on the Effective Date. Debtor is not aware of any other Allowed Administrative Claims. However, any such claims shall be paid in full on the Effective Date, unless the Holder agrees to different treatment. In the event that any Administrative Claim is a Disputed Claim on the Effective Date, such Claim, or any portion thereof, shall be paid in full in Cash within thirty (30) days after such Claim becomes an Allowed Administrative Claim, unless the Holder of such Allowed Administrative Claim agrees to be treated differently. Such disputed amounts (or amounts pending allowance by the Court) shall be reserved by the Reorganized Debtor until the dispute is resolved.

The estimated aggregate amount of all Allowed Administrative Claims (principally professionals' fees) is expected to be approximately \$200,000.00 on the Effective Date. Holders of Allowed Administrative Expense Claims will receive payments over a period of time rather than in full on the Effective Date, in accordance with the Plan Attachment "A". If any Holder of an Allowed Administrative Claim does not agree (or withdraws an agreement) to receive payment over time, then such Holder will have to be paid on the Effective Date as required by the Code.

**Allowed Priority Tax Claims.** The Debtor believes there to be only two Allowed Priority Tax Claims against the Debtor. As of the Bar Date, the Internal Revenue Service alleges that it is the holder of an Allowed Priority Tax Claim against the Debtor in the amount of ~~\$3,651,402,651.40~~ and filed a proof of such claim on ~~July 8, 2016~~ January 17, 2017 (Claim Number 4-~~23~~). Pursuant to an agreement with the Internal Revenue Service, the Debtor shall have the option to pay this Allowed Priority Tax Claim in full on the Effective Date or pay this

Allowed Priority Tax Claim over a period of 12 months beginning on the Effective Date as agreed to by the internal Revenue Service. Each of the monthly payments shall be in the amount of ~~\$304,282~~220.95. If the reorganized debtor substantially defaults on the payments of a tax due to the IRS under the plan, the entire tax debt still owed to the IRS shall become due and payable immediately, and the IRS may collect these unpaid tax liabilities through the administrative collection provisions of the Internal Revenue Code.

As of the Bar Date, the Pennsylvania Department of Revenue alleges that it is the holder of an Allowed Priority Tax Claim against the Debtor in the amount of \$36,652.58 and filed a proof of such claim on June 20, 2016 (Claim number 5-1). Pursuant to an agreement with the Pennsylvania Department of Revenue, the Debtor shall pay this Allowed Priority Tax Claim in full on the Effective Date or pay this Allowed Priority Tax Claim over a period of 12 months beginning on the Effective Date as agreed to by the Pennsylvania Department of Revenue. Each of the monthly payments shall be in the amount of \$3,054.38. To the extent that the claims of the Pennsylvania Department of Revenue are Secured Claims, any lien in favor of the Pennsylvania Department of Revenue shall be valid and unaffected by this Plan and shall be retained until such Secured Claim is paid in full, with statutory interest, if not paid on the Effective Date. If the Reorganized Debtor substantially defaults on the payments of a tax due to the Pennsylvania Department of Revenue under the plan, the entire tax debt still owed to the Pennsylvania Department of Revenue shall become due and payable immediately, and the Pennsylvania Department of Revenue may collect these unpaid tax liabilities through the administrative collection provisions applicable to the Pennsylvania Department of Revenue.

### **11.3 Treatment of Classes**

#### **Class 1 (Priority Claims– Non Tax Priority Claims)**

This class is for Priority Claims other than any Priority Tax Claim. All Allowed Priority Claims shall be paid in full on the Effective Date, unless the Holder agrees to different treatment. The Debtor also reserves the right to object to any Class 1 claim and to the extent that such claim should be treated as unsecured, the Debtor will object thereto for purposes of reclassification. Any portion of a Priority Claim that is determined by the Court or agreed to be an Allowed Unsecured Claim shall be treated in Class 4 hereof.

Holders of Class 1 Claims are not impaired by the Plan and are not entitled to vote on the Plan.

#### **Class 2 (Univest Secured Claim)**

Class 2 consists of the Allowed Secured Claim of Univest Bank in the Petition Date amount of \$151,340.41, which is the amount stated in the proof of claim filed by Univest Bank. For the purposes of this Plan, as a result of certain post-Petition Date payments made by the Debtor to Univest Bank, Univest Bank alleges it hold an Allowed Secured Claim of \$139,724.81 as of December 7, 2016. The Debtor believes the amount due is less. The Allowed Secured Claim of Univest Bank is secured by, among other things, a first priority lien upon substantially all of Debtor's Assets, pursuant to the terms of certain pre-petition loan documents (collectively,

the “Pre-Petition Loan Documents”). Under the Plan, the Pre-Petition Loan Documents are being reaffirmed. Univest Bank shall retain its Lien on substantially all of Debtor’s Assets to secure the Reorganized Debtor’s obligations under the Pre-Petition Date Loan Documents. Unless otherwise amended pursuant to the terms of the Plan, all terms in the Pre-Petition Date Loan Documents shall be enforceable notwithstanding (i) their not being expressly set forth within the Plan, or (ii) any inconsistency between the Plan and the Pre-Petition Date Loan Documents. The payment provisions for Univest Bank’s Allowed Secured Claim under the Plan will include, among other things, the following terms:

- (i) On the Effective Date, Univest Bank will receive a payment in the amount of \$5,000.00.
- (ii) Beginning on the first Business Date of the first month following the Effective Date of the Plan and continuing each month thereafter for a period of 36 months, Univest Bank will receive principal and interest payments in the amount of \$2,000.00 until the Univest Bank Secured Claim is paid in full. The Univest Bank Secured Claim shall accrue interest after the Effective Date at the non-default contract rate detailed in the Pre-Petition Date Loan Documents. Not later than the first day of the month following the month in which the 36th payment is made by the Debtor to Univest Bank under the Plan, Univest Bank will receive payment in full of the balance, if any shall remain, of its Allowed Secured Claim. The monthly payment amounts can be viewed on the three-year projection attached to the Plan as Plan Attachment “A”. Univest Bank may, but is not required to, agree to different treatment such as an additional extension of the maturity date. The Debtor may, but is not required to, make additional payments to Univest Bank as and when it is able to do so, without prepayment penalty.
- (iii) Upon payment of the Allowed Secured Claim of Univest Bank in full, Univest Bank shall cause to be recorded a satisfaction regarding its liens on the Assets of the Reorganized Debtor as required by applicable non-bankruptcy law and shall mark the Pre-Petition Date Loan Documents as satisfied.

The Univest Secured Claim is not impaired by the Plan and is not entitled to vote on the Plan.

**Class 3 (EBF Partners, LLC Secured Claim)**

Class 3 consists of the EBF Partners, LLC (“EBF”) Secured Claim, the estimated aggregate amount of which, as of the Petition Date was \$48,339.57, as reflected on the Debtor’s schedules. EBF filed a proof of its claim (Claim number 16-1) in the amount of \$50,944.57 as of the Petition Date. The EBF Secured Claim, which arises from a loan to the Debtor, is secured to the extent of its interest in the Debtor’s interest in certain receivables of the Debtor, but the Debtor believes the EBF Secured Claim is subordinate to the Univest Secured Claim. EBF asserts that it purchased an ownership interest in certain receivables of the Debtor and, in the alternative is the Holder of a secured claim. After taking into consideration the value of the

Debtor's receivables generated pre-Petition Date, the Debtor believes that, once collected, there are sufficient receivables to pay, in full, the EBF Secured Claim.

For the purposes of this Plan, as a result of certain post-Petition Date payments made by the Debtor to EBF, EBF alleges that it holds an Allowed Secured Claim of \$42,339.57 as of December 6, 2016. The Debtor believes the amount due is slightly less. The loan documents between EBF and the Debtor ("EBF Loan Documents") are being reaffirmed pursuant to the Plan. EBF shall retain its Lien on Debtor's Assets to secure the Reorganized Debtor's obligations to EBF. Unless otherwise amended pursuant to the terms of the Plan, all terms in the EBF Loan Documents shall be enforceable notwithstanding (i) their not being expressly set forth within the Plan, or (ii) any inconsistency between the Plan and the EBF Loan Documents. The payment provisions for EBF's Allowed Secured Claim under the Plan will include, among other things, the following terms:

- (i) On the Effective Date, EBF will receive a payment in the amount of \$5,000.00.
- (ii) Beginning on the first Business Date of the first month following the Effective Date of the Plan and continuing each month thereafter for a period of the shorter of 36 months or until the EBF Secured Claim is paid in full, EBF will receive principal and interest payments in the amount of \$1,000.00 until the EBF Secured Claim is paid in full. The EBF Secured Claim shall accrue interest after the Effective Date at the non-default contract rate detailed in the EBF Loan Documents. Not later than the first day of the month following the month in which the 36th payment is made by the Debtor to EBF under the Plan, EBF will receive payment in full of the balance, if any shall remain, of its Allowed Secured Claim. The monthly payment amounts can be viewed on the three year projection attached to the Plan as Plan Attachment "A". EBF may, but is not required to, agree to different treatment such as an additional extension of the maturity date. The Debtor may, but is not required to, make additional payments to EBF as and when it is able to do so, without prepayment penalty.
- (iii) Upon payment of the Allowed Secured Claim of EBF in full, EBF shall cause to be recorded a satisfaction regarding its liens on the Assets of the Reorganized Debtor as required by applicable non-bankruptcy law and shall mark the EBF Loan Documents as satisfied.

The Holder of Allowed Class 3 Claims is not impaired by the Plan and is not entitled to vote on the Plan.

#### **Class 4 (Unsecured Claims)**

Class 4 consists of the Allowed Unsecured Claims. As of the Bar Date, the total amount of Class 4 filed unscheduled claims (for which a proof of claim was timely filed) and unsecured claims scheduled so that no proof of such claim was required or a required proof of claim was filed, was \$3,824,286.69. This amount includes, where applicable, the amount claimed on a proof of claim if such amount is greater than the amount appearing on the Debtor's schedules. This amount does not reflect the Debtor's belief as to the Allowed amount of Class 4 claims.

Based on resolutions reached regarding informal objections to the claims of certain creditors, the Debtor believes that the Allowed amount of pre-Petition Date Class 4 claims will be no more than \$ 2,104,061.34.

Beginning on the first Business Day of the first month after the Effective Date and on the first Business Day of each successive month for a total of 36 monthly payments, the Debtor shall pay \$3,000.00 to be distributed to Class 4 Claimants on a *Pro Rata* basis to all Class 4 Holders of Allowed Unsecured Claims. The total amount of such payments to Class 4 Claimants whose claims are Allowed, over the life of the Plan, is \$108,000.00. This distribution equates to an approximate 5% *pro rata* distribution to the Holders of Allowed Class 4 claims based on total claims of \$ 2,104,061.34, when taking into consideration TD Bank's agreement to receive a distribution on account of a unsecured claim in the amount of \$200,000, rather than in the amount of its actual Allowed Class 4 Unsecured Claim, which is substantially higher at \$1,292,008.75. Additionally, the claim of Herbert W. Phillips, Sr., Executor of the Estate of Robert Kail and Patricia Kail and of Bridget Gantt, as Administrator of the Estate of Emanuel Gantt, Jr. were not included in the unsecured claims in light of the Court's Orders Granting Limited Relief from the Automatic Stay (Docket Nos.265 and 266) and the claimants agreement to limit any recovery against the Debtor solely to the extent of any available and applicable insurance coverage.

In no event shall any distribution exceed the total amount of the Class 4 Allowed Unsecured Claims. Each Holder of an Allowed Unsecured Claim shall be paid their *pro rata* share of any distribution in Cash. When determining the amount of each such Holder's *pro rata* distribution, the amount of each claim shall be in an amount equal to the principal amount of such claims, without interest, costs or attorneys' fees, of the Holders of Class 4 Allowed Unsecured Claims unless specifically allowed by Court order or, as in the case of TD Bank, as otherwise agreed. The Plan Proponent believes that the treatment of the Class 4 Allowed Unsecured Claims is proper, fair and equitable. The Debtor respectfully seeks and needs the affirmative vote of Class 4 to accept the Plan to confirm the Plan and be permitted to make the payments provided in the Plan to holders of Allowed Class 4 Claims. Without such vote to accept the Plan, the Debtor may not be able to satisfy the provisions of Code section 1129(b), as they relate to Class 4.

Holders of Allowed Class 4 Claims are impaired by the Plan and may vote.

#### **Class 5 (TD Bank Secured Claim)**

Class 5 consists of the TD Bank Secured Claim. The TD Bank Secured Claim arises from the pre-Petition Date judgment entered in favor of TD Bank and against the Debtor, among other defendants, arising from a guaranty issued by Debtor in connection with a loan extended to Debtor's principal Dr. Andrew Fanelli. Based on the proof of claim (Claim # 16 filed in case number 16-13517) filed by TD Bank, the amount of the TD Bank claim as of the Petition Date was \$1,920,225.35 and TD Bank alleged that its entire claim was secured.

#### **TD BANK SETTLEMENT**

As a result of certain pre-Petition Date execution proceedings, TD Bank caused to be issued to IBC and Cigna a writ of execution. Pursuant to a settlement reached by and among the Debtor, Ambulatory Endoscopic Surgical Center, LLC, Independence Blue Cross and TD Bank, for which Court approval is pending (the "TD Bank Settlement"), the Allowed amount of TD Bank's Secured Claim is fixed at a total amount of \$625,000 and shall accrue no interest or other charges or fees. The remainder of the TD Bank Claim is an unsecured claim to be treated in accordance with Section 4.5 of the Plan and in accordance with Class 4 of the Plan and the settlement referenced herein and made a part hereof.

The TD Bank Secured Claim shall be treated as follows:

- (i) On the Effective Date, TD Bank will receive a payment in the amount of \$225,000.00.
- (ii) Beginning on the first Business Date of the first month following the Effective Date of the Plan and continuing each month thereafter for a period of 23 months, TD Bank will receive a payment in the amount of \$15,000.00, half of which will be paid by Debtor pursuant to the terms of this Plan and the TD Bank Settlement and half of which will be paid pursuant to the plan filed by Ambulatory Endoscopic Surgical Center, LLC until the TD Bank Secured Claim is paid in full. The monthly payment amounts can be viewed on the three-year projection attached to the Plan as Plan Attachment "A". TD Bank may, but is not required to, agree to different treatment. The Debtor may, but is not required to, make additional payments to TD Bank as and when it is able to do so, without prepayment penalty.
- (iii) On or before the first Business Date of the twenty-fourth month following the Effective Date of the Plan, the Debtors shall tender a payment sufficient to retire the remaining amount of the TD Bank Secured Claim.
- (iv) Pursuant to the TD Bank Settlement, IBC has agreed to pay to TD Bank \$25,000 to be applied to reduce the amount of the TD Bank Secured Claim.

The terms and conditions of the TD Bank Settlement are incorporated into this Plan in their entirety. Upon payment in full of the TD Bank Secured Claim, TD Bank shall cause to be recorded a satisfaction regarding its liens on the accounts receivables of the Reorganized Debtor and Ambulatory Endoscopic Surgical Center, LLC as required by applicable non-bankruptcy law and the TD Bank Settlement and this Plan. TD Bank has further agreed to receive an Allowed Unsecured Claim in the amount by which Allowed TD Bank Claim exceeds the amount of the Allowed TD Bank Secured Claim, but for distribution purposes shall be entitled to a distribution on account of a claim in the amount of \$200,000.00 and shall be treated otherwise in accordance with Class 4 of the Plan. Other pertinent aspects of the TD Bank Settlement, as approved by the Court, are contained in the Order entered approving the settlement [Doc. No. 302].

The Holder of the TD Bank Secured Claim is impaired and is entitled to vote on the Plan.

**Class 6 (Olympus America Secured Claim)**

Class 6 consists of the Olympus America Secured Claim. The Olympus America Secured Claim arises from the pre-Petition Date agreement between the Debtor and Olympus America in which the Debtor financed the purchase of certain equipment from Olympus America, which equipment remains in the possession, custody and control of the Debtor and which, to the extent operational, continues to be used by the Debtor in the operation of its business. Based on the proof of claim (Claim # 12 filed in case number 16-13517) filed by Olympus America, the amount of the Olympus America Secured Claim as of the Petition Date was \$96,800.00. Olympus America also asserts that it is the holder of an Unsecured Claim, which the Debtor is treating in Class 4 of this Plan, in the amount of \$366,037.39 as of the Petition Date.

Pursuant to the Plan, Olympus America, will retain its unsecured claim and in full satisfaction of its Allowed Secured Claim, will agree to sell, and the Debtor will agree to purchase, all of the equipment currently being leased or financed by Debtor from Olympus in exchange for payment of \$15,20,000 (the “Olympus Equipment Purchase Price”) to be paid on the Effective Date and that the Debtor will provide Olympus America with a full indemnification and release in connection with the equipment it is retaining. ~~Olympus shall be paid the Olympus Equipment Purchase Price as follows: beginning on the first Business Date of the first month following the Effective Date of the Plan and continuing each month thereafter for a period of 5 months, Olympus shall receive a payment of \$2,500. This monthly payment amount can be viewed on the three year projection attached to the Plan as Plan Attachment “A”. The Debtor may, but is not required to, make accelerated payment of the Olympus Equipment Purchase Price as and when it is able to do so.~~

The Holder of the Olympus America Secured Claim is impaired and is entitled to vote on the Plan.

**Class 7 (Interest Holder of the Debtor)**

Class 7 consists of all equity ownership interests of the Interest Holder of the Debtor. The Interest Holder shall retain his interest in the Debtor in consideration of the contributions made by the Interest Holder to the Debtor toward the Debtor’s ability to make distributions in accordance with the Plan. The Interest Holder shall contribute to the Debtor the Cash payment by the Interest Holder to the Debtor in the amount of \$15,000.00 that will be contributed in the form of a voluntary reduction in salary of \$5,000 per month for three months beginning on the first Business Day of the first month following the Effective Date.

The Holder of Class 7 Interests is deemed to accept the Plan.

**11.4 Implementation of the Plan**

**Revesting of Assets.**



On the Effective Date, the Assets will be revested in the Reorganized Debtor.

**Operation of the Reorganized Debtor.**

The Reorganized Debtor shall take control of the operations of the Debtor's business and proceed to implement the Plan and make the Effective Date payments under the Plan. The Reorganized Debtor may continue to operate the business and use its collections of post-Effective Date Accounts Receivable that are deposited in the Reorganized Debtor's operating account.

The Reorganized Debtor may continue to pay Dr. Fanelli and other officers and employees the reasonable compensation for their services and may pay for post-Effective Date professional services rendered to the Reorganized Debtor without the need for prior Court approval to engage professionals or pay such professionals for post-Effective Date services.

**Effectuation of the Plan.**

On the Effective Date, Dr. Fanelli will serve as President and sole director of the Reorganized Debtor, shall continue to operate the Reorganized Debtor's business and shall be responsible to implement the Plan.

Upon the Reorganized Debtor substantially administering and distributing payments under this Plan on the Effective Date, the Plan shall be substantially consummated and the Reorganized Debtor may file appropriate pleadings to close the Case. Until the Case is closed, the Reorganized Debtor shall file the necessary quarterly operating reports and pay United States Trustee Fees.

**Distributions.**

Distributions pursuant to the Plan shall be made by the Reorganized Debtor as provided in the Plan and shall be made, unless otherwise provided in the Plan, on the Effective Date, or as soon as practicable thereafter or as may be otherwise ordered by the Court or agreed to by the applicable party. Distributions and deliveries to each Holder of an Allowed Claim as provided by the Plan shall be made: (i) at the address set forth on the Schedules; or (ii) at the address set forth on the proof of claim or any amendment thereof filed by or on behalf of such Holder, if different from clause (i). If any Holder's distribution is returned as undeliverable, no further distributions to the Holder will be made unless and until the Debtor is notified of the Holder's then current address, at which time all missed distributions will be made to the Holder without interest. All Claims for undeliverable distributions must be made to the Debtor on or before the later of (i) the first anniversary of the Effective Date, or (ii) ninety (90) days after the respective distribution was made. After that date, all unclaimed property will become property of the Reorganized Debtor, and the Claim of any Holder with respect to such property will be discharged and forever barred. Any distribution to the Pennsylvania Department of Revenue shall be made to the attorney handling this case for the Pennsylvania Department of Revenue. Debtor shall contact the attorney handling this case for the Pennsylvania Department of Revenue

[should any Distribution to the Pennsylvania Department of Revenue be returned unclaimed.](#)

Cash payments made pursuant to the Plan will be in United States funds, by check drawn on a domestic bank or by wire transfer from a domestic bank. All cash distributions will be made by the Reorganized Debtor. No cash payment of less than twenty-five dollars (\$25.00) will be made by the Debtor to any creditor unless a request is made in writing to Debtor to make such a payment. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but will be deemed to have been completed as of the required date.

Except as otherwise provided by order of the Court, the Debtor may, but will not be required to, set off against any Claim and the payments to be made pursuant to the Plan in respect of the Claim, any claims of any nature whatsoever the Debtor may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder will constitute a waiver of release by the Debtor of any such claim the Debtor may have against such claimant. Any claimant as to which the Debtor seeks a setoff may challenge any such setoff in the Bankruptcy Court.

## **11.5 Other Important Provisions under the Plan.**

### **Executory Contracts and Unexpired Leases**

The Debtor is a party to several executory contracts and unexpired leases, as more fully described in the Schedules [and stipulations entered into in this case, including those with Philadelphia Medical Billing, Inc., Financial Services Vehicle Trust and the United States Department of Health and Human Services.](#) Any and all such executory contracts and unexpired leases that have not been rejected prior to the Effective Date and not listed as rejected on the Plan Supplement, shall be deemed assumed as of the Effective Date. To the extent that any executory contracts and unexpired leases are deemed rejected, any Allowed Claims arising out of the rejection of any executory contract or unexpired lease shall be treated in accordance with the provisions relating to Class 4 Claims (Unsecured Claims).

A proof of claim evidencing any Rejection Claim shall be filed in accordance with the Order setting the deadline for the filing of claims in this Debtor's Case, which requires that a holder of any claim against the Debtor arising out of the rejection of an executory contract or unexpired lease must file for such claim within thirty (30) days after the date of service of an order authorizing rejection or within thirty (30) days after the rejection becomes effective, if such rejection occurred by reason of the expiration of a time period that may be fixed by the Court. Rejection Claims for rejections pursuant to the Plan shall be filed within 30 days of the Confirmation Date.

Objections to Rejection Claims may be filed with the Court at any time prior to the thirtieth (30th) day following the Effective Date. Such objections shall be served upon the Holder of the Claim to which an objection is made. Any objection not timely filed shall be deemed waived by all parties-in-interest.

**Changes in Rates Subject to Regulatory Commission Approval**

This Debtor is not subject to governmental regulatory commission approval of its rates.

**Retention of Jurisdiction**

The Court will retain jurisdiction as provided in Article XI of the Plan.

**12. MODIFICATION OF THE PLAN**

The Plan Proponent may modify the Plan as follows:

**Modification Before The Confirmation Date.** The Plan Proponent, exclusively, may modify the Plan at any time before the Confirmation Date provided that the Plan, as modified, meets the requirements of Code §§ 1122 and 1123. Once the Plan Proponent files a modification with the Court in accordance with this section 10.1 of the Plan, the Plan, as modified, becomes the Plan. **If any material modification to the Plan is made after the solicitation package is sent out, but before the confirmation hearing, the Debtor will file a motion to determine if resolicitation is necessary.**

**Modification After The Confirmation Date.** The Plan Proponent, exclusively, may modify the Plan at any time after the Confirmation Date and before the Effective Date, provided that the Plan, as modified, meets the requirements of Code §§ 1122 and 1123 and so long as it does not materially or adversely affect the interest of any creditors.. After the Effective Date and before substantial consummation of the Plan, only the Plan Proponent may modify the Plan (and, in accordance with Code §1127(e), whether or not the Plan has been substantially consummated), provided that the Plan, as modified, meets the requirements of Code §§ 1122 and 1123. Any modification addressed in this paragraph may only be made with authorization from the Court after notice and a hearing.

**Revocation or Withdrawal of Plan.** The Plan Proponent reserves the right to revoke or withdraw the Plan before the Confirmation Date and to file a subsequent plan. If the Plan Proponent revokes or withdraws the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any 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 (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claim or Interest; (b) prejudice in any manner the rights of the, any holder or any other Entity or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor s, any holder or any other entity.

**Plan Confirmation Contingency.** The Debtor reserves the right to withdraw this Plan from consideration for confirmation should the Plan filed by AESC not be confirmed.

**Defects, Omission, and Inconsistencies.** Before the Effective Date, the Plan Proponent may, with the approval of the Court, remedy any defect or omission, or reconcile or correct any inconsistencies in the Plan or amend the Plan in such manner as may be necessary to carry out

the purpose and effect of the Plan, so long as it does not materially and adversely affect the interest of Holders of Allowed Claims and Interests. After the Effective Date, the Plan Proponent, with the approval of the Court, may remedy any defect or omission, or reconcile or correct any inconsistencies in the Plan or amend the Plan in such manner as may be necessary to carry out the purpose and effect of the Plan, so long as it does not materially and adversely affect the interest of creditors.

### **13. FINANCIAL PROJECTIONS**

The Debtor's Plan is essentially funded by the collection of pre-Effective Date Accounts Receivable, cash on hand and future cash flows of the Reorganization Debtor.

### **14. LIQUIDATION ANALYSIS**

Prior to confirming the Plan, the Court must determine (with certain exceptions) that the Plan provides to each member of each impaired Class of Claims that does not accept the Plan, a recovery that has a value that is at least equal to the distribution that such member would receive if the Debtor were liquidated pursuant to Chapter 7 of the Code as of the Plan's proposed Effective Date. Such determination is referred to as the "best interests of creditors test." In a liquidation, a Debtor's secured creditors are paid the liquidation value of their collateral. Other creditors and interest holders of a Debtor are paid from the liquidation proceeds of the available assets in order of their priority under the Code with no junior class receiving any payment until all amounts due the senior classes have been fully paid or provided for to the extent possible.

This analysis assumes that TD Bank has a secured claim in Debtor's pre-petition and post-petition accounts receivables by virtue of the pre Petition Date Judgment, which remained unpaid in the amount of \$1,920,225.35, without taking into consideration any amounts that TD Bank may be entitled to for attorney's fees or other amounts due post Petition Date, so the actual amounts due may be higher. Additionally, this analysis assumes that Univest Bank and EBF have secured claims as of the Petition Date in the amount of \$202,284.87, without taking into consideration any amounts that Univest Bank and EBF may be entitled to for attorney's fees or other amounts due post Petition Date, so the actual amounts due may be higher. This should not be construed as an admission or waiver of any issues by the Debtor but rather is done for illustrative and simplicity purposes.

The Chapter 7 liquidation is based on the hypothetical liquidation of the Debtor's assets as of the Effective Date of the Plan. The Debtor believes that the liquidation value of the assets of the Debtor would be less than \$500,000.00 and that in the liquidation scenario, the Debtor would cease operations and be unable to contribute future revenue toward payment to creditors. As a result, in a liquidation scenario, even without considering costs of liquidation such as taxes, sales commissions, Chapter 7 Trustee fees, insurance and administrative expenses of the Chapter 7 Trustee and those of Chapter 11 administrative creditors, there would be no money available for any distribution to Holders of Allowed Unsecured Claims or to the Interest Holder. Contrasting the outcome in the event of a liquidation on the Effective Date, the Holders of Allowed Unsecured Claims would receive a pro rata share of \$108,000.00 under the Plan.

### **15. TAX CONSEQUENCES**

**Each Holder of a Claim or Interest should consult his, her or its own tax advisor to determine what effect, if any, the treatment afforded its respective Claim or Interest by the Plan may have under federal tax law, state and local tax laws and the laws of any applicable foreign jurisdictions.**

No statement in this Disclosure Statement should be construed as legal or tax advice. The Plan Proponent and the Plan Proponent's professionals do not assume any responsibility or liability for the tax consequences the holder of a Claim or Interest may incur as a result of the treatment afforded its Claim or Interest under the Plan.

The principal income tax consequence for a creditor relates to its ability to deduct a portion of its Claim in the event the creditor does not receive full payment of its Allowed Claim. Section 166 of the Internal Revenue Code of 1986, as amended ("IRC") (relating to the deductibility of bad debts) generally provides that:

- a. a totally worthless business bad debt is deductible only in the tax year in which it becomes worthless;
- b. a partially worthless business bad debt is deductible in an amount not in excess of the part charged off on the taxpayer's within the taxable year; and
- c. in the case of a taxpayer other than a corporation, a nonbusiness bad debt that becomes completely worthless during that taxable year is deductible as a short-term capital loss and is subject to the limitations imposed on the deductibility of such losses.

For purposes of IRC §166, a "nonbusiness debt" means a debt other than: (a) one created or acquired in connection with the taxpayer-creditor's trade or business or (b) the loss from the worthlessness of which was incurred during the operation of the taxpayer-creditor's trade or business.

Pursuant to Treas. Reg. section 1.166-2(c), a bankruptcy filing is generally an indication of the worthlessness of at least a part of an unsecured and unperfected debt. In bankruptcy cases, a debt may become worthless before settlement in some instances, and in others, only when a settlement has been reached. In either case, the mere fact that bankruptcy cases are terminated in a later year, thereby confirming the conclusion that the debt is worthless, does not authorize the shifting of the deduction under IRC §166 to such later year. Pursuant to Treas. Reg. section 1.166-1(2)(ii), only the difference between the amount received in distribution of assets of a Debtor and the amount of the claim may be deducted under IRC §166 as a bad debt.

Generally, a taxpayer is entitled to a bad debt deduction with respect to accounts receivable only if the taxpayer has recognized as income the accounts receivable in the year in which the bad debt deduction is claimed or a prior taxable year. Thus, bad debt deductions for worthless or partially worthless accounts receivable are normally available only to accrual method taxpayers. Likewise, worthless debts arising from unpaid wages, salaries, fees, rents and similar items of taxable income are not allowed as a bad debt deduction unless such items have been reported as income in the year for which the deduction as a bad debt is claimed or for a prior taxable year.

Business bad debts deductible under IRC §166 generally may be deducted using either the specific charge-off method or, if certain requirements are met, the nonaccrual-experience method. Under the specific charge-off method, specific business bad debts that become either partially or totally worthless during the tax year may be deducted in the manner permitted by IRC §166.

If a deduction is taken for a bad debt, which is recovered in whole or part in a latter tax year, the taxpayer may have to include in gross income the amount recovered, except, under limited circumstances, the amount of the deduction that did not reduce taxes in the year deducted.

All parties in interest, including creditors should satisfy themselves as to the tax consequences of the approval, confirmation and consummation of the Plan by obtaining independent advice from their own professional advisors.

## 16. DISPUTED CLAIMS

**Claims Objections That Are Pending as of the Effective Date.** The Plan Proponent may file objections to Claims. Claims objections that are pending on the Effective Date may be prosecuted after such date unless the Claim is deemed Allowed under the Plan. The Plan Proponent shall have the discretion to litigate to judgment, settle (without notice and approval by the Court pursuant to Bankruptcy Rule 9019) or withdraw objections to Disputed Claims.

**Post-Confirmation Date Objections.** After the Confirmation Date, only the Plan Proponent may make and file objections to proofs of claim for any claims that are not deemed allowed under this Plan. Any such objections to Claims shall be filed with the Court at any time within ninety (90) days after the Confirmation Date. The Plan Proponent shall have the discretion to litigate to judgment, settle, without notice or approval of the Court, or withdraw its objections.

## 17. DISCHARGE, EXCULPATION AND INJUNCTION

Pursuant to Bankruptcy Code sections 363 and 1123 and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of certain Claims and controversies relating to the contractual, legal and rights that a Holder of a Claim against the Debtor may have with respect to any Allowed Claim or any distribution to be made on account of such Allowed Claim or the Debtor may have against the Holder of the Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of such Claims and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtor s, its Estate and Holders of Claims, and is fair, equitable and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Code section 363 and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtor may compromise and settle Claims against them Actions.

**Injunction.** Except as otherwise provided for in the Plan or in the Confirmation Order, upon the Effective Date, all Persons other than the Debtor-s's Counsel for claims for professional services and reimbursement post-Effective Date, that have held, currently hold or may hold a Claim or other debt or liability, including, but not limited to, any and all Claims for contribution and/or indemnity, that are subject to this Plan or who have held, currently hold or may hold an Interest that is subject to this Plan from taking any of the following actions in respect of such Claim, debt or liability or Interest are permanently enjoined from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against the Debtor, the Reorganized Debtor, the Estate and the Assets; (ii) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order against the Debtor, the Reorganized Debtor, the Estate and the Assets; (iii) creating, perfecting or enforcing in any manner, directly or indirectly, any Lien or encumbrance of any kind against the Debtor, the Reorganized Debtor, the Estate and the Assets; (iv) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Estate; and (v) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions, and the enforcement, of the Plan or the Confirmation Order. Notwithstanding the foregoing, this Plan shall not alter or inhibit the setoff rights, if any, of the Pennsylvania Department of Revenue.

**Exculpation of Liability.** Debtor's attorneys and financial advisors, and the Debtor's member, officers and directors shall not have or incur any liability to any Person for any act taken or omitted to be taken in good faith prior to or after the Effective Date (but after the Petition Date) in connection with the Case or related to the formulation, preparation, dissemination, implementation, confirmation or consummation of the Plan, the Disclosure Statement, or any other contract, instrument, release, agreement or other document created or entered into, or any act taken or omitted to be taken prior to or after the Effective Date in connection with the Plan or the Case, including, without limitation, any pleadings filed with, or actions taken in, the Court in connection with the Case or the formulation, preparation, dissemination, implementation, confirmation or consummation of the Plan and the Disclosure Statement; provided, however, that the foregoing provision of this section 9.1.1 of the Plan shall have no effect on the liability of any Person that would otherwise result from any act or omission to the extent that such act or omission is determined by a Final Order to have constituted willful misconduct. This provision shall not apply to limit any liability of Debtor's member, officers or directors for trust fund liabilities, if any, owed to the Pennsylvania Department of Revenue.

**Effect of Confirmation Order; Discharge.** Except as provided in Section 1141(d) of the Bankruptcy Code and as otherwise provided in the Plan, the provisions of the Plan and the Confirmation Order shall bind the Reorganized Debtor and all holders of claims or interests and will be a judicial determination of discharge of the Debtor from all debts that arose before the Confirmation Date and any liability on a Claim that is determined under Section 502 of the Bankruptcy Code as if such Claim had arisen before the Confirmation Date, whether or not a proof of claim based on any such date or liability is filed under Section 501 of the Bankruptcy Code and whether or not a Claim based on such debt or liability is allowed under Section 502 of the Bankruptcy Code and whether or not such holder is impaired under the Plan and whether or

not such holder has accepted the Plan, and shall terminate all rights, claims and interests of such holder, except as provided in the Plan. [The Allowed Claim of the Pennsylvania Department of Revenue shall not be discharged until paid in full.](#)

**Continuance of the Automatic Stay.** As of the Effective Date, the Automatic Stay under Code §362 as to the Reorganized Debtor and the Assets that revert or vest in the Reorganized Debtor under the Plan shall continue until the Case is closed by Final Order of the Court.

**Other Documents and Actions.** On or before the Effective Date, the Plan Proponent, may file with the Court such agreements and other documents including a Plan Supplement which may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan. In addition, the Court, to the extent necessary, shall direct any party or Person to execute all appropriate documents and instruments to implement or further the provisions of the Plan.

## 18. MISCELLANEOUS PROVISIONS OF THE PLAN

**Title to Assets.** Except otherwise explicitly set forth in the Plan and in accordance with Code §1141, all Assets shall revert or vest in the Reorganized Debtor as of the Effective Date and all Assets so reverted or vested in the Reorganized Debtor shall be free and clear of all Liens, interests, and encumbrances other than the Excess Vehicles.

**No Levy.** To the fullest extent allowed by applicable law, the distributions made pursuant to this Plan shall not be subject to levy, garnishment, attachment or like legal process by any Person by reason of any claimed subordination agreement, right to avoid payments or transfers, guaranties or otherwise (unless specifically provided for under this Plan), so that each Holder of an Allowed Claim will have and receive the full benefit, if any, of distributions provided under this Plan.

**Interest Payments.** All Holders of Allowed Claims hereby waive any and all interest, late charges, penalties, attorneys' fees, court costs, and any other such charges of any kind arising from or related to such Claims not expressly provided for in this Plan.

**Filing of Additional Documents.** On or before the Effective Date, the Plan Proponent, may file with the Court such agreements and other documents including a Plan Supplement which may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan. In addition, the Court, to the extent necessary, shall direct any party or Person to execute all appropriate documents and instruments to implement or further the provisions of the Plan.

**Cure of Default.** No default shall be declared under this Plan unless and until the Reorganized Debtor and its counsel shall have received written notice of default setting forth the specific provision of the Plan and the method of cure sought, and the Reorganized Debtor has failed to cure such default within (30) days of receipt of the written notice.



**Quarterly Fees.** The Reorganized Debtor shall pay Quarterly Fees, based upon all post-confirmation disbursements made pursuant to the Plan for post-Confirmation periods within the time periods set forth in 28 U.S.C. § 1930(a)(6) until the earlier of the closing of this Case by the issuance of final decree by the Court, or upon the entry of an order by this Court dismissing the case, or converting this case to another chapter under the Code. The Reorganized Debtor shall provide to the U.S. Trustee upon the payment of each post-Confirmation payment a report indicating disbursement for the relevant periods.

**Transfer Taxes.** The transfer of any Assets of the Estate, the making or delivery of any instrument of transfer under the Plan, or the recording of any deed, lease, or other instrument executed and delivered in connection with the Plan shall be free and clear of any and all stamp or similar Taxes imposed upon the making or delivery of an instrument of transfer pursuant to Code § 1146(c). [This Debtor does not intend to transfer any real estate pursuant to the Plan as the Debtor does not own any real estate.](#)

**Compliance.** This Plan is not proposed principally for the purpose of avoidance of Taxes or the avoidance of the application of Section 5 of the Securities Act of 1933. The provisions of Code §§1145 and 1146 shall apply hereto to the fullest extent permitted by law.

**Reservation under Code §1129(b).** If all impaired classes do not vote in favor of the Plan, the Plan Proponent shall seek confirmation of the Plan in accordance with Code §1129(b) either under the terms provided herein or upon such terms as may exist if the Plan is modified in accordance with Code §1127(a) and the Plan.

**Reservation of Rights.** If the Plan is not confirmed by Final Order, or if the Plan is confirmed and the Effective Date does not occur, the rights of the Debtor and all parties in interest in the Case are and will be reserved in full. Any concessions, settlements or statements reflected therein are made for the purposes of the Plan only, and if Confirmation or the Effective Date does not occur, no party in interest in the Case nor shall be bound nor deemed prejudiced by any concession, settlement or statement.

**Notices.** All notices shall be deemed given when actually received or refused by the party to whom the same is directed. Each party may designate a change of address or supplemental addressee(s) by notice to the other affected parties given at least five (5) Business Days before such change of address is to become effective or by filing a Plan Supplement prior to or after the Effective Date. Any notice described in or required by the terms of this Plan or the Code and Rules shall be deemed to have been properly given when actually received, or if mailed, five (5) days after the date of mailing as such may have been sent by certified mail, return receipt requested, and if sent to:

- (a) If to the Debtor or Reorganized Debtor, addressed to:  
Regional Gastrointestinal Consultants, P.C.  
301 Oxford Valley Road, Suite 804  
Yardley, Pennsylvania  
Attn: Dr. Andrew T. Fanelli
- (b) With copies to Counsel:

Jeffrey S. Cianciulli, Esquire  
Weir & Partners LLP  
The Widener Building  
1339 Chestnut Street, Suite 500  
Philadelphia, PA 19107

**Recordation of Plan and Confirmation.** A true, certified copy of the Plan and/or the Confirmation Order may be recorded in any public place appropriate for such recordation. Pursuant to Code §1146(a), the making or delivery of an instrument of transfer under the Plan may not be taxed under any law imposing a stamp tax, sale tax or similar tax. In order to effectuate Code §1146(a), each recorder of deeds or similar official for any county, city or governmental unit in which deeds or title for transfer of any property of the Estate is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such deeds or titles for recording and promptly to record such deeds or title. The Confirmation Order shall provide that the filing of any objection thereto shall not stay the effect of the Confirmation Order and shall not exempt or excuse any recorder of deeds or similar official from promptly accepting and recording any such deeds or title.

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

**Severability.** If, prior to the Effective Date, any term, provision or portion of any provision of the Plan is held by the Court to be invalid, illegal, void or unenforceable for any reason, the Court shall have the power to alter, amend and/or interpret such term, provision or portion of the provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose and intent of the term, provision or portion of the provision held to be invalid, illegal, void or unenforceable; and, except as may be determined by the Plan Proponent, and any other Person directly and materially affected, (i) such term, provision or portion of the provision will then be applicable and valid as so altered, amended, or interpreted or (ii) such term shall be deemed deleted from the Plan. The remaining terms, provisions or portions of the provisions of the Plan shall remain in full force and effect and will in no way be affected, impaired or invalidated by such alteration, amendment or interpretation.

**Governing Law.** Except to the extent that the Code is applicable, the rights and obligations arising under the Plan and any documents, instruments or agreements executed in connection with the Plan (except as otherwise indicated in such documents, instruments or agreements) shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania, without giving effect to the principles of conflicts of law thereof.

**Binding Effect.** The provisions of this Plan and the Confirmation Order shall be binding upon and for the benefit of all parties in interest and all other Persons to the fullest extent permitted by Code § 1141. The provisions of this Plan and the Confirmation Order shall also inure to the benefit of the Plan Proponent, and the Holders of Claims or Interests, and their respective successors, assigns, heirs and personal representatives, whether or not the Claims or

Interests are impaired by the Plan and whether or not such Person or the Holder of any Claim or Interest voted to accept or reject the Plan or was deemed to have accepted or rejected the Plan.

**Plan Controls.** In the event that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, the provisions of the Plan shall control.

## **19. RISK FACTORS**

**Holders of Claims or Interests who are entitled to vote on the Plan should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement, before deciding whether to vote to accept or reject the Plan.**

### **CERTAIN BANKRUPTCY CONSIDERATIONS.**

Even if all Impaired voting classes vote to accept the Plan, and with respect to any Impaired Class deemed to have rejected the Plan, the requirements for "cramdown" are met; the Court may exercise substantial discretion and 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 Interest may not be less than the value such holders would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. Although the Debtor believes that the Plan will meet such requirement, there can be no assurance that the Court will reach the same conclusion.

### **RISKS IN COLLECTIONS OF ACCOUNT RECEIVABLES**

The Plan contemplates continuing operations and the collections of account receivables. There is always a risk in collecting such items. However, the Debtor has a long history of collecting receivables from insurers who the Debtor believes will continue to pay receivables on a regular basis. The risk is inherent in business. Because the Debtor will continue in business and servicing its customers, the risk of not collecting may be less than in a liquidation case.

## **18. RECOMMENDATIONS**

The Plan Proponent believes that the Confirmation of the Plan is the most efficient and effective means of resolving the Chapter 11 Case. **The Plan Proponent recommends the acceptance of the Plan.**

Respectfully Submitted,

REGIONAL GASTROINTESTINAL CONSULTANTS,  
P.C.

By: \_\_\_\_\_  
Andrew Fanelli, President