DANIEL J. BUSSEL (State Bar No. 121939),
MICHAEL L. TUCHIN (State Bar No. 150375), and
BRENDT C. BUTLER (State Bar No. 211273), Attorneys with
KLEE, TUCHIN, BOGDANOFF & STERN LLP
2121 Avenue of the Stars, 33rd Floor
Los Angeles, California 90067-5061
Telephone: (310) 407-4000
Facsimile: (310) 407-9090

Reorganization Counsel for
Debtors and Debtors in Possession

Debtors' Mailing Address
27442 Portola Parkway, Suite 200
Foothill Ranch, CA 92610

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CENTRAL DISTRICT OF CALIFORNIA
BY ________ DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

FOUNTAIN VIEW, INC., a Delaware corporation, et al.

Debtors.

Case No.: LA 01-39678 BB through LA 01-39697 BB

And LA 01-45516 BB; LA 01-45520 BB; and LA 01-45525 BB

(Jointly Administered under Case No. LA 01-39678 BB)

Chapter 11

MEMORANDUM IN SUPPORT OF CONFIRMATION OF DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION DATED APRIL 22, 2003; DECLARATION JOHN F. GIBSON; DECLARATION OF WILLIAM C. SCOTT; DECLARATION OF KEITH WILLIAMS

Confirmation Hearing

Date: July 3, 2003
Time: 11:00 a.m.
Place: Courtroom 1475
Roybal Federal Building
255 E. Temple Street
Los Angeles, CA 90012

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I.

OVERVIEW

Fountain View, Inc. and its twenty-two chapter 11 affiliates (the "Debtors"),[1] respectfully submit this Memorandum in support of confirmation of the *Debtors' Joint Plan Of Reorganization Dated April 22, 2003* (the "Plan"), together with the Plan and Disclosure Statement Filed with the Court, the Declarations of Shanda D. Ellingwood, John F. Gibson (the "Gibson Decl."), William C. Scott (the "Scott Decl.") and Keith Williams (the "Williams Decl."), and the arguments and evidence that may be presented at or before the Confirmation Hearing.[2] The key elements of the Plan include:

- $150 million in exit financing including an asset-backed securitization transaction, real estate supported mezzanine financing and two revolving facilities;
- A corporate restructuring plan that includes the creation of 91 new entities to facilitate the securitization and related financing and achieve other business, tax and legal objectives;
- The maintenance of the highly successful ADR Procedures established by the Court to efficiently resolve the remaining pre-confirmation professional liability Claims;
- Repayment in full in cash on the Effective Date of senior secured obligations to the Bank of Montreal, as Agent, and the Lenders;
- The satisfaction of $133 million in public debt through a combination of $50 million in cash, the issuance of the New Public Notes and the Noteholders' Stock Distribution, a treatment affirmatively accepted by holders of more than 98% of the outstanding public debt, with not a single dissenting vote;

[1] Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Plan.
[2] In addition, the Debtors respectfully request that the Court take judicial notice of the record in these cases including all documents previously filed with the Court. FED. R. EVID. 201.

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- The satisfaction of all general unsecured creditor Claims either in cash at a 20% discount or in the full amount of the Claim with interest through a combination of cash and new secured obligations maturing in 30 months or less.
- The satisfaction of the Interests of preferred shareholders through the issuance of New Preferred Stock with substantially the same economic rights as their existing preferred shares;
- The retention of 95% of the common equity in Reorganized Fountain View by the holders of the Existing Class A Common Stock.

The Plan is the result of many months of constructive, good faith negotiations among representatives of all the major constituencies in the Reorganization Cases—including the Debtors, the Creditors' Committee, the Noteholders' Committee, the Debtors' primary secured lenders and shareholders—as well as the Exit Facility lenders that will provide the $150 million in financing that will fund the payments required under the Plan. Following the court-approved solicitation conducted in accordance with the Code, all impaired classes of creditors and shareholders entitled to vote unanimously and overwhelmingly voted to accept the Plan. No class voted to reject the Plan. The treatment of those classes that are deemed to reject the Plan complies with the requirements of Bankruptcy Code section 1129(b) for nonconsensual confirmation and the Plan may therefore be confirmed notwithstanding their deemed rejection.

In short, the resolution of these cases as contemplated by the Plan is a model of how chapter 11 should work. Through the chapter 11 process, the Debtors have been able to attract fresh capital, without material liquidation or disposition of assets, sufficient to provide for repayment of all creditors in full, while maintaining substantially all their operations, retaining their 6,400 employees, and providing high quality service to their 5,400 residents, other customers and to the communities in which they are located. The Reorganized Enterprise that will emerge from chapter 11 under this consensual Plan is stronger, better managed, more efficient and more profitable than the company that entered chapter 11 on

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October 21, 2001.

As discussed in detail below, the Plan complies with all of the Bankruptcy Code requirements for confirmation. The Plan is fair, reasonable, and economically feasible, and all of the Debtors' creditors and Interest holders will receive at least as much under the Plan as they would receive in a chapter 7 liquidation (and, in fact, will generally receive far better treatment under the Plan than in a chapter 7 liquidation). Accordingly, the Debtors respectfully request that the Court issue an order confirming the Plan.

II.

FACTS

The pertinent facts are set forth in the Plan, the Disclosure Statement, the declarations in support of confirmation of the Plan that are filed concurrently herewith and incorporated herein by this reference, the record in these cases and any testimony that may be adduced at the Confirmation Hearing.

III.

OUTCOME OF VOTING

On or about April 24, 2003, the Court entered its *Order Authorizing And Approving: (A) Adequacy Of Debtors' Disclosure Statement; (B) Form, Scope, And Nature Of Solicitation, Balloting, Tabulation, And Notices With Respect Thereto And (C) Related Confirmation Procedures, Deadlines, And Notices* (the "Solicitation Order"). As set forth in the Solicitation Order, the Court found that the Disclosure Statement contained "adequate information" within the meaning of Bankruptcy Code section 1125 and authorized the Debtors to disseminate the Plan to parties in interest and to solicit acceptances with respect to the Plan pursuant to certain specified procedures. The Debtors thereafter caused the Plan and related solicitation materials to be served upon the parties in accordance with the Solicitation Order.[3] The deadline fixed for receipt of Ballots accepting or rejecting the Plan

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[3] See *Declaration Of Shanda D. Ellingwood Re: Distribution Of Solicitation And Election Materials With Respect To Debtors' Joint Plan Of Reorganization Dated April 22, 2003*; (Docket No. 1552); *Declaration of Boris R. Serrano Re: Distribution Of Solicitation And Election Materials With Respect To Debtors' Joint Plan Of Reorganization Dated April 22, 2003*; (Docket No. 1553); *Declaration of Paul R. Schulman Re: Distribution Of Solicitation And Election Materials With*

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was June 6, 2003, at 5:00 p.m. Pacific Time.

Classes 3, 4, 5, 7, 8 and 11 are unimpaired and are therefore deemed to accept the Plan. See 11 U.S.C. § 1126(f). As indicated in the Ballot Tabulation and summarized in the following table, Classes 1, 2, 6, 9, 10, 12, 13, 14, 15, 17 and 18 were all entitled to vote and have accepted the Plan.[4] Two non-voting classes, Class 16 (Existing Class B Common Stock) and Class 19 (Existing Management Incentives and Other Existing Interests) are deemed to reject the Plan because the holders of those Interests will neither receive nor retain property on account of those Interests. See 11 U.S.C. § 1126(g). As discussed in Section IV.B below, the treatment of these two classes under the Plan complies with the requirements of Bankruptcy Code section 1129(b). The following table summarizes the outcome of the voting:

Class	**Voting Status/Results**
Class 1 **Secured Claims of Bank Midwest (The Woodlands, TX)**	*Accepted.* Accepted by: 100% in amount ($5,003,331.00), and 100% in number (1)
Class 2 **Secured Claims of Woodlands Place Nursing Center, Inc. (The Woodlands, TX)**	*Accepted.* Accepted by: 100% in amount ($1,887,866.62), and 100% in number (1)

Respect To Debtors' Joint Plan Of Reorganization Dated April 22, 2003; (Docket No. 1558); *Declaration of Nancy Morse Re: Confirmation Of Posting "Notice Of (I) Approval Of (1) Adequacy Of Disclosure Statement, And (2) Related Procedures And Deadlines; And (II) Hearing On Confirmation Of Debtors' Joint Plan Of Reorganization Dated April 22, 2003" In Each Facility* (Docket No. 1614).

[4] Woodlands Place Nursing Center L.P., the holder of the Class 2 Claim submitted a timely Ballot rejecting the April 22, 2003 version of the Plan disseminated with the Disclosure Statement. The Plan's treatment of Class 2 was subsequently modified pursuant to the Woodlands Place Stipulation which also provides that Class 2 is deemed to accept the Plan as so modified. No eligible Ballots were cast in Classes 12, 13 and 17. As discussed below at Section IV.A.8, under these circumstances these classes should be deemed to impliedly accept the Plan. See In re Szostek, 886 F.2d 1405, 1413 (3d Cir.1989); In re Ruti-Sweetwater, Inc., 836 F.2d 1263, 1268 (10th Cir. 1988); In re Campbell, 89 B.R. 187, 188 (Bankr. N.D. Fla. 1988). But see In re M. Long Arabians, 103 B.R. 211, 216 (Bankr. 9th Cir.1989) (distinguishing Ruti-Sweetwater and progeny); cf. Great Lakes Higher Educ. Corp. v. Pardee (In re Pardee), 218 B.R. 916, 926 (Bankr. 9th Cir.1998) (applying doctrine of implied acceptance in chapter 13 context). In any event, the treatment afforded these classes, if they were to be viewed as nonconsenting classes, conforms with section 1129(b) of the Code. See Section IV.B.2, infra.

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Class	Voting Status/Results
Class 3 **Secured Tax Claims**	***Unimpaired – Deemed To Accept.***
Class 4 **Secured Claims of Union Bank, N.A.**	***Unimpaired – Deemed To Accept.***
Class 5 **Secured Claims of Leonard and Catherine May**	***Unimpaired – Deemed To Accept.***
Class 6 **Secured Claims of Bergen**	***Accepted.*** Accepted by: 100% in amount ($1,710,562.10), and 100% in number (1)
Class 7 **Other Secured Claims**	***Unimpaired – Deemed To Accept.***
Class 8 **Secured Claims of the Agent and the Lenders**	***Unimpaired – Deemed To Accept.***
Class 9 **11¼% Note Claims**	***Accepted.*** Accepted by: 100% in amount ($117,505,000), and 100% in number (39)
Class 10 **General Unsecured Claims**	***Accepted.*** Accepted by: 100% in amount ($9,988,324.99), and 100% in number (226)
Class 11 **Convenience Claims**	***Unimpaired – Deemed To Accept.***
Class 12 **Insured Professional Liability Claims**	***Accepted.*** No eligible Ballots cast.
Class 13 **Uninsured Punitive Damage Claims and Other Subordinated Liabilities**	***Accepted.*** No eligible Ballots cast.
Class 14 **Existing Preferred Stock**	***Accepted.*** Accepted by: 100% in amount (2,658 shares), and 100% in number (1)
Class 15 **Existing Class A Common Stock**	***Accepted.*** Accepted by: 100% in amount (713,498 shares), and 100% in number (12)
Class 16 **Existing Class B Common Stock**	***Deemed to Reject.***

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Class	Voting Status/Results
Class 17 **Existing Class C Common Stock**	***Accepted.*** No eligible Ballots cast.
Class 18 **Existing Warrants**	***Accepted.*** Accepted by: 100% in amount (16,120 warrants), and 100% in number (2)
Class 19 **Existing Management Incentives and Other Existing Interests**	***Deemed to Reject.***

IV.

ARGUMENT

A. The Plan Complies With All Requirements of Code Section 1129(a).

The Bankruptcy Code requires the Court to confirm the Plan if it satisfies the elements of section 1129(a)'s thirteen subsections. See 11 U.S.C. § 1129(a). The Plan in fact satisfies all of the applicable statutory requirements by a preponderance of the evidence[5] and therefore must be confirmed.

1. The Plan Complies With Applicable Provisions of the Code.

Bankruptcy Code section 1129(a)(1) requires that a plan "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(1). The legislative history of this section indicates that the provision embodies and incorporates the requirements of sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and interests and the mandatory contents of a plan. See H.R. Rep. No. 595, 95th Cong., 1st Sess. 412 (1977) ("Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as sections 1122 and 1123, governing classification and contents of [the] plan."). See also In re Resorts Int'l, Inc., 145 B.R. 412, 446-47 (Bankr. D.N.J. 1990). Because the Plan complies with both sections 1122 and 1123, and with all other applicable provisions of the Bankruptcy Code, the requirements of section

[5] See In re Monarch Beach Venture, Ltd., 166 B.R. 428, 432 (C.D. Cal. 1993) (proper burden of proof standard is preponderance of the evidence).

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1129(a)(1) are satisfied here.

a. The Plan Satisfies the Requirements of Bankruptcy Code Section 1122.

Bankruptcy Code section 1122(a) provides that "a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to other claims or interests in such class." 11 U.S.C. § 1122(a). By its plain language, Bankruptcy Code section 1122 prohibits only the classification of dissimilar claims into the same class and does not prohibit the separate classification of similar claims into separate classes. See 7 COLLIER ON BANKRUPTCY ¶ 1122.03[1][a] at 1122-6 (15th ed. rev. 2002). See also In re Barakat, 99 F.3d 1520, 1524 (9th Cir. 1996) ("while dissimilar claims may not be put in the same class, the Bankruptcy Code does not expressly state whether the plan may separately classify similar claims, or whether it must classify similar claims together"); In re Baldwin Park Towne Center, Ltd., 171 B.R. 374, 376 (Bankr. C.D. Cal. 1994) ("Section 1122 does not require that similar claims be classified together."). As such, the Bankruptcy Code provides courts with broad discretion to determine the propriety of classification schemes in light of the facts of each case. See Steelcase Inc. v. Johnston (In re Johnston), 21 F.3d 323, 327 (9th Cir. 1994) ("bankruptcy judges must have discretionary power in classifying claims under § 1122(a)"). Additionally, Bankruptcy Code section 1122(b) allows the separate classification of certain claims for purposes of administrative convenience. See 11 U.S.C. § 1122(b).

In compliance with the requirements of the Bankruptcy Code, Administrative Claims and Priority Claims are not classified and are treated separately under the Plan. The Plan classifies all other Claims and Interests in 19 Classes. Classes 1-8 are all secured classes properly classified separately because the holders in each class hold liens against distinct pools of collateral (or to the extent there are multiple liens against the same collateral, liens of distinct priority). See In re Commercial W. Fin. Corp., 761 F.2d 1329, 1338 (9th Cir. 1985); 7 COLLIER ON BANKRUPTCY ¶ 1122.03[4] at 1122-13 through -16.

The Plan also divides Unsecured Claims into five separate classes of distinct

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character. Equity Interests are divided into six separate classes each class consisting entirely of one of the six types of prepetition issued and outstanding equity Interests of Fountain View, Inc. See 7 COLLIER ON BANKRUPTCY ¶ 1122.03[3] at 1122-7 (noting that "a plan of reorganization must separately classify nonpriority prepetition unsecured claims, priority claims, secured claims, . . . and equity interests"). Each of the Claims or Interests in each particular Class under the Plan is substantially similar to the other Claims or Interests in such Class; thus, satisfying the requirement under Bankruptcy Code section 1122(a) that each claim or interest in a class be substantially similar to other claims or interests in that class.

(1) The Unsecured Classes Are Properly Divided Into Distinct Classes.

Although not required by the Bankruptcy Code, each Unsecured Claim that is classified in a particular Class is also substantially dissimilar from those Claims or Interests that are classified in other Classes under the Plan, or its separate classification is otherwise permissible under the Bankruptcy Code. The construction of Class 11, the Convenience Class, enabled the Debtors to minimize the significant administrative cost of soliciting thousands of small unsecured creditors and the ongoing cost to the Reorganized Enterprise and the Claims Agent of monitoring their even smaller Class 10 Deferred Obligations. Realizing these savings through separate classification of small Claims is expressly authorized by the Code. See 11 U.S.C. § 1122(b). See Oxford Life Ins. Co. v. Tucson Self-Storage, Inc., 166 B.R. 892, 898 (Bankr. 9th Cir. 1994) ("Generally, an administrative convenience class is one where the claims are so small in amount and large in number as to make dealing with them burdensome.").

The other four unsecured Classes--Class 9 (11¼% Note Claims), Class 10 (General Unsecured Claims), Class 12 (Insured Professional Liability Claims) and Class 13 (Uninsured Punitive Damage Claims and Other Subordinated Claims)--have different statutory or contractual rights to payment or are of a different legal character. See 7 COLLIER ON BANKRUPTCY at 1122.03[4][a] at 1122-10-11 (noting that general unsecured claims "may be divided into separate classes if separate classification is reasonable"). Courts

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have broad latitude in approving the classification of claims. See In re Johnston, 21 F.3d at 327 (recognizing that judges have discretionary power in classifying claims and that Congress intended to give courts broad latitude in doing so).

The Ninth Circuit has found that separate classification under a plan does not violate section 1122(a) as long as the "legal character of its claim is not 'substantially similar to the other claims or interests of such class[es].'" In re Johnston, 21 F.3d at 328 (quoting 11 U.S.C. § 1122(a)). Accord Granada Wines, Inc. v. New England Teamsters & Trucking Indus. Pension Fund, 748 F.2d 42, 46 (1st Cir. 1984) ("Separate classifications for unsecured creditors are only justified where the legal character of their claim is such to accord them a status different from the other unsecured creditors") (citation omitted). Furthermore, courts in the Ninth Circuit, like most courts throughout the country, routinely permit separate classification of otherwise similarly situated claims based on legitimate economic or business reasons advanced by the debtor. See In re Barakat, 99 F.3d at 1526 (plan proponent may classify substantially similar claims separately only when there is "legitimate business or economic justification" for doing so); In re Corcoran Hosp. Dist., 233 B.R. 449, 455 (Bankr. E.D. Cal. 1999) ("[T]here must be a business or economic justification for separate classification of unsecured claims."); In re Baldwin Park Towne Center, Ltd., 171 B.R. at 376 (same). See also In re Sentry Operating Co. of Texas, 264 B.R. 850, 860 (Bankr. S.D. Tex. 2001) ("Most of the commentators agree that §1122 is permissive of any classification scheme that is not proscribed, and that substantially similar claims may be separately classified.")

These cases hold not only that separate classification is permissible, but that disparate treatment of unsecured creditors can also be valid. For example, in In re Kliegl Bros. Univ. Elec. Stage Lighting Co., Inc., 149 B.R. 306 (Bankr. E.D.N.Y. 1992), the separately classified group of union trade creditors was to be paid 75% on claims, while all other general unsecured creditors were to be paid only 15% on their claims. Id. at 307. Similarly, the court in In re Atlanta West VI, 91 B.R. 620 (Bankr. N.D. Ga. 1988) approved the debtor's separate classification and disparate treatment of unsecured creditors; the one

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creditor who agreed to extend a new loan to the debtor would be paid its claim in full, while other unsecured creditors would receive payment of only 30% on their claims. Id. at 624.[6]

Moreover, in the somewhat unusual circumstances of these Reorganization Cases, which involve solvent chapter 11 Debtors, all Unsecured Claims, though provided for in a somewhat different manner based on their distinct characters and classification, will receive payment in full under the Plan. Courts have generally recognized that, the classification itself is not nearly as significant as the consequences of the classification. See Bruce Energy Centre Ltd. V. Orfa Corp. of America (In re Orfa Corp.), 129 B.R. 404, 416 (Bankr. E.D. Pa. 1991) ("[T]he classification itself was not nearly so significant as the consequences of disparate treatment of like or similar claims."). The consequence of separate classification in these cases is to fine-tune the treatment of distinct types of Claims and Interests in accordance with their distinct legal character and practical and economic realities. Fundamentally, however, all creditors and interest holders in all Classes will receive reorganization value equal to the allowed amount of their Claims. The differences in treatment have been consented to by the various classes, and, in any event, would not amount to "unfair discrimination" because they preserve an appropriate balance among holders of Claims with distinct character consistent with their varying legal rights.

i) 11¼% Note Claims Are Properly Classified and Treated Separately From General Unsecured Claims.

Class 9 consists of the $133 million Claim of the holders of long-term public subordinated notes governed by the Indenture and held by approximately 40-50 financial

[6] Separate classification has sometimes been attacked on the basis of the "no gerrymandering" principle, particularly in the context of single asset real estate cases. See In re Greystone III Joint Venture, 995 F.2d 1274, 1278-79 (5th Cir. 1991); In re Barakat, 99 F.3d at 1526. Courts have sometimes refused to permit separate classification that is intended to evade the one-impaired noninsider consenting class requirement of section 1129(a)(10) and is not otherwise supported by a sufficient legal or business justification. See, e.g., In re Sentry Operating Co. of Texas, 264 B.R. at 860-861. In this case, there are no less than five noninsider impaired consenting classes under any view of the facts, and the classification proposed in the Plan can not plausibly be characterized as a gerrymander of any kind.

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institutions and investors. Class 10 generally consists of approximately $17.2 million in general Unsecured Claims held by thousands of trade creditors and individuals. Principally, the Class 10 Claims arise out of the provision of goods and services to the Debtors, or are in the nature of compensatory damage Claims arising out of breach of contract or on account of professional liability suits. Unlike the Class 9 Claims, they are not governed by or issued pursuant to a single instrument such as the Indenture.

The legal and contractual character of Claims in Class 9 are distinguishable from the other Unsecured Claims in Class 10 not only in their massive relative size and high concentration, but because Class 9 Claims, while *pari passu* with Class 10 Claims, are contractually subordinated to Claims in Class 8. Bankruptcy Code section 510(a) requires the court to give effect to that subordination, a fact that would become particularly relevant in the event of a liquidation of the Debtors. 7 COLLIER ON BANKRUPTCY ¶ 1122.03[4][6][ii] at 1122-12 ("another frequent justification for separate classification of nonpriority prepetition unsecured claims is the existence of subordinated debt"). Moreover, on a practical basis, given the massive size of the Class 9 Claims it would be financially impossible to satisfy the Class 9 Claims on the terms being afforded Class 10, nor would it be practical to distribute the securities bargained for by Noteholders' Committee on behalf of Class 9, to Class 10.[7] While both Classes receive reorganization value equal to the allowed amount of their respective Claims under the Plan, the form of the distribution to Class 9 includes long-term notes and common stock in the privately held Reorganized Enterprise, while general unsecured creditors receive short-term obligations and cash. Confirming a consensual plan in this case required the Debtors to meet the distinct needs and desires of these distinct constituencies, in light of practical and financial realities, through appropriate distinction in the form of the consideration afforded each in satisfaction of their respective Claims. <u>See</u> <u>In re U.S. Truck Co., Inc.</u>, 800 F.2d 581, 587 (6th Cir. 1986) (held appropriate

[7] Fountain View, Inc. will remain a privately held firm and its shareholders will be subject to a shareholders' agreement establishing corporate governance mechanisms and restricting the alienability of the shares. A general distribution of very small amounts of stock to Class 10 holders would not be appropriate under these circumstances for business and securities law reasons.

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to separately classify union's unsecured claims from other unsecured claims because union's interests differed from those of other unsecured creditors even though right of payment was on the same priority level). These realities constitute a sound business reason for the separate classification.

ii) Insured Professional Liability Claims.

Class 12 consists of fully insured professional liability claims. Most of the Debtors remaining prepetition professional liability Claims are subject to insurance policies with ample unexhausted limits and no remaining deductible or self-insured retention. Gibson Decl. at 5-6. Accordingly, these Claims, although "unsecured" have access to a unique source of payment not available to any other creditors. See In re Apex Oil Co., 118 B.R. 683, 696 (Bankr. E.D. Mo. 1990) (approved confirmation of plan with separate classification of claims covered by insurance or indemnity policies); In re Genesis Health Ventures, Inc., 266 B.R. 591, 601-02 (Bankr. D. Del. 2001) (separate classification of punitive damage claims that will only receive distribution to the extent of available insurance coverage permissible, where debtors' assets were all encumbered and distribution on unsecured claims only available because senior secured creditors were willing to give up portion of value that they would otherwise receive in favor of any nonpunitive, unsecured claims). See also In re EBP, Inc., 172 B.R. 241, 244 (Bankr. N.D. Ohio 1994) (separate classification justified for trade creditors and for judgment creditor, which as a non-recurring judicial event provided no continuing benefit to the debtor's estate); In re Dow Corning Corp., 244 B.R. 634, 651 (Bankr. E.D. Mich. 1999) (commercial claims in one class of proposed plan were of a different legal nature and character than the personal injury claims in another class and, thus, were properly classified separately).

The Plan proposes to promptly liquidate and allow these Claims consistent with the ADR Procedures (or other applicable legal procedures) at which point the Claims will be paid out of the available insurance in cash in full at the allowed amount. Prejudgment interest does not generally accrue on unliquidated professional liability Claims under generally applicable law and so provision of interest is not appropriate, nor would it be

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appropriate to impose the generally less favorable terms of Class 10 treatment on the holders of fully insured Claims.[8] Given the special legal right of these holders to payment in accordance with applicable law from the insurers, separate classification in order to afford these holders treatment preserving those rights and providing a mechanism for prompt liquidation of the Class 12 Claims is appropriate for legal and business reasons.[9]

iii) Uninsured Punitive Damage Claims and Other Subordinated Liabilities.

Class 13 consists of unsecured claims of a noncompensatory nature that are subject to subordination to the Class 9 and Class 10 Claims. Under the Plan, the Class 13 holders, if and when their Claims are allowed, will receive a long-term subordinated note with interest accruing from the date of allowance (in recognition of the applicable law which generally prohibits the allowance of prejudgment interest in connection with unliquidated tort claims and other punitive liabilities) at the federal judgment rate.

Separate classification of punitive damages claims, together with other subordinated claims, is proper given the differing legal rights of the holders of such Claims under Bankruptcy Code section 726(a)(4), which provides for the subordination of "any allowed claim ... for any fine penalty or forfeiture, or for multiple, exemplary, or punitive damages, arising before ... the order for relief ... to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim." 11 U.S.C. § 726(a)(4). See also 7 COLLIER ON BANKRUPTCY ¶ 1122.03[4][d][ii] at 1122-18 ("The same reasoning should apply to nonpecuniary loss penalty claims which could be classified separately due to application of the best interest of creditors test under Section 1129(a)(7) which measures distributions under section 726(a) of chapter 7.").

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[8] The uninsured portion of any Class 12 Allowed Claim will to that extent be reclassified as a Class 10 Claim. See Plan, Section II.D.4.

[9] Even in the absence of insurance, the Ninth Circuit authorities permit separate classification of unliquidated tort and professional liability claims from general unsecured claims on the ground that such claims are subject to continuing litigation and dispute. See In re Johnston, 21 F.3d at 327-28 (creditor embroiled in litigation with the debtor appropriately separately classified).

Although prepetition punitive damage claims are asserted against the Debtors, all such Claims are Disputed Claims and the Debtors believe that it is unlikely that they will suffer an adverse judgment that includes punitive damages or that any such judgment, if it were rendered, could be sustained on appeal. The Debtors have successfully and routinely resolved professional liability Claims without being assessed or paying punitive awards in the past. Scott Decl. at 9. Nevertheless, punitive damages are available, in theory, in numerous pending prepetition lawsuits and the possibility of such liability being established can not be excluded and its amount, if any, is impossible to predict. In the unlikely event of a massive unexpected punitive award, the recoveries of other unsecured creditors, who would have priority over the punitive award in liquidation, would be significantly and adversely affected unless the recovery of any allowed Class 13 Claim were in turn subordinated in right of payment as the Plan provides.

Bankruptcy courts "have the equitable power to limit or disallow punitive damages claims where the claims would frustrate the debtor's reorganization. " See, e.g., In re FF Holdings Corp. & Farm Fresh Inc., No. 98-37/38-JFF, 1998 U.S. Dist. LEXIS 10741 at * 22 (D. Del. Feb. 17, 1998). For example, in cases such as In re A.H. Robins Co., Inc., 89 B.R. 555, 558 (E.D.Va. 1988), where the debtor's punitive damages exposure was "staggering" and "unpredictable," such claims were disallowed because the impossibility of estimating the liability would have destroyed the debtor's ability to reorganize. See also In re Johns-Manville Corp., 68 B.R. 618 (Bankr. S.D.N.Y. 1986), aff'd in part, rev'd in part, 78 B.R. 407 (S.D.N.Y. 1987), aff'd, Kane v. Johns-Manville Corp., 843 F.2d 636 (2d Cir. 1988). Similarly, the court, in In re Genesis Health Ventures, Inc., 266 B.R. at 601, expressly approved the separate classification of punitive damage claims in a situation where the secured lenders arranged to share the distribution they would otherwise be entitled to with unsecured claimants but not punitive damages claimants.

The proposed treatment of Class 13 is meant to preserve the relative priority of punitive claims to other unsecured claims by providing for their payment only after the holders in other Classes have received full cash payment in satisfaction of their restructured

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Claims. This treatment of Class 13, unlike the common case involving an insolvent estate, is far from tantamount to disallowance of such Claims. Rather, it preserves the appropriate relationship among general Unsecured Claims, punitive claims that are not intended to compensate for pecuniary loss, and shareholders. Preserving that relationship through the issuance of long-term subordinated notes in satisfaction of such obligations (should they arise) is neither unfair discrimination, nor is it inconsistent with the fair and equitable rule. See infra at Section IV.B; In re Genesis Health Ventures, Inc., 266 B.R. at 600-01. Under these circumstances, separate classification of punitive damage and other subordinated Claims is appropriate.

(2) The Six Equity Interest Classes.

Finally, the Plan properly separately classifies all Interests into Classes 14, 15, 16, 17, 18 and 19. These six equity Interest Classes respectively consist of the Interests represented by one of the six types of equity securities (each such security having distinctive legal rights) issued by the Debtors and outstanding as of the Petition Date. See In re Drexel Burnham Lambert Group Inc., 138 B.R. 714, 715 (S.D.N.Y. 1992) (separate classification appropriate where securities possessed different legal rights), aff'd 140 B.R. 347 (S.D.N.Y. 1992).

b. The Plan Complies With the Required Provisions of Bankruptcy Code Section 1123(a).

Bankruptcy Code section 1123(a) sets forth seven mandatory requirements for the contents of a chapter 11 plan of reorganization. See 11 U.S.C. § 1123(a). As indicated below, the Plan fully complies with these requirements.

(1) Section 1123(a)(1): The Plan Designates Classes of Claims and Interests.

Bankruptcy Code section 1123(a) requires that a chapter 11 plan designate classes of claims and interests other than claims of a kind specified in section 507(a)(1) (administrative expense claims), section 507(a)(2) (claims arising during the "gap" period in an involuntary bankruptcy case), and in section 507(a)(8) (priority tax claims). See 11

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U.S.C. § 1123(a)(1). Section II.A of the Plan complies with section 1123(a) by expressly classifying all Claims and Interests, other than Administrative Claims and Priority Tax Claims.

(2) Section 1123(a)(2): The Plan Identifies Unimpaired Classes.

Section 1123(a)(2) requires that a plan "specify any class of claims or interests that is not impaired under the plan." 11 U.S.C. § 1123(a)(2). Section II.A of the Plan complies with section 1123(a)(2) by specifying that Classes 3, 4, 5, 7, 8 and 11 are not impaired.

(3) Section 1123(a)(3): The Plan Specifies the Treatment of Impaired Classes.

Bankruptcy Code section 1123(a)(3) requires that a plan "specify the treatment of any class of claims or interests that is impaired under the plan." 11 U.S.C. § 1123(a)(3). Section II.A of the Plan satisfies section 1123(a)(2) by specifying that Classes 1, 2, 6, 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19 are impaired, and Sections II.C, II.D, and II.E satisfy this requirement by specifying the treatment of the Claims and Interests in each of those Classes.

(4) Section 1123(a)(4): The Plan Provides for the Same Treatment of Claims and Interests Within Each Class Except to the Extent that the Holder of the Claim or Interest Has Agreed to a Less Favorable Treatment.

Bankruptcy Code section 1123(a)(4) requires that a plan provide the same treatment for each claim or interest in a particular class unless the holder of the particular claim or interest agrees to a less favorable treatment. See 11 U.S.C. § 1123(a)(4). Sections II.C, II.D and II.E of the Plan satisfy section 1123(a)(4) by providing the same treatment to each Claim or Interest that is classified in each particular class established under the Plan except to the extent that the claimants have agreed to a less favorable treatment. While the Plan offers choices to entities holding Claims classified in Class 10 (e.g., the Convenience Class Election, and the election between payment option 10A and 10B), these choices are

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offered to all members of Class 10 without discrimination. This treatment satisfies the requirements of Bankruptcy Code section 1123(a)(4). See In re Middle Plantation of Williamsburg, Inc., 47 B.R. 884, 892 (E.D. Va. 1984) (plan that provided deferred payment arrangements for two members of class of unsecured creditors did not violate section 1123(a)(4) because these two creditors had agreed to differential treatment); In re Dow Corning Corp., 244 B.R. at 673 ("[I]dentical treatment is not what § 1123(a)(4) requires. Rather, its [sic] requires within-class claim treatment to provide an approximate measure of equality.")

(5) Section 1123(a)(5): The Plan Provides Adequate Means for Its Implementation.

Bankruptcy Code section 1123(a)(5) requires that a plan "provide adequate means for the plan's implementation" and sets forth examples of typical means for implementing a plan. 11 U.S.C. § 1123(a)(4). Among others, Sections II.B through II.E, III.A through III.C, and IV.A through IV.O satisfy section 1123(a)(5) by setting forth specific means for the implementation of the Plan, including among other things:

- Assuming, assigning, or rejecting executory contracts and leases;
- Establishing procedures for making the distributions under the Plan;
- Preserving rights of action and establishing procedures for handling any unresolved objections to Claims;
- Creating adequate funding for distributions and obligations under the Plan;
- Authorizing the sale of the property securing the Class 4 Claim pursuant to Bankruptcy Code sections 363, 1123 and 1129;
- Issuing the New Public Notes, New Preferred Stock, New Class A Common Stock and New Warrants;
- Substantive consolidation of the Debtors;
- Obtaining the Exit Facility;
- Assigning the Debtors' leaseholds to secure the Exit Facility;

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- Amending the Stockholders' Agreement and the Articles of Incorporation;
- Complete corporate restructuring whereby all of the Debtors' Business Assets will be held by the Reorganized Enterprise and all of the Debtors—other than Fountain View, Inc., Summit Care Pharmacy, Inc. and the Other Reorganized Debtors—will dissolve or be merged out of existence;
- Dissolving the Creditors' Committee and the Noteholders' Committee;
- Designating Officers and Directors for the Reorganized Enterprise; and
- Canceling Interests in Class 16 and Class 19.

i) Substantive Consolidation Is an Appropriate Means for Implementing the Plan.

Section IV.A of the Plan provides that, solely for purposes of the Plan, the assets, claims and affairs of the Debtors and the Estates will be substantively consolidated. The substantive consolidation has three major effects. First, it eliminates all intercompany Claims between and among the Debtors and the Estates. Second, it eliminates guaranties of one Debtor's obligations by another Debtor. Thus, any joint and several liability of any of the Debtors shall be deemed to be one obligation of the substantively consolidated Debtors. Finally, as a result of the substantive consolidation, on the Effective Date, all property, rights and claims of the Debtors and the Estates, and all Claims against the Debtors and the Estates will be deemed pooled for purposes of allowance, treatment and distributions under the Plan and multiple proofs of Claim on account of any Claim upon which any of the Debtors are co-obligors or guarantors or otherwise may be contingently liable will, without necessity of objection by any party, be deemed to constitute a single proof of Claim entitled to a single satisfaction from the substantively consolidated Estates in accordance with the terms of the Plan; the duplicative Claims being otherwise deemed disallowed.

Notably, the substantive consolidation will not affect the legal organizational structure of the Reorganized Enterprise, guaranties or the grants of collateral in connection

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with the Exit Facility, or the New Public Notes, the New Preferred Stock and the New Class A Common Stock, or distributions out of any insurance policies. The substantive consolidation will eliminate multiple and duplicative Claims as well as joint and several liability claims, and will afford payment of Allowed Claims against each of the Debtors from a common fund. See Gill v. Sierra Pacific Construction, Inc. (In re Parkway Calabasas, Ltd.), 89 B.R. 832, 836-37 (Bankr. C.D. Cal. 1988) ("In place of two or more debtors, each with its own estate and body of creditors, substantive consolidation substitutes a single debtor, a single estate with a common fund of assets, and a single body of creditors.").

Bankruptcy courts have long recognized substantive consolidation to be a part of their general equitable powers. See generally Sampsell v. Imperial Paper & Color Corp., 331 U.S. 215, 218-19 (1941); In re Bonham, 229 F.3d 750, 763 (9th Cir. 2000). As the Ninth Circuit noted in In re Bonham, 229 F.3d at 763:

> Although substantive consolidation was not codified by the Bankruptcy Reform Acts of 1978 or 1994, see Pub.L. No. 95-598 1978) and Pub.L. No. 103-394, § 104(a) (1994), as were related provisions allowing for procedural consolidation or joint administration, courts, as well as the bankruptcy rules, recognize its validity and have ordered substantive consolidation subsequent to the enactment of the Bankruptcy Code.

"'For many purposes, courts of bankruptcy are essentially courts of equity, and their proceedings inherently proceedings in equity.'" Id. (quoting Pepper v. Litton, 308 U.S. 295, 304 (1939)). The bankruptcy court's power of substantive consolidation has been considered part of the bankruptcy court's general equitable powers since the passage of the Bankruptcy Act of 1898. See Reider v. Fed. Deposit Ins. Corp. (In re Reider), 31 F.3d 1102, 1105 (11th Cir. 1994). At present, consistent with its historical roots, the power of substantive consolidation derives from the bankruptcy court's general equity powers as expressed in Bankruptcy Code section 105. See In re Augie/Restivo Baking Co., Ltd., 860 F.2d 515, 518 (2d Cir. 1988).

The Ninth Circuit has recently adopted the two-factor test set forth by the Second Circuit in In re Augie/Restivo, *supra*. See In re Bonham, 229 F.3d at 766 ("The

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Second Circuit's approach is more grounded in substantive consolidation and economic theory; it is also more easily applied. Thus, we adopt it and utilize it in our analysis of this case."). The two factors considered in this test are: (1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors. Id. (citing In re Reider, 31 F.3d at 1108). The presence of either factor is a sufficient basis to order substantive consolidation. Id.

The propriety of substantive consolidation is grounded on a finding that the consolidation is fair to all creditors and will result in an equitable distribution and efficient administration of the bankruptcy estates. Id. Typically, the consolidation of a solvent (or less insolvent) separate estate into an insolvent consolidated estate raises the possibility of prejudice to the creditors of the financially stronger estate. These concerns are not present in these cases where the consolidated whole will be solvent and each creditor of every estate is realizing reorganization value in an amount equal to the allowed amount of its claims. Here, the significant benefits of consolidation are not achieved on the backs of the creditors of any particular subsidiary. Consolidation is not only efficient here, it is fair to all.

Substantive consolidation may be ordered either upon separate motion pursuant to section 105(a) or upon confirmation of a plan of reorganization as authorized by section 1123(a)(5)(C) ("Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall ... provide adequate means for the plan's implementation, such as ... merger or consolidation of the debtor with one or more persons."). In particular, courts in the Ninth Circuit have found that substantive consolidation under the terms of a reorganization plan is appropriately ordered on less rigorous standards where all voting classes voted in favor of the debtor's plan of reorganization and there were no objections to such consolidation. See, e.g., In re Standard Brands Paint Co., 154 B.R. 563, 573 (Bankr. C.D. Cal. 1993) (court granted substantive consolidation on less rigorous showing where no party objected to the consolidation and there was a consensual plan calling for consolidation). Accord In re Cent. European Indus. Dev. Co. LLC, 288 B.R. 572, 576 (Bankr. N.D. Cal. 2003) ("substantive

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consolidation via a plan would require the affirmative vote of each class of each of debtors' creditors, counted before consolidation").[10]

With respect to the entanglement factor, the facts in this case demonstrate substantial identity and an extensive interrelationship, interdependence, and entanglement between and among the Debtors.[11] The Debtors consist of Fountain View, Inc. and 22 of its direct and indirect subsidiaries. The Debtors' integrated healthcare networks provide inpatient, pharmacy, medical supply, and other healthcare services through skilled nursing facilities, assisted living facilities, therapy facilities, long-term care pharmacies and durable medical equipment supply distributions to the Debtors' facilities and unaffiliated facilities in both California and Texas. There is little correlation between the names of the facilities and the names of the legal entities that technically own such facilities. Moreover, many of the Debtors operate their facilities under fictitious names. The Debtors' operations have been organized around business segments and regions. The Debtors, however, have historically operated pursuant to a centralized management organization that provides essential services such as day-to-day accounting, purchasing, human resources, legal, regulatory compliance, risk management, and other overhead functions. As a result, few, if any, of the Debtors currently are capable of operating as stand-alone entities. These facts alone will make it difficult for creditors to ascertain which Debtors they have a claim against.

In addition, the financial relationship of the Debtors further indicates their

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[10] Although the votes in this case were not solicited on an estate-by-estate basis, in fact, as shown in the voting summary at Section III, supra, no dissenting votes at all were cast on the Plan. Accordingly, even if the votes were tabulated on the controversial estate-by-estate standard suggested by Central European Industrial Development, no impaired rejecting class would exist. See also Section IV.A.8, infra (discussing Ruti-Sweetwater and progeny). Out of an abundance of caution, the Debtors have nevertheless filed a motion for substantive consolidation under section 105(a) of the Bankruptcy Code to be heard concurrently at the Confirmation Hearing.

[11] The discussion of substantive consolidation in this Memorandum pertains only to the Debtors' historical practices. Through their corporate restructuring plan, the Debtors intend to completely restructure their corporate structure. Thus, the historical grounds for substantive consolidation will be inapplicable with respect to the Debtors' post-confirmation operations, and nothing herein shall be deemed an admission or waiver of any rights or defenses with respect to the Debtors' post-confirmation corporate structure.

current interconnections. In fact, due to the organization of their books and records, the Debtors filed with the Bankruptcy Court their statement of financial affairs, schedules of assets and liabilities, schedules of executory contracts and unexpired leases on a partially consolidated basis.

The books and records of the Debtors also reflect a large amount of intercompany claims showing, among other things, advances from Fountain View, Inc. to fund and build operations, upstreamed funds from the other Debtors to enable Fountain View, Inc. to make payments to creditors, the allocation of corporate overhead, and the transfer of other property from one Debtor to another. In view of the complexity of such transactions and the adjustments that have been made over time, it would be difficult to reconcile intercompany claims without embarking on an enormous effort that would diminish returns for shareholders.

Finally, for the most part, the business units of the Debtors operate as integrated units, without all the formalities of separate corporate entities. As such, the Debtors participate in a unified cash management system (which includes non-Debtor subsidiaries) which would make it extremely difficult to confirm a plan of reorganization for the individual Debtors. The overwhelmingly majority of the Debtors' expenditures are made from commingled, centralized accounts.

The Debtors' principal financial creditors, the Class 8 Agent and Lenders and the Class 9 Noteholders (collectively holding over 95% of the total Claims against the Debtors) dealt with the Debtors as a single economic unit and did not rely on the separate identities of the individual Debtor entities in extending credit. Specifically, almost all of the Debtors are co-obligors under the Prepetition Credit Agreement and the Indenture. See In re Genesis Health Ventures, Inc., 266 B.R. at 619 ("In light of the indebtedness of nearly all of the . . . debtors to the Senior Lenders, the only way to provide any recovery to individual creditors of the subsidiaries is to treat all unsecured creditors on a consolidated pro rata basis."). These courses of dealing and the expectation of the holders of the Agent and Bank Group justify consolidation of the Reorganization Cases. See, e.g., In re Orfa Corp., 129

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B.R. at 415 ("the presence of inter-company guarantees . . . are indicative of an interrelationship of companies within a larger enterprise, and negate the claim of separate reliance on creditors"); In re Murray Indus., 119 B.R. 820, 827 (Bankr. M.D. Fla. 1990) (substantive consolidation ordered where it was impossible to determine the respective liabilities of the subsidiaries on certain loans, which were not only guaranteed by the subsidiaries, but the subsidiaries also pledged their assets as security for such loans).

Moreover, all financial information disseminated to the public by the Debtors, including to customers, suppliers, landlords, lenders, and credit agencies, has been prepared and presented on a consolidated basis. As a result, creditors cannot demonstrate that they relied upon the separate identity of one or more Debtors in extending credit. Because the Debtors' affairs are integrated, interrelated, and entangled from both a functional and an accounting perspective, substantive consolidation of the Debtors would be fair and equitable for all creditors. Having relied upon the creditworthiness of the Debtors as a unit, such creditors should be entitled to satisfaction of their claims from a single pool of assets.

Absent substantive consolidation, the Debtors would be required to disentangle their respective operations and businesses. Because the operational and financial affairs of each of the Debtors are deeply entangled, disentanglement, although perhaps not impossible, would likely be very costly and time consuming.

The substantive consolidation of the Debtors is solely for purposes related to the Plan, including for purposes of voting, confirmation and distribution. Following confirmation of the Plan, on the Effective Date the Corporate Restructuring Plan will be consummated. Other courts have approved similar consolidations. For example, in In re Standard Brands Paint Co., 154 B.R. at 564-67, a parent and four of its wholly-owned direct and indirect subsidiaries operated paint manufacturing, distribution, and retail businesses. One of the debtors owned or managed the retail store locations. The debtors requested that the court apply the doctrine of substantive consolidation to consolidate the separateness of the five debtors for purposes of the plan only, and to permit the debtors continue as separate corporations subsequent to plan confirmation. The court granted the motion, noting that

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substantive consolidation was an equitable doctrine that could be tailored to fit the needs of a particular case. Id. at 570. Utilizing the Second Circuit test for substantive consolidation, the court concluded that there was "substantial identity" among the debtors, which operated as a consolidated entity with multiple intercompany guarantees and indebtedness.

Similarly, in the instant case, the deemed consolidation is necessary to effectuate efficient distributions, avoid the calculation, resolution, and classification of inter-Debtor claims, and reduce the administrative burden of tabulating votes in respect of the 23 Debtors. A limited consolidation, for plan purposes only, is necessary to avoid adverse tax consequences that a permanent consolidation could entail. Lastly, consolidation in the Reorganization Cases will promote judicial economy and ease of administration and minimize the costs of administration of the Debtors' cases.

ii) The Debtors' Leaseholds May Be Assigned For Security Under Bankruptcy Code section 365(f).

The Debtors contemplate funding the Plan through the Exit Facility with the Proposed Exit Lenders. A portion of the Exit Facility, the New Public Notes, the Class 10 Deferred Obligation, the Continuing Creditor Deferred Obligation and the Vendors' Lien are to be secured by the Debtors' interests as lessee in 15 leased facilities in California and Texas. Certain of the leases pursuant to which the Debtors occupy the premises may impose contractual limitations on the assignment or hypothecation of the lessee's interest in the leases. Bankruptcy Code section 365(f)(1) and (3) together with section 1123(b)(2) nevertheless authorize the assignment for security of such leases as contemplated by the Plan. Section 365(f) provides:

> (1) Except as provided in subsection (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection; . . . .

The plain language of section 365(f)(1) authorizes a chapter 11 debtor to make a collateral assignment, notwithstanding the existence of anti-encumbrance provisions in a

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lease or in otherwise applicable nonbankruptcy law. The caselaw is in accord with the plain language of the statute. For example, the District Court in I & M Acquisition Corp., 95 Civ. 2114, 1995 U.S. DIST. LEXIS 15089 (S.D.N.Y. 1995), held that a debtor may pledge its leaseholds as security for a loan regardless of any prohibitive language in a lease, including the right of a landlord to withhold reasonable consent. Id. at *10-11. Here, the bankruptcy court authorized the debtor to "pledge most of their leasehold interests to Credit Agricole, for the limited purpose of granting leasehold mortgages for the benefit of Credit Agricole as partial security for [notes]." The bankruptcy court authorized the transaction without regard to obtaining the consent of any of the landlords. Id. at *5-6. One lease provided that the debtor could not assign or encumber the lease without first obtaining the consent of the landlord, and that such consent could not be unreasonably withheld. Id. *4-5. Following the bankruptcy court's authorization of the pledge, the landlord commenced an action in state court, contending that the pledge was in fact an assignment, that Credit Agricole would take possession in the event of a default, and that, because Credit Agricole was not experienced in the restaurant and bar business, he was under no obligation to consent to the assignment. Id. at *6-7. The bankruptcy court enjoined the state suit and, after a hearing, held that the landlord's consent was not required for the debtor to pledge its leaseholds. On appeal, the District Court held "[t]he bankruptcy court was ... correct in finding that provisions in the Lease giving [the landlord] the right to withhold consent to encumbrance or assignment are unenforceable pursuant to sections 365(f)(1) and (3) of the Bankruptcy Code." Id. *10-11. See also In re American Appliances, 272 B.R. 587, 596 (Bankr. D.N.J. 2002) ("It has been recognized that lease provisions restricting assignment are conceptually analogous to lease prohibitions against encumbering the leasehold interest without the landlord's consent.").[12]

[12] Under California law, a lease may absolutely prohibit any transfer of the leasehold, including its hypothecation. CAL. CIV. CODE § 1995.230; 1995.020(e) ("transfer"). If a lease includes a restriction requiring the consent of the landlord for transfer but provides no standard for giving or withholding such consent, the landlord may not unreasonably withhold its consent. See CAL. CIV. CODE § 1995.260. If a lease contains no express restrictions on transfer, "a tenant's rights under the lease include unrestricted transfer of the tenant's interest in the lease." CAL. CIV. CODE § 1995.210(b). Finally, any ambiguity in the terms of a transfer restriction "shall be construed in favor of transferability." CAL. CIV. CODE § 1995.220.

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In accordance with sections 365(f) and 1123(b)(2), the provisions in the Plan properly authorize assignment of the Debtors' leasehold interests as security for the Exit Facility, the New Public Notes, the Class 10 Deferred Obligation, the Continuing Creditor Deferred Obligation and the Vendors' Lien, notwithstanding any contractual or restrictions on transfer or assignment under the leases or otherwise applicable state law.

(6) <u>Section 1123(a)(6)</u>: The Plan Provides Appropriate Charters for the Reorganized Enterprise.

Bankruptcy Code section 1123(a)(6) requires that, with respect to a corporate debtor, a chapter 11 plan must provide for the inclusion in the reorganized debtor's charter of prohibition against the issuance of nonvoting equity securities and related protections for holders of preferred shares. 11 U.S.C. § 1123(a)(6). The Debtors will issue New Preferred Stock and New Class A Common Stock under the Plan. The New Class A Common Stock will have one-vote per share of New Class A Common Stock on all matters requiring a shareholder vote as set forth in the restated and amended articles of incorporation of Fountain View, Inc. The New Preferred Stock will have the same attributes as the Existing Preferred Stock, except that Reorganized Fountain View's articles of incorporation will be amended in the form provided in the Plan Supplement to prohibit the issuance of non-voting equity securities. Pursuant to the new articles of incorporation, the holders of New Preferred Stock shall have one-tenth of a vote per share of New Preferred Stock on all matters requiring a shareholder vote. The Debtors submit that these features of the Plan satisfy section 1126(a)(6).

All equity interests in Reorganized Fountain View will be subject to an

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Under Texas law, a tenant may not rent a leasehold to any other person during the term of the lease without the prior consent of the landlord, unless the parties clearly express an intent otherwise. TEX. PROP. CODE ANN. § 91.005; <u>Trinity Prof'l Plaza Assocs. v. Metrocrest Hosp. Auth.</u>, 987 S.W.2d, 621, 624 (1999). Moreover, under Texas law, a landlord is not required to act reasonably in withholding its consent to an assignment or sublease. <u>Trinity Prof'l Plaza Assocs</u>., 987 S.W.2d at 625 (explaining the "[l]essee did not contract for a reasonableness provision in the ground lease" and that the Texas Supreme Court "has specifically rejected the implication of a general duty of good faith and fair dealing in all contracts.") (citing <u>Crim Truck & Tractor Co. v. Navistar International Transportation Corporation</u>, 823 S.W.2d 591 (Tex.1992).

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Amended Stockholders' Agreement. The Amended Stockholders' Agreement will provide holders the customary benefits of "tag-along" and "drag-along" rights and related protections that are customary in the context of a privately-held corporation. Pursuant to the Amended Stockholders' Agreement, a majority of the Board of Directors will be designated by the Debtors' largest shareholder Heritage Fund II, L.P. ("Heritage") and Heritage will hold a proxy from other holders that it can exercise with respect to most matters that come before the Board of Directors. These provisions are similar in terms and effect to those of the existing Stockholders' Agreement.

Section 1126(a)(6) is based upon the idea that participation in, and control of, the selection of management of a reorganized debtor is requisite to a fair and equitable plan and must be provided for accordingly. See 7 COLLIER ON BANKRUPTCY ¶ 1123.01[6] at 1123-13; Richard L. Epling, Fun with Nonvoting Stock, 10 BANKR. DEV. J. 17, 20 (1993-1994). However, there is no immutable definition of what it means to "participate" in the selection of management; case law has demonstrated that a plan may place certain limitations on securities without rendering those securities nonvoting or otherwise creating an inequitable plan.

There are few cases directly interpreting the language of section 1123(a)(6). The Ninth Circuit has held that section 1123(a)(6) must be read in tandem with section 1123(a)(7), which in turn provides that a plan may contain "only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director or trustee." 11 U.S.C. § 1123(a)(7). Read together, these two sections require that a court "scrutinize any plan which alters voting rights or establishes management in connection with a plan of reorganization." In re Acequia, Inc., 787 F.2d 1352, 1361 (9th Cir. 1986). Thus, in analyzing plan provisions, a court must consider "the shareholders' interest in participating in the corporation, the desire to preserve the debtor's reorganization, and the overall fairness of the provisions." Id. at 1362. In Acequia, the parties had stipulated, prior to the submission of a plan, that one shareholder

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would give an irrevocable proxy to the other shareholder for two and a half years. The Acequia court found that section 1123(a)(6) was applicable, though the shares were not specifically new securities, because of its interaction with section 1123(a)(7) of the Bankruptcy Code. Though expressing its reluctance to cast aside a shareholder's participation in a corporation, the Ninth Circuit found that to permit both shareholders to exercise their voting rights would prove detrimental to all parties, as the enmity between them would preclude workable joint management and would thus threaten the debtor's reorganization. Id. Additionally, as the objecting shareholder did not propose an alternative plan, the Ninth Circuit saw no alternative to the approval of the plan's provisions to preserve the prospects of reorganization and to protect the interests of creditors, shareholders, and interested parties. Id.

In this case, Fountain View, Inc. has historically been operated as a private company subject to a Stockholder's Agreement. All the existing shareholders have expressly consented to a set of governance arrangements consistent with that proposed by the Amended Stockholders' Agreement and no present shareholder's rights are materially or adversely affected by the Amended Stockholders' Agreement. The new parties to the Amended Stockholders' Agreement will be the Class 9 creditors who will receive pro rata distributions of the Noteholders' Stock Distribution under the Plan. The terms of the Amended Stockholders' Agreement affecting the Class 9 creditors were negotiated at arms' length with the Noteholders' Committee, which like the Class 9 constituency generally, is composed of sophisticated investors and financial institutions. Moreover the substantive terms of the Amended Stockholders' Agreement have been disclosed in the Disclosure Statement which was sent to all identifiable Class 9 holders. See Disclosure Statement at 51 and 65. In fact, 39 holders representing \$117,505,000 out of \$120 million in outstanding notes have affirmatively indicated their consent to be bound by the Amended Stockholders' Agreement after having received disclosure of its material terms.

Several cases decided under section 216(11) of the Bankruptcy Act, the direct predecessor to section 1123(a)(6), also stand for the principle that a modification of the

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voting rights of newly issued securities does not render those securities "nonvoting." See In re Quaker City Cold Storage Co., 71 F. Supp. 124, 131 (E.D. Pa. 1947) (issuance of stock subject to voting trust found not to be issuance of non-voting stock; "[t]here is a wide difference between disfranchising a class of stockholders completely, and designating trustees to exercise the voting power of the class in the interest of that class"); In re Lower Broadway Props., Inc., 58 F. Supp. 615, 619 (S.D.N.Y. 1945) (same).

Accordingly, under these circumstances, the provisions of the Plan, Articles of Incorporation and the Amended Stockholders' Agreement relating to voting and corporate governance complies fully with section 1123(a)(6).

(7) Section 1123(a)(7): The Plan Provides for the Selection of Postconfirmation Management.

Finally, Bankruptcy Code section 1123(a)(7) provides that a plan must "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee." 11 U.S.C. § 1123(a)(7). The Disclosure Statement complies with section 1123(a)(7) by identifying the persons expected to serve as the initial members of the Board of Directors of Reorganized Fountain View and as the principal officers, and by indicating that the membership of the Board of Directors shall be subject to election at an annual meeting of Reorganized Fountain View subject to the procedures set forth in the Amended Stockholders' Agreement and that officers shall serve at the direction of the Board. See Disclosure Statement at 12-17.

c. The Plan Includes Permissive Provisions Authorized by Bankruptcy Code Section 1123(b).

Bankruptcy Code section 1123(b) sets forth several provisions that may, but need not, be included with a chapter 11 plan. 11 U.S.C. § 1123(a)(7). Among other provisions, the plan may include "any other appropriate provision not inconsistent with the applicable provision of [the Bankruptcy Code]." 11 U.S.C. § 1123(b). The Plan contains a number of such optional provisions, all of which are intended to facilitate a successful

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reorganization and the rapid resolution of the Reorganization Cases. For example, the Plan provides for the assumption, rejection, or assignment of the Debtors' executory contracts and unexpired leases. See 11 U.S.C. § 1123(b)(2) (allowing the assumption, rejection, or assignment of unexpired leases and executory contracts).

Another of these provisions, contained in Section VI.A of the Plan, provides that the ADR Procedures established by the Court to liquidate the professional liability Claims against the Debtors will be continued and applied to all pre-confirmation debts. These procedures have proven to be efficient and effective in leading to the resolution of professional liability claims. The Court, in approving the procedures, previously determined that the ADR Procedures provide an appropriate mechanism preserving jury trial rights to the extent required by applicable law for claims that are not successfully resolved through the ADR Procedures. Given that the responsibility for final allowance or disallowance of all pre-confirmation debts properly lies within the jurisdiction of the Bankruptcy Court (subject to preservation of jury trial rights to the extent required by applicable law), and the fact that the Plan does not limit or channel resolved claims to a particular fund, but rather treats them as Class 10, Class 12 or Class 13 Claims all of which are provided for in full, the continuation of these proven procedures post-confirmation is well within the authority of the Bankruptcy Court. Similarly successful alternative dispute resolution procedures have been routinely maintained pursuant to confirmation orders in numerous other Chapter 11 proceedings involving nursing homes. See, e.g. In re Mariner Health Group, Inc., Case No. 00-215 (Bankr. D. Del. filed January 18, 2000) (confirmation order dated April 3, 2002, Docket No. 2418, approving plan providing for post-confirmation ADR Procedures); In re Mariner Post-Acute Network, Inc., Case No. 00-113 (Bankr. D. Del. filed January 18, 2000) (same); In re Sun Healthcare Group, Inc., Case No. 99-3657 (Bankr. D. Del. filed October 14, 1999) (confirmation order dated February 6, 2002, Docket No. 7004, approving plan providing for post-confirmation ADR Procedures). More generally, such procedures have been employed in many large chapter 11 cases involving multiple personal injury or wrongful death suits. See, e.g., In re Federated Department Stores, Inc., 328 F.3d 829 (6th

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Cir.2003).

The Plan also contemplates that the confirmation order will include a provision finding that the Proposed Exit Lenders provided the Exit Financing in good faith and are entitled to the protections of Bankruptcy Code section 364(e). As with sales under section 363(m), good faith can be found based upon the integrity of a lender's conduct during the case. See In re Adams Apple, Inc., 829 F.2d 1484, 1489 (9th Cir. 1987) (while the Bankruptcy Code does not define "good faith" under section 364(e), courts can analogize to foreclosure sales where "to determine good faith we look to the integrity of an actor's conduct during the proceedings"); Kham & Nate's Shoes No. 2, Inc. v. First Bank of Whiting, 908 F.2d 1351, 1357 (7th Cir. 1990) ("'good faith' is a compact reference to an implied undertaking not to take opportunistic advantage in a way that could not have been contemplated at the time of drafting, and which therefore was not resolved explicitly by the parties"). Furthermore, by analogy to Section 363(m), including a good faith finding under 364(e) in a confirmation order is also appropriate. The record in these cases amply demonstrates that the Debtors sought competitive offers from institutions capable of providing the Exit Financing and that the terms provided by the Proposed Exit Lenders are not only reasonable but are the best terms available under the circumstances. As evidenced by the Scott Decl., the Debtors will enter into the Exit Financing after arms' length negotiations with the Proposed Exit Lenders pursuant to the loan documents in substantially the form filed with the Plan Supplement. Accordingly, a good faith finding with respect to the Proposed Exit Lenders is both reasonable and appropriate.

2. Section 1129(a)(2): The Debtors Have Complied With All Applicable Provisions of the Bankruptcy Code.

Bankruptcy Code section 1129(a)(2) requires that the proponent of a chapter 11 plan comply with the applicable provisions of the Bankruptcy Code. See 11 U.S.C. § 1129(a)(2). The principal purpose of section 1129(a)(2) is to ensure that a proponent complies with the Bankruptcy Code's requirements regarding the solicitation of plan acceptances. See In re Texaco, Inc., 84 B.R. 893, 906-7 (Bankr. S.D.N.Y. 1988). In its

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Solicitation Order, the Court found that the Disclosure Statement contains adequate information with the meaning of Bankruptcy Code section 1125(b), and the Court authorized the Debtors to disseminate the Plan and related solicitation materials to parties in interests and to solicit votes under certain specified procedures. The Debtors have previously filed declarations, *supra* at 3, n.2, demonstrating that the Debtors, their professionals and their agents have complied with all of the procedures set forth in the Solicitation Order and with all of the other applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. The requirements of section 1129(a)(2) have therefore been satisfied.

3. Section 1129(a)(3): The Debtors Have Proposed the Plan in Good Faith.

Bankruptcy Code section 1129(a)(3) requires that a chapter 11 plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). Bankruptcy Rule 3020(b)(2) provides that: "If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues." See FED. R. BANKR. P. 3020(b)(2). Barring any objection to the Plan on the grounds of a lack of good faith, the Court therefore should find that the requirements of section 1129(a)(3) are satisfied.

Moreover, even absent Rule 3020(b)(2)'s presumption of good faith, the Debtors' good faith in these cases is evident. The primary purpose of chapter 11 is to reorganize the debtor and to maximize the value of its estates. See In re Bonner Mall Partnership, 2 F.3d 899, 915 (9th Cir. 1993), cert. dismissed, 513 U.S. 18 (1994). Accordingly, a plan satisfies section 1129(a)(3) when it "is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success." In re Sun Country Dev., Inc., 764 F.2d 406, 408 (5th Cir. 1985).

Here, the Debtors sought protection under chapter 11 to: (1) resolve the Debtors' short-term cash-flow crisis caused by the unexpected seizure of their principal depositary accounts by a judgment creditor; (2) stabilize their operations; (3) restructure their existing debt obligations and recapitalize their business as rapidly and efficiently as

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practicable; and (4) emerge from chapter 11 as a viable going concern. As the record reflects, the Debtors will, through confirmation of the Plan, substantially achieve all of these legitimate goals. The Plan is the culmination of many months of constructive, good faith negotiations that have been conducted at arms' length among the major constituencies and representatives in these cases. See Scott Decl. at 1-2. At all times the Debtors' objective has been to restructure their business and capital structure in a manner that will maximize the economic value of their business enterprise and distribute that value fairly among their respective stakeholders, in accordance with applicable law. The Plan accomplishes this goal by providing the means through which the Debtors may continue to operate as a viable entity. In addition to fulfilling the rehabilitative function of the Bankruptcy Code, the Plan also allows creditors and interest holders to realize the highest possible recoveries in the shortest time practicable under the circumstances. The Committees' and the Class 8 Agent's and Lenders' support for the Plan is a strong indication that the Plan has achieved these objectives. Thus, there is no doubt that the Plan satisfies the good faith requirement of section 1129(a)(3).

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4. Section 1129(a)(4): The Plan Provides for Court Approval of All Payments for Services Rendered in Connection with the Reorganization Cases.

Bankruptcy Code section 1129(a)(4) requires that payments "for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case," be approved by the Court as reasonable. 11 U.S.C. § 1129(a)(4). In other words, section 1129(a)(4) requires that any and all payments made for non-ordinary course expenses of administration be subject to court review and approval. See In re Resort Int'l, Inc., 145 B.R. 412, 475-76 (Bankr. D.N.J. 1990). See also In re Elsinore Shore Assocs., 91 B.R. 238, 268 (Bankr. D.N.J. 1988) (the requirements of section 1129(a)(4) are satisfied where a plan provides for payment of "allowed" administrative expenses). But see In re Future Energy Corp., 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988) ("Court approval of payments for services and expenses is governed by various Code provisions—*e.g.*, §§ 328, 329, 330, 331 and 503(b)—and need not be explicitly provided for in a Chapter 11 plan."). Section II.B.1 of the Plan provides that the Reorganized Enterprise will not pay Non-Ordinary Course Administrative Claims or Professional Fee Claims unless and until the Court allows such claims. The Plan therefore complies with section 1129(a)(4).

5. Section 1129(a)(5): The Plan Discloses the Identity of the Directors and Officers of the Reorganized Fountain View.

Bankruptcy Code section 1129(a)(5) requires that (a) the proponent of a plan disclose the identity of any individual proposed to serve after confirmation as a director, officer, or voting trustee of the reorganized debtor; (b) the appointment of such individuals be consistent with the interests of creditors and shareholders, and with public policy; (c) the proponent disclose any insider that will be employed by the reorganized debtor and the nature of the compensation to be provided to such insider. The Disclosure Statement describes the persons expected to serve as the initial members of the Board of Directors for Reorganized Fountain View, and the expected retention of Boyd Hendrickson as Chief Executive Officer and the other principal officers of the Reorganized Enterprise. The background and qualifications of these individuals is set forth in detail in the Disclosure Statement along with a full compensation summary with respect to the senior executives. Disclosure Statement at 12-17. The appointment of such officers and directors is in the best interests of creditors and shareholders and consistent with public policy. See In re Toy & Sports Warehouse, Inc., 37 B.R. 141, 149-51 (Bankr. S.D.N.Y. 1984) (finding that the continuity of experienced management satisfied section 1129(a)(5) and enhanced the feasibility of the plan).

6. Section 1129(a)(6): The Plan Does Not Effect Any Change in Publicly Regulated Rates.

Bankruptcy Code section 1129(a)(6) requires that any regulatory commission with jurisdiction over the rates of a debtor approve any changes in rate regulations provided in a plan. 11 U.S.C. § 1129(a)(6). The Debtors are not subject to any such regulation and the Plan does not propose any rate changes. Accordingly, section 1129(a)(6) is not

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applicable, and consent from a regulatory agency is not required.

7. Section 1129(a)(7): The Plan Is in the "Best Interests" of Creditors.

Bankruptcy Code section 1129(a)(7) establishes what is commonly referred to as the "best interests" test. Specifically, section 1129(a)(7) requires that, with respect to each class of impaired claims or interests under a plan, every holder of a claim or interest in such impaired class either (i) accept the plan, or (ii) receive or retain property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code. See 11 U.S.C. § 1129(a)(7). The best interests test focuses on individual dissenting creditors rather than classes of claims. See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 441 n. 13 (1999). It requires that each holder of a claim or equity interest either accepts the Plan or will receive or retain under the Plan property having present value, as of the effective date of the Plan, not less than the amount such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

Classes 3, 4, 5, 7, 8 and 11 are all unimpaired, rendering the requirements of section 1129(a)(7) inapplicable to those Classes. All holders in impaired Classes 1, 2, and 6 have accepted the Plan, satisfying section 1129(a)(7)(A)(i).

As to Classes 9, 10, 12, and 13, all of which are provided for in full under the Plan, the liquidation analysis contained in Section XII to the Disclosure Statement and Exhibit 5 to the Disclosure Statement, and discussed in the Williams Decl. projects that all holders of unsecured claims in Classes 9, 10, and 12 would receive between zero and 34 cents on the dollar in the event that the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code (except to the extent of available insurance for Class 12, which insurance will remain available to those creditors under the Plan). Class 13 is projected to receive nothing in liquidation. See 11 U.S.C. § 726(a)(4). In a chapter 7 scenario, Interests (Classes 14, 15, 16, 17, 18 and 19) would not receive or retain any property.

In contrast, under the Plan entities holding Allowed Claims will receive

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payment in full with postpetition interest, and entities holding Interests in Class 14, 15, 17 and 18 will retain their Interests or obtain other Interests in accordance with applicable law.

Accordingly, the treatment under the Plan of the nonaccepting members of all impaired classes is in no case less than that which the holders of such Claims and Interests would otherwise be entitled to in chapter 7, and the requirements of section 1129(a)(7) are therefore satisfied.

8. Section 1129(a)(8): The Plan Has Been Accepted by All Impaired Classes Entitled to Vote.

Bankruptcy Code section 1129(a)(8) requires that each class of claims and interests established under a plan either accepts the plan or is not impaired under the plan. See 11 U.S.C. § 1129(a)(8). A class of claims accepts a plan if holders of at least two-third in dollar amount and a majority in number of claims in that class vote to accept the plan, counting only those claims whose holders actually vote. See 11 U.S.C. § 1126(c). A class of interests accepts the plan if holders of at least two-third in amount of allowed interests in that class vote to accept the plan, counting only those interests whose holders actually vote. See 11 U.S.C. § 1126(d). A class of claims or interests that is not impaired is deemed to have accepted the plan. See 11 U.S.C. §§ 1126(f) and 1129(a)(8)(B). A class of claims or interests that does not receive or retain any property under the plan is deemed to reject the plan. See 11 U.S.C. § 1126(g).

Classes 3, 4, 5, 7, 8 and 11 are all unimpaired and therefore are deemed to accept. As set forth in the Ballot Tabulation and summarized in Section I of this Memorandum, Classes 1, 2, 6, 9, 10, 14, 15, 17 and 18 are impaired under the Plan and have voted in requisite amounts and numbers to accept the Plan. Classes 16 and 19 are deemed to reject the Plan pursuant to Bankruptcy Code section 1126(g). As set forth in Section IV.B below, however, the Plan nevertheless may be "crammed down" on these deemed rejecting classes and should be confirmed pursuant to Bankruptcy Code section 1129(b).

With respect to Class 12, Class 13, and Class 17, no eligible Ballots were cast. Courts have held that where a class fails to vote for or against a plan, such inaction

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constitutes acceptance of the plan. For example, in In re Ruti-Sweetwater, Inc., 836 F.2d 1263 (10th Cir. 1988), a secured creditor, one of 83 separate classes of secured creditors and one of 20 classes opting not to vote on the plan prior to confirmation appealed the order confirming the plan and a determination by the bankruptcy court that a non-voting, non-objecting creditor who is the only member of a class is deemed to have accepted the plan for purposes of sections 1129(a)(8) and 1129(b). The Tenth Circuit affirmed the district court's affirmance of the bankruptcy court and stated,

> Heins' inaction constituted an acceptance of the Plan. To hold otherwise would be to endorse the proposition that a creditor may sit idly by, not participate in any manner in the formulation and adoption of a plan in reorganization and thereafter, subsequent to the adoption of the plan, raise a challenge to the plan for the first time. Adoption of the Heins' approach would effectively place all reorganization plans at risk in terms of reliance and finality.

Id. at 1266-67. See also In re Szostek, 886 F.2d at 1413 (concluding that "general rule is that the acceptance of the plan by a secured creditor can be inferred by the absence of an objection."); In re Campbell, 89 B.R. at 188 (same).

The doctrine of implied acceptance adopted by the Ruti-Sweetwater line of cases has been rejected by some courts, but as one commentary notes, "[m]any of the cases rejecting *Sweetwater*, however, actually distinguish themselves based on the facts of the case, i.e. the class that is allegedly deemed to accept, affirmatively and timely objected to the plan. [citation omitted]. In fact, there has yet to be an appeals court to reject *Sweetwater*." White & Medford, Consensual Plans with Non-voting Classes: When the Failure To Vote Means Acceptance, 2002 ABI Journal LEXIS 60 (2002). The leading case in the Ninth Circuit on implied acceptance is In re M. Long Arabians, 103 B.R. 211 (Bankr. 9th Cir. 1989). M. Long Arabians, while criticizing Ruti-Sweetwater, ultimately distinguished Ruti-Sweetwater (rather than rejected it) on the ground that the non-voting creditor in Ruti-Sweetwater had not vigorously and timely objected to the plan. Id. at 215. See also In re Pardee, 218 B.R. at 926 (applying implied acceptance doctrine in chapter 13 context).

Here, Classes 12 and 13 currently contain no creditors entitled to vote on the

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Plan. Nevertheless, the treatment afforded these Class 12 and Class 13 creditors still amounts to payment in full and appears to have garnered the implied acceptance of the respective classes. Similarly, as to Class 17, the rights of the holders of Existing Class C Stock are converted on a one-for-one basis into New Class A Common Stock preserving the existing economic rights of these holders. Under these circumstances, it is unnecessary for the Debtors, as plan proponents, to make a showing that the Plan complies with the cramdown standards of section 1129(b) as to any of these Classes.[13] Thus, all classes entitled to vote on the Plan have accepted the Plan. 11 U.S.C. § 1129(a)(8). Classes 16 and 19 will receive or retain no value under the Plan and are deemed to reject the Plan pursuant to Bankruptcy Code section 1126(g). However, as set forth in Section IV.B below, the Plan nevertheless may be confirmed under Bankruptcy Code section 1129(b) as to these deemed rejecting classes.

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9. <u>Section 1129(a)(9)</u>: The Plan Complies with the Required Treatment of Administrative Claims and Priority Claims.

Bankruptcy Code section 1129(a)(9) requires that, unless the holder of a claim agrees to a different treatment of its claim:

> (A) the holder of a claim entitled to priority under section 507(a)(1) or (2) must receive cash in the allowed amount of its claim on the effective date of the plan;
>
> (B) the holder of a claim entitled to priority under section 507(a)(3), (4), (5), (6), or (7) must receive cash in the allowed amount of such claim on the effective date of the plan or deferred cash payments of a value, as of the effective date, equal to the allowed amounts of such claim; and
>
> (C) the holder of a tax claim entitled to priority under section 507(a)(8) must receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of a plan, equal to the allowed amount of such claim.

[13] Nevertheless, out of an abundance of caution, the Debtors demonstrate, <u>infra</u> in Section IV.B that the treatment of the impliedly accepting Classes 12, 13, and 17 is fair and equitable and not unfairly discriminatory.

11 U.S.C. § 1129(a)(9).

The Plan satisfies the requirements of section 1129(a)(9). First, as required by section 1129(a)(9)(A), Section II.B.1 of the Plan provides, as follows: (i) Allowed Ordinary Course Administrative Claims will be paid in accordance with the terms and conditions of the transaction giving rise to the Claim, (ii) Allowed Professional Fee Claims will be paid after allowance by the Court, (iii) U.S. Trustee Fees under 28 U.S.C. § 1930 will be paid in cash on the Effective Date, (iv) Cure Payments in respect of contracts and leases assumed pursuant to the Plan will be paid within 10 days following the Effective Date,[14] and (v) Allowed Non-Ordinary Course Administrative Claims, other than Professional Fee Claims and Cure payments, will be allowed only if the entity holding such claim timely files a request for payment within 60 after the Effective Date and the Court allows the Claim by Final Order.

Second, in accordance with both section 1129(a)(9)(B) and 1129(a)(9)(C), Section II.B.2 of the Plan provides, unless agreed otherwise, that Allowed Priority Claims (including Allowed Priority Tax Claims) will be paid in cash equal to the allowed amount of the such claims, on or before the latest of: (a) the Distribution Date; (b) 30 days after the date on which the Priority Claim becomes an Allowed Priority Claim; or (c) the date on which the Allowed Priority Claim becomes due and payable in accordance with its terms.

10. Section 1129(a)(10): More Than One Impaired Class of Claims Has Voted to Accept the Plan.

Section 1129(a)(10) requires that at least one class of claims that is impaired under the plan has voted to accept the plan without regard to the votes of insiders. 11 U.S.C. § 1129(a)(10). As noted above, each of the impaired classes that is entitled to vote on the Plan (Classes 1, 2, 6, 9, 10, 12, 13, 14, 15, 17 and 18) has accepted the Plan. No insider Ballots at all were cast in Classes 1, 2, 6, 9 and 10, all of which are indisputably impaired

[14] As set forth in Section III.A.2 of the Plan, if a dispute arises regarding: (a) the amount of any proposed Cure Payments; (b) whether the Debtors have provided adequate assurance of future performance under an executory contract or unexpired lease to be assumed; or (c) any other matter pertaining to a proposed assumption, the proposed Cure Payments will be made within 30 days after entry of a Final Order resolving the dispute and approving the assumption.

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consenting classes. The Plan, therefore, satisfies the requirements of section 1129(a)(10).

11. <u>Section 1129(a)(11)</u>: The Plan is Feasible.

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 debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). Section 1129(a)(11) does not require an absolute assurance of financial success by the debtor. Rather, the feasibility standard requires only "a 'reasonable' prospect for financial stability and success." <u>In re Sound Radio, Inc.</u>, 103 B.R. 521, 524 (D.N.J. 1989), <u>aff'd</u>, 908 F.2d 964 (3d Cir. 1990); <u>accord</u> <u>Kane v. Johns-Manville Corp.</u> (<u>In re Johns-Manville Corp.</u>), 843 F.2d 636, 649 (2nd Cir. 1988) ("[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed."); <u>In re Orlando Investors, L.P.</u>, 103 B.R. 593, 600 (Bankr. E.D. Pa. 1989) ("The purpose behind the statutory requirement of feasibility is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation.") (quotations omitted).

The most compelling evidence of the Plan's feasibility is the fact that sophisticated financial institutions have spent months preparing to fund it with the $150 million Exit Facility and that the Plan is virtually unanimously supported by all constituents, including, most notably, the Noteholders' Committee whose differences with the Debtors led to intensive adversarial litigation at the commencement of these cases. Moreover, the Debtors' projections, which are set forth in length in the Disclosure Statement and fully support the feasibility of the Plan, are based on eighteen months of operating experience in chapter 11 during which the Debtors have consistently met or exceeded projections, all the while achieving dramatic improvements in financial performance in the face of reductions in Medicare and Medicaid reimbursement rates. The Debtors will emerge from chapter 11 with a proven management team and greatly improved operating performance.

As set forth in the Williams Decl. and Scott Decl., the Debtors will have the

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financial means to satisfy all of their Effective Date obligations under the Plan assuming the consummation of the $150 million Exit Facility.[15] Under the Plan, the Debtors are required, on or as soon as reasonably practicable after the Effective Date, to make certain one-time payments to holders of Claims or Interests, including an approximately $77 million payment in full satisfaction of the Class 8 Claims of the Agent and Lenders, a $50 million payment on account of the Class 9 Claims for principal and interest arising under the 11¼% Notes, approximately $15 million on account of Claims of general creditors, Convenience Claims, certain Secured Claims (including Secured Tax Claims, counterparties to executory contracts, and suppliers), and approximately $7.2 million in satisfaction of Allowed Administrative Claims and fees related to the Exit Facility. As set forth in the financial projections attached as Exhibit 3 to the Disclosure Statement, the Debtors respectfully submit that they will have sufficient funds from the Exit Facility and cash-on-hand to make these one-time payments. In addition, the Debtors project net availability on their new revolving credit facilities after making all payments due in connection with consummating the Plan of $19 million. The Debtors financial projections indicate that they will be able to generate sufficient revenues to make the other distributions contemplated under the Plan, after reserving for all operating expenses including the self-insured retention portion of projected professional liability claims. In particular, the Debtors project net income after payment of all taxes, interest and restructuring charges of $6.4 million for 2003, $15.6 million for 2004, $10.8 million in 2005 (after-tax net income dips in 2005 as the Debtors' pre-bankruptcy tax shields fully expire), $14.9 million in 2006 and $21.3 million in 2007. The assumptions that support these projections are reasonable and consistent with the Debtors' most recent actual operating results. See Disclosure Statement, Exhibit 3 at 142-145. The Plan is no "visionary scheme," but rather represents a good faith and reasonable effort developed by a proven management to repay 100% of all creditor claims out of the

[15] Any delays in consummating the Exit Facility will necessarily delay the Effective Date. Although the Debtors continue to believe that, assuming confirmation of the Plan on July 3, 2003, they will be in a position to consummate the Exit Facility transactions by July 31, 2003, the date fixed by the Plan, they expressly reserve the right to seek an extension of that date if events warrant.

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proceeds of the Exit Facility and the future earnings of the Reorganized Enterprise. The evidence therefore supports a finding that the Plan is feasible and is not likely to be followed by the liquidation or need for further financial reorganization of the Reorganized Enterprise.

12. Section 1129(a)(12): The Plan Provides for Full Payment of All Fees Payable Under 28 U.S.C. § 1930.

Bankruptcy Code section 1129(a)(12) requires that a chapter 11 plan provide that all fees payable under 28 U.S.C. § 1930 (consisting primarily of the quarterly fee owing to the United States Trustee) be paid on or before the effective date of the plan. As noted, Section II.B.1 provides for payment in full of Allowed Administrative Claims, which includes U.S. Trustee fees arising under 28 U.S.C. § 1930. See also Plan at Section I.A (Definition of "Non-Ordinary Course Administrative Claims"). Thus, the Plan satisfies the requirements of section 1129(a)(12).

13. Section 1129(a)(13) Is Inapplicable.

Bankruptcy Code section 1129(a)(13) requires the Plan to continue all retiree benefits within the meaning of Bankruptcy Code section 1129(a)(13). The Debtors are not presently obligated to fund any such benefits and, as such, Bankruptcy Code section 1129(a)(13) is inapplicable.

B. The Plan Should Be Confirmed Because the Cramdown Requirements of Section 1129(b) Are Satisfied with Respect to the Classes that are Deemed to Have Rejected the Plan.

Bankruptcy Code section 1129(b) provides that if a chapter 11 plan has satisfied all confirmation requirements except section 1129(a)(8)'s requirement that all impaired classes accept the plan, the court nevertheless "shall confirm the plan notwithstanding the requirements of [section 1129(a)(8)] if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. § 1129(b)(1).

Section 1129(b)(2)(B) expressly provides that a plan may be found to be "fair and equitable" with respect to a class of unsecured claims or interests if that class either: (i)

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(310) 407-4000

receives or retains value equal to the allowed amount of its claim or interest; or (ii) no junior interest receives or retains property under the plan. 11 U.S.C. § 1129(b)(2)(B) & (C).

Although its meaning is not set forth in the Bankruptcy Code with the specificity of the "fair and equitable" standard, courts have determined that the "unfair discrimination" standard generally provides that creditors and interest holders with similar legal rights may receive different treatment under a plan, so long as there is a reasonable basis for doing so. Section 1129(b)(1) does not prohibit discrimination between classes. "A plan can discriminate, but not unfairly; any discrimination must be supported by a legally acceptable rationale, and the extent of the discrimination must be necessary in light of the rationale." In re Salem Suede, Inc., 219 B.R. 922, 933-34 (Bankr. D. Mass.1998). The weight of judicial authority holds that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if similar claims or interests are treated differently without a reasonable basis for the disparate treatment. See In re Greate Bay Hotel & Casino, Inc., 251 B.R. 213, 228 (Bankr. D.N.J. 2000); In re Future Energy Corp., 83 B.R. at 492-93. Accordingly, as between two classes of claims or two classes of equity interests, there is no unfair discrimination if (i) the classes are comprised of dissimilar claims or interests, see, e.g., In re Johns-Manville, 68 B.R. at 636, or (ii) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment. See Buttonwood Partners, Ltd., 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990); In re Rivera Echevarria, 129 B.R. 11, 13 (Bankr. D.P.R. 1991).

The only classes that have rejected the Plan are those that are deemed to have rejected the Plan because the holders of Claims and Interests in those classes will neither receive nor retain value under the Plan: Class 16 (Existing Class B Common Stock) and Class 19 (Existing Management Incentives and Other Existing Interests). Although Classes 12, 13 and 17 are deemed to have accepted the Plan by virtue of the fact that no eligible Ballots were cast in those classes, the Plan is also fair and equitable and does not unfairly discriminate as to those classes either.

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1. No Junior Interest To Class 16 or Class 19 Receives or Retains Property Under The Plan and A Reasonable Basis Exists For The Cancellation of These Equity Interests.

Class 16 Existing Class B Common Stock and Class 19 Existing Management Incentives are at the very bottom of Fountain View, Inc.'s prepetition capital structure. Both classes of Interests were designed to provide a form of incentive compensation to the Debtors' prepetition management.

Pursuant to Fountain View, Inc.'s prepetition articles of incorporation, the Existing Class B Common Stock, the outstanding 114,202 shares of which are held by Mr. and Mrs. Robert Snukal and Mr. William Scott, are subject to a cumulative preferred return in favor of the Existing Class A Common Stock. That is, the value of each Existing Class A Common Share would have to exceed an amount equal to $126.53 per share plus a 22% internal rate of return calculated from the date of issuance of such share. The Existing Class A Common Shares have been issued and outstanding for five years. Accordingly, as of June 30, 2003, the equity value of Fountain View, Inc. would have to exceed $395,751,000 for the Class B Shares to have present value. The evidence submitted by the Debtors establishes their total enterprise value at $435,604,743, and that enterprise value is subject to senior claims that approximate $275 million. It is apparent on this basis that there is no present value to the Existing Class B Common Stock.

Similarly, in sharp contrast to the "penny-warrants" issued to nonmanagement investors in Class 18 (which may be exercised for nominal consideration), the strike price on the options and other existing management incentives in Class 19, which is approximately $104.61 per common share, remains significantly "out-of-the-money" (that is, the exercise prices significantly exceed the current value of the stock which the optionholder is entitled to purchase) based on the evidence of value before the Court. Moreover, no existing holder of these junior Interests has chosen to exercise these options.

Because the legal rights of the holders of the Class 16 and Class 19 junior Interests are distinct and inferior to those of the holders of other equity Interests and have no

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LOS ANGELES, CALIFORNIA 90067-5061
(310) 407-4000

present economic value, their cancellation is both "fair and equitable" and not "unfair discrimination" within the meaning of section 1129(b)(2).

2. Class 12, Class 13 and Class 17 Holders Are Receiving Reorganization Value Equal to the Allowed Amount of Their Claims or Interests and There Exists a Reasonable Basis for the Differential Treatment Afforded These Classes.[16]

a. Class 12.

Class 12 consists of fully insured professional liability claims. Most of the Debtors' remaining prepetition professional liability Claims are subject to insurance policies with ample unexhausted limits and no remaining deductible or self-insured retention. Gibson Decl. at 5-6. Accordingly, these Claims, although "unsecured" have access to a unique source of payment not available to any other creditors. See In re Apex Oil Co., 118 B.R. at 696 (Bankr. E.D. Mo. 1990) (approved confirmation of plan where separate classification of claims covered by insurance or indemnity policies). Creditors holding Claims in Class 12 will receive payment in full from available insurance policies which appear from available actuarial evidence to be more than adequate to satisfy the claims as they are liquidated. To the extent there is a deficiency or uninsured component of the claim that is compensation for pecuniary loss, such claim to that extent is entitled under the Plan to be reclassified as a Class 10 Claim. Far from being unfairly discriminatory, this treatment is in fact preferential: As their claims become allowed, Class 12 holders will be treated no worse than Class 10 holders, and to the extent of available insurance, they will receive immediate payment in full in cash.

b. Class 13.

Class 13 Claims consists of Other Subordinated Claims including punitive damage awards. The Debtors have successfully and routinely resolved professional liability

[16] As set forth in Section III, supra, no eligible Ballots were cast in Classes 12, 13, and 17 resulting in implied acceptance of the Plan by these classes. Nevertheless, the following section demonstrates, out of an abundance of caution, that the Plan may be confirmed with respect to these classes even if they are deemed to have rejected the Plan pursuant to Bankruptcy Code section 1129(b).

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Claims without being assessed or paying punitive awards in the past. Scott Decl. at 9. Nevertheless, punitive damages in theory are available in numerous pending prepetition lawsuits and the possibility of such liability being established can not be excluded and its amount if any is impossible to predict. In the unlikely event of a massive unexpected punitive award, the recoveries of other unsecured creditors, who would have priority over the punitive award in liquidation, would be significantly and adversely affected unless the recovery of any allowed Class 13 Claim were in turn subordinated in right of payment as the Plan provides.

Under the Plan, the Class 13 holders, if and when their Claims are allowed, will receive a long-term subordinated note with interest accruing from the date of allowance (in recognition of the applicable law which generally prohibits the allowance of prejudgment interest in connection with unliquidated tort claims and other punitive liabilities) at the federal judgment rate.

The Plan's treatment of punitive damages claims, together with other subordinated claims is not *unfairly* discriminatory, given the differing legal rights of the holders of such Claims under section 726(a)(4) which provides for the subordination of "any allowed claim ... for any fine penalty or forfeiture, or for multiple, exemplary, or punitive damages, arising before … the order for relief … to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim." 11 U.S.C. § 726(a)(4). <u>See</u> 7 COLLIER ON BANKRUPTCY ¶ 1122.03[4][d][ii] at 1122-18 ("the same reasoning should apply to nonpecuniary loss penalty claims which could be classified separately due to application of the best interest of Creditors test under Section 1129(a)(7) which measures distributions under section 726(a) of chapter 7"). The differential treatment of these claims is directly related to the rationale for their separate classification: The Plan proposes to pay any allowed Class 13 Claims in full from the resources of the Reorganized Enterprise, with appropriate post-judgment interest, but only after all non-subordinated creditors are paid in full. <u>See</u> <u>In re Ambanc La Mesa Ltd. Partnership</u>, 115 F.3d 650, 656 (9th Cir.1997) (holding that for discrimination to be proper,

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LOS ANGELES, CALIFORNIA 90067-5061
(310) 407-4000

degree of discrimination should be directly related to the basis or rationale for the discrimination); In re Salem Suede, Inc., 219 B.R. at 933-34 (same).

Because the Code provides for the subordination of these Claims and because payment of punitive damages on a non-subordinated basis would diminish the return to other unsecured creditors rather than punish the Debtors, this degree of disparate treatment of punitive damage claims is eminently reasonable. See In re Apex Oil Co., 118 B.R. at 697 ("the inclusion of distributions for Claims for punitive or exemplary damages or fines, penalties or forfeitures in [the class of general unsecured creditors] would alter the Plan and serve only to penalize the other creditors in that Class by potentially severely diluting their recovery – a result fundamentally at odds with the deterrence purposes of punitive or exemplary damages and fines, penalties, or forfeitures."). See also Novack v. Callahan (In re GAC Corp.), 681 F.2d 1295, 1301 (11th Cir. 1982) (in chapter X case, court held that punitive damages claim was properly stricken: "[T]he effect of allowing a punitive damages claim would be to force innocent creditors to pay for the bankrupt's wrongdoing. Such a result would be inequitable . . . ."); In re Bi-Coastal Corp., 134 B.R. 50, 54-55 (Bankr. M.D. Fla. 1991) (Bankruptcy Code "traditionally has not favored [penalty claims because allowance of such claims] punishes innocent parties, i.e. the entire body of creditors, and not the actual wrongdoer who deserves the punishment and is the entity which the statute intended to deter and punish."); In re Hillsborough Holdings Corp., 218 B.R. 617, 620 (Bankr. M.D. Fla. 1991) ("to enforce the punitive damages would serve more to punish unsecured creditors and thus . . . to the extent [the] claim is based on punitive damages, . . . the claim should be disallowed").

The proposed treatment of Class 13 is not only not unfair discrimination; it also meets the "fair and equitable" standard of section 1129(b)(2) because the Plan's proposed treatment requires payment of the full amount of such claim together with the interest to which such creditor would be entitled under otherwise applicable law on a basis that is senior to the interests retained by the existing Interest holders, the only parties whose interests in these estates is legally junior to those of the Class 13 holders. To the extent that it is

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(310) 407-4000

appropriate to test the treatment of Class 13 under the cramdown standards of section 1129(b) in light of Class 13's implied acceptance of the Plan, Section IV.A.8, supra, the Plan meets those standards.

c. Class 17.

Class 17 consists of Existing Class C Common Stock. These shares do not benefit from the effective subordination of the Existing Class B Common Stock to assure the cumulative preferred return in favor of the Existing Class A Common Stock but are otherwise *pari passu* with the Existing Class A Common Stock. In light of the cancellation of the Existing Class B Common Stock, there is no reason not to eliminate the historic distinction between Class A and Class C shares. Accordingly each share of Existing Class C Common Stock is to be exchanged under the Plan for New Class A Common Stock on a "one-for-one" basis. This exchange will further simplify Reorganized Fountain View's capital structure and will result in the Class 17 holders indubitably receiving the value of their Interest in the form of an equivalent number of shares of New Class A Common Stock.

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LOS ANGELES, CALIFORNIA 90067-5061
(310) 407-4000

V

CONCLUSION

For the foregoing reasons, the Debtors respectfully request that the Court enter its Order confirming the Plan.

DATED: June 13, 2003

Daniel J. Bussel

DANIEL J. BUSSEL
MICHAEL L. TUCHIN, and
BRENDT C. BUTLER, Attorneys with
KLEE, TUCHIN, BOGDANOFF & STERN LLP
Reorganization Counsel for Debtors and Debtors in Possession

KLEE, TUCHIN, BOGDANOFF & STERN LLP
2121 AVENUE OF THE STARS, 33RD FLOOR
LOS ANGELES, CALIFORNIA 90067-5061
(310) 407-4000

DECLARATION OF JOHN F. GIBSON

I, John F. Gibson, declare as follows:

1. I am over eighteen years of age. If called as a witness, I could and would testify competently from my own personal knowledge with respect to the matters set forth in this declaration. I make this declaration in support of the *Debtors' Amended Joint Plan Of Reorganization Dated April 22, 2003* (as further amended, the "Plan"),[1] filed by Fountain View, Inc. and its 22 chapter 11 debtor subsidiaries, the debtors and debtors in possession in the above-captioned, jointly administered chapter 11 cases (the "Debtors").

2. I am a principal with PricewaterhouseCoopers, LLP's ("PwC") Actuarial and Insurance Management Solutions practice in Atlanta, Georgia, where I have been a property casualty actuary since 1992. I am a Fellow of the Casualty Actuarial Society, and a Member of the American Academy of Actuaries.

3. I and other members of PwC's Actuarial and Insurance Management Solutions practice have been retained by the Debtors pursuant to an Order of the Court dated March 17, 2003. The Debtors retained PwC's Actuarial and Insurance Management Solutions practice to evaluate the retained liabilities for their long-term care facilities' professional liability program as of December 31, 2002. PwC's analysis includes claims-made liabilities related to exposures and the associated tail liability of Summit Care Corporation ("Summit"), one of the Debtors, and the nine (9) Fountain View, Inc. subsidiaries that existed prior to the merger between Fountain View, Inc. and Summit in 1998, which are hereafter referred to as the "Fountain View 9." The purpose of PwC's analysis is to provide the Debtors an estimation of their loss and defense costs reserves as of December 31, 2002.

4. In connection with PwC's analysis, I, along with other members of PwC assisting me, prepared the *Actuarial Report on Loss and Defense Cost Reserves as of December 31, 2002* (the "Report") for the Debtors. Below is a summary of certain key aspects of the Report.

[1] All capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

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5. The data used to prepare the report was prepared by and provided to PwC by the Debtors. PwC's engagement does not include an audit of the data according to generally accepted accounting practices, and at the time the Report was prepared the data provided to PwC was not audited. I, along with other actuaries of PwC, reviewed the data for reasonableness and consistency, but made no further attempt to verify the accuracy of the data provided by the Debtors.

6. PwC relied on the following data provided by the Debtors in preparing the Report:

- Historical accident year paid and incurred loss and defense cost triangles for long-term care professional liability to $1 million per occurrence;
- Historical report year paid and incurred loss and defense cost triangles for long-term care liability limited to $250,000 per occurrence and limited to $1 million per occurrence;
- Annual number of occupied beds;
- Historical claim count data; and
- Details of the Debtors' historical retentions and excess insurance coverage.

7. The evaluation of loss and defense cost reserves requires the estimation of loss development over an extended period of time. During this time period numerous factors will affect the ultimate settlement value of claims against the Debtors. Such factors may include, but are not limited to, tort reform, expected future inflationary trends, and jury awards. My projection of liabilities is based on the Debtors' historical experience, and I have not anticipated any extraordinary changes to these various factors that might impact the future cost of claims. Although my analysis was performed according to generally accepted actuarial practices and standards, there can be no guarantee that actual loss and defense costs will not vary materially from the estimates shown in the Report due to the uncertainty inherent in loss projections. Therefore, in assessing the reasonableness of reserves, I have

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LOS ANGELES, CALIFORNIA 90067-5061
(310) 407-4000

assumed that a range of acceptable estimates around these values exists in which the selected point estimate is one possible value.

8. Unlike commercial insurance, establishment of a self-insurance program does not result in the transfer of risk. All risk retained remains with the self-insurer, which should have sufficient financial capacity to withstand variation in results. Even if actual experience is very close to the expected experience for a long period of time, the year-to-year differences may be substantial. Except in unusual circumstances, a self-insurance program should consider the purchase of commercial excess or catastrophe coverage. Based on information and belief, I understand that the Debtors have historically maintained excess insurance coverage.

9. Based on information and belief, the Debtors filed for chapter 11 relief on October 2, 2001 (the "Petition Date"). This Court set August 30, 2002 as the bar date for claims related to incidents prior to the Petition Date. In the Report, I assume that the number of claims related to incidents prior to the Petition Date are fixed. In other words, no additional claims are contemplated in the Report.

10. All of the projections and reserve estimates in the Report include both loss and defense costs. However, no provisions have been included to meet other general administrative expenses of the Debtors' long-term care facilities' professional liability program as of December 31, 2002. PwC prepared the estimates in the Report in conformity with the Audit Guide Health Care Organizations.

11. In preparing the Report, I used five generally accepted actuarial methodologies: (i) the paid loss development method; (ii) the incurred loss development method; (iii) the claims frequency and severity method; (iv) the paid Bornheutter-Ferguson method; and (v) the incurred Bornheutter-Ferguson method.

12. The Debtors currently maintain professional and general liability insurance to insure against claims and/or lawsuits arising out of the care provided to their patients at their long-term care facilities and ancillary businesses. Summit and the Fountain View 9 maintained separate insurance policies prior to June 1, 2002, when the Fountain

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(310) 407-4000

View 9 was integrated into the Summit insurance program.

13. Summit's insurance policies since 1995 have followed a claims-made form with retro date of January 1, 1995. A summary of Summit's per claim and annual aggregate self-insured retentions ("SIR") is presented in the table below:

Policy Year	**Per Claim SIR**	**Annual Aggregate SIR**	**Policy Limits****	
			Per Claim	**Aggregate**
1/1/95 – 12/31/95	$100,000	N/A	N/A	N/A
1/1/96 – 12/31/96	$100,000	N/A	N/A	N/A
1/1/97 – 2/28/98	$100,000	N/A	N/A	N/A
3/1/98 – 2/28/99	$100,000	N/A	N/A	N/A
3/1/99 – 3/1/00	$350,000	$2,350,000	$1 million	$3 million
3/1/00 – 4/10/01*	$250,000	$2,333,333	$1 million	$3 million
4/10/01 – 4/10/02	$250,000 (CA & AZ) $1 million (TX)	N/A	$4 million	$5 million
4/10/02 – 4/10/03	$250,000 (CA & AZ) $1 million (TX)	N/A	$4 million	$5 million

*Extended reporting to June 1, 2003.

** Defense costs are in addition.

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14. There is $15 million excess coverage for the policy March 1, 1999 through March 1, 2000, and a $25 million excess coverage for the policy period March 1, 2000 through April 10, 2001. Thus, for example, for the March 1, 1999 through March 1, 2000 policy, there is a $350,000 SIR per claim and $2,350,000 aggregate limit. In other words, after the Debtors have expended $350,000 on any one claim, the insurance company providing the coverage is liable for the next $1 million plus defense costs. After the primary carrier has paid $1 million in indemnity on the claim, the excess carrier becomes responsible. This example assumes that neither the policy aggregate SIR has been met nor the $3 million coverage limit is exhausted. If the Debtors expend an aggregate of $2,350,000 defending or settling claims that are subject to this policy, the insurers pay each additional dollar until the coverages are exhausted (possibly subject to limitations regarding punitive damages).

15. The Debtors have exhausted their aggregate SIR for the March 1, 1999

through March 1, 2000 policy. In addition, the primary insurance layer of $3 million has been exhausted. There remain 17 open claims subject to the 1999 excess policy. The remaining coverage under the excess policy is currently $13,467,000.

16. For Summit's policy for period March 1, 2000 to April 10, 2001, there is a $250,000 SIR per claim and $2,333,333 SIR in the aggregate. The Debtors have also exhausted the SIR aggregate for this policy year. There remain 33 open claims subject to this policy and $25 million excess coverage for this year remains available. In addition, the Debtors purchased an extended reporting period for this policy which will allow claims that occurred from January 1, 1995 through April 10, 2001 to be reported into this policy until June 2003.

17. For Summit's policy for period April 10, 2001 to April 10, 2002, there is a $1 million SIR per claim in Texas, $250,000 SIR per claim in California, and no aggregate SIR limit. There are 34 open claims against this policy year.

18. The Fountain View 9 had guaranteed cost policies on an occurrence basis prior to August 1, 2001. For the August 1, 2001 through June 1, 2002 policy, the Fountain View 9 had a claims-made policy with a retro date of August 1, 2001 and an SIR of $250,000 per claim.

19. For period August 1, 2001 to Jun1 1, 2002, policy limits of $1 million per claim and $3 million annual aggregate apply to all Fountain View 9 policy periods. Beginning June 1, 2002, the Fountain View 9 was covered under the same policy as Summit.

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(310) 407-4000

20. Based on a review of the Debtors' excess loss experience, I do not expect the policy limits for Summit or the Fountain View 9 to be exhausted. Notwithstanding that historical excess loss experience, there always remains the possibility that the Debtors could have one or more high severity claims that could exhaust their excess coverage. Based on the Debtor's excess loss experience and my analysis of the data, I believe this possibility is unlikely.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 13th day of June 2003, at Atlanta, Georgia.

John F. Gibson

JOHN F. GIBSON

KLEE, TUCHIN, BOGDANOFF & STERN LLP
2121 AVENUE OF THE STARS, 33RD FLOOR
LOS ANGELES, CALIFORNIA 90067-5061
(310) 407-4000

DECLARATION OF WILLIAM C. SCOTT

I, William C. Scott, declare as follows:

1. I submit this Declaration in support of confirmation of the *Debtors' Amended Joint Plan Of Reorganization Dated April 22, 2003* (as it may be further amended, the "Plan")[1] filed by Fountain View, Inc., and its 22 Chapter 11 affiliates, the debtors and debtors in possession in the above-captioned, jointly administered chapter 11 cases (the "Debtors").

2. I am over 18 years of age and I have personal knowledge of the facts set forth herein, or I have obtained such knowledge from business records and documents of the Debtors within my custody and control that are regularly created by persons with personal knowledge of the facts contained therein and regularly maintained in the ordinary course of business by the Debtors.

WITNESS BACKGROUND

3. I am the Chairman of the Board of Directors of Fountain View, Inc. In that capacity, I am familiar with the nature and scope of the Debtors' operations and financial affairs. I have held that position since the April 1998 merger pursuant to which the Debtors in their current form were established.

PLAN NEGOTIATION AND DEVELOPMENT

4. The Debtors sought protection under chapter 11 in good faith to: (1) resolve the Debtors' short-term cash-flow crisis caused by the unexpected seizure of their principal depositary accounts by a judgment creditor; (2) stabilize their operations; (3) restructure their existing debt obligations and recapitalize their business as rapidly and efficiently as practicable; and (4) emerge from chapter 11 as a viable going concern.

5. The Plan is the culmination of many months of negotiations – in which I was personally and extensively involved on behalf of the Debtors – among the major constituencies in these cases, including the Debtors, the Official Creditors' Committee, the Official Noteholders Committee, and the Agent and Lenders. Concurrently I spent many

[1] All capitalized terms not otherwise defined shall have the meanings ascribed to them in the Plan.

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months of effort on behalf of the Debtors, along with other members of the Board of Directors, the Debtors' senior management and their legal and accounting professionals, exploring and eventually negotiating exit financing alternatives. During the course of all these negotiations, both I and the other representatives of the Debtors sought to achieve a plan of reorganization that would maximize the value of the Debtors' business enterprise for the benefit of all creditors and interest holders. Based upon my observations and participation in the process, the Official Creditors' Committee, the Official Noteholders' Committee, the Agent and Lenders, and other parties in interest each sought to maximize the recovery for their respective constituencies. These negotiations were undertaken at arms' length and in good faith. The Plan has been proposed in good faith and the solicitation and confirmation processes have likewise been undertaken in good faith. I reasonably believe that confirmation of the Plan is in the best interests of the Debtors' estates, their creditors and equity interest holders.

6. I am informed and believe that all Classes entitled to vote on the Plan have accepted the Plan. I am further informed and believe that under the Plan, Class 16 (Existing Class B Common Stock) and Class 19 (Existing Management Incentives and Other Interests) were not solicited during the voting process and are deemed to reject the Plan. I personally hold interests in both Class 16 and Class 19. Both Classes are at the very bottom of Fountain View, Inc.'s prepetition capital structure, and were designed to provide a form of incentive compensation to the Debtors' prepetition management. Pursuant to Fountain View, Inc.'s prepetition articles of incorporation,[2] the Existing Class B Common Stock—the 114,202 outstanding shares of which are held by Mr. And Mrs. Robert Snukal and myself—are subject to a cumulative preferred return in favor of the Existing Class A Common Stock. In other words, the value of each share of Existing Class A Common Stock would have to exceed an amount equal to $126.53 per share plus a 22% internal rate of return calculated from the date of issuance of such shares. Since the Existing Class A Common Stock has

[2] A true and correct copy of Fountain View, Inc.'s prepetition articles of incorporation is attached hereto as Exhibit 1.

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been issued and outstanding for five years, as of June 30, 2003, the equity value of Fountain View, Inc. would have to exceed $395,751,000 for the shares of Existing Class B Common Stock to have any present value.

7. The Debtors' management and professionals prepared the reorganization value of the Debtors that is set forth as Exhibit 6 to the Disclosure Statement and discussed in Section XIII.C of the Disclosure Statement. This analysis shows that the Debtors' total enterprise value is $435,604,743. Based on information and belief, the enterprise value, however, is subject to claims senior to the Existing Class B Common Stock that approximate $275 million. Although I do not profess expertise regarding the legal requirements to confirm the Plan as to these Classes, I believe it is apparent on this basis that there is no present value to the Existing Class B Common Stock under the Plan.

8. Similarly, in sharp contrast to the "penny-warrants" issued to non-management investors in Class 18 (which may be exercised for nominal consideration), the strike prices on the options and other existing management incentives in Class 19 is approximately $104.61, and remain significantly "out-of-the-money" (that is, the exercise prices significantly exceed the current value of the stock which the optionholder is entitled to purchase) based on the evidence of value present in Exhibit 6 to the Disclosure Statement.

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SUBSTANTIVE CONSOLIDATION

9. As part of their continuing efforts to restructure the operation of their businesses, the Debtors have decided to substantively consolidate for the limited purpose of implementing the Plan. Notably, the substantive consolidation will not affect the legal organizational structure of the Reorganized Enterprise contemplated under the Plan, guaranties or the grants of collateral in connection with the Exit Facility, or the issuance of new securities under the Plan, or distributions out of any insurance policies or proceeds of policies.

10. The substantive consolidation will eliminate multiple and duplicative claims as well as joint and several liability claims, and will afford payment of allowed claims against each of the Debtors from a common fund. I believe it will be less burdensome and

less costly implementing the Plan by pooling the claims of all creditors rather than attempting to disentangle the financial affairs of the various Debtors.

11. The Debtors' integrated healthcare networks provide inpatient, pharmacy, medical supply, and other healthcare services through skilled nursing facilities, assisted living facilities, therapy facilities, long-term care pharmacies and durable medical equipment supply distributions to the Debtors' facilities and unaffiliated facilities in both California and Texas. There is little correlation between the names of the facilities and the names of the legal entities that technically own such facilities, which the Debtors generally operate under fictitious names. Until the present, the Debtors have been operated as a consolidated business with highly integrated operations. The Debtors' operations have been organized around business segments and regions, and are operated pursuant to a centralized management organization that provides essential services such as day-to-day accounting, purchasing, human resources, legal, regulatory compliance, risk management, and other overhead functions. As a result, few, if any, of the Debtors currently are capable of operating as stand-alone entities.

12. Due to the organization of their books and records, the Debtors filed with the Bankruptcy Court their statement of financial affairs, schedules of assets and liabilities, schedules of executory contracts and unexpired leases on a partially consolidated basis. While most Debtor entities maintain their own books, the financial information is upstreamed to the Debtors' central financial management team that creates consolidated books and records without which the financial affairs of the Debtors would appear incomplete and misleading.

13. The books and records of the Debtors also reflect a large amount of intercompany claims showing, among other things, advances from Fountain View, Inc. to fund and build operations, upstreamed funds from the other Debtors to enable Fountain View, Inc. to make payments to creditors, the allocation of corporate overhead, and the transfer of other property from one Debtor to another. In view of the complexity of such transactions and the adjustments that have been made over time, it would be difficult to

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reconcile intercompany claims.

14. For the most part, the business units of the Debtors operate as integrated units, without all the formalities of separate corporate entities. As such, the Debtors participate in a unified cash management system (which includes non-Debtor subsidiaries). The overwhelming majority of the Debtors' expenditures are also made from commingled, centralized accounts.

15. Substantially all of the Debtors are co-obligors under the Prepetition Credit Agreement between the Debtors and the Agent and Lenders and under the indenture governing the 11¼% Notes (collectively holding over 95% of the total claims against the Debtors). In addition, almost all of the Debtors granted first priority security interests in substantially all their assets (including cash collateral) pursuant to pledge, guaranty, security agreements, and deeds of trust entered into as collateral support for the obligations under the Prepetition Credit Agreement.

16. All financial information disseminated to the public by the Debtors, including to customers, suppliers, landlords, lenders, and credit agencies, is prepared and presented on a consolidated basis. While the individual Debtor entities have personnel that separately compile financial information, that information is upstreamed to the financial officers of Fountain View, Inc. who consolidate that information for presentation to creditors and other interested parties as needed.

17. For all of the reasons stated above, I believe that their creditors, including and especially the Agents and Lenders and the holders of the 11¼% Notes, dealt with the Debtors as a single economic unit and did not rely on the separate identities of the individual Debtor entities in extending credit.

EXIT FACILITY

18. As stated in Section IX.C.3 of the Disclosure Statement, the Debtors have been engaged in extensive negotiations for exit financing in the approximate amount of $150 million with CapitalSource Finance LLC, Credit Suisse First Boston (through its subsidiary Column Financial, Inc.) and Highbridge/Zwirn Opportunity Fund LP

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(collectively, the "Proposed Exit Lenders"). I have personally led the Debtors' negotiations for financing with the Proposed Exit Lenders. I, along with other management of the Debtors, have negotiated with the representatives of the Proposed Exit Lenders at great length over the terms of the Exit Facility. These negotiations are ongoing. I believe that these negotiations have been, and continue to be, conducted in good faith and at arms' length. At all times in these negotiations, the Debtors were represented by independent and disinterested parties seeking to further the interests of the Debtors' estates and their creditors. I expect that, as a result of these negotiations, the Debtors will lodge definitive financing documents with the Court with the Plan Supplement on the Exhibit Filing Date providing for an Exit Facility of approximately $150 million. Moreover, I reasonably believe that the Debtors will be able to consummate the financing under the Exit Facility on the Effective Date and satisfy all of their obligations required under the Plan on the Effective Date and thereafter. The means of implementation provided by the Plan reasonably appear to be adequate under present circumstances.

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UNION BANK EXTENSION AGREEMENT

19. Class 4 consists exclusively of the Claim of Union Bank of California, N.A. ("Union Bank") under that certain Amended and Restated Commercial Promissory Note dated as of April 1, 2001 which are secured, pursuant to that certain Extension and Modification Agreement and Modification of Deed of Trust dated April 1, 2001, in the real property and personal property affixed thereto located at 730 North Frederick Street and 2600 West Magnolia Boulevard, Burbank, California, as such obligations shall be further modified and extended pursuant to the Union Bank Extension Agreement. The Debtors are currently in the process of consummating a sale of the property securing Union Bank's Claim for aggregate gross cash consideration of $2,450,000, an amount that greatly exceeds the current outstanding balance of the Class 4 Claim of approximately $830,000. I am the person with principal responsibility for representing the Debtors in connection with that sale transaction. That sale has been negotiated in good faith and at arms' length with a third party buyer by persons who are independent and disinterested parties seeking to further the

interests of the Debtors' estates and their creditors. The terms of the sale are fair and reasonable and in the best interests of the Debtors' estates. I expect the sale to close sometime after the Confirmation Hearing Date currently set for July 3, 2003.

20. In order to facilitate the orderly disposition of the property securing the Class 4 Claim and the repayment of the Class 4 Claim out of the sale proceeds, the Debtors and Union Bank have agreed on terms set forth in the Union Bank Extension Agreement, the form of which is to be filed with the Plan Supplement, to consensually extend the maturity date of the Class 4 Claim to December 31, 2003. Union Bank has also consented to the sale of the property free and clear of the liens of the holder of the Class 4 Claim; provided, however, that concurrently with any such sale the Class 4 Claim is satisfied by the payment from the proceeds of any such sale to the holder of the Class 4 Claim of cash in an amount equal to Allowed Class 4 Claim. The Debtors have been at all times represented by their independent professionals in negotiating this settlement and the treatment of Union Bank's Claim under the Plan. Accordingly, I believe this settlement is the product of arms' length and good faith negotiations between the Debtors and Union Bank and the terms are fair and reasonable and in the best interests of the Debtors' estates.

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SECURITIES ISSUED UNDER THE PLAN

21. The Debtors will issue New Preferred Stock and New Class A Common Stock under the Plan. The New Class A Common Stock will have one-vote per share of New Class A Common Stock on all matters requiring a shareholder vote as set forth in the restated and amended articles of incorporation of Fountain View, Inc. The New Preferred Stock will have the same attributes as the Existing Preferred Stock, except that Reorganized Fountain View's articles of incorporation will be amended in the form provided in the Plan Supplement to prohibit the issuance of non-voting equity securities. Pursuant to the new articles of incorporation, the holders of New Preferred Stock shall have one-tenth of a vote per share of New Preferred Stock on all matters requiring a shareholder vote.

22. All equity interests in Reorganized Fountain View issued under the Plan will be subject to an Amended Stockholders' Agreement. The Amended Stockholders'

Agreement will provide holders the customary benefits of "tag-along" and "drag-along" rights and related protections that are customary in the context of a privately-held corporation. Pursuant to the Amended Stockholders' Agreement a majority of the Board of Directors will be designated by the Debtors' largest shareholder Heritage Fund II, L.P. ("Heritage") and Heritage will hold a proxy from other holders that it can exercise with respect to most matters that come before the Board of Directors. These provisions are similar in terms and effect to those of the existing Stockholders' Agreement.

23. Fountain View, Inc. has historically been operated as a private company subject to the Stockholder's Agreement. All the existing shareholders of Fountain View, Inc. have expressly consented to a set of governance arrangements consistent with that proposed by the Amended Stockholders' Agreement and no present shareholder's rights are materially or adversely affected by the Amended Stockholders' Agreement. The new parties to the Amended Stockholders' Agreement will be the Class 9 creditors who will receive pro rata distributions of the Noteholders' Stock Distribution under the Plan. The terms of the Amended Stockholders' Agreement affecting the Class 9 creditors were negotiated at arms'-length and in good faith with the Noteholders' Committee, which like the Class 9 constituency generally, is composed of sophisticated investors and financial institutions. Moreover the substantive terms of the Amended Stockholders' Agreement have been disclosed in the Disclosure Statement which was sent to all identifiable Class 9 holders. See Disclosure Statement at 51 and 65. In fact, based on information and belief, 39 holders representing $117,505,000 out of the $120 million in outstanding principal amount of notes have affirmatively indicated their consent to be bound by the Amended Stockholders' Agreement after having received disclosure of its material terms.

MISCELLANEOUS

24. The Debtors have identified in Section VIII of the Disclosure Statement the persons expected to serve as the initial members of the Board of Directors of Reorganized Fountain View, and its principal officers, and also indicated that the membership of the Board shall be subject to the procedures set forth in the Amended

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Stockholders' Agreement and that the officers shall serve at the direction of the Board. Appointment of these directors and officers is in the best interests of the Debtors, their creditors and interest holders, and those of the Reorganized Enterprise, and is consistent with public policy.

25. I have been intimately involved in managing the Debtors' insurance and professional liability issues. Both pre- and postpetition the Debtors have successfully and routinely resolved professional liability Claims without being assessed or paying punitive awards in the past. The ADR Procedures established postpetition have proven to be a fair, efficient and cost-effective mechanism for resolving the Debtors' professional liability claims. The Debtors have successfully consummated settlements with approximately 65 professional liability claimants (involving over 60 proofs of Claims) pursuant to the settlement authority granted the Debtors under the ADR Procedures. Moreover, through mediation the Debtors have successfully mediated with four professional liability claimants, and have reached preliminary settlement agreements with four others. Based on this experience, the maintenance of those procedures in substantially the present form in order to liquidate and allow the Debtors' pre-confirmation debts arising out of personal injury and wrongful death claims and other professional liability matters is fair, reasonable and in the best interests of the Debtors' estates, creditors and interest holders.

26. The trade creditors designated as continuing creditors in the Plan are not insiders within the meaning of section 101(31) of the Bankruptcy Code. These third parties have agreed to extend future credit to the Reorganized Enterprise on terms and conditions acceptable to it and to provide essential services necessary to the continuing businesses of the Reorganized Enterprise and the continued well-being of their residents and customers. Their designation as continuing creditors was undertaken in the good faith business judgment of the Debtors and is fair and reasonable.

27. To the best of my information and belief, the Debtors are not subject to any public regulatory agency with jurisdiction over any rates charged by the Debtors.

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28. To the best of my knowledge, information and belief, the Debtors are not presently obligated to provide any "retiree benefits" within the meaning of the Bankruptcy Code (i.e., payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund or program maintained in whole or in party by the debtor prior to the commencement of their cases).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 13th day of June, 2003, at Chicago, Illinois.

William C. Scott

WILLIAM C. SCOTT

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EXHIBIT 3.1

CERTIFICATE OF INCORPORATION

OF

Fountain View Management, Inc.

THE UNDERSIGNED, for the purpose of forming a corporation pursuant to the provisions of the General Corporation Law of the State of Delaware, does hereby certify as follows:

FIRST: The name of the Corporation is Fountain View Management, Inc. (the "Corporation").

SECOND: The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, 19801 and the name of the Corporation's registered agent at such address is The Corporation Trust Company.

THIRD: The purpose for which the Corporation is organized is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is 3,000 shares of Class A Common Stock, $.01 par value.

FIFTH: The name and the mailing address of the incorporator is as follows:

NAME	MAILING ADDRESS
Kathleen M. Sablone	Choate, Hall & Stewart Exchange Place 53 State Street Boston, MA 02109

SIXTH: The Directors shall have power to adopt, amend, or repeal the By-Laws of the Corporation.

SEVENTH: Election of Directors need not be by written ballot unless the By-Laws of the Corporation so provide.

EIGHTH: The Corporation shall indemnify and hold harmless any director, officer employee or agent of the Corporation from and against any and all expenses and liabilities that may be imposed upon or incurred in connection with, or as a result of, any proceeding in which he or she may become involved, as a party or otherwise, by reason of the fact that
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he or she is or was such a director, officer, employee or agent, whether or not he or she continues to be such at the time such expenses and liabilities shall have been imposed or incurred, to the fullest extent permitted by the laws of the State of Delaware as they may be amended from time to time.

NINTH: No director of the Corporation shall be liable to the Corporation

EXHIBIT 1
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or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of Title 8 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which the director derived an improper personal benefit.

TENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

The undersigned incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, does make this certificate, hereby declaring and certifying that this is her act and deed and the facts stated herein are true and accordingly has hereunto set her hand this 14th day of July, 1997.

/s/ Kathleen M. Sablone

Kathleen M. Sablone, Incorporator

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PAGE 1

State of Delaware

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "FOUNTAIN VIEW MANAGEMENT, INC.", CHANGING ITS NAME FROM "FOUNTAIN VIEW MANAGEMENT, INC." TO "FOUNTAIN VIEW, INC.", FILED IN THIS OFFICE ON THE FIRST DAY OF AUGUST, A.D. 1997, AT 2:30 O'CLOCK P.M.

[SEAL]

/s/ Edward J. Freel

Edward J. Freel, Secretary of State

2772638 8100

AUTHENTICATION: 9027443

981143230

DATE: 04-15-98

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CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
FOUNTAIN VIEW MANAGEMENT, INC.

EXHIBIT F
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IT IS HEREBY CERTIFIED THAT:

1. The name of the Corporation (hereinafter, the "Corporation") is Fountain View Management, Inc.

2. The Certificate of Incorporation of the Corporation is hereby amended by deleting ARTICLE 1 thereof and by substituting in lieu thereof the following new ARTICLE 1:

ARTICLE 1. The name of the Corporation is Fountain View, Inc. (the "Corporation").

3. The Certificate of Incorporation of the Corporation is hereby amended by deleting ARTICLE 4 thereof and by substituting in lieu thereof the following new ARTICLE 4:

ARTICLE 4. A description of each class and series of stock of the Corporation and the voting rights, designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof is as follows:

Section 1. Capital Stock.

1.1 General. The Corporation shall have two classes of capital stock (the "Capital Stock"): Common Stock, $.01 par value per share (the "Common Stock"), and Preferred Stock, $.01 par value per share (the "Preferred Stock").

1.2 Number of Shares. The total authorized number of shares of each class of Capital Stock is (a) 200,000 shares of Common Stock and (b) 7,000 shares of Preferred Stock.

1.3 Series of Preferred Stock. The shares of Preferred Stock shall be designated "Series A Preferred Stock" (the "Series A Preferred Stock").

1.4 Series of Common Stock. 53,850 shares of the Common Stock shall be designated "Series A-1 Common Stock" (the "Series A-1 Common Stock"). 99,950 shares of the Common Stock shall be designated "Series A-2 Common Stock" (the "Series A-2 Common Stock"). 46,200 shares of the Common Stock shall be designated "Series A-3 Common Stock" (the "Series A-3 Common Stock").

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Section 2. Dividends and Other Distributions and Benefits.

2.1 Dividends on the Series A Preferred Stock.

(a) The holders of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of funds legally available therefor, a dividend at the annual rate of 10% of the Base Amount (as

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hereinafter defined) of each share of Series A Preferred Stock from and including the date of issuance of such share to and including the day on which the Liquidation Value (as hereinafter defined) of such share is paid. Such dividends shall accrue from day to day, whether or not earned or declared, on each issued and outstanding share of Series A Preferred Stock, and shall be cumulative. The date on which the Corporation initially issues any share of Series A Preferred Stock will be deemed to be its "date of issuance" regardless of the number of times transfer of such share is made on the stock records of the Corporation and regardless of the number of certificates which may be issued to evidence such share.

(b) If declared by the Board of Directors, dividends on each share of Series A Preferred Stock shall be paid on each July 1 while such share is outstanding (the "Dividend Reference Date").

(c) Any dividends that accrue on any share of Series A Preferred Stock during the one-year period (or lesser period in the case of the first Dividend Reference Date) ending upon such Dividend Reference Date, and are not paid on such Dividend Reference Date, shall automatically be added to the Base Amount of such share and will remain a part thereof until such dividends are paid, at which time the Base Amount shall be reduced by such payment.

(d) The "Base Amount" of any share of Series A Preferred Stock as of a particular date shall be an amount equal to the sum of $1,000 plus any unpaid dividends on such share added to the Base Amount of such share as provided above and not thereafter paid.

2.2 Other Dividends and Distributions on Capital Stock. Any dividend payable in shares of the Corporation's Common Stock, and any split or other subdivision of such Common Stock, shall not be deemed to be a distribution of property pursuant to this paragraph 2.2. Dividends on the Common Stock shall be made among the holders thereof pro rata to the number of shares of Common Stock held by each holder (but, in the case of a stock dividend, shall be made only in shares of the respective series of Common Stock held by each holder).

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Section 3. Voting Rights.

At every meeting of the stockholders (or for actions by written consent of stockholders), except as otherwise required by law or specified in this Certificate of Incorporation, on all matters to be voted on by the stockholders of the Corporation, the following provisions shall apply:

3.1 Voting by Series A Preferred Stock. The Preferred Stock shall be non-voting, and the holders thereof, as such, shall not be entitled to vote on matters to be voted upon by the stockholders of the Corporation, provided that as long as any Series A Preferred Stock is outstanding, the Corporation shall not, without the affirmative vote or written consent of the then holders of a majority of the outstanding shares of Series A Preferred Stock, alter or change the powers, preferences or rights of the Series A Preferred Stock or the qualifications, limitations or restrictions thereof.

3.2 Class Voting by Common Stock. Subject to the following paragraphs of this Section 3, the holders of all series of Common Stock shall vote together as a single class on all matters to be voted on by the holders of the Common Stock.

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3.3 Voting by Series A-1 Common Stock. In any matter to be voted on by the holders of the Common Stock, each holder of shares of Series A-1 Common Stock shall have three votes for each such share held by such holder.

3.4 Voting by Series A-2 Common Stock. In any matter to be voted on by the holders of the Common Stock, each holder of shares of Series A-2 Common Stock shall have one vote for each such share held by such holder.

3.5 Voting by Series A-3 Common Stock. The Series A-3 Common Stock shall be non-voting, and the holders thereof, as such, shall not be entitled to vote on matters to be voted upon by the stockholders of the Corporation.

Section 4. Liquidation.

4.1 Preference of Series A Preferred Stock. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled, before any distribution or payment is made upon any shares of Common Stock, to be paid in cash, in respect of each share of Series A Preferred Stock held by such holder, an amount equal to the Base Amount of such share on such date, plus all unpaid dividends accrued on such share through the close of business on such date and not previously added to such Base Amount (the "Liquidation Value"). If upon such liquidation, dissolution or winding up, the assets to be

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distributed among the holders of the shares of Series A Preferred Stock shall be insufficient to permit payment to the holders thereof of such amounts, then all of the assets of the Corporation then remaining shall be distributed ratably among the holders of the shares of Series A Preferred Stock.

4.2 Preference of Series A-1 Common Stock and Series A-2 Common Stock. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment in full of the Liquidation Value of the Series A Preferred Stock, the holders of Series A-1 Common Stock and Series A-2 Common Stock shall be entitled, before any distribution or payment is made upon any other shares of Common Stock, to be paid in cash, in respect of each share of Series A-1 Common Stock and Series A-2 Common Stock held by such holder, an amount equal to $130 (the "Common Stock Preference"). If upon such liquidation, dissolution or winding up, the assets to be distributed among the holders of the shares of Series A-1 Common Stock and Series A-2 Common Stock shall be insufficient to permit payment to the holders thereof of such amounts, then all of the assets of the Corporation then remaining shall be distributed ratably among the holders of the shares of Series A-1 Common Stock and Series A-2 Common Stock.

4.3 Preference of Series A-3 Common Stock. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment in full of the Liquidation Value of the Series A Preferred Stock and the Common Stock Preference of the Series A-1 Common Stock and Series A-2 Common Stock, the holders of Series A-3 Common Stock shall be entitled, before any distribution or payment is made upon any other shares of Common Stock, to be paid in cash, in respect of each share of Series A-3 Common Stock held by such holder, an amount equal to the Common Stock Preference. If upon such liquidation, dissolution or winding up, the assets to be distributed among the holders of the shares of Series A-3 Common Stock shall be insufficient to permit payment to the holders thereof of such amounts, then all of the assets of the Corporation then remaining shall be distributed ratably among the holders of the shares of Series A-3 Common Stock.

4.4 Distribution of Remaining Assets. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after provision is made for holders of Series A Preferred Stock and Common Stock as provided in the preceding paragraphs, the holders of Common Stock shall be entitled to receive ratably all remaining assets of the Corporation to be distributed, based on the number of shares of Common Stock held by each such holder.

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4.5 Treatment of Certain Transactions. The occurrence of a "Trigger Event", as such term is defined in the Stockholders Agreement dated as of August 1, 1997 among the Company, Robert Snukal, Sheila Snukal and Heritage Fund II Investment Corporation, as amended from time to time, shall be deemed to be a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of Section 4.1, and shall be subject to all of the provisions thereof, and no such transaction shall be consummated unless the Corporation has received (or upon the consummation of such transaction will receive) payment in cash of the Liquidation Value as provided in Section 4.1.

4. That such amendment has been duly adopted in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

The foregoing Certificate of Amendment has been signed and attested as of August __, 1997.

/s/ Robert Snukal

Robert Snukal, President

ATTEST:

/s/ Sheila Snukal
- ----------------------------
Sheila Snukal, Secretary

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EXHIBIT 3.1(A)

FORM OF AMENDMENT TO

CERTIFICATE OF INCORPORATION

OF
--
FOUNTAIN VIEW, INC.

CERTIFICATE OF AMENDMENT

OF THE CERTIFICATE OF INCORPORATION OF

FOUNTAIN VIEW, INC.

IT IS HEREBY CERTIFIED THAT:

1. The name of the Corporation is Fountain View, Inc. (hereinafter, the "Corporation").

2. The Certificate of Incorporation of the Corporation is hereby amended by deleting Article 4 thereof and substituting in lieu thereof the following new Article 4:

ARTICLE 4. A description of each class and series of stock of the Corporation and the voting rights, designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof is as follows:

Section 1. Capital Stock.

1.1 General. The Corporation shall have two classes of capital stock (the "Capital Stock"): Common Stock, $.01 par value per share (the "Common Stock"), and Preferred Stock, $.01 par value per share (the "Preferred Stock").

1.2 Number of Shares. The total authorized number of shares of each class of Capital Stock is (a) 3,000,000 shares of Common Stock and (b) 1,000,000 shares of Preferred Stock.

1.3 Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the "Board") is hereby authorized, within the limitations and restrictions stated in this Certificate of Incorporation, to determine or alter the rights, preferences,
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powers, privileges and the restrictions, qualifications and limitations granted to or imposed upon any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation thereof; to increase or decrease the number of shares constituting any such series; and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series as are then issued and outstanding, and if any series shall be so decreased, the shares then constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

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1.4 Series of Preferred Stock. 200,000 shares of the Preferred Stock shall be designated "Series A Preferred Stock" (the "Series A Preferred Stock").

1.5 Series of Common Stock. 1,500,000 shares of the Common Stock shall be designated "Series A Common Stock" (the "Series A Common Stock"). 200,000 shares of the Common Stock shall be designated "Series B Non-Voting Common Stock" (the "Series B Common Stock"). 1,300,000 shares of the Common Stock shall be designated "Series C Common Stock" (the "Series C Common Stock").

Section 2. Dividends and Other Distributions.

2.1 Dividends on the Series A Preferred Stock.

(a) Subject to the rights of series of Preferred Stock which may from time to time come into existence, the holders of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of funds legally available therefor, a dividend at the annual rate of 12% of the Base Amount (as hereinafter defined) of each share of Series A Preferred Stock from and including the date of issuance of such share to and including the day on which the Liquidation Value (as hereinafter defined) of such share is paid. Such dividends shall accrue from day to day, whether or not earned or declared, on each issued and outstanding share of Series A Preferred Stock, and shall be cumulative. The date on which the Corporation initially issues any share of Series A Preferred Stock will be deemed to be its "date of issuance" regardless of the number of times transfer of such share is made on the stock records of the Corporation and regardless of the number of certificates which may be issued to evidence such share, provided however that all shares of Series A Preferred Stock issued prior to the first Dividend Reference Date (as hereinafter defined) shall be deemed, for purposes of this Subsection (a), to have been issued on March 27, 1998.

(b) If declared by the Board, dividends on each share of Series A Preferred Stock shall be paid on each March 31,

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commencing March 31, 1999 (the "Dividend Reference Dates"), while such share is outstanding.

(c) Any dividends that accrue on any share of Series A Preferred Stock during the period ending upon such Dividend Reference Date that are not paid on such Dividend Reference Date shall automatically be added to the Base Amount of such share and will remain a part thereof until such dividends are paid, at which time the Base Amount shall be reduced by such payment.

(d) The "Base Amount" of any share of Series A Preferred Stock as of a particular date shall be an amount equal to the sum of $1,000.00 plus any unpaid dividends on such share added to the Base Amount of such share as provided above and not thereafter paid.

2.2 Other Dividends. Dividends on any series of Preferred Stock shall be

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determined by the Board. Dividends on the Common Stock shall be made among the holders thereof pro rata to the number of shares of Common Stock held by each holder (but, in the case of a stock dividend, shall be made only in shares of the respective series of Common Stock held by each holder), unless otherwise specified by the Company's Board of Directors.

Section 3. Voting Rights. Subject to the rights of series of Preferred Stock which may from time to time come into existence, at every meeting of the stockholders (or for actions by written consent of stockholders), except as otherwise required by law, on all matters to be voted on by the stockholders of the Corporation, the following provisions shall apply:

3.1 Voting by Series A Preferred Stock. The Series A Preferred Stock shall be non-voting, and the holders thereof, as such, shall not be entitled to vote on matters to be voted upon by the stockholders of the Corporation.

3.2 Voting by Series A Common Stock. In any matter to be voted on by the holders of the Common Stock, each holder of shares of Series A Common Stock shall have one vote for each such share held by such holder.

3.3 Voting by Series B Common Stock. The Series B Common Stock shall be non-voting, and the holders thereof, as such, shall not be entitled to vote on matters to be voted upon by the stockholders of the Corporation.

3.4 Voting by Series C Common Stock. In any matter to be voted on by the holders of the Common Stock, each holder of shares of Series C Common Stock shall have one vote for each such share held by such holder.

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Section 4. Liquidation.

4.1 Series A Preferred Stock. Subject to the rights of any series of Preferred Stock which may from time to time come into existence, upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled, before any distribution or payment is made upon any shares of Common Stock, to be paid in cash, in respect of each share of Series A Preferred Stock held by such holder, an amount equal to the Base Amount of such share on such date, plus all unpaid dividends accrued on such share from the previous Dividend Reference Date through the close of business on the date of payment (the "Liquidation Value").

If upon such liquidation, dissolution or winding up, the assets to be distributed among the holders of the shares of Series A Preferred Stock shall be insufficient to permit payment to the holders thereof of such amounts, then all of the assets of the Corporation then remaining and legally available for distribution shall be distributed ratably among the holders of the shares of Series A Preferred Stock.

4.2 Common Stock. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment in full of the Liquidation Value of the Series A Preferred Stock and the liquidation value of any other series of Preferred Stock which may from time to time come into existence, the assets available for distribution to the holders of Common Stock shall be distributed ratably among the holders of (a) the Series A Common Stock

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and the Series B Common Stock, on the one hand, and (b) the holders of the Series C Common Stock, on the other, based on the relative number of shares of Common Stock outstanding and held by such holders, provided that for all purposes of this Section 4.2 the aggregate number of outstanding shares of Series A Common Stock and Series B Common Stock shall be deemed to be 1,114,202 (appropriately adjusted for stock splits, stock dividends, combinations and similar transactions), regardless of the number of shares actually outstanding.

4.3 Distribution among the Holders of Series A Common Stock and Series B Common Stock. All amounts distributable in respect of the Series A Common Stock and the Series B Common Stock shall be divided among such shares in the following proportions:

(a) Preference of Series A Common Stock. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of Series A Common Stock shall be entitled, before any distribution or payment is made upon any Series B Common Stock, to be paid in cash, in respect of each share of Series A Common Stock an amount equal to $126.53 plus a 22% internal rate of return thereon calculated from the date of initial issuance of such share (without regard for any prior transfers of such share) and taking into account

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any prior dividends or other distributions thereon (the "Series A Common Stock Preference"). If upon such liquidation, dissolution or winding up, the assets to be distributed among the holders of the shares of Series A Common Stock and the Series B Common Stock shall be insufficient to permit payment to the holders of the Series A Common Stock of the Series A Common Stock Preference, then all of the assets of the Corporation to be distributed among the Series A Common Stock and the Series B Common Stock pursuant to Section 4.2 shall be distributed ratably among the holders of the shares of Series A Common Stock.

(b) Preference of Series B Common Stock. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment in full of the Series A Common Stock Preference, the holders of Series B Common Stock shall be entitled, before any other distribution or payment is made upon any shares of Series A Common Stock, to be paid in cash, in respect of each share of Series B Common Stock held by such holder, an amount equal to the Series A Common Stock Preference. If upon such liquidation, dissolution or winding up, after payment in full of the Series A Common Stock Preference to the holders of the Series A Common Stock, the remaining assets to be distributed among the holders of the Series A Common Stock and the Series B Common Stock shall be insufficient to permit payment of an amount to the holders of the Series B Common Stock equal to the Series A Common Stock Preference, then all of the assets of the Corporation then remaining and which are to be distributed among the Series A Common Stock and Series B Common Stock shall be distributed ratably among the holders of the shares of Series B Common Stock.

(c) Distribution of Remaining Assets. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment is made to the holders of the Series A Common Stock and the Series B Common Stock as provided in the preceding Sections, the holders of the Series A Common Stock and the Series B Common Stock shall be entitled to receive ratably all remaining assets of the Corporation to be distributed among them pursuant to Section 4.2, based on the number of shares of Series A Common Stock and Series B Common Stock held by each such holder.

Section 5. Redemption of Series A Preferred Stock.

5.1 Redemption Upon Initial Public Offering.

(a) Promptly after the closing of an underwritten, initial public offering of the Corporation's Common Stock for cash pursuant to a registration statement under the Securities Act of 1933, as amended, the Corporation shall redeem, out of funds legally available therefor, all outstanding shares of the Series A Preferred Stock by paying in cash to the holders thereof

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an amount equal to the Liquidation Value thereof. Such payment shall be made to the record holders of the Series A Preferred Stock and shall be accompanied by written notice specifying the number of shares that are being redeemed from each holder.

(b) If the funds legally available to redeem shares of Series A Preferred Stock under this Section 5.1 are insufficient to redeem all of the outstanding shares of Series A Preferred Stock at any time, the Corporation shall redeem the maximum number of shares of Series A Preferred Stock that the Corporation has funds legally available therefor on a pro rata basis among all of the holders of Series A Preferred Stock according to the number of shares of Series A Preferred Stock owned by each holder, and shall quarterly thereafter redeem the maximum number of shares of Series A Preferred Stock that the Corporation has funds legally available therefor on a pro rata basis among all of the holders of Series A Preferred Stock according to the number of shares of Series A Preferred Stock then owned by each holder.

(c) Promptly after each holder of Series A Preferred Stock has received payment of the Liquidation Value thereof, such holder shall surrender certificates evidencing the Series A Preferred Stock so redeemed, and shall thereupon be entitled to receive a replacement certificate for any shares not redeemed.

(d) After any payment under this Section, the redeemed shares shall be canceled on the Corporation's records and shall cease to be outstanding.

5.2 Redemption at Corporation's Option.

(a) The Corporation may at any time, at its option, redeem some or all shares of Series A Preferred Stock, out of funds legally available therefor, at a price per share equal to the Liquidation Value as of the date of redemption. Such redemption shall be made by paying such amount to the record holders of the Series A Preferred Stock and shall be accompanied by written notice specifying the number of shares that are being redeemed from each holder. All such redemptions shall be pro rata among the holders of Series A Preferred Stock.

(b) Promptly after each record holder of Series A Preferred Stock has received payment of the Liquidation Value thereof pursuant to this Section 5.2, such holder shall surrender certificates evidencing the Series A Preferred Stock so redeemed, and shall thereupon be entitled to receive a replacement certificate for any shares not redeemed.

(c) After any payment under this Section, the redeemed shares shall be canceled on the Corporation's records and shall cease to be outstanding.

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3. At the time this amendment becomes effective, (a) each share of (i) prior Series A-1 Common Stock, (ii) prior Series A-2 Common Stock and (iii) prior Series A-3 Common Stock then issued and outstanding shall be reclassified and converted into 1.3824 fully paid and nonassessable shares of the authorized Series A Common Stock of the Corporation, rounded to the nearest whole share, and (b) each share of prior Series A Preferred Stock then issued and outstanding shall be reclassified and converted into 7.9226 fully paid and nonassessable shares of the authorized Series A Common Stock of the Corporation, rounded to the nearest whole share, all without any further act of this Corporation or its shareholders.

4. That such amendment has been duly adopted in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

The foregoing Certificate of Amendment has been signed and attested as of March 27, 1998.

/s/ Robert Snukal

Robert Snukal, President

ATTEST:

/s/ Sheila Snukal
- ----------------------------
Sheila Snukal, Secretary

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State of Delaware

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "FOUNTAIN VIEW, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-SEVENTH DAY OF MARCH, A.D. 1998.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

[CORPORATE SEAL APPEARS HERE]

/s/ Edward J. Freel

Edward J. Freel, Secretary of State

2772638 8300

AUTHENTICATION:

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8998994
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981119858
03-27-98

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EXHIBIT 3.1(B)

CERTIFICATE OF AMENDMENT

TO

CERTIFICATE OF INCORPORATION

OF

FOUNTAIN VIEW, INC.

IT IS HEREBY CERTIFIED THAT:

1. The name of the Corporation is Fountain View, Inc. (hereinafter, the "Corporation").

2. The Certificate of Incorporation of the Corporation is hereby amended as follows:

2.1. Section 4.2 of Article 4 is hereby amended by deleting the text thereof in its entirety and inserting in lieu thereof the following:

"4.2 Common Stock. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment in full of the Liquidation Value of the Series A Preferred Stock and the liquidation value of any other series of Preferred Stock which may from time to time come into existence, the assets available for distribution to the holders of Common Stock shall be distributed ratably among the holders of (a) the Series A Common Stock and the Series B Common Stock, on the one hand, and (b) the holders of the Series C Common Stock, on the other, based on the relative number of shares of Common Stock outstanding and held by such holders, provided that for all purposes of this Section 4.2 the aggregate number of outstanding shares of Series A Common Stock and Series B Common Stock shall be deemed to be the number of shares of Series A Common Stock and Series B Common Stock then outstanding plus the number of shares of Series B Common Stock previously outstanding but forfeited pursuant to Article II of the Stockholders Agreement dated as of March 27, 1998

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by and among the Corporation, Robert Snukal, Sheila Snukal, William Scott, Heritage Fund II, L.P. and certain other parties, as amended from time to time."

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2.2. Section 5 of Article 4 is hereby amended by inserting after Section 5.2 a new Section 5.3, as follows:

"5.3 Mandatory Redemption.

(a) The Corporation shall, on the first business day following May 1, 2010 (or, if the Corporation's 11 1/4% Senior Subordinated Notes due 2008 have not then been paid in full, immediately after the date on which such Notes have been paid in full), redeem all shares of Series A Preferred Stock then outstanding, out of funds legally available therefor, at a price per share equal to the Liquidation Value as of the date of redemption. Such redemption shall be made by paying such amount to the record holders of the Series A Preferred Stock and shall be accompanied by written notice specifying the number of shares that are being redeemed from each holder. In the event the funds legally available to redeem shares of Series A Preferred Stock are insufficient to redeem all of the outstanding shares of Series A Preferred Stock, the Corporation shall redeem the maximum number of shares of Series A Preferred Stock that the Corporation has funds legally available therefor on a pro rata basis among the holders of Series A Preferred Stock and shall quarterly thereafter redeem the maximum number of shares of Series A Preferred Stock that the Corporation has funds legally available therefor on a pro rata basis among the holders of Series A Preferred Stock, at the then applicable Liquidation Value. All such redemptions shall be pro rata among the holders of Series A Preferred Stock.

(b) Promptly after each record holder of Series A Preferred Stock has received payment of the Liquidation Value thereof pursuant to this Section 5.3, such holder shall surrender certificates evidencing the Series A Preferred Stock so redeemed, and shall thereupon be entitled to receive a replacement certificate for any shares not redeemed.

(c) After any payment under this Section, the redeemed shares shall be canceled on the Corporation's records and shall cease to be outstanding."

3. That such amendment has been duly adopted in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

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The foregoing Certificate of Amendment has been signed and attested as of April 30, 1998.

/s/ Robert Snukal

Robert Snukal, President

ATTEST:

/s/ Sheila Snukal

Sheila Snukal, Secretary

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DECLARATION OF KEITH WILLIAMS

I, Keith Williams, declare as follows:

1. I submit this Declaration in support of confirmation of the *Debtors' Amended Joint Plan Of Reorganization Dated April 22, 2003* (the "Plan")[1] filed by Fountain View, Inc., one of the debtors and debtors in possession in the above-captioned, jointly administered chapter 11 cases (the "Debtors"). I am over 18 years of age and I have personal knowledge of the facts set forth herein, or I have obtained such knowledge from business records regularly maintained in the ordinary course of business by the Debtors.

WITNESS BACKGROUND

2. I am a Director with Crossroads, LLC, a nationally recognized turnaround management and financial advisory firm. The Debtors have engaged Crossroads LLC to provide turnaround management services including advisory, analytical, valuation and operational support. I currently serve as a financial consultant to the Debtors. I have interviewed and interacted extensively with members of senior management and staff having responsibilities for all financial aspects of the Debtors' operations. I have reviewed the books and records of the Debtors, including the financial statements and projections, business plans, business analyses and reports, contracts and other legal documents, notes and correspondence, and the like. I have been responsible for the preparation and review of the Debtors' cash flow projections and related financial reporting.

BEST INTERESTS

3. With the assistance of the Debtors' personnel and retained professionals, I prepared the liquidation analysis that is attached as Exhibit 5 to the Disclosure Statement and discussed in Section XII of the Disclosure Statement (the "Liquidation Analysis"). The Liquidation Analysis projects that all holders of unsecured claims in Classes 9, 10, 11 and 12 under the Plan would receive between zero and 34 cents on the dollar in the event that the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code (except to the extent of available insurance for Class 12, which insurance

[1] All capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

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2121 AVENUE OF THE STARS, 33RD FLOOR
LOS ANGELES, CALIFORNIA 90067-5061
(310) 407-4000

will remain available to those creditors under the Plan). Class 13 is projected to receive nothing in liquidation. As shown in the Liquidation Analysis, in a chapter 7 liquidation the only assets that would be available to satisfy general unsecured creditors would result from the Debtors' current assets. These entities would share with the Class 9 claims of the holders of the 11¼% Notes (approximately $133 million) after the satisfaction of administrative claims, secured claims, priority claims and priority tax claims. In a chapter 7 scenario, interests in Classes 14, 15, 16, 17, 18 and 19 would not receive or retain any property. In contrast, under the Plan, entities holding allowed claims will receive payment in full with postpetition interest (including Class 13 Claims), and entities holding interests in Class 14, 15, 17 and 18 will retain their interests or obtain other interests in accordance with applicable law. Based upon the foregoing, the treatment under the Plan of the non-accepting members of all impaired classes, is in no case less than that which the holders of such claims and interests would otherwise be entitled to in liquidation under chapter 7.

KLEE, TUCHIN, BOGDANOFF & STERN LLP
2121 AVENUE OF THE STARS, 33RD FLOOR
LOS ANGELES, CALIFORNIA 90067-5061
(310) 407-4000

FEASIBILITY

4. With the assistance of the Debtors' personnel and retained professionals, I prepared the 5-year projections attached as Exhibit 3 to the Disclosure Statement, including projected balance sheets, cash flow statements, and income and expense statements (collectively, the "Projections"). The Projections present the expected financial results of the Reorganized Enterprise for the periods projected, subject to various reasonable assumptions set forth therein, on a quarterly basis, for fiscal years 2003 through 2007. The Projections assume, among other things specifically set forth therein, that the Plan becomes effective, that the Exit Facility to be provided under the Plan is provided, and that all payments to be made under the Plan are made. Subject to various uncertainties to which the Projections are subject (which are discussed in the Disclosure Statement), the Projections show that the Reorganized Enterprise is likely to maintain its going concern operations, improve cash flow and earnings over time, and not require either additional reorganization or liquidation. I am not aware of any material developments since the Projections were prepared that would changes this conclusion. I believe the assumptions underlying Exhibit 3

are fair and reasonable based upon, among other things, improved cash flow and EBITDA during the trailing 12 months.

5. With the assistance of the Debtors' personnel and retained professionals, I prepared the sources and uses summary for the reorganized Debtors that is set forth as Exhibit 7 to the Disclosure Statement and discussed in Section XIII.C of the Disclosure Statement. Under the Plan, the Debtors are required, on the Effective Date or shortly thereafter, to make certain one-time payments. The funds needed to fund the Effective Date obligations will be provided primarily by the Debtors' cash-on-hand and financing from the Exit Facility. As Exhibit 7 to the Disclosure Statement demonstrates, the Debtors should have ample liquidity to satisfy their obligations to make the payments called for under the Plan on the Effective Date. I believe the assumptions underlying Exhibit 7 are fair and reasonable.

6. With the assistance of the Debtors' personnel and retained professionals, I prepared the reorganization value for the Debtors that is set forth as Exhibit 6 to the Disclosure Statement and discussed in Section XIII.C of the Disclosure Statement. The estimated reorganization value of the Debtors on a consolidated basis as of an assumed effective date of July 31, 2003 of approximately $435 million reflects a number of reasonable assumptions, including a successful reorganization of the Debtors' businesses and finances in a timely manner, the achievement of the forecasts reflected in the Projections, the amount of available cash, discount rates and market conditions, and the Plan becoming effective in accordance with its terms. I believe the assumptions underlying the reorganization value are fair and reasonable based upon, among other things, the Debtors' Projections showing improved cash flow and earnings over time.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 13th day of June 2003, at Harris County, Texas.

Keith Williams

KEITH WILLIAMS

KLEE, TUCHIN, BOGDANOFF & STERN LLP
2121 AVENUE OF THE STARS, 33RD FLOOR
LOS ANGELES, CALIFORNIA 90067-5061
(310) 407-4000

PROOF OF SERVICE

I am over eighteen years of age, and I am not a party to this action. I am employed by Klee, Tuchin, Bogdanoff & Stern LLP, and my business address is: Fox Plaza, 2121 Avenue of the Stars, Thirty-Third Floor, Los Angeles, CA 90067-5061. Klee, Tuchin, Bogdanoff & Stern LLP employs a member of the bar of the State of California at whose direction this service was made.

On June 13, 2003, I served the following pleading:

MEMORANDUM IN SUPPORT OF CONFIRMATION OF DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION DATED APRIL 22, 2003; DECLARATIO OF JOHN F. GIBSON; DECLARATION OF WILLIAM C. SCOTT; DECLARATION OF KEITH WILLIAMS

on the interested parties in this action by placing true and correct copies of the pleading with the United States Postal Service, enclosed in sealed envelopes, with postage fully paid, addressed as indicated on the attached list.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED on June 13, 2003, at Los Angeles, California.

Yvonne Alamillo

Yvonne Alamillo, Declarant

Debtors
Fountain View, Inc.
Attn: Roland Rapp
27442 Portola Parkway, Suite 200
Foothill Ranch, CA 92610

U.S. Trustee
Office of the United States Trustee
Attn: Joseph Caceres, Esq.
Ernst & Young Plaza
725 South Figueroa Street, 26th Floor
Los Angeles, CA 90017

Counsel/Creditors Committee–via FED EX
Carole Neville, Esq.
Sonnenschein Nath & Rosenthal
1221 Avenue of the Americas
New York, NY 10020-1089

Counsel to Creditors' Committee
Michael Lubic/Christopher Prince
Sonnenschein Nath & Rosenthal
601 S. Figueroa St, Suite 1500
Los Angeles, CA 90017-5704

Counsel to Bondholders–via FED EX
Akin Gump Strauss Hauer & Feld LLP
Attn M. Stamer/J. Savin
590 Madison Avenue
New York, NY 10022

Counsel to Bondholders
Akin, Gump, Strauss, Hauer & Feld, LLP
Attn: Robert M. Aronson, Esq.
2029 Century Park East #2600
Los Angeles, CA 90067

Secured Lender
Bank of Montreal
Mark F. Spencer, Managing Dir.
601 South Figueroa Street, Suite 4900
Los Angeles, CA 90017

Counsel for the Secured Lenders
Chapman and Cutler
James E. Spiotto/Ann Acker
111 West Monroe Street
Chicago, IL 60603

Counsel for Bank Midwest, N.A.
Bryan Cave LLP
Sheldon Eisenberg, Esq.
120 Broadway, Suite 300
Santa Monica, CA 90401

Atty/Bank of Montreal
Pillsbury Winthrop LLP
Attn: Kenneth Russak, Esq.
725 S. Figueroa St, #2800
Los Angeles, CA 90017-5406

Indenture Trustee/20 Largest
State St Bank & Trust Co of CA N.A.
Attn. Corporate Trust Dept
633 W. Fifth St, 12th Fl
Los Angeles, CA 90071

Counsel for Indenture Trustee
Brown, Rudnick, Freed & Gesmer
Attn. Kevin Mallery, Esq.
City Place I, 185 Asylum St
Hartford, Ct. 06103

Attys to Heritage Partners LP
Choate, Hall & Stewart
Stephen Cohen/Charles Glerum
Exchange Place
53 State Street
Boston, MA 02109-2891

Counsel for Margaret Muccianti, et al.
Stephen M. Garcia, Esq.
Wilkes & McHugh
222 W. Sixth St, #780
San Pedro, CA 90731

Internal Revenue Service
Special Procedures Function
Collection Division
Rm 4062 Federal Bldg. (Stop 5022)
300 N. Los Angeles St
Los Angeles, CA 90012

UCC Party
Union Bank of CA, N.A.
As Admin & Syndication Agent
445 S.Figueroa St, 16th Fl
Los Angeles, CA 90017

UCC Party
Union Bank of California, N.A.
18300 Von Karman Ave, #200
Irvine, CA 92612

UCC Party
Bank of Montreal, As Agent
115 South LaSalle St
Chicago, IL 60603

UCC Party
Robert & Sheila Snukal
8489 W. 3rd Street #101
Los Angeles, CA 90048

UCC Party
Robert & Sheila Snukal
Locomotion Therapy, Inc.
10284 Century Woods Dr
Los Angeles, CA 90067

UCC Party
Consolacion Padama
8489 W. 3rd Street, #1001
Los Angeles, CA 90048

UCC Party
Manuel Padama
8489 W. 3rd Street #1001
Los Angeles, CA 90048

UCC Party
HLFC Group
35 S. Raymond Ave., Ste. 206
Pasadena, CA 91105

UCC Party
Cal Fed Credit
25 E. Anapamu St., 3rd Flr.
Santa Barbara, CA 93101-2704

UCC Party
Calif Thrift & Loan
P. O. Box 1199
Santa Barbara, CA 93102-1199

UCC Party
Garnet & Co.
P.O. Box 92165
Pasadena, CA 91109-2165

UCC Party
Garnett & Co.
35 S. Raymond Ave., #206
Pasadena, CA 91105-1931

UCC Party
Western Bank
1251 Westwood Blvd.
Los Angeles, CA 90024-4811

UCC Party
Bank of the West
1450 Treat Blvd.
Walnut Creek, CA 94596

UCC Party
Shackelford Incorporated
10900 Northwest Fwy., Ste. 103
Houston, TX 77092

UCC Party
Safeco Credit Co. Inc.
dba Safeline Leasing
10915 Willows Rd. NE
Redmond, WA 98052

UCC Party
Norwest Financial Leasing, Inc.
1700 Iowa Ave., Ste. 240
Riverside, CA 92507

UCC Party
First Nat'l Bank of Chicago/Agent
1 First National Plaza, 8th Flr., #0091
Chicago, IL 60670

UCC Party
Harris Trust & Savings Bank, Coll Agent
Attn: Indenture Trust Admin
311 W. Monroe St, 12th Fl
Chicago, IL 60606

UCC Party
Minolta Business Systems Inc.
POB 728
Park Ridge, NJ 07656

UCC Party
Fleet Leasing Corp
P.O. Box 7023
Troy, MI 48007

UCC Party
FUL Incorporated
100 Corporate North
Bannockburn, IL 60015

UCC Party
Standard Restaurant Equip
2922 East McDowell Road
Phoenix, AZ 85008

UCC Party
Ikon Office Solutions
2090 Woodward
Austin, TX 78744

UCC Party
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0001

UCC Party
Employment Develop Dept
P.O. Box 826880
Sacramento, CA 94280-0001

UCC Party
Mellon First United Leasing
100 Corporate North
Bannockburn, IL 60015

UCC Party
IRS – Los Angeles
300 N. Los Angeles St., Rm 1216
Los Angeles, CA 90012

UCC Party
Master Lease Corp.
One Presidential Blvd.
Bala Cynwyd, PA 19004-1017

UCC Party
Chemical Trust Co. of CA
Attn Corporate Trust Depart
300 South Grand Ave., 4th Floor
Los Angeles, CA 90071

UCC Party
Hans Henry Helley, Jr., As Trustee
300 S, Grand Ave., 4th Fl
Los Angeles, CA 90071

UCC Party
Delight Gunnarsson
Locomotion Therapy, Inc.
10284 Century Woods Drive
Los Angeles, CA 90067

UCC Party
Gundi Gunnarsson
Locomotion Therapy, Inc.
10284 Century Woods Drive
Los Angeles, CA 90067

UCC Party
AmerisourceBergen Drup Corp.
Financial Services Dept.
POB 5910
Orange, CA 93813-5910

UCC Party
Wallace Moir Co.
130 El Camino
Beverly Hills, CA 90212-2705

UCC Party
The Great West Life Assurance Co.
60 Osborne St. North
Winnipeg, Manitoba
Canada R3C 1V3

Member of Unsecured Creditors' Committee
Twin Med, Inc.
Steve Rechnitz, President/CEO
4646 Hampton Street
Vernon, CA 90058

Member of Unsecured Creditors' Committee
Pharmacy Support Services
Attn Andrew F. Torok, Esq.
27071 Aliso Creek Road, Suite 100
Aliso Viejo, CA 92656

Member of Unsecured Creditors' Committee
U.S. Food Service
Attn Mark H. Speiser
9755 Patuxent Woods Drive
Columbia, MD 21046

Member Unsec Creditors' Committee
Service Employees Int'l Union, AFL-CIO
Andrew L. Stern, Int'l. President
1313 L Street, N.W.
Washington, D.C. 20005

Member Unsec Creditors Committee
SEIU Local 399, AFL-CIO
Atn Jorge Rodriguez, Ex Sec
1247 W. 7th St
Los Angeles, CA 90017

20 Largest
Intercare Insurance Services
Attn Mike Silcox
3010 Lava Ridge Court #200
Roseville, CA 95661

20 Largest
Intelistaf Healthcare
1900 Spring Rd #515
Oak Brook, IL 60523

20 Largest
Aseterth Medical Services
Attn Teresa Taylor
1224 E. Green St 2nd Fl
Pasadena, CA 91106

20 Largest
Symphony Mobilex
Attn Mary Johnson
920 Ridgebrook Rd
Sparks, MD 21152

20 Largest
Jackson Walker LLP
100 Congress Ave, Ste 1100
Austin, TX 78701-9722

20 Largest
US Foodservice, Inc.
Attn Linda Fitzgerald
80 International Dr., Ste. 200
Greenville, SC 29615

20 Largest
Sysco Food Services
Attn: Jim Peightal
20701 E. Currier Road
Walnut, CA 91789

20 Largest
Starmed Staffing Group
Attn: Brandi Hubert
7737 Forsyth Blvd #1700
Clayton, MO 63105

20 Largest
Healthcare Design & Supply
6217 Rimbank Ave
Pico Rivera, CA 90660

Request for Special Notice
Attys/Jackson Walker LLP
Jackson Walker LLP
Attn: C. Wade Cooper
100 Congress Ave, #1100
Austin, TX 78701

Request for Special Notice
Attys/Floor Covering Design
Attn: Steven L. Bergh
Prenovost Normandin Bergh & Dawe
2122 N. Broadway, #200
Santa Ana, CA 92706-2614

Request for Special Notice
Attys/Brenda Low/Harlan Estate
Floyd, Isgur, Rios & Wahrlich
Marvin Isgur/Patrick Griffin
700 Louisiana, Suite 4600
Houston, TX 77002-2732

Request for Special Notice
Attys/Twin Med
Alan J. Stomel, Esq.
369 S. Doheny Dr #374
Beverly Hills, CA 90211

Atty/New Braunfels ISD/Bexar Cty
Linebarger Goggan Blair
Pena & Sampson LLP
711 Navarro #300
San Antonio, TX 78205

20 Largest
Vencare Ancillary Services
680 S 4th Ave 5th Fl
Louisville, KY 40202

Member of Unsecured Creditors' Committee
Mediq
Attn Alan Einhorn, Esq.
1 Mediq Plaza
Pennsauken, NJ 08110

20 Largest/Member of Unsecured Creditors' Committee
Ancillary Provider Service
Attn: Cora
5416 Jillson Street
Commerce, CA 90040

20 Largest
Diagnostic Laboratories
Attn: Don Goldberg
1111 S. Central Ave
Glendale, CA 91204

Global Crossing
PO Box 741276
Cincinnati, OH 45274-1276

Request For Special Notice
Amelia Tovar
Wise Senior Serv Ombudsman
255 S. Hill St, Rm 406
Los Angeles, CA 90012

Request for Special Notice
Atty/Ancillary Provider Services
Law Office of Baruch C. Cohen
4929 Wilshire Blvd, #940
Los Angeles, CA 90010

Request for Special Notice
Radcliff Frandsen Dongell & Lawrence
Jules G. Radcliff, Jr.
707 Wilshire Blvd, 45th Fl
Los Angeles, CA 90017

Req Spec Not/Atty-Arkansas /Round Rock ISD/
McMallenCity/Lavaca Cty/Live Oak/New
Braunfels
Lori Robertson/David G. Aelvoet,
Linebarger Goggan Blair Pena & Sampson
1949 South IH 35
Austin, TX 78741

Request for Special Notice
Mark Schreiber, Esq.
16501 Ventura Blvd, #401
Encino, CA 91436-2068

20 Largest
Foley & Lardner
Jonathon E. Cohn, Esq.
2029 Century Pk East, 35th Fl
Los Angeles, Ca 90067-3000

20 Largest/Member of Unsecured Creditors' Committee
Culver Dairy, Inc., dba Dairy King
Attn Allan Dalfen, President/CEO
815 Thompson Avenue
Glendale, CA 91201

20 Largest
Floor Covering Design Specialists
13006 E Philadelphia, # 509
Whittier, CA 90601

20 Largest
Nestle USA
Attn William T. Ferioli, Esq.
800 N. Brand Blvd
Glendale, CA 91203

Request for Special Notice
Atty to State St Bank & Trust
Buchalter, Nemer, Fields & Younger
Attn: R. Soref/ B. Seigel
601 S. Figueroa St, #2400
Los Angeles, CA 90017-5704

Request for Special Notice/Member of Unsecured Creditors' Committee
Waltz Medical Specialties, Inc.
Attn: Phyllis Waltz
4520 E. Eisenhower Circle
Anaheim, CA 92807

Request for Special Notice
Attys/AmerisourceBergen Drip Corp.
Henrichs Law Firm
Attn: Alan W. Forsley, Esq.
835 Wilshire Blvd #300
Los Angeles, CA 90017

Request for Special Notice
Attys/Tranquilino & Raynaldo Mendoza
and Brenda Low/Harlan Estate
David Marks/The Marks Firm
10000 Memorial Dr, #760
Houston, TX 77024

Atty to Jefferson County
Linebarger Goggan Blair Pena & Sampson
Attn Clayton Mayfield, Esq.
1148 Park Street
Beaumont, TX 77701-3614

Request for Special Notice
Atty/State St Bank
Steven B. Levin, Esq.
Brown Rudnick Freed & Gesmer
One Financial Center
Boston, MA 02111

Request for Special Notice
State St Bank Trust Co/Global Inv Serv
Corp Trust
Robert C. Butzier
2 Ave de Lafayette, 6th Fl
Boston, MA 02102-0778

Request for Special Notice
Jonathan Mitchell, President
2828 Roanoke Lane
Tyler, TX 75701

Request for Special Notice
Holly E. Kendig, Esq.
O'Melveny & Myers LLP
400 South Hope St
Los Angeles, CA 90071-2899

Req Spec Not/Atty County of Comal
Michael Reed, Esq.
McCreary Veselka Bragg & Allen PC
Post Office Box 26990
Austin, TX 78755

Req for Spec Not/IOS Capital,Inc.
Rosa Dominy, Bankruptcy Admin
IOS Capital, Inc.
1738 Bass Road
Post Office Box 13708
Macon, GA 31208-3708

Req for Spec Not
Atty/Meridian/Lloyd's/Great Lakes
Musick Peeler & Garrett LLP
Attn: Richard S. Conn
624 S. Grand Ave #2000
Los Angeles, CA 90017

Req for Spec Notice
Co- Def Atty to Nandlal Patel MD
Wright & Kidwell PC
Attn: Matt Catalano
505 N. Big Spring #300
Midland, TX 79701

Req Spec Not/Atty for McIlroy Estate
Gray.Hart LLP
Attn: Jay K. Gray
2419 Highway 121
Bedford, TX 76021

Req Spec Not/Atty HPH Associates
Hardy & Atherton, P.C.
Attn Jerry L. Atherton
909 ESE Loop 323, Suite 750
Tyler, TX 75701

Req Spec Not
AT&T Corp
Attn: Judith Archer, Esq.
295 N. Maple Ave, Rm 1128M1
Basking Ridge, NJ 07920

Request for Special Notice
Attys/Robert & Sheila Snukal
Milbank Tweed Hadley & McCloy LLP
Attn G.Bray/F. Neufeld
601 S. Figueroa St, 30th Fl
Los Angeles, CA 90017

Req Spec Not/US Dept of Health &
Human Svcs. Ctrs Medicare/Medicaid Svcs.
Assistant U.S. Attorney
J.Gordon/L.Weidman/C.Bauer
300 N. Los Angeles St #7516
Los Angeles, CA 90012-9834

Request for Special Notice
Atty/Fayette County Appraisal Dist
John T. Banks, Esq.
Perdue, Brandon, Fielder, Collins & Mott
6300 La Calma, Suite 450
Austin, TX 78752

Req Spec Not Atty/Eleanor Fleming
Houck & Balisok
Attn: Russell S. Balisok, Esq.
PO Drawer 8170
Universal City, CA 91618-8170

Req for Spec Not/Atty for
Superior Nat'l Ins Co In Liquidation
Carole Runcie Sherman, Esq.
26541 Agoura Road
Calabasas, CA 91302

Req for Spec Notice
Dennis Simon
Crossroads LLC
9 Executive Circle, Suite 190
Irvine, CA 92614

Req for Spec Not/John Przybyla
Provost Umphrey Law Firm
Attn: J. Fisher/M.Sparks
490 Park Street
Beaumont, TX 77704

Req Spec Not/Atty for Covenant Care
Pharmacy Support Services
c/o Andrew Torok, Gen Counsel
27071 Aliso Creek Rd #100
Aliso Viejo, CA 92656

Req Spec Not/Atty Osburn Estate
Noteboom & Parker
Attn: Dina K. Madison
669 Airport Freeway, #100
Hurst, TX 76053

Req Spec Not
Sun Healthcare Group, Inc.
Alicy Nystel Page, Esq.
101 Sun Ave NE
Albuquerque, NM 87109

Request for Special Notice
Attys/Sysco Foodservice/Citicorp Vendo
Financer
Hemar Rousso & Heald LLP
Attn: Kenneth G. Lau
15910 Ventura Blvd, 12th Fl
Encino, CA 91436-2829

Req Spec Not/US Dept of Health &
Human Svcs. Ctrs Medicare/Medicaid
Suzanne K. Yurk
Ass't Regional Counsel
Health Care Financing Admin
50 United Nations Plaza #420
San Francisco, CA 94102

Request for Special Notice
Todd Andrews
3924 Park Place No. 20
Montrose, CA 91020

Req Spec Not
Bill Angelowitz
Daily Insights
225 West 34th St #403
New York, NY 10122

Req for Special Notice
L.Degroat/C.Geller/Heirs DeGroat Estate
The Williams Firm
Attn: Stephen N. Williams
2467 Calder Ave
Beaumont, TX 77702

Req for Spec Notice
Atty/Asereth Medical Services Inc.
Paul B. Nesbitt, Esq.
Nesbitt & Associates
9601 Wilshire Blvd, #828
Los Angeles, CA 90210

Req Spec Not/Atty for Mildred Gaines
Bain, Files, Jarrett & Bain
109 West Ferguson
PO Box 2013
Tyler, TX 75710

Req Spec Not/AttyM. Muccianti
Rein Evans & Sestanovich LLP
Attn: Byron Z. Moldo/Patrick Fraioli
1925 Century Park East, 16th Fl
Los Angeles, CA 90067

Req Spec Not/Atty to Comal and
Taylor Counties/Abilene
Attn Michael Reed, Esq.
McCreary Veselka Bragg & Allen
PO Box 26990
Austin, TX 78755-0990

Spec Not Req/Atty for O'Quinn
Charles Soechting
O'Quinn, Laminack & Pirtle
400 West Hopkins, Suite 101
San Marcos, TX 78666

Spec Not Req/Atty for Quinn
Gerald Treece
South Texas College of Law
1303 San Jacinto
Houston, TX 77002

Spec Not Req/Atty to Shepard Estate
Perkins Coie LLP
Attn: Steven G.F. Polard
1620 26th St, 6th Fl
Santa Monica, CA 90404

Spec Not Req/Atty to So Desert Clinic Pharm e tal
Irell & Manella
Jeffrey Reisner/Ravi Flanagan
840 Newport Center Dr, #400
Newport Beach, CA 92660-6324

Spec Not Req/O'Burton Estate
Law Office Jeffrey H. Rasansky
Attn Davette J. Speer, Paralegal
3811 Turtle Creek Blvd #1640
Dallas, TX 75219

Spec Not Req/Atty Lloyds, et al
Kristi Weiler Dean, Esq.
Law Office Kristi Weiler Dean
6345 Balboa Blvd
Office Park II Suite 230
Encino, CA 91316-1525

Spec Not Req/Atty to Riverside Cty
Paul McDonnell – Treasurer/Tax Collector
Attn Maria O'Neil
County of Riverside
P.O. Box 12005
Riverside, CA 92502-2205

Spec Not Req/Regan Capital I, Inc.
Regal Capital I, Inc.
Attn Elliot H. Herskowitz
PO Box 626 Planetarium Station
New York, NY 10024-0540

Spec Not Req/Atty to May
Sorrell Anderson Lehrman Maixner Ridulfo
711 N. Carancahua, #1200
Corpus Christi, TX 78475

Spec Not Request
Tyler & Wilson
Attn Francesca Brotman-Orner
6500 Wilshire Blvd #125
Los Angeles, CA 90048

Attorney for Medicom, Inc.
Vincent M. Lentini, Esq.
600 Old County Road, Suite 202
Garden City, NY 11530

Spec Not Req/Atty for the Bradys
Nunley Davis Jolley & Hill LLP
Attn: William A. Brant, Esq.
1580 S. Main St, Suite 200
Boerne, TX 78006

Spec Not Req/Atty Gates McDonald Gibbons
#120515 Gates McDonald fka Gibbons Co
Seals & Tenenbaum, APC
Attn: Jay M. Tenenbaum, Esq.
2323 W. Lincoln Ave, #127
Anaheim, CA 92801

Spec Not Req
Southern Desert Clinic Pharmacy
27071 Aliso Creek Road
Aliso Viejo, CA 92656

Spec Not Req/Atty to Andrews-Beseda
Law Offices of Dean W. Greer
2929 Mossrock, Suite 105
San Antonio, TX 78230

Spec Not Req/Atty TX Human Resources
Flora A. Fearon, Asst Atty Gen of TX
Bankruptcy & Collections Div
P.O. Box 12548
Austin, TX 78711-2548

Spec Not Req/Atty to Amer Express
SVCS Co Inc Corp Card
c/o Becket & Lee LLP
PO Box 3001 Dept. AC
Malvern, PA 19355-0701

Spec Not Req/TX Comptroller
John Mark Stern
Ass't Atty General
Bankruptcy & Collections Division
PO Box 12548
Austin, TX 78711-2548

Spec Not Request
Leonard & Catherine May
7433 FM 70
Bishop, TX 78343

Atty to AIES Ins Co
Brad Reager, Claims Analyst
A.I.G.T.S
Healthcare Claims Department
2 Rincon Center
121 Spear Street, 6th Floor
San Francisco, CA 94105

Attorneys for Ken Kerr
Robert Brumfield, Esq.
Price & Brumfield
841 Mohawk Street, Suite 200
Bakersfield, CA 93309

Spec Not Req/Atty for Anna Louis Daniels
Clarkson, Gore & Marsella
Attn: Scott C. Clarkson, Esq.
3424 Carson Street, Suite 350
Torrance, CA 90503

Spec Not Req/Atty for Summit Care TX
Leonard A. Goldman, Esq.
Law Office of Leonard A. Goldman
1900 Ave of the Stars, #1800
Los Angeles, CA 90067

Spec Not Req/Atty to GE Cap
Glass & Goldberg
Attn Marshall F. Goldberg
21700 Oxnard St, #430
Woodland Hills, CA 91367-3665

Spec Not Req/Atty Lloyds, London et al
J. Sheldon Capeloto
McKinley & Capeloto
225 South Lake Avenue, Suite 300
Pasadena, California 91101

Spec Not Req/Atty to Susan Fleishman
Law Office of Marc Lieberman
Attn Marc Lieberman/Karie Kaiser
1875 Century Park East, #2200
Los Angeles, CA 90067-2523

Spec Not Req/Atty to G. Scurlock
Attn J. Wayne Little
Riley Dornburg Little & Wham
220 W. Davis
Conroe, TX 77301

Spec Not Req/Atty to E. Zolla
Good Wildman Hegness & Walley
Attn John A. Stillman, Esq.
5000 Campus Drive
Newport Beach, CA 92660

Spec Not RequestAtty to Baylor Health
Haynes & Boone LLP
900 Main St, Suite 3100
Dallas, TX 75202

Spec Not Request
Atty to Calwest Industrial Properties
Glen Dresser, Esq.
12650 Riverside Dr #100
North Hollywood, CA 91607

Kaye Scholer LLP
Ronald L. Leibow
1999 Avenue of the Stars, Ste. 1600
Los Angeles, CA 90067

Madison Liquidity Investors
4210 Shawnee Mission Parkway, Suite 310A
Fairway, KS 66205
Attn: Antonia Roberson

Scott Krochek
Argo Partners
12 W 37th Street, 9th Floor
New York, NY 10018

Spec Not Request
Attys. For Cedar-Sinai Med. Ctr.
Lance N. Jurich, Esq.
Loeb & Loeb LLP
10100 Santa Monica Boulevard, Suite 2200
Los Angeles, CA 90067-4164

Spec Not Request
Neil H. Herskowitz
ReGen Capital I, Inc.
PO Box 626, Planetarium Station
New York, NY 10024-0540