

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Senior Health Insurance : No. 1 SHP 2020
Company of Pennsylvania in :
Rehabilitation :

**APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT IN
THE PPVA LITIGATION**

Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, in her capacity as the Statutory Rehabilitator (“Rehabilitator”) of Senior Health Insurance Company of Pennsylvania (“SHIP”), respectfully requests that this Court enter an Order approving a settlement agreement to resolve a dispute between SHIP and other entities regarding the competing claims to assets pledged as collateral securing a loan, as described herein, and which is currently the subject of ongoing litigation proceedings pending in Delaware Chancery Court in *Principal Growth Strategies, et al., v. AGH Parent LLC, et al.*, Case No. 2019-0431-JTL (the “PPVA Litigation”). The settlement agreement at issue (the “Settlement Agreement”) is made between (a) SHIP and Fuzion Analytics, Inc. (collectively, the “SHIP Parties”) and (b) Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) (“PPVA”); Martin Trott and Christopher Smith, the Joint Official Liquidators (“JOL”) of PPVA; DMRJ GROUP LLC; Montsant Partners LLC (“Montsant”); and Principal Growth Strategies LLC, (“PGS”) (collectively, the

“PPVA Parties”). The Settlement Agreement is attached hereto as Exhibit 1. In support of this Application, the Rehabilitator states the following:

Background

1. The Settlement Agreement seeks to resolve certain claims at issue in the PPVA Litigation, which itself predates SHIP’s receivership. The relevant claims in the PPVA Litigation arise out of investments that SHIP began making in 2014 with Beechwood Capital Group, LLC and its affiliates (“Beechwood”). In total, SHIP eventually invested approximately \$320 million with Beechwood.

2. The relationship became complex and by 2016 it became evident that Beechwood had become embroiled in the collapse of hedge funds run by Platinum Partners Credit Opportunities Fund (“PPCO”) and its affiliates, including PPVA.

3. Thus, prior to SHIP’s rehabilitation, the Beechwood investments were under observation by the Pennsylvania Insurance Department (“PID”). (*See* Ex. RP-56 at 53; Hearing on Second Amended Plan of Rehabilitation, Tr. at 66:1-9 (Testimony of Special Deputy Rehabilitator Patrick H. Cantilo (“Cantilo Testimony”))).

4. In 2018, SHIP realized an investment loss of \$176 million on primarily the Beechwood assets. (*See* Ex. RP-56 at 54; Cantilo Testimony, Tr. at 67:5-11.)

5. Seeking to recover losses under the Beechwood Investment Management Agreements, SHIP eventually joined in pending litigation by other

Platinum and Beechwood clients. SHIP then became the target of a number of cross claims and counterclaims, although SHIP was able to recover most of its defense costs for these proceedings from its liability insurers. In addition, SHIP recovered about \$84 million of assets from the investment program. (*See Cantilo Testimony, Tr. at 76:2-12.*)

6. On June 7, 2019, the PPVA's JOL commenced the PPVA Litigation against SHIP and others in Delaware State Court. The PPVA Litigation includes competing claims by SHIP and PPVA'S JOL to certain collateral underlying the Beechwood investments, as well as claims by the JOL against SHIP for losses suffered by PPVA investors in a complicated transaction partially funded by SHIP under the Beechwood program but outside the Investment Management Agreements. The PPVA Litigation is further discussed in Appendix B of SHIP's Approved Rehabilitation Plan. (*See Approved Rehabilitation Plan at 155.*)

7. In due course, the Special Deputy Rehabilitator ("SDR") has overseen the continued wind-down of the Beechwood Litigation. As part of this process, SHIP and the appointed receiver for PPCO previously reached an agreement to settle certain claims against each other, which resulted in an additional \$9.5 million payment to SHIP at the time, with an additional \$4.5 million expected to be paid to SHIP after the expiration of certain contingencies.

8. The Settlement Agreement for which the Rehabilitator now seeks approval resolves certain claims at issue in the PPVA Litigation; specifically, the competing claims by SHIP and PPVA's JOL to certain collateral underlying the Beechwood investments.

9. As part of its investments with Beechwood, on or about March 21, 2016, SHIP received from Montsant a Second Amended and Restated Secured Term Note in the face principal sum of \$36,774,055.56 and made payable to SHIP (the "Montsant Note").

10. Montsant is a wholly-owned subsidiary of PPVA. In August 2016, PPVA was placed into liquidation by order of the Grand Court of the Cayman Islands.

11. SHIP has asserted that Montsant's indebtedness and obligations to SHIP with respect to the Montsant Note are secured by certain assets that Montsant pledged as collateral (the "Montsant Collateral"). (*See* Ex. 1, Settlement Agreement at § 3.03.)

12. The JOL have also asserted that the PPVA Parties have rights to some or all of the Montsant Collateral that are superior to the security interests that secure the Montsant Note.

13. The Rehabilitator and PPVA Parties have negotiated and executed the Settlement Agreement, which, if approved by the Court, will resolve the competing claims to the Montsant Collateral at issue in the PPVA Litigation.

14. Under the terms of the Settlement Agreement, SHIP will receive \$4.5 million in cash and surrender its claims to the Montsant Note and Montsant Collateral. Although the Settlement Agreement does not resolve other claims in the PPVA Litigation, including claims against SHIP and Fuzion, the defense costs for the remaining claims in the PPVA Litigation are being reimbursed by SHIP's liability insurers—unlike the costs associated with the issue resolved by the Settlement Agreement.

15. The Settlement Agreement is expressly contingent upon approval by both this Court and the court overseeing PPVA's liquidation proceedings in the Cayman Islands.

The Settlement Agreement Should Be Approved

16. This Court should approve the Settlement Agreement by entering the attached proposed order.

17. Article V of the Insurance Department Act of 1921, 40 P.S. §§ 221.1, *et seq.* confers broad powers on the Rehabilitator to manage the assets of SHIP. *See* 40 P.S. § 221.16.

18. The Rehabilitator is entrusted with broad discretion to “take such action as [s]he deems necessary or expedient to correct the condition or conditions which constituted the ground or grounds . . . for the order of the [C]ourt to rehabilitate [SHIP].” *Id.* § 221.16(b).

19. The Rehabilitator’s powers include “all the powers of the directors, officers and managers” of SHIP, including “the full power to direct and manage . . . and to deal with the property and business of [SHIP].” *Id.*

20. The Rehabilitator’s powers also include the discretion to “pursue all appropriate legal remedies on behalf of [SHIP].” *Id.* § 221.16(c).

21. The Rehabilitator has concluded that the Settlement Agreement is in the best interests of the Rehabilitator’s efforts to rehabilitate SHIP, and thus will best protect the interests of SHIP’s policyholders, creditors, and the public generally.

22. As explained above, the Settlement Agreement will allow SHIP to recover an additional \$4.5 million in cash from assets invested in the failed-Beachwood investments.

23. Given the uncertainty of the competing claims to the Montsant Collateral, as well the complexity, risk and cost of the litigation, the Rehabilitator has concluded that this settlement is in SHIP’s best interest and that of its policyholders and creditors. *See In Re Penn Treaty Network Am. Ins. Co. in Rehab.*, Nos. 1 PEN 2009 and 1 ANI 2009, 2016 WL 5804872, at *4 (Pa. Commw. Ct. Sept.

23, 2016) (approving settlement agreement and deferring to Rehabilitator’s risk assessment “and her judgment that the Settlement Agreement is in the best interests of the policyholders, claimants and the public”).

24. The Rehabilitator therefore believes that her determination and the relief requested herein satisfies the requirements of Article V, thereby representing a sound exercise of the Rehabilitator’s broad discretion.

WHEREFORE, the Rehabilitator respectfully requests that this Court grant her Application and enter the attached Proposed Order approving the Settlement Agreement.

Dated: October 1, 2021

Respectfully submitted,

/s/ Michael J. Broadbent

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SENIOR HEALTH INSURANCE COMPANY
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EXHIBIT 1

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “**Agreement**”) is made as of the 21st day of September, 2021 (the “**Execution Date**”), by and among

(i) PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in Official Liquidation), a Cayman Islands exempted limited partnership (“**PPVA**”), (ii) MARTIN TROTT and CHRISTOPHER SMITH, the Joint Official Liquidators of PPVA (the “**JOLs**”), (iii) DMRJ GROUP LLC, a Delaware limited liability company (“**DMRJ**”), (iv) MONTSANT PARTNERS LLC, a Delaware limited liability company (“**Montsant**”), and (v) PRINCIPAL GROWTH STRATEGIES LLC, a Delaware limited liability company (“**PGS**”, and together with PPVA, the JOLs, DMRJ, and Montsant, the “**PPVA Parties**”), and

(i) SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, In Rehabilitation, a Pennsylvania insurance company currently in rehabilitation (“**SHIP**”), and (ii) Fuzion Analytics, Inc., a Delaware corporation (“**Fuzion**”, and together with SHIP, the “**SHIP Parties**”). The PPVA Parties and the SHIP Parties are sometimes referred to herein as individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. SHIP has asserted (i) that it is the holder of Montsant Note 1 (herein defined) and (ii) that Montsant Note 1, and Montsant’s indebtedness and obligations to SHIP with respect thereto, are secured by (a) certain assets that Montsant pledged as collateral for Montsant Note 1 that were held in the Montsant Collateral Account (herein defined) and (b) the Escrowed Funds (herein defined) held in an escrow account at Holland & Knight LLP (collectively, the “**Montsant Collateral**”).

B. PGS has asserted (i) that it is the holder of Montsant Note 2 (herein defined) and (ii) that Montsant Note 2, and Montsant’s obligations to PGS with respect thereto, are secured by some or all of the same collateral that secures Montsant Note 1.

C. SHIP has asserted that any security interest in the Montsant Collateral that secures Montsant Note 2 is subject to priority provisions set forth in the Agency Agreement (as defined on **Exhibit A** hereto), which provisions benefit Montsant Note 1 and SHIP.

D. One or more of the PPVA Parties have asserted that they have rights to some or all of the Montsant Collateral that are superior to the security interests therein that secure Montsant Note 1 or Montsant Note 2.

E. The SHIP Parties and the PPVA Parties desire to settle their respective claims to the Montsant Collateral as set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I CONSTRUCTION

Section 1.01. Recitals. The Parties acknowledge and agree that the recitals to this Agreement are a material and substantive part of this Agreement. The recitals are incorporated herein and made part of this Agreement.

Section 1.02. Article and Section Headings. Article and Section headings and captions in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement. Unless otherwise expressly stated in this Agreement, references in this Agreement to Sections shall be read as Sections of this Agreement.

Section 1.03. Exhibits and Schedules. Unless an Exhibit or Schedule is referred to in this Agreement as being an Exhibit or Schedule to another document, the references in this Agreement to specific Exhibits and Schedules shall be read as references to such specific Exhibits and Schedules attached, or intended to be attached, to this Agreement and any counterpart of this Agreement and regardless of whether they are in fact attached to this Agreement, and including any amendments, supplements and replacements to such Exhibits and Schedules made from time to time.

ARTICLE II SETTLEMENT PAYMENT

Section 2.01. Settlement Payment to SHIP. Within seven (7) Business Days after the Effective Date (herein defined) the PPVA Parties shall pay to SHIP (in accordance with wire instructions to be provided by SHIP) a settlement payment in the amount of \$4,500,000.00 (the “**Settlement Payment**”) without defense, setoff, counterclaim or reduction of any kind (the date on which SHIP receives the Settlement Payment in full is the “**Settlement Payment Date**”). The PPVA Parties may make the Settlement Payment to SHIP from the funds (the “**Escrowed Funds**”) in the Montsant-related escrow that is maintained in an escrow account (the “**H&K Escrow Account**”) at Holland & Knight LLP (the “**Escrow Agent**”), if Montsant consents to, and the PPVA Parties obtain all other necessary consents for and authorizations for, the use of the Escrowed Funds for the Settlement Payment to SHIP. If requested to do so, the SHIP Parties will consent to the PPVA Parties using the Escrowed Funds to make the Settlement Payment to SHIP, provided that Montsant shall have provided its written consent to the use of the Escrowed Funds to make the Settlement Payment to SHIP, and the PPVA Parties have obtained or provided, as applicable, all other necessary consents and authorizations in writing for the use of such Escrowed Funds to make the Settlement Payment to SHIP. If requested to do so, the PPVA Parties will notify the SHIP Parties of the source of funds used to make the Settlement Payment to SHIP. “**Effective Date**” means the later of (a) the date on which an order from the Grand Court of the Cayman Islands (the “**Cayman Court**”) is entered sanctioning (*i.e.*, authorizing) (i) this Settlement Agreement, and (ii) the payment of the Settlement Payment to SHIP, and (b) the date on which an order is entered by the Commonwealth Court of Pennsylvania (the “**Commonwealth Court**”, and together with the order of the Cayman Court referred to in preceding clause (a), the “**Necessary Court Approvals**”), which has jurisdiction over the assets or activities of SHIP and whose authorization is required, which order authorizes SHIP to enter into this Settlement Agreement with the PPVA Parties. If the Settlement Payment has not been paid to, and received by, SHIP in full by November 30, 2021 (the “**Outside Payment Date**”), then the Parties shall not be bound by this Agreement or the terms of the settlement under this Agreement unless expressly agreed to by the Parties in writing. Promptly upon receipt of the Necessary Court Approval from the Cayman Court (and in any event within three Business Days thereafter), the PPVA Parties shall give a copy thereof to the SHIP Parties. Promptly upon receipt of the Necessary Court Approval from the Commonwealth Court (and in any event within three Business Days

thereafter), SHIP shall give a copy thereof to the PPVA Parties. In this Agreement, the term “**Business Day**” means a day, other than a Saturday or a Sunday, on which banks in the State of New York are open for the transaction of a substantial part of their commercial banking business and which is not a legal holiday in the State of New York.

ARTICLE III ASSIGNMENT AND ASSUMPTION REGARDING MONTSANT DEBT

Section 3.01. Assignment and Assumption. Concurrent with the Settlement Payment Date, the SHIP Parties and the PPVA Parties shall execute and deliver an assignment and assumption agreement substantially in the form set forth in Exhibit B (the “**Assignment and Assumption Agreement**,” and together with this Settlement Agreement and any documents related thereto, the “**Settlement Documents**”) pursuant to which Assignment and Assumption Agreement, effective upon SHIP’s receipt of the Settlement Payment in full, SHIP will assign to PPVA, without recourse, and without representation or warranty of any kind (other than any representation expressly set forth in this Agreement), and on an “as is” “where is” and “with all faults” basis, all of SHIP’s right, title and interest in and to that certain Second Amended and Restated Secured Term Note dated as of March 21, 2016 (the Reissue Date), in the face principal sum of \$36,774,055.56, made by Montsant Partners LLC, a Delaware limited liability company, payable to Senior Health Insurance Company of Pennsylvania, a Pennsylvania domiciled life insurance company (“**Montsant Note 1**,” which term includes any amendments or modification thereto, restatements thereof, and substitutions and replacements therefor, at any time), including any right, title and interest that SHIP may have under any other documents that evidence, guarantee or secure Montsant Note 1 or the indebtedness of Montsant evidenced thereby, including, but not limited to, those documents listed on Exhibit A hereto relating to Montsant Note 1 (collectively, Montsant Note 1 and such other documents, the “**Montsant Loan Documents**”), which assignment shall be made expressly subject to any claims, purported claims, or other matters listed on Exhibit C hereto (the “**Scheduled Exceptions**”), and PPVA shall assume all of SHIP’s obligations under the Montsant Loan Documents. SHIP shall not be required to locate, or to deliver to the PPVA Parties or any other person, the original of Montsant Note 1 or the originals of any other Montsant Loan Documents, or any collateral therefor. For the purposes of this paragraph, none of SHIP’s debt or equity interests affected by or subject to the litigation in *Principal Growth Strategies, et al., v. AGH Parent LLC, et al.*, Case No. 2019-0431-JTL; pending in the Court of Chancery in the State of Delaware (the “**Agera Litigation**”) are subject to this assignment, including those listed on Schedule 3.01 of this Agreement.

Section 3.02. Notice to BAM Administrative Services LLC. From and after the effective date of the assignment of the Montsant Loan Documents from SHIP to PPVA and corresponding assumption of obligations thereunder by PPVA (the “**Assignment and Assumption**”), and provided that SHIP shall have received the Settlement Payment in full, PPVA shall be entitled to notify BAM Administrative Services LLC (“**BAM**”), in BAM’s capacity as the Agent under the Montsant Loan Documents, of the assignment of Montsant Note 1 from SHIP to PPVA as described herein. Provided that SHIP shall have received the Settlement Payment in full, SHIP shall execute such joint instructions with the PPVA Parties as may be reasonably necessary to request that BAM withdraws any and all claims arising from or related to Montsant Note 1 as against the PPVA Parties.

Section 3.03. Montsant Collateral.

(a) Attached hereto as Exhibit D are copies of the securities account statements for the Montsant Collateral Account (the “**Montsant Collateral Account Statements**”) dated (i) October 31, 2016, (ii) October 31, 2018, (iii) December 31, 2019, (iv) December 31, 2020, and (v) May 31, 2021 (the “**Montsant Statement Date**”), issued by JH Darbie & Co. that show the Montsant

Collateral that was held in the Montsant Collateral Account on the respective dates of the statements, and the form of such Montsant Collateral (for example, certificated or uncertificated securities, etc.).

(b) Attached hereto as **Exhibit E** are copies of each account statement dated prior to the Execution Date in the PPVA Parties' possession for each account maintained by Montsant or any other PPVA Party at William Blair & Company, including securities account # [REDACTED] 6 (the "**Supplemental Collateral Account**") maintained at William Blair & Company in the name of Montsant Partners LLC.

(c) Attached hereto as **Exhibit F** is a listing of the Montsant Collateral, and the form of such Montsant Collateral (for example, certificated or uncertificated securities, etc.), which list is current as of the Execution Date of this Agreement.

(d) Attached hereto as **Exhibit G** is a copy of a deposit account statement dated September 8, 2021 (the "**H&K Escrow Account Statement Date**") issued by Holland & Knight LLP, that shows the amount of Escrowed Funds held in the escrow account at Holland & Knight LLP (the "**H&K Escrow Account**") as of H&K Escrow Account Statement Date.

(e) The PPVA Parties shall be permitted to sell any of the Montsant Collateral in arms-length cash sales to third parties not affiliated with the PPVA Parties; provided that, such sales shall be conducted by the PPVA Parties in full compliance with all applicable laws and until the Settlement Payment has been paid to SHIP in full and the Assignment and Assumption Agreement has been executed and delivered by SHIP and PPVA all proceeds from any sale of the Montsant Collateral, less any reasonable brokerage fees paid in connection with the sale of the Montsant Collateral, and any other payments of any kind received in respect of the Montsant Collateral, shall (i) immediately be deposited in the H&K Escrow Account; (ii) may not be otherwise transferred or used for any purpose until SHIP's receipt of the Settlement Payment in full; and (iii) shall be and remain subject, in all respects, to the Montsant Loan Documents and the security interests and other rights provided under the Montsant Loan Documents for the security of Montsant Note 1 as are applicable thereto on the Execution Date; provided, further, that the PPVA Parties shall promptly (and in any event within five (5) days after each such sale) provide to SHIP a written report of each such sale, including the asset sold, the parties to the sale (if known by the PPVA Parties), the date of the sale, the proceeds of the sale, and the date and amount of the deposits of such sale proceeds to the H&K Escrow Account. Other than sales in accordance with the preceding sentence, deposits to the H&K Escrow Account in accordance with the preceding sentence, payment of the Settlement Payment to SHIP in accordance with this Agreement, the PPVA Parties shall not make, or direct or permit any other person to make, any Disposition of any of the Montsant Collateral without SHIP's prior written consent. As used in this Agreement, "**Disposition**" means any sale, assignment, transfer, conveyance, exchange, conversion, surrender, deposit, withdrawal, redemption, contribution, donation, gift giving, abandonment or other action or transaction that disposes of any asset or property.

(f) For the avoidance of doubt, nothing in this Agreement shall be construed as amending the Montsant Loan Documents or waiving any of SHIP's rights under the Montsant Loan Documents.

(g) For the avoidance of doubt, after the Settlement Payment has been received by SHIP in full and the Assignment and Assumption Agreement has been executed and delivered by the Parties, the SHIP Parties shall have no interest in the Montsant Collateral and nothing set forth in this Agreement shall prohibit or restrict the PPVA Parties from transferring or liquidating the Montsant Collateral after such date.

(h) For the avoidance of doubt, and excepting sales made in accordance with Section 3.03(e) and deposits to the H&K Escrow Account made in accordance with Section 3.03(e), none of the Montsant Collateral or proceeds thereof, including, without limitation, any funds or other financial assets in the H&K Escrow Account, and any funds or other financial assets in the Supplemental Collateral Account, shall be withdrawn, redeemed, transferred or used for any purpose and no other Disposition thereof shall be made until SHIP has received the Settlement Payment in full.

(i) Until SHIP has received the Settlement Payment in full, the PPVA Parties shall provide to the SHIP Parties copies of monthly account statements for the Supplemental Collateral Account and for the H&K Escrow Account, which monthly account statements shall be provided within ten days after the end of each month and shall show the balances of the accounts as of the dates of the statements and shall show all account activity (including deposits, withdrawals, redemptions, transfer into and out of the accounts, and any fees) during the monthly period covered by the statements.

(j) Until SHIP has received the Settlement Payment in full, the PPVA Parties shall not enter into any agreement relating to the Supplemental Collateral Account or the H&K Escrow Account, and shall not modify, amend, restate or supplement any existing agreement that is listed on Exhibit I hereto, without SHIP's prior written consent.

ARTICLE IV RELEASES

Section 4.01. Release of the PPVA Parties by the SHIP Parties.

(a) Section 4.01(b) shall be effective only upon SHIP's receipt of the Settlement Payment in full, the execution and delivery of the Settlement Documents by all parties, and satisfaction of the terms and conditions set forth in this Agreement.

(b) Except for rights and obligations set forth in the Settlement Documents, and subject to Section 4.01(a), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the SHIP Parties and their past and present, successors, assigns, advisors, subsidiaries and affiliates ("**SHIP Releasors**"), will release, remise and forever discharge each of the PPVA Parties, their respective subsidiaries and affiliates, and each of their past and present managers, employees, representatives, agents, attorneys, successors and assigns (the "**PPVA Parties Releasees**"), from any and all causes of action, claims, cross-claims, demands, liabilities, complaints, damages, injuries, losses, obligations of any kind (including any claims for the payment of attorney's fees), whether known or unknown, or whether asserted or could have been asserted against the PPVA Parties Releasees, from the beginning of the world through and including the date of this Settlement Agreement, including, but not limited to, any and all claims as a secured party to a security interest in the Montsant Collateral and that certain securities account at COR Clearing LLC ("**COR**") referred to as the "Account" in the Preamble to that certain Control Agreement dated July 6, 2015, by and among BAM Administrative Services LLC, as Agent, Montsant Partners LLC, as Debtor, and COR Clearing LLC, as Securities Intermediary, as amended by that certain Amendment No. 1 to Control Agreement dated as of March 21, 2016 (the "**Montsant Collateral Account**") as well as the Supplemental Collateral Account (the "**PPVA Release**"). The SHIP Parties make no representations or warranties of any kind regarding the Montsant Collateral, Montsant Collateral Account, or any assets or property in the Montsant Collateral Account, or any collateral for Montsant Note 1 or any indebtedness evidenced thereby, or any agreements relating to any of the foregoing.

The following matters shall be excluded from the PPVA Release:

- (1) The SHIP Parties shall retain all rights to assert claims in the Agera Litigation, which may be asserted in accordance with Delaware law and the Delaware Chancery Court Rules of Procedure. All Parties' rights, (including the right of the JOLs, PPVA and PGS to contest any and all counterclaims asserted by the SHIP Parties in the Agera Litigation, and to assert defenses and setoffs arising from any claims asserted by the SHIP Parties in the Agera Litigation), are expressly preserved and excluded from the SHIP Release, as defined in Section 4.02 of this Agreement.
- (2) The PPVA Release and this Settlement Agreement are not intended to, and do not, release any claims that have been or may be brought by or on behalf of SHIP or Fuzion against David Levy.

Section 4.02. Release of the SHIP Parties by the PPVA Releasors.

(a) Section 4.02(b) shall be effective only upon SHIP's receipt of the Settlement Payment in full, the execution and delivery of the Settlement Documents by all parties, and satisfaction of the terms and conditions set forth in this Agreement.

(b) Except for rights and obligations set forth in the Settlement Documents, and subject to Section 4.02(a), the PPVA Parties, each of their respective subsidiaries and affiliates, and each of their past and present managers, representatives, successors and assigns ("**PPVA Releasors**") will release, remise, and forever discharge the SHIP Parties, their subsidiaries and affiliates and their past and present managers, employees, representatives, agents, rehabilitators, attorneys, successors and assigns (collectively, the "**SHIP Releasees**") from any and all causes of action, claims, cross-claims, demands, liabilities, complaints, damages, injuries, losses, obligations of any kind (including any claims for the payment of attorneys' fees), whether known or unknown, or whether asserted or could have been asserted against the SHIP Releasees, from the beginning of the world through and including the date of this Settlement Agreement (the "**SHIP Release**"), with the sole exception of the claims, defenses or setoffs asserted or that may in the future be asserted in the Agera Litigation which are related either to the subject matter set forth in the First Verified Complaint filed in the Agera Litigation, or arise from any defenses, cross claims or counterclaims asserted by the SHIP Parties in the Agera Litigation, as to which all Parties' rights are expressly preserved. The PPVA Parties acknowledge and agree that the SHIP Release includes a release of any claim or interest of any kind that any PPVA Party may have against any SHIP Releasee relating in any way to Montsant Note 1, the Montsant Loan Documents, any indebtedness evidenced thereby, or any collateral or other credit support therefor (excepting PPVA's interest as an assignee when the assignment of Montsant Note 1 to PPVA becomes effective under the Assignment and Assumption Agreement).

Furthermore, and without limiting the foregoing, effective on the Settlement Payment Date and in consideration of this Settlement Agreement, and other good and valuable consideration, the receipt and sufficiency of which being acknowledged, each PPVA Releasor, for itself and each of its present and former owners, subsidiaries and affiliates, and for its and their past and present managers, representatives, successors and assigns, shall relieve, release, acquit and forever discharge the SHIP Releasees from any and all claims, actions, causes of action, demands, disputes, suits, judgments, awards, and appeals of every type, kind, description and character, whether known or unknown, suspected or unsuspected, anticipated or unanticipated, disclosed or undisclosed, asserted or unasserted, direct or indirect, absolute or contingent, whether at law or in equity, whether arising under any statute or other law, whether in contract or tort or any other form of action, and whether for money damages or other relief (the foregoing referred to herein as "**Claims**") of any PPVA Party or other PPVA Releasor occurring, existing or arising

from the beginning of time through and including the Settlement Payment Date that are based on, arise out of, or relate to (i) any commitment or agreement to make, issue, provide, or arrange, any loan or other financing, or to purchase any promissory note or other instrument, or to renew, extend, or modify any thereof, or to provide any consent, waiver, or forbearance with respect to any thereof, (ii) any Montsant Loan Document or any loan or other financing made, issued, provided or contemplated under any Montsant Loan Document, (iii) any transaction contemplated by or under any Montsant Loan Document, (iv) the administration of any loan or other financing under the Montsant Loan Documents, (v) the administration, handling, collection, disposition, condition, value, existence or nonexistence of any collateral or any proceeds thereof, (vi) the administration, handling, collection, disposition, condition, value or existence or nonexistence of any escrow or escrowed funds constituting collateral or proceeds of collateral, (vii) the enforcement of any Montsant Loan Document or any obligation under any Montsant Loan Document, (viii) the collection of any amount owed under any Montsant Loan Document, (ix) any intercreditor agreement, subordination agreement or comparable arrangement, (x) the condition, whether financial, operating, or otherwise, of any PPVA Party or any other person, (xi) any plans or prospects of any PPVA Party or other person, (xii) the negotiation of this Agreement or the negotiation, preparation, or execution of any other the Settlement Documents or any document related to this Agreement, (xiii) any Scheduled Exception, or (xiv) any action, inaction, communication, conduct, breach, default, loss, injury, liability or damage related to any of the foregoing.

Section 4.03. Waiver and Release of Claims to Settlement Payment. Without limiting the effect of any other provision of this Agreement, effective on the Effective Date, PGS and each other PPVA Releaser hereby waive and release any right or claim, if any, that they or any of them may have to the Settlement Payment or any portion thereof; provided that in the event that a final judgment would be entered for PGS or any other PPVA Party and against SHIP in the Agera Litigation, the waiver and release in this Section shall not apply to any right that the PPVA Parties may have in respect of such final judgment.

ARTICLE V **NECESSARY COURT APPROVALS**

Section 5.01. Condition Precedent Regarding Necessary Court Approvals. The settlement, assignments and releases and other actions described in this Agreement are conditional upon (a) sanction (*i.e.*, authorization) by the Cayman Court, and (b) approval by the Commonwealth Court. The PPVA Parties undertake to diligently (and in any event within ten Business Days after the Execution Date) seek the Necessary Court Approval from the Cayman Court and notify the SHIP of such filing. SHIP undertakes to diligently (and in any event within ten Business Days after the Execution Date) seek the Necessary Court Approval from the Commonwealth Court and notify the PPVA of such filing.

ARTICLE VI **REPRESENTATIONS AND WARRANTIES**

Section 6.01. Representations and Warranties by PPVA Parties. To induce the SHIP Parties to enter into this Agreement, the PPVA Parties represent and warrant to the SHIP Parties, on and as of the date of this Agreement, as follows:

(a) Organization. The PPVA Parties severally represent and warrant that they are duly organized, validly existing and in good standing under the laws of the applicable jurisdiction where they are incorporated, organized or formed, with full power and authority to execute, deliver and perform this Agreement and to enter into and consummate the transactions contemplated herein. Upon

receipt of such of the Necessary Court Approval that applies to it, each of the PPVA Parties will have taken all actions required to authorize the execution, delivery and performance of this Agreement.

(b) Approvals. The approval of the Cayman Court is the only approval that the PPVA Parties are required to seek in order to execute, deliver and perform their obligations, and provide their releases and waivers, under the Settlement Documents, and no other court approvals or other approvals are necessary. To the extent that the consent or authorization of a PPVA Party may be necessary for another PPVA Party to execute, deliver and perform its obligations, and provide its releases and waivers, under the Settlement Documents, such consent or authorization has been given. Other than as set forth herein or on any exhibit hereto, neither the execution and delivery of the Settlement Documents by any PPVA Party, nor the performance by any PPVA Party of its obligations under the Settlement Documents, requires the consent, approval, order or authorization of, or registration with, or the giving notice to, any person or entity, except such as have been obtained, made or given or are otherwise set forth expressly in this Agreement.

(c) Ownership of Montsant. PPVA is the direct owner of 100% of the limited liability company membership interests in Montsant.

(d) Ownership of Montsant Note 2. PGS is the direct holder and owner of 100% of Montsant Note 2 (herein defined) and any indebtedness evidenced by Montsant Note 2.

(e) Montsant Note 1. To the extent that the PPVA Parties or any of them have at any time claimed to have an interest in Montsant Note 1, or have at any time been presented on any registry or report as having an interest in Montsant Note 1, none of the PPVA Parties have transferred or assigned such interest to any person.

(f) Execution and Delivery. This Agreement has been duly and validly executed and delivered by the PPVA Parties.

(g) Enforceable Agreement. This Agreement constitutes the legal, valid and binding obligation of the PPVA Parties, enforceable against the PPVA Parties in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally, and the exercise of judicial discretion in accordance with general principles of equity.

(h) Montsant Collateral Statements. The PPVA Parties do not have any Montsant Collateral Account Statements issued after the Montsant Statement Date.

(i) Montsant Collateral Statement Date. There have been no transfers, withdrawals or other dispositions of any Montsant Collateral (whether funds, securities or other assets) or any proceeds thereof on or after the Montsant Statement Date, except those transfers described on **Exhibit H**.

(j) H&K Escrow Account Statement Date. There have been no deposits to, or transfers or withdrawals from, the H&K Escrow Account, on or after the H&K Escrow Account Statement Date.

(k) Location of Montsant Collateral on Execution Date. On the Execution Date, (i) all of the Montsant Collateral is in maintained in either (A) the account disclosed on **Exhibit E** (the Supplemental Collateral Account at William Blair & Company) or (B) the account disclosed on

Exhibit G (the H&K Escrow Account); (ii) none of the PPVA Parties is a party to any agreement relating to the Supplemental Collateral Account or the H&K Escrow Account other than the agreements listed on **Exhibit I**, (iii) none of the Montsant Collateral is in the Montsant Collateral Account or any other account at COR, (iv) none of the Montsant Collateral is in any account at JH Darbie.

Section 6.02. **Representations and Warranties by SHIP Parties.** To induce the PPVA Parties to enter into this Agreement, the SHIP Parties represent and warrant to the PPVA Parties, on and as of the date of this Agreement, as follows:

(a) **Organization.** The SHIP Parties severally represent and warrant that they are duly organized, validly existing and in good standing under the laws of the applicable jurisdiction where they are incorporated, organized or formed, with full power and authority to execute, deliver and perform this Agreement and to enter into and consummate the transactions contemplated herein. Upon receipt of such of the Necessary Court Approvals that apply to it, each of the SHIP Parties will have taken all actions required to authorize the execution, delivery and performance of this Agreement.

(b) **Ownership of Montsant Note 1.** Effective on the Settlement Payment Date, SHIP is the owner of Montsant Note 1 and it owns its interest in Montsant Note 1 free and clear of any lien, security interest or encumbrance, excepting any Scheduled Exceptions.

(c) **Consents and Approvals.** Other than as set forth herein or on any exhibit hereto, neither the execution and delivery of the Settlement Documents by the SHIP Parties, nor the performance by the SHIP Parties of their obligations under the Settlement Documents, requires the consent, approval, order or authorization of, or registration with, or the giving notice to, any person or entity, except such as have been obtained, made or given or are otherwise set forth expressly in this Agreement; provided that the representation and warranty made in this clause (c) does not apply to (i) any consent, approval, order or authorization of, or registration with, or notice to, any PPVA Party or any affiliate of any PPVA Party, or (ii) any consent, approval, order or authorization of, or registration with, or notice to any party to any of the Montsant Loan Documents.

(d) **Execution and Delivery.** This Agreement has been duly and validly executed and delivered by the SHIP Parties.

(e) **Enforceable Agreement.** This Agreement constitutes the legal, valid and binding obligation of the SHIP Parties, enforceable against the SHIP Parties in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally, and the exercise of judicial discretion in accordance with general principles of equity.

Section 6.03. **No Other Representations or Warranties by SHIP Parties.** PPVA, the PPVA Parties and the PPVA Releasors expressly acknowledge that, except as provided in Section 6.02 of this Agreement, the SHIP Parties make no representations or warranties of any kind regarding or relating to (a) Montsant Partners LLC or any other PPVA Party, (b) Montsant Note 1 or any other Montsant Loan Document, (c) any indebtedness or any amount thereof evidenced or represented by Montsant Note 1 or any other Montsant Loan Document, (e) any collateral (or the existence, perfection or priority of any security interest or other lien on any collateral), guaranty, or other credit support for Montsant Note 1 or any other Montsant Loan Document or any indebtedness or obligations evidenced thereby, (f) the status of any indebtedness or other obligation under Montsant Note 1 or any other Montsant Loan Document, including whether such indebtedness or other obligation is in default or the nature of such default, or (g)

the administration or servicing of, or accounting for, any loan or other financing under Montsant Note 1 or any other Montsant Loan Document or otherwise.

Section 6.04. No Other Representations or Warranties by PPVA Parties. The SHIP Parties and the SHIP Releasors expressly acknowledge that, except as provided in Section 6.01 of this Agreement, the PPVA Parties make no representations or warranties of any kind regarding or relating to (a) Montsant Partners LLC or any other PPVA Party, (b) Montsant Note 1 or any other Montsant Loan Document, (c) any indebtedness or any amount thereof evidenced or represented by Montsant Note 1 or any other Montsant Loan Document, (e) any collateral (or the existence, perfection or priority of any security interest or other lien on any collateral), guaranty, or other credit support for Montsant Note 1 or any other Montsant Loan Document or any indebtedness or obligations evidenced thereby, (f) the status of any indebtedness or other obligation under Montsant Note 1 or any other Montsant Loan Document, including whether such indebtedness or other obligation is in default or the nature of such default, or (g) the administration or servicing of, or accounting for, any loan or other financing under Montsant Note 1 or any other Montsant Loan Document or otherwise.

ARTICLE VII

INDEPENDENT REVIEW BY THE PPVA PARTIES

Section 7.01. Independent Review and Decision. PPVA, the PPVA Parties and the PPVA Releasors expressly acknowledge (a) that Montsant Partners LLC is a wholly-owned direct subsidiary of PPVA, (b) that the PPVA Parties have conducted such independent reviews and other diligence as they have deemed necessary and appropriate regarding Montsant Partners LLC, Montsant Note 1, the Montsant Loan Documents, any indebtedness or obligation evidenced by Montsant Note 1 or any other Montsant Loan Document, and any collateral, guaranty or other credit support for Montsant Note 1 or any such indebtedness, and any subordination, intercreditor, agency or other agreements applicable to any of the foregoing, and have made their own independent decision to enter into the Settlement Documents and to make the Settlement Payment to SHIP, (c) that Montsant Note 1 is past due, and (d) that, excepting the representations made by the SHIP Parties in Section 6.02, the PPVA Parties, in making their independent decision to enter into the Settlement Documents and make the Settlement Payment to SHIP, have not relied in any way on any representations or statements made by, or any information provided by, the SHIP Parties or any of their present and former owners, affiliates, directors, managers, trustees, officers, employees, agents, rehabilitators, representatives, attorneys, accountants, consultants or other advisors. PPVA, the PPVA Parties and the PPVA Releasors further expressly acknowledge that the list of Montsant Loan Documents set forth on Exhibit A is not an exhaustive or complete list of all of the documents entered into by Montsant Partners LLC or others that may relate to or affect Montsant Note 1 or any of the other documents listed on Exhibit A or an indebtedness or other obligations evidenced thereby, or that may relate to or affect any collateral, guaranty or other credit support therefor.

Section 7.02. Montsant Note 2. As used herein, the term “**Montsant Note 2**” means that certain Promissory Note, dated March 31, 2016, in the original principal amount of \$6,137,215.50, made by Montsant Partners LLC payable to the order of BBIL ULICO 2014, including any amendments or modification thereto, restatements thereof, and any substitutions and replacements therefor, at any time. The PPVA Parties acknowledge that Montsant Note 2 may be secured by a security interest or other lien in some or all of the same collateral that secures Montsant Note 1.

ARTICLE VIII
OTHER INTERESTS

Section 8.01. Other Interests. In conjunction with the execution and delivery of the Settlement Documents and SHIP's receipt of the Settlement Payment, SHIP will acknowledge that it holds no other interests in instruments covered by the following documents.

(1) Master Guaranty Agreement, dated March 21, 2016, made by Montsant Partners LLC, Golden Gate Oil LLC, and Platinum Partners Value Arbitrage Fund L.P., as Guarantors, Mark A. Nordlicht, as Individual Guarantor, as agreed and acknowledged by BAM Administrative Services LLC, as Agent.

(2) One-page letter dated January 13, 2016, acknowledged and agreed by Mark Nordlicht, on behalf of himself, Platinum Partners Value Arbitrage Fund L.P. ("PPVA"), Platinum Partners Credit Opportunities Master Fund LP ("PPCO") and each of their affiliates, and witnessed by Mark Feuer (referred to generally as the "**Nordlicht Side Letter**").

(3) Note Purchase Agreement, dated January 30, 2015, by and among Montsant Partners LLC, BAM Administrative Services LLC, as Agent, and Senior Health Insurance Company of Pennsylvania, as an Investor.

ARTICLE IX
GENERAL PROVISIONS

Section 9.01. Notices. Any notice required or permitted by or in connection with this Agreement shall be in writing and shall be made by facsimile, or by electronic transmission ("e-mail"), or by hand delivery, or by overnight delivery service, or by certified mail, return receipt requested, postage prepaid, addressed to the Parties at the appropriate address set forth below or to such other address as may be hereafter specified by written notice given by the PPVA Parties to the SHIP Parties or by the SHIP Parties to the PPVA Parties. Notice shall be considered given as of the earlier of the date of actual receipt, or the date of the facsimile transmission without error, if receipt of the facsimile has been confirmed by telephone, or the date the e-mail is delivered, or the date of hand delivery, or one (1) Business Day after delivery to a nationally recognized overnight delivery service, or three (3) Business Days after the date of mailing, independent of the date of actual delivery or whether delivery is ever in fact made, as the case may be, provided the giver of notice can establish that notice was given as provided herein.

If to the PPVA Parties:

R&H Restructuring (Cayman) LTD.
Windward 1, Regatta Office Park
PO BOX 897 Grand Cayman KY1-1103
Attn: Martin Trott
Telephone No.: +1 345-949-7576
Facsimile No.: +1 345- 949-8295
E-mail: mtrott@rhrestructuring.com

With a copy to:

Holland & Knight LLP
31 W. 52nd Street
New York, New York 10019

Attn: Warren E. Gluck, Esq.
Telephone No.: 212-513-3200
Facsimile No.: 212-385-9010
E-mail: warren.gluck@hkllaw.com

If to the SHIP Parties:

Patrick H. Cantilo
Special Deputy Rehabilitator
Cantilo & Bennett, L.L.P.
11401 Century Oaks Terrace, Suite 300
Austin, Texas 78758
Telephone No.: 512-478-6000
Facsimile No.: 512-404-6550
E-mail: phcantilo@cb-firm.com

With a copy to:

DLA Piper (US) LLP
1251 Avenue of the Americas, 27th Floor
New York, New York 10020-1104
Attn: Aidan M. McCormack, Esq.
Telephone No.: 212-335-4750
Facsimile No.: 917-778-8750
E-mail: aidan.mccormack@us.dlapiper.com

and to

Jane Bagley
General Counsel
Senior Health Insurance Company of Pennsylvania, In
Rehabilitation
550 Congressional Blvd Suite 200,
Carmel, IN 46032.
Telephone No.: 317-566-7483
Facsimile No.: 317-566-7581
E-mail: janebagley_ship@shipltc.com

If to the Escrow Agent:

Holland & Knight LLP
31 W. 52nd Street
New York, New York 10019
Attn: Warren E. Gluck, Esq.
Telephone No.: 212-513-3200
Facsimile No.: 212-385-9010
E-mail: warren.gluck@hkllaw.com

Section 9.02. Amendments. This Agreement shall not be modified or amended, and the obligations of the Parties in this Agreement shall not be waived, unless such modifications, amendments or waivers shall have been made in a writing signed by the Parties hereto.

Section 9.03. No Third Party Beneficiaries. There shall be no third party beneficiaries of this Agreement or any representation, warranty, covenant or other provision of this Agreement.

Section 9.04. Entire Agreement. This Agreement and any other documents executed with this Agreement (if any other documents are executed with this Agreement) are a complete and exclusive expression of all the terms of the matters expressed therein. No promise, inducement, or representation has been made to which relates in any way to the matters expressed in this Agreement or any other document executed with this Agreement other than what is expressly stated herein and in such other document.

Section 9.05. No Strict Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event that any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 9.06. Whole Agreement. If any provision of this Agreement is prohibited by, or unenforceable under, the laws of any jurisdiction, then this Agreement shall be deemed void *ab initio* unless each of the Parties to this Agreement agree that the purpose and intent of this Agreement can be fulfilled notwithstanding the severing of such prohibited or unenforceable provision.

Section 9.07. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (for example, “.pdf” or “.tif”) format by email or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement. Signature pages may be detached from separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document. In making proof of this Agreement, it shall not be necessary to produce more than one counterpart of this executed Agreement.

Section 9.08. Assignments; Successors and Assigns.

(a) Subject to clause (b) of this Section, this Agreement shall be binding upon the Parties and their respective successors and assigns.

(b) The PPVA Parties shall not sell, assign or transfer any of the Settlement Documents, or any of their rights or obligations under the Settlement Documents, or sell or grant any participation interest in any of the foregoing, to any person without the prior written consent of the SHIP Parties, which consent may be withheld in the discretion of the SHIP Parties, and any such attempted sale, assignment, transfer, or grant without the prior written consent of the SHIP Parties shall be void *ab initio*.

Section 9.09. Further Assurances. Upon and after the effective date of the Assignment and Assumption Agreement, and provided that SHIP has received the Settlement Payment, SHIP will, upon PPVA's written request, provide written confirmation, in form and substance satisfactory to SHIP, addressed to COR Clearing LLC, JH Darbie & Co., or William Blair & Company, that Montsant Note 1 has been assigned to PPVA and that SHIP does not claim any interest in any collateral that may then be in the Montsant Collateral Account that secures Montsant Note 1; provided, however, that SHIP shall not be required to incur any cost or expense in connection with any such request or written confirmation, and shall not be required to comply with any such request that may impose any liability on either of the SHIP Parties as determined by the SHIP Parties in their reasonable discretion; and provided, further, that SHIP shall not be required to provide any such request or confirmation if any Montsant Collateral or proceeds thereof has been the subject of any Disposition other than in accordance with the terms of this Agreement.

Section 9.10. Choice of Law; Venue; Jury Trial Waiver.

(a) Governing Law. This Agreement and the other Settlement Documents and the rights and obligations of the parties hereunder and thereunder shall, in all respects, be governed by, and construed in accordance with, the laws (excluding the principles of conflict of laws) of the State of New York (the “**Governing Jurisdiction**”) (including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York), including all matters of construction, validity and performance.

(b) Jurisdiction; Venue; Service.

(i) The Parties hereby irrevocably consent to the non-exclusive personal jurisdiction of the state courts of the Governing Jurisdiction and, if a basis for Federal jurisdiction exists, the non-exclusive personal jurisdiction of the United States District Court for the Southern District of New York.

(ii) The parties agree that venue shall be proper in any court of the Governing Jurisdiction or, if a basis for Federal jurisdiction exists, in the United States District Court for the Southern District of New York. The Parties waive any right to object to the maintenance of any suit, claim, action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, in any of the state courts of the Governing Jurisdiction or the United States District Court for the Southern District of New York on the basis of improper venue or inconvenience of forum.

(iii) Any suit, claim, action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, brought by any Party against another Party that is based, in whole or in part, directly or indirectly, on this Agreement or any other Settlement Document shall be brought in a court only in the Governing Jurisdiction. Furthermore, the Parties irrevocably and unconditionally agree that they will not bring or commence any suit, claim, action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, in any way relating to this Agreement or the other Settlement Documents in any forum other than the courts of the State of New York sitting in New York County, and the United States District Court for the Southern District of New York, and any appellate court from any thereof, and each of the Parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such suit, claim, action, litigation or proceeding may be heard and determined in such New York state court or, to the fullest extent permitted by applicable law, in the United States District Court for the Southern District of New York. The Parties agree that a final judgment in any such suit, claim, action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(iv) The Parties irrevocably consent to the service of process out of any of the aforementioned courts in any such suit, claim, action, litigation or proceeding by the mailing of copies thereof by registered or certified mail postage prepaid, to it at the address provided for notices in this Agreement, such service to become effective thirty (30) days after the date of mailing.

(v) Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

(c) Waiver of Jury Trial. **The Parties mutually waive all right to trial by jury of all claims of any kind arising out of or based upon this Agreement or any other**

Settlement Document or any matter relating to this Agreement or any other Settlement Document, or any obligations, or any contemplated transaction. The Parties acknowledge that this is a waiver of a legal right and that the Parties each make this waiver voluntarily and knowingly after consultation with counsel of its choice. The Parties agree that all such claims shall be tried before a judge of a court having jurisdiction, without a jury.

(d) Agera Litigation. Notwithstanding anything to the contrary, and for the avoidance of doubt, the Parties agree that the preceding clauses 9.10(a), 9.10(b) and 9.10(c) of this Section 9.10 shall not apply to any claims or defenses made, or that may be made, in, or related to, the Agera Litigation.

[The signature page follows. The remainder of this page is blank.]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned Parties execute this Agreement as of the Execution Date first above written.

PPVA PARTIES:

PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P.
(in Official Liquidation)

By: 
Name: Martin Trott
Title: Joint Official Liquidator

JOINT OFFICIAL LIQUIDATORS of Platinum Partners Value
Arbitrage Fund L.P. (in Official Liquidation)

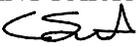
By: 
Name: Martin Trott
Title: Joint Official Liquidator

By: 
Name: Christopher Smith
Title: Joint Official Liquidator

DMRJ GROUP LLC

By: 
Name: Martin Trott
Title: For PPVA, as operating manager of DMRJ Group
LLC

MONTSANT PARTNERS LLC

By: 
Name: Christopher Smith
Title: For PPVA, as operating manager of Montsant
Partners, LLC

PRINCIPAL GROWTH STRATEGIES LLC

By: 
Name: Martin Trott
Title: For PPVA, as operating manager of Principal Growth
Strategies LLC

SHIP PARTIES:

SENIOR HEALTH INSURANCE COMPANY OF
PENNSYLVANIA, In Rehabilitation

By: Patrick H. Cantilo
Name: Patrick H. Cantilo
Title: Special Deputy Rehabilitator

FUZION ANALYTICS, INC.

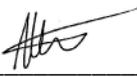
By: Patrick H. Cantilo
Name: Patrick H. Cantilo
Title: Chief Executive Officer

[SHIP Party Signature Page to Settlement Agreement]

The undersigned Escrow Agent acknowledges that it has received and agrees to comply with the provisions of the foregoing Settlement Agreement that apply to the H&K Escrow Account:

ESCROW AGENT:

HOLLAND & KNIGHT LLP

By:  _____

Name: Warren Gluck

Title: Partner

[Escrow Agent Signature Page to Settlement Agreement]

Exhibit A to Settlement Agreement

Listed Montsant Loan Documents

1.	Second Amended and Restated Secured Term Note, dated as of March 21, 2016 (the Reissue Date), in the principal sum of \$36,774,055.56, made by Montsant Partners LLC, a Delaware limited liability company, payable to Senior Health Insurance Company of Pennsylvania, a Pennsylvania domiciled life insurance company or its registered assigns or successors in interest
2.	Note Purchase Agreement dated as of January 30, 2015, by and among Montsant Partners LLC, a Delaware limited liability company, as Company or Borrower, BAM Administrative Services LLC, a Delaware limited liability company, as Agent, and Senior Health Insurance Company of Pennsylvania, as an Investor, as amended
3.	Amended and Restated Agency Agreement, amended and restated as of March 31, 2016, by and among Senior Health Insurance Company of Pennsylvania, BBIL ULICO 2014 and BAM Administrative Services LLC, as Agent, as amended (the “ Agency Agreement ”)
4.	Pledge Agreement entered into as of May 13, 2015 by and between Montsant Partners LLC, as Pledgor, and BAM Administrative Services LLC, as Agent, as amended
5.	Control Agreement dated July 6, 2015, by and among BAM Administrative Services LLC, as Agent, Montsant Partners LLC, as Debtor, and COR Clearing LLC, as Securities Intermediary, as amended

Exhibit B to Settlement Agreement

Form of Assignment Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Agreement**”), dated as of _____, 2021 (the “**Settlement Payment Date**”), is made by and between SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, In Rehabilitation, a Pennsylvania insurance company currently in rehabilitation (“**SHIP**” or the “**Assignor**”) and PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in Official Liquidation), a Cayman Islands exempted limited partnership (“**PPVA**” or the “**Assignee**”). The Assignor and the Assignee are sometime referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. The Assignor and the Assignee are parties to that certain Settlement Agreement, dated with an Execution Date of September 21, 2021, by and among PPVA, MARTIN TROTT and CHRISTOPHER SMITH, the Joint Official Liquidators of PPVA (the “**JOLs**”), DMRJ GROUP LLC, a Delaware limited liability company (“**DMRJ**”), MONTSANT PARTNERS LLC, a Delaware limited liability company (“**Montsant**”), PRINCIPAL GROWTH STRATEGIES LLC, a Delaware limited liability company (“**PGS**”, and together with PPVA, the JOLs, DMRJ, and Montsant, the “**PPVA Parties**”), SHIP, and Fuzion Analytics, Inc., a Delaware corporation (“**Fuzion**”, and together with SHIP, the “**SHIP Parties**”) (the “**Settlement Agreement**”).

B. This Agreement is the Assignment and Assumption Agreement referred to in Section 3.01 of the Settlement Agreement.

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged hereby, the undersigned Parties hereby agree as follows:

1. Recitals. The Parties acknowledge and agree that the recitals to this Agreement are a material and substantive part of this Agreement and that the information set forth in each recital is true and accurate. The recitals are incorporated herein and made part of this Agreement.

2. Defined Terms. Terms that are used in this Agreement that are not defined in this Agreement but are defined in the Settlement Agreement shall have the meanings ascribed to them in the Settlement Agreement.

3. Assignment. Effective as of the Settlement Payment Date, all of the Assignor’s right, title and interest in and to Montsant Note 1 and the other Montsant Loan Documents, are hereby assigned by the Assignor to the Assignee. This assignment is made without recourse and without any representation or warranty of any kind other than any representation expressly set forth in the Settlement Agreement and is made expressly subject to any claims, purported claims or other matters listed on **Exhibit C** to the Settlement Agreement (the Scheduled Exceptions). SHIP shall not be required to locate, or to deliver to the PPVA or any other person, the original of Montsant Note 1 or the originals of any other Montsant Loan Documents, or any collateral therefor. The Parties acknowledge that pursuant to the last sentence of Section 3.01 of the Settlement Agreement the Assignor’s debt or equity interests affected by or subject to the litigation in *Principal Growth Strategies, et al., v. AGH Parent LLC, et al.*, Case No.

2019-0431-JTL; pending in the Court of Chancery in the State of Delaware (the “**Agera Litigation**”), are not subject to this assignment, including those listed on **Schedule 3.01** to the Settlement Agreement.

4. **Assumption.** Effective as of the Settlement Payment Date, the Assignee hereby assumes the duties, obligations and liabilities of the Assignor under Montsant Note 1 and the other Montsant Loan Documents.

5. **Notices.** Notices relating to this Agreement that are given by or to any Party to this Agreement shall be given in accordance with the notice provisions in the Settlement Agreement.

6. **Amendments.** Neither this Agreement nor any of the terms hereof may be amended, modified, changed, waived, discharged or terminated, nor shall any consent be given, unless such amendment, modification, change, waiver, discharge, termination or consent is in writing and executed by the Assignor and the Assignee.

7. **Successors and Assigns.** This Agreement is subject to the restrictions on assignment set forth in the Settlement Agreement.

8. **No Third Party Beneficiaries.** There shall be no third party beneficiaries of this Agreement.

9. **Counterparts.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (for example, “.pdf” or “.tif”) format by email or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement. Signature pages may be detached from separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document. In making proof of this Agreement, it shall not be necessary to produce more than one counterpart of this executed Assignment.

10. **Governing Law; Jurisdiction; Venue; Service; Waiver of Jury Trial; Agera Litigation.**

(a) **Governing Law.** This Agreement and the other Settlement Documents and the rights and obligations of the parties hereunder and thereunder shall, in all respects, be governed by, and construed in accordance with, the laws (excluding the principles of conflict of laws) of the State of New York (the “**Governing Jurisdiction**”) (including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York), including all matters of construction, validity and performance.

(b) **Jurisdiction; Venue; Service.**

(i) The Parties hereby irrevocably consent to the non-exclusive personal jurisdiction of the state courts of the Governing Jurisdiction and, if a basis for Federal jurisdiction exists, the non-exclusive personal jurisdiction of the United States District Court for the Southern District of New York.

(ii) The parties agree that venue shall be proper in any court of the Governing Jurisdiction or, if a basis for Federal jurisdiction exists, in the United States District Court for the Southern District of New York. The Parties waive any right to object to the maintenance of any suit, claim, action, litigation or proceeding of any kind or description, whether in law or equity, whether in

contract or in tort or otherwise, in any of the state courts of the Governing Jurisdiction or the United States District Court for the Southern District of New York on the basis of improper venue or inconvenience of forum.

(iii) Any suit, claim, action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, brought by any Party against another Party that is based, in whole or in part, directly or indirectly, on this Agreement or any other Settlement Document shall be brought in a court only in the Governing Jurisdiction. Furthermore, the Parties irrevocably and unconditionally agree that they will not bring or commence any suit, claim, action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, in any way relating to this Agreement or the other Settlement Documents in any forum other than the courts of the State of New York sitting in New York County, and the United States District Court for the Southern District of New York, and any appellate court from any thereof, and each of the Parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such suit, claim, action, litigation or proceeding may be heard and determined in such New York state court or, to the fullest extent permitted by applicable law, in the United States District Court for the Southern District of New York. The Parties agree that a final judgment in any such suit, claim, action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(iv) The Parties irrevocably consent to the service of process out of any of the aforementioned courts in any such suit, claim, action, litigation or proceeding by the mailing of copies thereof by registered or certified mail postage prepaid, to it at the address provided for notices in this Agreement, such service to become effective thirty (30) days after the date of mailing.

(v) Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

(c) **Waiver of Jury Trial.** The Parties mutually waive all right to trial by jury of all claims of any kind arising out of or based upon this Agreement or any other Settlement Document or any matter relating to this Agreement or any other Settlement Document, or any obligations, or any contemplated transaction. The Parties acknowledge that this is a waiver of a legal right and that the Parties each make this waiver voluntarily and knowingly after consultation with counsel of its choice. The Parties agree that all such claims shall be tried before a judge of a court having jurisdiction, without a jury.

(d) Agera Litigation. Notwithstanding anything to the contrary, and for the avoidance of doubt, the Parties agree that the preceding clauses (a), (b) and (c) of this Section shall not apply to any claims or defenses made, or that may be made, in, or related to, the Agera Litigation.

[The remainder of this page is blank. Signatures appear on the following page.]

IN WITNESS WHEREOF, the undersigned Parties hereto have executed this Assignment and Assumption Agreement as of the date first above written.

ASSIGNOR:

SENIOR HEALTH INSURANCE COMPANY OF
PENNSYLVANIA, In Rehabilitation

By: Patrick H. Cantilo
Name: Patrick H. Cantilo
Title: Special Deputy Rehabilitator

ASSIGNEE:

PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P.
(in Official Liquidation)

By: _____
Name: Martin Trott
Title: Joint Official Liquidator

[Signature Page to Assignment and Assumption Agreement]

Exhibit C to Settlement Agreement

Scheduled Exceptions

1. Any right, title or interest of any kind in that certain Second Amended and Restated Secured Term Note dated as of March 21, 2016 (the Reissue Date), in the face principal amount of \$36,774,055.56, made by Montsant Partners LLC payable to the order of Senior Health Insurance Company of Pennsylvania ("**Montsant Note 1**," which term includes any amendments or modification thereto, restatements thereof, and substitutions and replacements therefor, at any time) held or claimed to be held, or that was at any time held or claimed to be held, by Principal Growth Strategies LLC ("**PGS**") or any other PPVA Party or PPVA Releasor.
2. The effects of any transaction entered into by, or other action taken by or consented to by, or any inaction by, PGS, or any other PPVA Party or PPVA Releasor, and any other transaction to which any of them were or may have been a party, at any time.
3. The effects of any agreement or transaction entered into by, or other action taken by or consented to by, or any action or inaction by, BAM Administrative Services LLC, COR Clearing LLC, JH Darbie, William Blair & Company, Holland & Knight LLP, or any of their respective agents, in any capacity, relating to the Montsant Loan Documents, any indebtedness evidenced thereby, the Montsant Collateral, or any account or other collateral, or any proceeds therefor, or related thereto.
4. Any security interest, lien or encumbrance created by or on behalf of Montsant Partners LLC, and any other claim or lien against Montsant Partners LLC or its property, that may affect any rights or obligations under the Montsant Loan Documents or any collateral or other credit support for Montsant Note 1 or any indebtedness or other obligations evidenced thereby.
5. Any claim, security interest, lien or encumbrance known to any PPVA Party or PPVA Releasor.
6. Any allegations, claims or defenses of any kind, whether known or unknown, suspected or unsuspected, anticipated or unanticipated, disclosed or undisclosed, asserted or unasserted, direct or indirect, absolute or contingent, of Montsant Partners LLC or any other PPVA Party or PPVA Releasor or any other person relating to (a) Montsant Note 1 or any other Montsant Loan Document (or any predecessors thereto) or any collateral therefor, (b) any action or transaction related to Montsant Note 1 or any other Montsant Loan Document (or any predecessors thereto) or any collateral therefor, (c) any indebtedness or other obligation evidenced by Montsant Note 1 or any other Montsant Loan Document (or any predecessors thereto), (d) any collateral for Montsant Note 1 or any other Montsant Loan Documents (or any predecessors thereto), or (e) any guarantee of or related to, or other credit support for, Montsant Note 1 or any other Montsant Loan Document (or any predecessors thereto) or any such indebtedness or obligations.
7. Any defect or impairment in or with respect to any documentation, collateral or any security interest or lien, or the perfection or priority thereof, or other credit support of any kind, relating to or affecting Montsant Note 1 or any other Montsant Loan Document (or any predecessor thereto) or any indebtedness or other obligations evidenced thereby at any time.
8. Any sale, release or substitution of collateral or proceeds of collateral, or the administration, servicing, custody, or other handling thereof, related to Montsant Note 1 or any other Montsant

- Loan Document (or any predecessor thereto), or any indebtedness or other obligations evidenced thereby at any time.
9. Any escrow or similar arrangement, or the administration, servicing or other handling thereof, related to Montsant Note 1 or any other Montsant Loan Document (or any predecessor thereto), or any indebtedness or other obligations evidenced thereby, or any collateral therefor, at any time.
 10. Any release of any guarantor or other credit support related to Montsant Note 1 or any other Montsant Loan Document (or any predecessor thereto) at any time.
 11. Any settlement made with respect to any collateral or any proceeds of collateral related to Montsant Note 1 or any other Montsant Loan Document (or any predecessor thereto) at any time.
 12. Any action or transaction relating to Montsant Note 1 or any other Montsant Loan Document (or any predecessors thereto) or any indebtedness or other obligations evidenced thereby, or any interest therein, or any collateral therefor, to the extent that any such action or transaction were taken or entered into without SHIP's express consent at any time.
 13. Any execution, delivery, amendment, modification, restatement, consent, waiver, release, substitution, termination, or replacement of, or relating to, Montsant Note 1 or any other Montsant Loan Document (or any predecessors thereto) at any time.
 14. The effect of any inability to locate or produce an original of Montsant Note 1 or any other Montsant Loan Documents.
 15. The right of any party that has custody or possession (whether actual or constructive) of Montsant Note 1 or any other Montsant Loan Document.
 16. The rights of any party that has custody or possession (whether actual or constructive) of any Montsant Collateral or other collateral or other property, or that maintains or has rights to any securities account, deposit account, collateral account, escrow account or other account (or similar arrangement) in which collateral or proceeds of collateral are held.
 17. The effect of any accounting, statement or report relating to Montsant Note 1 or any indebtedness or obligations evidenced thereby or relating to any collateral or escrow.
 18. The effect of any control agreement, custody agreement, management agreement, advisory agreement, agency agreement, guaranty agreement, intercreditor agreement or subordination agreement related to or applicable to Montsant Note 1 or any other Montsant Loan Document, or related to or applicable to any collateral for Montsant Note 1, that may in any way be applicable to, relate to or benefit any indebtedness or other obligation other than Montsant Note 1.
 19. The effect of any right, title or interest of any kind of any person under, related to, or based on, that certain Promissory Note, dated March 31, 2016, in the original principal amount of \$6,137,215.50, made by Montsant Partners LLC payable to the order of BBIL ULICO 2014 ("**Montsant Note 2**", which term includes any amendments or modification thereto, restatements thereof, and substitutions and replacements therefor, at any time) in and to any property of any kind that is collateral for Montsant Note 1 or in and to any other credit support for Montsant Note 1.

20. Any effect of this Settlement Agreement or any Disposition or other transaction contemplated or permitted by this Settlement Agreement.
21. Any agreement or other information or matter disclosed in this Settlement Agreement or on any Exhibit or Schedule to this Settlement Agreement.

Exhibit D to Settlement Agreement

Montsant Collateral Account Statements

	See attached the following account statements dated (i) October 31, 2016, (ii) October 31, 2018, (iii) December 31, 2019, (iv) December 31, 2020, and (v) May 31, 2021
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Exhibit E to Settlement Agreement

William Blair & Company Account Statements for Supplemental Collateral Account

	See attached the following account statements
1.	Statement dated July 31, 2021, regarding account # [REDACTED] 6.

Exhibit F to Settlement Agreement

List of Montsant Collateral Current As of Execution Date of Settlement Agreement

Exhibit G to Settlement Agreement

Escrow Account Statement (Holland & Knight LLP Escrow Account)

	See attached the following deposit account statement dated the H&K Statement Date (as defined in the Settlement Agreement).
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Exhibit H to Settlement Statement

Transfer, withdrawal and other disposition of Montsant Collateral since Montsant Statement Date

Montsant Collateral transferred, withdrawn or disposed of	Date of transfer, withdrawal or other disposition	Description of transfer, withdrawal or other disposition
34,418 shares of Common Stock in VistaGen Therapeutics, Inc. ("VistaGen") represented by Certificate Nos. 6451	14 th July 2021	Transfer of securities from Montsant Partners LLC collateral account # [REDACTED] 72 at JH Darbie to Montsant Partners LLC collateral account # [REDACTED] 6 at William Blair
500,000 shares of Series A Preferred Stock in VistaGen represented by Certificate No. 9	15 th July 2021	Transfer of securities from Montsant Partners LLC collateral account # [REDACTED] 72 at JH Darbie to Montsant Partners LLC collateral account # [REDACTED] 6 at William Blair
1,131,669 shares of Series B Preferred Stock in VistaGen represented by Certificate Nos. 4, 35, 47, 61, 67, 68, 74, 75, 85, 86, 90 & 95.	15 th July 2021	Transfer of securities from Montsant Partners LLC collateral account # [REDACTED] 72 at JH Darbie to Montsant Partners LLC collateral account # [REDACTED] 6 at William Blair
2,318,012 shares of Series C Preferred Stock in VistaGen represented by Certificate Nos. 1, 2, 3, & 4.	15 th July 2021	Transfer of securities from Montsant Partners LLC collateral account # [REDACTED] 72 at JH Darbie to Montsant Partners LLC collateral account # [REDACTED] 6 at William Blair

Exhibit I to Settlement Agreement

Agreements Relating to Supplemental Collateral Account

	Agreements Relating to Supplement Collateral Account at William Blair & Company
1.	Client Account Agreement with William Blair & Company, LLC

Schedule 3.01

Equity and Debt Interests Relating to AGH Parent LLC and Agera Holdings LLC

Related to Investment Management Agreements (“IMAs”)	
Issuer	Interest
AGH Parent LLC	18,593.80 Class B-1 Preferred Units
AGH Parent LLC	\$940,000 Secured Term Note (B-1)
AGH Parent LLC	\$5,000,000 interest in the principal of \$9,060,000 Secured Term Note (B-1)
Agera Holdings LLC	Option to purchase 57.80% of 4.99% interest in the Common Units issued by Agera Holdings LLC

Not Related to IMAs	
Issuer	Interest
AGH Parent LLC	350,000 Class A Preferred Units
AGH Parent LLC	5,730 Common Units
AGH Parent LLC	\$15,000,000 Secured Term Note (B-1)

CERTIFICATE OF SERVICE

I, Michael J. Broadbent, hereby certify that on October 1, 2021, I caused to be served the foregoing APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT IN THE PPVA LITIGATION through the Court's PACFile system and on all parties listed on the Master Service List. In addition, I hereby certify that an electronic copy of the foregoing document will be posted on SHIP's website at <https://www.shipltc.com/court-documents>.

/s/ Michael J. Broadbent