

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

In re:

NOVATION COMPANIES, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11153 ()

(Joint Administration Requested)

**DECLARATION OF MICHAEL WYSE IN SUPPORT
OF DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

I, Michael Wyse, hereby declare under penalty of perjury that the following is true and correct:

1. I am the Chief Restructuring Officer (“CRO”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”). I have served in this capacity since January 17, 2022. I am also the Managing Partner of Wyse Advisors LLC, a boutique financial services firm headquartered in New Jersey, providing, among other services, distressed restructuring solutions for lower to middle market companies. I have over 20 years of leadership experience in a variety of industries, focusing on financial consulting and advisory services. During that time, I have served in the roles of chief restructuring officer, chief financial officer, investment banker, and financial advisor to various companies. In addition, I have served as an independent director for numerous companies in distressed circumstances. I hold Bachelor of Business Administration and Master of Business Administration degrees from St. Bonaventure University.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Novation Companies, Inc. (0661), Novation Holding, Inc. (7576), Healthcare Staffing, Inc. (6045), and NovaStar Mortgage LLC (0743). The mailing address for each of the Debtors is 1724 Phoenix Parkway, College Park, GA 30349.

2. In my capacity as CRO, I am familiar with the Debtors' operations and assets, day-to-day business and financial affairs, and books and records. I submit this declaration (this "**Declaration**") to assist the Court and parties-in-interest in gaining an understanding of the circumstances that led to the commencement of these chapter 11 cases (collectively, the "**Chapter 11 Cases**") and what the Debtors seek to accomplish through the timely and efficient prosecution of the Chapter 11 Cases, and in support of the Debtors' chapter 11 petitions and their applications and motions requesting various types of "first day" relief from the Court (collectively, the "**First Day Motions**"). I am authorized to submit this Declaration on behalf of the Debtors.

3. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, my discussions with employees and other representatives of the Debtors, and information provided to me by the Debtors' professional advisors, including: (i) Young Conaway Stargatt & Taylor, LLP ("**Young Conaway**"), as restructuring counsel; and (ii) Wyse Advisors, LLC ("**Wyse Advisors**"), which has provided the Debtors with additional personnel to support me as CRO. If called upon to testify, I would testify competently to the facts set forth herein.

4. On the date hereof (the "**Petition Date**"), each of the Debtors filed a voluntary petition with the Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors have filed a motion seeking joint administration of the Chapter 11 Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

5. Part I of this Declaration provides an overview of the Debtors' businesses and capital structure. Part II provides a discussion of the events that led to the commencement of

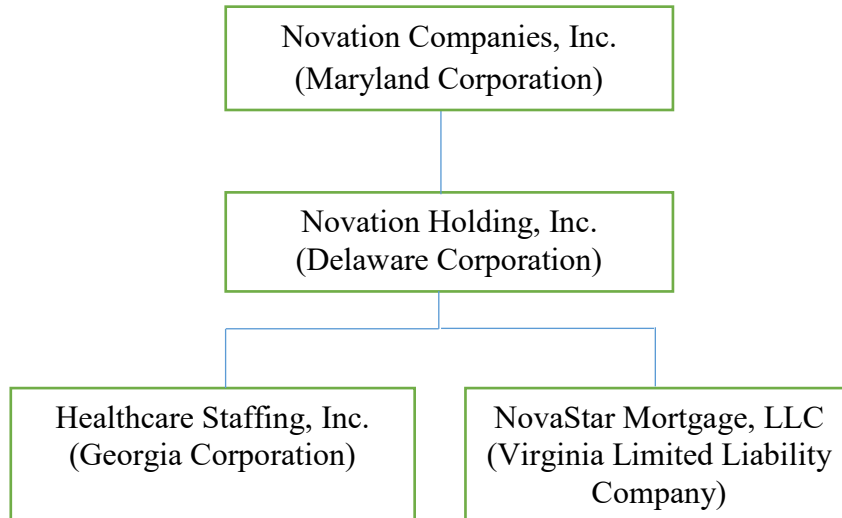
the Chapter 11 Cases and the Debtors' prepetition marketing and restructuring efforts. Part III affirms and incorporates the facts that support the relief requested in the First Day Motions.

-Part I-

THE DEBTORS' BUSINESSES

A. The Debtors' Organizational Structure

6. The Debtors' organizational structure reflects their varied business pursuits, which are discussed more fully below. Specifically, the Debtors comprise: (a) holding companies (i.e., Novation Companies, Inc. and Novation Holding, Inc.); (b) a company that historically engaged in various mortgage and securities-backed lending (i.e., NovaStar Mortgage, LLC); and (c) a company that operates a healthcare services staffing business (i.e., Healthcare Staffing, Inc.), which is the Debtors' only operating business. A corporate organizational chart of the Debtors is as follows:



7. Additional background information about the Debtors is briefly summarized below.

(i) Novation Companies, Inc.

8. Established on September 13, 1996, Novation Companies, Inc. (“**Novation**”) was headquartered in Kansas City, Missouri until June 2023, when it fully transitioned its business operations to a virtual environment. Novation manages its subsidiaries, Novation Holding, Inc. (“**Novation Holding**”), Healthcare Staffing, Inc. (“**HCS**”), and NovaStar Mortgage LLC (“**NovaStar**”).² Historically—but not since the acquisition of HCS in 2017—Novation, along with certain of its subsidiaries, engaged in the business of acquiring and re-selling various other businesses.

9. Novation’s common stock is publicly traded on OTC Markets Group’s Pink Open Market under the symbol “NOVC”. As of the Petition Date, Novation has issued 113,605,893 outstanding shares of common stock.

(ii) Novation Holding, Inc.

10. Established on August 26, 2015, Novation Holding is a holding company that wholly owns HCS and NovaStar.

(iii) Healthcare Staffing, Inc.

11. As discussed more fully below, Novation (indirectly through Novation Holding) acquired the stock of HCS on July 27, 2017 (the “**HCS Transaction**”). HCS was established in 1995, and provides certain staffing services to healthcare businesses, such as nursing homes, doctor offices, and treatment facilities. It is headquartered in College Park, Georgia.

² Novation also manages three dormant, non-Debtor affiliates, all of which are Delaware corporations: (a) NovaStar REMIC Financing Corporation (“**NovaStar REMIC**”); (b) NovaStar Mortgage Funding Corporation (“**NovaStar Funding**”); and (c) NovaStar CDO Holdings, Inc. (collectively with NovaStar REMIC and NovaStar Funding, the “**Non-Debtor Affiliates**”).

(iv) *NovaStar Mortgage, LLC*

12. As discussed in more detail below, NovaStar no longer has any business operations. Prior to 2007, NovaStar bought and sold mortgage-backed securities.

B. Overview of the Debtors and Their Operations

(i) *Mortgages/Securities Business and Related Bankruptcy Proceedings*

13. Prior to 2007, certain of the Debtors and the Non-Debtor Affiliates (each, non-operating entities), originated, purchased, securitized, sold, invested in, and serviced residential nonconforming mortgage loans and securities. After the market for mortgage-backed securities dissipated, NovaStar ceased its lending operations and, in 2007, completed a sale of its mortgage servicing portfolio. Following the sale, NovaStar retained certain investment securities, which had historically generated revenue.

14. In 2015, the Debtors implemented a turnaround strategy, which contemplated the acquisition and sale of various operating businesses. Although such sales, together with interest received from investment securities, generated revenue sufficient to render the Debtors' operations cash flow positive, the Debtors were unable to make quarterly interest payments under their unsecured notes. Accordingly, on July 20, 2016, Debtors Novation and NovaStar, along with two non-Debtor affiliates, NovaStar Funding and 2114 Central, LLC ("**2114 Central**")³ (collectively, the "**Maryland Bankruptcy Debtors**"), filed voluntary petitions for

³ Until October 9, 2017, 2114 Central was a limited liability company organized under the laws of Delaware. Prior to ceasing operations in 2016, 2114 Central engaged in the business of tax refund processing and issuing prepaid debit cards to individuals for their tax refund deposits. Given 2114 Central's limited assets and following resolution of the only two claims scheduled in its chapter 11 case, 2114 Central sought—and obtained—dismissal of its chapter 11 case. See ECF 615, Case No. 16-19745, (Bankr. D. Md. Sept. 7, 2017). Following dismissal of its chapter 11 case, 2114 Central wound up its affairs and, thereafter, filed a Certificate of Cancellation of a Limited Liability Company with the Delaware Division of Corporations.

relief (the “**Maryland Bankruptcy Proceedings**”) in the United States Bankruptcy Court for the District of Maryland (the “**Maryland Bankruptcy Court**”).⁴

15. The Maryland Bankruptcy Debtors utilized the Maryland Bankruptcy Proceedings to, among other things, restructure their debt and resolve claims. On June 12, 2017, the Maryland Bankruptcy Court entered an order confirming Novation’s chapter 11 plan (the “**Novation 2017 Chapter 11 Plan**”), which became effective on July 27, 2017. On April 12, 2018, the Maryland Bankruptcy Court entered an order confirming NovaStar’s plan, which became effective on April 13, 2018.

16. Following the wind down of its mortgage and securities business, in 2018, NovaStar sold all of its remaining investments for approximately \$13.0 million, and subsequently ceased all operations.

(ii) Acquisition of HCS Business

17. In connection with the Maryland Bankruptcy Proceedings, the Debtors consummated the HCS Transaction discussed above. The Debtors’ acquisition of HCS, a then-thriving staffing services business, with locations throughout Georgia, was the culmination of the Debtors’ turnaround strategy. As of 2017, HCS was the largest provider of outsourced services to healthcare businesses in Georgia, operating in a then large and growing market for such services. HCS had a long track record of consistent growth and profitability, having increased revenue from \$1.3 million in 2000 to \$55.3 million in 2016. Further, HCS had a long-term and loyal client base. However, since 2017, among other things, market conditions, the unprecedented COVID-19 pandemic, and certain operational challenges have stymied HCS’s growth, and the Debtors have struggled to maintain HCS’s revenue and increase its market share.

⁴ The Maryland Bankruptcy Proceedings were jointly administered under lead case number 16-19745 (DER).

(iii) HCS Business Operations

18. Historically, HCS delivered outsourced full-time and part-time employees primarily to Community Service Boards (each, a “**CSB**”). CSBs are quasi-state organizations that provide behavioral health services at facilities across Georgia, including mental health services, developmental disabilities programs, and substance abuse treatments. Each CSB has a number of facilities, including crises centers, outpatient centers, and 24-hour group homes, that require a broad range of employees, such as registered nurses, social workers, house parents, and supervisors. Unfortunately, market trends reduced demand for outplacement services in CSBs, which resulted in the CSBs beginning to terminate their related agreements with HCS. In response, HCS repositioned itself to provide outsourced employees to traditional healthcare businesses, such as hospitals, crisis units, clinics, and doctors’ offices, as well as schools, prisons, and a variety of privately owned businesses. HCS charges its customers monthly service fees—its sole source of revenue—to cover HCS’s expenses, overhead, and other liabilities.

19. Individuals placed by HCS at various facilities (the “**Staffing Employees**”) are employees of HCS, and HCS bears the cost of providing such individuals with compensation and benefits. As of the Petition Date, HCS’s workforce consists of approximately 60 Staffing Employees and nine additional administrative personnel, significantly reduced from approximately 375 Staffing Employees and 18 additional administrative personnel during the second quarter of 2022. This reduction is directly attributable to the market headwinds that required HCS to reposition itself.

20. Beginning in early 2022, the Debtors experienced substantial changeover in their executive management. During the first quarter, Novation’s Chief Executive Officer resigned from that role as well as his position on Novation’s board of directors (the “**Board of Directors**”).

Later that quarter, HCS's Chief Executive Officer and Chief Financial Officer both resigned, which resulted in further deterioration of HCS's business performance.

21. Since those resignations, the Debtors have outsourced the operational management of HCS's business to third parties. In April 2022, HCS entered into an administrative services agreement with an administrative services provider to provide certain consulting and administrative services to HCS, including with respect to: (a) selecting vendors; (b) negotiating rates and terms regarding leases, insurance programs, information technology and support services; and (c) marketing, recruiting, employee relations, and general customer service. In February 2023, HCS terminated that agreement, and selected Michael Bach, a former Chief Executive Officer of a competitor staffing services company, as a replacement administrative services provider.

(iv) The Debtors' Financial Performance

22. Since acquiring HCS, the Debtors' only operating business, the Debtors have struggled financially. They have experienced lower than anticipated cash flows due to HCS's increased costs and the decrease in demand for HCS's services, as briefly discussed above. Beginning in March 2020, the Debtors experienced a reduction in customer demand related to the COVID-19 pandemic due to closures of CSBs and non-emergency healthcare centers, resulting in a steep reduction in revenue and necessitating a reduction in HCS's workforce. In June 2021 and March 2022, three of HCS's customers, which accounted for 25% of HCS's customer base, terminated their services contracts, resulting in further significant reductions in revenue. At the same time, HCS also incurred increased expenses, including increases in insurance coverage and rising personnel overhead, which in turn required HCS to increase services fees, thereby reducing its competitive advantage in the marketplace. In 2021, HCS incurred a net loss of \$0.4 million.

23. Eventually, during the second half of 2022, HCS lost nearly all of its remaining contracts with CSBs due to the lack of demand for such services when the state of Georgia, HCS's largest customer, transitioned away from an outsourcing staffing model. Monthly revenue declined from approximately \$2.7 million in January 2022 to \$0.1 million in December 2022. In 2022, HCS incurred a net loss of \$2.6 million. Year to date HCS has incurred a net loss of \$1.6 million.

C. The Debtors' Capital Structure

(i) Secured Notes

24. Pursuant to the Novation 2017 Chapter 11 Plan, all of the Debtors other than NovaStar entered into that certain *Senior Secured Note Purchase Agreement*, dated as of July 27, 2017 (as may have thereafter been amended, restated, supplemented or otherwise modified from time to time, the "**Note Purchase Agreement**," and the three secured promissory notes governed thereby, the "**2017 Notes**"), by and among Novation, as Issuer, Novation Holding and HCS, as Guarantors, Taberna Preferred Funding I, Ltd., Taberna Preferred Funding II, Ltd., and Kodiak CDO I, Ltd., as Noteholders (collectively, the "**Noteholders**"), and Wilmington Savings Fund Society, FSB, as Collateral Agent (collectively with the Noteholders, the "**Prepetition Secured Parties**"), whereby the Debtors refinanced their then-outstanding senior unsecured notes in the same aggregate principal amount. The 2017 Notes are secured by a first priority lien on substantially all of the Debtors' assets, *other than* accounts receivable (as of the Petition Date, the Debtors' accounts receivable totaled approximately \$100,000 and the Debtors had no inventory).

25. Thereafter, on August 9, 2019, certain of the Debtors and the Prepetition Secured Parties entered into that certain *First Amendment to Senior Secured Note Purchase Agreement* (the "**Amendment**"), to, among other things, retroactively reduce the interest rate due and owing under the 2017 Notes, and permit the Debtors to apply certain surplus payments (in the

aggregate amount of \$2.2 million) resulting from the interest rate reduction against future quarterly interest payments. Consequently, the Debtors did not make any additional quarterly interest payments from the period beginning on the effective date of the Amendment through April 1, 2022. Thereafter, the Debtors paid the interest payment due for the first quarter of 2022. However, as discussed in more detail below, since that time, the Debtors have been unable to make certain interest payments due under the Note Purchase Agreement, and the Noteholders informally agreed to waive any related events of default through the Petition Date.

26. Under the terms of the Amendment, the Debtors issued to the Noteholders (i) 9,000,000 shares of Novation's common stock (the "**Stock Issuance**"); and (ii) ten-year warrants (the "**Warrants**") allowing the Noteholders to purchase up to 22,250,000 shares of Novation's common stock at an exercise price of \$0.01 per share. In addition, the outstanding principal balance of the 2017 Notes was reduced by the fair market value of the Stock Issuance and Warrants, resulting in debt premium of \$0.9 million, offset by accrued interest of \$0.5 million.

27. As of the Petition Date, approximately \$97.8 million was outstanding under the 2017 Notes, inclusive of accrued and unpaid interest and fees due and owing under the Note Purchase Agreement. The unpaid principal amounts of the 2017 Notes bear interest at the following rates until they mature on March 30, 2033 (the "**Maturity Date**"): 1% annually from April 1, 2019 through December 31, 2023; 2% annually from January 1, 2024 through December 31, 2028; and 10% annually from January 1, 2029 through the Maturity Date. Such interest is payable quarterly, in arrears, until the Maturity Date.

(ii) Trade Payables and Other Unsecured Claims

28. The Debtors estimate that they have approximately \$1.3 million in trade payables and other unsecured claims outstanding as of the Petition Date. These amounts are primarily owed to (a) vendors that supply goods and services to HCS; (b) landlords for lease

payments; (c) governmental authorities on account of taxes and fees; (d) insurers on account of policy premiums; and (e) employees for services rendered to the Debtors.

29. Prior to the Petition Date, as discussed more fully below, the Plan Sponsors and Plan Sponsor Affiliates (each as defined below) provided the Debtors with the Pre-Bankruptcy Funding (as defined below) that was critical to afford the Debtors the liquidity runway to prepare for and commence the transactions contemplated under the terms of the Plan and RSA. In the aggregate, pursuant to the Pre-Bankruptcy Funding, the Plan Sponsors and Plan Sponsor Affiliates lent \$1,625,000 to the Debtors on a fully unsecured basis prior to the Petition Date.

(iii) Cash on Hand

30. As of the Petition Date, the Debtors had only a *de minimis* amount of cash on hand.

D. The Debtors' Net Operating Losses Assets

31. As of the Petition Date, the Debtors believe that they have net operating losses ("NOLs") of approximately \$731 million in the aggregate, including for losses on mortgage securities that have not been recognized for income tax purposes. The Debtors' federal NOLs may be carried forward to offset future taxable income, subject to applicable law. If not used, the Debtors' federal NOLs will expire in years 2025 through 2037. However, the Debtors' NOLs that accrued after 2017 may carry forward indefinitely. The Debtors also have certain state NOLs arising from combined and separate tax filings from as early as 2002. The Debtors' state NOLs may expire in years 2024 through 2037. As discussed below, concurrently herewith the Debtors filed the NOL Motion (as defined below) seeking to, among other things, impose certain procedural protections and restrictions on trading of the Debtors' equity interests for purposes of preserving the Debtors' tax attributes.

-Part II-

EVENTS LEADING TO CHAPTER 11

A. The Debtors' Businesses Have Suffered Ongoing Poor Financial Performance

32. Notwithstanding the Debtors' prior restructuring and other efforts to right-size their business and financial affairs, as discussed above, the Debtors have continued to experience financial distress due to a number of factors. Like so many other businesses, HCS suffered from the devastating effects of the COVID-19 pandemic. The pandemic forced many of HCS's customers to close or significantly scale back operations, reducing demand for healthcare staffing services. Also, the loss of all of HCS's customer contracts with CSBs not only forced HCS to reposition itself, but it more importantly drastically reduced revenue, and the Debtors have been unable to cover ongoing expenses. Currently, other than the Pre-Bankruptcy Funding received by the Debtors under the Term Sheet discussed more fully below, HCS's operations are their sole source of revenue.

33. As a result of these and other factors, the Debtors have sustained large operating losses over the last five years, including losses of approximately \$2.6 million in fiscal 2022 and \$4.0 million fiscal year to date. The Debtors have attempted to address liquidity concerns by, among other things, (i) working to expand HCS's customer base by targeting new customers; (ii) entering into the Amendment, discussed above, to provide an interest payment holiday; (iii) reducing overall operating costs; and (iv) transitioning administrative service providers. Notwithstanding these efforts, without restructuring and obtaining access to additional liquidity, the Debtors will run out of cash shortly after the Petition Date.

B. Prepetition Marketing and Restructuring Efforts

34. Taking into consideration, among other things, the Debtors' outstanding debt under the 2017 Notes, the loss of significant HCS customer contracts, and the Debtors' current and projected fiscal condition, in January 2022, the Debtors retained Wyse Advisors and appointed me as CRO to explore all reasonably available strategic alternatives (the "**Marketing and Sale Process**"), including a potential sale of HCS.

35. In January 2022, Wyse Advisors contacted approximately thirty-five potentially interested parties, all of which were strategic buyers, regarding HCS. Five interested parties executed non-disclosure agreements and were provided access to a diligence data room and background information to assist them in formulating bids.

36. After receiving proposals from four parties expressing interest in purchasing the HCS business, the Debtors selected Med Healthcare Partners LLC ("**Med Healthcare**") as the purchaser after determining that its proposal provided the best value for those assets. Med Healthcare's bid comprised \$1.5 million in cash at closing for the Debtors' assets associated with the HCS business, excluding all accounts receivable. However, before closing on the proposed sale, the Debtors determined that it was in their best interest to consummate the sale pursuant to an in-court proceeding under section 363 of the Bankruptcy Code. Accordingly, as discussed above, the Debtors entered into an administrative services agreement with an affiliate of Med Healthcare to operate the HCS business while the Debtors pursued a marketing process for the sale of their other assets, with the ultimate goal of executing on a comprehensive global restructuring for all of the Debtors and their assets in chapter 11.

37. Thereafter, at the direction of the Board of Directors, Wyse Advisors initiated additional outreach and broadened the Marketing and Sale Process to include potential

buyers for the remainder of the Debtors' assets. Wyse Advisors also re-engaged with potential buyers that Wyse Advisors had previously solicited in January 2022. Three parties submitted indications of interest for a transaction to acquire all or substantially all of the Debtors' assets. Wyse Advisors then worked closely with these interested bidders to explore and address, among other things, transaction structure, timing, and process considerations. After the Board of Directors and I determined that it was in the Debtors' best interests to seek potential higher indications of value, Wyse Advisors contacted approximately twenty additional potentially interested strategic buyers. One party expressed an interest in the Debtors' assets and performed some initial due diligence, but did not submit a formal bid.

38. Ultimately, certain affiliates of the Plan Sponsors (as defined below) (the "**Plan Sponsor Affiliates**") submitted a joint bid on September 16, 2022 for all of the Debtors' assets, including the HCS business. Based on their review of the proposals received to date, the Debtors, in consultation with the Debtors' professional advisors, focused their attention on the bid submitted by the Plan Sponsor Affiliates, which the Debtors concluded was the best and most actionable offer under the circumstances.

39. Thereafter, the Debtors commenced extensive arms'-length and good faith negotiations with the Plan Sponsor Affiliates to finalize the definitive terms of a proposed restructuring transaction, which culminated in the execution of an initial term sheet on January 23, 2023 and a revised term sheet on April 21, 2023 (together, the "**Term Sheet**"). Among other things, the Term Sheet summarized certain principal terms for a proposed restructuring of the Debtors sponsored by the Plan Sponsor Affiliates. Importantly, the Term Sheet provided the Debtors with prepetition funding, on a fully unsecured basis, which afforded the Debtors the

liquidity runway necessary to continue to fund operations and to negotiate and prepare the definitive documents related to the proposed transaction (the “**Pre-Bankruptcy Funding**”).

C. Entry into the Restructuring Support Agreement

40. On August 4, 2023, the Debtors executed that certain *Restructuring Support Agreement* (as amended, restated, supplemented or otherwise modified from time to time, the “**RSA**”) with Nighthawks Holdings I, LLC (together with any of its successors or assigns or any designees thereof, the “**Lead Plan Sponsor**”), as lead acquirer, and HOMF II Distressed Opportunities, Ltd. (together with any of its successors or assigns or any designees thereof, the “**Minority Participant**,” and together with the Lead Plan Sponsor, the “**Plan Sponsors**”), as minority participant, and certain of the Noteholders.⁵ The RSA contemplates a restructuring of the Debtors in an in-court transaction on the terms set forth in the RSA, including consummation of a prepackaged chapter 11 plan of reorganization (as amended, restated, supplemented or otherwise modified from time to time, the “**Plan**”).⁶ The transactions contemplated under the RSA (the “**Restructuring**”) are intended, among other things, to restructure the 2017 Notes, unimpair Holders of Allowed General Unsecured Claims, preserve the value of the Debtors’ significant tax attributes, and jump-start the HCS business.

41. Under the RSA, among other things, the Noteholders will exchange their existing debt under the 2017 Notes for (a) certain preferred stock in Reorganized Novation; (b) 52.5% of the total issued and outstanding common stock in Reorganized Novation; and (c) certain potential cash consideration under the terms of the RSA and the Plan.

⁵ The Minority Participant is an affiliate of the investment manager for the 2017 Notes held by Taberna Preferred Funding I, Ltd. and Taberna Preferred Funding II, Ltd.

⁶ Unless otherwise indicated, capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Plan.

42. Among other things, the Plan Sponsors will fund a debtor in possession term loan facility (the “**DIP Facility**”), which shall be used to satisfy operational costs, other costs associated with administering the Chapter 11 Cases, Allowed Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims and Other Secured Claims (collectively, “**Allowed SAP Claims**”). The DIP Facility will be refinanced (rather than satisfied in cash) on the Plan effective date through an exit term loan. Further, the Plan Sponsors will (a) assume all Allowed General Unsecured Claims and satisfy such claims in the ordinary course of business as provided for in the RSA and the Plan; (b) pay the reorganized Debtors \$350,000 upon emergence, which amount will first be available to satisfy Allowed SAP Claims under the Plan and other costs associated with exiting chapter 11, and to the extent any amounts remain available after doing so, shall be distributed to the Noteholders; and (c) subject to reduction on account of any Excess Claim Amounts paid by the Plan Sponsor, fund an additional \$625,000 in annual payments of \$125,000, commencing on the first business day of the 40th month following the effective date of the Plan.

43. In exchange, the Plan Sponsors will receive, among other things, (a) certain preferred stock in Reorganized Novation; and (b) 47.5% of the total issued and outstanding common stock in Reorganized Novation. In addition, Reorganized Novation and the Plan Sponsors will enter into a management services contract and an administration services agreement following the effective date of the Plan. In exchange for the Plan Sponsors’ business management and consulting services, the Plan Sponsors will receive an annual administration and management fee in the amount of \$565,000, and certain warrants, options, or an alternative economically equivalent arrangement on the terms set forth in the RSA and the Plan.

44. In an effort to avert continued losses and avoid further deterioration of the businesses, the Debtors have filed the Chapter 11 Cases to (i) implement the terms of the RSA and

the Plan; and (ii) obtain postpetition financing, through the DIP Facility, that will provide sufficient liquidity for the Debtors to fund, among other things, their operations during the Chapter 11 Cases. I believe that these efforts will allow the Debtors to maximize their value for the benefit of the Debtors' stakeholders, including customers, employees, and creditors, and to emerge from chapter 11 with a significantly deleveraged capital structure, in a timely and efficient manner.

D. Debtors' Pre-Packaged Plan and Case Timeline

45. As set forth above, the Debtors intend to implement the RSA through the confirmation and consummation of the Plan. The Plan provides that Allowed General Unsecured Claims will be unimpaired and satisfied in full.

46. Each Allowed Noteholder Claim will receive: (i) its pro rata interest in the Class 3 Equity Pool, provided the Holder is described in section 382(l)(5)(E) of the Code and provides representations to that effect to the Debtors in a form satisfactory to the Debtors and the Plan Sponsor at least twenty (20) business days prior to the Effective Date, and provided further that any Holder that is not described in section 382(l)(5) of the Code or fails to provide the required representations to that effect shall forfeit the right to receive its pro rata interest in the Class 3 Equity Pool and the interests shall instead be distributed to eligible Holders of Class 3 Noteholder Claims; (ii) its pro rata interest in the Class 3 Preferred Stock; (iii) its pro rata share of any proceeds of the Initial Preferred Stock Consideration that remain after the funding of the Exit Funding and less amounts offset against the Plan Sponsor Expenses Amount; and (iv) the right to receive its pro rata share of the proceeds of the Subsequent Preferred Stock Consideration that remain after any reduction for the Plan Sponsor's payment of any Excess Claim Amounts.

47. The DIP Obligations will be refinanced by an exit facility, as discussed in further detail in the First Day Declaration. Allowed (a) Administrative Claims (including Fee

Claims); (b) United States Trustee Fee Claims; (c) Priority Tax Claims; (d) Priority Non-Tax Claims; and (e) Other Secured Claims will be paid in full in cash.

48. All other Holders of Claims and Interests will not receive or retain any distribution under the Plan on account of their Claims or Interests.

E. Prepetition Solicitation

49. In connection with the Plan, the Debtors prepared the *Debtors' Disclosure Statement Relating to the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (as may be amended, modified or supplemented from time to time the “**Disclosure Statement**”),⁷ describing, among other things, the Debtors' proposed Restructuring and its effect on Holders of Claims and Interests. To effectuate the terms of the Restructuring, shortly before the Petition Date, the Debtors, through their claims, noticing, and voting agent, Stretto, Inc. (the “**Voting Agent**”), caused electronic copies of the Plan, the Disclosure Statement, and the ballot (the “**Ballot**,”) to be transmitted to the Holders of Class 3 (Noteholder Claims), which is the only impaired class with a right to vote on the Plan. The instructions on the Ballot advised parties that, for a vote to be counted, the Ballot must be properly executed and completed in accordance with the instructions included therein and delivered to the Voting Agent so that it is received by the Voting Agent not later than 4:00 p.m. (prevailing Eastern Time) on August 11, 2023, unless such deadline was extended by the Debtors. The Voting Agent has informed me that Class 3 voted to accept the Plan.

50. Under the Plan, five Classes of Claims and Interests are unimpaired and are conclusively presumed to have accepted the Plan. *See* 11 U.S.C. § 1126(f). Specifically, Holders

⁷ The Disclosure Statement (with the Plan attached as an exhibit thereto) has been filed contemporaneously with this Motion.

of Claims or Interests in the following Classes are deemed to accept the Plan: Class 1 (Priority Non-Tax Claims), Class 2 (Other Secured Claims), Class 4 (General Unsecured Claims), Class 5 (Intercompany Claims) (to the extent that such Intercompany Claims are unimpaired at the option of the applicable Debtor or Reorganized Debtor) and Class 7b (Interests in Debtor Subsidiaries). Because the Holders of Claims or Interests in these Classes are presumed to accept the Plan, and therefore not entitled to vote to accept or reject the Plan, the Debtors have not solicited votes from such Holders.

51. The Holders of Class 5 (Intercompany Claims) (to the extent that such Intercompany Claims are impaired at the option of the applicable Debtor or Reorganized Debtor), Holders of Class 6 (510(b) Claims), and Holders of Class 7a (Interests in Novation) are not entitled to receive any distributions under the Plan, and are deemed to reject the Plan.

52. Contemporaneously with the filing of this Declaration, the Debtors filed a motion (the “**Scheduling Motion**”) requesting the Court to, among other things, (i) schedule a combined hearing (the “**Combined Hearing**”) to consider approval of the adequacy of the Disclosure Statement and confirmation of the Plan; and (ii) approve the form and manner of notice the Combined Hearing. The Scheduling Motion contemplates a Combined Hearing on October 6, 2023 and a deadline of 4:00 p.m. (prevailing Eastern Time) on September 15, 2023 to object to the adequacy of the Disclosure Statement and confirmation of the Plan. The Debtors seek to have the Scheduling Motion heard at the “first day hearing” to ensure that the Chapter 11 Cases can proceed in a timely and efficient manner and in accordance with the RSA.

53. Concurrently herewith, the Debtors have also filed and served a bar date motion (the “**Bar Date Motion**”), seeking, among other things, to establish a general bar date in the Chapter 11 Cases of the date that is thirty (30) days following the anticipated service of the

Bar Date Package (as defined in the Bar Date Motion). As an integral part of the chapter 11 restructuring process contemplated by the RSA, the Plan Sponsors required the establishment of customary bar dates in the Chapter 11 Cases so that, prior to the Combined Hearing and proceeding to confirmation of the Plan, the Plan Sponsors would have complete visibility into the non-governmental unit prepetition claims against the Debtors' estates. In light of the various forms of funding that the Plan Sponsors have provided and continue to provide to the Debtors in connection with the Debtors' proposed restructuring, including funding the administration of the Chapter 11 Cases and distributions under the Plan, the Debtors agreed to this condition. The timeline for the Chapter 11 Cases, including confirmation of the Plan and approval of the Disclosure Statement, contemplated by the RSA and provided for in the Scheduling Motion is predicated on the Court approving the relief requested in the Bar Date Motion. To facilitate this, the Debtors filed their schedules and statements on the Petition Date, and seek to have the Bar Date Motion heard on the fourteenth day after the Petition Date.

F. Debtors' DIP Financing⁸

54. As noted above, the Debtors require additional liquidity to fund operations and the Chapter 11 Cases. Absent obtaining pre- and postpetition funding pursuant to a proposed restructuring transaction, the Debtors would have been simply unable to pursue, let alone consummate, such a transaction. As a result, pursuant to the RSA, the Debtors required, and the Plan Sponsors agreed to provide, prepetition financing (i.e., the Pre-Bankruptcy Funding) and the DIP Facility on the terms set forth in the Term Sheet, the RSA and the DIP Motion, as applicable. Accordingly, the Board and I, with the assistance of the Debtors' professional advisors, focused

⁸ Capitalized terms used in this subsection but not otherwise defined have the meanings set forth in the DIP Motion (as defined below).

on negotiating the best possible financing terms under the circumstances with the Plan Sponsors in conjunction with negotiating the terms of the Term Sheet and the RSA.

55. The DIP Facility consists of a new money multiple draw term loan of up to \$1.77 million provided by the Plan Sponsors, of which \$0.9 million (less applicable fees, as detailed below) will be available upon entry of the Interim Order and the closing of the DIP Facility, and the remainder will be funded in accordance with an agreed upon budget, subject to various terms and conditions. The DIP Facility will accrue interest at a rate of 13% per annum, be secured by first priority priming liens (subject to certain prior permitted liens as set forth in the Interim Order), have a facility fee of 6% of the principal amount (which fee will be deducted from the proceeds of the facility), and allow the Debtors to utilize cash collateral (as noted above, the Debtors had a de minimis amount of cash on hand as of the Petition Date) on a fully-consensual basis (subject to the limitations in the Interim Order). The DIP Facility will have a maturity date of the earlier of (a) 90 days from the Petition Date or (b) the Plan effective date, on which date it shall be assumed and refinanced by the exit term loan (the Pre-Bankruptcy Funding will also be satisfied by such exit loan) contemplated by the RSA and the Plan.

56. I believe that the commercial terms of the DIP Facility are fair and reasonable, and that they provide sufficient liquidity to fund the Chapter 11 Cases and implement the proposed restructuring transactions contemplated under the RSA. I also believe that approval of the DIP Facility will instill confidence in parties that are critical to the success of the Chapter 11 Cases, including the Debtors' employees, vendors, and customers. Absent the DIP Facility, the Debtors would be unable to pay the costs of the chapter 11 process or avoid a value-destructive chapter 7 liquidation—all of which would result in irreparable harm to the Debtors and their stakeholders. Finally, the DIP Facility was a critical component of the Term Sheet and the RSA;

without it, neither the Debtors nor the Plan Sponsors would have agreed to the proposed restructuring transactions contemplated by those documents.

57. For all these reasons, I believe that the DIP Facility is essential to the Debtors' ability to conduct the Chapter 11 Cases for the benefit of their stakeholders.

-Part III-

SUPPORT FOR RELIEF REQUESTED IN FIRST DAY MOTIONS

58. The Debtors filed the following First Day Motions concurrently with the commencement of the Chapter 11 Cases:

Administrative and Procedural Pleadings

- *Debtors' Motion for Entry of an Order Authorizing the Joint Administration of the Debtors' Chapter 11 Cases;*
- *Debtors' Motion for Entry of Interim and Final Orders (I) Modifying Requirements to File a List of, and Provide Notice to, All Equity Holders, (II) Authorizing Redaction of Certain Personal Identification Information from the Creditor Matrix and Other Documents, and (III) Granting Related Relief;*
- *Debtors' Application for Appointment of Stretto, Inc. as Claims and Noticing Agent Effective as of the Petition Date;*
- *Debtors' Motion for Interim and Final Orders (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services; (II) Deeming Utility Companies Adequately Assured of Future Payment; (III) Establishing Procedures for Determining Additional Adequate Assurance of Payment and (IV) Setting a Final Hearing Related Thereto;*
- *Motion of the Debtors for Interim and Final Orders Establishing Notice and Hearing Procedures for Trading in, or Certain Claims of Worthlessness with Respect to, Equity in Novation Companies, Inc. or Claims Against the Debtors (the "NOL Motion");*

Operational Motions

- *Debtors' Motion for Entry of Interim and Final Orders, (I) Authorizing (A) Payment of Prepetition Employee Wages, Salaries and Other Compensation; (B) Payment of Prepetition Employee Business Expenses; (C) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (D) Payment of Workers' Compensation Obligations; and (E) Payment and Remittance of Funds on Account of*

Withholding and Payroll-Related Taxes and Deductions; and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto;

- *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing and Approving Continued Use of Cash Management System, (II) Authorizing Use of Prepetition Bank Accounts and Business Forms, (III) Waiving the Requirements of Section 345(b) on an Interim Basis, (IV) Granting Administrative Expense Status to Postpetition Intercompany Claims, and (V) Granting Certain Related Relief;*
- *Debtors' Motion for Interim and Final Orders (I) Authorizing (A) Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection with Insurance Programs, Including Payment of Policy Premiums and Broker Fees; and (B) Continuation of Insurance Premium Financing Programs; and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto;*
- *Motion of Debtors Pursuant to Sections 105, 361, 362, 363, 364, and 507 of the Bankruptcy Code, Bankruptcy Rule 4001, and Local Rule 4001-2, for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing and Use Cash Collateral; (II) Granting Liens, Super-Priority Claims and Adequate Protection; (III) Scheduling a Final Hearing; (IV) Modifying the Automatic Stay; and (V) Granting Related Relief (the "**DIP Motion**").*

59. As a result of my first-hand experience, and through my review of various materials and information, and discussions with employees and other representatives of the Debtors and the Debtors' outside professional advisors, I have formed opinions as to (a) the necessity of obtaining the relief sought in the First Day Motions; and (b) the immediate and irreparable harm to which the Debtors and their businesses would be exposed unless the relief requested in the First Day Motions is granted without delay.

60. I have reviewed each of the First Day Motions (including the exhibits and schedules attached thereto) and, to the best of my knowledge, believe the facts set forth therein to be true and correct and incorporate herein by reference such facts. If I were called upon to testify, I could and would, based on the foregoing, testify competently to the facts set forth in each of the First Day Motions.

61. The relief sought in the First Day Motions is critical to the implementation of the RSA and the Plan and the success of the Chapter 11 Cases. The First Day Motions will

maximize value for the Debtors' estates and stakeholders by reducing unnecessary disruption and minimizing any adverse effects caused by the Chapter 11 Cases to the Debtors' businesses and operations, while the Debtors seek to execute on the value maximizing restructuring transactions contemplated under the RSA and the Plan.

I, the undersigned, declare under penalty of perjury that the foregoing is true and correct.

Dated: August 13, 2023

/s/ Michael Wyse

Michael Wyse
Chief Restructuring Officer