



beneficiary, where known, or payable to the heirs of the deceased beneficiary pursuant to an available final probate order of a state or tribal court. Where there is no known personal representative, administrator or executor of the estate of a deceased beneficiary and no available final probate order of a state or tribal court, the deceased beneficiary's payment shall remain in the Settlement Account at the Qualified Bank until further order of the Court or Special Master.

(See Order [Dkt. No. 3923] ¶ 2.)

2. To date, there have been approximately 1,205 payments to the estates of deceased Historical Accounting Class Members (or to the heirs of those Class Members) pursuant to the district court's orders. There remain approximately 38,220 deceased Historical Accounting Class Members for whom no distribution has been made. This is due principally to the absence of state or tribal probates for many deceased Class Members, as non-trust assets for these Class Members may be minimal and the only probate is the federal probate for distribution of trust assets. The cost and procedural requirements for opening a state or tribal probate in order to receive the settlement payment is a deterrent for many heirs of Class Members.

3. The district court, in its *Estate Distribution Order*, determined that with respect to the estates of those deceased members of the Historical Accounting and Trust Administration Classes for which there was no personal representative, executor or administrator, and where there existed no state or tribal probate order, "payments shall be made by [The Garden City Group, Inc. ("GCG"), the Claims Administrator] in accordance with orders of the Special Master as he may determine in his discretion, including using procedures under applicable state or tribal law for small estates and federal probate orders for the disposition of trust property." (See *Estate Distribution Order* [Dkt. No. 3958] ¶ 2.)

4. On July 2, 2013, the Plaintiffs submitted to the Special Master a motion requesting that GCG be allowed to distribute settlement payments owed to deceased members of the Historical Accounting and Trust Administration Classes, or to their heirs, in accordance with applicable state procedures for small estates in Arizona, Arkansas, California, Colorado, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wisconsin.

5. In accordance with the *Estate Distribution Order*, the Plaintiffs respectfully request that, where GCG has not been notified by the heir or heirs of a deceased Class Member of the identity of a personal representative, executor or administrator of the Class Member's estate, and has not been provided either a copy of the Class Member's will which has been accepted for probate or a state or tribal probate order disposing of the assets of the Class Member, GCG be allowed to distribute settlement payments owed to deceased members of the Historical Accounting and Trust Administration Classes, or to their heirs, in accordance with applicable state procedures for small estates in the following additional states: Alaska, Idaho, Indiana, Kansas, Louisiana, Michigan, New Mexico, and Virginia. The cost of using these procedures is substantially less than formal state probate proceedings. The following is a summary of these procedures by state:

#### **ALASKA**

Alaska allows collection of personal property by successors to a small estate by affidavit. Alaska Stat. §§ 13.16.680, 13.16.685. *See* Exhibit 1 for the relevant Alaska statutes. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property belonging to the decedent shall make payment of the indebtedness or deliver the property to a person claiming to be the successor

of the decedent upon presentation of an affidavit, made by or on behalf of the successor, stating that:

1. The entire estate, wherever located, less liens and encumbrances, consists only of not more than:
  - a. vehicles with a total value of \$100,000 or less; and
  - b. other personal property that does not exceed \$50,000;
2. 30 days have elapsed since the death of the decedent;
3. No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and
4. The claiming successor is entitled to payment or delivery of the property.

Alaska Stat. § 13.16.680(a).

The payor is discharged and released to the same extent as if the payor dealt with a personal representative of the decedent. The payor is not required to see to the application of the personal property or evidence of it or to inquire into the truth of any statement in the affidavit. *Id.* § 13.16.685. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence of it, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for that purpose by or on behalf of the persons entitled to it. *Id.* Any person to whom payment is made is answerable and accountable for it to any personal representative of the estate or to any other person having a superior right. *Id.*

### **IDAHO**

Idaho allows collection of personal property by affidavit. Idaho Code §§ 15-3-1201, 15-3-1202 (2013). *See* Exhibit 2 for the relevant Idaho statutes. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal

property belonging to the decedent shall make payment of the indebtedness or deliver the property to a person or entity claiming to be the successor of the decedent upon being presented an affidavit, made by or on behalf of the successor, stating that:

1. The fair market value of the entire probate estate of the decedent, less liens and encumbrances, does not exceed one hundred thousand dollars (\$100,000);
2. Thirty (30) days have elapsed since the death of the decedent;
3. No application or petition for the appointment of a personal representative or for summary administration is pending or has been granted in any jurisdiction; and
4. The claiming successor is entitled to payment or delivery of the property, including entitlement as a trust pursuant to a will of the decedent.

Idaho Code § 15-3-1201(a).

The payor is discharged and released to the same extent as if he or she dealt with a personal representative of the decedent, and is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. *Id.* § 15-3-1202. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment compelled upon proof of their right in a proceeding brought for that purpose by or on behalf of the persons entitled thereto. *Id.* Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right. *Id.*

## INDIANA

Indiana allows collection of personal property by affidavit. Indiana Code §§ 29-1-8, *et seq.* (2013). *See* Exhibit 3 for the relevant Indiana statutes. Forty-five days after the death of a decedent and upon being presented with an appropriate affidavit, a person indebted to

the decedent or having possession of personal property belonging to the decedent shall make payment of the indebtedness or deliver the property to a person claiming to be entitled to payment or delivery of property of the decedent. *Id.* § 29-1-8-1(a). The affidavit must be made by or on behalf of the claimant and must state the following:

1. That the value of the gross probate estate, wherever located (less liens and encumbrances), does not exceed fifty thousand dollars (\$50,000);
2. That forty-five (45) days have elapsed since the death of the decedent;
3. That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;
4. The name and address of each other person that is entitled to a share of the property and the part of the property to which each person is entitled;
5. That the claimant has notified each person identified in the affidavit of the claimant's intention to present an affidavit under this section; and
6. That the claimant is entitled to payment or delivery of the property on behalf of each person identified in the affidavit.

*Id.* § 29-1-8-1(b).

The person paying pursuant to an affidavit is discharged and released to the same extent as if he or she dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right. *Id.* § 29-8-1-2.

## KANSAS

Kansas allows for the transfer of personal property on affidavit. Kan. Stat. Ann. § 59-1507b (2012). *See* Exhibit 4 for the relevant Kansas statutes. If the total assets of the estate of the resident decedent subject to probate do not exceed \$40,000 in value, any personal property transferable to the decedent's estate by any entity or person shall be transferred to the successor(s) of the decedent upon the successor's furnishing the entity or person with an affidavit showing entitlement thereto. Kan. Stat. Ann. § 59-1507b.

An affidavit shall be deemed sufficient if it is in substantial compliance with the form set forth by the Kansas judicial council. *Id.* The affidavit must state the following:

1. The decedent's name and date of death;
2. That the value of the decedent's estate does not exceed \$40,000;
3. That no petition for the appointment of an executor or administrator of the decedent's estate is pending or has been granted;
4. That all unpaid debts, claims or demands against the decedent or the decedent's estate and all estate, and inheritance taxes due, if any, on the property transfers involved, have been or will be paid;
5. The names, ages, relationships and addresses of the beneficiaries under the decedent's will or heirs of the decedent;
6. The property constituting the estate and its value; and
7. That the affiant has the sole and exclusive right to succeed to the personal property of the decedent, and that the affiant is over 18 years of age and is legally competent in all respects to make the affidavit and to receive the referenced personal property.

*Id.* Transfer of personal property by affidavit to the successor(s) shall be deemed to be a transfer to the personal representative of the decedent, and the receipt of the successor(s) shall constitute a full discharge and release from any further claim for such transfer to the

same extent as if the transfer had been made to an executor or administrator of the decedent's estate. *Id.*

## LOUISIANA

Louisiana provides for the collection of property by affidavit where certain conditions are met. La. Code Civ. Proc., art 3421, *et seq.* (2012). *See* Exhibit 5 for the relevant Louisiana statutes. First, the deceased must have been domiciled in Louisiana and died intestate. *Id.*, art. 3431(A). Second, the deceased's sole heirs must be limited to the deceased's:

1. Descendants;
2. Ascendants;
3. Brothers or sisters, or descendants thereof;
4. Surviving spouse; and
5. Legatees under a testament probated by court order of another state.

*Id.* Third, the gross value of the deceased's property in Louisiana must be less than \$75,000 at the date of death, or the date of death must have occurred at least twenty-five years prior to the filing of the affidavit. *Id.*, art. 3421.

Where these conditions are met, the deceased's spouse and/or heirs (as detailed below) may obtain payment or delivery of any money or property of the deceased by presentation of a sworn affidavit setting forth the following:

1. The date of death of the deceased, and his domicile at the time thereof;
2. The fact that the deceased died intestate;
3. The marital status of the deceased, the location of the last residence of the deceased, and the name of the surviving spouse, if any, and the surviving spouse's address, domicile, and location of last residence;



4. The names and last known addresses of the heirs of the deceased, their relationship to the deceased, and the statement that an heir not signing the affidavit: (a) cannot be located after the exercise of reasonable diligence, or (b) was given ten days' notice by U.S. mail of the affiants' intent to execute the affidavit and did not object;
5. A description of the property left by the deceased;
6. A showing of the value of each item of property, and the aggregate value of all such property, at the time of the death of the deceased;
7. A statement describing the respective interests in the property which each heir has inherited and whether a legal usufruct of the surviving spouse attaches to the property; and
8. An affirmation that, by signing the affidavit, the affiant, if an heir, has accepted the succession of the deceased.

*Id.*, art. 3434(A), 3432(A).

The affidavit must be executed by at least two persons, including the surviving spouse, if any, and one or more competent major heirs of the deceased. *Id.*, art. 3432(A). If the deceased had no surviving spouse, the affidavit must be signed by at least two heirs. If the deceased had no surviving spouse and only one heir, the affidavit must also be signed by a second person who has actual knowledge of the matters stated therein. *Id.*, art. 3432(B).

Presentation of such an affidavit shall be full and sufficient authority for the payment or delivery of any money or property of the deceased described in the affidavit to the heirs of the deceased and the surviving spouse by any bank, financial institution, trust company, warehouseman, or other depository, or by any person having such property in his or her possession or under his or her control. *Id.*, art. 3434(A). Such payment or transfer constitutes a full release and discharge for the payment of money or delivery of property made under these provisions of Louisiana law. Any creditor, heir, succession representative, or other person whatsoever shall have no right or cause of action against the person paying the

money, or delivering the property on account of such payment, delivery, or transfer. *Id.*, art. 3434(B).

### MICHIGAN

Michigan authorizes the collection of personal property by sworn statement. Mich. Comp. Laws §§ 700.3983-84, 1210 (2013). *See* Exhibit 6 for the relevant Michigan statutes. Twenty-eight days after a decedent's death, a person indebted to the decedent or having possession of tangible personal property belonging to the decedent shall pay the indebtedness or deliver the property to a person claiming to be the decedent's successor upon being presented with the decedent's death certificate and a sworn statement, made by or on behalf of the successor, stating the following:

- a. The estate does not include real property and the value of the entire estate net of liens and encumbrances, does not exceed \$15,000.00 (adjusted annually according to a cost-of-living adjustment factor published by the Michigan Department of Treasury);
- b. Twenty-eight days have elapsed since the decedent's death;
- c. An application or petition for the appointment of a personal representative is not pending or has not been granted in any jurisdiction;
- d. The claiming successor is entitled to payment or delivery of the property; and
- e. The name and address of each other person that is entitled to a share of the property and the portion to which each is entitled.

Mich. Comp. Laws §§ 700.3983, 700.1210. Pursuant to the cost-of-living adjustment factor published annually by the Michigan Department of Treasury, the maximum value of an estate for which collection of personal property by affidavit is authorized is as follows:

- \$18,000 for decedents who died in 2005-2006;
- \$19,000 for decedents who died in 2007-2008;

- \$20,000 for decedents who died in 2009-2011; and
- \$21,000 for decedents who died in 2012-2013.

Michigan Department of Treasury, *Estates and Protected Individuals Code Cost-of-Living Adjustments to Specific Dollar Amounts* (Jan. 24, 2013).

A person paying, delivering, transferring, or issuing personal property or the evidence of personal property under a sworn statement is discharged and released to the same extent as if the person dealt with the decedent's personal representative. The person is not required to see to the application of the personal property or evidence of the application, or to inquire into the truth of a statement in the sworn statement. Mich. Comp. Laws § 700.3984(1).

If a person to whom a sworn statement is delivered under these provisions refuses to pay, deliver, transfer, or issue personal property or evidence of personal property, the property may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of a person's right to the property in a proceeding brought for that purpose by or on behalf of the persons entitled to the property. A person to whom payment, delivery, transfer, or issuance is made is answerable and accountable for the property to a personal representative of the estate or to another person having a superior right. *Id.* § 700.3984(2).

### **NEW MEXICO**

New Mexico allows for the collection of personal property by affidavit. N.M. Stat. Ann. §§ 45-3-1201, 45-3-1202 (2012). *See* Exhibit 7 for the relevant New Mexico statutes. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property belonging to the decedent shall make payment of the indebtedness or deliver the property to a person claiming to be the successor of the

decedent upon being presented an affidavit, made by or on behalf of the successor, stating that:

1. The value of the entire estate, less liens and encumbrances, does not exceed fifty thousand dollars (\$50,000);
2. Thirty days have elapsed since the death of the decedent;
3. No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and
4. The claiming successor is entitled to payment or delivery of the property.

N.M. Stat. Ann. § 45-3-1201(A).

The person paying, delivering, transferring or issuing property pursuant to such an affidavit is discharged and released to the same extent as if he or she dealt with a personal representative of the decedent. The payor is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer or issuance compelled upon proof of their right in a proceeding brought for that purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right. *Id.* § 45-3-1202.

## **VIRGINIA**

Virginia law authorizes payment or delivery of small assets by affidavit. Va. Code §§ 64.2-600, *et seq.* (2013). *See* Exhibit 8 for the relevant Virginia statutes. Virginia law defines a “small asset” as any indebtedness owed to or any asset belonging or presently distributable to the decedent, other than real property, having a value, on the date of the

decedent's death, of no more than \$50,000. A small asset includes any bank account, savings institution account, credit union account, brokerage account, security, deposit, tax refund, overpayment, item of tangible personal property, or an instrument evidencing a debt, obligation, stock, or chose in action. *Id.* § 64.2-600.

Any person having possession of a small asset shall pay or deliver the small asset to a designated successor of the decedent upon being presented an affidavit made by all of the known successors stating:

1. That the value of the decedent's entire personal probate estate as of the date of the decedent's death does not exceed \$50,000;
2. That at least 60 days have elapsed since the decedent's death;
3. That no application for the appointment of a personal representative is pending or has been granted in any jurisdiction;
4. That the decedent's will, if any, was duly probated;
5. That the claiming successor is entitled to payment or delivery of the small asset, and the basis upon which such entitlement is claimed;
6. The names and addresses of all successors, to the extent known;
7. The name of each successor designated to receive payment or delivery of the small asset on behalf of all successors; and
8. That the designated successor shall have a fiduciary duty to safeguard and promptly pay or deliver the small asset as required by the laws of the Commonwealth.

*Id.* § 64.2-601(A).

In addition, any person having possession of a small asset of a decedent valued at \$15,000 or less *may* pay or deliver the small asset to any successor, regardless of the size of the estate, provided that at least 60 days have elapsed since the decedent's death, and that no application for the appointment of a personal representative is pending or has been granted in

any jurisdiction. *Id.* § 64.2-602(A). The designated successor shall have a fiduciary duty to safeguard and promptly pay or deliver the small asset as required by the laws of the Commonwealth to the other successors, if any. *Id.* § 64.2-602(B).

Any person paying or delivering a small asset pursuant to these provisions is discharged and released to the same extent as if that person dealt with the personal representative of the decedent. *Id.* § 64.2-603. Such person is not required to see to the application of the small asset or to inquire into the truth of any statement in any affidavit presented. *Id.* If any person to whom such an affidavit is presented refuses to pay or deliver any small asset, it may be recovered, or its payment or delivery compelled, and damages may be recovered, on proof of a rightful claim in a proceeding brought for that purpose by or on behalf of the person entitled thereto. *Id.* Any person to whom payment or delivery of a small asset has been made is answerable and accountable therefor to any personal representative of the decedent's estate or to any other successor having an equal or superior right. *Id.*

11. Plaintiffs respectfully request that GCG be permitted to use these procedures to facilitate distribution of settlement funds to the estates of deceased Class Members and their heirs. Additionally, as GCG receives similar documentation for states not detailed above, the additional states will be presented for review and approval by the Special Master.

Respectfully submitted this 12<sup>th</sup> day of July, 2013.

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