

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re:	)	
	)	
DIRECTORY DISTRIBUTING	)	Chapter 11
ASSOCIATES, INC.,	)	
	)	Case No. 16-47428-659
	)	
Debtor.	)	
	)	

**FIRST AMENDED PLAN OF LIQUIDATION PROPOSED BY JOHN P. VACLAVEK,  
CHAPTER 11 TRUSTEE  
(Dated as of April 1, 2020)**

Nothing contained herein shall constitute an offer, an acceptance, or a legally binding obligation of John P. Vaclavek, in his capacity as Chapter 11 Trustee of Directory Distributing Associates, Inc. or any other party in interest. The Plan is subject to approval of the Bankruptcy Court and other customary conditions. The Plan is not an offer with respect to any securities. This is not a solicitation of acceptances or rejections of the Plan. Acceptances or rejections with respect to the Plan may not be solicited until a disclosure statement has been approved by the United States Bankruptcy Court for the Eastern District of Missouri in accordance with § 1125 of the Bankruptcy Code. Such a solicitation will only be made in compliance with applicable provisions of securities and bankruptcy laws. YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED IN, OR THE TERMS OF, THE PLAN FOR ANY PURPOSE (INCLUDING IN CONNECTION WITH THE PURCHASE OR SALE OF THE DEBTOR'S SECURITIES) PRIOR TO THE CONFIRMATION OF THE PLAN BY THE BANKRUPTCY COURT.

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## INTRODUCTION

John P. Vaclavek (the “Trustee”), the court-appointed Chapter 11 Trustee of Directory Distributing Associates, Inc. (“DDA” or the “Debtor”) hereby proposes, pursuant to § 1121 of the Bankruptcy Code, this first amended plan of liquidation for DDA (the “Plan”).

Reference is made to the Disclosure Statement filed in connection herewith for a discussion of the Debtor’s history, businesses, properties, certain postpetition events, issues which may affect estimated distributions, and for a summary and analysis of the Plan and certain related matters, as well as to the FLSA Claimants’ Summary filed in connection herewith for a concise explanation of the provisions of this Plan affecting the FLSA Claimants. All Holders of Claims against the Debtor entitled to vote on the Plan are advised to read the Plan, the Disclosure Statement and, as applicable, the FLSA Claimants Summary in their entirety before voting to accept or reject the Plan.

## ARTICLE I

### DEFINED TERMS

As used in the Plan, capitalized terms have the meanings set forth below. Any term that is not otherwise defined in the Plan, but that is used in the Bankruptcy Code or the Bankruptcy Rules, will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

**1.01 Administrative Claim** means any right to payment allowed under §§ 503(b) and 507(a)(2) of the Bankruptcy Code, including, without limitation, (a) any actual and necessary costs and expenses of preserving the Estate, (b) any actual and necessary costs and expenses of operating the Debtor’s business, (c) any indebtedness or obligations incurred or assumed by the Debtor or the Trustee during the Chapter 11 Case, (d) any substantial contribution requests under § 503(b)(3)(D) and (e) any allowances of compensation and reimbursement of expenses to the extent allowed by Final Order under §§ 330 or 503 of the Bankruptcy Code. For the avoidance of any doubt, Non-DDA Reserve Administrative Expenses are not included in the definition of “Administrative Claim” herein.

**1.02 Administrative Claim Request** means a request filed by a Person asserting a Claim against the Estate that is entitled to priority under § 503(b)(1) of the Bankruptcy Code, but shall not include a request for payment of a Pre-Effective Date Professional Fee Claim.

**1.03 Administrative Claims Bar Date** means the next Business Day following twenty-eight (28) days after the Effective Date.

**1.04 Aggregate Minimum DDA Distributions** means an amount calculated by taking the number of DDA FLSA Claimants believed to have no DDA FLSA Compensable Workweeks multiplied by \$40, which amount the Trustee currently estimates to be \$424,040.

**1.05 Allowed Administrative Claims** means all Administrative Claims that are allowed by a Final Order or pursuant to the terms of the Plan.

**1.06 Allowed Claims** means collectively (a) the Allowed Administrative Claims, (b) the Allowed Priority Tax Claims, (c) the Allowed General Unsecured Claims, (d) the Allowed

Publishers' Claims, (e) the Allowed FLSA Counsel Claims, (f) the Allowed FLSA Claims, and (g) any other Claims allowed by a Final Order.

**1.07 Allowed DDA FLSA Claims** means all FLSA Claims for which an FLSA Proof of Claim is submitted on or before the FLSA Claims Bar Date that (a) seeks payment for DDA FLSA Compensable Workweeks equal to or less than the DDA FLSA Claimant Aggregate Individual Compensable Workweeks calculated by the Trustee for such DDA FLSA Claimant, or (b) seeks payment of the Minimum DDA Distribution, or (c) seeks payment for DDA FLSA Compensable Workweeks in excess of the DDA FLSA Claimant Aggregate Individual Compensable Workweeks calculated by the Trustee for such FLSA Claimant, but to which no objection is filed on or before the FLSA Claims Objection Bar Date, or (d) comprises any DDA FLSA Claim to which an objection is timely filed that is subsequently resolved by a Final Order, provided, however, pursuant to Section 7.04 of the Plan, an FLSA Proof of Claim filed by an Unverified SSN FLSA Claimant that does not include a complete and accurate social security number shall not be an Allowed Non-DDA FLSA Claim.

**1.08 Allowed FLSA Claims** means collectively (i) all Allowed DDA FLSA Claims, and (ii) all Allowed Non-DDA FLSA Claims.

**1.09 Allowed FLSA Counsel Claims** means the aggregate Claims for attorneys' fees and expenses under 29 U.S.C. §216(b) held by FLSA Counsel, which are allowed in the amount of \$4,000,000.

**1.10 Allowed General Unsecured Claims** means the unsecured, non-Priority Tax Claims against the Debtor listed on Schedule 6.01 that are deemed allowed in the amounts set forth on Schedule 6.01 or such other amount as embodied in a Final Order.

**1.11 Allowed Non-DDA FLSA Claims** means all FLSA Claims for which an FLSA Proof of Claim is submitted on or before the FLSA Claims Bar Date and that (a) seeks payment of the Minimum Non-DDA Distribution or (b) seeks payment of the Non-DDA FLSA Workweek Distribution, in either instance, for which (x) no objection is filed on or before the FLSA Claims Objection Bar Date, or (y) comprises any Non-DDA FLSA Claim to which an objection is timely filed but, and to the extent, that such claim is subsequently allowed by a Final Order, provided, however, pursuant to Section 7.04 of the Plan, an FLSA Proof of Claim filed by an Unverified SSN FLSA Claimant that does not include a complete and accurate social security number shall not be an Allowed Non-DDA FLSA Claim.

**1.12 Allowed Priority Tax Claims** means those Claims against the Debtor of the kind specified in §§ 502(i) and 507(a)(8) of the Bankruptcy Code that are listed on Schedule 3.03 hereto and that are deemed allowed in the amounts set forth on Schedule 3.03.

**1.13 Allowed Publishers' Claims** means the Claims against the Debtor held by the Publishers, including without limitation indemnity Claims, which are allowed in the amount of \$2,550,000.

**1.14 Applicable FLSA Period means** for: (i) DDA FLSA Claimants, the Applicable Walker FLSA Period and the Applicable Krawczyk FLSA Period, collectively; and (ii) Non-DDA FLSA Claimants the period beginning on May 10, 2013 and ending on the FLSA Claims Bar Date.

**1.15 Applicable Krawczyk FLSA Period** means the period beginning on May 10, 2013 and ending on the FLSA Claims Bar Date for all Krawczyk FLSA Claimants.

**1.16 Applicable Walker FLSA Period** means the period beginning on June 25, 2009 and continuing through the FLSA Claims Bar Date for all Walker FLSA Claimants, except that the beginning date for the following Walker FLSA Claimants shall not be June 25, 2009, but shall instead be the date listed next to the individual's name below:

Name	Date
Donald Walker	May 2, 2009
Eric Allen	May 2, 2009
Justin Cooper	May 2, 2009
Ervin Walker	August 25, 2008
Regina Coutee	July 3, 2009
Brian Mathis	July 3, 2009

**1.17 AT&T** means AT&T Services, Inc.; its affiliated non-publishing entities sued in the FLSA Litigation (consisting of AT&T Corp. and AT&T Inc.); former AT&T entities named in the FLSA Litigation (consisting of AT&T Advertising, L.P., AT&T Advertising & Publishing, AT&T Advertising Solutions, and Pacific Bell Directory); and their lawful successors.

**1.18 Avoidance Actions** means, without limitation, any and all actions, causes of action, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, claims and demands whatsoever, whether known or unknown, in law (including, without limitation, pursuant to §§ 510, 544, 547, 548, 549, 550 and 553 of the Bankruptcy Code or equivalent provisions of applicable non-bankruptcy law), equity or otherwise.

**1.19 Ballot** means the forms distributed by the Trustee to each Holder of an impaired Claim that is entitled to vote on the Plan and on which form the Holder of such Claim is to indicate acceptance or rejection of the Plan.

**1.20 Bankruptcy Code** means title 11 of the United States Code as now in effect or hereafter amended.

**1.21 Bankruptcy Court** means the United States Bankruptcy Court for the Eastern District of Missouri in which the Chapter 11 Case was commenced on the Petition Date.

**1.22 Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended.

**1.23 Business Day** means any day other than a Saturday, Sunday, or any other day on which federal courts or banking institutions in St. Louis, Missouri are required or authorized to close by law, executive order, or order of the United States District Court for the Eastern District of Missouri.

**1.24 Cash** means legal tender of the United States of America.

**1.25 Chapter 11 Case** means the Debtor's chapter 11 bankruptcy case pending in the Bankruptcy Court.

**1.26 Claims** means all claims within the meaning of § 101(5) of the Bankruptcy Code, regardless of the identity of the Holder of the Claim and whether the Claim is an Allowed Claim or Disputed Claim, that are asserted against (a) the Shareholders, the Individual Defendants or

the Publishers, relating to the delivery of Publishers' Books for DDA, (b) against the Publishers relating to the delivery of Publishers' Books for Non-DDA Entities, and (c) against the Debtor, for any reason, including without limitation, the FLSA Claims.

**1.27 Class** means a category of Holders of Claims or Interests, as described in Article IV of the Plan.

**1.28 Confirmation Date** means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

**1.29 Confirmation Hearing** means the hearing to be held by the Bankruptcy Court regarding confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

**1.30 Confirmation Order** means an order entered by the Bankruptcy Court confirming the Plan pursuant to § 1129 of the Bankruptcy Code.

**1.31 DDA Aggregate Workweeks** means all Workweeks by DDA FLSA Claimants.

**1.32 DDA FLSA Aggregate Compensable Workweeks** means 72,514, which is the total number of DDA FLSA Compensable Workweeks for all DDA FLSA Claims. For the avoidance of any doubt, DDA FLSA Aggregate Compensable Workweeks will be calculated by including all DDA FLSA Compensable Workweeks for all DDA FLSA Claimants, not just the DDA FLSA Compensable Workweeks for Allowed DDA FLSA Claims.

**1.33 DDA FLSA Claimant Aggregate Individual Compensable Workweeks** means the total number of DDA Compensable Workweeks for any individual DDA FLSA Claimant.

**1.34 DDA FLSA Claimants** means the Holders of DDA FLSA Claims.

**1.35 DDA FLSA Claims** means all FLSA Claims related to delivery of Publishers' Books for DDA.

**1.36 DDA FLSA Compensable Workweek** means a Workweek during which an FLSA Claimant delivered Publishers' Books for DDA that meets the criteria for damages under the FLSA Claimants' allegations in the FLSA Litigation using the FLSA Claimants' theory of damages in the FLSA Litigation. While the defendants in the FLSA Litigation, including the Trustee, DDA, and the Publishers, dispute the FLSA Claimants' damages theories and methodologies, they have accepted them solely for purposes of calculating DDA FLSA Compensable Workweeks and otherwise carrying out the provisions of the Plan. The defined term "DDA FLSA Compensable Workweeks" does not include Workweeks in which an FLSA Claimant delivered Publishers' Books for a Non-DDA Entity (see instead **Non-DDA FLSA Compensable Workweeks**).

**1.37 DDA FLSA Individual Settlement Amount** means the amount of an FLSA Claim for an individual FLSA Claimant calculated by multiplying the DDA FLSA Claimant Aggregate Individual Compensable Workweeks for such individual by the DDA FLSA Workweek Settlement Amount, provided, however, that all DDA FLSA Claimants who have no DDA FLSA Compensable Workweeks or who fail to demonstrate any DDA FLSA Compensable Workweeks shall receive the Minimum DDA Distribution.

**1.38 DDA FLSA Workweek Settlement Amount** means the FLSA Claims Estimated Net Distributable Cash divided by the DDA FLSA Aggregate Compensable Workweeks. The Trustee estimates that as of the date of this Plan, the DDA FLSA Workweek Settlement Amount is \$[---] per DDA FLSA Compensable Workweek, but this amount is subject to change as set forth in Article VIII of the Plan.

**1.39 Debtor or DDA** means Directory Distributing Associates, Inc. (both before and after it becomes a Post-Confirmation Debtor) and, to the extent the context so requires, the Trustee, not individually but solely in his capacity as the Trustee of the Debtor.

**1.40 Disclosure Statement** means, collectively, the written disclosure statement relating to the Plan, as approved by the Bankruptcy Court pursuant to § 1125 of the Bankruptcy Code, as the same may be amended, modified, or supplemented from time to time, including the FLSA Claimants' Summary. For the avoidance of any doubt, the term "Disclosure Statement" hereunder shall refer to any disclosure statement approved in conjunction with this first amended Plan and shall not refer to the original disclosure statement filed in the Chapter 11 Case on November 19, 2018.

**1.41 Disputed FLSA Claims** means those FLSA Claims to which an objection is filed on or before the FLSA Claims Objection Bar Date or any FLSA Claims associated with FLSA Proofs of Claim filed after the FLSA Claim Bar Date.

**1.42 Disputed FLSA Claims Reserve** means a reserve to be funded in Cash as part of the Plan Funding Commitment that will be held in reserve pending resolution of Disputed FLSA Claims.

**1.43 Effective Date** means the first Business Day on which all conditions precedent to the Effective Date specified in Section 10.01 of the Plan shall have been satisfied or waived as provided herein.

**1.44 Estate** means the estate for the Debtor created upon the Petition Date consisting of all legal and/or equitable interests of the Debtor to the extent provided for under 11 U.S.C. §541, which said estate shall cease to exist upon the Effective Date.

**1.45 Exculpated Parties** means the Trustee, the counsel for the Trustee, the Plan Administrator, and each of the FLSA Counsel, together with the foregoing's respective officers, directors, members, managers, owners, employees, accountants, agents, restructuring advisors and attorneys and representatives (but solely in their capacities as such).

**1.46 Final Order** means an order that has not been reversed, stayed, modified, or amended and as to which the time to appeal, petition for certiorari, or move for re-argument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for re-argument or rehearing shall then be pending; *provided, however*, that the possibility that a motion under Rule 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not preclude such order from being a Final Order.

**1.47 FLSA** means the Fair Labor Standards Act, 29 U.S.C. §§201 et seq. now in effect or hereafter amended.

**1.48 FLSA Claim Employment-Related Taxes** means the employer and employee's respective portions of federal and state income taxes, Federal Insurance Contribution Act amounts, federal and state unemployment taxes, and all other similar type taxes associated with payment of the Allowed FLSA Claims.

**1.49 FLSA Claims** means any and all claims that have been or could be asserted (whether in tort, contract, statute, regulation or otherwise) against DDA, the Shareholders, the Individual Defendants, the Publishers, and/or their respective officers, directors, and employees alleging a violation of the FLSA and/or any other similar or related federal or state statute, regulation or law, whether for wages, economic damages, non-economic damages, liquidated damages, punitive damages, restitution, penalties, interest, other monies, or other relief based on any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act in connection with delivery of Publishers' Books. The term "FLSA Claims" shall include, without limitation, any and all Claims asserted, or that could have been asserted, in the FLSA Litigation, except that the term "FLSA Claims" herein shall not include (a) FLSA Counsel Claims, (b) personal injury or wrongful death claims held by FLSA Claimants, (c) property damage claims held by FLSA Claimants, or (d) workers' compensation claims held by FLSA Claimants.

**1.50 FLSA Claims Bar Date** means the date fixed by the Bankruptcy Court as the final day for FLSA Claimants to file FLSA Proofs of Claim.

**1.51 FLSA Claims Estimated Net Distributable Cash** means the sum of \$                     <sup>1</sup>, which was calculated by adding together the Debtor's Cash on                     , 2020 and the Maximum Funding Commitment and subtracting from the result: (a) the employer's portion of the FLSA Claim Employment-Related Taxes on estimated Allowed FLSA Claims, (b) the amount of the estimated Allowed Administrative Claims (to the extent not already included in the Wind-Down Reserve), (c) the amount of the Allowed Priority Tax Claims, (d) the amount of Allowed General Unsecured Claims, (e) the amount of Allowed FLSA Counsel Claims, (f) the amount of the Named Plaintiff Incentive Payments, (g) the amount of the Wind-Down Reserve, (h) the amount of the estimated FLSA Claims Trust Expenses anticipated by the Trustee, (i) the Aggregate Minimum DDA Distributions, and (j) the Non-DDA Reserve.

**1.52 FLSA Claims Objection Bar Date** means the first Business Day after twenty-eight (28) days after the Effective Date.

**1.53 FLSA Claims Trust** means the trust described in Article VIII of the Plan, which shall be formed as a trust under Missouri law and shall be organized so as to constitute a "qualified settlement fund" for purposes of 26 U.S.C. §468B and any related Treasury Regulations.

**1.54 FLSA Claims Trust Agreement** means the written agreement providing for the establishment of the FLSA Claims Trust, the proposed form of which shall be submitted as part of the Plan Supplement.

**1.55 FLSA Claims Trust Expenses** means the actual and necessary expenses of administering the FLSA Claims Trust as described in the FLSA Claims Trust Agreement, including without limitation the costs associated with (a) professionals retained by the FLSA Claims Trust, (b) the FLSA Claims Trustee Fees, (c) costs of preparing and mailing checks to Holders of Allowed

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<sup>1</sup> All highlighted blanks will be completed before votes are solicited on this First Amended Plan.

FLSA Claims and Allowed FLSA Counsel Claims, and (d) preparing and filing all required federal, state, and local tax returns or reports.

**1.56 FLSA Claims Trust Surplus Amount** means the amount of Cash remaining in the FLSA Claims Trust after (a) all distributions to Holders of Allowed FLSA Claims and Allowed FLSA Counsel Claims have been made, (b) all FLSA Claims Trust Expenses have been paid, and (c) all other actions have been taken to complete the administration of the FLSA Claims Trust.

**1.57 FLSA Claims Trustee** means the initial trustee of the FLSA Claims Trust, whose identity shall be disclosed in the Plan Supplement, together with any successor thereto.

**1.58 FLSA Claims Trustee Fees** means fees and out-of-pocket expenses for services performed by the FLSA Claims Trustee and any attorneys or other professionals hired by the FLSA Claims Trustee.

**1.59 FLSA Claimants** means all Holders of FLSA Claims.

**1.60 FLSA Claimants' Summary** means the written Summary of the Plan and of the Disclosure Statement relating to the provisions of the Plan applicable to the FLSA Claims as approved by the Bankruptcy Court pursuant to § 1125(c) of the Bankruptcy Code.

**1.61 FLSA Counsel** means any counsel for FLSA Claimants, including without limitation counsel in the Chapter 11 Case, the *Walker* Case and the *Krawczyk* Case, including, but not limited to, Mithoff Law Firm; Holmes Diggs & Sadler PLLC; Beck Redden LLP; Summers Compton Wells LLC; and Cotchet Pitre & McCarthy LLP.

**1.62 FLSA Litigation** means collectively the *Walker* Case and the *Krawczyk* Case.

**1.63 FLSA Proof of Claim** means a proof of claim submitted by an FLSA Claimant in accordance with the procedures and methods outlined in the Procedures Order.

**1.64 Holder** means one holding the beneficial interest in: (a) a Claim, or (b) in shares of stock in the Debtor.

**1.65 Individual Defendants** means collectively Richard Price, Steve Washington, Laura Washington, Roland Schmidt, and Sandy Sanders, the former DDA employees named as defendants in the *Walker* Case.

**1.66 Information** means the social security number and other tax information provided by the Chapter 11 Trustee to the FLSA Claims Trustee for purposes of any applicable tax returns or other tax reporting, including Form W-2 or Form-1099 information provided to the Internal Revenue Service, U.S. Department of the Treasury, or other governmental authority related to the distributions made to FLSA Claimants pursuant to this Plan.

**1.67 Krawczyk Case** means the case captioned *Krawczyk, et al v. Directory Distributing Associates, Inc.*, currently pending in the United States District Court for the Eastern District of Missouri, Case No. 19-01399-HEA.

**1.68 Krawczyk FLSA Claimants** means all FLSA Claimants listed on a Schedule to be filed by the Trustee no later than three (3) Business Days before the hearing on the Procedures Motion.

**1.69 Maximum Funding Commitment** means the total maximum amount the Publishers and Shareholders are obligated to contribute to the Plan Funding Commitment in settlement of the claims released herein, which in no event will exceed \$10,000,000, provided, however that the amount of the Non-DDA Reserve Administrative Expenses paid by the Publishers shall be in addition to the Maximum Funding Commitment.

**1.70 Minimum DDA Distribution** means \$40, which will be payable from the FLSA Claims Trust to all Holders of Allowed DDA FLSA Claims who have zero Compensable Workweeks.

**1.71 Minimum Non-DDA Distribution** means \$40, subject to the Pro Rata Distribution Adjustment.

**1.72 Named Plaintiff Incentive Payment** means (a) a cumulative amount not to exceed \$46,500 to be paid by the FLSA Claims Trustee to named Plaintiffs represented by FLSA Counsel in the *Walker* Case and the *Krawczyk* Case as follows:

Name	Amount
James Krawczyk	\$5,500.00
Eric Allen	\$5,500.00
Justin Cooper	\$5,500.00
Regina Coutee	\$5,500.00
Brian Mathis	\$5,500.00
Donald Walker	\$5,500.00
David Estrada	\$4,500.00
Ben Bibb	\$3,000.00
Joanne Estrada	\$3,000.00
Tony Estrada	\$3,000.00

and (b) the amount of \$4,500 to be paid by the FLSA Claims Trustee to *pro se* named Plaintiff Ervin Walker. Any Named Plaintiff Incentive Payment shall be in addition to, and not in lieu of, any Allowed FLSA Claim of any named Plaintiff listed above.

**1.73 Non-DDA Entity** means all Persons other than DDA, if any, that contracted with the Publishers to deliver Publishers' books during the Applicable FLSA Period, including without limitation Product Development Corporation.

**1.74 Non-DDA FLSA Claimants** means the Holders of Non-DDA FLSA Claims.

**1.75 Non-DDA FLSA Claims** means all FLSA Claims against the Publishers related to delivery of Publishers' Books for Non-DDA Entities.

**1.76 Non-DDA FLSA Compensable Workweeks** means, with respect to any individual Non-DDA FLSA Claimant who makes a Non-DDA FLSA Workweek Certification, a number calculated by taking the total number of Non-DDA Workweeks reported on such individual's FLSA Proof of Claim multiplied by such individual's Workweek Percentage and rounding the result up

to the nearest whole number. The defined term “Non-DDA FLSA Compensable Workweeks” does not include Workweeks in which an FLSA Claimant delivered Publishers’ Books for DDA (see instead *DDA FLSA Compensable Workweeks*).

**1.77 Non-DDA FLSA Individual Settlement Amount** means (a) in the case of any individual FLSA Claimant who makes a Non-DDA FLSA Minimum Distribution Certification, the Minimum Non-DDA Distribution, or (b) in the case of any individual FLSA Claimant who makes a Non-DDA FLSA Workweek Certification, the Non-DDA FLSA Workweek Distribution.

**1.78 Non-DDA FLSA Minimum Distribution Certification** means the certification made under penalty of perjury by an FLSA Claimant on a timely filed FLSA Proof of Claim that such FLSA Claimant delivered Publishers’ Books for Non-DDA Entities but that does not include any workweek information.

**1.79 Non-DDA FLSA Workweek Certification** means the certification made under penalty of perjury by an FLSA Claimant on a timely filed FLSA Proof of Claim that such FLSA Claimant delivered Publishers’ Books for Non-DDA Entities for more than one Workweek during the Applicable Krawczyk FLSA Period and wishes to receive the Non-DDA FLSA Workweek Distribution.

**1.80 Non-DDA FLSA Workweek Distribution** means a distribution to an individual FLSA Claimant who filed a Non-DDA FLSA Workweek Certification, which distribution shall be calculated by multiplying (a) the individual’s Non-DDA FLSA Compensable Workweeks by (b) the lesser of (i) \$60 or (ii) the DDA FLSA Workweek Settlement Amount, subject to the Pro Rata Distribution Adjustment.

**1.81 Non-DDA Reserve** means that certain reserve funded solely by the Publishers from the Publishers’ Plan Funding Commitment in an amount up to \$765,000. The final amount of the Non-DDA Reserve will be determined as set forth in Section 8.01(d). To be eligible to receive any distribution from the Non-DDA Reserve, including, without limitation, the Non-DDA FLSA Minimum Distribution, an FLSA Claimant must timely return the FLSA Proof of Claim and make either a Non-DDA FLSA Minimum Distribution Certification or a Non-DDA FLSA Workweek Certification.

**1.82 Non-DDA Reserve Administrative Expenses** means all of the fees and costs incurred in connection with (a) establishing and administering the Non-DDA Reserve, and (b) reconciling and objecting to Non-DDA FLSA Claims, and (c) all FLSA Claims Trust Expenses related to the Non-DDA Reserve, all of which shall be paid by the Publishers or reimbursed to the Trustee or FLSA Claims Trustee, as the case may be.

**1.83 Non-DDA Workweek** means a Workweek where an FLSA Claimant delivered Publishers’ Books for a Non-DDA Entity during the Applicable FLSA Period.

**1.84 Ordinary Course Administrative Claims** has the meaning set forth in Section 3.01 of the Plan.

**1.85 Petition Date** means October 14, 2016.

**1.86 Plan** means this amended Chapter 11 plan of liquidation, and all exhibits, supplements, and schedules to the Plan, as the same may be amended, modified, or supplemented. For the avoidance of any doubt, the term “Plan” hereunder shall refer to this first

amended Plan and shall not refer to the original plan filed in the Chapter 11 Case on November 19, 2018.

**1.87 Plan Administration Expenses** means the actual and necessary expenses of administering the Plan Administration Trust, including without limitation the fees and expenses of any Plan Administrator Professional, the costs of destroying any of DDA's unneeded records, the costs of winding down DDA's business, and the costs of preparing and filing all required federal, state, and local tax returns or reports.

**1.88 Plan Administration Surplus** means any Cash of the Post-Confirmation Debtor, including but not limited to Cash in the Wind-Down Reserve, remaining after the Plan Administrator has completed his duties under the Plan, including without limitation, (a) payment of the Plan Administrator Contribution, (b) payment of all Allowed Claims (except those Allowed Claims that will be paid by the FLSA Claims Trust), (c) payment of Plan Administration Expenses, and (d) completion of all actions necessary to dissolve the Debtor and complete administration of the Chapter 11 Case, including without limitation the filing of all final federal, state, and local tax returns and destruction of records. The Plan Administration Surplus shall include any funds provided to the Plan Administrator from the FLSA Claims Trust Surplus Amount.

**1.89 Plan Administrator** means the person or entity who shall be responsible for: (a) holding, administering and distributing the Debtor's assets in accordance with the terms of the Plan; (b) conducting the winding down of the Debtor's business and liquidating and recovering upon any assets of the Debtor, and (c) undertaking any and all other duties and responsibilities assigned or otherwise contemplated hereunder. The initial Plan Administrator is designated as John P. Vaclavek. Any successor or replacement Plan Administrator shall be selected by the Office of the United States Trustee, after consultation with the FLSA Counsel, the Shareholders and the Publishers. To the extent that the rights and duties of the "Plan Administrator" and the "Trustee" may overlap with one another on or after the Effective Date, the two terms shall be deemed interchangeable for such purposes.

**1.90 Plan Administrator Contribution** means the contribution made by the Plan Administrator to the FLSA Claims Trust as described in Section 8.05(d) of the Plan.

**1.91 Plan Administrator Professional** shall mean collectively any Professionals retained by the Plan Administrator.

**1.92 Plan Funding Allocation Formula** means the allocation of the Plan Funding Commitment between the Shareholders and the Publishers as follows: (a) up to \$6 million, allocable, on a pro-rata basis \$5,600,000 to the Shareholders and \$400,000 to the Publishers; (b) Non-DDA Reserve funded solely by Publishers for the benefit of Allowed Non-DDA FLSA Claims; and (c) all required funding above \$6 million in connection with distributions to Allowed FLSA DDA Claims to be funded: (i) by Shareholders up to \$3 million; and (ii) by Publishers up to \$235,000 plus any unused Non-DDA Reserve. All funding above \$6 million shall be allocated 75% to Shareholders and 25% to Publishers until each of their respective maximum funding requirements have been exhausted. The Shareholders and Publishers' aggregate funding maximum is \$10 million. The maximum funding requirements under the Plan for the Publishers is up to \$1,400,000, including the Non-DDA Reserve but excluding Non-DDA Reserve Administrative Expenses, and the maximum funding requirement for the Shareholders is up to \$8,600,000.

**1.93 Plan Funding Commitment** shall have the meaning set forth in Section 8.01(f) of the Plan.

**1.94 Plan Supplement** means those proposed forms of documents and/or related disclosures that will be filed by the Trustee with the Bankruptcy Court no later than 14 days before the deadline to object to confirmation of the Plan, and that are intended to provide additional details relating to the implementation of the Plan. The Plan Supplement shall include, without limitation, a proposed form of FLSA Claims Trust Agreement, the proposed Wind-Down Reserve and the identity and qualifications of the proposed FLSA Claims Trustee.

**1.95 Post-Confirmation Debtor** means the Debtor following the revesting of the assets of the Estate in the Debtor in accordance with Article XI of the Plan and §§ 1141(b) and (c) of the Bankruptcy Code.

**1.96 Potential Avoidance Action Collateral** means those investment accounts and related collateral pledged by some or all of the Potential Avoidance Action Defendants in favor of the Trustee on behalf of the Estate in accordance with the *Order Granting Motion for Approval of Agreement with Certain of the Runk Family* (ECF #. 176) entered by the Bankruptcy Court on October 18, 2017, as the same has been or may be modified, amended, restated and/or superseded from time to time.

**1.97 Potential Avoidance Action Defendants** means collectively the Shareholders and the Runks.

**1.98 Potential Avoidance Action Defendants Plan Funding Percentage** means the percentage of the actual total Plan Funding Commitment contributed by the Shareholders. For purposes of this calculation, any portion of the Plan Funding Commitment contributed by the Trustee and the payment by the Publishers of the Non-DDA Reserve Administrative Expenses shall be disregarded.

**1.99 Potential Avoidance Action Defendants Settlement Contribution** means that portion of the Plan Funding Commitment, calculated using the Plan Funding Allocation Formula due and payable from the Shareholders to the Plan Administrator on the Effective Date.

**1.100 Potential Avoidance Action Settlement** has the meaning ascribed to that term in Section 2.01 of the Plan.

**1.101 Pre-Effective Date Professional Fee Claims** means all Administrative Claims under §§ 330(a), 331, 503, or 1103 of the Bankruptcy Code for compensation of a Professional for services rendered or expenses incurred in the Chapter 11 Case on or prior to the Effective Date.

**1.102 Priority Tax Claim** means a Claim of a kind specified in §507(a)(1) and §507 (a)(3) through (a)(10) of the Bankruptcy Code.

**1.103 Procedures Motion** means the Motion for Entry of an Order (A) Establishing the Final Date for FLSA Claimants To File Proofs of Claim and Procedures for Filing Proofs of Claim; (B) Approving the form of A Plan and Disclosure Statement Summary To Be Transmitted To FLSA Claimants, the Publishers, and the FLSA Counsel; (C) Approving Solicitation and Notice Procedures with Respect To Confirmation of the First Amended Plan; (D) Establishing Voting Deadlines and Procedures for Vote Tabulation; (E) Scheduling A Hearing On Confirmation of First Amended Plan; and (F) Granting Related Relief. For the avoidance of any doubt, the term "Procedures Motion" in this Plan shall refer to the Procedures Motion filed on the same day as

this amended Plan and shall not refer to the similar pleading filed on November 19, 2018 (ECF # 261) in the Chapter 11 Case.

**1.104 Procedures Order** means any order of the Bankruptcy Court granting any of the relief requested in Procedures Motion, as said order may be amended, modified, restated and/or superseded from time to time.

**1.105 Professional** means (a) any professional employed in the Chapter 11 Case pursuant to §§ 327, 328, 1103, or 1114 of the Bankruptcy Code; and (b) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to § 503(b)(4) of the Bankruptcy Code; and (iii) any professional retained by the Plan Administrator in accordance with Section 8.02(e) of the Plan.

**1.106 Pro Rata** means with respect to any class of Claims, the ratio of the amount of any Allowed Claim within that Class to the aggregate amount of all Allowed Claims within that Class.

**1.107 Pro Rata Distribution Adjustment** means the adjustment to the distributions otherwise payable to Holders of Allowed Non-DDA FLSA Claims that will be applied only if the total Allowed Non-DDA FLSA Claims exceeds \$765,000, in which case such distributions will be adjusted so that all Holders of Allowed Non-DDA FLSA Claims receive a Pro Rata share of \$765,000.

**1.108 Publishers** means AT&T and YP.

**1.109 Publishers' Books** means all telephone directories, including companion directories and any accompanying materials, published by the Publishers during the Applicable FLSA Period.

**1.110 Publishers' Claims** means any and all Claims that any of the Publishers may assert against the Debtor, including but not limited to any Claims based on contractual indemnity language.

**1.111 Publishers' Plan Funding Commitment** means that portion of the Plan Funding Commitment, calculated using the Plan Funding Allocation Formula, due and payable from the Publishers to the FLSA Claims Trustee on the Effective Date plus an amount necessary to pay incurred or anticipated Non-DDA Reserve Administrative Expenses.

**1.112 Publishers' Plan Funding Percentage** means the percentage of the actual total Plan Funding Commitment that was contributed by the Publishers minus (a) the amount of distributions made for FLSA Non-DDA Claims from the Non-DDA Reserve and (b) the amount necessary to pay the Non-DDA Reserve Administrative Expenses. For purposes of this calculation, any portion of the Plan Funding Commitment contributed by the Trustee shall be disregarded.

**1.113 Released Parties** means the Debtor, the Trustee, the Plan Administrator, the Publishers, the Individual Defendants, the Potential Avoidance Action Defendants, and Richard Rackers, and each of their respective trustees, officers, directors, members, owners, employees, accountants, financial advisors, investment bankers, agents, restructuring advisors and attorneys and representatives (but solely in their capacities as such).

**1.114 Runks** means collectively John W. Runk, Glen J. Runk, Kristy Runk Bryan, Jack W. Runk, Judith A. Runk, and their respective accountants, financial advisors, investment bankers, agents, attorneys and representatives (but solely in their capacities as such).

**1.115 Schedules** mean the schedules of assets and liabilities, the list of Holders of Interests, and the statements of financial affairs filed in the Chapter 11 Case pursuant to § 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments and modifications to such schedules, lists, and statements through the Confirmation Date.

**1.116 Shareholders** means John W. Runk Revocable Trust, Glen J. Runk Irrevocable Trust, Kristy Runk Bryan Irrevocable Trust and Jack W. Runk Irrevocable Trust, which are the Holders of all shares of stock in DDA.

**1.117 Tax Code** means title 26 of the United States Code, as amended from time to time.

**1.118 Treasury Regulations** means final, temporary, and proposed regulations promulgated by the U.S. Treasury Department in respect of the Tax Code.

**1.119 Unverified SSN FLSA Claimants** means those FLSA Claimants on the list to be filed by the Trustee no later than three (3) Business Days before the hearing on the Procedures Motion for whom the Trustee does not have complete, verified social security number information.

**1.120 Walker Case** means the case captioned *Walker, et al. v. Directory Distributing Associates, Inc. et al.* currently pending in the United States District Court for the Eastern District of Missouri, Case No. 4:19-cv-001225-RLW.

**1.121 Walker FLSA Claimants** means all FLSA Claimants listed on a Schedule to be filed by the Trustee no later than three (3) Business Days before the hearing on the Procedures Motion.

**1.122 Wind-Down Reserve** means an amount to be calculated by the Trustee and disclosed in the Plan Supplement that will remain in reserve for use by the Plan Administrator to pay Pre-Effective Date Professional Fee Claims and wind-down the Debtor's operations, including, without limitation, the filing of all final tax returns and other reports required by Governmental units, fees under 28 U.S.C. § 1930(a)(6), court costs, record destruction costs and other normal and customary costs of winding down a business and a bankruptcy estate.

**1.123 Workweek** means a week, beginning on Sunday and ending on Saturday, in which an FLSA Claimant delivered Publishers' Books during the Applicable FLSA Period.

**1.124 Workweek Percentage** means a number, expressed as a percentage, for each individual FLSA Claimant who made a Non-DDA FLSA Workweek Certification calculated by dividing the DDA FLSA Compensable Workweeks for such individual by the DDA Aggregate Workweeks for such individual.

**1.125 YP** means any entity that formerly did business as AT&T Advertising Solutions which YP acquired in 2012; YP affiliated entities named in the FLSA Litigation (consisting of YP Western Directory LLC; YP Shared Services LLC; YP Advertising & Publishing, LLC, as successor to AT&T Advertising, L.P.; YP LLC as successor to YP Shared Services LLC; YP Holdings LLC); and their lawful successors, including, but not limited to, Dex Media, Inc.; Thryv Holdings, Inc.; and Thryv, Inc.

## ARTICLE II

### COMPROMISE AND SETTLEMENT OF (A) TRUSTEE'S ALLEGED CAUSES OF ACTION AGAINST THE POTENTIAL AVOIDANCE ACTION DEFENDANTS, (B) CLAIMS AGAINST DDA HELD BY THE PUBLISHERS, AND (C) CLAIMS AGAINST DDA HELD BY THE FLSA COUNSEL

**2.01 *Compromise and Settlement of Potential Avoidance Action Claims.*** Pursuant to §§ 363, 1123(a)(5), and 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates, and is expressly contingent upon the approval of, a full, final, and complete compromise, settlement, and release of any and all actual or alleged Avoidance Actions existing in favor of the Debtor and/or the Estate against any of the Potential Avoidance Action Defendants, subject to and in accordance with the following terms and conditions (the "Potential Avoidance Action Settlement"):

(a) Plan Funding Commitment. The Plan Administrator shall receive the Potential Avoidance Action Defendants Settlement Contribution in Cash on or before the Effective Date as set out in Sections 10.01(b) and 10.02 of the Plan.

(b) Releases and Related Consideration to be Provided to Potential Avoidance Action Defendants. Subject to the indefeasible payment of the Potential Avoidance Action Defendants Settlement Contribution and the occurrence of the Effective Date: (i) each of the Potential Avoidance Action Defendants shall be fully released from any and all actual and/or alleged Avoidance Actions existing in favor of the Debtor and/or the Estate; (ii) each of the Potential Avoidance Action Defendants shall receive the full benefit and protection of the releases and injunctions described in Article XI of the Plan; and (iii) any and all liens, security interests and/or control agreements existing in favor of the Debtor and/or the Estate with respect to the Potential Avoidance Action Collateral shall be terminated and released and the Plan Administrator shall take all acts required to effectuate such termination. The Trustee and the Plan Administrator, as the case may be, shall consent to allow the Potential Avoidance Action Collateral to be used to fund the Potential Avoidance Action Defendants Settlement Contribution and shall take all acts necessary to allow for such use including but not limited to providing all necessary approvals and instructions to Merrill Lynch.

(c) Distribution of Plan Administration Surplus. Upon the Plan Administrator's completion of his duties under the Plan, the Plan Administrator shall distribute the Plan Administration Surplus to the Person designated in writing by the Potential Avoidance Action Defendants who shall receive such distribution on behalf of all Potential Avoidance Action Defendants and who shall then be responsible to disburse such funds among the Potential Avoidance Action Defendants as directed in writing by the Potential Avoidance Action Defendants or, in the absence of such written direction, in accordance with a Final Order.

(d) Conditions Precedent. The Potential Avoidance Action Settlement is expressly made subject to and conditioned upon the occurrence of the Effective Date. In the event the Effective Date does not occur: (i) the Potential Avoidance Action Settlement shall be null and void and of no legal or evidentiary effect; (ii) all of the Potential Avoidance Action Defendants Settlement Contribution paid (either in escrow or otherwise) shall be immediately refunded in full to the Potential Avoidance Action Defendants; and (iii) the Potential Avoidance Action Collateral shall continue to be subject to a valid and effective security interest in favor of the Trustee on behalf of the Estate.

(e) Releases and Injunctions Not Severable. The releases and injunctions provided as part of the Potential Avoidance Action Settlement and in Article XI of the Plan are integral to obtaining the value provided under the Potential Avoidance Action Settlement and the releases and injunctions under the Plan constitute an essential component of the compromise reached and, notwithstanding anything to the contrary in the Plan, are not severable from the other provisions of the Potential Avoidance Action Settlement and the Plan unless the beneficiary of such release or injunction shall waive its right to such releases or injunctions in writing.

**2.02 *Compromise and Settlement of Claims Held by the Publishers***. The Publishers assert unsecured, nonpriority Claims against DDA arising primarily out of indemnity language included in various prepetition agreements between one or more of the Publishers and DDA. As of the date of this Plan, the Publishers assert that their Claims total more than \$5,000,000. In consideration of the various payments, releases, injunctions and other terms set forth in the Plan, the Publishers' Claim shall be allowed in the amount of \$2,550,000, without the need for the Publishers to file a proof of claim. The Publishers shall submit a single Ballot in respect of the Class 3 Claim. The Allowed Publishers' Claim shall be treated in accordance with Section 6.03 of the Plan.

**2.03 *Compromise and Settlement of Claims Held by the FLSA Counsel***. As of the date of the filing of the Plan, the FLSA Counsel assert unsecured, nonpriority Claims against DDA for aggregate attorneys' fees and expenses under 29 U.S.C. §216(b) for more than \$5,200,000. In consideration of the various payments, releases, injunctions and other terms contained in the Plan, including without limitation, the distributions to be made to Holders of Allowed FLSA Claims and to the FLSA Counsel, the FLSA Counsel have compromised their Claims against the Debtor and have further consented to an Allowed Claim in the amount of \$4,000,000, and the Confirmation Order shall constitute an order Allowing the FLSA Counsel Claims at \$4,000,000, without the need for the FLSA Counsel to file a proof of claim. The FLSA Counsel shall submit a single Ballot in respect of their Class 4 Claim. Of the \$4,000,000 in Allowed FLSA Counsel Claims, no more than \$500,000 may be allocated to reimbursement of expenses.

### ARTICLE III

#### TREATMENT OF ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS

**3.01 *Administrative Claims in General***. On the Effective Date, or as soon thereafter as is reasonably practicable, except to the extent that a Holder of an Allowed Administrative Claim against the Debtor agrees to a different treatment, each Holder of an Allowed Administrative Claim shall receive Cash in an amount equal to such Allowed Administrative Claim. To the extent that an Administrative Claim is Allowed after the Effective Date, such Administrative Claim will be paid as soon as reasonably practicable after the (i) entry of a Final Order approving such Administrative Claim or (ii) the compromise or settlement with respect to such Administrative Claim by the Plan

Administrator and the Holder of the Administrative Claim, provided, however, the Plan Administrator may pay any Administrative Claims arising in the ordinary course of business of the Chapter 11 Case that remain unpaid as of the Effective Date as such Claims thereafter become due ("Ordinary Course Administrative Expense Claims"). Allowance and payment of Pre-Effective Date Professional Fee Claims shall be governed by Section 8.02(d) of the Plan.

**3.02 Administrative Claims Bar Date.** Administrative Claim Requests must be filed in the Bankruptcy Court and served on the Plan Administrator pursuant to the procedures specified in the Confirmation Order by the Administrative Claims Bar Date, except the Holders of Ordinary Course Administrative Expense Claims shall not be required to file an Administrative Claim Request.

Holders of Administrative Claims that are required to file an Administrative Claim Request that do not file and serve such a request by the Administrative Claims Bar Date will be forever barred from asserting such Administrative Claims against the Debtor, the Estate, or the Plan Administrator and such Administrative Claims will be deemed discharged as of the Effective Date. In the event that any party objects to an Administrative Claim Request, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding the foregoing, no Administrative Claim Request need be filed with respect to an Administrative Claim previously Allowed by Final Order of the Bankruptcy Court.

**3.03 Allowed Priority Tax Claims.** On the Effective Date, or as soon thereafter as is reasonably practicable, unless otherwise agreed to by the Holder of an Allowed Priority Tax Claim and the Plan Administrator (and except to the extent that a Holder of an Allowed Priority Tax Claim has been satisfied prior to the Effective Date), each Holder of an Allowed Priority Tax Claim listed on Schedule 3.03 of the Plan shall receive, in full satisfaction of such Allowed Priority Tax Claim, payment in full, in Cash of the amount of such Allowed Priority Tax Claim as listed on Schedule 3.03 of the Plan. Unless otherwise noted therein, the amount listed as the "Allowed Claim Amount" on Schedule 3.03 with respect to a particular Claim shall constitute, as of the entry of the Confirmation Order (and subject to revision until such time), the final Allowed Amount of such Claim.

For the avoidance of doubt, upon the occurrence of the Effective Date, only the parties listed on Schedule 3.03 of the Plan will receive a distribution on account of their Allowed Priority Tax Claims and such parties will receive such distribution in accordance with the amount listed on Schedule 3.03. Upon entry of the Confirmation Order, all Claims listed on Schedule 3.03 shall be deemed Allowed in the amount listed thereon. To the extent that such amount listed on Schedule 3.03 differs from the amount listed in the Schedules or a proof of claim filed by a party, the Plan shall constitute an objection with respect to such Claim. Any party that believes that its Priority Tax Claim has been omitted from the Schedule 3.03 or that the amount of such Priority Tax Claim as listed on Schedule 3.03 is incorrect must file and serve an objection to confirmation of the Plan by the deadline established in the Procedures Order to file objections to the Plan stating, with particularity, the basis for such objection. Any such objections will be adjudicated at the Confirmation Hearing, subject to the Plan Administrator's election to continue the hearing with respect to such objection to a later date. If such objection is not timely filed, the Claimant will be forever barred from the assertion of any Priority Tax Claim arising before the Petition Date (other than those appearing on Schedule 3.03) against the Debtor, the Plan Administrator, the Estate, and any successors, or properties of the foregoing.

## ARTICLE IV

### CLASSIFICATION OF CLAIMS AND INTERESTS

Pursuant to § 1122 of the Bankruptcy Code, set forth below is a designation of classes of Claims against and Interests in the Debtor.

In accordance with § 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Allowed Priority Tax Claims have not been classified, and are accorded the treatment set forth in Article III. Except as set forth above, all Claims and Interests are classified for all purposes, including voting, confirmation, and distribution pursuant to the Plan, as follows:

**4.01 Class 1.** Class 1 consists of all General Unsecured Claims.

**4.02 Class 2.** Class 2 consists of the FLSA Claims.

**4.03 Class 3.** Class 3 consists of the Publishers' Claims.

**4.04 Class 4.** Class 4 consists of the Allowed FLSA Counsel Claims.

**4.05 Class 5.** Class 5 consists of the equity interests of the Shareholders in the Debtor.

## ARTICLE V

### IDENTIFICATION OF IMPAIRED CLASSES OF CLAIMS AND INTERESTS

**5.01 Unimpaired Class of Claims.** Class 1 is unimpaired under the Plan:

**5.02 Impaired Classes of Claims and Interests.** Classes described in this Section are impaired under the Plan:

Class 2	(FLSA Claims)
Class 3	(Publishers' Claims)
Class 4	(Allowed FLSA Counsel Claims)
Class 5	(Shareholders)

## ARTICLE VI

### TREATMENT OF CLASSES OF CLAIMS AND INTERESTS

**6.01 Class 1 (General Unsecured Claims).**

(a) Impairment; Voting. Class 1 is unimpaired under the Plan. Accordingly, Class 1 General Unsecured Creditors are not entitled to vote to accept or reject the Plan.

(b) Treatment. On the Effective Date, or as soon thereafter as is reasonably practicable, each Holder of an Allowed General Unsecured Claim listed on Schedule 6.01 of the Plan shall receive, payment in full in Cash of such Allowed General Unsecured Claim. Unless otherwise noted therein, the amount listed as the "Allowed Claim Amount" on Schedule 6.01 with respect to a particular Claim shall constitute, as of the entry of the Confirmation Order, the final Allowed Amount of such Claim.

For the avoidance of doubt, upon the occurrence of the Effective Date, only the parties listed on Schedule 6.01 of the Plan will receive a distribution on account of their General Unsecured Claims and such parties will receive such distribution in accordance with the amount listed on Schedule 6.01. Upon entry of the Confirmation Order, all Claims listed on Schedule 6.01 shall be deemed Allowed in the amount listed thereon. To the extent that such amount listed on Schedule 6.01 differs from the amount listed in the Schedules or a proof of claim filed by a party, the Plan shall constitute an objection with respect to such Claim. Any party that believes that its General Unsecured Claim has been omitted from the Schedule 6.01 or that the amount of such General Unsecured Claim as listed on Schedule 6.01 is incorrect must file and serve an objection to confirmation of the Plan by the deadline established by the Procedures Order to file objections to the Plan stating, with particularity, the basis for such objection. Any such objections will be adjudicated at the Confirmation Hearing, subject to the Plan Administrator's election to continue the hearing with respect to any such objection to a later date. If such objection is not timely filed, the Claimant will be forever barred from the assertion of any General Unsecured Claim arising before the Petition Date (other than those appearing on Schedule 6.01) against the Debtor, the Plan Administrator, their estate, successors, or properties.

**6.02 Class 2 (FLSA Claims).**

(a) Impairment; Voting. The FLSA Claims are impaired under the Plan, so FLSA Claimants are entitled to vote on the Plan.

(b) Treatment. As soon as practicable after the Effective Date, each Holder of an Allowed FLSA Claim shall receive Cash from the FLSA Claims Trust as follows:

- (i) the DDA FLSA Individual Settlement Amount for such Holder; and
- (ii) if applicable, the Non-DDA FLSA Individual Settlement Amount for such Holder.

(c) Named Plaintiff Incentive Payment. In addition, simultaneously with the payments to Holders of Allowed FLSA Claims, the FLSA Claims Trustee shall also cause the Named Plaintiff Incentive Payments to be made to all individuals listed in Section 1.72 regardless of whether such individuals timely file an FLSA Proof of Claim.

(d) Satisfaction in Full. Each and every FLSA Claim shall be deemed fully satisfied and extinguished in its entirety as a result of the FLSA Claims Trustee's issuance and remittance of distribution checks in the amounts specified herein, regardless of whether such distribution checks may subsequently be returned to the FLSA Claims Trustee or otherwise not timely presented for payment.

(e) Single Check. All amounts payable to Holders of Allowed FLSA Claims shall be made on a single check payable to such Holder.

**6.03 Class 3 (Publishers' Claims).**

(a) Impairment; Voting. Class 3 is impaired under the Plan. Accordingly, Class 3 is entitled to vote on the Plan.

(b) Treatment. In full satisfaction of the Allowed Publishers' Claims and subject to and conditioned upon the Publishers payment in Cash when due of the Publishers' Plan Funding

Commitment to the FLSA Claims Trust, the Publishers shall receive their share of the FLSA Claims Trust Surplus Amount as described in Article VIII of the Plan and as calculated based on the Publishers' Plan Funding Percentage.

**6.04 Class 4 (Allowed FLSA Counsel Claims).**

(a) Impairment; Voting. The Allowed FLSA Counsel Claims are impaired. Accordingly, Holders of the Allowed FLSA Counsel Claims are entitled to vote on the Plan.

(b) Treatment. In full satisfaction of the Allowed FLSA Counsel Claims, the FLSA Claims Trustee shall tender to FLSA Counsel the sum of \$4,000,000 on the Effective Date or as soon thereafter as practicable, with such distribution to be made in accordance with written instructions delivered to the FLSA Claims Trustee by the FLSA Counsel on or before the Confirmation Hearing.

**6.05 Class 5 (Shareholders).**

(a) Impairment; Voting. Class 5 is impaired by the Plan. Because the Shareholders will not receive or retain any property under the Plan on account of their equity interests in the Debtor, the Shareholders are deemed to have rejected the Plan under § 1126(g) of the Bankruptcy Code.

(b) Treatment. The Shareholders will not receive or retain any property under the Plan on account of their equity interests in the Debtor.

**ARTICLE VII**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**7.01 Record Date for Distributions.** As of the date all Ballots are due on the Plan, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Bankruptcy Court or the Debtor, shall be deemed closed for purposes of distribution and voting on the Plan, and there shall be no further changes made to reflect any new record Holders of any Claims or Interests. The Plan Administrator and the FLSA Claims Trustee, as applicable, shall have no obligation to recognize any transfer of Claims or Interests occurring on or after such date. The Plan Administrator and the FLSA Claims Trustee may, in their separate discretion, recognize such transfers after the Effective Date.

**7.02 Interest on Claims.** Except as expressly noted to the contrary in the Plan, interest, fees, costs, and other charges accruing on or after the Petition Date shall not accrue or be paid on any Allowed Claims.

**7.03 Disbursements.** All distributions under the Plan to the Holders of Class 2 and Class 4 Claims shall be made by the FLSA Claims Trustee and all other distributions under the Plan shall be made by the Plan Administrator.

**7.04 Unverified SSN FLSA Claimants.** As described in the Procedures Order, the proof of claim form mailed to the Unverified SSN FLSA Claimants requires such claimants to include their complete social security number on the form. If any Unverified SSN FLSA Claimant returns a FLSA Proof of Claim on a timely basis but fails to include a complete social security

number on the claim form, such FLSA Claim shall not be an Allowed FLSA Claim and such claimant shall not receive any distributions under the Plan.

**7.05 Distributions of Cash.** Except as otherwise expressly provided for herein, any payment of Cash made pursuant to the Plan may be made at the option of the Plan Administrator or the FLSA Claims Trustee, as applicable, either by check drawn on a domestic bank or by wire transfer from a domestic bank. The employee's portion of the FLSA Claim Employment-Related Taxes will be withheld from distributions to Holders of Allowed FLSA Claims and paid to the appropriate taxing authorities.

**7.06 Delivery of Distributions.** The date of the Distribution shall be the date of mailing, and property distributed in accordance with this Section shall be deemed delivered to such entity regardless of whether such property is actually received by that entity.

**7.07 Undeliverable Distributions.** If any Holder's distribution is returned as undeliverable, no further distributions to such Holder shall be made unless and until the Plan Administrator or the FLSA Claims Trustee, as applicable, is notified within one hundred twenty (120) days of the date of the check representing such distribution of such Holder's then-current address, at which time all missed distributions shall be made to such Holder, without interest. The FLSA Claims Trustee's receipt of a forwarding order from the United States Postal Service shall be sufficient to constitute notice of a Holder's then-current address.

**7.08 Time Bar to Cash Payments.** Each distribution check to Holders of Allowed FLSA Claims shall contain a notation that failure to present the check within one hundred twenty (120) days of the date of the check will render the distribution check null and void. The FLSA Claims Trust Agreement shall contain a provision requiring the FLSA Claims Trustee to provide one written notice to all Holders of Allowed FLSA Claims who have not cashed their distribution checks approximately thirty (30) days before the distribution checks will become null and void. Any Allowed FLSA Claim for which a distribution check has not been negotiated within one hundred twenty (120) days shall be fully and finally expunged and the funds otherwise distributable on such expunged FLSA Claim shall remain in the FLSA Claims Trust and thereafter subject to payment to the Publishers and the Potential Avoidance Action Defendants as part of the FLSA Claims Trust Surplus Amount; provided, however, the portion, if any, of any such check attributable to the Non-DDA FLSA Individual Settlement Amount shall be paid to the Publishers only.

**7.09 Transactions on Business Days.** If the Effective Date, or any other date on which a transaction may occur under the Plan shall occur on a day that is not a Business Day, including but not limited to the time bar to cash payments contained in Section 7.07 of the Plan, the transactions contemplated by the Plan to occur on such day shall instead occur on the next succeeding Business Day.

## ARTICLE VIII

### MEANS FOR IMPLEMENTATION AND EXECUTION OF THE PLAN

#### **8.01 Additional Provisions Pertaining to FLSA Claims.**

(a) Denial of Wrongdoing. The Plan is the product of mediation and negotiation among the major parties to the Chapter 11 Case. The Debtor, the Trustee, the Individual Defendants, and the Publishers contend that the FLSA Claimants were properly classified as independent

contractors by DDA and that they were not jointly employed by the Publishers. Thus, they assert that the FLSA Claimants have been properly compensated for all time worked, including minimum wage and overtime, under applicable law. DDA, the Publishers, and the Individual Defendants have denied and continue to deny each of the claims and contentions alleged by the plaintiffs in the FLSA Litigation, and they deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged therein and believe that they have valid defenses to the FLSA Claims. Neither the Plan nor any document referred to or contemplated herein, nor any action taken to carry out the Plan may be construed as, or may be used as, an admission, concession or indication by or against the Debtor, the Individual Defendants, and the Publishers of any fault, wrongdoing or liability whatsoever, or that the FLSA Claimants were damaged in any way by any actions of DDA, the Publishers, or the Individual Defendants. In addition, all Defendants in both the *Krawczyk* Case and the *Walker* Case contend that the relief sought is extremely difficult to determine with any certainty for any given year, or at all, and is subject to many differing calculations and formulae that cannot be applied on a collective basis.

(b) Investigation and Compromise. The FLSA Claimants disagree with the assertions in Section 8.01(a) above. The FLSA Claimants assert that they are entitled to compensation and damages because DDA knowingly and intentionally misclassified them as independent contractors to avoid paying the minimum wage required under applicable law and/or overtime pay for hours worked in excess of forty hours a week and because DDA and the Individual Defendants acted to prevent FLSA Claimants from accurately reporting, and receiving payment for, all work time and tasks. In addition, the FLSA Claimants contend that DDA and the Publishers comprised joint employers under the FLSA that have joint liability for all amounts due to the FLSA Claimants. The Trustee has produced records regarding time worked by the FLSA Claimants and other information to enable the major parties to the Chapter 11 Case to reach the settlement embodied by the Plan. In light of the complex legal issues in the FLSA Litigation - some of which are unsettled, DDA's termination of operations and bankruptcy case, and the anticipated costs of further litigation in the FLSA Litigation, the FLSA Counsel are of the opinion that the settlement of the FLSA Litigation on the terms set forth in this Plan is fair, reasonable and adequate and is in the best interest of the FLSA Claimants in light of all known facts and circumstances.

(c) General Overview of Calculation of DDA FLSA Individual Settlement Amount. On March \_\_, 2020, the Trustee calculated the amount of the FLSA Claims Estimated Net Distributable Cash using the formula described in Section 1. \_\_\_\_\_. While some of the numbers in the calculation are fixed, others required the Trustee to make his best estimate. As of the filing of the Plan, the Trustee believes the FLSA Claims Estimated Net Distributable Cash is \$ \_\_\_\_\_. The Trustee then divided \$ \_\_\_\_\_ by the number of DDA FLSA Aggregate Compensable Workweeks, which results in a total of \$ \_\_\_\_\_ per DDA FLSA Compensable Workweek, which is the estimated DDA FLSA Workweek Settlement Amount. To personalize the information for each FLSA Claimant, the Trustee then multiplied the estimated DDA FLSA Workweek Settlement Amount (\$ \_\_\_\_\_) by the DDA FLSA Claimant Aggregate Individual Compensable Workweeks for each FLSA Claimant who had at least one or more Compensable Workweeks. The resulting amount is the estimated DDA FLSA Individual Settlement Amount. In addition, the Trustee identified those FLSA Claimants who do not have any DDA FLSA Compensable Workweeks according to the Debtor's electronic records and who therefore are eligible to receive the Minimum DDA Distribution unless they can prove that they have one or more DDA FLSA Compensable Workweeks. It is likely that the actual DDA FLSA Workweek Settlement Amount will differ from the amount estimated herein because of changes in anticipated expenses and the possibility that some funds initially included in the Non-DDA Reserve will not be claimed by Non-DDA FLSA Claimants. In that event, such funds will become available for DDA FLSA Claimants. The Trustee does not anticipate any changes will be material.

The amount of the Minimum DDA Distribution (\$40) will not change, even if the estimated expense amounts or the DDA FLSA Compensable Workweeks differ from the actual amount of DDA FLSA Compensable Workweeks;

(d) General Overview of Calculation of Non-DDA FLSA Individual Settlement Amount. Some FLSA Claimants may have also delivered Publishers' Books for Non-DDA Entities. The Publishers will fund a Non-DDA Reserve of \$765,000 on the Effective Date from which payment of all Allowed Non-DDA FLSA Claims will be made. In the event that the entire sum of \$765,000 is not claimed by Non-DDA FLSA Claimants, the unclaimed funds will become available for DDA FLSA Claimants as set forth in Section 8.01(c). In order to receive a distribution from the Non-DDA Reserve, an FLSA Claimant must certify under penalty of perjury on such claimant's FLSA Proof of Claim that he or she delivered Publishers' Books for Non-DDA Entities during the Applicable FLSA Period. A FLSA Claimant who certifies that he or she delivered Publishers' Books for Non-DDA Entities may receive either (i) the Minimum Non-DDA Distribution, or (ii) the Non-DDA FLSA Workweek Distribution. To receive the Non-DDA FLSA Workweek Distribution, an FLSA Claimant must certify the number of Non-DDA Workweeks he or she worked for Non-DDA Entities.

(e) Taxes. For purposes of this Plan and the settlements contained herein, fifty percent (50%) of each distribution made on account of an Allowed FLSA Claim shall be allocated to wages to be reported on IRS Form W-2 and from which payroll deductions will be made for the employee's portion of the FLSA Claim Employment-Related Taxes, provided, however that 100% of the Named Plaintiff Incentive Payment shall be subject to wage withholding. The remaining fifty percent (50%) of each distribution on account of an Allowed FLSA Claim shall be deemed to represent the payment of alleged liquidated damages, interest, and penalties under applicable law which shall not be subject to FLSA Claim Employment-Related Taxes and will be reported on IRS Form 1099, to the extent required by applicable law. It shall be the responsibility of the FLSA Claims Trustee or its designee, in coordination with the Trustee, as necessary, to timely and properly withhold from each distribution on account of an Allowed FLSA Claim the employee's portion of the FLSA Claim Employment-Related Taxes and to prepare and deliver the necessary tax documentation for signature by all necessary parties and, thereafter, to cause the appropriate deposits and informational and other tax return filing to occur. Each FLSA Claimant's share of the employee's portion of the FLSA Claim Employment-Related Taxes withheld and deposited with the applicable governmental authorities in accordance with this Plan shall be a part of, and paid out of, the FLSA Claims Trust.

(f) Plan Funding Commitment. The precise amount that must be contributed to fund payments to FLSA Claimants cannot be ascertained until after the FLSA Claims Bar Date has passed and the Trustee has completed an analysis of the filed FLSA Proofs of Claim. As soon as practicable after the FLSA Claims Bar Date, and in no event later than two Business Days before the Confirmation Hearing, the Trustee will notify the Potential Avoidance Action Defendants and the Publishers of the amount that must be contributed to the FLSA Claims Trust or the Plan Administrator, as the case may be, on the Effective Date as a precondition to the Effective Date sufficient to (i) make the distributions to Holders of Allowed Claims, including any FLSA Claim Employment Related Taxes, (ii) satisfy the anticipated FLSA Trust Administration Expenses and Non-DDA Reserve Administrative Expenses, (iii) satisfy the anticipated Plan Administration Expenses, and (iv) establish the Disputed FLSA Claims Reserve (the "Plan Funding Commitment") as more particularly described herein. In no event, however, will the contributions due from Publishers and the Potential Avoidance Action Defendants exceed the Maximum Funding Commitment, except for Non-DDA Reserve Administrative Expenses which shall be paid by Publishers and not count towards the Maximum Funding Commitment.

(g) FLSA Proof of Claims; Solicitation of Votes; Disputed FLSA Claims. Each FLSA Claimant will receive a written notice by mail explaining that he or she (i) may vote for or against the Plan, and (ii) must file an FLSA Proof of Claim to receive a distribution from the FLSA Claims Trust. The notice will notify the FLSA Claimant of the FLSA Claims Bar Date. The mailings will be personalized so they contain the DDA FLSA Claimant Aggregate Individual Compensable Workweeks for each FLSA Claimant and the estimated DDA FLSA Individual Settlement Amount. To receive a distribution under the Plan, an FLSA Claimant must file an FLSA Proof of Claim on or before the FLSA Claim Bar Date. Any FLSA Claimant may file an FLSA Proof of Claim seeking allowance of an FLSA Claim for an amount greater than that claimant's DDA FLSA Individual Settlement Amount and certifying that the FLSA Claimant has Non-DDA FLSA Compensable Workweeks or is entitled to the Minimum Non-DDA Distribution, subject to certain parties' rights to object set forth in Sections 8.01(i) and 8.05.

(h) Consequences of Failing to File FLSA Proof of Claim On or Before the FLSA Claim Bar Date. All FLSA Claimants who fail to file an FLSA Proof of Claim on or before the FLSA Claims Bar Date shall be (i) forever barred, estopped and enjoined from asserting any claim against the Debtor, the Trustee, the Plan Administrator, the FLSA Claims Trustee or their successors and assigns; (ii) bound by the terms of this Plan, including without limitation, the releases, exculpations, and channeling injunction described in Article XI of the Plan; and (iii) not entitled to receive any further notices or mailings in the Chapter 11 Case. Nothing in this Plan shall prevent an FLSA Claimant from asserting a claim against Non-DDA Entities in a non-bankruptcy forum, except to the extent that such Non-DDA Entity is also a Released Party or an Exculpated Party.

(i) Disputed FLSA Claims; Disputed FLSA Claims Reserve. No distributions shall be made to the Holder of a Disputed FLSA Claim unless and until such Disputed FLSA Claim has been resolved either through settlement or entry of a Final Order in respect of such Claim. A Disputed FLSA Claim that is resolved through settlement or entry of a Final Order in respect of such Claim shall thereafter be deemed an Allowed FLSA Claim and entitled to distributions as described herein. No later than two (2) Business Days before the Confirmation Hearing, the Trustee shall notify the Publishers and the Potential Avoidance Action Defendants of the Trustee's calculation of their respective shares of the Disputed FLSA Claims Reserve. The Publishers and/or the Potential Avoidance Action Defendants may object to the Trustee's calculation of the Disputed FLSA Claim Reserve and the Bankruptcy Court shall resolve any such objection at the Confirmation Hearing. Any Cash remaining in the Disputed FLSA Claims Reserve after the resolution of all Disputed FLSA Claims shall be included within of the FLSA Claims Trust Surplus Amount.

## **8.02 Plan Administrator.**

(a) Appointment of Plan Administrator. On the Effective Date, the Trustee shall be replaced by the Plan Administrator, who shall have sole and exclusive authority to administer and manage the assets and affairs of the Post-Confirmation Debtor in accordance with the provisions of the Plan. In conjunction with the foregoing, as of the Effective Date, all of the Debtor's existing officers and directors (if any) shall be deemed to have resigned and/or been terminated and all remaining corporate power and authority over and with respect to the Post-Confirmation Debtor shall reside solely and exclusively with the Plan Administrator (notwithstanding any applicable nonbankruptcy law to the contrary). To the extent necessary, the Confirmation Order shall be deemed an amendment to the Debtor's bylaws and articles of incorporation to include provisions consistent with Section 1123(a)(6) of the Bankruptcy Code.

(b) Effective Date Payments to Holders of Certain Allowed Claims; Contribution to FLSA Claim Trust. On the Effective Date, or as soon thereafter as is reasonably practicable, the Plan Administrator shall make all payments to Holders of Allowed Claims, except that the distributions to Holders of Allowed FLSA Claims and Allowed FLSA Counsel Claims shall be made by the FLSA Claims Trustee from the FLSA Claims Trust. In addition, the Plan Administrator shall make the Plan Administrator Contribution to the FLSA Claims Trust pursuant to Section 8.05(d) of the Plan.

(c) Establishment of Wind-Down Reserve. On the Effective Date, the Plan Administrator shall segregate Cash in the amount of the Wind-Down Reserve.

(d) Pre-Effective Date Professional Fee Claims. Each Professional retained with approval by order of the Bankruptcy Court or requesting compensation in the Chapter 11 Case pursuant to §§ 330 and/or 503(b) of the Bankruptcy Code, shall be required to file a final application for allowance of compensation and reimbursement of expenses in the Chapter 11 Case incurred through the Effective Date on or before the date that is the next Business Day following twenty-eight (28) days after the Effective Date. Objections to any such application shall be filed no later than seven days before the hearing to consider such applications. Any unpaid Pre-Effective Date Professional Fee Claims allowed by the Bankruptcy Court pursuant to the foregoing applications shall be paid by the Plan Administrator.

(e) Post-Effective Date Fees and Expenses of the Plan Administrator Professionals. The Plan Administrator may retain Professionals (without obtaining Bankruptcy Court approval) to assist in carrying out the Plan Administrator's duties hereunder. The Plan Administrator and the Plan Administrator Professionals shall be compensated for their time spent in performing the duties assigned hereunder at their normal and customary hourly billing rates. Fees and expenses due to the Plan Administrator and Plan Administrator Professionals shall be due in accordance with the procedures set forth herein.

(i) On or before the fifteenth date of each calendar month after the Effective Date, the Plan Administrator and the Plan Administrator Professionals shall serve via electronic mail on the Office of the United States Trustee, the Publishers, and the Shareholders a written statement of the fees and expenses incurred in the previous month. If no objection to payment of the fees and expenses is made within seven (7) days from the service of such statement, then the Plan Administrator may pay the requested fees and expenses from the Wind-Down Reserve.

(ii) Any objection to such fee statement shall be made in writing within seven (7) days after service. The objection(s) shall be served on the Plan Administrator and on any affected Plan Administrator Professional via electronic mail at such parties' normal business email address. Such an objection shall not be filed with the Bankruptcy Court.

(iii) The objector, the Plan Administrator and any affected Plan Administrator Professional shall then promptly meet and confer to resolve the objection consensually. If the objection cannot be resolved consensually, the Plan Administrator or Plan Administrator Professional against whom an objection was served hereunder shall then cause a written demand to be made on the objector to file with the Bankruptcy Court a detailed, written objection to the requested fees and expenses within fourteen (14) days of such demand. If no such objection is filed with the Bankruptcy Court on a timely basis, the Plan Administrator shall pay the requested amounts from the Wind-Down Reserve. If

such an objection is filed with the Bankruptcy Court on a timely basis, the Bankruptcy Court shall hear and determine the dispute after notice of hearing and the Plan Administrator shall pay the amount allowed by the Bankruptcy Court from the Wind-Down Reserve.

(f) Post-Effective Powers and Duties of the Plan Administrator. Upon the Effective Date, the Plan Administrator shall proceed to effectuate an orderly liquidation of the Debtor's assets in accordance with the terms of the Plan. Except as otherwise provided in the Plan, the Plan Administrator shall have the rights and powers to: (i) distribute and disburse funds as may be required under the Plan; (ii) object to Claims filed against the Debtor, the Post-Confirmation Debtor, and/or the Estate, as provided for in the Plan, including without limitation FLSA Proofs of Claim; (iii) prepare and file final federal, state and local tax returns on behalf of the Debtor; (iv) execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents on behalf of the Post-Confirmation Debtor, and take such other actions as may be necessary or appropriate to effectuate and further carry out the terms and conditions of the Plan; and (v) undertake any other measures deemed necessary and appropriate to effectuate the Post-Confirmation Debtor's liquidation in accordance with the terms of the Plan. Notwithstanding the foregoing, the Plan Administrator may, in accordance with the retention of jurisdiction provisions set forth in Article XII, request the Bankruptcy Court to enter one or more orders to facilitate the winding down of the Post-Confirmation Debtor.

(g) Dissolution of the Debtor. After the Effective Date, the Post-Confirmation Debtor shall continue to exist solely for the purposes of carrying out the provisions of the Plan and the completion and filing of all federal, state, local and final franchise and income tax returns required by any Governmental unit. After the Post-Confirmation Debtor's business operations have been wound down, and all final tax returns have been filed and all of the Debtor's assets have been administered and/or, to the extent determined appropriate, destroyed, the Post-Confirmation Debtor shall be deemed dissolved and terminated for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Post-Confirmation Debtor or payments to be made in connection therewith.

(h) Closing of the Chapter 11 Case. The Plan Administrator shall seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules as soon as reasonably practicable after the Estate is fully administered.

(i) Distribution of Plan Administration Surplus. The Plan Administrator shall receive and hold the portion of the FLSA Claims Trust Surplus Amount distributed to the Plan Administrator. To the extent necessary, the Plan Administrator may utilize such funds to pay expenses associated with the Plan Administrator's duties hereunder. After the Plan Administrator has performed all of his duties hereunder, the Plan Administrator shall distribute the Plan Administration Surplus pursuant to Section 2.01(c) of the Plan.

### **8.03 FLSA Claims Trust.**

(a) Appointment of FLSA Claims Trustee; Execution of FLSA Claims Trust Agreement. From and after the Effective Date, the person identified in the FLSA Claims Trust Agreement shall serve as the FLSA Claims Trustee on the terms and conditions set forth in the FLSA Claims Trust Agreement. Prior to or on the Effective Date, the Debtor and the FLSA Claims Trustee shall execute the FLSA Claims Trust Agreement, in substantially the same form as set forth in the Plan Supplement. Any nonmaterial modifications to the FLSA Claims Trust Agreement made with the consent of both the Trustee and FLSA Counsel prior to the Effective Date, are hereby ratified.

The FLSA Claims Trust Agreement shall contain provisions permitting the amendment or modification of such agreement as may be necessary to implement the provisions of the Plan.

(b) Creation of the FLSA Claims Trust. On the Effective Date, the FLSA Claims Trust shall be created in accordance with the FLSA Claims Trust Agreement. The purpose of the FLSA Claims Trust shall be to assume liability for all Allowed FLSA Claims and all Allowed FLSA Counsel Claims and to use the assets in the FLSA Claims Trust to (i) pay Holders of Allowed FLSA Claims and Allowed FLSA Counsel Claims, (ii) pay all costs of administering the FLSA Claims Trust and fulfilling all of the duties and responsibilities in the FLSA Claims Trust Agreement, and (iii) if applicable, to distribute the FLSA Claims Trust Surplus Amount as described herein. The FLSA Claims Trust shall be deemed the entity acquiring the Debtor's assets under the Plan within the meaning of §347(b) of the Bankruptcy Code.

(c) The Publishers' Plan Funding Commitment. On the Effective Date, the Publishers shall transfer Cash to the FLSA Claims Trust in the amount of the Publishers' Plan Funding Commitment free and clear of all Claims, Interests, encumbrances, and other interests of any Person. Such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax, pursuant to § 1146(a) of the Bankruptcy Code

(d) Plan Administrator Contribution to the FLSA Claims Trust. On the Effective Date (or as soon thereafter as reasonably practicable), the Plan Administrator shall contribute to the FLSA Claims Trust all Cash and other monetary assets of the Post-Confirmation Debtor remaining after (i) the payment of Allowed Claims (other than the Allowed FLSA Claims and Allowed FLSA Counsel Claims); and (ii) reserving and segregating therefrom the amount of the Wind-Down Reserve (such contribution shall be referred to as the "Plan Administrator Contribution"). Such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax, pursuant to § 1146(a) of the Bankruptcy Code.

(e) Transfer of Liability for FLSA Claims and Allowed FLSA Counsel Claims to the FLSA Claims Trust. All FLSA Claims and the FLSA Counsel Claims shall be permanently channeled to and paid solely from the FLSA Claims Trust as set forth in Article XI hereof.

(f) FLSA Claims Trust Expenses. The FLSA Claims Trust shall pay all FLSA Claims Trust Expenses. For the avoidance of doubt, all Non-DDA Reserve Administrative Expenses shall be paid solely out of the Publishers' Plan Funding Commitment. Neither the Debtor, the Trustee, the Plan Administrator, the Publishers, nor the Potential Avoidance Action Defendants shall have any further obligations to pay or contribute toward any expenses of administering the FLSA Claims Trust after the Effective Date.

(g) Personally Identifiable Information Contained in FLSA Claims. The provisions of the FLSA Claims Trust govern the release and confidentiality of information gained through the administration of the FLSA Claims Trust.

(h) Distribution of FLSA Claims Trust Surplus Amount. Upon the FLSA Claims Trustee's completion of his duties under the Plan and the FLSA Claims Trust Agreement, the FLSA Claims Trustee shall distribute (x) to the Publishers, 100% of the funds in the FLSA Claims Trust attributable to distributions for Non-DDA Claims that have been expunged pursuant to Sections 7.04 and 7.07 of the Plan and any unused portion, if any, of the Publishers' Plan Funding Commitment related to the payment of Non-DDA Reserve Administrative Expenses, and (y) of the remaining FLSA Claims Trust Surplus Amount (i) the Potential Avoidance Action Defendants Plan Funding Percentage of the remaining FLSA Claims Trust Surplus Amount to the Plan

Administrator and (ii) the Publishers' Plan Funding Percentage of the remaining FLSA Claims Trust Surplus Amount to the Publishers. In the case of the distribution to the Publishers under this Section, the FLSA Claims Trustee shall distribute the funds due to the Publishers to Marc A. Levinson, Esq., of Orrick, Herrington Sutcliffe LLP (or such other Person as may be designated in writing by the Publishers) who shall receive such distribution on behalf of all of the Publishers and who shall then be responsible to disburse such funds among the Publishers as directed in writing by the Publishers or, in the absence of such written directions, in accordance with a Final Order.

**8.04 Indemnification.** The Post-Confirmation Debtor shall, to the fullest extent permitted by Missouri law, indemnify and hold harmless the Plan Administrator and the FLSA Claims Trustee and their respective agents, representatives, attorneys, professionals, and employees, from and against any and all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys' fees and costs, arising out of or due to their actions or omissions with respect to the implementation or administration of the Plan, if the party acted in good faith and in a reasonable manner.

**8.05 Objections to Claims.** On or before the FLSA Claims Objection Bar Date, the Trustee, the Plan Administrator, or the Shareholders may object to any FLSA Proof of Claim, except that no objections may be filed to an FLSA Proof of Claim to the extent that such FLSA Proof of Claim seeks payment for (i) the Minimum DDA Distribution or (ii) the number of DDA FLSA Compensable Workweeks that is equal to or less than the number of DDA FLSA Compensable Workweeks reflected in DDA's records for the Holder of such FLSA Claim. Further, and notwithstanding the foregoing, the Trustee, the Plan Administrator, or the Shareholders may object to (x) any FLSA Proof of Claim submitted after the FLSA Claims Bar Date, (y) any FLSA Proof of Claim filed by a Person not appearing on the lists filed pursuant to Sections 1.68 and 1.121 hereof, and (z) any FLSA Proof of Claim filed by a Person that is not otherwise the Holder of an Allowed Claim. Shareholders may not seek payment or reimbursement from the Trustee, the Plan Administrator, the Estate or the FLSA Claims Trust of any fees or expenses the Shareholders incur in objecting to any FLSA Proofs of Claim. Notwithstanding anything to the contrary herein, no more than one objection may be filed to any particular FLSA claim.

**8.06 FLSA Litigation.** The Trustee will file a motion in each of the *Walker* Case and the *Krawczyk* Case seeking approval of a stipulation among the represented parties in those cases for the transfer of those cases to the Bankruptcy Court for resolution consistent with the terms of the Plan, namely dismissal with prejudice of both such cases on the Effective Date.

**8.07 FLSA Claims Trustee Reliance on Information.** The FLSA Claims Trustee shall not be liable for any inaccuracy in the Information provided by the Debtor and/or the Trustee. Any disputes as to the obligations of the FLSA Claims Trustee or the FLSA Claims Trust shall be exclusively vested in the Bankruptcy Court.

## ARTICLE IX

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

**9.01 Generally.** All prepetition executory contracts and unexpired leases that exist between the Debtor and any Person have previously been rejected or expired by their own terms.

## ARTICLE X

### CONDITIONS TO CONFIRMATION AND EFFECTIVE DATE

**10.01 Conditions Precedent to Effective Date of Plan.** The occurrence of the Effective Date of the Plan is subject to satisfaction of all of the following conditions precedent:

- (a) The Confirmation Order shall have been entered and is a Final Order;
- (b) The Plan Administrator shall have received the Potential Avoidance Action Defendants Settlement Contribution;
- (c) The FLSA Claims Trustee shall have received the Publishers' Plan Funding Commitment.
- (d) All authorizations, consents and regulatory approvals required by the Plan Administrator or in connection with the consummation of the Plan have been obtained and not revoked;
- (e) All other actions and all agreements, instruments or other documents necessary to implement the terms and provisions of the Plan, that are necessary for the effectuation of the Plan shall have been duly and validly executed and delivered by the parties thereto and all conditions to their effectiveness shall have been satisfied or waived; and
- (f) The Walker Case and the Krawczyk Case shall each have been dismissed with prejudice, which shall occur after the foregoing conditions have been satisfied or waived.

**10.02 Waiver of Conditions Precedent.** The conditions precedent in Section 10.01(a) of the Plan may be waived or modified, in whole or in part, only with the written approval of all of the Trustee, the Publishers, and the Shareholders, each in their respective sole discretion. The conditions precedent in Section 10.01(b), (c), and (e) may not be waived or modified, in whole or in part, under any circumstances. The conditions precedent in Section 10.01(d) and (f) may be waived or modified, in whole or in part, only with the written approval of the Trustee.

**10.03 Effect of Failure of Conditions.** In the event that the conditions specified in Section 10.01 of the Plan have not been satisfied or waived in the manner provided in Section 10.02 of the Plan on or before sixty-three (63) days after the Confirmation Date, then the Trustee shall file written notification with the Bankruptcy Court and upon such written notification to the Bankruptcy Court (a) the Confirmation Order shall be vacated, (b) no distributions under the Plan shall be made, (c) any amounts funded to the Plan Administrator and/or the FLSA Claims Trustee by any of the Potential Avoidance Action Defendants or the Publishers shall immediately be returned to the respective funder, (d) the Debtor and all Holders of Claims and Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, (e) the Potential Avoidance Action Defendants and the Publishers shall have no obligation to fund any amounts as set forth in this Plan; (f) the Potential Avoidance Action Collateral shall continue to be subject to a valid and effective security interest in favor of the Trustee on behalf of the Estate, (f) the represented parties in each of the *Walker Case* and the *Krawczyk Case* shall enter into and file stipulations and agreed proposed orders to the reinstatement and re-transfer of those cases from the Bankruptcy Court to the United States District Court for the Eastern District of Missouri and (h) all the Debtor's obligations with respect to the Claims and Interests shall remain unchanged and nothing contained herein shall

be deemed to constitute a waiver or release of any Claims by or against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any person, in any further proceedings involving the Debtor. Should one or more of the conditions specified in Section 10.01 of the Plan not occur before the expiration of the sixty-three (63) day deadline, such period may be extended by court order approving a stipulation among the Trustee, the Shareholders, the Publishers and the FLSA Counsel.

**10.04 Occurrence of Effective Date.** In the event the conditions specified in Section 10.01 of the Plan have been satisfied or waived in the manner provided in Section 10.02 of the Plan on or before the sixty-three (63) day deadline established in Section 10.03 of the Plan (or within such extended date as may be ordered pursuant to Section 10.03), then the Plan Administrator shall file written notification with the Bankruptcy Court of the occurrence of the Effective Date, but the Plan Administrator need not serve copies of such notice on any of the FLSA Claimants.

## ARTICLE XI

### EFFECTS OF CONFIRMATION

**11.01 Vesting of Assets upon the Effective Date.** Except to the extent provided otherwise herein and/or in the Confirmation Order, on the Effective Date, any and all assets of the Estate (including, without limitation, the Potential Avoidance Action Defendants Settlement Contribution) shall vest in the Debtor free and clear of all claims and interests, so that said assets can be administered by the Plan Administrator in accordance with the terms of the Plan.

**11.02 Binding Effect.** Subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any Holder of a Claim against, or Interest in, the Debtor and such Holder's respective successors and assigns, whether or not the Claim or Interest of such Holder is impaired under the Plan, whether or not such Holder has accepted the Plan, and whether or not such Holder is entitled to a distribution under the Plan.

**11.03 Term of Injunctions or Stays.** Unless otherwise provided herein and/or the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under §§ 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

**11.04 Rights of Action.** On the Effective Date, all of the Estate's rights, Claims, causes of action, avoiding powers, suits and proceedings arising under §§ 510, 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code shall be extinguished and expunged.

**11.05 Release of Certain Claims.** On the Effective Date, in consideration of the terms described herein and the settlements described herein, each Holder of a Claim described below and any Person acting on behalf of such Holder shall be deemed to release unconditionally, and is hereby deemed to forever release and discharge unconditionally:

(a) The Potential Avoidance Action Defendants, the Publishers, and the Individual Defendants, their respective officers, directors, members, owners, employees, accountants, financial advisors, investment bankers, agents, restructuring advisors and attorneys and representatives (but solely in their capacities as such), successors and assigns, from the following Claims arising at any time prior to the Claim Bar Date:

(i) The FLSA Claims, whether or not the Holder of the FLSA Claim filed or files an FLSA Proof of Claim;

(ii) The FLSA Counsel Claims; and

(iii) Acts taken or omitted to be taken in connection with the Chapter 11 Case, the formulation, dissemination, confirmation, consummation or administration of the Plan and any related documents.

(b) The Potential Avoidance Action Defendants and Richard Rackers, and their respective heirs, successors, assigns, officers, directors, members, owners, employees, accountants, financial advisors, investment bankers, agents, restructuring advisors and attorneys and representatives (but solely in their capacities as such), from the following Claims arising at any time prior to the Claims Bar Date:

(i) Avoidance Actions; and

(ii) Claims of any kind that arise out of any of the Potential Avoidance Action Defendants receipt of a distribution, payment, transfer, or compensation of any kind from DDA.

(c) The Debtor, the Trustee, and all officers, directors, members, owners, employees, accountants, financial advisors, investment bankers, agents, restructuring advisors and attorneys and representatives (but solely in their capacities as such), from the following Claims arising at any time prior to the Claims Bar Date:

(i) Publishers' Claims; and

(ii) Claims of any kind that arise out of or relate to any contracts between the Debtor and any of the Publishers.

(d) Each of these releases contained in Section 11.05 of the Plan shall be self-executing and enforceable on the Effective Date without further action by any Person.

**11.06 Release of Claims by Trustee.** On the Effective Date, in consideration of the terms described herein and the settlements described herein, the Trustee, on behalf of the Debtor and the Estate, and all agents, successors, and assigns, shall be deemed to release unconditionally, and hereby is deemed to forever release unconditionally the Potential Avoidance Defendants, Richard Rackers, and the Publishers, their respective officers, directors, members, owners, employees, accountants, financial advisors, investment bankers, agents, restructuring advisors and attorneys and representatives (but solely in their capacities as such), successors and assigns from any and all Claims of every kind and nature, whether or not known, direct or indirect, asserted in connection with, arising out of, or in any way relating to the Debtor or its business. These releases shall be self-executing and enforceable on the Effective Date without further action by any Person.

**11.07 Limitation on Releases.** Nothing in the releases provided under Article XI of the Plan shall release or relieve any Person from its obligations under the Plan.

**11.08 Exculpation.** Notwithstanding anything herein to the contrary, as of the Effective Date, none of the Exculpated Parties shall have or incur any liability for any claim, cause of action,

or other assertion of liability for any act taken or omitted to be taken in connection with, or arising out of, the Chapter 11 Case, the formulation, dissemination, confirmation, consummation or administration of the Plan, property to be distributed under the Plan or any other act or omission in connection with the Chapter 11 Case, the Plan, the Disclosure Statement or any contract, instrument, document or other agreement related thereto; *provided, however*, that the foregoing (a) shall not affect the liability of any person that otherwise would result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct or gross negligence, and (b) shall not affect the determination of any pre-Effective Date Professional Fee Claims pursuant to Section 8.02(d) of the Plan.

**11.09 Injunction or Stay. Except as otherwise expressly provided herein or in the Confirmation Order, all Persons or entities who have held, hold or may hold Claims against the Debtor are permanently enjoined, from and after the Effective Date, from (a) commencing or continuing in any manner an action or other proceeding of any kind on any such Claim (including without limitation an FLSA Claim) against the Debtor, the Plan Administrator, the FLSA Claims Trustee, or the FLSA Claims Trust, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtor, the Plan Administrator, the FLSA Claims Trustee, or the FLSA Claims Trust, (c) creating, perfecting or enforcing any encumbrance of any kind against property or assets of the Debtor, the Plan Administrator, the FLSA Claims Trust, or the FLSA Claims Trustee, (d) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due to the Debtor, the Plan Administrator, the FLSA Claims Trustee, or the FLSA Claims Trust, or against the property or interests in the property of the Debtor, the Plan Administrator, FLSA Claims Trustee, or the FLSA Claims Trust, and (e) pursuing any Claim released pursuant to Article XI of the Plan.**

**11.10 Channeling Injunction; Permanent Injunction Against Released Claims. To preserve and promote the settlements contemplated by and provided for in the Plan and to supplement, where necessary the effect of the releases and other provisions in this Article XI, pursuant to § 105 of the Bankruptcy Code, the Confirmation Order shall provide that as of the Effective Date:**

**(a) all FLSA Claims and FLSA Counsel Claims shall be permanently channeled to and paid solely from the FLSA Claims Trust.**

**(b) all persons that have held or asserted, that hold or assert, or that may in the future hold or assert any claims released under Article XI shall be permanently stayed, restrained and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering or receiving payment, satisfaction or recovery from or against the released parties with respect to such claim released under article XI, including but not limited to:**

**(i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any claims released under Article XI against any of the Released Parties, including without limitation, the Walker case and the Krawczyk case or against the property of any Released Party.**

**(ii) enforcing, attaching, collecting, or recovering, by any manner or means, any judgment award, decree, or order against any of the released parties or against the property of any Released Party with respect to any claims released under Article XI.**

(iii) creating, perfecting, or enforcing any lien of any kind against any Released Party or the property of any Released Party with respect to any claims released under Article XI;

(iv) except as otherwise specifically provided in the Plan, asserting any right of subrogation, indemnity, or contribution of any kind against any Released Party or against the property of any Released Party with respect to any claims released under Article XI; and

(v) taking any action, in any manner, in any place whatsoever, against any of the Released Parties or their property, that does not conform to or comply with the provisions of the Plan relating to a claim released under Article XI.

(c) notwithstanding anything to the contrary above, this permanent injunction against released claims shall not enjoin:

(i) the rights of persons to the treatment accorded them under the Plan, as applicable;

(ii) the rights of Persons to assert any FLSA Claim or FLSA Counsel Claim against the FLSA Claims Trust assets in accordance with Article VI of the Plan; or

(iii) the rights of Persons to assert any claim, debt, obligation, or liability for payment against other Persons that are not Released Parties, unless otherwise enjoined by a Final Order.

## ARTICLE XII

### RETENTION OF JURISDICTION

The Bankruptcy Court shall have the exclusive jurisdiction of all matters arising out of, or related to, this Chapter 11 Case and the Plan, pursuant to, and for the purposes of, §§ 105(a) and 1142 of the Bankruptcy Code, including, without limitation, to:

(a) Allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim and to determine and resolve any objections to the allowance or priority of Claims;

(b) Enter and implement such orders as may be appropriate in the event the Confirmation Order is, for any reason, stayed, revoked, modified or vacated;

(c) Issue such orders in aid of execution of the Plan, to the extent authorized by § 1142 of the Bankruptcy Code;

(d) Consider any amendments to or modifications of the Plan or cure any defect or omission, or reconcile any inconsistency, in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(e) Hear and determine any disputes or issues arising in connection with the interpretation, implementation or enforcement of the Plan, the Confirmation Order, any

transactions or payments contemplated hereby, any agreement, instrument, or other document governing or relating to any of the foregoing or any settlement approved by the Bankruptcy Court;

(f) Determine requests for payment of Claims entitled to priority under § 507(a)(1) of the Bankruptcy Code;

(g) Determine other requests for payment of Administrative Claims, Allowed Priority Tax Claims and/or other Priority Tax Claims;

(h) Hear and determine all applications for allowance of compensation and reimbursement of expenses of Professionals under §§ 330, 331 and 503(b) of the Bankruptcy Code for periods ending on or before the Effective Date;

(i) Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

(j) Determine or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications and motions involving the Debtor that may be pending in the Bankruptcy Court on or initiated after the Confirmation Date;

(k) Enforce all orders, judgments, injunctions, and rulings entered in connection with the Chapter 11 Case;

(l) Determine such other matters and such other purposes as the Confirmation Order may provide;

(m) Issue such orders as may be necessary or appropriate to implement, execute, and consummate the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

(n) Hear and determine all disputes involving the existence, scope, nature or otherwise of the discharges, releases, injunctions and exculpations granted under the Plan, the Confirmation Order, or the Bankruptcy Code;

(o) Issue injunctions and effect any other actions that may be necessary or appropriate to restrain interference by any person or entity with the consummation, implementation or enforcement of the Plan, the Confirmation Order, or any other Order of the Bankruptcy Court;

(p) Hear and resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, implementation, enforcement or interpretation of the Plan, whether by the Trustee, the Plan Administrator, the Post-Confirmation Debtor, the FLSA Claims Trustee or otherwise, or any contract, instrument, release, or other agreement or document that is executed or created pursuant to the Plan or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;

(q) Modify the Plan before or after the Effective Date pursuant to § 1127 of the Bankruptcy Code or modify the Disclosure Statement, the Confirmation Order, the Plan Supplement or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the

Disclosure Statement, the Plan Supplement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

(r) Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation, or enforcement of the Plan or the Confirmation Order;

(s) Hear and determine matters concerning state, local, and federal taxes in accordance with §§ 346, 505 and 1146 of the Bankruptcy Code (including, without limitation, any request by the Trustee or the Plan Administrator for any expedited determination of tax under § 505(b) of the Bankruptcy Code);

(t) Determine compromises and settlements of Claims against the Debtor or the Estate;

(u) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked, or vacated or distributions pursuant to the Plan are enjoined or stayed;

(v) Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Plan Supplement, the Confirmation Order, or any contract, pleading, instrument, release, or other agreement or document created in connection with the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order;

(w) Enter an order or final decree closing the Chapter 11 Case; and

(x) Hear any other matter not inconsistent with the Bankruptcy Code and applicable non-bankruptcy law.

## ARTICLE XIII

### ADDITIONAL PROVISIONS

**13.01 Effectuating Documents and Further Transactions.** On or before the Effective Date, and without the need for any further order or authority, the Trustee shall file with the Bankruptcy Court or execute, as appropriate, such agreements and other documents that are in form and substance satisfactory to him as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. All parties bound by the Plan are authorized and directed to execute, deliver, file, or record such contracts, pleadings, instruments, releases, indentures and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any securities issued pursuant to the Plan.

**13.02 Withholding and Reporting Requirements.** In connection with the Plan and all instruments issued in connection therewith and distributed thereon, any party issuing any instrument or making any distribution under the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim that is to receive a

distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental unit, including income, withholding, and other tax obligations on account of such distribution.

**13.03 Satisfaction of Claims before the Effective Date.** To the extent that the Debtor or the Trustee, for whatever reason, has satisfied a Claim in full, by payment or otherwise, before the occurrence of the Effective Date, the Plan Administrator shall not be required to provide a distribution to the Holder of such Claim pursuant to the Plan.

**13.04 Modification of Plan.** Alterations, amendments, or modifications of or to the Plan may be proposed in writing by the Trustee at any time prior to the Confirmation Date; *provided, however,* that the Plan, as altered, amended, or modified satisfies the conditions of §§ 1122 and 1123 of the Bankruptcy Code and the Trustee shall have complied with § 1125 of the Bankruptcy Code. The Plan may be altered, amended or modified at any time after the Confirmation Date and before substantial consummation, provided that the Plan, as altered, amended, or modified, satisfies the requirements of §§ 1122, 1123, and 1127 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended, or modified, satisfies § 1129 of the Bankruptcy Code and the circumstances warrant such alterations, amendments, or modifications. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder. Prior to the Effective Date, the Trustee may make appropriate technical adjustments or modifications to the Plan without further order or approval of the Bankruptcy Court, provided that such technical adjustments and modifications do not adversely affect in a material way the treatment of Holders of Claims or Interests.

**13.05 Withdrawal of Plan; Effect of Non-Confirmation.** The Trustee reserves the right to withdraw the Plan before the Confirmation Hearing. If the Confirmation Date or the Effective Date does not occur, then the Plan shall be deemed null and void. In the event of a revocation or withdrawal by the Trustee, nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Interests by or against the Debtor or any other person or to prejudice in any manner the rights of any person in any further proceedings involving the Debtor.

**13.06 Payment of Statutory Fees.** All fees payable under § 1930 of chapter 123 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid as and when due until a final decree is entered, provided, however that for purposes of calculating any statutory fees payable hereunder, neither of (a) the Plan Administrator's distributions of the Plan Administration Surplus under Section 2.01(c) of the Plan nor (b) any of the FLSA Claims Trustee's expenditures, shall be a "distribution" within the meaning of 28 U.S.C. §1930(b)(6). The Plan Administrator and the FLSA Claims Trustee each reserve their rights with regard and relating to the increased fees assessed against the Debtor on or after January 1, 2018 pursuant to the Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, § 1004, 131 Stat. 1224, 1232 (Oct. 26, 2017) (codified at 28 U.S.C. § 1930(b)(6)(B)). Should any of the statutory fees paid under Section 13.06 be refunded at any time for any reason, the amount of such refund shall be first used to satisfy any unpaid Plan Administration Expenses at the time of the receipt of such refund and the remaining balance of such refund shall be considered a Plan Administration Surplus and distributed in the same manner as described in Section 2.1(c).

**13.07 Exemption from Transfer Taxes.** Pursuant to §§ 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of property under or in connection with the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording or other similar tax.

**13.08 Exemption from Securities Laws.** To the maximum extent provided by § 1145 of the Bankruptcy Code and applicable non-bankruptcy law (and to the extent applicable), the issuance, exchange and/or redemption under the Plan of any equity rights and/or beneficial interests thereunder will be exempt from registration under the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder.

**13.09 Tax Matters.** The Plan Administrator is authorized to request an expedited determination of taxes under § 505(b) of the Bankruptcy Code for any or all returns filed for, or on behalf of, the Debtor for any and all taxable periods (or portions thereof) ending after the Petition Date through and including the Effective Date. The Plan Administrator shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority and all distributions under the Plan shall be subject to any such withholding and reporting requirements.

**13.10 Exhibits/Schedules.** All exhibits and schedules to the Plan are incorporated into and are a part of the Plan as if set forth in full herein.

**13.11 Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under §§ 1101 and 1127(b) of the Bankruptcy Code.

**13.12 Severability of Plan Provisions.** In the event that, prior to the Confirmation Date, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable in accordance with its terms.

**13.13 Voting of Claims and Interests.** Each Holder of an Allowed Claim in an impaired Class of Claims that is receiving a distribution shall be entitled to vote to accept or reject the Plan as provided in the order approving the Procedures Motion. For purposes of calculating the number of Allowed Claims in a Class that has voted to accept or reject the Plan under § 1126(c) of the Bankruptcy Code, all Allowed Claims in such Class held by one entity or its "affiliate" (as defined in the Securities Act of 1933 and the rules and regulations promulgated with respect to such Act) shall be aggregated and treated as one Allowed Claim in such Class; *provided, however*, that Claims acquired by an entity from unrelated entities shall not be aggregated for purposes of voting. In all events, each FLSA Claimant shall be counted as a separate Holder of a Claim for voting purposes.

**13.14 Nonconsensual Confirmation.** If any impaired Class does not accept such Plan by the requisite statutory majorities provided in §§ 1126(c) or 1126(d) of the Bankruptcy Code, as applicable, or if any impaired Class is deemed to have rejected the Plan, the Trustee reserves the right (a) to undertake to have the Bankruptcy Court confirm the Plan under § 1129(b) of the

Bankruptcy Code and (b) to amend the Plan in accordance with Article XI of the Plan as necessary to obtain entry of the Confirmation Order.

**13.15 Successors and Assigns.** The Plan shall be binding upon and inure to the benefit of the Debtor, the Trustee, the Holders of Claims and Interests, and their respective successors and assigns.

**13.16 Notices.** Any notice required or permitted under the Plan shall be in writing and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed to the following parties:

*If to the Plan Administrator:*

WILLIAMS-KEEPERS LLC  
2005 West Broadway, Suite 100  
Columbia, MO 65203  
Telephone: (573) 442-6171  
Facsimile: (573) 777-7800  
Attn: John P. Vaclavek

*with copies to:*

THOMPSON COBURN LLP  
One US Bank Plaza  
St. Louis, MO 63101  
Telephone: (314) 552-6000  
Facsimile: (314) 552-7000  
Attn: David A. Warfield, Esq.

**13.17 Governing Law.** Except to the extent the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, the rights and obligations arising under the Plan and any agreements, documents and instruments executed in connection with the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Missouri, without giving effect to the principles of conflicts of law of such jurisdiction.

**13.18 Rules of Interpretation and Computation of Time.** For purposes of the Plan, unless otherwise provided therein, (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural, (ii) any reference in the Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions, (iii) any reference in the Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified, or supplemented pursuant to the Plan, (iv) any reference to an entity as a Holder of a Claim or Equity Interest includes that entity's successors and assigns, (v) all references in the Plan to Sections, Articles, and schedules are references to Sections, Articles, and schedules of or to the Plan, (vi) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan, (vii) the rules of construction set forth in § 102 of the Bankruptcy Code will apply, and (viii) in computing any period of time prescribed or allowed by the Plan, Bankruptcy Rule 9006(a) will apply.

**13.19 Conflict of Terms.** In the event of a conflict between the terms of the Plan, Disclosure Statement, Confirmation Order, and the FLSA Claims Trust Agreement, the following rules shall apply to which document governs:

Document 1	Document 2	Governing Document
Plan	Disclosure Statement	Plan
Plan	FLSA Claims Trust Agreement	Plan
Plan	Confirmation Order	Confirmation Order
FLSA Claims Trust Agreement	Disclosure Statement	FLSA Claims Trust Agreement
FLSA Claims Trust Agreement	Confirmation Order	Confirmation Order

**Dated: April 1, 2020**

Respectfully submitted,

THOMPSON COBURN LLP

By: /s/ David A. Warfield

David A. Warfield, MO # 34288  
dwarfield@thompsoncoburn.com  
David D. Farrell, MO # 39969  
dfarrell@thompsoncoburn.com  
One US Bank Plaza – Suite 3200  
St. Louis, MO 63101  
Telephone: (314) 552-6000  
Fax (314) 552-7000

Counsel for John P. Vaclavek, Chapter 11  
Trustee

**Schedule 3.03  
Priority Tax Claims**

<b>Creditor</b>	<b>Proof of Claim Number</b>	<b>Allowed Claim Amount</b>	<b>Distribution</b>
City of Bowling Green PO Box 1410 Bowling Green, KY 42102-1410		\$30.00	\$30.00
City of Hopkinsville PO Box 707 Hopkinsville, KY 42441-0707		\$250.00	\$250.00
City of Owensboro/Davies PO Box 10088 Owensboro, KY 42302-9008		\$47.00	\$47.00
Kentucky State Treasurer Kentucky Department of Revenue Frankfort, KY 40620		\$313.00	\$313.00
Lexington-Fayette Urban County PO Box 14058 Lexington, KY 40512		\$100.00	\$100.00
Louisiana Department of Revenue PO Box 91011 Baton Rouge, LA 70821-9011		\$600.00	\$600.00
Mississippi Department of Revenue PO Box 23191 Jackson, MS 39255-3191		\$65.00	\$65.00
North Carolina Department of Revenue PO Box 25000 Raleigh, NC 27640-0503		\$37.00	\$37.00
Revenue Department - Gadsden City of Gadsden P.O. Box 267 Gadsden, AL 35902-0267		\$24.98	\$24.98
South Carolina Department of Revenue Columbia, SC 29214-0034		\$124.00	\$124.00

Creditor	Proof of Claim Number	Allowed Claim Amount	Distribution
State of Alabama, Department of Revenue Kelley A. Gillikin - Asst Counsel P.O. Box 320001 Montgomery, AL 36132-0001	4	\$79.00	\$79.00

**Schedule 6.01  
General Unsecured Claims**

<b>Creditor</b>	<b>Proof of Claim Number</b>	<b>Allowed Claim Amount</b>	<b>Distribution Amount</b>
El Paso National Guard Armory 11701 Montana Avenue El Paso, TX 79936		450.00	450.00
Laura Washington 1915 W. MacArthur Rd., #300 Wichita, KS 67217	22	2,026.38	2,026.38
Luttrell & Williams, P.C. 3000 Wesleyan Suite 245 Houston, TX 77027	6	725.00	725.00
Luttrell & Williams, P.C. 3000 Wesleyan Suite 245 Houston, TX 77027	7	725.00	725.00
Luttrell & Williams, P.C. 3000 Wesleyan Suite 245 Houston, TX 77027	8	725.00	725.00
Luttrell & Williams, P.C. 3000 Wesleyan Suite 245 Houston, TX 77027	9	725.00	725.00
Luttrell & Williams, P.C. 3000 Wesleyan Suite 245 Houston, TX 77027	10	725.00	725.00
Luttrell & Williams, P.C. 3000 Wesleyan Suite 245 Houston, TX 77027	11	725.00	725.00
Richard Price c/o Josephine Abshier Hesse Martone 530 Maryville Center Drive, Ste 250 St. Louis, MO 63141	20	2,026.38	2,026.38
Robert Lewis 1604 Hays Street Seguin, TX 78155-2032		10.19	10.19
Roland E. Schmidt c/o Josephine Abshier Hesse Martone 530 Maryville Center Drive, Ste 250 St. Louis, MO 63141	21	2,026.38	2,026.38

<b>Creditor</b>	<b>Proof of Claim Number</b>	<b>Allowed Claim Amount</b>	<b>Distribution Amount</b>
Ronnie Estrada 3610 Riva San Antonio, TX 78228		38.07	38.07
Sandy Sanders c/o Josephine Abshier Hesse Martone 530 Maryville Center Drive, Ste 250 St. Louis, MO 63141	19	2,026.38	2,026.38
Travelers Insurance 2420 Lakemont Avenue P.O. Box 3356 Orlando, FL 32802		138.00	138.00
Travelers Insurance 2420 Lakemont Avenue P.O. Box 3356 Orlando, FL 32802		384.00	384.00
UHY LLP 15 Sunnen Drive, Suite 108 St. Louis MO 63143-3819	5	1,065.81	1,065.81
Walter J. Kronzer, Esq. 3000 Wesleyan, Ste. 247 Houston, TX 77027		681.50	681.50

**Schedule 6.02**  
**FLSA Claims**

[Exhibit is voluminous. It will be filed separately]