

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

In re:	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
Debtors.	)	(Jointly Administered)

**DISCLOSURE STATEMENT FOR THE AMENDED JOINT  
CHAPTER 11 PLAN OF PIER 1 IMPORTS, INC. AND ITS DEBTOR AFFILIATES**

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Dated: June 24, 2020

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

**THE DEBTORS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT TO HOLDERS OF CLAIMS FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE JOINT CHAPTER 11 PLAN OF PIER 1 IMPORTS, INC. AND ITS DEBTOR AFFILIATES. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE RELIED UPON OR USED BY ANY ENTITY FOR ANY OTHER PURPOSE. BEFORE DECIDING WHETHER TO VOTE FOR OR AGAINST THE PLAN, EACH HOLDER ENTITLED TO VOTE SHOULD CAREFULLY CONSIDER ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN ARTICLE VIII HEREIN.**

**THE PLAN IS SUPPORTED BY THE DEBTORS AND CERTAIN PROPONENTS OF THE PLAN SUPPORT AGREEMENT, INCLUDING HOLDERS OF APPROXIMATELY 64% OF THE TERM LOAN CLAIMS. ALL SUCH PARTIES URGE HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED TO ACCEPT THE PLAN.**

**THE DEBTORS URGE EACH HOLDER OF A CLAIM TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX, OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN, AND THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY. FURTHERMORE, THE BANKRUPTCY COURT'S APPROVAL OF THE ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE PLAN.**

**THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, AND CERTAIN ANTICIPATED EVENTS IN THE DEBTORS' CHAPTER 11 CASES. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH ANTICIPATED EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTORS DO NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(B) AND IS NOT NECESSARILY PREPARED IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS.**

**THE PLAN AND DISCLOSURE STATEMENT HAVE NEITHER BEEN FILED WITH, NOR APPROVED OR DISAPPROVED, BY UNITED STATES SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) OR ANY STATE SECURITIES COMMISSION AND NEITHER THE SEC NOR ANY STATE SECURITIES COMMISSION HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR THE MERITS OF THE PLAN. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**IN PREPARING THIS DISCLOSURE STATEMENT, THE DEBTORS RELIED ON FINANCIAL DATA DERIVED FROM THE DEBTORS’ BOOKS AND RECORDS AND ON VARIOUS ASSUMPTIONS REGARDING THE DEBTORS’ BUSINESSES. WHILE THE DEBTORS BELIEVE THAT SUCH FINANCIAL INFORMATION FAIRLY REFLECTS THE FINANCIAL CONDITION OF THE DEBTORS AS OF THE DATE HEREOF AND THAT THE ASSUMPTIONS REGARDING FUTURE EVENTS REFLECT REASONABLE BUSINESS JUDGMENTS, NO REPRESENTATIONS OR WARRANTIES ARE MADE AS TO THE ACCURACY OF THE FINANCIAL INFORMATION CONTAINED HEREIN OR ASSUMPTIONS REGARDING THE DEBTORS’ BUSINESSES AND THEIR FUTURE RESULTS AND OPERATIONS. THE DEBTORS EXPRESSLY CAUTION READERS NOT TO PLACE UNDUE RELIANCE ON ANY FORWARD LOOKING STATEMENTS CONTAINED HEREIN.**

**THIS DISCLOSURE STATEMENT CONTAINS “FORWARD LOOKING STATEMENTS” WITHIN THE MEANING OF UNITED STATES SECURITIES LAWS. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD LOOKING TERMINOLOGY SUCH AS “MAY,” “EXPECT,” “ANTICIPATE,” “ESTIMATE,” OR “CONTINUE,” OR THE NEGATIVE THEREOF, OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. YOU ARE CAUTIONED THAT ALL FORWARD LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE REFERRED TO IN SUCH FORWARD LOOKING STATEMENTS.**

**THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION, OR WAIVER. THE DEBTORS MAY SEEK TO INVESTIGATE, FILE, AND PROSECUTE CLAIMS AND MAY OBJECT TO CLAIMS AFTER THE CONFIRMATION OR EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THIS DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS.**

**THE DEBTORS ARE MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTORS MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTORS HAVE NO AFFIRMATIVE**

**DUTY TO DO SO, AND EXPRESSLY DISCLAIM ANY DUTY TO PUBLICLY UPDATE ANY FORWARD LOOKING STATEMENTS, WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE. HOLDERS OF CLAIMS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THIS DISCLOSURE STATEMENT WAS FILED. INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION, MODIFICATION, OR AMENDMENT. THE DEBTORS RESERVE THE RIGHT TO FILE AN AMENDED OR MODIFIED PLAN AND RELATED DISCLOSURE STATEMENT FROM TIME TO TIME, SUBJECT TO THE TERMS OF THE PLAN AND CONSISTENT WITH THE PLAN SUPPORT AGREEMENT.**

**CONFIRMATION AND CONSUMMATION OF THE PLAN ARE SUBJECT TO CERTAIN MATERIAL CONDITIONS PRECEDENT DESCRIBED IN ARTICLE XI OF THE PLAN. THERE IS NO ASSURANCE THAT THE PLAN WILL BE CONFIRMED OR, IF CONFIRMED, THAT SUCH MATERIAL CONDITIONS PRECEDENT WILL BE SATISFIED OR WAIVED. YOU ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, INCLUDING BUT NOT LIMITED TO THE PLAN AND ARTICLE VIII OF THIS DISCLOSURE STATEMENT ENTITLED "RISK FACTORS," BEFORE SUBMITTING YOUR BALLOT TO VOTE TO ACCEPT OR REJECT THE PLAN.**

**THE DEBTORS HAVE NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTORS HAVE NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.**

**IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AND INTERESTS (INCLUDING THOSE HOLDERS OF CLAIMS AND INTERESTS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN, OR WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND THE RESTRUCTURING TRANSACTION CONTEMPLATED THEREBY.**

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## **EXHIBITS**

EXHIBIT A Plan

EXHIBIT B Plan Support Agreement

EXHIBIT C Disclosure Statement Order



## I. INTRODUCTION

Pier 1 Imports, Inc. (“Pier 1”) and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors” or the “Company”), submit this disclosure statement (this “Disclosure Statement”) pursuant to section 1125 of the Bankruptcy Code to Holders of Claims against and Interests in the Debtors in connection with the solicitation of acceptances with respect to the Amended Joint Chapter 11 Plan of Pier 1 Imports, Inc. and Its Debtor Affiliates (as amended, supplemented, or modified from time to time, the “Plan”), dated June 9, 2020.<sup>2</sup> A copy of the Plan is attached hereto as **Exhibit A** and incorporated herein by reference. The Plan constitutes a separate chapter 11 plan for Pier 1 and each of its affiliated Debtors.

THE DEBTORS AND THE PARTIES TO THE PLAN SUPPORT AGREEMENT (COLLECTIVELY, THE “PROPONENTS”) BELIEVE THAT THE COMPROMISE CONTEMPLATED UNDER THE PLAN IS FAIR AND EQUITABLE, MAXIMIZES THE VALUE OF THE DEBTORS’ ESTATES, AND PROVIDES THE BEST RECOVERY TO CLAIM HOLDERS. AT THIS TIME, THE DEBTORS AND THE OTHER PROPONENTS BELIEVE THIS IS THE BEST AVAILABLE ALTERNATIVE FOR COMPLETING THE CHAPTER 11 CASES. THE DEBTORS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

## II. PRELIMINARY STATEMENT

Pier 1 was one of the nation’s leading omni-channel retailers specializing in unique home décor, furniture, and accessories. Founded in 1962, the Company rapidly expanded its geographic footprint over the next four decades from a single store in San Mateo, California to over 1,000 stores across the United States, Puerto Rico, and Canada. Pier 1 is headquartered in Fort Worth, Texas, employed approximately 17,000 associates, and operated regional distribution centers in Maryland, Ohio, Texas, California, Georgia, and Washington. The Company’s products were available in its 858 stores in the U.S., 65 stores in Canada, online at [www.pier1.com](http://www.pier1.com), and Grupo Sanborns, S.A.B. de C.V. (“Grupo Sanborns”) subsidiaries Sears Operadora de Mexico, Corporacion de Tinedas Internacionales, S.A. de C.V., S.A.P.I. de C.V., and online at Claroshop.com.

With the support of 63.8% of its prepetition Term Loan Lenders, Pier 1 commenced these chapter 11 cases with an agreed Plan and operational process designed to maximize the value of the enterprise for the benefit of *all* stakeholders and continue the operational redo that is already underway. As contemplated in the Plan Support Agreement attached hereto as **Exhibit B** and related bidding procedures (the “Bidding Procedures”) approved by the Bankruptcy Court on February 18, 2020 [Docket No. 102] (the “Bidding Procedures Order”), the Company continued a broad marketing effort to seek all manner of bids for its assets. The “all weather” Plan originally contemplated by the Plan Support Agreement provided for either the effectuation of a sale or the

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<sup>2</sup> Capitalized terms used but not otherwise defined in this Disclosure Statement will have the meaning ascribed to such terms in the Plan. **The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between this Disclosure Statement and the Plan, the Plan will govern.**

equitization of term loan indebtedness on a stand-alone basis. The Debtors secured \$256 million in debtor in possession financing (“DIP Financing”) to facilitate this process.

As the Company commenced negotiations with potential bidders and continued the store closing process, coronavirus (“COVID-19”) entered the world’s stage and quickly upended day-to-day life in the United States and abroad. State and local governments imposed “shelter-in-place” orders and mandated closure of non-essential retail operations, creating unprecedented challenges for the retail industry. Despite these challenges, the Company continued its efforts to reach a value-maximizing transaction and, following the bid deadline on March 23, 2020, the Company had received fee-based liquidation bids and was in extensive conversations with potential going-concern bidders, including the Required Consenting Term Lenders. Shortly after the bid deadline, the Required Consenting Term Lenders initially elected to pursue an equitization and the Company filed a notice cancelling the auction [Docket No. 428].

Despite the election by the Required Consenting Term Lenders, the Debtors, the Required Consenting Term Lenders, DIP Lenders, and the Creditors’ Committee worked constructively to determine how to structure the most value-maximizing transaction in light of the COVID-19 pandemic, increasing government shut-downs, and overall unstable market conditions. The Debtors took actions to preserve liquidity, including furloughing employees, closing stores, decreasing salaries, and reaching out to every landlord to negotiate a consensual rent deferral. Additionally, the Debtors filed a motion on March 31, 2020, seeking, among other relief, to limit payments to only those necessary expenses contemplated by their interim operation budget and to automatically adjourn any motions, applications, and demands for payment to an omnibus hearing scheduled no less than 45 days after the end of the limited operation period (*i.e.*, when the Debtors file a notice of intent to reopen operations or such later date as the Bankruptcy Court may determine) [Docket No. 438]. The Bankruptcy Court entered an order approving that motion on April 6, 2020 [Docket No. 493] and entered a supplemental order extending the requested relief through May [Docket No. 629] (collectively, the “Limited Operation Orders”).

The Required Consenting Term Lenders, DIP Lenders, and the Creditors’ Committee utilized the post-adjournment period to finalize a transaction and ultimately reached an agreement-in-principle to conduct a full-scale, orderly wind-down of the Debtors’ operations in accordance with the Wind-Down Budget. Accordingly, on May 19, 2020, the Debtors filed an omnibus motion seeking an order authorizing the Debtors to wind down operations and conduct closings of any remaining stores [Docket No. 671] (the “Wind-Down Motion”). The Wind-Down Motion also contemplated approval of the Wind-Down Budget and wind-down plan term sheet (the “Term Sheet”) [Docket No. 688], which the Bankruptcy Court approved on June 2, 2020 [Docket No. 744].

Pursuant to the Term Sheet and as reflected in the Plan, Holders of Claims and Interests will receive the following treatment in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, such holders’ Claims and Interests:

- Holders of Other Secured Claims will receive: (a) payment in full in Cash; (b) delivery of the collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code; (c) Reinstatement of such Claim; or (d) other treatment rendering such Claim Unimpaired.

- Holders of Other Priority Claims and Administrative Claim will receive the Distributable Proceeds available for Holders of Allowed Administrative Claims (other than Professional Fee Claims and DIP Claims) and Allowed Priority Claims pursuant to the Waterfall Recovery, which amount shall be used by the Plan Administrator to fund the Administrative / Priority Claims Reserve. All known Holders of Other Priority Claims and Administrative Claims have been sent an Administrative / Priority Claim Consent Form pursuant to which the Debtors are seeking the agreement of such party to the treatment afforded to such Holder under the Plan. The treatment afforded to Holders of Other Priority Claims and Administrative Claims under the Plan is only available if each such Holder agrees to such treatment. **The failure to return the Administrative / Priority Claim Consent Form or to object to the Plan shall be deemed to be such Holder's consent to accept less than full payment of its Claim as required by section 1129(a)(9) and as contemplated under sections 1124 and 1123(a)(4) of the Bankruptcy Code, and in full and final satisfaction, compromise, settlement, and release of and in exchange for each Allowed Other Priority Claim and Allowed Administrative Claim (other than Professional Fee Claims and DIP Claims), as applicable, each Holder of an Allowed Other Priority Claim or Administrative Claims (other than Professional Fee Claims and DIP Claims), as applicable, shall receive its Pro Rata share of the Administrative / Priority Claims Recovery on the Effective Date, or as soon as reasonably practicable thereafter.** If such Holder does not object to the treatment under the Plan, such Holder shall be deemed a Released Party for all purposes under the Plan.
- Priority Tax Claims (a reserve for which amounts will be funded into a Priority Tax Claims Reserve) will be paid in full in Cash on the Effective Date; *provided* that any amounts in the Priority Tax Claims Reserve after payment of all Allowed Priority Tax Claims shall otherwise promptly be transferred to the General Account to be distributed in accordance with the Plan without any further action or order of the Bankruptcy Court.
- to the extent not already indefeasibly paid in full in cash or “rolled up” or converted into DIP Obligations pursuant to the DIP Order before the Effective Date, each Holder of an Allowed ABL Claim shall (a) receive Distributable Proceeds of ABL Priority Collateral up to the full amount of its Allowed ABL Claim and (b) all issued and undrawn letters of credit shall be replaced or cash collateralized in the amounts specified under the ABL Credit Agreement.
- Each holder of a Term Loan Claim will receive its *Pro Rata* share of the Term Loan Recovery Pool.
- Holders of General Unsecured Claims will receive their (a) Pro Rata share of the Distributable Proceeds pursuant to the Modified Waterfall Recovery, only if Distributable Proceeds are available after all senior Claims (including, for the avoidance of doubt, the Term Loan Claims) are paid in full; and (b) a complete waiver and release of any and all claims, Causes of Action, and other rights against the Holders of Allowed Class 5 Claims based on claims pursuant to chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes and common law including fraudulent transfer laws from the Debtors, the Wind-Down Debtors, and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities

who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, subject to and in accordance with Article X of the Plan.

The Plan provides the best available alternative for the Debtors' estates and creditor recoveries. If the Debtors' businesses were liquidated in a chapter 7 process, store closing processes likely would halt, forcing locations to go dark and resulting in termination of employees until a trustee could turn the lights back on. Even then, employees with critical institutional knowledge will have left, leaving a large and complex liquidation to be managed by new hires unfamiliar with the Debtors' businesses. The needless loss of value to creditors and the Debtors' estates would be enormous. Creditors would receive lower recoveries in chapter 7 because the Debtors' estates necessarily would bear additional costs associated with transitioning to chapter 7, retaining a chapter 7 trustee, counsel, and advisors, and administering a chapter 7 process.

The Debtors believe that the Plan maximizes stakeholder recoveries in these chapter 11 cases. The Debtors seek the Bankruptcy Court's approval of the Plan and urge all Holders of Claims entitled to vote to accept the Plan by returning their Ballots so that the notice and claims agent, Epiq Corporate Restructuring, LLC (the "Notice and Claims Agent") actually receives such Ballots by the Voting Deadline, *i.e.*, July 24, 2020, at 4:00 p.m. (prevailing Eastern Time). Assuming the Plan receives the requisite acceptances, the Debtors will seek the Bankruptcy Court's approval of the Plan at the Confirmation Hearing.

### **III. QUESTIONS AND ANSWERS REGARDING THIS DISCLOSURE STATEMENT AND PLAN**

#### **A. What is chapter 11?**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. In addition to permitting debtor rehabilitation, chapter 11 promotes equality of treatment for creditors and similarly situated equity interest holders, subject to the priority of distributions prescribed by the Bankruptcy Code.

The commencement of a chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the date the chapter 11 case is commenced. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

Consummating a plan of reorganization is the principal objective of a chapter 11 case. A bankruptcy court's confirmation of a plan binds the debtor, any person acquiring property under the plan, any creditor or equity interest holder of the debtor, and any other entity as may be ordered by the bankruptcy court. Subject to certain limited exceptions, the order issued by a bankruptcy court confirming a plan provides for the treatment of the Debtors' liabilities in accordance with the terms of the confirmed plan.

#### **B. Why are the Debtors sending me this Disclosure Statement?**

The Debtors are seeking to obtain Bankruptcy Court approval of the Plan. Before soliciting acceptances of the Plan, section 1125 of the Bankruptcy Code requires the Debtors to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable

a hypothetical reasonable investor to make an informed judgment regarding acceptance of the Plan. This Disclosure Statement is being submitted in accordance with these requirements.

**C. Am I entitled to vote on the Plan?**

Your ability to vote on, and your distribution under, the Plan, if any, depends on what type of Claim or Interest you hold. Each category of Holders of Claims or Interests, as set forth in Article III of the Plan pursuant to section 1122(a) of the Bankruptcy Code, is referred to as a “Class.” Each Class’s respective voting status is set forth below.

<b>Class</b>	<b>Claim or Interest</b>	<b>Status</b>	<b>Voting Rights</b>
1	Other Priority Claims	Unimpaired	Presumed to Accept
2	Other Secured Claims	Unimpaired	Presumed to Accept
3	ABL Claims	Unimpaired	Presumed to Accept
4	Term Loan Claims	Impaired	Entitled to Vote
5	General Unsecured Claims	Impaired	Entitled to Vote
6	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote
7	Intercompany Interests	Impaired	Deemed to Reject
8	Interests in Pier 1	Impaired	Deemed to Reject
9	Section 510(b) Claims	Impaired	Deemed to Reject

**D. What will I receive from the Debtors if the Plan is consummated?**

The following chart provides a summary of the anticipated recovery to Holders of Claims and Interests under the Plan. Any estimates of Claims and Interests in this Disclosure Statement may vary from the final amounts Allowed by the Bankruptcy Court. Your ability to receive distributions under the Plan depends upon the ability of the Debtors to obtain Confirmation and meet the conditions necessary to consummate the Plan.

**THE PROJECTED RECOVERIES SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND THEREFORE ARE SUBJECT TO CHANGE. FOR A COMPLETE DESCRIPTION OF THE DEBTORS’ CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS, REFERENCE SHOULD BE MADE TO THE ENTIRE PLAN.**

SUMMARY OF EXPECTED RECOVERIES				
Class	Claim/Equity Interest	Treatment of Claim/Equity Interest	Projected Amount of Claims <sup>3</sup>	Projected Recovery Under the Plan
1	Other Priority Claims	All known Holders of Other Priority Claims have been sent an Administrative / Priority Claim Consent Form pursuant to which the Debtors are seeking the agreement of such party to the treatment afforded to such Holder under the Plan. The treatment afforded to Holders of Other Priority Claims under the Plan is only available if each such Holder agrees to such treatment. <b>The failure to return the Administrative / Priority Claim Consent Form or to object to the Plan shall be deemed to be such Holder's consent to accept less than full payment of its Claim as required by section 1129(a)(9) and as contemplated under sections 1124 and 1123(a)(4) of the Bankruptcy Code, and in full and final satisfaction, compromise, settlement, and release of and in exchange for each Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall receive its Pro Rata share of the Administrative / Priority Claims Recovery on the Effective Date, or as soon as reasonably practicable thereafter.</b> If such Holder does not object to the Plan, such Holder shall be deemed a Released Party for all purposes under the Plan.	\$532,011	10% - 40%
2	Other Secured Claims	In full and final satisfaction of each Allowed Other Secured Claim, except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, each Holder thereof will receive: (a) payment in full in Cash; (b) delivery of the collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code; (c) Reinstatement of such Claim; or (d) other treatment rendering such Claim Unimpaired.	\$25,363,967	100%
3	ABL Claims	In full and final satisfaction, compromise, settlement, release, and discharge of its Claim (unless the applicable Holder agrees to a less favorable treatment), to the extent not already indefeasibly paid in full in cash or "rolled up" or converted into DIP Facility Obligations pursuant to the DIP Order before the Effective Date, each Holder of an Allowed ABL Claim shall receive (a) Distributable Proceeds of ABL Priority Collateral up to the full amount of its Allowed ABL Claim and (b) all issued and undrawn letters of credit shall be replaced or cash collateralized in the amounts specified under the ABL Credit Agreement.	\$172,252,036 <sup>4</sup>	100%

<sup>3</sup> The estimated total of Allowed Claims for Classes 3 and 4 includes the principal amount outstanding plus estimated accrued and unpaid interest as of February 24, 2020.

<sup>4</sup> Amount is inclusive of approximately \$37.5 million in Letters of Credit Outstanding.

SUMMARY OF EXPECTED RECOVERIES				
Class	Claim/Equity Interest	Treatment of Claim/Equity Interest	Projected Amount of Claims <sup>3</sup>	Projected Recovery Under the Plan
4	Term Loan Claims	In full and final satisfaction, compromise, settlement, release, and discharge of its Claim (unless the applicable Holder agrees to a less favorable treatment), each Holder of an Allowed Term Loan Claim shall receive its <i>Pro Rata</i> share of the Term Loan Recovery Pool.	\$190,600,721	20% - 40%
5	General Unsecured Claims	In full and final satisfaction, compromise, settlement, release, and discharge of its Claim (unless the applicable Holder agrees to a less favorable treatment), each Holder of an Allowed General Unsecured Claim shall receive: (a) its <i>Pro Rata</i> share of the Distributable Proceeds pursuant to the Waterfall Recovery, <i>only if</i> Distributable Proceeds are available after all senior Claims (including, for the avoidance of doubt, the Term Loan Claims and Administrative Claims) are paid in full; and (b) a complete waiver and release of any and all claims, Causes of Action, and other rights against the Holders of Allowed Class 5 Claims based on claims pursuant to chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes and common law including fraudulent transfer laws from the Debtors, the Wind-Down Debtors, their Estates, and the Plan Administrator in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, subject to and in accordance with Article X of the Plan.	\$246,359,699	0%
6	Intercompany Claims	In full and final satisfaction of each Allowed Intercompany Claim, each Allowed Intercompany Claim, unless otherwise provided for under the Plan, will either be Reinstated, distributed, contributed, set off, settled, cancelled and released or otherwise addressed at the option of the Debtors in consultation with the Required Consenting Term Lenders; <i>provided</i> , that no distributions shall be made on account of any such Intercompany Claims.	N/A	N/A
7	Intercompany Interests	Intercompany Interests shall be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Intercompany Interests will not receive any distribution on account of such Intercompany Interests.	N/A	N/A
8	Interests in Pier 1	In full and final satisfaction of each Allowed Interest in Pier 1, each Allowed Interest in Pier 1 shall be canceled, released, and extinguished, and will be of no further force or effect and no Holder of Interests in Pier 1 shall be entitled to any recovery or distribution under the Plan on account of such Interests.	N/A	N/A

SUMMARY OF EXPECTED RECOVERIES				
Class	Claim/Equity Interest	Treatment of Claim/Equity Interest	Projected Amount of Claims <sup>3</sup>	Projected Recovery Under the Plan
9	Section 510(b) Claims	Section 510(b) Claims will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and each Holder of a Section 510(b) Claim will not receive any distribution on account of such Section 510(b) Claim. The Debtors are not aware of any valid Section 510(b) Claims and believe that no such Section 510(b) Claims exist.	N/A	0%

**E. What happens to my recovery if the Plan is not confirmed or does not go effective?**

In the event that the Plan is not confirmed or does not go effective, there is no assurance that the Debtors will be able to implement the Restructuring Transactions. It is possible that any alternative may provide Holders of Claims or Interests with less than they would have received pursuant to the Plan. For a more detailed description of the consequences of an extended chapter 11 case, or of a liquidation scenario, *see* Article X of this Disclosure Statement, entitled “*Confirmation of the Plan.*”

The Debtors believe that liquidation under chapter 7 of the Bankruptcy Code—a very possible event if the Plan is not confirmed—would result in significantly reduced creditor recoveries as compared to the Plan. Smaller recoveries would result because of, among other things, significant additional administrative expenses associated with the appointment of a chapter 7 trustee and administration of a chapter 7 liquidation, including additional claims that may be entitled to administrative priority.

**F. If the Plan provides that I get a distribution, do I get it upon Confirmation or when the Plan goes effective, and what is meant by “Confirmation,” “Effective Date,” and “Consummation?”**

“Confirmation” of the Plan refers to approval of the Plan by the Bankruptcy Court. Confirmation of the Plan does not guarantee that you will receive the distribution indicated under the Plan. After Confirmation of the Plan by the Bankruptcy Court, there are conditions that must be satisfied or waived so that the Plan can “go effective.” Distributions to Holders of Allowed Claims can only be made on the date the Plan becomes effective—the “Effective Date”—or as soon as reasonably practicable thereafter, as specified in the Plan. *See* Article IV.H of this Disclosure Statement, entitled “*Conditions Precedent to the Effective Date,*” for a discussion of the conditions precedent to consummation of the Plan.

“Consummation” refers to “substantial consummation” of the Plan, as defined in section 1101(2) of the Bankruptcy Code, and means: (1) the transfer of all or substantially all of the property proposed by the Plan to be transferred; (2) assumption by the Debtors or by the successors to the Debtors under the Plan of the business or of the management of all or substantially all of the property dealt with by the Plan; and (3) commencement of distributions under the Plan. Note that



Holders of certain types of Claims, such as General Unsecured Claims, may not receive any distributions until the Debtors or Wind-Down Debtors have reconciled all such Claims, which could take several months or longer following the Effective Date.

**G. What will I receive from the Debtors if I hold an Allowed Administrative Claim, Priority Tax Claim, Professional Fee Claim, or a DIP Claim?**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III of the Plan.

1. Administrative Claims and Priority Tax Claims

Except as otherwise provided in Article II.A of the Plan and except with respect to Administrative Claims that are Professional Fee Claims, DIP Claims, or subject to 11 U.S.C. § 503(b)(1)(D), requests for payment of Allowed Administrative Claims must be made in compliance with the Administrative Claims Bar Date Order or by the Administrative Claims Bar Date. **Holders of Administrative Claims that are required to, but do not timely request payment on account of Administrative Claims by the Administrative Claims Bar Date or as set forth in the Administrative Claims Bar Date Order shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Wind-Down Debtors or their property, and such Administrative Claims shall be deemed satisfied, settled, and released as of the Effective Date.** Objections to such requests, if any, must be Filed in compliance with the Administrative Claims Bar Date Order.

Except with respect to Administrative Claims that are Professional Fee Claims or DIP Claims, and except to the extent that an Administrative Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Claim and the applicable Debtor(s) agree to less favorable treatment, each Holder of an Allowed Administrative Claim shall be paid its Pro Rata share of the Distributable Proceeds, pursuant to the Waterfall Recovery, of the unpaid portion of its Allowed Administrative Claim on the latest of: (a) the Effective Date if such Administrative Claim is Allowed as of the Effective Date; (b) the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter; (c) the date such Allowed Administrative Claim becomes due and payable, or as soon thereafter as is reasonably practicable; and (d) as soon as reasonably practicable after the Wind-Down Debtors complete reconciling timely filed Administrative Claims and liquidating the Wind-Down Debtors' assets such that an appropriate final Pro Rata distribution amount can be determined (or an interim amount can be determined and distributed to then Allowed Holders of Administrative Claims); *provided* that with respect to a Holder of a Priority Tax Claim, such Priority Tax Claim shall be treated in accordance with section 1129(a)(9)(C) of the Bankruptcy Code as soon as reasonably practicable following the Effective Date; *provided further* that Allowed Administrative Claims that arise in the ordinary course of the Wind-Down Debtors' businesses that are required for the Wind Down shall be paid in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements and/or arrangements governing, instruments evidencing, or other documents relating to such transactions (and no requests for payment of such Administrative Claims must be Filed or served). Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim Allowed by Final Order.

All known Holders of Administrative Claims (other than Holders of Professional Fee Claims or DIP Claims) have been sent an Administrative / Priority Claim Consent Form pursuant to which the Debtors are seeking the agreement of such Holder to the treatment afforded to such Holder under the Plan. The failure to return the Administrative / Priority Claim Consent Form or the failure to object to the treatment under the Plan by a Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims or DIP Claims) shall be deemed to be such Holder's consent to receive treatment for such Claim that is different from that set forth in section 1129(a)(9) of the Bankruptcy Code. If such Holder of an Administrative Claim does not object to the treatment under the Plan, such Holder shall be deemed a Released Party for all purposes under the Plan.

With respect to any Holder of an Administrative Claim (including a claim under 503(b)(9) of the Bankruptcy Code) that (i) does not object to the Plan on account of the treatment contemplated hereby or (ii) does not validly return the Administrative / Priority Claim Consent Form indicating they do not agree with the treatment contemplated under the Plan, as of the Effective Date of the Plan, the Debtors, the Wind-Down Debtors, the Plan Administrator, and any successor-in-interest will waive and release (to the extent not already waived and released) any and all claims, Causes of Action, and other rights against the any such Holder on account of any and all estate causes of action pursuant to chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes and common law including fraudulent transfer laws.

Any amounts remaining in the Administrative / Priority Claims Reserve after payment of all Allowed Administrative Claims and all Allowed Priority Claims shall promptly be transferred to the General Account and shall be distributed according to the priority set forth in Article VIII.F of the Plan without any further action or order of the Bankruptcy Court.

The treatment of Administrative Claims (other than Professional Fee Claims and DIP Claims) under the Plan is consistent with applicable law and similar approaches have been adopted by other debtors facing administrative insolvency and have been approved by bankruptcy courts under such circumstances. *See e.g., In re Barneys New York, Inc.*, Case No. 19-36300 (CGM) (Bankr. S.D.N.Y. Dec. 19, 2019) (approving a disclosure statement that provided in relevant part "The treatment afforded to Holders of Administrative Claims under the Plan is only available if each such Holder agrees to such treatment. The failure to return the Administrative / Priority Claim Consent Form or to object to confirmation of the Plan . . . shall be deemed to be such Holder's consent and agreement to receive treatment for such Claim that is different from that set forth in 11 U.S.C. § 1129(a)(9)"); *In re MSR Hotels & Resorts, Inc.*, Case No. 13-11512 (SHL) (Bankr. S.D.N.Y. Dec. 20, 2013) (approving a disclosure statement that provided in relevant part, "General Administrative Claims, Other Priority Claims, DIP Claims, and Priority Tax Claims are impaired under the Plan. Failure to object to the Plan will be deemed consent to such treatment under the Plan"); *In re Teligent*, 282 B.R. 765 (Bankr. S.D.N.Y. 2002) (confirming a plan where administrative and priority claims would be paid through a claim fund and provided notice to administrative creditors via a consent form); *In re Trans World Airlines, Inc. III*, Case No. 01-00056 (PJW) (D. Del. Feb. 15, 2002) (confirming a plan that provided that any administrative expense convenience claims (as defined in the plan) were entitled to 50 percent of their allowed claim and any such creditors that failed to object would be deemed to accept such treatment). The rights of these administrative claimants to object to this treatment have been fully preserved.

Based on current best available projections, the Debtors anticipate that recovery on account of Administrative Claim and Priority Claims will be approximately 10% to 40%. This range could change materially based on the actual realized value of the Debtors' assets and required expenses (which could each change materially in either direction).

## 2. Professional Compensation

### (a) Final Fee Applications and Payment of Professional Fee Claims

All final requests for payment of Professional Fee Claims incurred during the period from the Petition Date through the Confirmation Date shall be Filed no later than 45 days after the Effective Date. All such final requests will be subject to approval by the Bankruptcy Court after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior orders of the Bankruptcy Court, including the Interim Compensation Order, and once approved by the Bankruptcy Court, shall be promptly paid from the Professional Fee Escrow Account up to the full Allowed amount. Notwithstanding anything to the contrary in the Plan, to the extent that funds held in the Professional Fee Escrow Account are insufficient to satisfy the amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency; *provided* that in no case should the total amount of Professional Fee Claims exceed the amounts set forth in the Wind-Down Budget.

### (b) Professional Fee Escrow Account

On the Effective Date, the Wind-Down Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Reserve Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals. Such funds shall not be considered property of the Estates or the Plan Administrator. The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Wind-Down Debtors as soon as reasonably practicable after such Professional Fee Claims are Allowed. When all Allowed amounts owing to the Professionals have been paid in full, any amount remaining in the Professional Fee Escrow Account shall promptly be paid to the Wind-Down Debtors without any further action or order of the Bankruptcy Court.

### (c) Professional Fee Reserve Amount

Professionals shall reasonably estimate their unpaid Professional Fee Claims, and shall deliver such estimate to the Debtors no later than five days before the Effective Date; *provided*, that such estimate shall not be deemed to limit the amount of the fees and expenses that are the subject of the Professional's final request for payment of Professional Fee Claims. If a Professional does not provide an estimate, the Debtors or Wind-Down Debtors may estimate the unpaid and unbilled fees and expenses of such Professional.

### (d) Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented

legal, professional, or other fees and expenses incurred by the Professionals, subject to the Wind-Down Budget. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtors or the Plan Administrator, as applicable, may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

### 3. DIP Claims

As of the Effective Date, the DIP Claims shall be Allowed and deemed to be Allowed Claims in the full amount outstanding under the DIP Credit Agreement and the other DIP Documents, including principal, interest, fees, prepayment premiums and expenses and other amounts constituting obligations under the DIP Credit Agreement. Except to the extent that a Holder of an Allowed DIP Claim agrees, in its sole and absolute discretion, to a less favorable treatment, in full satisfaction of each Allowed DIP Claim, on the Effective Date, each Holder of an Allowed DIP Claim will either: (a) be Paid in Full on the Effective Date or (b) receive such other treatment as agreed to by such Holder, in its sole and absolute discretion, and the Debtors and Wind-Down Debtors, as applicable. As used in this paragraph, "Paid in Full" shall mean the indefeasible repayment in full in Cash of all obligations (including principal, interest, fees, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted) under the DIP Senior Credit Facility, the cash collateralization of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancelation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the terms of the DIP Senior Credit Facility. The DIP Senior Credit Facility shall not be deemed Paid in Full until such time as (i) the commitments to lend thereunder have been terminated, and (ii) the DIP Agents have received (x) a countersigned payoff letter in form and substance satisfactory to such Agent and (y) releases in form and substance satisfactory to such DIP Agent, each in its sole discretion.

Subject to the Allowed DIP Claims being Paid in Full in accordance with the terms of the Plan, or other such treatment as contemplated by Article II.C of the Plan, on the Effective Date all Liens and security interests granted to secure such obligations (other than those granted in connection with the payoff arrangements and cash collateralization of such obligations) shall be automatically terminated and of no further force and effect without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

### 4. Statutory Fees

All fees due and payable pursuant to section 1930 of Title 28 of the United States Code before the Effective Date shall be paid by the Debtors. On and after the Effective Date, the Wind-Down Debtors shall pay any and all such fees when due and payable, and shall File with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. Each Wind-Down Debtor shall remain obligated to pay quarterly fees to the U.S. Trustee until the earliest of the applicable Debtor's Chapter 11 Case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**H. Are any regulatory approvals required to consummate the Plan?**

There are no known regulatory approvals that are required to consummate the Plan. However, to the extent such any such regulatory approvals or other authorizations, consents, rulings, or documents are necessary to implement and effectuate the Plan, it is a condition precedent to the Effective Date that they be obtained.

**I. Is there potential litigation related to Confirmation of the Plan?**

Parties in interest may object to Confirmation of the Plan, which objections potentially could give rise to litigation. See Article VIII.A of this Disclosure Statement, entitled “*Bankruptcy Law Considerations*.”

If it becomes necessary to confirm the Plan over the rejection of certain Classes, the Debtors may seek confirmation of the Plan notwithstanding the dissent of such rejecting Classes. The Bankruptcy Court may confirm the Plan pursuant to the “cramdown” provisions of the Bankruptcy Code, which allow the Bankruptcy Court to confirm a plan that has been rejected by an impaired Class if it determines that the Plan satisfies section 1129(b) of the Bankruptcy Code. See Article VIII.A of this Disclosure Statement, entitled “*Bankruptcy Law Considerations*.”

**J. Will the final amount of Allowed General Unsecured Claims affect my recovery under the Plan?**

Holder of General Unsecured Claims will receive their (a) Pro Rata share of the Distributable Proceeds pursuant to the Modified Waterfall Recovery, only if Distributable Proceeds are available after all senior Claims (including, for the avoidance of doubt, the Term Loan Claims and Administrative Claims) are paid in full; and (b) a complete waiver and release of any and all claims, Causes of Action, and other rights against the Holders of Allowed Class 5 Claims based on claims pursuant to chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes and common law including fraudulent transfer laws from the Debtors, the Plan Administrator, the Wind-Down Debtors, and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, subject to and in accordance with Article X of the Plan.

In addition, Holders of General Unsecured Claims that vote to accept the Plan shall be deemed a Released Party for all purposes under the Plan. Although the Debtors’ estimate of General Unsecured Claims is the result of the Debtors’ careful analysis of available information, General Unsecured Claims actually asserted against the Debtors may be higher or lower than the Debtors’ estimate provided in the Plan, which difference could be material.

As set forth in the Plan, because the Debtors believe it is unlikely all Allowed Administrative and Priority Claims (except for Professional Fee Claims and DIP Claims) will be paid in full in Cash, they further believe that it is unlikely that Holders of Allowed General Unsecured Claims will receive a Cash recovery under the Plan on account of such Claims. The Plan consideration for such Holders that vote to accept and/or do not oppose the Plan would be the mutual releases described in the Plan.

The projected amount of Allowed General Unsecured Claims set forth herein is subject to change and reflects the Debtors' current view on potential rejection damages. Any change in the number, identity, or timing of actual rejected Executory Contracts and Unexpired Leases could have a material impact on the amount of Allowed General Unsecured Claims. To the extent that the actual amount of rejection damages Claims changes, the value of recoveries to Holders of Allowed General Unsecured Claims could change as well, and such changes could be material.

Further, as of the Petition Date, the Debtors were parties to certain litigation matters that arose in the ordinary course of operating their businesses and could become parties to additional litigation in the future as a result of conduct that occurred prior to the Petition Date. Although the Debtors have disputed, are disputing, or will dispute in the future the amounts asserted by such litigation counterparties, to the extent these parties are ultimately entitled to a higher amount than is reflected in the amounts estimated by the Debtors herein, the value of recoveries to Holders of Allowed General Unsecured Claims could change as well, and such changes could be material.

Finally, the Debtors, the Plan Administrator, the Creditors' Committee, or other parties in interest may object to certain proofs of claim, and any such objections ultimately could cause the total amount of Allowed General Unsecured Claims to change. These changes could affect recoveries to Holders of Allowed General Unsecured Claims, and such changes could be material.

**K. Will there be releases and exculpation granted to parties in interest as part of the Plan?**

Yes, Article X of the Plan proposes to release the Released Parties and to exculpate the Exculpated Parties. The Debtors' releases, third-party releases, and exculpation provisions included in the Plan are an integral part of the Debtors' overall restructuring efforts and were an essential element of the negotiations between the Debtors, DIP Lenders, and the Required Consenting Term Lenders in obtaining their support for the Plan pursuant to the terms of the Plan Support Agreement.

All of the Released Parties and the Exculpated Parties have made substantial and valuable contributions to the Debtors' restructuring through efforts to negotiate and implement the Plan, which will maximize value of the Debtors for the benefit of all parties in interest. Accordingly, each of the Released Parties and the Exculpated Parties warrants the benefit of the release and exculpation provisions.

Importantly, (i) all Holders of Claims or Interests that are deemed to accept the Plan and who do not opt out of the releases provided by the Plan, (ii) all Holders of Claims and Interests who vote to accept the Plan, and (iii) all Holders of Claims or Interests that abstain from voting on the Plan and who do not opt out of the releases provided by the Plan will be deemed to have expressly, unconditionally, generally, individually, and collectively released and discharged all Claims and Causes of Action against the Debtors and the Released Parties.

Based on the foregoing, the Debtors believe that the releases and exculpations in the Plan are necessary and appropriate and meet the requisite legal standard promulgated by the United States Court of Appeals for the Fourth Circuit. Moreover, the Debtors will present evidence at the Confirmation Hearing to demonstrate the basis for and propriety of the release and exculpation

provisions. The release, exculpation, and injunction provisions that are contained in the Plan are copied in Article IV.G of this Disclosure Statement, entitled “*Releases*.”

**L. What is the deadline to vote on the Plan?**

The Voting Deadline is July 24, 2020, at 4:00 p.m. (prevailing Eastern Time).

**M. How do I vote for or against the Plan?**

Detailed instructions regarding how to vote on the Plan are contained on the ballots distributed to Holders of Claims that are entitled to vote on the Plan. For your vote to be counted, your ballot must be completed and signed so that it is **actually received** by July 24, 2020, at 4:00 p.m. (prevailing Eastern Time). Hard copy ballots must be sent to Pier 1 – Ballot Processing, c/o Epiq Corporate Restructuring, LLC, P.O. Box 4422, Beaverton, OR 97076-4422 (if by First Class mail) or Pier 1 – Ballot Processing, c/o Epiq Corporate Restructuring, LLC, 10300 SW Allen Boulevard, Beaverton, OR 97005 (if by overnight courier or hand delivery). Electronic ballots must be submitted through the E-ballot online portal at <https://dm.epiq11.com/Pier1>. See Article IX of this Disclosure Statement entitled “*Solicitation and Voting Procedures*” and the Disclosure Statement Order attached hereto as **Exhibit C**.

If a Class of Claims or Interests is eligible to vote and no Holder of Claims or Interests, as applicable, in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by such Class.

**N. Why is the Bankruptcy Court holding a Confirmation Hearing?**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court to hold a hearing on confirmation of the Plan and recognizes that any party in interest may object to Confirmation of the Plan.

**O. When is the Confirmation Hearing set to occur?**

The Bankruptcy Court has scheduled the Confirmation Hearing for July 30, 2020, at 1:00 p.m. (prevailing Eastern Time). The Confirmation Hearing may be adjourned from time to time without further notice.

Objections to Confirmation of the Plan must be filed and served on the Debtors, and certain other parties, by no later than July 24, 2020, at 4:00 p.m. (prevailing Eastern Time) in accordance with the notice of the Confirmation Hearing that accompanies this Disclosure Statement and the Disclosure Statement Order attached hereto as **Exhibit C** and incorporated herein by reference.

The Debtors will publish the notice of the Confirmation Hearing, which will contain the deadline for objections to the Plan and the date and time of the Confirmation Hearing, in the national editions of the *New York Times* (national) and *USA Today* (national) to provide notification to those persons who may not receive notice by mail. The Debtors may also publish the notice of the Confirmation Hearing in such trade or other publications as the Debtors may choose.

**P. What is the purpose of the Confirmation Hearing?**

The confirmation of a plan of reorganization by a bankruptcy court binds the Debtors, any issuer of securities under a plan of reorganization, any person acquiring property under a plan of reorganization, any creditor or equity interest holder of a Debtor, and any other person or entity as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the bankruptcy court confirming a plan of reorganization discharges the Debtors from any debt that arose before the confirmation of such plan of reorganization and provides for the treatment of such debt in accordance with the terms of the confirmed plan of reorganization.

**Q. Who do I contact if I have additional questions with respect to this Disclosure Statement or the Plan?**

If you have any questions regarding this Disclosure Statement or the Plan, please contact the Notice and Claims Agent:

*By regular mail, hand delivery, or overnight mail at:*

**Pier 1 – Ballot Processing  
c/o Epiq Corporate Restructuring, LLC  
10300 SW Allen Boulevard  
Beaverton, OR 97005**

*By electronic mail at:*

**Tabulation@epiqglobal.com (please reference “Pier 1” in the subject line)**

*By telephone at:*

**(866) 977-0883 (Toll Free)  
(503) 520-4412 (International)**

Copies of the Plan, this Disclosure Statement, and any other publicly filed documents in the Chapter 11 Cases are available upon written request to the Debtors’ Notice and Claims Agent at the address above or by downloading the exhibits and documents from the website of the Debtors’ Notice and Claims Agent at <https://dm.epiq11.com/Pier1> (free of charge) or the Bankruptcy Court’s website at [www.vaeb.uscourts.gov](http://www.vaeb.uscourts.gov) (for a fee).

**R. Do the Debtors recommend voting in favor of the Plan?**

Yes. The Debtors believe that the Plan provides for a larger distribution to the Debtors’ creditors than would otherwise result from any other available alternative. The Debtors believe that the Plan is in the best interest of all Holders of Claims or Interests, and that any other alternatives (to the extent they exist) fail to realize or recognize the value inherent under the Plan.

**IV. THE DEBTORS’ PLAN SUPPORT AGREEMENT, PLAN, AND TERM SHEET**

As discussed in Article I of the Disclosure Statement, the Plan Support Agreement contemplated a restructuring of the Debtors through (a) a sale of substantially all of the assets of, or Interests in, the Company to one or more purchasers and winding down of operations and/or (b)



the Wind-Down Debtors' issuance of interests in a new Pier 1 entity to fund distributions to Holders of Tem Loan Claims in accordance with Article III of the Plan. The Required Consenting Term Lenders have elected to wind down the Debtors' operations pursuant to the terms of the Plan Support Agreement. After the Required Consenting Term Lenders' election, the Required Consenting Term Lenders, DIP Lenders, Creditors' Committee, and the Debtors negotiated a value-maximizing transaction to effectuate an orderly Wind Down as set forth in the Plan and reflected in the Term Sheet. As discussed in Article IV of the Plan, the Plan contemplates, among other things, distributions to Holders of Allowed Claims in accordance with its terms, followed by the Wind Down of the Wind-Down Debtors.

#### **A. Restructuring Transactions**

On the Effective Date, or as soon as reasonably practicable thereafter, the Wind-Down Debtors shall take all actions as may be necessary or appropriate to effectuate the Restructuring Transactions, including, without limitation: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (3) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (4) such other transactions that are required to effectuate the Restructuring Transactions; (5) all transactions necessary to provide for the purchase of some or all of the assets of, or Interests in, any of the Debtors which purchase may be structured as a taxable transaction for United States federal income tax purposes; and (6) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

#### **B. Cancellation of Existing Securities, Notes, Instruments, Certificates, and Other Documents**

On the Effective Date, except as otherwise specifically provided for in the Plan (including, without limitation, the satisfaction of the DIP Claims in accordance with Article II.C of the Plan): (1) any certificate, share, note, bond, indenture, purchase right, or other instrument or document, directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest, equity, or portfolio interest in the Debtors or any warrants, options, or other securities exercisable or exchangeable for, or convertible into, debt, equity, ownership, or profits interests in the Debtors giving rise to any Claim or Interest shall be canceled and deemed surrendered as to the Debtors and shall not have any continuing obligations thereunder; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificates or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indenture, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be fully released, settled, and compromised; provided, that notwithstanding Confirmation or Consummation, any such instrument or document that governs the rights of a Holder of a Claim or Interest shall continue in effect solely for purposes of: (1) allowing Holders to receive

distributions under the Plan; (2) allowing the Term Loan Agent to enforce its rights, claims, and interests vis-à-vis any parties other than the Released Parties; (3) allowing the Term Loan Agent to make the distributions in accordance with the Plan (if any); (4) preserving any rights of the Term Loan Agent to payment of fees, expenses, and indemnification obligations as against any money or property distributable to the Holders under Term Loan Credit Agreement, including any rights to priority of payment and/or to exercise charging liens; (5) allowing the Term Loan Agent to enforce any obligations owed it under the Plan; (6) allowing the Term Loan Agent to appear in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court or any other court, including, but not limited, to enforce the respective obligations owed to such parties under the Plan; and (7) permitting the Term Loan Agent to perform any functions that are necessary to effectuate the foregoing.

### **C. General Settlement of Claims and Interests**

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their respective Estates, and holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Wind-Down Debtors may compromise and settle Claims against the Debtors and their respective Estates and Causes of Action against other Entities.

### **D. Means of Implementation**

Any Asset Sale Transaction will be either (a) conducted pursuant to the Bidding Procedures and approved as part of the Confirmation of the Plan, (b) approved by the Bankruptcy Court prior to the Effective Date, or (c) otherwise authorized by the Plan.

#### **1. Sources of Consideration for Plan Distributions**

The Plan Administrator will fund distributions under the Plan with Cash on hand on the Effective Date and the revenues and proceeds of all assets of the Debtors, including proceeds from all Causes of Action not settled, released, discharged, enjoined, or exculpated under the Plan or otherwise on or prior to the Effective Date.

#### **2. Vesting of Assets**

Except as otherwise provided in the Plan, or any agreement, instrument, or other document incorporated herein or therein, on the Effective Date, the assets of the Debtors shall vest in the Wind-Down Debtors for the purpose of liquidating the Estates, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, the Debtors and the Wind-Down Debtors may (at the direction of the Plan Administrator) use, acquire, or dispose of property, and

compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

### 3. Wind-Down Debtors

On and after the Effective Date, if applicable, the Wind-Down Debtors shall continue in existence for purposes of (a) winding down the Debtors' business and affairs as expeditiously as reasonably possible in accordance with the Wind-Down Budget, (b) resolving Disputed Claims, (c) making distributions on account of Allowed Claims as provided under the Plan, (d) establishing and funding the Distribution Reserve Accounts in accordance with the Wind-Down Budget, (e) enforcing and prosecuting claims, interests, rights, and privileges under the Causes of Action on the Retained Causes of Action List in an efficacious manner and only to the extent the benefits of such enforcement or prosecution are reasonably believed to outweigh the costs associated therewith, (f) filing appropriate tax returns, (g) complying with its continuing obligations under the Purchase Agreements, if any, (h) liquidating all assets of the Wind-Down Debtors, and (i) otherwise administering the Plan in an efficacious manner consistent with the Plan. The Wind-Down Debtors shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (i) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court and (ii) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Plan Administrator to file motions or substitutions of parties or counsel in each such matter.

### 4. Plan Administrator

The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to administer and distribute the Distribution Reserve Accounts and wind down the business and affairs of the Debtors and Wind-Down Debtors, including (all without further order of the Bankruptcy Court): (a) liquidating, receiving, holding, investing, supervising, and protecting the assets of the Wind-Down Debtors in accordance with the Wind-Down Reserve; (b) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan from the Distribution Reserve Accounts in accordance with the Wind-Down Reserve; (c) making distributions from the Distribution Reserve Accounts as contemplated under the Plan; (d) establishing and maintaining bank accounts in the name of the Wind-Down Debtors; (e) subject to the terms set forth in the Plan, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (f) paying all reasonable fees, expenses, debts, charges, and liabilities of the Wind-Down Debtors; (g) administering and paying taxes of the Wind-Down Debtors, including filing tax returns; (h) representing the interests of the Wind-Down Debtors or the Estates before any taxing authority in all matters, including any action, suit, proceeding, or audit; and (i) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan in accordance with the Wind-Down Reserve.

The Plan Administrator may resign at any time upon 30 days' written notice delivered to the Required Consenting Term Lenders, the Wind-Down Debtors, and the Bankruptcy Court; provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator, to be chosen by the Required Consenting Term Lenders,

with the consent of the Debtors (not to be unreasonably withheld). Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Plan Administrator relating to the Wind-Down Debtors shall be terminated.

(a) Plan Administrator Rights and Powers

The Plan Administrator shall retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under the Plan in accordance with the Wind-Down Reserve, and as otherwise provided in the Confirmation Order. The Plan Administrator shall be the exclusive trustee of the assets of the Wind-Down Debtors for the purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

(b) Establishment of Reserve Accounts

The Plan Administrator shall establish each of the Distribution Reserve Accounts (which may be affected by either establishing a segregated account or establishing book entry accounts, in the sole discretion of the Plan Administrator) in accordance with Article VIII of the Plan.

(c) Retention of Professionals

The Plan Administrator shall have the right, subject to the Wind-Down Reserve, to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of his or her duties. The reasonable fees and expenses of such professionals shall be paid by the Wind-Down Debtors from the Wind-Down Reserve upon the monthly submission of statements to the Plan Administrator to the extent set forth in the Wind-Down Reserve. The payment of the reasonable fees and expenses of the Plan Administrator's retained professionals shall be made in the ordinary course of business from the Wind-Down Reserve and shall not be subject to the approval of the Bankruptcy Court.

(d) Compensation of the Plan Administrator

The Plan Administrator's compensation, on a post-Effective Date basis, shall be as described in the Plan Supplement and paid out of the Wind-Down Reserve. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Plan Administrator in connection with such Plan Administrator's duties shall be paid without any further notice to, or action, order, or approval of, the Bankruptcy Court in Cash from the Wind-Down Reserve if such amounts relate to any actions taken under the Plan.

(e) Plan Administrator Expenses

All costs, expenses and obligations incurred by the Plan Administrator in administering the Plan, the Wind-Down Debtors, or in any manner connected, incidental or related thereto, in effecting distributions from the Wind-Down Debtors thereunder (including the reimbursement of

reasonable expenses) shall be incurred and paid in accordance with the Wind-Down Budget. Such costs, expenses and obligations shall be paid from the Wind-Down Reserve.

The Debtors and the Plan Administrator, as applicable, shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. However, in the event that the Plan Administrator is so ordered after the Effective Date, all costs and expenses of procuring any such bond or surety shall be paid for with Cash from the Wind-Down Reserve.

(f) Wind-Down

On and after the Effective Date, the Plan Administrator will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

As soon as practicable after the Effective Date, the Plan Administrator shall: (1) cause the Debtors and the Wind-Down Debtors, as applicable, to comply with, and abide by, the terms of the Purchase Agreements and any other documents contemplated thereby; (2) to the extent applicable, file a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable laws of their state of incorporation or formation (as applicable); and (3) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Plan Administrator without need for any action or approval by the shareholders or board of directors or managers of any Debtor. From and after the Effective Date, except with respect to Wind-Down Debtors as set forth in the Plan, the Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have canceled pursuant to the Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. For the avoidance of doubt, notwithstanding the Debtors' dissolution, the Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

The filing of the final monthly report (for the month in which the Effective Date occurs) and all subsequent quarterly reports shall be the responsibility of the Plan Administrator.

(g) Exculpation, Indemnification, Insurance & Liability Limitation

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed exculpated and indemnified, except for fraud, willful misconduct, or gross negligence, in all respects by the Wind-Down Debtors. The Plan Administrator may obtain, at the expense of the Wind-Down Debtors and with funds from the Wind-Down Reserve, commercially reasonable liability or other appropriate insurance with

respect to the indemnification obligations of the Wind-Down Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

For the avoidance of doubt, notwithstanding anything to the contrary contained herein or in the Plan, the Plan Administrator in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors.

(h) Tax Returns

After the Effective Date, the Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors, and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws.

(i) Dissolution of the Wind-Down Debtors

Upon a certification to be Filed with the Bankruptcy Court by the Plan Administrator of all distributions having been made and completion of all its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Cases, the Wind-Down Debtors shall be deemed to be dissolved without any further action by the Wind-Down Debtors, including the filing of any documents with the secretary of state for the state in which each Debtor is formed or any other jurisdiction. The Plan Administrator, however, shall have authority to take all necessary actions to dissolve the Wind-Down Debtors in and withdraw the Wind-Down Debtors from applicable state(s).

5. Wind-Down Budget

The Wind Down Budget (as modified, amended or supplemented in accordance with the Wind-Down Order) shall continue in full force and effect during the Wind Down. The Debtors will file an updated Wind-Down Budget as part of the Plan Supplement. The Wind-Down Budget may change, potentially materially, as described in Article VIII.B.6 of this Disclosure Statement.

6. Distribution Reserve Accounts

(a) Wind-Down Reserve

On the Effective Date, the Plan Administrator shall establish the Wind-Down Reserve by depositing Cash, in the amount of the Wind-Down Amount into the Wind-Down Reserve. The Wind-Down Reserve shall be used by the Plan Administrator solely to satisfy the expenses of Wind-Down Debtors and the Plan Administrator as set forth in the Plan and Wind-Down Budget; provided that all costs and expenses associated with the winding up of the Wind-Down Debtors and the storage of records and documents shall constitute expenses of the Wind-Down Debtors and shall be paid from the Wind-Down Reserve to the extent set forth in the Wind-Down Budget. In no event shall the Plan Administrator be required or permitted to use its personal funds or assets for such purposes. Any amounts remaining in the Wind-Down Reserve after payment of all expenses of the Wind-Down Debtors and the Plan Administrator shall promptly be transferred to

the General Account and shall be distributed according to the priority set forth in Article VIII.G of the Plan without any further action or order of the Bankruptcy Court.

(b) Administrative / Priority Claims Reserve

On the Effective Date, the Plan Administrator shall establish the Administrative / Priority Claims Reserve by depositing Cash in the amount of the Administrative / Priority Claims Reserve Amount into the Administrative / Priority Claims Reserve (and the Plan Administrator shall deposit Cash into or withdraw Cash from into the Administrative / Priority Claims Reserve if the Administrative / Priority Claims Reserve Amount changes at any time. The Administrative / Priority Claims Reserve Amount shall be used to pay Holders of all Allowed Priority Claims, Allowed Administrative Claims (other than Professional Fee Claims or DIP Claims), and Allowed Other Secured Claims their respective Pro Rata share of the Administrative / Priority Claims Reserve, to the extent that such Priority Claims, Administrative Claims (other than Professional Fee Claims or DIP Claims), and Allowed Other Secured Claim have not been paid in full on or before the Effective Date. If all or any portion of a Priority Claim, Administrative Claim (other than Professional Fee Claims or DIP Claims), or Allowed Other Secured Claim shall become a Disallowed Claim, then the amount on deposit in the Administrative / Priority Claims Reserve attributable to such surplus or such Disallowed Claim, including the interest that has accrued on said amount while on deposit in the Administrative / Priority Claims Reserve, shall remain in the Administrative / Priority Claims Reserve to the extent that the Plan Administrator determines necessary to ensure that the Cash remaining in the Administrative / Priority Claims Reserve is sufficient to ensure that all Allowed Priority Claims, Allowed Administrative Claims, and Allowed Other Secured Claims will be paid in accordance with the Plan, and shall otherwise promptly be transferred to the General Account to be distributed in accordance with the Plan without any further action or order of the Bankruptcy Court. Any amounts remaining in the Administrative / Priority Claims Reserve after payment of all Allowed Priority Claims, Allowed Administrative Claims, and Allowed Other Secured Claims (or any amount in excess of that reasonably needed to be reserved for any Disputed Claims) shall promptly be transferred to the General Account and shall be distributed according to the priority set forth in Article VIII.F of the Plan without any further action or order of the Bankruptcy Court.

(c) Priority Tax Claims Reserve

On the Effective Date, the Plan Administrator shall establish the Priority Tax Claims Reserve by depositing Cash in the amount of the Priority Tax Claims Reserve Amount into the Priority Tax Claims Reserve. The Priority Tax Claims Reserve Amount shall be used to pay Holders of all Allowed Priority Tax Claims their respective Pro Rata share of the Priority Tax Claims Reserve, to the extent that such Priority Tax Claims have not been paid in full on or before the Effective Date. If all or any portion of a Priority Tax Claim shall become a Disallowed Claim, then the amount on deposit in the Priority Tax Claims Reserve attributable to such surplus or such Disallowed Claim, including the interest that has accrued on said amount while on deposit in the Priority Tax Claims Reserve, shall remain in the Priority Tax Claims Reserve to the extent that the Plan Administrator determines necessary to ensure that the Cash remaining in the Priority Tax Claims Reserve is sufficient to ensure that all Allowed Priority Tax Claims shall otherwise promptly be transferred to the General Account to be distributed in accordance with the Plan without any further action or order of the Bankruptcy Court. Any amounts remaining in the

Priority Tax Claims Reserve after payment of all Allowed Priority Tax Claims, Allowed Administrative Claims, and Allowed Other Secured Claims (or any amount in excess of that reasonably needed to be reserved for any Disputed Claims) shall promptly be transferred to the General Account and shall be distributed according to the priority set forth in Article VIII.F of the Plan without any further action or order of the Bankruptcy Court.

(d) Distributable Proceeds / Settlement Waterfall Recovery

After the DIP Claims have been Paid in Full pursuant to Article II.C of the Plan, the Priority Tax Claims Reserve, the Professional Fee Escrow Account, and the Wind-Down Reserve have been funded, and all proceeds (if any) of Intellectual Property (as defined in the Intercreditor Agreement) have been paid to Holders of Allowed Term Loan Claims in accordance with the DIP Order, all remaining Distributable Proceeds shall be allocated and paid to the applicable Holders of Claims until paid in full from time to time in the following priority (in each case on a Pro Rata basis, and subject to any applicable cap): (i) *first*, 88% of Distributable Proceeds shall be paid to Holders of Allowed Term Loan Claims as part of the Term Loan Recovery Pool pursuant to Article III.B.4 of the Plan, and the remaining 12% of Distributable Proceeds shall be added to the Administrative / Priority Claims Reserve and thereby paid to Holders of 503(b)(9) Claims and remaining Administrative Claims and Other Priority claims pursuant to Article II.A of the Plan, up to the amount of such 503(b)(9) Claims, Administrative Claims and Priority Claims, (ii) *second*, if, pursuant to the Waterfall Recovery, 503(b)(9) Claims, Administrative Claims, and Other Priority Claims are paid in full, any remaining Distributable Proceeds shall be paid to the holders of Allowed Term Loan Claims until paid in full, and (iii) *third*, any remaining Distributable Proceeds shall be paid to Holders of Allowed General Unsecured Claims. For the avoidance of doubt, unless Allowed Term Loan Claims are paid in full, no holders of General Unsecured Claims shall receive any amount of Distributable Proceeds.

(e) The General Account and Distribution Reserve Account Adjustments

Beginning on the six-month anniversary of the Effective Date or at such other times as the Plan Administrator shall determine as appropriate, and thereafter, on each six-month interval thereafter, the Plan Administrator shall determine the amount of Cash required to adequately maintain each of the Distribution Reserve Accounts. If after making and giving effect to any determination referred to in the immediately preceding sentence, the Plan Administrator determines that any Distribution Reserve Account (i) contains Cash in an amount in excess of the amount then required to adequately maintain such Distribution Reserve Account, then at any such time the Plan Administrator shall transfer such surplus Cash to the General Account to be used or distributed according to the priority set forth in Article VIII.F of the Plan, or (ii) does not contain Cash in an amount sufficient to adequately maintain such Distribution Reserve Account, then at any such time the Plan Administrator shall, with the consent of the Required Consenting Term Lenders, transfer Cash from the General Account, to the extent Cash is available in the General Account until the deficit in such Distribution Reserve Account is eliminated. Any funds in the General Account not needed to eliminate a Distribution Reserve Account deficit shall be allocated and paid as Distributable Proceeds pursuant to the Waterfall Recovery as set forth in Article VIII.F of the Plan.



7. Monitor

The Required Consenting Term Lenders, upon consultation with the Creditors' Committee shall appoint the Monitor on or before the Confirmation Date. The Monitor will work cooperatively with the Plan Administrator to ensure compliance with the Wind-Down Budget. The Debtors shall include in the Plan Supplement, the terms of the Monitor's engagement, which shall be reasonably acceptable to the Required Consenting Term Lenders and the Creditors' Committee, but will include a financial incentive to maximize Distributable Proceeds, and shall not otherwise exceed \$275,000.

8. Claims Representative

On or prior to the Confirmation Date, the Creditors' Committee, upon consultation with the Required Consenting Term Lenders shall appoint the Claims Representative to participate in the post-Effective Date Claims reconciliation process. The Claims Representative shall be tasked with ensuring an efficient and fair claims reconciliation process, and overseeing the prosecution of estate causes of action under section 547 that are not covered by waiver or otherwise released, including the retention of a firm to prosecute such claims if appropriate, which firm shall be mutually agreed by the Required Consenting Term Lenders and the Committee. The terms of the Claims Representative's engagement shall be included in the Plan Supplement and are to be reasonably acceptable to both the Required Consenting Term Lenders and the Creditors' Committee. For the avoidance of doubt, compensation for the Claims Representative's duties shall not exceed \$50,000.

9. Board of the Debtors

As of the Effective Date, the existing board of directors or managers, as applicable, of the Debtors shall be dissolved without any further action required on the part of the Debtors or the Debtors' officers, directors, managers, shareholders, or members, and any remaining officers, directors, managers, or managing members of any Debtor shall be dismissed without any further action required on the part of any such Debtor, the equity holders of the Debtors, the officers, directors, or managers, as applicable, of the Debtors, or the members of any Debtor. Subject in all respects to the terms of the Plan, the Debtors shall be dissolved as soon as practicable on or after the Effective Date, but in no event later than the closing of the Chapter 11 Cases.

As of the Effective Date, the Plan Administrator shall act as the sole officer, director, and manager, as applicable, of the Debtors with respect to its affairs. Subject in all respects to the terms of the Plan, the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve any of the Debtors, and shall: (a) file a certificate of dissolution for any of the Debtors, together with all other necessary corporate and company documents, to effect the dissolution of any of the Debtors under the applicable laws of each applicable Debtor's state of formation; and (b) complete and file all final or otherwise required federal, state, and local tax returns and shall pay taxes required to be paid for any of the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any of the Debtors or their Estates for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws; and (c)

represent the interests of the Debtors or the Estates before any taxing authority in all tax matters, including any action, suit, proceeding, or audit.

The filing by the Plan Administrator of any of the Debtors' certificate of dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, board of directors, or board of managers of Pier 1 or any of its affiliates.

#### 10. Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors' Estates shall be fully released, settled, and compromised, and the holder of such mortgages, deeds of trust, Liens, pledges, or other security interest against any property of the Debtors' Estates shall be authorized to take such actions as may be reasonably requested by the Debtors to evidence such releases.

#### 11. Preservation of Causes of Action

Unless any Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Debtors shall convey to the Plan Administrator all rights to commence, prosecute or settle, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, which shall vest in the Plan Administrator pursuant to the terms of the Plan. The Plan Administrator may enforce all rights to commence, prosecute, or settle, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, and the Plan Administrator's rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Plan Administrator may, in its reasonable business judgment, pursue such Causes of Action and may retain and compensate professionals in the analysis or pursuit of such Causes of Action to the extent the Plan Administrator deems appropriate, including on a contingency fee basis. No Entity may rely on the absence of a specific reference in the Plan, the Disclosure Statement, or the Plan Supplement to any Cause of Action against them as any indication that the Debtors or the Plan Administrator will not pursue any and all available Causes of Action against them. The Debtors and the Plan Administrator expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan; *provided* that the Debtors, in consultation with the Plan Administrator after the Effective Date, may prosecute any such Cause of Action against any party only in connection with their objection to and resolution of any Claim asserted by such party. Unless any Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, the Plan Administrator expressly reserves all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. The Plan

Administrator reserves and shall retain the foregoing Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. The Plan Administrator shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, or to take any action contemplated by this section, without the consent or approval of any third party or any further notice to, or action, order, or approval of, the Bankruptcy Court.

12. Director and Officer Liability Insurance

The Debtors shall be deemed to have assumed all of the Debtors' D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code effective as of the Effective Date (whether or not such policies are listed on the Schedule of Assumed Executory Contracts), and coverage for defense and indemnity under any of the D&O Liability Insurance Policies shall remain available to all individuals within the definition of "Insured" in any of the D&O Liability Insurance Policies. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption of each of the unexpired D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained in the Plan, and except as otherwise may be provided in an order from the Bankruptcy Court, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be filed; *provided, however*, that the Holder(s) of a Claim for an indemnity obligation will look only to the D&O Liability Insurance Policies for recovery and not the Estates.

13. Termination of the Non-Qualified Deferred Compensation Trust Plans

The Non-Qualified Deferred Compensation Trust Plans shall be terminated on the Effective Date.

**E. Exemption from Certain Transfer Taxes and Fees**

To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto, including the Asset Sale Transaction, or the issuance, transfer or exchange of any security under the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax, recordation fee, or governmental assessment.

## **F. Procedures for Resolving Contingent, Unliquidated and Disputed Claims**

### **1. Allowance of Claims**

After the Effective Date, the Plan Administrator or each of the Wind-Down Debtors, as applicable, shall have and retain any and all rights and defenses the applicable Debtor had with respect to any Claim immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim.

For the avoidance of doubt, nothing in this Plan will supersede the Prepetition Claims Bar Date Order with respect to a parties right to file a Claim.

### **2. Claims Administration Responsibilities**

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Plan Administrator or the Wind-Down Debtors, as applicable, shall have the sole authority to File and prosecute objections to Claims, and the Wind-Down Debtors shall have the sole authority to (1) settle, compromise, withdraw, litigate to judgment, or otherwise resolve objections to any and all Claims, regardless of whether such Claims are in a Class or otherwise; (2) settle, compromise, or resolve any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

### **3. Estimation of Claims**

Before, on, or after the Effective Date, the Debtors, Plan Administrator or the Wind-Down Debtors, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim pursuant to applicable law, including, without limitation, pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any such Claim, including during the litigation of any objection to any Claim or during the pendency of any appeal relating to such objection. Notwithstanding any provision to the contrary in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim, such estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions and discharge) and may be used as evidence in any supplemental proceedings, and the Debtors, Plan Administrator or Wind-Down Debtors may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any

Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before seven (7) days after the date on which such Claim is estimated. Each of the foregoing Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

4. Adjustment to Claims Without Objection

Any Claim that has been paid in full or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtors, the Plan Administrator or the Wind-Down Debtors, as applicable, without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

5. Time to File Objections to Claims

Any objections to Claims shall be Filed on or before the Claims Objection Bar Date.

6. Disallowance of Claims

Any Claims held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors, the Plan Administrator or the Wind-Down Debtors, as applicable. All Proofs of Claim Filed on account of an Indemnification Obligation shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such Indemnification Obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

Except as otherwise provided herein or as agreed to by the Plan Administrator or the Wind-Down Debtors, as applicable, any and all Proofs of Claim Filed after the Prepetition Claims Bar Date shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.

7. Amendments to Claims

On or after the Effective Date, a Claim (other than a Claim arising from the rejection of an Executory Contract or Unexpired Lease or a Claim filed by the Administrative Claims Bar Date) may not be Filed or amended without the prior authorization of the Bankruptcy Court, the Plan Administrator or the Wind-Down Debtors, as applicable, and any such new or amended Claim

Filed shall be deemed Disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court to the maximum extent provided by applicable law.

8. No Distributions Pending Allowance

If an objection to a Claim or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim, unless otherwise determined by the Plan Administrator or Wind-Down Debtors, as applicable.

9. Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Wind-Down Debtors shall provide to the Holder of such Claim the distribution to which such Holder is entitled under the Plan as of the Effective Date, less any previous distribution (if any) that was made on account of the undisputed portion of such Claim, without any interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law or as otherwise provided herein.

**G. Settlement, Release, Injunction, and Related Provisions**

1. Compromise and Settlement of Claims, Interests, and Controversies

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete settlement, compromise, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or Proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. The Confirmation Order shall be a judicial determination of the settlement, compromise, and release of all Claims and Interests subject to the Effective Date occurring. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy

Court, after the Effective Date, the Plan Administrator, or Wind-Down Debtors, as applicable, may compromise and settle any Claims and Causes of Action against other Entities.

2. Term of Injunctions or Stays

Unless otherwise provided in the Plan or the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

3. Release of Liens

**Except as otherwise specifically provided in the Plan (including, without limitation the satisfaction of the DIP Claims in accordance with Article II.C of the Plan), or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Wind-Down Debtors and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors or Wind-Down Debtors. The ABL Agent and the Term Loan Agent shall execute and deliver all documents reasonably requested by the Wind-Down Debtors or the Plan Administrator to evidence the release of such mortgages, deeds of trust, Liens, pledges, and other security interests and shall authorize the Wind-Down Debtors to file UCC-3 termination statements (to the extent applicable) with respect thereto.**

4. Debtor Release

**Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released and discharged by the Debtors, Wind-Down Debtors, and their respective Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any cause of action, by, through, for, or because of the foregoing entities, from any and all claims and Causes of Action, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, including any derivative claims asserted or assertable on behalf of the Debtors or their respective Estates, that the Debtors, Wind-Down Debtors, or their respective Estates would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in the Debtors based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), any securities issued by the Debtors and the ownership**

thereof, the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), any intercompany transaction, the ABL Claims, the ABL Documents, the ABL Obligations, the Term Loan Claims, the Term Loan Credit Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Plan Support Agreement, the Disclosure Statement, the DIP Senior Credit Facility, the Plan, the Plan Supplement or the Asset Sale Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Plan Support Agreement, the Disclosure Statement, the ABL Claims, the ABL Documents, the ABL Obligations, the DIP Senior Credit Facility, the Term Loan Claims, the Term Loan Credit Agreement, the Plan, the Plan Supplement, the Chapter 11 Cases, the filing of the Chapter 11 Cases, the Restructuring Documents, solicitation of votes on the Plan, the prepetition negotiation and settlement of Claims, the pursuit of confirmation, the pursuit of consummation, the administration and implementation of the Plan, including the issuance or distribution of debt and/or securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, except for claims related to any act or omission that is determined in a final order by a court of competent jurisdiction to have constituted actual fraud, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, the Asset Sale Transaction, or any document, instrument, or agreement (including the Restructuring Documents, and other documents, instruments and agreements set forth in the Plan Supplement) executed to implement the Plan and shall not result in a release, waiver, or discharge of any of the Debtors' or Wind-Down Debtors' assumed indemnification provisions as set forth in the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtor release is: (a) in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the restructuring and implementing the Plan; (b) a good faith settlement and compromise of the Claims released by the Debtor release; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any of the Debtors, Wind-Down Debtors, or the Debtors' respective Estates asserting any Claim or Cause of Action released pursuant to the Debtor release.

#### 5. Release by Holders of Claims or Interests

Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, and to the fullest extent allowed by applicable law, each Releasing Party is deemed to have released and discharged each of the Debtors, Wind-Down Debtors, and Released Party from any and all Claims and Causes of Action, whether known or unknown, including any



derivative claims asserted or assertable on behalf of the Debtors or their respective Estates, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof), any securities issued by the Debtors and the ownership thereof, the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), any intercompany transaction, the ABL Claims, the ABL Documents, the ABL Obligations, the Term Loan Claims, the Term Loan Credit Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Plan Support Agreement, the Disclosure Statement, the DIP Senior Credit Facility, the Plan, the Plan Supplement, or the Asset Sale Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Plan Support Agreement, the Disclosure Statement, the DIP Senior Credit Facility, the Plan, the Plan Supplement, the ABL Claims, the ABL Documents, the ABL Obligations, the Term Loan Claims, the Term Loan Credit Agreement, the Chapter 11 Cases, the filing of the Chapter 11 Cases, the Restructuring Documents, solicitation of votes on the Plan, the prepetition negotiation and settlement of Claims, the pursuit of confirmation, the pursuit of consummation, the administration and implementation of the Plan, including the issuance or distribution of debt pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, except for Claims related to any act or omission that is determined in a final order by a court of competent jurisdiction to have constituted actual fraud, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post-Effective Date obligations of any party or Entity under the Plan, the Asset Sale Transaction, or any document, instrument, or agreement (including the Restructuring Documents, and other documents, instruments, and agreements set forth in the Plan Supplement) executed to implement the Plan and (2) any indemnification obligations of the Term Loan Lenders owed to the Term Loan Agent pursuant to the Term Loan Credit Agreement and shall not result in a release, waiver, or discharge of any of the Debtors' or Wind-Down Debtors' assumed indemnification provisions as set forth in the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the third-party release, which includes by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Bankruptcy Court's finding that the third-party release is: (a) consensual; (b) essential to the confirmation of the Plan; (c) given in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the Asset Sale Transaction and implementing the Plan; (d) a good faith settlement and compromise of the Claims released by the third-party release; (e) in the best interests of the Debtors and their respective Estates; (f) fair, equitable, and reasonable; (g) given and made after due notice and opportunity for hearing; and (h) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to the third-party release.

## 6. Exculpation

Notwithstanding anything contained in the Plan to the contrary, no Exculpated Party shall have or incur liability for, and each Exculpated Party is released and exculpated from, any Cause of Action or any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Plan Support Agreement and related prepetition transactions, the DIP Senior Credit Facility, the Disclosure Statement, the Plan, the Plan Supplement, the ABL Claims, the ABL Documents, the ABL Obligations, the Term Loan Claims, the Term Loan Credit Agreement, or the Asset Sale Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Plan Support Agreement, the DIP Senior Credit Facility, the Disclosure Statement, the Plan, the Plan Supplement, the ABL Claims, the ABL Documents, the ABL Obligations, the Term Loan Claims, the Term Loan Credit Agreement, the Chapter 11 Cases, the filing of the Chapter 11 Cases, the Restructuring Documents, solicitation of votes on the Plan, the prepetition negotiation and settlement of Claims, the pursuit of confirmation, the pursuit of consummation, the administration and implementation of the Plan, including the issuance or distribution of debt, and/or securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, except for Claims related to any act or omission that is determined in a final order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

The Exculpated Parties have, and upon confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes on, and distribution of consideration pursuant to, the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding anything to the contrary in the foregoing, the exculpation set forth above does not release or exculpate any Claim relating to any post-Effective Date obligations of any party or Entity under the Plan, the Asset Sale Transaction, or any document, instrument, or agreement (including the Restructuring Documents, and other documents, instruments and agreements set forth in the Plan Supplement) executed to implement the Plan.

## 7. Injunction

Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, Causes of Action, or liabilities that: (a) are subject to compromise and settlement pursuant to the terms of the Plan; (b) have been released by the Debtors pursuant to the Plan; (c) have been released by third parties pursuant to the Plan, (d) are subject to exculpation pursuant to the Plan; or (e) are otherwise discharged, satisfied, stayed or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, Wind-Down Debtors, the Released

**Parties, or the Exculpated Parties: (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, Causes of Action or liabilities; (ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, Causes of Action or liabilities; (iii) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or Estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, Causes of Action or liabilities; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims, Interests, Causes of Action or liabilities unless such Entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, Causes of Action or liabilities discharged, released, exculpated, or settled pursuant to the Plan.**

#### **8. Protection Against Discriminatory Treatment**

**Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Wind-Down Debtors or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Wind-Down Debtors, or another Entity with whom the Wind-Down Debtors have been associated, solely because the Debtors have been debtors under chapter 11 of the Bankruptcy Code, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases), or have not paid a debt that is dischargeable in the Chapter 11 Cases.**

#### **9. Recoupment**

In no event shall any Holder of a Claim be entitled to recoup against any claim, right, or Cause of Action of the Debtors or the Wind-Down Debtors, as applicable, unless such Holder actually has provided notice of such recoupment in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

#### **10. Subordination Rights**

Any distributions under the Plan shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal process by any Holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal,

or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

## **H. Conditions Precedent to the Effective Date**

### **1. Conditions Precedent to the Effective Date of the Plan**

It shall be a condition to Consummation of the Plan that the following conditions shall have been satisfied (or waived pursuant to the provisions of Article XI.B of the Plan):

- (a) The Plan Support Agreement shall remain in full force and effect and shall not have been terminated by the Debtors or the Required Consenting Term Lenders;
- (b) The Debtors shall not be in default under the DIP Credit Agreement or the DIP Order (or, to the extent that the Debtors have been or are in default on the proposed Effective Date, such default shall have been waived by the DIP Lenders or cured in a manner consistent with the DIP Credit Agreement and the DIP Order, as applicable);
- (c) The DIP Claims shall have been Paid in Full (as defined in the Plan) or otherwise satisfied in accordance with Article II.C of the Plan;
- (d) The Confirmation Order shall have been duly entered and in full force and effect;
- (e) The Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan and each of the other transactions contemplated by the Restructuring;
- (f) The final version of the schedules, documents, and exhibits contained in the Plan Supplement, and all other schedules, documents, supplements and exhibits to the Plan, shall be consistent with the Plan Support Agreement in all material respects and otherwise approved by the Restructuring Support Parties and the Debtors consistent with their respective consent and approval rights as set forth in Section 3 of the Plan Support Agreement;
- (g) All fees, expenses, and other amounts payable pursuant to the Plan Support Agreement and the DIP Order shall have been paid in full;
- (h) All Allowed Professional Fee Claims approved by the Bankruptcy Court shall have been paid in full or amounts sufficient to pay such Allowed Professional Fee Claims after the Effective Date shall

have been placed in the Professional Fee Escrow Account pending approval of the Professional Fee Claims by the Bankruptcy Court; and

- (i) The Debtors shall have implemented the Restructuring Transactions in a manner consistent in all material respects with the Plan and the Plan Support Agreement.

## 2. Waiver of Conditions

The conditions to Confirmation of the Plan and to the Effective Date of the Plan set forth in Article XI of the Plan may be waived only by consent of the Debtors and the Required Consenting Term Lenders without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan; *provided* however that the Debtors may not waive the condition set forth in Article XI.A.8 of the Plan; *provided further* that the consent of the DIP Agents, each in its sole discretion, is required for a waiver of the conditions set forth in Articles XI.A.2, XI.A.3 or XI.A.7 of the Plan.

## 3. Substantial Consummation

“Substantial Consummation” of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

## 4. Effect of Nonoccurrence of Conditions to the Effective Date

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtors, any Holders of a Claim or Interest, or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders, or any other Entity in any respect; *provided* that all provisions of the Plan Support Agreement that survive termination of those agreements shall remain in effect in accordance with the terms thereof.

# V. **THE DEBTORS’ CORPORATE HISTORY, STRUCTURE, AND BUSINESS OVERVIEW**

## A. **The Debtors’ Corporate History**

Founded with a single store in San Mateo, California in 1962, Pier 1’s first customers were post-World War II baby boomers looking for beanbag chairs, love beads, and incense. By 1966, the Company had expanded to 16 locations selling incense and novelty items, and established its corporate headquarters in Fort Worth, Texas. By 1970, the Company’s stock was publicly traded on the American Stock Exchange. Two years later, Pier 1 joined the New York Stock Exchange (the “NYSE”) under the symbol PIR. By this time, Pier 1 had 123 stores and had expanded its international presence by adding stores in Australia and Europe.

Pier 1 rapidly expanded beginning in the 1970s and continuing through the 1990s. In 1979, a store in Royal Oak, Michigan was the first to reach \$1 million in annual sales. By 1985 the

Company operated 265 stores. In 1988, the Company launched the Pier 1 Preferred loyalty card; within its first year 120,000 customers were cardholders and by 1994, the card generated over \$100 million in sales. The Company continued to grow its footprint and increase its brand exposure through the 1990s, expanding into Puerto Rico and developing partnerships for operations in the United Kingdom and Mexico. In 1996, the Company introduced its first program designed to provide interior designers exclusive product previews and generous discounts on Pier 1 merchandise, which is still offered as the Trade Perks program at all Company stores throughout the U.S. and Canada.

Since the turn of the millennium, the Company has continued to expand and evolve, developing an e-commerce platform, opening new stores, and modernizing its existing stores. Today, Pier 1's merchandise is cohesive, aspirational, and inspiring. Pier 1's store associates are a defining asset and hallmark of any visit to a Pier 1 store location; their dedication to delighting customers at every turn sets Pier 1 apart from its competitors and has long been considered one of Pier 1's greatest strengths. Pier 1's products, including a wide variety of decorative accessories, candles, housewares, gifts, and seasonal products are available in retail stores throughout the United States and Canada, as well as 61 store-in-store formats in Mexico and one in El Salvador through a partnership with Grupo Sanborns. The Company directly imports the majority of its merchandise from China, India, and Vietnam. Pier 1's stores attract a loyal customer base that appreciates the Company's curated, unique mix of home goods from the world's most gifted artisans reflecting fashion-forward trends and handcraft exclusive products.

## **B. The Debtors' Cost Structure**

### **1. Supply Chain and Vendor Relationships**

The Debtors' supply chain and vendor relationships are some of the most important components of its business. The Company maintains an integrated supply chain aimed at ensuring the uninterrupted flow of fresh merchandise to their brick-and-mortar locations and to the Company's distribution centers. In order to meet the changing demands and preferences of customers and adapt to trends within the market, the Company works closely with various vendors and logistics providers to ensure merchandise is up to the standards the Company's customers demand, and delivered on time. The Company also utilizes buying agents (the "Buying Agents") in overseas markets to assist with product development and sampling, order management, product inspection, and quality control.

Over the past year, the Company implemented an integrated industry standard "End2End" process, previously nonexistent at the Company, that is data driven and reinforces a culture of collaboration, accountability, and results. The iterative process begins with the Company developing a style story, and considering merchandise selection and mix. Samples are produced, and employees and Buying Agents liaise with merchants and vendors. The product line and mix are then reviewed from a financial and marketing perspective, ensuring that any changes are implemented to meet Company goals and standards. While the final product is being produced, employees work through final mock store walkthroughs in order to present the merchandise in a cohesive and elevated manner. Once the vendor ships the final orders, it takes approximately 12 weeks for the order to arrive and for employees to prepare the floor sets. In total, this integrated process requires 54 weeks of lead time.

The Company, utilizing their Buying Agents, coordinates with overseas vendors to ship the merchandise on ocean freight carriers to the Company's destination port. Once the goods arrive at the destination port, the Company oversees their transport to the appropriate distribution center.

During fiscal year 2019, the Company sold merchandise imported from many different countries, with approximately 60% of its sales derived from merchandise produced in China, 16% in India and 17% collectively in Vietnam, the United States, and Indonesia. The remainder of its merchandise is sourced from other countries around the world. Most merchandise is shipped from the supplier to the Company's distribution centers, where merchandise is then allocated and delivered to retail stores, fulfillment centers, or to third-party carriers fulfilling customer orders.

## 2. Employee Compensation and Benefits

The Debtors employ slightly over 17,000 employees across their retail and corporate operations in the United States and Canada (collectively, the "Employees"). In the 12 months before the Petition Date, the Debtors spent an average of approximately \$24.7 million per month on gross employee compensation, including wages, salaries, and related compensation. The Debtors offer their Employees the ability to participate in a number of insurance and benefits programs that are standard and competitive in the industry. These programs are described in detail in the Debtors' wages motion [Docket No. 27].

## 3. Real Estate Obligations

As of the Petition Date, the Company operated 858 stores in the United States and 65 stores in Canada in addition to its e-commerce website, [www.pier1.com](http://www.pier1.com), with e-commerce representing 27% of total sales.<sup>5</sup> As announced on January 6, 2020, the Debtors closed approximately 450 stores, and in conjunction with the filing of these chapter 11 cases, announced its intent to close its Canadian operations.

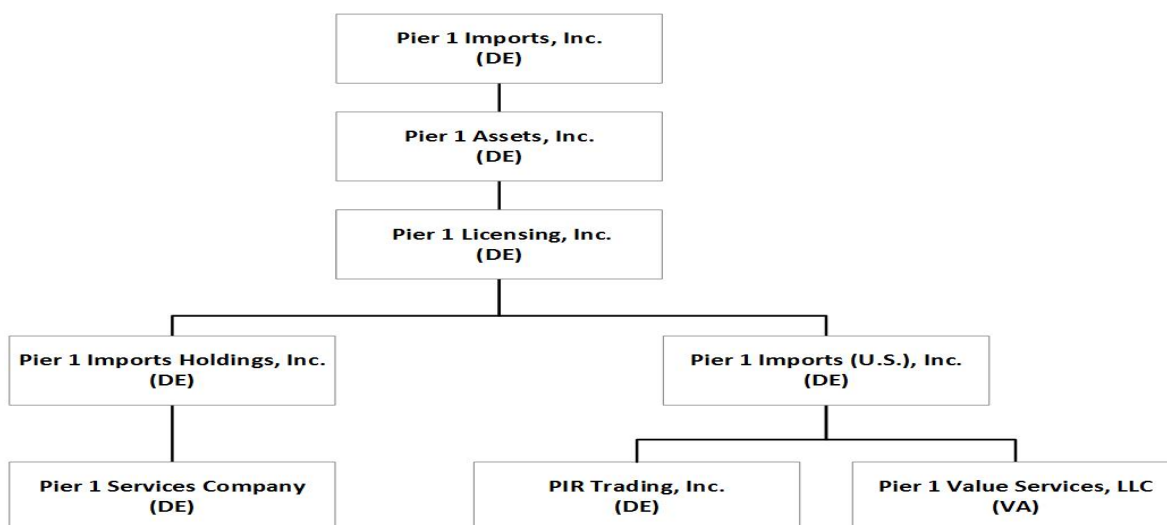
The Debtors, through Debtor PIR Trading, Inc., had an arrangement to supply Grupo Sanborns with the Company's merchandise to be sold by Grupo Sanborns' subsidiaries, Sears Operadora de Mexico, Corporacion de Tiendas Internacionales, S.A. de C.V., S.A.P.I. de C.V., and claroshop.com. Through this relationship, Grupo Sanborns operates a "store within a store" format for Pier 1 merchandise in 61 locations in Mexico, one location in El Salvador, and online at claroshop.com.

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<sup>5</sup> As a percentage of sales in the last twelve months as of the company's third fiscal quarter of fiscal year 2020.

## C. Prepetition Capital Structure

The below chart depicts the Debtors' current corporate structure:



As of the Petition Date, the Debtors' capital structure consists of outstanding funded-debt obligations in the aggregate principal amount of approximately \$400.0 million. The following table summarizes the Debtors' outstanding funded-debt obligations as of the Petition Date:

Funded Debt	Maturity	Facility	Interest Rates	Funded Debt Outstanding as of the Petition Date
Revolving Credit Facility	June 2, 2022	ABL Facility	Libor + 1.25–1.50% or Prime rate + 0.25–0.50%	\$187,300,000 <sup>6</sup>
		FILO Facility	Libor + 3.00% Prime rate + 0.25–0.50%	
		ABL Term Loan	Libor + 8.00% or Prime rate + 7.00%	
Term Loan Facility	April 30, 2021	Term Loan Facility	Libor <sup>7</sup> + 3.50% or Base rate + 2.50%	\$189,000,000
<b>TOTAL</b>				<b>\$400,000,000<sup>8</sup></b>

### 1. Revolving Credit Facility

Pier 1 Imports (U.S.), Inc. (“Pier 1 (U.S.)”), as lead borrower, certain affiliates of Pier 1 (U.S.), as guarantors, Bank of America, N.A. (“BofA”), as administrative agent and collateral agent, Pathlight Capital Fund as ABL Term Loan agent, and the ABL Lenders, are party to that certain Second Amended and Restated Credit Agreement dated as of June 2, 2017 (as amended, novated, supplemented, extended or restated from time to time), which provides for a senior

<sup>6</sup> Amount is inclusive of approximately \$47.3 million in Letters of Credit Outstanding.

<sup>7</sup> There is 1.00% LIBOR Floor.

<sup>8</sup> Amount is inclusive of approximately \$9.5 million outstanding under industrial revenue bonds and approximately \$14.2 million in loans secured by company-owned life insurance policies.



secured asset based revolving credit facility that matures on June 2, 2022 (the “ABL Facility”), a senior secured tranche “first in last-out” term loan that matures on June 2, 2022 (the “FILO Facility”), and an asset based term loan (the “Term Loan Facility”, and together with the ABL Facility and the FILO Facility, the “Revolving Credit Facility”).

The obligations under the ABL Credit Agreement are secured, subject to certain exceptions, by a first priority lien on substantially all of the assets and property of Pier 1 and the other domestic guarantors, including, without limitation, eligible merchandise inventory, third-party credit card receivables, and related assets, and a second lien on certain other assets of certain subsidiaries. As of the Petition Date, approximately \$90.0 million in borrowings and approximately \$47.3 million of letters of credit are outstanding under the ABL Credit Agreement.

## 2. Term Loan Facility

Pier 1 (U.S.), as lead borrower, certain affiliates of Pier 1 (U.S.), as guarantors, Wilmington Savings Fund Society, FSB, as successor administrative agent, and the Term Loan Lenders, are party to that certain Term Loan Credit Agreement, dated as of April 30, 2014 (as amended, novated, supplemented, extended or restated from time to time), which provides for a secured term credit facility consisting of a term commitment of \$200.0 million, which matures on April 30, 2021.

The obligations under the Term Loan Credit Agreement are secured, subject to certain exceptions, by a second priority lien on all assets subject to a first priority lien under the ABL Credit Agreement, and a first lien on certain other assets of certain subsidiaries. As of the Petition Date, approximately \$189.0 million in borrowings are outstanding under the Term Loan Credit Agreement.

## 3. Industrial Revenue Bonds

Pier 1 Imports (U.S.), Inc. owns certain property in Mansfield, Texas (the “Mansfield Property”), which was financed by certain bonds (the “Industrial Revenue Bonds”) incurred under that certain loan agreement by and between itself and the City of Mansfield Industrial Development Corporation dated November 1, 1986 (the “Mansfield Loan Agreement”). The current value of the Mansfield Property is estimated in excess of \$9.9 million. The Industrial Revenue Bonds have approximately \$9.5 million of principal and interest outstanding. Under the Term Loan Credit Agreement, the Mansfield Property is not required to be pledged as collateral as long as the Mansfield Loan Agreement remains outstanding. The Mansfield Loan Agreement is due to mature on November 1, 2026.

## 4. Company-Owned Life Insurance

The Debtors are party to certain Company-owned life insurance contracts (collectively, “COLIs”) by and between Pier 1 Services Company and John Hancock Mutual Life Insurance Company, and Voya Financial. The COLIs are life insurance policies on certain former employees held for the benefit of the Company. Pursuant to the COLIs, the policyholder is permitted to borrow against the cash surrender value of each individual COLI. As of the Petition Date, the collective cash surrender value of the COLIs is roughly \$16.1 million. As of the Petition Date, the

Debtors' have borrowed roughly \$14.2 million against the collective cash surrender value of the COLIs. Such borrowing is secured by the future proceeds of the loan against the COLI and is afforded first lien priority against such COLI. When a COLI policy becomes payable, the related outstanding loan is deducted from the proceeds of the COLI.

## 5. Equity Interests

The Debtors' common stock was traded on the NYSE under the symbol "PIR." As of the Petition Date, there were approximately 4.2 million shares outstanding, trading at \$3.56 per share. On February 18, 2020, Pier 1 was notified by the staff of NYSE Regulation that it had determined to commence proceedings to delist the common stock of Pier 1 from the NYSE and that trading Pier 1 common stock would be suspended immediately. Pier 1 does not intend to appeal the determination and, therefore, it is expected that the common stock will be delisted. Trading of Pier 1's common stock has commenced on the OTC Bulletin Board or "pink sheets" market under the symbol "PIRRQ."

## **VI. EVENTS LEADING TO THE CHAPTER 11 FILINGS**

### **A. Challenging Operating Environment and Operational Right Sizing**

A confluence of operational and strategic factors contributed to the Debtors' need to commence these Chapter 11 Cases. The most significant factor was a strategy launched under past management to turn to a mass-market merchandizing strategy based on high-volume, low-price, lower-margin commodity items. Pier 1's struggles derive from a misguided effort by prior management to adapt to the changing retail environment by seeking to compete in the marketplace with low-price, low curation retailers. This strategy failed to resonate with core customers, leading to excess inventory on shelves that the Company could not move, requiring significant discounting (and loss of margin) to open up space in stores with fixed inventory capacities, or stripping the stores of the inventory taking more significant losses.

While implementing this strategy, the Company lost focus of its core customer and the financial assumptions underlying the strategy did not materialize, leading to a loss of sourcing savings and inventory productivity. Even after bringing in new management, the Company was left with a large quantity of low-price, low-quality inventory that it needed to sell before implementing a new strategy, thus causing continuing losses into fiscal year 2020.

In addition, the Company did not rationalize its store footprint in any meaningful way or close underperforming stores to account for these losses. The decline in store traffic was also a result of heightened competition both online, with the entrance of Amazon and Wayfair, and in-store, with the entrance of AtHome, Cost Plus World Markets, HomeGoods, HomeSense, Target and others. The macroeconomic trends impacting the home furnishings sector of the retail industry also generally contributed to the Company's performance shortfalls.

The Company has worked to further enhance and develop their omni-channel approach, and have transferred a large share of their customers to online shopping. Nonetheless, heightened competition online—with the entrance of Amazon, Wayfair, and Overstock—coupled with added in-store competition from AtHome, Cost Plus World Market, HomeGoods, HomeSense, and

increased furniture offerings from big box retailers such as Target and Walmart have added competition in the retail space. The Company did not timely respond to meet all of these challenges, and suffered diminished performance as a result. Over time, these factors have tightened the Company's liquidity position and the Debtors now have insufficient liquidity to meet their operating obligations. As a result, net income dropped to \$11.6 million in fiscal year 2018 and the Company experienced a loss of \$198.8 million in fiscal year 2019.

Additionally, as the Company's liquidity has tightened, certain supply chain vendors have begun to place pressure on the supply chain cost structure. Some of the Company's inventory is currently located in ports in China, Vietnam, and Indonesia, and a number of foreign vendors have signaled that they are unwilling to ship the product absent payment in full prior to or upon delivery. This in turn reduces the Company's ability to generate revenue from sales, creating a negative feedback loop decreasing liquidity. Any disruption to the supply chain poses a threat to the Company, as without the flow of fresh inventory, the Company's retail business will effectively starve. The flow of fresh inventory is the lifeblood of retail sales, and ensuring the uninterrupted flow of inventory to the Company's customers is of the utmost importance.

Further, the Company, like many other companies, are facing potential disruptions from the COVID-19 virus (commonly referred to as Coronavirus) currently facing China and other parts of the world. While factories are beginning to reopen in China, this will likely have some effect on inventory levels for the foreseeable future.

## **B. Exploration of Strategic Alternatives**

In late 2018, certain of the Company's Term Loan Lenders started organizing as a result of a growing concern about the Company's future and became increasingly focused on contingency planning. Recognizing the need to explore restructuring alternatives, in December 2018 the Company retained Credit Suisse Securities (USA) LLC ("Credit Suisse") to assist the Company's board of directors (the "Board") in its review of strategic alternatives. Credit Suisse commenced a process seeking a comprehensive out-of-court merger or sale proposals for the Company's entire business. The Company, however, did not receive any actionable proposals. In January 2019, the Company hired AlixPartners to assist in its operational restructuring efforts, including assisting with a store rationalization strategy and inventory pricing strategy. The AlixPartners team also took on significant responsibility within the Company's finance and liquidity management apparatus, with AlixPartners employees taking temporary positions as both CFO and Treasurer in the middle of 2019. Kirkland & Ellis LLP was retained in March 2019 to further facilitate the Company's turnaround efforts and to pursue strategic alternatives.

In late summer 2019, the Company engaged Guggenheim Securities LLC ("Guggenheim Securities") to serve as its investment banker and assist the Company in connection with the evaluation of various strategic alternatives. Additionally the AlixPartners team assisted the Company in preparing cash-flow models and other related diligence in connection with these conversations. In conjunction with the employment of an investment banker, the Company had a full suite of restructuring advisors that were able to jump start formal negotiations with organized lender groups. These negotiations picked up speed going into February 2020 as it became clear that time was of the essence for this Company and a path forward needed to be forged sooner, rather than later. In early 2020, the Company engaged in substantive negotiations with its Term

Loan Lenders and launched a broader marketing process, as discussed herein, with the assistance of Guggenheim Securities.

1. Governance Matters

The Company's Board consists of eleven members. In connection with ramped up restructuring efforts, on January 6, 2020, the Company appointed two disinterested restructuring industry veterans, Pamela B. Corrie and Steven G. Panagos.

2. Overhead Rationalization

While exploring comprehensive restructuring options, Pier 1 has taken key initiatives to reduce overhead and streamline operations to adapt to certain retail industry trends and improve overall efficiency. The Company has cut over \$90 million in selling, general, and administrative expenses in the last 12 months, and has strategically re-negotiated media contracts, all without sacrificing sales and operational efficiency. The Company has also implemented sourcing and supply chain savings to improve profit margins, such as renegotiating agent commissions and optimizing logistics. The Debtors are in the process of completing that rationalization, along with right-sizing the Company's distribution center network. Additionally, the Company is in discussions with the landlord of their corporate offices regarding a reduction in space or will otherwise likely reject the lease during these cases and find new corporate offices.

3. Inventory Rationalization

As a result of the unsuccessful shift in its retail strategy towards higher volume, lower margin product in 2018, and new management's strategy to revert to the Company's historic stronghold, the Company was left with a large amount of excess inventory that does not meet its current business plan. In order to effectively realize this excess inventory, the Company ran concentrated clearance sales in 169 underperforming stores (the "Clearance Sales"). The Clearance Sales were an effective mechanism to clear this excess inventory while also helping to maintain liquidity. Further, the Clearance Sales were offered at historically under-performing locations, allowing the Company to monetize this excess inventory while maintaining the brand strength in stores that are most likely to have a role in a go-forward business plan. As described herein, on January 6, 2020, the Company announced that it ultimately determined to close up to 450 stores (including these 169 stores). The Company intends to continue to sell the excess inventory through the remaining store closings.

4. Store Closings

During 2019 the Company recognized that their store footprint was unsustainable and began developing a strategy in conjunction with AlixPartners, A&G Realty Partners, LLC ("A&G"), and partner Gordon Brothers Retail Partners, LLC ("Gordon Brothers") to help right-size the Company's store footprint and assist with the Clearance Sales. Company management undertook a store by store analysis of the financial performance of each store location. The analysis resulted in a store reduction target creating a simplified and substantially more profitable store base. Based on this analysis, Company management decided that in any going-concern scenario, the Company needed to close up to 450 stores. The remaining go-forward stores

achieved superior sales and customer metrics compared to the closing stores. As discussed further herein, the Debtors are continuing the store closures in accordance with the Store Closing Order and Wind-Down Order [Docket Nos. 378, 744] (each as defined herein).

#### 5. DIP Financing Negotiations and Marketing Process

In connection with the chapter 11 filing, the Debtors, with the assistance of advisors, initiated a process for identifying sources of capital on the best available terms. Specifically, the Debtors began soliciting indications of interest from potential debtor in possession lenders, including lenders in the Debtors' prepetition capital structure and other third-party financial institutions, to gauge their interest in providing DIP Financing prior to the Petition Date.

Following preliminary discussions with certain of the prepetition ABL Lenders, the Debtors received an initial term sheet from the prepetition ABL Lenders. The Debtors, with the assistance of Guggenheim Securities, then commenced a comprehensive marketing process and solicited 12 financial institutions to gauge whether such parties would be willing to provide DIP Financing on similar or better economic terms than the prepetition ABL Lenders' proposal. Each of those parties executed confidentiality agreements and were granted access to a virtual data room containing detailed non-public information regarding the Debtors. As a result of these efforts, four parties and their advisors provided preliminary DIP Financing proposals. Ultimately, no party was willing to provide financing to the Debtors on an unsecured or administrative priority basis.

Following the conclusion of the DIP Financing negotiations and marketing process, the Debtors' prepetition ABL Lenders (together with any other parties that may become a party to the DIP Credit Agreement, the "DIP Lenders") agreed to provide an aggregate of \$256 million of DIP Financing under the DIP Senior Credit Facility to fund the administration of these Chapter 11 Cases as discussed further herein.

#### 6. Plan Support Agreement

The culmination of the Company's efforts and decision making, in consultation with the Company's advisors, was entry into the Plan Support Agreement on February 16, 2020. Under the Plan Support Agreement, the Consenting Term Lenders agreed to either release their liens on the Pier 1 assets in exchange for the sale proceeds (after payment of all applicable more senior claims as contemplated by the Plan) or convert their debt claims into equity in a new Pier 1 entity depending on the outcome of the marketing and auction process.

The compromises and settlements embodied in the Plan Support Agreement, to be implemented pursuant to the Plan, preserve value by enabling the Debtors to avoid protracted, value-destructive litigation that would delay their emergence from chapter 11. Instead of litigating with the Consenting Term Lenders over the sale and potential recoveries, the Consenting Term Lenders have agreed to become parties to the Plan Support Agreement and support the Debtors' sale and Plan—each of which provides significant value to the Debtors.

## **VII. EVENTS OF THE CHAPTER 11 CASES**

### **A. First Day Relief**

On the Petition Date, along with their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Petitions”), the Debtors filed several motions (the “First Day Motions”) designed to facilitate the administration of the Chapter 11 Cases and minimize disruption to the Debtors’ operations, by, among other things, easing the strain on the Debtors’ relationships with employees, vendors, and customers following the commencement of the Chapter 11 Cases. A brief description of each of the First Day Motions and the evidence in support thereof is set forth in the *Declaration of Robert J. Riesbeck, Chief Executive Officer, of Pier 1 Imports, Inc., in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 30], filed on the Petition Date.

The First Day Motions, Petitions, and all proposed orders for relief in the Chapter 11 Cases, can be viewed free of charge at <https://dm.epiq11.com/case/pier1/info>.

### **B. Plan Support Agreement**

Along with the First Day Motions, the Debtors filed the Plan Support Agreement with the support of 63.8% of the Company’s Term Loan Lenders. The Bankruptcy Court approved the Debtors’ assumption of the Plan Support Agreement on February 18, 2020 [Docket No. 102].

### **C. Final Approval of DIP Financing**

On March 13, 2020, the Bankruptcy Court entered a final order approving the DIP Senior Credit Facility [Docket No. 342], which provides (1) \$200 million in revolving commitments, which will include a \$60 million sublimit for the issuance of letters of credit, (2) a \$15 million first in, last out term loan commitment, (3) an approximately \$41.2 million asset-based term loan, a financing structure similar to the Debtors’ prepetition Revolving Credit Facility, and (4) the refinancing or “roll-up” of all outstanding ABL Obligations into DIP Facility Obligations on a final basis. The ABL Lenders have also consented to the Debtors’ use of their cash collateral in connection with the DIP Senior Credit Facility.

Under the Plan, in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, each Allowed DIP Claim, each such holder of an Allowed DIP Claim shall receive payment in full in Cash of such holder’s Allowed DIP Claim or such other treatment as agreed by such holder in such holder’s sole discretion.

### **D. Schedules and Statements**

On February 17, 2020, the Debtors filed a motion [Docket No. 5] seeking entry of interim and final orders granting an extension of time through and including March 16, 2020, to file their schedules of assets and liabilities, schedules of current income and expenditures, schedules of executory contracts and unexpired leases, and statements of financial affairs (collectively, the “Schedules and Statements”). On March 17, 2020, the Bankruptcy Court entered a final order approving this extension motion [Docket No. 373]. On March 17, 2020, the Debtors filed their Schedules and Statements.

### **E. Appointment of Official Committee**

On February 27, 2020, the U.S. Trustee filed the *Appointment of Unsecured Creditors Committee* [Docket No. 176], notifying parties in interest that the U.S. Trustee had appointed a statutory committee of unsecured creditors in the Chapter 11 Cases. The Debtor held a meeting of creditors pursuant to section 341 of the Bankruptcy Code on April 21, 2020.

### **F. Sale Process and Bidding Procedures**

The Debtors conducted a marketing process for substantially all of their assets that began in December 2019. The Debtors, with the assistance of Guggenheim Securities, contacted approximately 22 strategic buyers and investors. These strategic buyers and investors were selected based on their business model, historical acquisition activity and financial capabilities, among other factors. Also, approximately 69 financial buyers and investors were contacted. These financial buyers and investors were selected based on their historical interest in retail, consumer and branding opportunities, existing and past investment and financial capabilities and other factors. Finally, approximately four brand/inventory buyers, who were selected based on their historical interest in individual retail assets, were also contacted. Thus, in total, approximately 95 strategic, financial and brand/inventory buyers were contacted and received introductory materials and non-disclosure agreements (“NDAs”), of which 35 parties executed NDAs and 25 parties have received a Confidential Information Memorandum and other information containing business and brand overviews, product positioning, management team information, channel overviews, customer demographics, strategic plans, growth opportunities, and historical and projected financial information.

Pursuant to the Bidding Procedures Order, the deadline to submit non-binding indications of interest was February 28, 2020. The deadline for interested parties to submit Qualified Bids (as defined in the Bidding Procedures) to participate in the Auction (as defined in the Bidding Procedures) was March 23, 2020. The Debtors’ marketing process was upended by the COVID-19 epidemic, and the only bids received were liquidating bids. Shortly after the bid deadline, the Required Consenting Term Lenders initially elected to pursue an equitization and the Company filed a notice cancelling the auction [Docket No. 428]. The Debtors seek to sell any and all of their remaining assets, including their intellectual property and e-commerce business, pursuant to the Bidding Procedures Order and to liquidate inventory in their closing stores pursuant to the Store Closing Order (with minor modifications as set forth in the Wind-Down Order). Pursuant to the Wind-Down Order, the Debtors extended the bid deadline to July 1, 2020, to accommodate bids for their remaining assets.

### **G. Store Closing Process**

On March 17, 2020, the Bankruptcy Court granted the Debtors’ store closing motion on a final basis and approved continuance of store closures in accordance with customary store-closing procedures, subject to the auction and sale process, assumption of the Gordon Brothers consulting agreement, and customary store closing bonuses up to \$1.79 million [Docket No. 378] (the “Store Closing Order”). On January 6, 2020, the Debtors announced an intention to close up to 450 stores. Ultimately, the Debtors’ management team, in consultation with the Debtors’ advisors, determined that it was appropriate to close and wind down approximately 398 underperforming

brick-and-mortar stores (the “Initial Store Closings”). On or around January 10, 2020, the Debtors commenced the Initial Store Closings at approximately 270 stores, which included 169 stores where the Clearance Sales have been conducted. The Debtors also commenced closings of approximately 56 stores in Canada a few days after the Petition Date. The Initial Store Closings were completed on March 31, 2020 and the properties have all been vacated. Additionally, the Debtors wound-down and vacated their Ontario, California distribution center on April 17, 2020.

The Debtors, with the assistance of AlixPartners and A&G, also initiated lease modification negotiations with the Debtors’ landlords for certain rent concessions and cure costs reductions with respect to leases not associated with the Initial Store Closings. The Debtors intend for Gordon Brothers to manage all of the store closing operations as further set forth in the Debtors’ store closing motion [Docket No. 24].

The store footprint rationalization plan intended for the Debtors to take advantage of inventory management, and logistics initiatives, freeing up net working capital, while simultaneously providing a viable operational footprint for potential buyers. Nonetheless, due to the COVID-19 epidemic and lack of interest from potential buyers, the store footprint rationalization plan was insufficient to provide a viable go-forward operation. As such, the Debtors modified the store closing process in accordance with the Wind-Down Order and intend to close the remaining open stores by October 31, 2020, as discussed further herein.

#### **H. Limited Operation Orders**

The Limited Operation Orders allow the Debtors to limit payments to only those necessary expenses contemplated by their interim operating budgets for the months of April and May 2020. Specifically, the Limited Operating Orders allow the Debtors to: pay critical expenses, including employee benefits for all furloughed employees, reduced wages for critical employees, insurance, and trust fund taxes; temporarily cease making or delaying all other payments not contemplated by the interim debtor-in-possession financing budget; automatically adjourn any motions, applications, or demands for payment on account of unpaid invoices or otherwise to the next scheduled omnibus hearing that is no less than 45 days after the Debtors file a notice of intent to reopen operations or such later date as the Bankruptcy Court may determine; and schedule a monthly hearing to (i) provide all parties in interest an update on the sale process and business reopening timeline, (ii) resolve any material disputes related to the Order, and (iii) determine if the relief granted by the Limited Operation Orders should remain in place or be modified in response to changing circumstances.

#### **I. CARES Act Tax Refund**

As a direct response to the effects COVID-19 has had on the U.S. economy, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed into law on March 27, 2020. The CARES Act provides various forms of relief aimed at assisting the American economy, including forgivable loans to business affected by COVID-19 under the Paycheck Protection Program (the “PPP”) and tax savings to companies, including tax refunds and the acceleration of certain tax credits. The Debtors were not eligible for loans under the PPP, however have been able to utilize certain tax-related provisions. One of those tax-related provisions is the temporary resurrection of the ability to “carry back” net operating losses (“NOLs”) generated in



taxable years beginning after December 31, 2017 and before January 1, 2021 for five years. The Debtors currently anticipate that they will be able to receive more than \$100 million of cash tax refunds as a result of the NOL carryback provisions of the CARES Act (and certain other provisions that permit the acceleration of refundable tax credits related to payment of the corporate alternative minimum tax) (the “Tax Refund”). Despite the Tax Refund and the constrained operations granted in the Interim Budget Order, the Debtors are still unable to maintain sufficient liquidity in the current business environment.

#### **J. Extension Order**

As part of the Debtors’ comprehensive efforts to respond to operational challenges imposed by COVID-19, on February 28, 2020, the Debtors filed a motion seeking an order extending by 90 days the 120-day time period within which the Debtors must assume or reject unexpired leases of non-residential real property under section 365(d)(4) of the Bankruptcy Code. The DIP Credit Agreement requires that the Debtors receive approval of an extension of the section 365(d)(4) deadline (the “Section 365(d)(4) Deadline”) on or before March 13, 2020. The Debtors also do not want to foreclose the ability to have sufficient time to make assumption and rejection decisions. The Bankruptcy Court entered an order extending the Section 365(d)(4) Deadline to September 14, 2020 on March 13, 2020 [Docket No. 346] (the “Extension Order”).

#### **K. Wind-Down Order**

After pursuing every available alternative and engaging in conversations with the Required Consenting Term Lenders, DIP Lenders, and the Creditors’ Committee, and all parties who expressed interest in purchasing the Debtors’ stores and assets—and considering all available government support—the Debtors were left with no choice but to wind down their retail operations and seek to sell all remaining assets, including their intellectual property and e-commerce business. On June 2, 2020 the Bankruptcy Court entered the *Order (I) Authorizing the Debtors to Wind-Down Operations, (II) Authorizing the Debtors to Conduct Store Closings, (III) Modifying the DIP Order and (IV) Granted Related Relief* [Docket No. 744] (the “Wind-Down Order”).

The Wind-Down Order provides a framework for an orderly wind-down of the Debtors’ operations, while implementing renewed procedures to market the Debtors’ assets. Specifically, the Debtors will endeavor to sell any and all of their remaining assets, including their intellectual property and e-commerce business, pursuant to the Bidding Procedures Order and to liquidate inventory in their closing stores pursuant to the Store Closing Order, with certain incremental modifications. Pursuant to the Wind-Down Order, the Debtors will complete going out of business sales at their retail locations as soon as state and local regulations allow. The Debtors entered into a new contract with Gordon Brothers to facilitate these sales. Simultaneously, the Debtors, with the assistance of their advisors, will market their assets under milestones and procedures set forth in the Wind-Down Order. These procedures allow flexibility for the Debtors to pause going out of business sales in certain locations if potential buyers seek to purchase some or all of the Debtors’ retail business.

As part of the wind-down process, the Debtors currently estimate that, as a result of delays caused by COVID-19, they will not exit a majority of the stores by the Section 365(d)(4) Deadline. The Debtors anticipate completing store closings and exiting the properties at approximately 301

stores by no later than September 30, 2020 and the remaining 240 stores by October 31, 2020. Regardless of whether stores are open, the Debtors began paying rent for all stores on June 1, 2020. In exchange for allowing the Debtors to remain on the applicable properties beyond the Section 365(d)(4) Deadline and until the conclusion of the store closings, the Debtors will (i) continue to timely satisfy all rent obligations in the ordinary course of business through the date that the Debtors vacate the premises (with such rent to be paid based on the actual weeks of occupancy), and (ii) reimburse the landlord for April and May rent (such rent, the “Deferred Rent Claims”) by no later than September 12, 2020, solely to the extent landlords agree to a lease rejection date that allows the Debtors to remain in stores through the end of the store closing process, each in accordance with the Wind-Down Order. If the landlords do not consent to this later lease rejection date, the Debtors will work with the landlord to vacate the premises as soon as possible on or around the Section 365(d)(4) Deadline, and such landlord will be entitled to an administrative expense claim on account of the Deferred Rent Claims, which claim will be treated just as all other administrative expenses in these chapter 11 cases.

The Debtors will file a list of proposed rejection dates for all stores on or prior to July 10, 2020 (the “Rejection Notice”). This list will be subject to change; *provided* that the Debtors will need landlord consent to push any rejection date later than that which is set out in the Rejection Notice. Any landlord objecting to the proposed rejection date on the grounds that it is beyond the 365(d)(4) Deadline shall be required to notify the Debtors’ counsel by email or mail to Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains; Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman and Charles Sterrett, and Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23218, Attn: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson of their decision to opt out of the later rejection date prior to July 24, 2020 prior to July 24, 2020. Any landlord objecting to the proposed rejection date set forth on the Rejection Notice that does not subsequently agree to such proposed rejection date will have their Deferred Rent Claims treated as all other administrative claims in these chapter 11 cases. The Debtors will work with the landlord to vacate the premises as soon as possible on or around the 365(d)(4) Deadline. Any landlord that does not notify the aforementioned parties of their objection prior to July 24, 2020, will be deemed to consent to the rejection date set forth on the Rejection Notice and will receive payment of the Deferred Rent Claims on or prior to September 12, 2020.

Due to the lack of liquidity, the DIP Lenders have allowed the Debtors, in accordance with the DIP Order and the DIP Loan Documents, to overdraw the DIP Facility by approximately \$40 million in order to provide needed capital to facilitate the Wind Down.

## **L. Treatment of Executory Contracts and Unexpired Leases**

### **1. Assumption and Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (a) is specifically described in the Plan as to be assumed

in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (b) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Confirmation Date; (c) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as applicable, in connection with the any sale transaction that is subject of a pending motion as of the Confirmation Date; (d) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (e) is a D&O Liability Insurance Policy. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

2. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Counterparties to Executory Contracts or Unexpired Leases listed on the Schedule of Rejected Executory Contracts and Unexpired Leases or otherwise Rejected pursuant to the Plan shall be served with a notice of rejection of Executory Contracts and Unexpired Leases substantially in the form approved by the Bankruptcy Court pursuant to the Bankruptcy Court order approving the Disclosure Statement as soon as reasonably practicable following the filing of the Plan Supplement. The notice of the Plan Supplement shall also be deemed appropriate notice of rejection when served on applicable parties. Proofs of Claims with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be Filed with the Claims Agent by the later of the date that is thirty (30) days after: (1) the entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection; (2) the Effective Date; and (3) the effective date of any rejection that occurs after the Effective Date. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease that are not Filed within such time will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Wind-Down Debtors, the Estates, or property of the foregoing parties, without the need for any objection by the Debtors or the Wind-Down Debtors, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or a Proof of Claim to the contrary.** Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III of the Plan.

3. Cure of Default for Assumed Executory Contracts and Unexpired Leases

Any Cure Obligations under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of agreed monetary Cure Obligations in Cash on the Effective Date and payment or performance of all other Cure Obligations on or after the Effective Date, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of an unresolved dispute regarding (1) the amount of any

Cure Claim, (2) the ability of the Wind-Down Debtors or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or assumed and assigned, or (3) any other matter pertaining to assumption, assignment, or payments of any Cure Claims required by section 365(b)(1) of the Bankruptcy Code, such dispute shall be resolved by a Final Order(s) of the Bankruptcy Court.

At least 14 days before the Voting Deadline, the Debtors shall distribute, or cause to be distributed, Cure Notices to the applicable third parties and their counsel (if any). **Any objection by a counterparty to an Executory Contract or Unexpired Lease to the proposed assumption, assumption and assignment, or related Cure amount must be Filed by the Cure/Assumption Objection Deadline.** Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption, assumption and assignment, or Cure Notice will be deemed to have assented to such assumption or assumption and assignment, and Cure amount. To the extent that the Debtors seek to assume and assign an Unexpired Lease pursuant to the Plan, the Debtors will identify the assignee in the applicable Cure Notice and/or Schedule and provide “adequate assurance of future performance” for such assignee (within the meaning of section 365 of the Bankruptcy Code) under the applicable Executory Contract or Unexpired Lease to be assumed and assigned.

Assumption or assumption and assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise, and the satisfaction of the Cure Obligations, shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that the Debtors assume or assume and assign such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed or assumed and assigned shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, with respect to any asserted non-monetary Cure Obligations, such Cure obligations may be cured (or resolved) by the assignee and the applicable counterparty in the ordinary course of business following the assumption and all parties reserve all rights with respect to any such asserted Cure obligations.

#### 4. Indemnification Obligations

All indemnification obligations in place as of the Effective Date (whether in the by laws, certificates of incorporation or formation, limited liability company agreements, other organizational or formation documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for the current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of the Debtors, as applicable, shall be assumed and remain in full force and effect after the Effective Date, and shall not be modified, reduced, discharged, impaired, or otherwise affected in any way, and shall survive Unimpaired and unaffected, irrespective of when such obligation arose; *provided, however*, that neither the Term Loan Lenders nor any Purchaser shall have any liability or other responsibility for any such obligation, which shall solely be an obligation of the Plan Administrator (if an Asset Sale Transaction occurs) and any applicable insurance company.

5. Insurance Policies

Without limiting Article IV.D.8 of the Plan, all of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan. On the Effective Date, the Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments related thereto.

6. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed (or assumed and assigned) shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

7. Reservation of Rights

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Rejected Executory Contracts and Unexpired Leases or the Schedule of Assumed Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor has any liability thereunder.

8. Nonoccurrence of Effective Date

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting any Executory Contract or Unexpired Lease pursuant to section 365(d)(4) of the Bankruptcy Code.

9. Contracts and Leases Entered Into After the Petition Date

Contracts and leases entered into in the ordinary course of business after the Petition Date by any Debtor, including any Executory Contracts and/or Unexpired Leases assumed by such Debtor, will be performed by the applicable Debtor or Wind-Down Debtor in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) that have not been rejected under the Plan will survive and remain unaffected by entry of the Confirmation Order, except as provided therein.

## **M. Exclusivity**

The Debtors' exclusivity periods end on June 16, 2020 (for filing the Plan) and August 17, 2020 (for solicitation of the Plan). Section 1121(b) of the Bankruptcy Code establishes an initial period of 120 days after the Bankruptcy Court enters an order for relief under chapter 11 of the Bankruptcy Code, during which only the debtor may file a chapter 11 plan. Section 1121(d) of the Bankruptcy Code also permits the Bankruptcy Court to extend these exclusivity periods "for cause." To that end, on May 15, 2020, the Debtors filed a motion seeking an extension of their exclusivity periods by 90 days to September 14, 2020 (for filing the Plan) and November 16, 2020 (for solicitation of the Plan) [Docket No. 666] to extend the runway for Plan negotiations that largely focus on the reopening of the U.S. economy.

## **N. Administrative Claims Bar Date**

On June 1, 2020, the Bankruptcy Court granted the *Debtors' Motion for Entry of an Order (I) Setting a Bar Date for Filing Proofs of Administrative Claims, (II) Establishing Administrative Claims Procedures, (III) Approving the Form and Manner of Filing Proofs of Administrative Claims, (IV) Approving Notice of the Administrative Claims Bar Date, and (V) Granting Related Relief* [Docket No. 737] (the "Administrative Claim Bar Date Order"). The Administrative Claim Bar Date Order sets forth the deadline for filing requests for payment of Administrative Claims arising from the Petition Date through and including May 31, 2020, other than for Professional Fee Claims and DIP Claims, and claims arising under section 503(b)(9) of the Bankruptcy Code for which bar dates were established in the Prepetition Claims Bar Date Order. Pursuant to the Plan, the deadline for filing requests for payment of Administrative Claims shall be the date that is 30 days following the Effective Date, except as specifically set forth in the Plan or the Administrative Claims Bar Date Order or otherwise ordered by the Bankruptcy Court. For the avoidance of doubt, the Administrative Claims Bar Date shall not apply to any Debtor having a Claim against another Debtor and parties not required to file a Proof of Administrative Claim pursuant to the Administrative Claims Bar Date Order (the "Administrative Claims Bar Date").

For the avoidance of doubt, the Administrative Claims Bar Date shall not apply to, among other claims, Professional Fee Claims, DIP Claims, and claims arising under section 503(b)(9) of the Bankruptcy Code, the bar date for which claims was established by the Prepetition Claims Bar Date Order.

## **O. Litigation Matters**

In the ordinary course of business, the Debtors are parties to certain lawsuits, legal proceedings, collection proceedings, and claims arising out of their business operations. The Debtors cannot predict with certainty the outcome of these lawsuits, legal proceedings, and claims.

With certain exceptions, the filing of the Chapter 11 Cases operates as a stay with respect to the commencement or continuation of litigation against the Debtors that was or could have been commenced before the commencement of the Chapter 11 Cases. In addition, the Debtors' liability with respect to litigation stayed by the commencement of the Chapter 11 Cases generally is subject to discharge, settlement, and release upon confirmation of a plan under chapter 11, with certain

exceptions. Therefore, certain litigation Claims against the Debtors may be subject to discharge in connection with the Chapter 11 Cases.

## **VIII. RISK FACTORS**

Holders of Claims should read and consider carefully the risk factors set forth below before voting to accept or reject the Plan. Although there are many risk factors discussed below, these factors should not be regarded as constituting the only risks present in connection with the Debtors' businesses or the Plan and its implementation.

### **A. Bankruptcy Law Considerations**

The occurrence or non-occurrence of any or all of the following contingencies, and any others, could affect distributions available to Holders of Allowed Claims under the Plan but will not necessarily affect the validity of the vote of the Impaired Classes to accept or reject the Plan or necessarily require a re-solicitation of the votes of Holders of Claims in such Impaired Classes.

#### **1. Parties in Interest May Object to the Plan's Classification of Claims and Interests**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtors believe that the classification of the Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims and Interests each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims or Interests, as applicable, in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

#### **2. The Conditions Precedent to the Effective Date of the Plan May Not Occur**

As more fully set forth in Article XI of the Plan, the Effective Date is subject to a number of conditions precedent. If such conditions precedent are not met or waived, the Effective Date will not take place.

#### **3. The Debtors May Fail to Satisfy Vote Requirements**

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek, as promptly as practicable thereafter, Confirmation of the Plan. In the event that sufficient votes are not received, the Debtors may seek to confirm an alternative chapter 11 plan. There can be no assurance that the terms of any such alternative chapter 11 plan would be similar or as favorable to the Holders of Allowed Claims and Interests as those proposed in the Plan.

#### 4. The Debtors May Not Be Able to Secure Confirmation of the Plan

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, and requires, among other things, a finding by the Bankruptcy Court that: (a) such plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting classes; (b) confirmation of such plan is not likely to be followed by a liquidation or a need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to non-accepting Holders of claims and equity interests within a particular class under such plan will not be less than the value of distributions such Holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that this Disclosure Statement, the balloting procedures, and voting results are appropriate, the Bankruptcy Court could still decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation are not met. If a chapter 11 plan of reorganization is not confirmed by the Bankruptcy Court, it is unclear whether the Debtors will be able to reorganize their business and what, if anything, Holders of Allowed Claims against them would ultimately receive on account of such Allowed Claims.

Confirmation of the Plan is also subject to certain conditions as described in Article XI of the Plan. If the Plan is not confirmed, it is unclear what distributions, if any, Holders of Allowed Claims will receive on account of such Allowed Claims.

The Debtors, subject to the terms and conditions of the Plan and the Plan Support Agreement, reserve the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications could result in less favorable treatment of any non-accepting Class, as well as any Class junior to such non-accepting Class, than the treatment currently provided in the Plan. Such a less favorable treatment could include a distribution of property with a lesser value than currently provided in the Plan or no distribution whatsoever under the Plan.

#### 5. Nonconsensual Confirmation

In the event that any impaired class of claims or interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm a plan at the Proponents’ request if at least one impaired class (as defined under section 1124 of the Bankruptcy Code) has accepted the plan (with such acceptance being determined without including the vote of any “insider” in such class), and, as to each impaired class that has not accepted the plan, the Bankruptcy Court determines that the plan “does not discriminate unfairly” and is “fair and equitable” with respect to the dissenting impaired class(es). The Debtors believe that the Plan satisfies these requirements, and the Debtors may request such nonconsensual Confirmation in accordance with subsection 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach



this conclusion. In addition, the pursuit of nonconsensual Confirmation or Consummation of the Plan may result in, among other things, increased expenses relating to professional compensation.

#### 6. Continued Risk Upon Confirmation

Even if a chapter 11 plan of reorganization is consummated, the Debtors will continue to face a number of risks, including certain risks that are beyond their control, such as further industry deterioration or other changes in economic conditions, and increasing expenses. Some of these concerns and effects typically become more acute when a case under the Bankruptcy Code continues for a protracted period without indication of how or when the case may be completed. As a result of these risks and others, there is no guarantee that a chapter 11 plan of reorganization reflecting the Plan will achieve the Debtors' stated goals.

In addition, at the outset of the Chapter 11 Cases, the Bankruptcy Code will give the Debtors the exclusive right to propose the Plan and will prohibit creditors and others from proposing a plan. The Debtors will have retained the exclusive right to propose the Plan upon filing their petitions for chapter 11 relief. If the Bankruptcy Court terminates that right, however, or the exclusivity period expires, there could be a material adverse effect on the Debtors' ability to achieve confirmation of the Plan in order to achieve the Debtors' stated goals.

Furthermore, even if the Debtors' debts are reduced and/or discharged through the Plan, the Debtors may need to raise additional funds through public or private debt or equity financing or other various means to fund the Debtors' business after the completion of the proceedings related to the Chapter 11 Cases. Adequate funds may not be available when needed or may not be available on favorable terms.

#### 7. The Chapter 11 Cases May Be Converted to Cases Under Chapter 7 of the Bankruptcy Code

If the Bankruptcy Court finds that it would be in the best interest of creditors and/or the debtor in a chapter 11 case, the Bankruptcy Court may convert a chapter 11 bankruptcy case to a case under chapter 7 of the Bankruptcy Code. In such event, a chapter 7 trustee would be appointed or elected to liquidate the debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtors believe that liquidation under chapter 7 would result in significantly smaller distributions being made to creditors than those provided for in a chapter 11 plan because of (a) the likelihood that the assets would have to be sold or otherwise disposed of in a disorderly fashion over a short period of time rather than reorganizing or selling in a controlled manner affecting the business as a going concern, (b) additional administrative expenses involved in the appointment of a chapter 7 trustee, and (c) additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation, and including Claims resulting from the rejection of Unexpired Leases and other Executory Contracts in connection with cessation of operations.

#### 8. The Chapter 11 Cases Could Result in a "Structured Dismissal"

If the Confirmation or Consummation of the Plan does not occur, (a) the Plan shall be null and void in all respects other than as set forth in the Plan, (b) the Plan shall be deemed a motion seeking dismissal of these Chapter 11 Cases in accordance with the applicable provisions and

priority scheme of the Bankruptcy Code, and (c) nothing contained in the Plan or this Disclosure Statement shall: (1) constitute a waiver or release of any Claims by the Debtors, any Holders, or any other Entity; (2) prejudice in any manner the rights of the Debtors, any Holders, or any other Entity; or (3) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any Holders, or any other Entity in any respect.

9. The Debtors May Object to the Amount or Classification of a Claim

Except as otherwise provided in the Plan, the Debtors reserve the right to object to the amount or classification of any Claim under the Plan. The estimates set forth in this Disclosure Statement cannot be relied upon by any Holder of a Claim where such Claim is subject to an objection. Any Holder of a Claim that is subject to an objection thus may not receive its expected share of the estimated distributions described in this Disclosure Statement.

10. Risk of Non-Occurrence of the Effective Date

Although the Debtors believe that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether the Effective Date will, in fact, occur.

11. Contingencies Could Affect Votes of Impaired Classes to Accept or Reject the Plan

The distributions available to Holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including, without limitation, whether the Bankruptcy Court orders certain Allowed Claims to be subordinated to other Allowed Claims. The occurrence of any and all such contingencies, which could affect distributions available to Holders of Allowed Claims under the Plan, will not affect the validity of the vote taken by the Impaired Classes to accept or reject the Plan or require any sort of revote by the Impaired Classes.

The estimated Claims and creditor recoveries set forth in this Disclosure Statement are based on various assumptions, and the actual Allowed amounts of Claims may significantly differ from the estimates. Should one or more of the underlying assumptions ultimately prove to be incorrect, the actual Allowed amounts of Claims may vary from the estimated Claims contained in this Disclosure Statement. Moreover, the Debtors cannot determine with any certainty at this time, the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the percentage recoveries to Holders of Allowed Claims under the Plan.

12. Releases, Injunctions, and Exculpations Provisions May Not Be Approved

Article X of the Plan provides for certain releases, injunctions, and exculpations, including a release of liens and third-party releases that may otherwise be asserted against the Debtors, Wind-Down Debtors, or Released Parties, as applicable. The releases, injunctions, and exculpations provided in the Plan are subject to objection by parties in interest and may not be approved. If the releases are not approved, certain Released Parties may withdraw their support for the Plan.

13. The Total Amount of Allowed Unsecured Claims May Be Higher than Anticipated by the Debtors

With respect to Holders of Allowed General Unsecured Claims, the claims filed against the Debtors' estates may be materially higher than the Debtors have estimated.

14. The Total Amount of Allowed Administrative and Priority Claims May Be Higher than Anticipated by the Debtors

The amount of Cash the Debtors ultimately receive prior to and following the Effective Date may be lower than anticipated. Additionally Allowed Administrative Claims and Allowed Priority Claims may be higher than anticipated. Accordingly, there is a risk that the Debtors will not be able to pay in full in cash all Administrative Claims and Priority Claims on the Effective Date as is required to confirm a chapter 11 plan of reorganization.

15. Certain Tax Implications of the Plan

Holders of Allowed Claims should carefully review Article XI of this Disclosure Statement, entitled "*Certain United States Federal Income Tax Consequences of the Plan*," to determine how the tax implications of the Plan and the Chapter 11 Cases may adversely affect the Wind-Down Debtors and Holders of certain Claims.

**B. Risks Related to the Wind-Down Debtors' Businesses**

1. The Debtors May Not Be Able to Generate Sufficient Cash to Service All of Their Indebtedness

The Debtors' ability to make scheduled payments depends on the Debtors' financial condition and operating performance, which are subject to prevailing economic, industry, and competitive conditions and to certain financial, business, legislative, regulatory, and other factors beyond the Debtors' control. The Debtors may be unable to maintain a level of cash flow from operating activities sufficient to permit the Debtors to pay the principal, premium, if any, and interest on their indebtedness.

2. The Debtors Will Be Subject to the Risks and Uncertainties Associated with the Chapter 11 Cases

For the duration of the Chapter 11 Cases, the Debtors' ability to operate, develop, and execute a business plan, and continue as a going concern, will be subject to the risks and uncertainties associated with bankruptcy. These risks include the following: (a) ability to develop, confirm, and consummate the restructuring transactions specified in the Plan or an alternative restructuring transaction; (b) ability to obtain court approval with respect to motions filed in the Chapter 11 Cases from time to time; (c) ability to maintain relationships with suppliers, service providers, customers, employees, vendors, and other third parties; (d) ability to maintain contracts that are critical to the Debtors' operations; (e) ability of third parties to seek and obtain court approval to terminate contracts and other agreements with the Debtors; (f) ability of third parties to seek and obtain court approval to terminate or shorten the exclusivity period for the Debtors to propose and confirm a chapter 11 plan, to appoint a chapter 11 trustee, or to convert the Chapter

11 Cases to chapter 7 proceedings; and (g) the actions and decisions of the Debtors' creditors and other third parties who have interests in the Chapter 11 Cases that may be inconsistent with the Debtors' plans.

These risks and uncertainties could affect the Debtors' businesses and operations in various ways. For example, negative events associated with the Chapter 11 Cases could adversely affect the Debtors' relationships with suppliers, service providers, customers, employees, and other third parties, which in turn could adversely affect the Debtors' operations and financial condition. Also, the Debtors will need the prior approval of the Bankruptcy Court for transactions outside the ordinary course of business, which may limit the Debtors' ability to respond timely to certain events or take advantage of certain opportunities. Because of the risks and uncertainties associated with the Chapter 11 Cases, the Debtors cannot accurately predict or quantify the ultimate impact of events that occur during the Chapter 11 Cases that may be inconsistent with the Debtors' plans.

3. The Wind-Down Debtors May Be Adversely Affected by Potential Litigation, Including Litigation Arising Out of the Chapter 11 Cases

The Debtors are currently subject to or interested in certain legal proceedings, which may adversely affect the Debtors. In the future, the Wind-Down Debtors may become party to litigation. In general, litigation can be expensive and time consuming to bring or defend against. Such litigation could result in settlements or judgments that could significantly affect the Wind-Down Debtors' financial results. It is also possible that certain parties will commence litigation with respect to the treatment of their Claims under the Plan. It is not possible to predict the potential litigation that the Wind-Down Debtors may become party to, nor the final resolution of such litigation. The impact of any such litigation on the Wind-Down Debtors' businesses and financial stability, however, could be material.

4. The Loss of Key Personnel Could Adversely Affect the Debtors' Operations

The Debtors' operations are dependent on a relatively small group of key management personnel, including the Debtors' executive officers. The Debtors' recent liquidity issues and the Chapter 11 Cases have created distractions and uncertainty for key management personnel and employees. As a result, the Debtors may experience increased levels of employee attrition. The Debtors may be unable to find acceptable replacements with comparable skills and experience, and the loss of such key management personnel could adversely affect the Debtors' ability to operate their businesses. In addition, a loss of key personnel or material erosion of employee morale could have a material adverse effect on the Debtors' ability to meet customer and counterparty expectations, thereby adversely affecting the Debtors' businesses and the results of operations.

5. Results of Wind Down Sales May Not Meet Projections

The Wind Down sales may fail to meet projections due to the economic uncertainty surrounding the continued spread of COVID-19, which has had a significant impact on the Debtors' business in the context of consumer demand. On a macro level, this pandemic has dampened global growth and could ultimately lead to an economic recession. If this occurs,

demand for retail and consumer goods will continue to decline. Significantly, such a continued decline during the Wind Down and over the next several months could greatly impact the Debtors' sales at their remaining stores. Such a scenario would negatively impact the ability of the Debtors to sell inventory and complete the Wind Down.

6. The Wind-Down Budget May Change Materially

The Wind-Down Budget is the Debtors' best estimates of actual expenses and revenues during the remainder of the chapter 11 cases. Creditors should be aware that such numbers may change, potentially materially, and any changes to the actual expenses and revenues will ultimately impact the amount of Distributable Proceeds available to be paid to creditors under the Plan.

7. Renewed Shelter-in-Place Orders May Interrupt Going Out of Business Sales

Renewed government lockdowns and employee infections could both inhibit the Debtors' ability to wind down their businesses. The inability to remain open to the public during the Wind Down would materially impact the ability of the Debtors to facilitate an Asset Sale Transaction and liquidate inventory at store locations. The inherent risk that state governments may again shut down non-essential businesses plays a significant role in the success of the Plan.

8. The Debtors' Landlords May Not Consent to a Later Lease Rejection Date and Could Disrupt Store Closing Sales

Pursuant to the Wind-Down Order, if the landlords do not consent to the later lease rejection date (as discussed herein), the Debtors will have to vacate the store premises as soon as possible on or around the 365(d)(4) Deadline, and such landlord will be entitled to an administrative expense claim on account of the Deferred Rent Claims, which claim will be treated just as all other administrative expenses in these chapter 11 cases. The Debtors will be unable to determine which properties they may have to vacate until the expiration of the July 24, 2020 objection deadline for the Debtors' Rejection Notice. If a landlord requires the Debtors to vacate the store premises, the Debtors will be forced to liquidate inventory faster than desired, potentially significantly reducing recoveries.

## **IX. SOLICITATION AND VOTING PROCEDURES**

This Disclosure Statement is being distributed to the Holders of Claims in those Classes that are entitled to vote to accept or reject the Plan. The procedures and instructions for voting and related deadlines are set forth in the exhibits annexed to the Disclosure Statement Order, which is attached hereto as Exhibit C.

**THE DISCLOSURE STATEMENT ORDER IS INCORPORATED HEREIN BY REFERENCE AND SHOULD BE READ IN CONJUNCTION WITH THIS DISCLOSURE STATEMENT AND IN FORMULATING A DECISION TO VOTE TO ACCEPT OR REJECT THE PLAN.**

**THE DISCUSSION OF THE SOLICITATION AND VOTING PROCESS SET FORTH IN THIS DISCLOSURE STATEMENT IS ONLY A SUMMARY.**

PLEASE REFER TO THE DISCLOSURE STATEMENT ORDER ATTACHED HERETO FOR A MORE COMPREHENSIVE DESCRIPTION OF THE SOLICITATION AND VOTING PROCESS.

**A. Holders of Claims Entitled to Vote on the Plan**

Under the provisions of the Bankruptcy Code, not all Holders of Claims and Interests against a Debtor are entitled to vote on a chapter 11 plan. The table in Article III.H of this Disclosure Statement provides a summary of the status and voting rights of each Class (and, therefore, of each Holder within such Class absent an objection to the Holder's Claim or Interest) under the Plan.

As shown in the table, the Debtors are soliciting votes to accept or reject the Plan only from Holders of Claims in Class 4 and 5 (the "Voting Classes"). The Holders of Claims in the Voting Classes are Impaired under the Plan and may, in certain circumstances, receive a distribution under the Plan. Accordingly, Holders of Claims in the Voting Class have the right to vote to accept or reject the Plan.

The Debtors are *not* soliciting votes from Holders of Claims and Interests in Classes 1, 2, 3, 6, 7, 8, and 9. Additionally, the Disclosure Statement Order provides that certain Holders of Claims in the Voting Classes, such as those Holders whose Claims have been disallowed or are subject to a pending objection, are not entitled to vote to accept or reject the Plan.

**B. Voting Record Date**

**The Voting Record Date is June 16, 2020.** The Voting Record Date (as defined in the Disclosure Statement Order) is the date on which it will be determined which Holders of Claims in the Voting Class are entitled to vote to accept or reject the Plan and whether Claims have been properly assigned or transferred under Bankruptcy Rule 3001(e) such that an assignee or transferee, as applicable, can vote to accept or reject the Plan as the Holder of a Claim.

**C. Voting on the Plan**

**The Voting Deadline is July 24, 2020, at 4:00 p.m. (prevailing Eastern Time).** In order to be counted as votes to accept or reject the Plan, all ballots must be properly executed, completed, and delivered in accordance with the instructions on your ballot so that the ballots are **actually received** by the Debtors' Notice and Claims Agent on or before the Voting Deadline:

**DELIVERY OF BALLOTS**

**Pier 1 – Ballot Processing,  
c/o Epiq Corporate Restructuring, LLC  
P.O. Box 4422  
Beaverton, OR 97076-4422**

**and/or**

**In addition, to submit your Ballot via the Notice and Claims Agent’s online portal, please visit <https://dm.epiq11.com/Pier1>. Click on the “Submit E-Ballot” section of the website and follow the instructions to submit your Ballot.**

**D. Ballots Not Counted**

**No ballot will be counted toward Confirmation if, among other things:** (1) any ballot that is illegible or contains insufficient information to permit the identification of the Holder of such Claim; (2) any ballot cast by any Entity that does not hold a Claim in a Voting Class; (3) any Ballot cast for a Claim scheduled as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed by the Voting Record Date (unless the applicable bar date has not yet passed, in which case such Claim shall be entitled to vote in the amount of \$1.00); (4) any unsigned ballot or ballot lacking an original signature (for the avoidance of doubt, a ballot submitted via the Notice and Claims Agent online balloting portal shall be deemed an original signature); (5) any ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (6) any ballot submitted by any Entity not entitled to vote pursuant to the procedures described herein. **Please refer to the Disclosure Statement Order for additional requirements with respect to voting to accept or reject the Plan.**

**IF YOU HAVE ANY QUESTIONS ABOUT THE SOLICITATION OR VOTING PROCESS, PLEASE CONTACT THE NOTICE AND CLAIMS AGENT AT**

**(866) 977-0883 (Toll Free)  
(503) 520-4412 (International)**

**ANY BALLOT RECEIVED AFTER THE VOTING DEADLINE OR OTHERWISE NOT IN COMPLIANCE WITH THE SOLICITATION ORDER WILL NOT BE COUNTED.**

**E. Deadline for Returning Administrative Claim / Priority Claim Consent Form**

**The Deadline for returning Administrative Claim / Priority Claim Consent Form is July 24, 2020 at 4:00 p.m. (prevailing Eastern Time).** To be effective, all Administrative / Priority Claim Consent Form must be properly executed, completed, and delivered as directed, so that it is **actually received** by the Notice and Claims Agent on or before July 24, 2020 at 4:00 p.m. (prevailing Eastern Time).

## **F. Confirmation Hearing**

The Bankruptcy Court has scheduled the Confirmation Hearing for July 30, 2020, 1:00 p.m. (prevailing Eastern Time). The Confirmation Hearing may be adjourned from time to time without further notice.

Objections to Confirmation of the Plan must be filed and served on the Debtors, and certain other parties, by no later than July 24, 2020, at 4:00 p.m. (prevailing Eastern Time) in accordance with the notice of the Confirmation Hearing that accompanies this Disclosure Statement and the Disclosure Statement Order attached hereto as **Exhibit C** and incorporated herein by reference.

The Debtors will publish notice of the Confirmation Hearing, which will contain the deadline for objections to the Plan and the date and time of the Confirmation Hearing, in the *New York Times* (national) and *USA Today* (national) to provide notification to those persons who may not receive notice by mail. The Debtors may also publish the notice of the Confirmation Hearing in such trade or other publications as the Debtors may choose.

## **X. CONFIRMATION OF THE PLAN**

### **A. Requirements for Confirmation of the Plan**

Among the requirements for Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code are: (1) the Plan is accepted by all Impaired Classes of Claims or Interests, or if rejected by an Impaired Class, the Plan “does not discriminate unfairly” and is “fair and equitable” as to the rejecting Impaired Class; (2) the Plan is feasible; and (3) the Plan is in the “best interests” of Holders of Claims and Interests.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies all of the requirements of section 1129 of the Bankruptcy Code. The Debtors believe that: (1) the Plan satisfies, or will satisfy, all of the necessary statutory requirements of chapter 11; (2) the Debtors have complied, or will have complied, with all of the necessary requirements of chapter 11; and (3) the Plan has been proposed in good faith.

### **B. Best Interests of Creditors**

Often called the “best interests” test, section 1129(a)(7) of the Bankruptcy Code requires that a bankruptcy court find, as a condition to confirmation, that a chapter 11 plan provides, with respect to each impaired class, that each holder of a claim or an equity interest in such impaired class either (1) has accepted the plan or (2) will receive or retain under the plan property of a value that is not less than the amount that the non-accepting holder would receive or retain if the debtors liquidated under chapter 7.

The Debtors believe that the Plan will satisfy the best interests test because, among other things, the recoveries expected to be available to Holders of Allowed Claims and Interests under the Plan will be greater than the recoveries expected to be available in a chapter 7 liquidation, as discussed more fully below.



In a typical chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets and to make distributions to creditors in accordance with the priorities established in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of their collateral. If any assets remain in the bankruptcy estate after satisfaction of secured creditors' claims from their collateral, administrative expenses are next to be paid. After accounting for administrative expenses, unsecured creditors (including any secured creditor deficiency claims) are paid from the sale proceeds of any unencumbered assets and any remaining sale proceeds of encumbered assets in excess of any secured claims, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, interest holders receive the balance that remains, if any, after all creditors are paid.

All or substantially all of the assets of the Debtors' business will be liquidated through the Asset Sale Transaction and the Plan effects a Wind Down of the Debtors' remaining assets not otherwise acquired in the Asset Sale Transaction. Although a chapter 7 liquidation would achieve the same goal, the Debtors believe that the Plan provides a greater recovery to Holders of General Unsecured Claims than would a chapter 7 liquidation. Liquidating the Debtors' Estates under the Plan likely provides Holders of General Unsecured Claims with a larger, more timely recovery, primarily due to expected materially lower realized sale proceeds in chapter 7.

A chapter 7 liquidation beginning on what would have been the Effective Date would provide less recovery for creditors than the Plan. The delay of the chapter 7 trustee becoming familiar with the assets could easily cause bids already obtained to be lost, and the chapter 7 trustee will not have the technical expertise and knowledge of the Debtors' businesses that the Debtors had when they proposed to sell their assets and commence the Wind Down. Moreover, the distributable proceeds under a chapter 7 liquidation will be lower because of the chapter 7 trustee's fees and expenses.

Sale proceeds in chapter 7 would likely be significantly lower particularly in light of the time delay associated with the chapter 7 trustee's learning curve for these assets. In addition to the expected material reduction in sale proceeds, recoveries would be further reduced (in comparison with the Plan) due to the expenses that would be incurred in a chapter 7 liquidation, including added expenses for wind down costs and costs incurred by the chapter 7 trustee and any retained professionals in familiarizing themselves with the Debtors' assets, and these specific Chapter 11 Cases, in order to complete the administration of the Estates. *See, e.g.*, 11 U.S.C. § 326(a) (providing for compensation of a chapter 7 trustee up to three percent of the value of the assets); 11 U.S.C. 503(b)(2) (providing administrative expense status for compensation and expenses of a chapter 7 trustee and such trustee's professionals).

The Debtors' Estates would continue to be obligated to pay all unpaid expenses incurred by the Debtors during the Chapter 11 Cases (such as compensation for Professionals), which may constitute Allowed Claims in any chapter 11 case. Moreover, the conversion to chapter 7 would also require entry of a new bar date for filing claims that would be more than 90 days following conversion of the case to chapter 7. *See* Fed. R. Bankr. P. 1019(2); 3002(c). Thus, the amount of Claims ultimately filed and Allowed against the Debtors could materially increase, thereby further reducing creditor recoveries versus those available under the Plan.

In light of the foregoing, the Debtors submit that a chapter 7 liquidation would result in materially reduced sale proceeds, increased expenses, delayed distributions, and the prospect of additional claims that were not asserted in the Chapter 11 Cases. Accordingly, the Debtors believe that the Plan provides an opportunity to bring the highest return for creditors.

### **C. Feasibility**

The Bankruptcy Code requires that a chapter 11 plan provide for payment in full of all administrative and priority claims unless holders of such claim consent to other treatment. The Plan provides for the payment of priority and administrative obligations from Administrative / Priority Claims Reserve Amount. It is likely there will not be sufficient Cash to satisfy all administrative and priority claims in full upon the Effective Date. The Debtors will be required to obtain consent from any such claim holder that is not otherwise paid in full in Cash. The Debtors believe that the Plan is feasible on these alternative bases.

### **D. Acceptance by Impaired Classes**

The Bankruptcy Code requires, as a condition to confirmation, except as described in the following section, that each class of claims or equity interests impaired under a plan, accept the plan. A class that is not “impaired” under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such a class is not required.<sup>9</sup>

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by Holders of at least two-thirds in a dollar amount and more than one-half in a number of Allowed claims in that class, counting only those claims that have *actually* voted to accept or to reject the plan. Thus, a class of claims will have voted to accept the plan only if two-thirds in amount and a majority in number actually cast their ballots in favor of acceptance.

### **E. Confirmation Without Acceptance by All Impaired Classes**

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if all impaired classes have not accepted it; *provided, however*, the plan has been accepted by at least one impaired class. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired class’s rejection or deemed rejection of the plan, the plan will be confirmed, at the plan Proponent’s request, in a procedure commonly known as a “cramdown” so long as the plan does not “discriminate unfairly” and is “fair and equitable” with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan.

If any Impaired Class rejects the Plan, the Debtors reserve the right to seek to confirm the Plan utilizing the “cramdown” provision of section 1129(b) of the Bankruptcy Code. To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, the Debtors will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b)

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<sup>9</sup> A class of claims is “impaired” within the meaning of section 1124 of the Bankruptcy Code unless the plan (a) leaves unaltered the legal, equitable and contractual rights to which the claim or equity interest entitles the holder of such claim or equity interest or (b) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable, or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan or any Plan Supplement document in a manner consistent with the Plan Support Agreement, including the right to amend or modify the Plan or any Plan Supplement document to satisfy the requirements of section 1129(b) of the Bankruptcy Code.

1. No Unfair Discrimination

The “unfair discrimination” test applies to classes of claims or interests that are of equal priority and are receiving different treatment under a plan. The test does not require that the treatment be the same or equivalent, but that treatment be “fair.” In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (*e.g.*, classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly. A plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class.

2. Fair and Equitable Test

The “fair and equitable” test applies to classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in the class. As to the dissenting class, the test sets different standards depending upon the type of claims or equity interests in the class.

The Debtors submit that if the Debtors “cramdown” the Plan pursuant to section 1129(b) of the Bankruptcy Code, the Plan is structured so that it does not “discriminate unfairly” and satisfies the “fair and equitable” requirement. With respect to the unfair discrimination requirement, all Classes under the Plan are provided treatment that is substantially equivalent to the treatment that is provided to other Classes that have equal rank. The Debtors believe that the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the foregoing requirements for nonconsensual Confirmation of the Plan.

## **XI. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

### **A. Introduction**

The following discussion summarizes certain United States (“U.S.”) federal income tax consequences of the implementation of the Plan to the Debtors, the Wind-Down Debtors, and certain Holders of Claims. This summary is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”), the U.S. Treasury Regulations promulgated thereunder (the “Treasury Regulations”), judicial decisions and published administrative rules, and pronouncements of the Internal Revenue Service (the “IRS”), all as in effect on the date hereof (collectively, “Applicable Tax Law”). Changes in the rules or new interpretations of the rules may have retroactive effect and could significantly affect the U.S. federal income tax consequences described below. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. The Debtors have not requested, and do not intend to request, any ruling or determination from the IRS or any other taxing authority with respect to the tax consequences discussed herein, and the discussion below is not binding upon the IRS or the courts. No assurance can be given

that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein.

This summary does not address foreign, state, local, gift, or estate tax consequences of the Plan, nor does it purport to address all aspects of U.S. federal income taxation that may be relevant to a Holder in light of its individual circumstances or to a Holder that may be subject to special tax rules (such as Persons who are related to the Debtors within the meaning of the Tax Code, broker-dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, tax exempt organizations, pass-through entities, beneficial owners of pass-through entities, trusts, governmental authorities or agencies, dealers and traders in securities, subchapter S corporations, persons who hold Claims, persons using a mark-to-market method of accounting, and Holders of Claims who are themselves in bankruptcy). Furthermore, this summary assumes that a Holder of a Claim holds only Claims in a single Class and holds a Claim only as a “capital asset” (within the meaning of section 1221 of the Tax Code). This summary also assumes that the various debt and other arrangements to which any of the Debtors are a party will be respected for U.S. federal income tax purposes in accordance with their form, and that the Claims constitute interests in the Debtors “solely as a creditor” for purposes of section 897 of the Tax Code. This summary does not discuss differences in tax consequences to Holders of Claims that act or receive consideration in a capacity other than any other Holder of a Claim of the same Class or Classes, and the tax consequences for such Holders may differ materially from that described below. This summary does not address the U.S. federal income tax consequences to Holders (1) whose Claims are Unimpaired or otherwise entitled to payment in full in Cash under the Plan, or (2) that are deemed to reject the Plan.

For purposes of this discussion, a “U.S. Holder” is a Holder of a Claim that is: (1) an individual citizen or resident of the United States for U.S. federal income tax purposes; (2) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia; (3) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (4) a trust (A) if a court within the United States is able to exercise primary jurisdiction over the trust’s administration and one or more United States persons have authority to control all substantial decisions of the trust or (B) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person. For purposes of this discussion, a “non-U.S. Holder” is any Holder of a Claim that is not a U.S. Holder other than any partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes).

If a partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes) is a Holder of a Claim, the tax treatment of a partner (or other beneficial owner) generally will depend upon the status of the partner (or other beneficial owner) and the activities of the partner (or other beneficial owner) and the entity. Partners (or other beneficial owners) of partnerships (or other pass-through entities) that are Holders of Claims should consult their respective tax advisors regarding the U.S. federal income tax consequences of the Plan.

**ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND**

**IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM OR INTEREST. ALL HOLDERS OF CLAIMS OR INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE FEDERAL, STATE, LOCAL, AND NON-U.S. INCOME, ESTATE, AND OTHER TAX CONSEQUENCES OF THE PLAN.**

**B. Certain U.S. Federal Income Tax Consequences to the Debtors and the Wind-Down Debtors**

The Plan provides for an Asset Sale Transaction. Pursuant to an Asset Sale Transaction, Debtors would recognize gain or loss upon the transfer in an amount equal to the difference between the fair market value of the assets sold and the Debtors' tax basis in such assets. To the extent any gains are recognized, such gains may be able to be offset, in whole or in part, by the Debtors' available tax attributes. As of the end of the 2020 fiscal year, the Debtors had approximately \$39.8 million of disallowed business interest carryovers under section 163(j) of the Tax Code (the "163(j) Carryovers"). Pursuant to the provisions of the CARES Act, the Debtors are in the process of carrying back an estimated NOL generated during the 2020 fiscal year to offset income recognized during previous years (and the Debtors previously carried back the NOL generated during the 2019 fiscal year). Other than an NOL generated above estimates for the 2020 fiscal year or an NOL generated during the 2021 fiscal year, it is not expected that the Debtors will have material NOLs to offset any gains realized pursuant to an Asset Sale Transaction. If the Debtors were to recognize gain in connection with an Asset Sale Transaction and such gain could not be entirely offset with available tax attributes, a cash tax liability could arise. The Debtors do not currently anticipate that a cash tax liability is likely to arise in connection with an Asset Sale Transaction, but that expectation depends on, among other things, the Debtors' determination that their tax attributes, and ability to claim losses in connection with sales of specific assets for an amount less than their tax basis, is not subject to limitation pursuant to section 382 of the Tax Code.

**C. Certain U.S. Federal Income Tax Consequences to Certain U.S. Holders of Allowed Claims Entitled to Vote**

The following discussion assumes that the Debtors will undertake an Asset Sale Transaction. Holders of Claims and Interests are urged to consult their tax advisors regarding the tax consequences of the Asset Sale Transaction.

1. U.S. Federal Income Tax Consequences for Holders of Allowed Class 4 Claims and Allowed Class 5 Claims

Pursuant to the Plan, in exchange for full and final satisfaction, settlement, release and discharge of the Allowed Class 4 Claims and Allowed Class 5 Claims, each Holder thereof will receive its Pro Rata share of the Distributable Proceeds pursuant to the Waterfall Recovery (where Holders of Allowed Class 5 Claims will receive its Pro Rata share after all senior Claims are paid in full).

Each such Holder will be treated as exchanging such Claim in a taxable exchange under section 1001 of the Tax Code for the Distributable Proceeds. Accordingly, subject to the rules

regarding accrued but untaxed interest, each Holder of such Claim should recognize gain or loss equal to the difference between (1) the amount of Distributable Proceeds received, as applicable, in exchange for such Claim, and (2) such Holder's adjusted basis, if any, in such Claim.

The character of any such gain as capital gain or ordinary income will be determined by a number of factors, including the tax status of the Holder, the rules regarding accrued but untaxed interest and market discount, whether the Claim constitutes a capital asset in the hands of the Holder, and whether and to what extent the Holder had previously claimed a bad debt deduction with respect to its Claim. If recognized gain or loss is capital in nature, it generally would be long-term capital gain if the holder held its Claim for more than one year at the time of the exchange.

## 2. Accrued but Untaxed Interest

To the extent that any amount received by a U.S. Holder of a surrendered Claim is attributable to accrued but untaxed interest on the debt instruments constituting the surrendered Claim, the receipt of such amount should be taxable to the U.S. Holder as ordinary interest income (to the extent not already taken into income by the U.S. Holder). Conversely, a U.S. Holder of a Claim may be able to recognize a deductible loss (or, possibly, a write off against a reserve for worthless debts) to the extent that any accrued interest previously was included in the U.S. Holder's gross income but was not paid in full by the Debtors. Such loss may be ordinary, but the tax law is unclear on this point.

If the fair value of the consideration is not sufficient to fully satisfy all principal and interest on an Allowed Claim, the extent to which such consideration will be attributable to accrued interest is unclear. Under the Plan, the aggregate consideration to be distributed to U.S. Holders of Allowed Claims in each Class will be allocated first to the principal amount of such Allowed Claims, with any excess allocated to unpaid interest that accrued on these Claims, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan of reorganization is binding for U.S. federal income tax purposes, while certain Treasury Regulations treat payments as allocated first to any accrued but unpaid interest. The IRS could take the position that the consideration received by the U.S. Holder should be allocated in some way other than as provided in the Plan. U.S. Holders of Claims should consult their own tax advisors regarding the proper allocation of the consideration received by them under the Plan.

**HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE ALLOCATION OF CONSIDERATION RECEIVED IN SATISFACTION OF THEIR CLAIMS AND THE FEDERAL INCOME TAX TREATMENT OF ACCRUED BUT UNPAID INTEREST.**

## 3. Market Discount

Under the "market discount" provisions of the Tax Code, some or all of any gain realized by a U.S. Holder of a Claim who exchanges the Claim for an amount on the Effective Date may be treated as ordinary income (instead of capital gain), to the extent of the amount of "market discount" on the debt instruments constituting the exchanged Claim. In general, a debt instrument is considered to have been acquired with "market discount" if it is acquired other than on original issue and if the U.S. Holder's adjusted tax basis in the debt instrument immediately after such

acquisition is less than (a) the sum of all remaining payments to be made on the debt instrument, excluding “qualified stated interest” or (b) in the case of a debt instrument issued with original issue discount, its adjusted issue price, by at least a de minimis amount (equal to 0.25% of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a U.S. Holder on the taxable disposition of a Claim that had been acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while the Claim was considered to be held by the U.S. Holder (unless the U.S. Holder elected to include market discount in income as it accrued).

To the extent that the Allowed Claims that were acquired with market discount are exchanged in a tax-free transaction for other property, any market discount that accrued on the Allowed Claims (*i.e.*, up to the time of the exchange) but was not recognized by the U.S. Holder is carried over to the property received therefor and any gain recognized on the subsequent sale, exchange, redemption, or other disposition of the property is treated as ordinary income to the extent of the accrued, but not recognized, market discount with respect to the exchanged debt instrument.

#### 4. Character of Gain or Loss With Respect to Impaired Claims

Generally, the gain or loss recognized by a U.S. Holder with respect to a Claim will be a capital gain or loss unless the Claim was acquired at a market discount (as discussed above), and depending on whether and the extent to which the Holder previously claimed a bad debt deduction. Any such capital gain or loss generally should be long-term if the U.S. Holder’s holding period in the Claim is more than one year and otherwise should be short-term. Under current U.S. federal income tax law, certain non-corporate U.S. Holders (including individuals) are eligible for preferential rates of U.S. federal income tax on long-term capital gains.

A U.S. Holder of a Claim who recognizes capital losses as a result of the distributions under the Plan will be subject to limits on the use of such capital losses. For a non-corporate U.S. Holder, capital losses may be used to offset any capital gains (without regard to holding periods), and also ordinary income to the extent of the lesser of (x) \$3,000 (\$1,500 for married individuals filing separate returns) or (y) the excess of the capital losses over the capital gains. A non-corporate U.S. Holder may carry over unused capital losses and apply them against future capital gains and a portion of their ordinary income for an unlimited number of years. For corporate U.S. Holders, capital losses may only be used to offset capital gains. A corporate U.S. Holder that has more capital losses than may be used in a tax year may carry back unused capital losses to the three years preceding the capital loss year or may carry over unused capital losses for the five years following the capital loss year.

#### 5. Distribution Reserve Accounts and Delayed Equity Distributions

The Plan provides that certain distributions may be delayed while contingent, unliquidated, or disputed Claims are addressed. Pending the resolution of such Claims, a portion of the property to be received by Holders of Claims or Interests may be deposited into the various Claim distribution accounts described in the Plan (including the Priority Claims Reserve, Other Secured

Claims Reserve, and the General Account). The property that is subject to delayed distribution will be subject to “disputed ownership fund” treatment under section 1.468B-9 of the United States Treasury Regulations. Pursuant to such treatment, a separate federal income tax return shall be filed with the IRS with respect to such accounts. Such accounts will be liable, as an entity, for taxes, including with respect to interest, if any, or appreciation in property between the Effective Date and date of distribution. Such taxes shall be paid out of the assets of such accounts (and reductions shall be made to amounts disbursed from such accounts to account for the need to pay such taxes). To the extent property is not distributed to U.S. Holders of applicable Claims on the Effective Date but, instead, is transferred to such accounts, although not free from doubt, U.S. Holders should not recognize any gain or loss on the date that the property is so transferred. Instead, gain or loss should be recognized when and to the extent property is actually distributed to such U.S. Holders.

#### **D. Certain U.S. Federal Income Tax Consequences to Certain Non-U.S. Holders of Claims**

The following discussion includes only certain U.S. federal income tax consequences of the Restructuring Transactions to non-U.S. Holders. The discussion does not include any non-U.S. tax considerations. The rules governing the U.S. federal income tax consequences to non-U.S. Holders are complex. Each non-U.S. Holder should consult its own tax advisor regarding the U.S. federal, state, local and foreign tax consequences of the consummation of the Plan to such non-U.S. Holder.

Whether a non-U.S. Holder realizes gain or loss on the exchange and the amount of such gain or loss is generally determined in the same manner as set forth above in connection with U.S. Holders.

##### **1. Gain Recognition**

Other than with respect to any amounts received that are attributable to accrued but untaxed interest (or OID, if any), any gain realized by a non-U.S. Holder on the exchange of its Claim pursuant to the Plan generally will not be subject to U.S. federal income taxation unless (a) the non-U.S. Holder is an individual who was present in the United States for 183 days or more during the taxable year in which the Restructuring Transactions occur and certain other conditions are met or (b) such gain is effectively connected with the conduct by such non-U.S. Holder of a trade or business in the United States (and if an income tax treaty applies, such gain is attributable to a permanent establishment maintained by such non-U.S. Holder in the United States).

If the first exception applies, to the extent that any gain is taxable, the non-U.S. Holder generally will be subject to U.S. federal income tax at a rate of 30% (or at a reduced rate or exemption from tax under an applicable income tax treaty) on the amount by which such non-U.S. Holder’s capital gains allocable to U.S. sources exceed capital losses allocable to U.S. sources during the taxable year of the exchange. If the second exception applies, the non-U.S. Holder generally will be subject to U.S. federal income tax (and possibly withholding tax) with respect to any gain realized on the exchange if such gain is effectively connected with the non-U.S. Holder’s conduct of a trade or business in the United States in the same manner as a U.S. Holder. In order to claim an exemption from withholding tax, such non-U.S. Holder will be required to provide a



properly executed IRS Form W-8ECI (or such successor form as the IRS designates). In addition, if such a non-U.S. Holder is a corporation, it may be subject to a branch profits tax equal to 30% (or such lower rate provided by an applicable treaty) of its effectively connected earnings and profits for the taxable year, subject to certain adjustments.

## 2. Accrued Interest

Subject to the discussion of FATCA below, payments to a non-U.S. Holder that are attributable to accrued but untaxed interest with respect to Claims generally will not be subject to U.S. federal income or withholding tax, *provided* that the withholding agent has received or receives, prior to payment, appropriate documentation (generally, IRS Form W-8BEN or W-8BEN-E) establishing that the non-U.S. Holder is not a U.S. person, unless:

- (a) the non-U.S. Holder actually or constructively owns 10% or more of the total combined voting power of all classes of Pier 1's stock entitled to vote;
- (b) the non-U.S. Holder is a "controlled foreign corporation" that is a "related person" with respect to Pier 1 (each, within the meaning of the Tax Code);
- (c) the non-U.S. Holder is a bank receiving interest described in section 881(c)(3)(A) of the Tax Code; or
- (d) such interest is effectively connected with the conduct by the non-U.S. Holder of a trade or business within the United States (in which case, provided the non-U.S. Holder provides a properly executed IRS Form W-8ECI (or successor form) to the withholding agent, the non-U.S. Holder (x) generally will not be subject to withholding tax, but (y) will be subject to U.S. federal income tax in the same manner as a U.S. Holder (unless an applicable income tax treaty provides otherwise), and a non-U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect to such non-U.S. Holder's effectively connected earnings and profits that are attributable to the accrued interest at a rate of 30% (or at a reduced rate or exemption from tax under an applicable income tax treaty)).

A non-U.S. Holder that does not qualify for the exemption from withholding tax with respect to accrued but untaxed interest that is not effectively connected income generally will be subject to withholding of U.S. federal income tax at a 30% rate (or at a reduced rate or exemption from tax under an applicable income tax treaty) on any payments that are attributable to accrued but untaxed interest. For purposes of providing a properly executed IRS Form W-8BEN or W-8BEN-E, special procedures are provided under applicable Treasury Regulations for payments through qualified foreign intermediaries or certain financial institutions that hold customers' securities in the ordinary course of their trade or business. As described above in more detail under the heading "*Accrued but Untaxed Interest*," the aggregate consideration to be distributed to holders of Allowed Claims in each Class will be allocated first to the principal amount of such Allowed Claims, with any excess allocated to unpaid interest that accrued on these Claims, if any.

### 3. FATCA

Under the Foreign Account Tax Compliance Act (“FATCA”), foreign financial institutions and certain other foreign entities must report certain information with respect to their U.S. account holders and investors or be subject to withholding at a rate of 30% on the receipt of “withholdable payments.” For this purpose, “withholdable payments” are generally U.S. source payments of fixed or determinable, annual or periodical income. FATCA withholding will apply even if the applicable payment would not otherwise be subject to U.S. federal nonresident withholding.

Withholding with respect to the gross proceeds of a disposition of any stock, debt instrument, or other property that can produce U.S.-source dividends or interest has been eliminated under proposed U.S. Treasury regulations, which can be relied on until final regulations become effective.

Each non-U.S. Holder should consult its own tax advisor regarding the possible impact of these rules on such non-U.S. Holder’s exchange of its Claim.

#### **E. Information Reporting and Back-Up Withholding**

The Debtors and Wind-Down Debtors will withhold all amounts required by law to be withheld from any distributions made under the Plan. The Debtors will comply with all applicable reporting requirements of the Tax Code. In general, information reporting requirements may apply to distributions or payments made to a Holder of a Claim under the Plan. Additionally, under the backup withholding rules, a Holder of a Claim may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan unless, in the case of a U.S. Holder, such U.S. Holder provides a properly executed IRS Form W-9 and, in the case of Non-U.S. Holder, such Non-U.S. Holder provides a properly executed applicable IRS Form W-8 (or otherwise establishes such Non-U.S. Holder’s eligibility for an exemption). Backup withholding is not an additional tax but is, instead, an advance payment that may entitle the Holder to a refund from the IRS to the extent it results in an overpayment of tax, provided that the required information is timely provided to the IRS.

In addition, from an information reporting perspective, the Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer’s claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the Holders’ tax returns.

**THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER’S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AND INTERESTS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING**

**THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, OR FOREIGN TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.**

**XII. RECOMMENDATION**

In the opinion of the Debtors, the Plan is preferable to all other available alternatives and provides for a larger distribution to the Debtors' creditors than would otherwise result in any other scenario. Accordingly, the Debtors recommend that Holders of Claims entitled to vote on the Plan vote to accept the Plan and support Confirmation of the Plan.

Respectfully submitted, as of the date first set forth above,

PIER 1 IMPORTS, INC. (on behalf of itself  
and all other Debtors)

Dated: June 24, 2020

/s/ Robert J. Riesbeck

Robert J. Riesbeck  
Chief Executive Officer and Chief Financial  
Officer of Pier 1 Imports, Inc.

Prepared by:

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*Co-Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Plan of Reorganization**

**[Filed at Docket No. 803]**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: )
) Chapter 11
)
PIER 1 IMPORTS, INC., et al.,1 )
) Case No. 20-30805 (KRH)
)
Debtors. ) (Jointly Administered)
)

AMENDED JOINT CHAPTER 11 PLAN OF
PIER 1 IMPORTS, INC. AND ITS DEBTOR AFFILIATES

NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER, ACCEPTANCE, COMMITMENT, OR LEGALLY BINDING OBLIGATION OF THE DEBTORS, ANY OF THE PLAN SUPPORT PARTIES, OR ANY OTHER PARTY IN INTEREST.
YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED IN, OR THE TERMS OF, THIS PLAN FOR ANY PURPOSE PRIOR TO THE CONFIRMATION OF THIS PLAN BY THE BANKRUPTCY COURT.
THIS PLAN IS SUBJECT TO APPROVAL BY THE BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS. THIS PLAN IS NOT AN OFFER WITH RESPECT TO ANY SECURITIES.

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Co-Counsel to the Debtors and Debtors in Possession

Dated: June 24, 2020

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief [Docket No. 76]. The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

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## **INTRODUCTION**

Pier 1 Imports, Inc. (“Pier 1”) and its debtor affiliates, as debtors and debtors in possession (each, a “Debtor” and, collectively, the “Debtors”), propose this first amended joint plan of reorganization (together with the documents comprising the Plan Supplement, the “Plan”) for the resolution of outstanding Claims against, and Interests in, the Debtors. Capitalized terms used and not otherwise defined shall have the meanings ascribed to such terms in Article I.A hereof. Holders of Claims and Interests may refer to the Disclosure Statement for a discussion of the Debtors’ history, businesses, assets, results of operations, historical financial information, and projections of future operations, as well as a summary and description of the Plan. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code, and the Plan constitutes a separate plan of reorganization for each of the Debtors.

ALL HOLDERS OF CLAIMS AND INTERESTS, TO THE EXTENT APPLICABLE, ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## **ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW**

### **A. Defined Terms**

As used in this Plan, capitalized terms have the meanings set forth below.

1. “*ABL Administrative Agent*” means Bank of America, N.A., in its capacity as administrative agent and collateral agent under the ABL Credit Agreement.
2. “*ABL Agents*” means the ABL Administrative Agent and the ABL Term Loan Agent.
3. “*ABL Claims*” means any and all claims arising from, under or in connection with the ABL Documents including, without limitations, the ABL Obligations.
4. “*ABL Credit Agreement*” means that certain Second Amended and Restated Credit Agreement dated as of June 2, 2017 (as amended, restated, supplemented, or otherwise modified from time to time), among Pier 1, as lead borrower, the ABL Administrative Agent, the ABL Term Loan Agent and the ABL Lenders.
5. “*ABL Documents*” means the ABL Credit Agreement and any other agreements and documents executed in connection therewith or related thereto.
6. “*ABL Lenders*” means the lenders party to the ABL Credit Agreement.
7. “*ABL Obligations*” shall mean “Prepetition ABL Obligations” as defined in the DIP Order.

8. “*ABL Priority Collateral*” has the meaning ascribed to it in the Intercreditor Agreement.

9. “*ABL Term Loan Agent*” means Pathlight Capital Fund I LP, in its capacity as ABL term loan agent under the ABL Credit Agreement.

10. “*Adequate Assurance Information*” means written evidence to demonstrate the ability of the Wind-Down Debtors or any assignee, as applicable, to provide “adequate assurance of future performance” (with the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed.

11. “*Administrative Claim*” means a Claim for costs or expenses of administration of the Debtors’ Estates pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) Allowed Professional Fee Claims; (c) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code; and (d) all DIP Claims.

12. “*Administrative Claims Bar Date*” means, other than for Professional Fee Claims, DIP Claims, and claims arising under section 503(b)(9) of the Bankruptcy Code, for which bar dates were established in the Prepetition Claims Bar Date Order, the date that is 30 days following the Effective Date, except as specifically set forth in the Plan or the Administrative Claims Bar Date Order or otherwise ordered by the Bankruptcy Court. For the avoidance of doubt, the Administrative Claims Bar Date shall not apply to any Debtor having a Claim against another Debtor and parties not required to file a Proof of Administrative Claim pursuant to the Administrative Claims Bar Date Order.

13. “*Administrative Claims Bar Date Order*” means the order granting the *Debtors’ Motion for Entry of an Order (I) Setting A Bar Date for Filing Proofs of Administrative Claims Against the Debtors, (II) Establishing Administrative Claims Procedures, (III) Approving the Form and Manner of Filing Proofs of Administrative Claims, (IV) Approving Notice of the Administrative Claims Bar Date, and (V) Granting Related Relief* [Docket No. 737].

14. “*Administrative / Priority Claim Consent Form*” means the certain notice served upon known Holders of Administrative, and Other Priority Claims, attached to the Disclosure Statement Order, pursuant to which the Debtors are seeking the agreement of such Holder to the treatment afforded to such Holder under the Plan.

15. “*Administrative / Priority Claims Reserve*” means a segregated account to be established and maintained by the Plan Administrator and funded with the Administrative / Priority Claims Reserve Amount to fund distribution to the Holders of Allowed Administrative Claims and Allowed Priority Claims as set forth in Article VIII.D and Allowed Other Secured Claims, to the extent that such Other Secured Claims have not been satisfied pursuant to Article III.B.2. For the avoidance of doubt, Allowed Professional Fee Claims will be paid from the Professional Fee Escrow and DIP Claims shall be treated in accordance with Article II.C herein and in no case from the Administrative / Priority Claims Reserve.

16. “*Administrative / Priority Claims Reserve Amount*” means the amount of the Distributable Proceeds available for Holders of Allowed Administrative Claims and Allowed Priority Claims pursuant to the Waterfall Recovery, which amount shall be used by the Plan Administrator to fund the Administrative / Priority Claims Reserve.

17. “*Affiliate*” shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

18. “*Allowed*” means with respect to any Claim, except as otherwise provided herein: (a) a Claim that is evidenced by a Proof of Claim timely Filed by the Bar Date (or for which Claim under the Plan, the Bankruptcy Code, or a Final Order of the Court a Proof of Claim is not or shall not be required to be Filed); (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely filed; or (c) a Claim Allowed pursuant to the Plan, any stipulation approved by the Court, any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan, or a Final Order of the Court; provided, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that with respect to such Claim no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Court, or if such an objection is so interposed, such Claim shall have been Allowed by a Final Order. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim or Interest is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Court. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes. For the avoidance of doubt, a Proof of Claim Filed after the Bar Date shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim. “*Allow*” and “*Allowing*” shall have correlative meanings.

19. “*Asset Sale Transaction*” means the sale or sales, either as a going-concern or in a liquidation, of some or all of the Debtors’ assets under this Plan or as otherwise authorized by order of the Bankruptcy Court or the Bankruptcy Code.

20. “*Avoidance Actions*” means any and all avoidance, recovery, subordination, or other claims, actions, or remedies which any of the Debtors, the debtors in possession, the Estates, or other appropriate parties in interest have asserted or may assert under sections 502, 510, 542, 544, 545, or 547 through 553 of the Bankruptcy Code or under similar or related state or federal statutes and common law.

21. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended from time to time, as applicable to the Chapter 11 Cases.

22. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Eastern District of Virginia having jurisdiction over the Chapter 11 Cases, and, to the extent of the withdrawal of reference under 28 U.S.C. § 157 and/or the General Order of the District Court

pursuant to section 151 of title 28 of the United States Code, the United States District Court for the Eastern District of Virginia.

23. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, each as amended from time to time.

24. “*Bidding Procedures*” means the *Bidding Procedures for the Disposition of the Debtors’ Assets* attached as Exhibit 1 to the *Order (I) Establishing Bidding Procedures, (II) Scheduling Bid Deadlines and an Auction, (III) Approving the Form and Manner of Notice thereof, (IV) Approving the Form of Asset Purchase Agreement, (V) Authorizing Assumption of the Plan Support Agreement and (VI) Granting Related Relief* [Docket No. 102].

25. “*Budget*” has the meaning set forth in the DIP Order.

26. “*Business Day*” means any day, other than a Saturday, Sunday, or “*legal holiday*” (as defined in Bankruptcy Rule 9006(a)).

27. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

28. “*Cash Consideration*” means any proceeds paid or payable in Cash by buyers to the Debtors in connection with any Asset Sale Transaction; provided, however, that, for the avoidance of doubt, Cash Consideration includes any Cash or Cash equivalents returned (whether before or after the Effective Date) to the Debtors or their Estates, including (a) the return of any deposits of Cash or Cash equivalents and (b) the release of Cash or Cash equivalents used to collateralize any of the Debtors’ surety bonds, insurance policies or utility contracts.

29. “*Causes of Action*” means any claims, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, in tort, law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims on contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (d) such claims and defenses as fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code.

30. “*Chapter 11 Cases*” means when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, and when used with reference to all of the Debtors, the procedurally consolidated and jointly administered chapter 11 cases pending for the Debtors in the Bankruptcy Court.

31. “*Claim*” means a claim, as defined in section 101(5) of the Bankruptcy Code, and any Cause of Action or liability asserted against a Debtor.

32. “*Claims Objection Bar Date*” means the deadline for objecting to a Claim, which shall be on the date that is the later of (a) 180 days after the Effective Date (as may be extended by the Court upon the request of the Debtors or the Wind-Down Debtors) and (b) such other period of limitation as may be specifically fixed by the Debtors or the Wind-Down Debtors, as applicable, or by an order of the Bankruptcy Court for objecting to Claims.

33. “*Claims Register*” means the official register of Claims maintained by the Notice and Claims Agent.

34. “*Claims Representative*” means the individual or entity selected by the Creditors’ Committee, upon consultation with the Consenting Term Lenders, tasked with ensuring an efficient and fair claims reconciliation process and overseeing the prosecution of estate causes of action under section 547 of the Bankruptcy Code, if any.

35. “*Class*” means a category of Claims or Interests under section 1122(a) of the Bankruptcy Code.

36. “*COLI Loans*” means those loans secured by the COLI Policies dated as of (a) August 27, 2019, between Pier 1 Services Company and John Hancock Mutual Life Insurance Company, and (b) August 27, 2019, between Pier 1 Services Company and Voya Financial.

37. “*COLI Loan Claims*” means any Claim based on or derived from the COLI Loans.

38. “*COLI Policies*” means those company-owned life insurance policies between (a) Pier 1 Services Company and John Hancock Mutual Life Insurance Company, and (b) between Pier 1 Services Company and Voya Financial.

39. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases, subject to the conditions set forth in the Plan.

40. “*Confirmation Date*” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

41. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

42. “*Confirmation Order*” means an order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

43. “*Consenting Term Lenders*” means each Term Loan Lender that is a party to the Plan Support Agreement.

44. “*Consummation*” means the occurrence of the Effective Date.

45. “*Creditors’ Committee*” means any official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102(a) of the Bankruptcy Code.

46. “*Cure Claim*” means a monetary Claim based upon a Debtor’s defaults under any Executory Contract or Unexpired Lease at the time such contract or lease is assumed by such Debtor pursuant to section 365 of the Bankruptcy Code.

47. “*Cure Obligations*” means all (a) Cure Claims and (b) other obligations required to cure any non-monetary defaults (the performance required to cure such non-monetary defaults and the timing of such performance will be described in reasonable detail in a notice of proposed assumption and assignment) under any Executory Contract or Unexpired Lease that is to be assumed by the Debtors pursuant to sections 365 or 1123 of the Bankruptcy Code.

48. “*Cure/Assumption Objection Deadline*” means the date that is 14 days after filing of the Schedule of Assumed Executory Contracts and Unexpired Leases with the Plan Supplement and service of the Cure Notice; provided, that if any Executory Contract or Unexpired Lease is added to the Schedule of Assumed Executory Contracts and Unexpired Leases after the filing of the initial Schedule of Assumed Executory Contracts and Unexpired Leases, or an Executory Contract or Unexpired Lease proposed to be assumed by the Wind-Down Debtors is proposed to be assigned to a third party after the filing of the initial Schedule of Assumed Executory Contracts and Unexpired Leases, then the Cure/Assumption Objection Deadline with respect to such Executory Contract or Unexpired Lease shall be 14 days after service of the amended Schedule of Assumed Executory Contracts and Unexpired Leases with such modification (or such other time period as the Debtors set (subject to Bankruptcy Court approval) if the Debtors seek a limited notice period prior to the date of the Confirmation Hearing).

49. “*Cure Notice*” means a notice of a proposed amount to be paid and/or obligation to be performed on account of a Cure Obligation in connection with an Executory Contract or Unexpired Lease to be assumed under the Plan pursuant to section 365 of the Bankruptcy Code, which notice shall include: (a) procedures for objecting to proposed assumptions of Executory Contracts and Unexpired Leases; (b) Cure Claims to be paid in connection therewith; (c) Adequate Assurance Information; and (d) procedures for resolution by the Bankruptcy Court of any related disputes.

50. “*D&O Liability Insurance Policies*” means all insurance policies (including any “*tail policy*”) of any of the Debtors for current or former directors’, managers’, and officers’ liability.

51. “*Debtors*” means, collectively: Pier 1; Pier 1 Assets, Inc.; Pier 1 Holdings, Inc.; Pier 1 Imports (U.S.), Inc.; Pier 1 Licensing, Inc.; Pier 1 Services Company; Pier 1 Value Services, LLC; and PIR Trading, Inc., the debtors and debtors in possession in the Chapter 11 Cases.

52. “*DIP ABL Agent*” means Pathlight Capital LP, in its capacity as ABL term loan agent under the DIP Credit Agreement, together with its respective successors and assigns in such capacity.

53. “*DIP Administrative Agent*” means Bank of America, N.A., in its capacity as administrative agent and collateral agent under the DIP Credit Agreement, together with its respective successors and assigns in such capacity.

54. “*DIP Agents*” means the DIP ABL Agent and the DIP Administrative Agent.

55. “*DIP Claims*” means, any and all Claims derived from, based upon, or secured by, the DIP Documents including, without limitation, the DIP Facility Obligations.

56. “*DIP Credit Agreement*” means that certain Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement (as it may be amended, restated, supplemented, or otherwise modified from time to time), dated as of February 20, 2020, by and among the Debtors, the DIP Lenders, and the DIP Agents.

57. “*DIP Documents*” means the DIP Credit Agreement and any other agreements and documents executed in connection with or related thereto.

58. “*DIP Facility Obligations*” shall have the meaning set forth in the DIP Order.

59. “*DIP Lenders*” means collectively the Lenders (as defined in the DIP Credit Agreement) party to the DIP Credit Agreement.

60. “*DIP Order*” means the Final Order (I) *Authorizing the Debtors to Obtain Postpetition Financing*, (II) *Authorizing the Debtors to Use Cash Collateral*, (III) *Granting Liens and Providing Administrative Expense Status*, (IV) *Granting Adequate Protection to the Prepetition Secured Parties*, (V) *Modifying the Automatic Stay*, and (VI) *Granting Related Relief* [Docket No. 342].

61. “*DIP Senior Credit Facility*” means that certain \$256,000,000 postpetition debtor-in-possession financing facility available under the DIP Credit Agreement.

62. “*Disallowed*” means, with respect to any Claim, a Claim or any portion thereof that: (a) has been disallowed by a Final Order; (b) is Scheduled as zero or as contingent, disputed, or unliquidated and as to which no Proof of Claim or request for payment of an Administrative Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely Filed under applicable law or the Plan; (c) is not Scheduled and as to which no Proof of Claim or request for payment of an Administrative Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely Filed under applicable law or the Plan; (d) has been withdrawn by agreement of the applicable Debtor and the Holder thereof; or (e) has been withdrawn by the Holder thereof.

63. “*Disclosure Statement*” means the disclosure statement for the Plan, including all exhibits and schedules thereto.

64. “*Disclosure Statement Order*” means the order entered by the Bankruptcy Court approving the Disclosure Statement, entered on [\_\_\_\_], 2020 [Docket No. [●]].

65. “*Disputed*” means a Claim that is not yet Allowed.

66. “*Distributable Proceeds*” means all Cash of the Debtors available on or after the Effective Date after the funding of the Priority Tax Claims Reserve, the Other Secured Claims Reserve, the Professional Fee Escrow Account, and the Wind-Down Reserve, available for



distribution under Article VIII.F hereof, which Distributable Proceeds shall be the excess Cash in the General Account and subject to the Intercreditor Agreement, as applicable.

67. “*Distribution Agent*” means the Wind-Down Debtors or any Entity the Wind-Down Debtors select to make or facilitate distributions to be made pursuant to the Plan.

68. “*Distribution Record Date*” means the date for determining which Holders of Claims are eligible to receive distributions hereunder and shall be the Effective Date or such other date as designated in a Final Order of the Bankruptcy Court; provided, that the Distribution Record Date shall not apply to publicly held securities.

69. “*Distribution Reserve Accounts*” means the Administrative / Priority Claims Reserve, the Undeliverable Distribution Reserve, the Wind-Down Reserve, the Other Secured Claims Reserve established pursuant to this Plan.

70. “*Effective Date*” means, with respect to the Plan, the date that is a Business Day selected by the Debtors on which: (a) no stay of the Confirmation Order is in effect; (b) all conditions precedent specified in Article IX.A have been satisfied or waived (in accordance with Article IX.B); and (c) the Plan is declared effective.

71. “*Entity*” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

72. “*Estate*” means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

73. “*Exculpated Parties*” means collectively, and in each case in its capacity as such: (a) the Debtors and Wind-Down Debtors; (b) the DIP Agents; (c) the DIP Lenders; (d) the Term Loan Agent; (e) the Term Loan Lenders; (f) the ABL Lenders; (g) the ABL Agents; (h) the Consenting Term Lenders; (i) the Creditors’ Committee; (j) with respect to the foregoing clauses (a) through (i), each such Entity’s current and former Affiliates, and such Entities’ and their current and former Affiliates’ current and former directors, managers, officers, control persons, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, subsidiaries, principals, members, employees, agents, managed accounts or funds, management companies, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

74. “*Executory Contract*” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

75. “*Federal Judgment Rate*” means the federal judgment rate in effect as of the Petition Date, compounded annually.

76. “*File,*” “*Filed,*” or “*Filing*” means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy Court or, with respect to the filing of a Proof of Claim or proof of Interest, the Notice and Claims Agent.

77. “*Final Order*” means (i) an order or judgment of the Bankruptcy Court, as entered on the docket in any Chapter 11 Case (or any related adversary proceeding or contested matter) or the docket of any other court of competent jurisdiction, or (ii) an order or judgment of any other court having jurisdiction over any appeal from (or petition seeking certiorari or other review of) any order or judgment entered by the Bankruptcy Court (or any other court of competent jurisdiction, including in an appeal taken) in the Chapter 11 Case (or in any related adversary proceeding or contested matter), in each case that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired according to applicable law and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; provided, that the possibility a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules of the Bankruptcy Court, may be filed relating to such order shall not prevent such order from being a Final Order.

78. “*General Account*” means a general account: (a) into which shall be deposited revenues and proceeds of all assets of the Debtors, including proceeds of any Asset Sale Transaction, and Cash of the Debtors in an amount in excess of the amount required to adequately maintain the Distribution Reserve Accounts as described in Article VIII.G (provided that the General Account shall not include funds required to be deposited into the Distribution Reserve Accounts); (b) from which shall be made payments to any Distribution Reserve Account in an amount sufficient to adequately maintain such Distribution Reserve Account as described in Article VIII.G; and (c) from which payments shall be made according to the priority set forth in Article VIII.F.

79. “*General Unsecured Claim*” means any Claim, including the Term Loan Deficiency Claim, other than (a) an Administrative Claim, (b) a Secured Tax Claim, (c) an Other Secured Claim, (d) a Priority Tax Claim, (e) an Other Priority Claim, (f) a Term Loan Claim, (g) an Intercompany Claim, (h) a DIP Claim, or (i) an ABL Claim.

80. “*Governmental Unit*” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

81. “*Holder*” means an Entity holding a Claim or Interest, as applicable.

82. “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

83. “*Industrial Revenue Bond Agreement*” means that certain Loan Agreement originally dated as of November 1, 1986 between Pier 1 Imports - Texas, Inc. and the City of Mansfield Industrial Development Corporation.

84. “*Intercompany Claim*” means any Claim held by a Debtor or a Debtor’s Affiliate against a Debtor or a Debtor’s Affiliate.

85. “*Intercompany Interest*” means, other than an Interest in Pier 1, an Interest in one Debtor held by another Debtor or a Debtor’s Affiliate.

86. “*Intercreditor Agreement*” means that certain intercreditor agreement, dated as of April 30, 2014, by and among Bank of America, N.A. and the Term Loan Agent, as modified by that certain Acknowledgement and Agreement, dated as of February 20, 2020.

87. “*Interest*” means any equity security (as defined in section 101(16) of the Bankruptcy Code) in any Debtor.

88. “*Interim Compensation Order*” means the order of the Bankruptcy Court establishing procedures for interim compensation and reimbursement of expenses for professionals.

89. “*IRB Claims*” means any claim based on or derived from the Industrial Revenue Bond Agreement.

90. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001, as amended from time to time, as applicable to the Chapter 11 Cases.

91. “*Lien*” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

92. “*Limited Operation Order*” means the *Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief* [Docket No. 493].

93. “*Monitor*” means an individual or entity selected by the Required Consenting Term Lenders, upon consultation with the Creditors’ Committee responsible for overseeing compliance with the Wind-Down Budget.

94. “*Non-Qualified Deferred Compensation Trust Plans*” means the Debtors’ supplemental retirement plan, deferred compensation plan, supplemental executive retirement plan, and benefit restoration plan.

95. “*Notice and Claims Agent*” means Epiq Corporate Restructuring, LLC.

96. “*Other Priority Claim*” means any Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim; or (b) a Priority Tax Claim, to the extent such Claim has not already been paid during the Chapter 11 Cases.

97. “*Other Secured Claim*” means any Secured Claim, other than (a) claims arising under the Debtors’ prepetition asset-based lending credit facility or (b) a Term Loan Claim. For the avoidance of doubt, the COLI Loan Claims and IRB Claims are Other Secured Claims.

98. “*Person*” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

99. “*Petition Date*” means February 17, 2020, the date on which the Debtors commenced the Chapter 11 Cases.

100. “*Pier 1*” means Pier 1 Imports, Inc.

101. “*Plan*” means this plan, as it may be amended or supplemented from time to time, including all exhibits, schedules, supplements, appendices, annexes and attachments thereto.

102. “*Plan Administrator*” means the person selected by the Required Consenting Term Lenders, with the consent of the Debtors (not to be unreasonably withheld), to administer the Wind-Down Debtors. For the avoidance of doubt, all costs, liabilities, and expenses reasonably incurred by the Plan Administrator, and any personnel employed by the Plan Administrator in the performance of the Plan Administrator’s duties, shall be paid from the Wind-Down Debtors’ Assets.

103. “*Plan Supplement*” means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (as may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Plan Support Agreement) to be Filed by the Debtors no later than fourteen days before the Voting Deadline or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, including the following, as applicable: (a) Schedule of Assumed Executory Contracts and Unexpired Leases; (b) the identity and terms of any documentation, including a wind-down trust agreement, establishing the rights and compensation of the Plan Administrator; (c) any transition services agreement between a Purchaser and the Debtors (as applicable); and (d) any other necessary documentation related to any Asset Sale Transaction or other Restructuring Transactions in accordance with Article X of the Plan.

104. “*Plan Support Agreement*” means that certain Plan Support Agreement, dated as of February 16, 2020, by and among the Debtors and the Plan Support Parties, including all exhibits and schedules attached thereto, as may be amended from time to time in accordance with the terms thereof.

105. “*Plan Support Parties*” means, collectively, the Consenting Term Lenders that are party to the Plan Support Agreement.

106. “*Prepetition Claims Bar Date*” means the dates established by the Bankruptcy Court in the Prepetition Claims Bar Date Order by which Proofs of Claim on account of prepetition claims (including claims arising under section 503(b)(9) of the Bankruptcy Code) must be Filed.

107. “*Prepetition Claims Bar Date Order*” means the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(B)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* [Docket No. 345].

108. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

109. “*Priority Tax Claims Reserve*” means a segregated account to be established and maintained by the Plan Administrator to fund distribution to the Holders of Priority Tax Claims as set forth in Article VIII.D

110. “*Priority Tax Claim Reserve Amount*” means Cash in the amount to be determined by the Debtors, which amount shall be funded by the Debtors and used by the Plan Administrator to fund the Priority Tax Claims Reserve.

111. “*Pro Rata*” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under the Plan.

112. “*Professional*” means an Entity employed pursuant to a Bankruptcy Court order in accordance with sections 327, 328 or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

113. “*Professional Fee Claims*” means all Administrative Claims for the compensation of Professionals and the reimbursement of expenses incurred by such Professionals through and including the Effective Date to the extent such fees and expenses have not been previously paid.

114. “*Professional Fee Escrow Account*” means an interest-bearing account (to the extent commercially reasonable) in an amount equal to the total Professional Fee Reserve Amount funded by the Wind-Down Debtors on the Effective Date.

115. “*Professional Fee Reserve Amount*” means the amount set forth in the Wind-Down Budget for all Professional fee payments through the Effective Date, including (a) amounts budgeted for prior months not yet invoiced to the Debtors and (b) any amounts for services provided in prior periods that are invoiced but not yet paid (including hold back amounts).

116. “*Proof of Claim*” means a proof of Claim Filed in the Chapter 11 Cases.

117. “*Purchase Agreement*” means any asset purchase agreement, by and among the Debtors and a Purchaser, as may be amended, supplemented, or otherwise modified from time to time.

118. “*Purchaser*” means, collectively, any purchaser under any Asset Sale Transaction, together with its or their successors and permitted assigns (including any and all of its or their wholly-owned Affiliates to which it or they assigns any of its rights or obligations).

119. “*Reinstated*” or “*Reinstatement*” means, with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

120. “*Rejection Notice*” means any applicable notice filed by the Debtors providing notice to counterparties of the Debtors’ intent to reject an Executory Contract or Unexpired Lease,

as set forth in the *Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [Docket No. 402].

121. “*Released Party*” means each of the following, solely in its capacity as such: (a) the Debtors and Wind-Down Debtors; (b) the DIP Agents; (c) the DIP Lenders; (d) the Term Loan Lenders; (e) the Term Loan Agent; (f) the ABL Agents; (g) the ABL Lenders; (h) the Consenting Term Lenders; (i) with respect to the foregoing clauses (a) through (h), each such Entity’s current and former Affiliates, and such Entities’ and their current and former Affiliates’ current and former directors, managers, officers, control persons, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, participants, managed accounts or funds, fund advisors, predecessors, successors, assigns, subsidiaries, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, investment managers, and other professionals, each in their capacity as such; and (j) Holders of Other Priority Claims and Administrative Claims that do not opt out or do not object to the treatment of their Claims under the Plan; *provided* that any Holder of a Claim or Interest that opts out of the releases contained in the Plan shall not be a “Released Party.”

122. “*Releasing Party*” means each of the following, solely in its capacity as such: (a) the Debtors and Wind-Down Debtors; (b) the Estate; (c) the DIP Agents; (d) the DIP Lenders; (e) the Term Loan Lenders; (f) the Term Loan Agent; (g) the ABL Agents; (h) the ABL Lenders; (i) the Consenting Term Lenders; (j) the Purchaser; (k) with respect to each of the foregoing entities in clauses (a) through (j), such entity’s respective current and former Affiliates, and each of such entity’s, and such entity’s current and former affiliates’, current and former equity holders (regardless of whether such interests are held directly or indirectly), subsidiaries, officers, directors, managers, principals, members, employees, agents, advisors, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such; (l) all Holders of Claims and Interests that are deemed to accept the Plan and who do not opt out of the releases provided by the Plan; (m) all Holders of Claims and Interests who vote to accept the Plan; and (n) all Holders in voting classes who abstain from voting on the Plan and who do not opt-out of the releases provided by the Plan; *provided*, that any Holder of a Claim or Interest that votes to reject the Plan (and thereby opts out of the releases contained in the Plan), that abstains from voting on the Plan and opts-out, or that is deemed to reject the Plan shall not be a “Releasing Party.”

123. “*Required Consenting Term Lenders*” has the meaning set forth in the Plan Support Agreement.<sup>2</sup>

124. “*Restructuring*” means the restructuring of the Debtors on the terms of the Plan and the Plan Support Agreement

125. “*Restructuring Documents*” means the Plan, the Disclosure Statement, the Plan Supplement, and the various agreements and other documents formalizing or implementing the Plan and the transactions contemplated thereunder, each subject to the Plan Support Agreement.

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<sup>2</sup> For the avoidance of doubt, any consultation or consent rights provided to the Required Consenting Term Lenders in this Plan shall only be applicable so long as the Plan Support Agreement remains in effect.

126. “*Restructuring Transactions*” means those mergers, amalgamations, consolidations, arrangements, continuances, restructurings, transfers, conversions, dispositions, liquidations, dissolutions, or other corporate transactions that the Debtors and the Required Consenting Term Lenders reasonably determine to be necessary to implement the Restructuring, as described in more detail in Article IV.A herein.

127. “*Retained Causes of Action List*” means a list of all retained Claims and Causes of Action of the Debtors, identified in the Plan Supplement.

128. “*Schedule of Assumed Executory Contracts and Unexpired Leases*” means the schedule (including any amendments or modifications thereto), if any, of the Executory Contracts and Unexpired Leases to be assumed or assumed and assigned by the Wind-Down Debtors pursuant to the Plan, as set forth in the Plan Supplement, as amended by the Debtors from time to time in accordance with the Plan, which shall be in form and substance acceptable to each of the Debtors.

129. “*Schedules*” means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

130. “*Section 510(b) Claim*” means any Claim subject to subordination under section 510(b) of the Bankruptcy Code.

131. “*Secured*” means when referring to a Claim: (a) secured by a Lien on property in which any of the Debtors has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the applicable Holder’s interest in the applicable Debtor’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to the Plan, or separate order of the Bankruptcy Court, as a secured claim.

132. “*Securities Act*” means the Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, together with the rules and regulations promulgated thereunder, as amended from time to time.

133. “*Security*” means a security as defined in section 2(a)(1) of the Securities Act.

134. “*Term Loan Agent*” means Wilmington Savings Fund Society, FSB, in its capacity as successor administrative agent under the Term Loan Credit Agreement, and any successor thereto.

135. “*Term Loan Claim*” means any Claim derived from or based upon the Term Loan Credit Agreement.

136. “*Term Loan Credit Agreement*” means that certain Term Loan Credit Agreement, dated as of April 30, 2014 (as amended, novated, supplemented, extended or restated from time to time), by and among Pier 1, as lead borrower, certain direct wholly-owned subsidiaries and certain

affiliates of Pier 1, as guarantors, Wilmington Savings Fund Society, FSB, as successor administrative agent, and certain financial institutions, as lenders.

137. “*Term Loan Deficiency Claim*” means any Term Loan Claim that is not a Secured Claim.

138. “*Term Loan Lenders*” means the lending institutions party from time to time to the Term Loan Credit Agreement.

139. “*Term Loan Recovery Pool*” means collectively, the proceeds of Intellectual Property and the Distributable Proceeds available for Allowed Term Loan Claims, pursuant to the Waterfall Recovery.

140. “*Term Priority Collateral*” has the meaning ascribed to it in the Intercreditor Agreement.

141. “*Term Sheet*” means that certain term sheet, attached as Exhibit B to the *Amended Notice of Filing of Wind-Down Budget and Term Sheet* [Docket No. 689].

142. “*U.S. Trustee*” means the Office of the United States Trustee for the Eastern District of Virginia.

143. “*Unexpired Lease*” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

144. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that are unimpaired within the meaning of section 1124 of the Bankruptcy Code, including through payment in full in Cash.

145. “*Voting Deadline*” means July 24, 2020, at 4:00 p.m. (prevailing Eastern Time).

146. “*Wages Order*” means the *Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* [Docket No. 348].

147. “*Waterfall Recovery*” means the priority of Claims to payments of Distributable Proceeds as set forth in Article VIII.F.

148. “*Wind Down*” means the wind down and dissolution of the Debtors’ Estates following the Effective Date as set forth in Article VII.B hereof.

149. “*Wind-Down Amount*” means Cash in an amount set forth in the Wind-Down Budget to be determined by the Debtors, with the consent of the Required Consenting Term Lenders, which amount shall be funded by the Debtors and used by the Plan Administrator to fund the Wind Down.



150. “*Wind-Down Budget*” has the same meaning ascribed to such term in the Wind-Down Order.

151. “*Wind-Down Debtors*” means the Debtors, or any successor thereto, by merger, consolidation, or otherwise, on or after the Effective Date.

152. “*Wind-Down Order*” means the *Order (I) Authorizing the Debtors to Wind-Down Operations, (II) Authorizing the Debtors to Conduct Store Closings, and (III) Granting Related Relief* [Docket No. 744].

153. “*Wind-Down Reserve*” means a segregated account established by the Plan Administrator established in accordance with Article VIII.C.

## **B. Rules of Interpretation**

For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, modified, or supplemented; (4) any reference to an Entity as a Holder of a Claim or Interest includes that Entity’s successors and assigns; (5) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (8) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (9) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (10) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (11) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (12) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (13) any immaterial effectuating provisions may be interpreted by the Debtors, Wind-Down Debtors, or the Plan Administrator in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; and (14) except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Wind-Down Debtors shall mean the Debtors and the Wind-Down Debtors, as applicable, to the extent the context requires.

**C. Computation of Time**

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

**D. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); provided, that corporate governance matters relating to the Debtors or the Wind-Down Debtors, as applicable, shall be governed by the laws of the state of incorporation or formation of the relevant Debtor.

**E. Reference to Monetary Figures**

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

**F. Controlling Document**

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and any document included in the Plan Supplement, the terms of the relevant provision in the Plan shall control (unless stated otherwise in such document or in the Confirmation Order). In the event of an inconsistency between the Confirmation Order and the Plan, the Confirmation Order shall control.

**G. Nonconsolidated Plan**

Although for purposes of administrative convenience and efficiency the Plan has been filed as a joint plan for each of the Debtors and presents together Classes of Claims against, and Interests in, the Debtors, the Plan does not provide for the substantive consolidation of any of the Debtors.

**ARTICLE II.  
ADMINISTRATIVE CLAIMS AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III hereof.

**A. Administrative Claims and Priority Tax Claims**

Except as otherwise provided in this Article II.A. and except with respect to Administrative Claims that are Professional Fee Claims, DIP Claims or subject to 11 U.S.C. § 503(b)(1)(D), requests for payment of Allowed Administrative Claims must be made by the Administrative Claims Bar Date or in compliance with the Administrative Claims Bar Date Order. **Holders of Administrative Claims that are required to, but do not timely request payment on account of Administrative Claims as set forth in the Administrative Claims Bar Date Order or by the Administrative Claims Bar Date. shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Wind-Down Debtors or their property, and such Administrative Claims shall be deemed satisfied, settled, and released as of the Effective Date.** Objections to such requests, if any, must be Filed in compliance with the Administrative Claims Bar Date Order.

Except with respect to Administrative Claims that are Professional Fee Claims or DIP Claims, and except to the extent that an Administrative Claim has already been paid during the Chapter 11 Cases or a Holder of an Allowed Administrative Claim and the applicable Debtor(s) agree to less favorable treatment, each Holder of an Allowed Administrative Claim shall be paid its Pro Rata share of the Distributable Proceeds, pursuant to the Waterfall Recovery, of the unpaid portion of its Allowed Administrative Claim on the latest of: (a) the Effective Date if such Administrative Claim is Allowed as of the Effective Date; (b) the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter; (c) the date such Allowed Administrative Claim becomes due and payable, or as soon thereafter as is reasonably practicable; and (d) as soon as reasonably practicable after the Wind-Down Debtors complete reconciling timely filed Administrative Claims and liquidating the Wind-Down Debtors' assets such that an appropriate final Pro Rata distribution amount can be determined (or an interim amount can be determined and distributed to then Allowed Holders of Administrative Claims); provided that, with respect to a Holder of a Priority Tax Claim, such Priority Tax Claim shall be treated in accordance with section 1129(a)(9)(C) of the Bankruptcy Code as soon as reasonably practicable following the Effective Date; provided further that Allowed Administrative Claims that arise in the ordinary course of the Wind-Down Debtors' businesses that are required for the Wind Down shall be paid in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements and/or arrangements governing, instruments evidencing, or other documents relating to such transactions (and no requests for payment of such Administrative Claims must be Filed or served). Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim Allowed by Final Order.

All known Holders of Administrative Claims (other than Holders of Professional Fee Claims or DIP Claims) have been sent an Administrative / Priority Claim Consent Form pursuant to which the Debtors are seeking the agreement of such Holder to the treatment afforded to such Holder under the Plan. The failure to return the Administrative / Priority Claim Consent Form or the failure to object to the treatment under the Plan by a Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims or DIP Claims) shall be deemed to be such Holder's consent to receive treatment for such Claim that is different from that set forth in section 1129(a)(9) of the Bankruptcy Code. If such Holder of an Administrative Claim does not object to the treatment under the Plan, such Holder shall be deemed a Released Party for all purposes hereunder.

With respect to any Holder of an Administrative Claim (including a claim under 503(b)(9) of the Bankruptcy Code) that (i) does not object to the Plan on account of the treatment contemplated hereby or (ii) does not validly return the Administrative / Priority Claim Consent Form indicating they do not agree with the treatment contemplated under the Plan, as of the Effective Date of the Plan, the Debtors, the Wind-Down Debtors, the Plan Administrator, and any successor-in-interest will waive and release (to the extent not already waived and released) any and all claims, Causes of Action, and other rights against the any such Holder on account of any and all estate causes of action pursuant to chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes and common law including fraudulent transfer laws.

Any amounts remaining in the Administrative / Priority Claims Reserve after payment of all Allowed Administrative Claims and all Allowed Priority Claims shall promptly be transferred to the General Account and shall be distributed according to the priority set forth in Article VIII.F without any further action or order of the Court.

**B. Professional Compensation**

1. Final Fee Applications and Payment of Professional Fee Claims

All final requests for payment of Professional Fee Claims incurred during the period from the Petition Date through the Confirmation Date shall be Filed no later than 45 days after the Effective Date. All such final requests will be subject to approval by the Bankruptcy Court after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior orders of the Bankruptcy Court, including the Interim Compensation Order, and once approved by the Bankruptcy Court, shall be promptly paid from the Professional Fee Escrow Account up to the full Allowed amount. Notwithstanding anything to the contrary herein, to the extent that funds held in the Professional Fee Escrow Account are insufficient to satisfy the amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency; provided that in no case should the total amount of the Professional Fee Claims exceed the amounts set forth in the Wind-Down Budget.

2. Professional Fee Escrow Account

On the Effective Date, the Wind-Down Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Reserve Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals. Such funds shall not be considered property of the Estates or the Plan Administrator. The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Wind-Down Debtors as soon as reasonably practicable after such Professional Fee Claims are Allowed. When all Allowed amounts owing to the Professionals have been paid in full, any amount remaining in the Professional Fee Escrow Account shall promptly be paid to the Wind-Down Debtors without any further action or order of the Bankruptcy Court.

3. Professional Fee Reserve Amount

Professionals shall reasonably estimate their unpaid Professional Fee Claims, and shall deliver such estimate to the Debtors no later than five days before the Effective Date; provided,

that such estimate shall not be deemed to limit the amount of the fees and expenses that are the subject of the Professional's final request for payment of Professional Fee Claims. If a Professional does not provide an estimate, the Debtors or Wind-Down Debtors may estimate the unpaid and unbilled fees and expenses of such Professional.

4. Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by the Professionals, subject to the Wind-Down Budget. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtors or the Plan Administrator, as applicable, may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

**C. DIP Claims**

As of the Effective Date, the DIP Claims shall be Allowed and deemed to be Allowed Claims in the full amount outstanding under the DIP Credit Agreement and the other DIP Documents, including principal, interest, fees, prepayment premiums and expenses and other amounts constituting obligations under the DIP Credit Agreement. Except to the extent that a Holder of an Allowed DIP Claim agrees, in its sole and absolute discretion, to a less favorable treatment, in full satisfaction of each Allowed DIP Claim, on the Effective Date, each Holder of an Allowed DIP Claim will either: (1) be Paid in Full on the Effective Date or (2) receive such other treatment as agreed to by such Holder, in its sole and absolute discretion, and the Debtors and Wind-Down Debtors, as applicable. As used in this paragraph, "Paid in Full" shall mean the indefeasible repayment in full in Cash of all obligations (including principal, interest, fees, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted) under the DIP Senior Credit Facility, the cash collateralization of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancelation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the terms of the DIP Senior Credit Facility. The DIP Senior Credit Facility shall not be deemed Paid in Full until such time as (x) the commitments to lend thereunder have been terminated, and (y) the DIP Agents have received (i) a countersigned payoff letter in form and substance satisfactory to such Agent and (ii) releases in form and substance satisfactory to such DIP Agent, each in its sole discretion.

Subject to the Allowed DIP Claims being Paid in Full in accordance with the terms of this Plan, or other such treatment as contemplated by this Article II.C of the Plan, on the Effective Date all Liens and security interests granted to secure such obligations (other than those granted in connection with the payoff arrangements and cash collateralization of such obligations) shall be automatically terminated and of no further force and effect without any further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

**D. Statutory Fees**

All fees due and payable pursuant to section 1930 of Title 28 of the United States Code before the Effective Date shall be paid by the Debtors. On and after the Effective Date, the Wind-Down Debtors shall pay any and all such fees when due and payable, and shall File with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. Each Wind-Down Debtor shall remain obligated to pay quarterly fees to the U.S. Trustee until the earliest of the applicable Debtor’s Chapter 11 Case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

**A. Summary of Classification**

Claims and Interests, except for DIP Claims, Administrative Claims, and Priority Tax Claims, are classified in the Classes set forth in this Article III. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. Except as otherwise provided in this Plan, a Claim or Interest also is classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and has not been paid, released, or otherwise satisfied before the Effective Date.

1. Class Identification

The classification of Claims and Interests against each Debtor (as applicable) pursuant to the Plan is as follows:

Class	Claim or Interest	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Presumed to Accept
2	Other Secured Claims	Unimpaired	Presumed to Accept
3	ABL Claims	Unimpaired	Presumed to Accept
4	Term Loan Claims	Impaired	Entitled to Vote
5	General Unsecured Claims	Impaired	Entitled to Vote
6	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote
7	Intercompany Interests	Impaired	Deemed to Reject
8	Interests in Pier 1	Impaired	Deemed to Reject
9	Section 510(b) Claims	Impaired	Deemed to Reject

## B. Treatment of Claims and Interests

Subject to Article VI hereof, each holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, such holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors and the holder of such Allowed Claim or Allowed Interest, as applicable. Unless otherwise indicated, the holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the later of the Effective Date and the date such holder's Claim or Interest becomes an Allowed Claim or Allowed Interest or as soon as reasonably practicable thereafter.

### 1. Class 1 – Other Priority Claims

- a. *Classification:* Class 1 consists of Other Priority Claims.
- b. *Treatment:* All known Holders of Other Priority Claims have been sent an Administrative / Priority Claim Consent Form pursuant to which the Debtors are seeking the agreement of such party to the treatment afforded to such Holder hereunder. The treatment afforded to Holders of Other Priority Claims hereunder is only available if each such Holder agrees to such treatment. **The failure to return the Administrative / Priority Claim Consent Form or to object to the Plan shall be deemed to be such Holder's consent to accept less than full payment of its Claim as required by section 1129(a)(9) and as contemplated under sections 1124 and 1123(a)(4) of the Bankruptcy Code, and in full and final satisfaction, compromise, settlement, and release of and in exchange for each Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall receive its Pro Rata share of the Administrative / Priority Claims Recovery on the Effective Date, or as soon as reasonably practicable thereafter.** If such Holder does not object to the Plan, such Holder shall be deemed a Released Party for all purposes hereunder.
- c. *Voting:* Class 1 is Unimpaired. Holders of Class 1 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.

### 2. Class 2 – Other Secured Claims

- a. *Classification:* Class 2 consists of Other Secured Claims against any Debtor.
- b. *Treatment:* In full and final satisfaction of each Allowed Other Secured Claim, except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, each Holder thereof will receive: (a) payment in full in Cash; (b) delivery

of the collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code; (c) Reinstatement of such Claim; or (d) other treatment rendering such Claim Unimpaired.

- c. *Voting:* Class 2 is Unimpaired. Holders of Class 2 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.

3. Class 3 – ABL Claims

- a. *Classification:* Class 3 consists of all ABL Claims.
- b. *Allowance:* The ABL Claims shall be Allowed in the aggregate face amount of the then outstanding amount under the ABL Credit Agreement, plus any unreimbursed amounts thereunder, and any accrued but unpaid interest on such unreimbursed amounts through the Effective Date, plus any fees, charges, expenses, reimbursement obligations, indemnification obligations, prepayment premiums, and other amounts due under the ABL Credit Agreement.
- c. *Treatment:* In full and final satisfaction, compromise, settlement, release, and discharge of its Claim (unless the applicable Holder agrees to a less favorable treatment), to the extent not already indefeasibly paid in full in cash or “rolled up” or converted into DIP Facility Obligations pursuant to the DIP Order before the Effective Date, each Holder of an Allowed ABL Claim shall (i) receive Distributable Proceeds of ABL Priority Collateral up to the full amount of its Allowed ABL Claim and (ii) all issued and undrawn letters of credit shall be replaced or cash collateralized in the amounts specified under the ABL Credit Agreement.
- d. *Voting:* Class 3 is Unimpaired. Holders of Allowed Class 3 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

4. Class 4 – Term Loan Claims

- a. *Classification:* Class 4 consists of all Term Loan Claims.
- b. *Allowance:* The Term Loan Claims shall be Allowed in the aggregate amount of \$189,000,000, plus accrued but unpaid interest, fees and all other amounts due under the Term Loan Credit Agreement.



- c. *Treatment:* In full and final satisfaction, compromise, settlement, release, and discharge of its Claim (unless the applicable Holder agrees to a less favorable treatment), each Holder of an Allowed Term Loan Claim shall receive its *Pro Rata* share of the Term Loan Recovery Pool.

If such Holder votes to accept the Plan, such Holder shall be deemed a Released Party for all purposes hereunder.

- d. *Voting:* Class 4 is Impaired. Holders of Allowed Class 4 Claims are entitled to vote to accept or reject the Plan.

5. Class 5 – General Unsecured Claims

- a. *Classification:* Class 5 consists of all General Unsecured Claims.

- b. *Treatment:* In full and final satisfaction, compromise, settlement, release, and discharge of its Claim (unless the applicable Holder agrees to a less favorable treatment), each Holder of an Allowed General Unsecured Claim shall receive:

- i. its *Pro Rata* share of the Distributable Proceeds pursuant to the Waterfall Recovery, *only if* Distributable Proceeds are available after all senior Claims (including, for the avoidance of doubt, the Term Loan Claims and Administrative Claims) are paid in full; and
- ii. a complete waiver and release of any and all claims, Causes of Action, and other rights against the Holders of Allowed Class 5 Claims based on claims pursuant to chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes and common law including fraudulent transfer laws from the Debtors, the Wind-Down Debtors, their Estates, and the Plan Administrator, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, subject to and in accordance with Article X of the Plan.

- c. *Voting:* Class 5 is Impaired. Holders of Allowed Class 5 Claims are entitled to vote to accept or reject the Plan.

6. Class 6 – Intercompany Claims

- a. *Classification:* Class 6 consists of all Intercompany Claims.
- b. *Treatment:* In full and final satisfaction of each Allowed Intercompany Claim, each Allowed Intercompany Claim, unless otherwise provided for under the Plan, will either be Reinstated, distributed, contributed, set off, settled, cancelled and released or otherwise addressed at the option of the Debtors in consultation with the Required Consenting Term Lenders; provided, that no distributions shall be made on account of any such Intercompany Claims.
- c. *Voting:* Class 6 is either Unimpaired, and the Holders of Intercompany Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code, or Impaired or the Holders of Allowed Class 6 Claims are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

7. Class 7 – Intercompany Interests

- a. *Classification:* Class 7 consists of all Intercompany Interests.
- b. *Treatment:* Intercompany Interests shall be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Intercompany Interests will not receive any distribution on account of such Intercompany Interests.
- c. *Voting:* Class 7 is Impaired, and Holders of Intercompany Interests are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

8. Class 8 – Interests in Pier 1

- a. *Classification:* Class 8 consists of all Interests in Pier 1.
- b. *Treatment:* In full and final satisfaction of each Allowed Interest in Pier 1, each Allowed Interest in Pier 1 shall be canceled, released, and extinguished, and will be of no further force or effect and no Holder of Interests in Pier 1 shall be entitled to any recovery or distribution under the Plan on account of such Interests.
- c. *Voting:* Class 8 is Impaired. Holders of Interests in Pier 1 are deemed to have rejected the Plan pursuant to section 1126(g) of the

Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

9. Class 9– Section 510(b) Claims

- a. *Classification:* Class 9 consists of all Section 510(b) Claims.
- b. *Treatment:* Section 510(b) Claims will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and each Holder of a Section 510(b) Claim will not receive any distribution on account of such Section 510(b) Claim. The Debtors are not aware of any valid Section 510(b) Claims and believe that no such Section 510(b) Claims exist.
- c. *Voting:* Class 9 is Impaired. Holders of Section 510(b) Claims are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

**C. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class(es) of Claims and Interests. The Debtors reserve the right to modify the Plan in accordance with Article X hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims to render such Class of Claims Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

**D. Elimination of Vacant Classes**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**E. Voting Classes; Presumed Acceptance by Non-Voting Classes**

If a Class of Claims or Interests is eligible to vote and no Holder of Claims or Interests, as applicable, in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by such Class.

**F. Subordinated Claims and Interests**

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and their respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or Wind-Down Debtors, as applicable, reserve the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. Restructuring Transactions**

On the Effective Date, or as soon as reasonably practicable thereafter, the Wind-Down Debtors shall take all actions as may be necessary or appropriate to effectuate the Restructuring Transactions, including, without limitation: (a) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (d) such other transactions that are required to effectuate the Restructuring Transactions; (e) all transactions necessary to provide for the purchase of some or all of the assets of, or Interests in, any of the Debtors which purchase may be structured as a taxable transaction for United States federal income tax purposes; and (f) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

**B. Cancellation of Notes, Instruments, Certificates, and Other Documents**

On the Effective Date, except as otherwise specifically provided for in the Plan (including, without limitation, the satisfaction of the DIP Claims in accordance with Article II.C of the Plan): (1) any certificate, share, note, bond, indenture, purchase right, or other instrument or document, directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest, equity, or portfolio interest in the Debtors or any warrants, options, or other securities exercisable or exchangeable for, or convertible into, debt, equity, ownership, or profits interests in the Debtors giving rise to any Claim or Interest shall be canceled and deemed surrendered as to the Debtors and shall not have any continuing obligations thereunder; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificates or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indenture, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be fully

released, settled, and compromised; provided, that notwithstanding Confirmation or Consummation, any such instrument or document that governs the rights of a Holder of a Claim or Interest shall continue in effect solely for purposes of: (1) allowing Holders to receive distributions under the Plan; (2) allowing the Term Loan Agent to enforce its rights, claims, and interests vis-à-vis any parties other than the Released Parties; (3) allowing the Term Loan Agent to make the distributions in accordance with the Plan (if any); (4) preserving any rights of the Term Loan Agent to payment of fees, expenses, and indemnification obligations as against any money or property distributable to the Holders under Term Loan Credit Agreement, including any rights to priority of payment and/or to exercise charging liens; (5) allowing the Term Loan Agent to enforce any obligations owed it under the Plan; (6) allowing the Term Loan Agent to appear in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court or any other court, including, but not limited, to enforce the respective obligations owed to such parties under the Plan; and (7) permitting the Term Loan Agent to perform any functions that are necessary to effectuate the foregoing.

### **C. General Settlement of Claims**

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their respective Estates, and holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Wind-Down Debtors may compromise and settle Claims against the Debtors and their respective Estates and Causes of Action against other Entities.

### **D. Means for Implementation**

Any Asset Sale Transaction will be either (a) conducted pursuant to the Bidding Procedures and approved as part of the Confirmation of the Plan, (b) approved by the Bankruptcy Court prior to the Effective Date, or (c) otherwise authorized by the Plan.

#### **1. Sources of Consideration for Plan Distributions**

The Plan Administrator will fund distributions under the Plan with Cash on hand on the Effective Date and the revenues and proceeds of all assets of the Debtors, including proceeds from all Causes of Action not settled, released, discharged, enjoined, or exculpated under the Plan or otherwise on or prior to the Effective Date.

#### **2. Vesting of Assets**

Except as otherwise provided in the Plan, or any agreement, instrument, or other document incorporated herein or therein, on the Effective Date, the assets of the Debtors shall vest in the

Wind-Down Debtors for the purpose of liquidating the Estates, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, the Debtors and the Wind-Down Debtors may (at the direction of the Plan Administrator) use, acquire, or dispose of property, and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

3. Wind-Down Debtors

On and after the Effective Date, if applicable, the Wind-Down Debtors shall continue in existence for purposes of (a) winding down the Debtors' business and affairs as expeditiously as reasonably possible in accordance with the Wind-Down Budget, (b) resolving Disputed Claims, (c) making distributions on account of Allowed Claims as provided hereunder, (d) establishing and funding the Distribution Reserve Accounts in accordance with the Wind-Down Budget, (e) enforcing and prosecuting claims, interests, rights, and privileges under the Causes of Action on the Retained Causes of Action List in an efficacious manner and only to the extent the benefits of such enforcement or prosecution are reasonably believed to outweigh the costs associated therewith, (f) filing appropriate tax returns, (g) complying with its continuing obligations under the Purchase Agreements, if any, (h) liquidating all assets of the Wind-Down Debtors, and (i) otherwise administering the Plan in an efficacious manner consistent with the Plan. The Wind-Down Debtors shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (i) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court and (ii) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Plan Administrator to file motions or substitutions of parties or counsel in each such matter.

4. Plan Administrator

As set forth below, the Plan Administrator shall act for the Wind-Down Debtors in the same fiduciary capacity as applicable to a board of managers, directors, and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same) and retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under this Plan in accordance with the Wind-Down and as otherwise provided in the Confirmation Order. On the Effective Date, the authority, power, and incumbency of the persons acting as managers, directors, and officers of the Wind-Down Debtors shall be deemed to have resigned, and the Plan Administrator shall be appointed as the sole manager, sole director, and sole officer of the Wind-Down Debtors, and shall succeed to the powers of the Wind-Down Debtors' managers, directors, and officers.

From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Wind-Down Debtors as further described in Article VII hereof. The Plan Administrator shall have the authority to sell, liquidate, or otherwise dispose of any and all of the Wind-Down Debtors' assets without any additional notice to or approval from the Bankruptcy Court.

5. Claims Representative

On or prior to the Confirmation Date, the Creditors' Committee, upon consultation with the Required Consenting Term Lenders shall appoint the Claims Representative to participate in the post-Effective Date Claims reconciliation process. The Claims Representative shall be tasked with ensuring an efficient and fair claims reconciliation process, and overseeing the prosecution of estate causes of action under section 547 that are not covered by waiver or otherwise released, including the retention of a firm to prosecute such claims if appropriate, which firm shall be mutually agreed by the Required Consenting Term Lenders and Committee. The terms of the Claims Representative's engagement shall be included in the Plan Supplement and are to be reasonably acceptable to both the Required Consenting Term Lenders and the Creditors' Committee. For the avoidance of doubt, compensation for the Claims Representative's duties shall not exceed \$50,000.

6. Board of the Debtors

As of the Effective Date, the existing board of directors or managers, as applicable, of the Debtors shall be dissolved without any further action required on the part of the Debtors or the Debtors' officers, directors, managers, shareholders, or members, and any remaining officers, directors, managers, or managing members of any Debtor shall be dismissed without any further action required on the part of any such Debtor, the equity holders of the Debtors, the officers, directors, or managers, as applicable, of the Debtors, or the members of any Debtor. Subject in all respects to the terms of this Plan, the Debtors shall be dissolved as soon as practicable on or after the Effective Date, but in no event later than the closing of the Chapter 11 Cases.

As of the Effective Date, the Plan Administrator shall act as the sole officer, director, and manager, as applicable, of the Debtors with respect to its affairs. Subject in all respects to the terms of this Plan, the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve any of the Debtors, and shall: (a) file a certificate of dissolution for any of the Debtors, together with all other necessary corporate and company documents, to effect the dissolution of any of the Debtors under the applicable laws of each applicable Debtor's state of formation; and (b) complete and file all final or otherwise required federal, state, and local tax returns and shall pay taxes required to be paid for any of the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any of the Debtors or their Estates for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws; and (c) represent the interests of the Debtors or the Estates before any taxing authority in all tax matters, including any action, suit, proceeding, or audit.

The filing by the Plan Administrator of any of the Debtors' certificate of dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, board of directors, or board of managers of Pier 1 or any of its affiliates.



7. Release of Liens

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors' Estates shall be fully released, settled, and compromised, and the holder of such mortgages, deeds of trust, Liens, pledges, or other security interest against any property of the Debtors' Estates shall be authorized to take such actions as may be reasonably requested by the Debtors to evidence such releases.

8. Preservation of Causes of Action

Unless any Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Debtors shall convey to the Plan Administrator all rights to commence, prosecute or settle, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, which shall vest in the Plan Administrator pursuant to the terms of the Plan. The Plan Administrator may enforce all rights to commence, prosecute, or settle, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, and the Plan Administrator's rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Plan Administrator may, in its reasonable business judgment, pursue such Causes of Action and may retain and compensate professionals in the analysis or pursuit of such Causes of Action to the extent the Plan Administrator deems appropriate, including on a contingency fee basis. No Entity may rely on the absence of a specific reference in the Plan, the Disclosure Statement, or the Plan Supplement to any Cause of Action against them as any indication that the Debtors or the Plan Administrator will not pursue any and all available Causes of Action against them. The Debtors and the Plan Administrator expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan; provided that the Debtors, in consultation with the Plan Administrator after the Effective Date, may prosecute any such Cause of Action against any party only in connection with their objection to and resolution of any Claim asserted by such party. Unless any Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, the Plan Administrator expressly reserves all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. The Plan Administrator reserves and shall retain the foregoing Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. The Plan Administrator shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, or to take any action contemplated by this section, without the consent or approval of any third party or any further notice to, or action, order, or approval of, the Bankruptcy Court.



9. Director and Officer Liability Insurance

The Debtors shall be deemed to have assumed all of the Debtors' D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code effective as of the Effective Date (whether or not such policies are listed on the Schedule of Assumed Executory Contracts), and coverage for defense and indemnity under any of the D&O Liability Insurance Policies shall remain available to all individuals within the definition of "Insured" in any of the D&O Liability Insurance Policies. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption of each of the unexpired D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained in the Plan, and except as otherwise may be provided in an order from the Bankruptcy Court, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be filed; provided, however, that the Holder(s) of a Claim for an indemnity obligation will look only to the D&O Liability Insurance Policies for recovery and not the Estates.

10. Termination of Non-Qualified Deferred Compensation Trust Plans

The Non-Qualified Deferred Compensation Trust Plans shall be terminated on the Effective Date.

**E. Exemption from Certain Transfer Taxes and Fees**

To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto, including the Asset Sale Transaction, or the issuance, transfer or exchange of any security under the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax, recordation fee, or governmental assessment.

**ARTICLE V.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption and Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Confirmation Date; (3) is to be assumed by the Debtors or assumed by the Debtors and assigned to another third party, as

applicable, in connection with the any sale transaction that is the subject of a pending motion as of the Confirmation Date; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; (5) is a D&O Liability Insurance Policy; or (6) is listed on the Schedule of Rejected Executory Contracts and Unexpired Leases as of the Confirmation Date for rejection effective on a date that occurs after the Effective Date. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

#### **B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Counterparties to Executory Contracts or Unexpired Leases listed on the Schedule of Rejected Executory Contracts and Unexpired Leases or otherwise Rejected pursuant to the Plan shall be served with a notice of rejection of Executory Contracts and Unexpired Leases substantially in the form approved by the Bankruptcy Court pursuant to the Bankruptcy Court order approving the Disclosure Statement as soon as reasonably practicable following the filing of the Plan Supplement. The notice of the Plan Supplement shall also be deemed appropriate notice of rejection when served on applicable parties. Proofs of Claims with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be Filed with the Notice and Claims Agent by the later of the date that is thirty (30) days after (1) the entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection; (2) the Effective Date; and (3) the effective date of any rejection that occurs after the Effective Date. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease that are not Filed within such time will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Wind-Down Debtors, the Estates, or property of the foregoing parties, without the need for any objection by the Debtors or the Wind-Down Debtors, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or a Proof of Claim to the contrary.** Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III of the Plan.

#### **C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases**

Any Cure Obligations under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by performance or payment of the Cure Obligation in Cash on or after the Effective Date, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the Cure Obligation, (2) the ability of the Wind-Down Debtors or any assignee, as applicable, to provide "adequate assurance of future performance" (with the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, the Cure Obligations shall be made following the entry of a Final Order resolving the dispute and approving the assumption.

At least 14 days before the Voting Deadline, the Debtors shall distribute, or cause to be distributed, Cure Notices to the applicable third parties and their counsel (if known). **Any objection by a counterparty to an Executory Contract or Unexpired Lease to the proposed assumption, assumption and assignment, or related Cure amount must be Filed by the Cure/Assumption Objection Deadline.** Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption, assumption and assignment, or Cure Notice will be deemed to have assented to such assumption or assumption and assignment, and Cure amount. To the extent that the Debtors seek to assume and assign an Unexpired Lease pursuant to the Plan, the Debtors will identify the assignee in the applicable Cure Notice and/or Schedule and provide “adequate assurance of future performance” for such assignee (within the meaning of section 365 of the Bankruptcy Code) under the applicable Executory Contract or Unexpired Lease to be assumed and assigned, which adequate assurance information will be provided with the Cure Notice.

Assumption or assumption and assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise, and the satisfaction of the Cure Obligations, shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date that the Debtors assume or assume and assign such Executory Contract or Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed or assumed and assigned shall be deemed Disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, with respect to any asserted non-monetary Cure Obligations, such Cure obligations may be cured (or resolved) by the assignee and the applicable counterparty in the ordinary course of business following the assumption and all parties reserve all rights with respect to any such asserted Cure obligations.

#### **D. Indemnification Obligations**

All indemnification obligations in place as of the Effective Date (whether in the by laws, certificates of incorporation or formation, limited liability company agreements, other organizational or formation documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for the current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, and other professionals of the Debtors, as applicable, shall be assumed and remain in full force and effect after the Effective Date, and shall not be modified, reduced, discharged, impaired, or otherwise affected in any way, and shall survive Unimpaired and unaffected, irrespective of when such obligation arose; provided, however, that neither the Term Loan Lenders nor any Purchaser shall have any liability or other responsibility for any such obligation, which shall solely be an obligation of the Plan Administrator (if an Asset Sale Transaction occurs) and any applicable insurance company.

#### **E. Insurance Policies**

Without limiting Article IV.D.8, all of the Debtors’ insurance policies and any agreements, documents, or instruments relating thereto, are treated as and deemed to be Executory Contracts

under the Plan. On the Effective Date, the Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments related thereto.

**F. Modifications, Amendments, Supplements, Restatements, or Other Agreements**

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed (or assumed and assigned) shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

**G. Reservation of Rights**

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule of Rejected Executory Contracts and Unexpired Leases or the Schedule of Assumed Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor has any liability thereunder.

**H. Nonoccurrence of Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting any Executory Contract or Unexpired Lease pursuant to section 365(d)(4) of the Bankruptcy Code.

**I. Contracts and Leases Entered Into After the Petition Date**

Contracts and leases entered into in the ordinary course of business after the Petition Date by any Debtor, including any Executory Contracts and/or Unexpired Leases assumed by such Debtor, will be performed by the applicable Debtor or Wind-Down Debtor in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) that have not been rejected under the Plan will survive and remain unaffected by entry of the Confirmation Order, except as provided therein.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Timing and Calculation of Amounts to Be Distributed**

Unless otherwise provided herein, on the Effective Date (or, if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Interest (or such Holder's affiliate) shall receive the full amount of the distributions that the Plan provides for Allowed Claims and Interests in each applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VII of the Plan. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

**B. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

1. Delivery of Distributions

a. Delivery of Distributions in General

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims, except as otherwise provided in this Article VI, or Interests shall be made to Holders of record as of the Distribution Record Date by the Wind-Down Debtors: (1) to the signatory set forth on any of the Proof of Claim Filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no Proof of Claim is Filed or if the Debtors have been notified in writing of a change of address); (2) at the addresses set forth in any written notices of address changes delivered to the Wind-Down Debtors after the date of any related Proof of Claim; (3) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Wind-Down Debtors have not received a written notice of a change of address; or (4) on any counsel that has appeared in the Chapter 11 Cases on such Holder's behalf. Subject to this Article VI, distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Debtors and the Wind-Down Debtors shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

All Distributions on account of Allowed Term Loan Claims shall be made to or at the direction of the Term Loan Agent for further distribution to the Term Loan Lenders in accordance with the Term Loan Credit Agreement and the Plan, and shall be deemed completed when made to or at the direction of the Term Loan Agent. As soon as practicable following any delivery of distributions to the Term Loan Agent on account of Allowed Term Loan Claims, the Term Loan

Agent shall arrange to deliver any such distributions to the Term Loan Lenders in accordance with the Term Loan Credit Agreement and the Plan. For the avoidance of doubt, the Term Loan Agent shall have no liability to any party for actions taken in accordance with this Plan or in reliance upon information provided to it in accordance with this Plan, and the Wind-Down Debtors shall reimburse the Term Loan Agent for any reasonable and documented fees and expenses (including reasonable and documented fees and expenses of its counsel and agents), subject to the Wind-Down Budget, incurred on or after the Effective Date in connection with the implementation of the Plan, including but not limited to, making distributions pursuant to and in accordance with the Plan.

2. Minimum Distributions

Holders of Allowed Claims entitled to distributions of \$100 or less shall not receive distributions, and each such Claim shall be discharged pursuant to Article VIII and its Holder is forever barred pursuant to Article VIII from asserting that Claim against the Wind-Down Debtors or their property.

3. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Wind-Down Debtors or the Plan Administrator, as applicable, have determined the then current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six (6) months from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the applicable Wind-Down Debtors or the Plan Administrator, as applicable, without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any Holder to such property or Interest in property shall be discharged and forever barred.

**C. Tax Issues and Compliance with Tax Requirements**

In connection with the Plan, to the extent applicable, the Debtors, Wind-Down Debtors or the Plan Administrator, as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Wind-Down Debtors or the Plan Administrator, as applicable, shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Wind-Down Debtors reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

Property deposited into the various Claim distribution accounts described elsewhere in the Plan (including the Administrative / Priority Claims Reserve, Other Secured Claims Reserve, and the General Account) will be subject to disputed ownership fund treatment under section 1.468B-9 of the United States Treasury Regulations. All corresponding elections with respect to such accounts shall be made, and such treatment shall be applied to the extent possible for state, local, and non-U.S. tax purposes. Under such treatment, a separate federal income tax return shall be filed with the IRS with respect to such accounts, any taxes (including with respect to interest, if any, or appreciation in property between the Effective Date and date of distribution) imposed on such accounts shall be paid out of the assets of such accounts (and reductions shall be made to amounts disbursed from such accounts to account for the need to pay such taxes).

**D. Allocations**

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest as Allowed herein.

**E. No Postpetition Interest on Claims**

Unless otherwise specifically provided for in an order of the Bankruptcy Court, the Plan, or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any such Claim.

**F. Setoffs and Recoupment**

The Debtors or the Wind-Down Debtors, as applicable, may, but shall not be required to, set off against or recoup any payments or distributions to be made pursuant to the Plan in respect of any Claims of any nature whatsoever that the Debtors or the Wind-Down Debtors may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Wind-Down Debtors of any such Claim it may have against the Holder of such Claim.

Notwithstanding anything to the contrary in the Plan, the Restructuring Documents, the Plan Supplement, or any other documents related to any of the foregoing, nothing shall modify the rights, if any, of any holder of Claims or any current or former party to an executory contract, whether currently or previously executory, or lease of non-residential real property to assert any right of setoff or recoupment that such party may have under applicable bankruptcy or non-bankruptcy law, including, but not limited to: (i) the ability, if any, of such parties to setoff or recoup a security deposit held pursuant to the terms of their unexpired lease(s) with the Debtors, or any successors to the Debtors, under the Plan; (ii) assertion of rights of setoff or recoupment, if any, in connection with Claims reconciliation; or (iii) assertion of setoff or recoupment as a defense, if any, to any claim or action by the Debtors, Wind-Down Debtors, Plan Administrator, Monitor or any successors of the Debtors or Wind-Down Debtors. The Debtors reserve all rights related thereto.

**G. Claims Paid or Payable by Third Parties**

1. Claims Paid by Third Parties

To the extent that the Holder of an Allowed Claim receives payment in full on account of such Claim from a party that is not a Debtor or Wind-Down Debtor, such Claim shall be Disallowed without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or Wind-Down Debtor on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the applicable Debtor or Wind-Down Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Notwithstanding anything herein to the contrary (including, without limitation, Article VIII), nothing shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any Cause of Action that the Debtors or any other Entity may hold against any other Entity, including insurers under any policies of insurance or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**ARTICLE VII.  
THE PLAN ADMINISTRATOR**

**A. The Plan Administrator**

The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to administer and distribute the Distribution Reserve Accounts and wind down the business and affairs of the Debtors and Wind-Down Debtors, including (all without



further order of the Bankruptcy Court): (1) liquidating, receiving, holding, investing, supervising, and protecting the assets of the Wind-Down Debtors in accordance with the Wind-Down Reserve; (2) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan from the Distribution Reserve Accounts in accordance with the Wind-Down Reserve; (3) making distributions from the Distribution Reserve Accounts as contemplated under the Plan; (4) establishing and maintaining bank accounts in the name of the Wind-Down Debtors; (5) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (6) paying all reasonable fees, expenses, debts, charges, and liabilities of the Wind-Down Debtors; (7) administering and paying taxes of the Wind-Down Debtors, including filing tax returns; (8) representing the interests of the Wind-Down Debtors or the Estates before any taxing authority in all matters, including any action, suit, proceeding, or audit; and (9) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan in accordance with the Wind-Down Reserve.

The Plan Administrator may resign at any time upon 30 days' written notice delivered to the Consenting Term Lenders, the Wind-Down Debtors, and the Bankruptcy Court; provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator, to be chosen by the Required Consenting Term Lenders, with the consent of the Debtors (not to be unreasonably withheld). Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Plan Administrator relating to the Wind-Down Debtors shall be terminated.

1. Plan Administrator Rights and Powers

The Plan Administrator shall retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under this Plan in accordance with the Wind-Down Reserve, and as otherwise provided in the Confirmation Order. The Plan Administrator shall be the exclusive trustee of the assets of the Wind-Down Debtors for the purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

2. Wind-Down Budget

The Wind-Down Budget (as modified, amended or supplemented in accordance with the Wind-Down Order) shall continue in full force and effect during the Wind Down. The Debtors will file an updated Wind-Down Budget as part of the Plan Supplement.

3. Monitor

The Required Consenting Term Lenders, upon consultation with the Creditors' Committee shall appoint the Monitor on or before the Confirmation Date. The Monitor will work cooperatively with the Plan Administrator to ensure compliance with the Wind-Down Budget. The Debtors shall include in the Plan Supplement, the terms of the Monitor's engagement, which shall be reasonably acceptable to the Required Consenting Term Lenders and the Creditors'

Committee, but will include a financial incentive to maximize Distributable Proceeds, and shall not otherwise exceed \$275,000.

4. Retention of Professionals

The Plan Administrator shall have the right, subject to the Wind-Down Reserve, to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of his or her duties. The reasonable fees and expenses of such professionals shall be paid by the Wind-Down Debtors from the Wind-Down Reserve upon the monthly submission of statements to the Plan Administrator to the extent set forth in the Wind-Down Reserve. The payment of the reasonable fees and expenses of the Plan Administrator's retained professionals shall be made in the ordinary course of business from the Wind-Down Reserve and shall not be subject to the approval of the Bankruptcy Court.

5. Compensation of the Plan Administrator

The Plan Administrator's compensation, on a post-Effective Date basis, shall be as described in the Plan Supplement and paid out of the Wind-Down Reserve. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Plan Administrator in connection with such Plan Administrator's duties shall be paid without any further notice to, or action, order, or approval of, the Bankruptcy Court in Cash from the Wind-Down Reserve if such amounts relate to any actions taken hereunder.

6. Plan Administrator Expenses

All costs, expenses and obligations incurred by the Plan Administrator in administering this Plan, the Wind-Down Debtors, or in any manner connected, incidental or related thereto, in effecting distributions from the Wind-Down Debtors thereunder (including the reimbursement of reasonable expenses) shall be incurred and paid in accordance with the Wind-Down Budget. Such costs, expenses and obligations shall be paid from the Wind-Down Reserve.

The Debtors and the Plan Administrator, as applicable, shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. However, in the event that the Plan Administrator is so ordered after the Effective Date, all costs and expenses of procuring any such bond or surety shall be paid for with Cash from the Wind-Down Reserve.

**B. Wind-Down**

On and after the Effective Date, the Plan Administrator will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

As soon as practicable after the Effective Date, the Plan Administrator shall: (1) cause the Debtors and the Wind-Down Debtors, as applicable, to comply with, and abide by, the terms of the Purchase Agreements and any other documents contemplated thereby; (2) to the extent applicable, file a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable laws of their state of incorporation or formation (as applicable); and (3) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Plan Administrator without need for any action or approval by the shareholders or board of directors or managers of any Debtor. From and after the Effective Date, except with respect to Wind-Down Debtors as set forth herein, the Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have canceled pursuant to this Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. For the avoidance of doubt, notwithstanding the Debtors' dissolution, the Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

The filing of the final monthly report (for the month in which the Effective Date occurs) and all subsequent quarterly reports shall be the responsibility of the Plan Administrator.

#### **C. Exculpation, Indemnification, Insurance & Liability Limitation**

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed exculpated and indemnified, except for fraud, willful misconduct, or gross negligence, in all respects by the Wind-Down Debtors. The Plan Administrator may obtain, at the expense of the Wind-Down Debtors and with funds from the Wind-Down Reserve, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Wind-Down Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

For the avoidance of doubt, notwithstanding anything to the contrary contained herein, the Plan Administrator in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors.

#### **D. Tax Returns**

After the Effective Date, the Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors, and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws.

**E. Dissolution of the Wind-Down Debtors**

Upon a certification to be Filed with the Bankruptcy Court by the Plan Administrator of all distributions having been made and completion of all its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Cases, the Wind-Down Debtors shall be deemed to be dissolved without any further action by the Wind-Down Debtors, including the filing of any documents with the secretary of state for the state in which each Debtor is formed or any other jurisdiction. The Plan Administrator, however, shall have authority to take all necessary actions to dissolve the Wind-Down Debtors in and withdraw the Wind-Down Debtors from applicable state(s).

**ARTICLE VIII.  
RESERVES ADMINISTERED BY THE PLAN ADMINISTRATOR**

**A. Establishment of Reserve Accounts**

The Plan Administrator shall establish each of the Distribution Reserve Accounts (which may be affected by either establishing a segregated account or establishing book entry accounts, in the sole discretion of the Plan Administrator).

**B. Undeliverable Distribution Reserve**

1. Deposits

If a distribution to any Holder of an Allowed Claim is returned to the Plan Administrator as undeliverable or is otherwise unclaimed, such distribution shall be deposited in a segregated, interest-bearing account, designated as an “Undeliverable Distribution Reserve,” for the benefit of such Holder until such time as such distribution becomes deliverable, is claimed or is deemed to have been forfeited in accordance with Article VIII.B.2 of this Plan.

2. Forfeiture

Any Holder of an Allowed Claim that does not assert a Claim pursuant to this Plan for an undeliverable or unclaimed distribution within three months after the first distribution is made to such Holder shall be deemed to have forfeited its claim for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such claim for the undeliverable or unclaimed distribution against any Debtor, any Estate, the Plan Administrator, the Wind-Down Debtors, or their respective properties or assets. In such cases, any Cash or other property held by the Wind-Down Debtors in the Undeliverable Distribution Reserve for distribution on account of such claims for undeliverable or unclaimed distributions, including the interest that has accrued on such undeliverable or unclaimed distribution while in the Undeliverable Distribution Reserve, shall become the property of the Wind-Down Debtors, notwithstanding any federal or state escheat laws to the contrary, and shall promptly be transferred to the General Account to be distributed according to the priority set forth in Article VIII.F without any further action or order of the Court.

3. Disclaimer

The Plan Administrator and his or her respective agents and attorneys are under no duty to take any action to attempt to locate any Claim Holder; provided that in his or her sole discretion, the Plan Administrator may periodically publish notice of unclaimed distributions.

4. Distribution from Reserve

Within fifteen (15) Business Days after the Holder of an Allowed Claim satisfies the requirements of this Plan, such that the distribution(s) attributable to its Claim is no longer an undeliverable or unclaimed distribution (provided that satisfaction occurs within the time limits set forth in Article VIII.B of this Plan), the Plan Administrator shall distribute out of the Undeliverable Distribution Reserve the amount of the undeliverable or unclaimed distribution attributable to such Claim, including the interest that has accrued on such undeliverable or unclaimed distribution while in the Undeliverable Distribution Reserve, to the General Account.

**C. Wind-Down Reserve**

On the Effective Date, the Plan Administrator shall establish the Wind-Down Reserve by depositing Cash, in the amount of the Wind-Down Amount into the Wind-Down Reserve. The Wind-Down Reserve shall be used by the Plan Administrator solely to satisfy the expenses of Wind-Down Debtors and the Plan Administrator as set forth in the Plan and Wind-Down Budget; provided that all costs and expenses associated with the winding up of the Wind-Down Debtors and the storage of records and documents shall constitute expenses of the Wind-Down Debtors and shall be paid from the Wind-Down Reserve to the extent set forth in the Wind-Down Budget. In no event shall the Plan Administrator be required or permitted to use its personal funds or assets for such purposes. Any amounts remaining in the Wind-Down Reserve after payment of all expenses of the Wind-Down Debtors and the Plan Administrator shall promptly be transferred to the General Account and shall be distributed according to the priority set forth in VIII.G without any further action or order of the Court.

**D. Administrative / Priority Claims Reserve**

On the Effective Date, the Plan Administrator shall establish the Administrative / Priority Claims Reserve by depositing Cash in the amount of the Administrative / Priority Claims Reserve Amount into the Administrative / Priority Claims Reserve (and the Plan Administrator shall deposit Cash into or withdraw Cash from into the Administrative / Priority Claims Reserve if the Administrative / Priority Claims Reserve Amount changes at any time). The Administrative / Priority Claims Reserve Amount shall be used to pay Holders of all Allowed Priority Claims, Allowed Administrative Claims (other than Professional Fee Claims or DIP Claims), and Allowed Other Secured Claims their respective Pro Rata share of the Administrative / Priority Claims Reserve, to the extent that such Priority Claims, Administrative Claims (other than Professional Fee Claims or DIP Claims), and Allowed Other Secured Claim have not been paid in full on or before the Effective Date. If all or any portion of a Priority Claim, Administrative Claim (other than Professional Fee Claims or DIP Claims), or Allowed Other Secured Claim shall become a Disallowed Claim, then the amount on deposit in the Administrative / Priority Claims Reserve

attributable to such surplus or such Disallowed Claim, including the interest that has accrued on said amount while on deposit in the Administrative / Priority Claims Reserve, shall remain in the Administrative / Priority Claims Reserve to the extent that the Plan Administrator determines necessary to ensure that the Cash remaining in the Administrative / Priority Claims Reserve is sufficient to ensure that all Allowed Priority Claims, Allowed Administrative Claims, and Allowed Other Secured Claims will be paid in accordance with the Plan, and shall otherwise promptly be transferred to the General Account to be distributed in accordance with the Plan without any further action or order of the Court. Any amounts remaining in the Administrative / Priority Claims Reserve after payment of all Allowed Priority Claims, Allowed Administrative Claims, and Allowed Other Secured Claims (or any amount in excess of that reasonably needed to be reserved for any Disputed Claims) shall promptly be transferred to the General Account and shall be distributed according to the priority set forth in Article VIII.F without any further action or order of the Court.

**E. Priority Tax Claims Reserve**

On the Effective Date, the Plan Administrator shall establish the Priority Tax Claims Reserve by depositing Cash in the amount of the Priority Tax Claims Reserve Amount into the Priority Tax Claims Reserve. The Priority Tax Claims Reserve Amount shall be used to pay Holders of all Allowed Priority Tax Claims their respective Pro Rata share of the Priority Tax Claims Reserve, to the extent that such Priority Tax Claims have not been paid in full on or before the Effective Date. If all or any portion of a Priority Tax Claim shall become a Disallowed Claim, then the amount on deposit in the Priority Tax Claims Reserve attributable to such surplus or such Disallowed Claim, including the interest that has accrued on said amount while on deposit in the Priority Tax Claims Reserve, shall remain in the Priority Tax Claims Reserve to the extent that the Plan Administrator determines necessary to ensure that the Cash remaining in the Priority Tax Claims Reserve is sufficient to ensure that all Allowed Priority Tax Claims shall otherwise promptly be transferred to the General Account to be distributed in accordance with the Plan without any further action or order of the Court. Any amounts remaining in the Priority Tax Claims Reserve after payment of all Allowed Priority Tax Claims, Allowed Administrative Claims, and Allowed Other Secured Claims (or any amount in excess of that reasonably needed to be reserved for any Disputed Claims) shall promptly be transferred to the General Account and shall be distributed according to the priority set forth in Article VIII.F without any further action or order of the Court.

**F. Distributable Proceeds / Settlement Waterfall Recovery**

After the DIP Claims have been Paid in Full pursuant to Article II.C hereof, the Priority Tax Claims Reserve, the Professional Fee Escrow Account, and the Wind-Down Reserve have been funded, and all proceeds (if any) of Intellectual Property (as defined in the Intercreditor Agreement) have been paid to Holders of Allowed Term Loan Claims in accordance with the DIP Order, all remaining Distributable Proceeds shall be allocated and paid to the applicable Holders of Claims until paid in full from time to time in the following priority (the “Waterfall Recovery”) (in each case on a Pro Rata basis, and subject to any applicable cap): (i) *first*, 88% of Distributable Proceeds shall be paid to Holders of Allowed Term Loan Claims as part of the Term Loan Recovery Pool pursuant to Article III.B.4 hereof, and the remaining 12% of Distributable Proceeds shall be added to the Administrative / Priority Claims Reserve and thereby paid to Holders of

503(b)(9) Claims and remaining Administrative Claims and Other Priority claims pursuant to Article II.A hereof, up to the amount of such 503(b)(9) Claims, Administrative Claims and Priority Claims, (ii) *second*, if, pursuant to the Waterfall Recovery, 503(b)(9) Claims, Administrative Claims, and Other Priority Claims are paid in full, any remaining Distributable Proceeds shall be paid to the holders of Allowed Term Loan Claims until paid in full, and (iii) *third*, any remaining Distributable Proceeds shall be paid to Holders of Allowed General Unsecured Claims. For the avoidance of doubt, unless Allowed Term Loan Claims are paid in full, no holders of General Unsecured Claims shall receive any amount of Distributable Proceeds.

#### **G. The General Account and Distribution Reserve Account Adjustments**

Beginning on the six-month anniversary of the Effective Date or at such other times as the Plan Administrator shall determine as appropriate, and thereafter, on each six-month interval thereafter, the Plan Administrator shall determine the amount of Cash required to adequately maintain each of the Distribution Reserve Accounts. If after making and giving effect to any determination referred to in the immediately preceding sentence, the Plan Administrator determines that any Distribution Reserve Account (i) contains Cash in an amount in excess of the amount then required to adequately maintain such Distribution Reserve Account, then at any such time the Plan Administrator shall transfer such surplus Cash to the General Account to be used or distributed according to the priority set forth in Article VIII.F hereof, or (ii) does not contain Cash in an amount sufficient to adequately maintain such Distribution Reserve Account, then at any such time the Plan Administrator shall, with the consent of the Required Consenting Term Lenders, transfer Cash from the General Account, to the extent Cash is available in the General Account until the deficit in such Distribution Reserve Account is eliminated. Any funds in the General Account not needed to eliminate a Distribution Reserve Account deficit shall be allocated and paid as Distributable Proceeds pursuant to the Waterfall Recovery as set forth in Article VIII.F.

### **ARTICLE IX. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS**

#### **A. Allowance of Claims**

After the Effective Date, the Plan Administrator or each of the Wind-Down Debtors, as applicable, shall have and retain any and all rights and defenses the applicable Debtor had with respect to any Claim immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim.

For the avoidance of doubt, nothing in this Plan will supersede the Prepetition Claims Bar Date Order with respect to a parties right to file a Claim.

## **B. Claims Administration Responsibilities**

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Plan Administrator or the Wind-Down Debtors, as applicable, shall have the sole authority to File and prosecute objections to Claims, and the Wind-Down Debtors shall have the sole authority to (1) settle, compromise, withdraw, litigate to judgment, or otherwise resolve objections to any and all Claims, regardless of whether such Claims are in a Class or otherwise; (2) settle, compromise, or resolve any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

## **C. Estimation of Claims**

Before, on, or after the Effective Date, the Debtors, Plan Administrator or the Wind-Down Debtors, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim pursuant to applicable law, including, without limitation, pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any such Claim, including during the litigation of any objection to any Claim or during the pendency of any appeal relating to such objection. Notwithstanding any provision to the contrary in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim, such estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions and discharge) and may be used as evidence in any supplemental proceedings, and the Debtors, Plan Administrator or Wind-Down Debtors may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before seven (7) days after the date on which such Claim is estimated. Each of the foregoing Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

## **D. Adjustment to Claims Without Objection**

Any Claim that has been paid in full or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtors, the Plan Administrator or the Wind-Down Debtors, as applicable, without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.



**E. Time to File Objections to Claims**

Any objections to Claims shall be Filed on or before the Claims Objection Bar Date.

**F. Disallowance of Claims**

Any Claims held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors, the Plan Administrator or the Wind-Down Debtors, as applicable. All Proofs of Claim Filed on account of an Indemnification Obligation shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such Indemnification Obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

Except as otherwise provided herein or as agreed to by the Plan Administrator or the Wind-Down Debtors, as applicable, any and all Proofs of Claim Filed after the Prepetition Claims Bar Date shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.

**G. Amendments to Claims**

On or after the Effective Date, a Claim (other than a Claim arising from the rejection of an Executory Contract or Unexpired Lease or a Claim filed by the Administrative Claims Bar Date) may not be Filed or amended without the prior authorization of the Bankruptcy Court, the Plan Administrator or the Wind-Down Debtors, as applicable, and any such new or amended Claim Filed shall be deemed Disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court to the maximum extent provided by applicable law.

**H. No Distributions Pending Allowance**

If an objection to a Claim or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim, unless otherwise determined by the Plan Administrator or Wind-Down Debtors, as applicable.

**I. Distributions After Allowance**

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Wind-Down Debtors shall provide to the

Holder of such Claim the distribution to which such Holder is entitled under the Plan as of the Effective Date, less any previous distribution (if any) that was made on account of the undisputed portion of such Claim, without any interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law or as otherwise provided herein.

**ARTICLE X.**  
**SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

**A. Compromise and Settlement of Claims, Interests, and Controversies**

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete settlement, compromise, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or Proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. The Confirmation Order shall be a judicial determination of the settlement, compromise, and release of all Claims and Interests subject to the Effective Date occurring. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Plan Administrator, or Wind-Down Debtors, as applicable, may compromise and settle any Claims and Causes of Action against other Entities.

**B. Term of Injunctions or Stays**

Unless otherwise provided in the Plan or the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

### **C. Release of Liens**

Except as otherwise specifically provided in the Plan (including, without limitation the satisfaction of the DIP Claims in accordance with Article II.C of the Plan), or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Wind-Down Debtors and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors or Wind-Down Debtors. The ABL Agent and the Term Loan Agent shall execute and deliver all documents reasonably requested by the Wind-Down Debtors or the Plan Administrator to evidence the release of such mortgages, deeds of trust, Liens, pledges, and other security interests and shall authorize the Wind-Down Debtors to file UCC-3 termination statements (to the extent applicable) with respect thereto.

### **D. Debtor Release**

Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released and discharged by the Debtors, Wind-Down Debtors, and their respective Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any cause of action, by, through, for, or because of the foregoing entities, from any and all claims and Causes of Action, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, including any derivative claims asserted or assertable on behalf of the Debtors or their respective Estates, that the Debtors, Wind-Down Debtors, or their respective Estates would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in the Debtors based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), any securities issued by the Debtors and the ownership thereof, the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), any intercompany transaction, the ABL Claims, the ABL Documents, the ABL Obligations, the Term Loan Claims, the Term Loan Credit Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Plan Support Agreement, the Disclosure Statement, the DIP Senior Credit Facility, the Plan, the Plan Supplement or the Asset Sale Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Plan Support Agreement, the Disclosure Statement, the ABL Claims, the ABL Documents, the ABL Obligations, the DIP Senior Credit Facility, the Term Loan Claims, the Term Loan Credit Agreement, the Plan, the Plan Supplement, the Chapter 11 Cases, the filing of the Chapter 11 Cases, the Restructuring Documents, solicitation of votes on the Plan, the petition

negotiation and settlement of Claims, the pursuit of confirmation, the pursuit of consummation, the administration and implementation of the Plan, including the issuance or distribution of debt and/or securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, except for claims related to any act or omission that is determined in a final order by a court of competent jurisdiction to have constituted actual fraud, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, the Asset Sale Transaction, or any document, instrument, or agreement (including the Restructuring Documents, and other documents, instruments and agreements set forth in the Plan Supplement) executed to implement the Plan and shall not result in a release, waiver, or discharge of any of the Debtors' or Wind-Down Debtors' assumed indemnification provisions as set forth in the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtor release is: (a) in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the restructuring and implementing the Plan; (b) a good faith settlement and compromise of the Claims released by the Debtor release; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any of the Debtors, Wind-Down Debtors, or the Debtors' respective Estates asserting any Claim or Cause of Action released pursuant to the Debtor release.

#### **E. Release by Holders of Claims or Interests**

Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, and to the fullest extent allowed by applicable law, each Releasing Party is deemed to have released and discharged each of the Debtors, Wind-Down Debtors, and Released Party from any and all Claims and Causes of Action, whether known or unknown, including any derivative claims asserted or assertable on behalf of the Debtors or their respective Estates, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof), any securities issued by the Debtors and the ownership thereof, the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), any intercompany transaction, the ABL Claims, the ABL Documents, the ABL Obligations, the Term Loan Claims, the Term Loan Credit Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Plan Support Agreement, the Disclosure Statement, the DIP Senior Credit Facility, the Plan, the Plan Supplement, or the Asset Sale Transaction, contract, instrument, release, or other agreement or document created or entered into in

connection with the Plan Support Agreement, the Disclosure Statement, the DIP Senior Credit Facility, the Plan, the Plan Supplement, the ABL Claims, the ABL Documents, the ABL Obligations, the Term Loan Claims, the Term Loan Credit Agreement, the Chapter 11 Cases, the filing of the Chapter 11 Cases, the Restructuring Documents, solicitation of votes on the Plan, the prepetition negotiation and settlement of Claims, the pursuit of confirmation, the pursuit of consummation, the administration and implementation of the Plan, including the issuance or distribution of debt pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, except for Claims related to any act or omission that is determined in a final order by a court of competent jurisdiction to have constituted actual fraud, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (1) any post-Effective Date obligations of any party or Entity under the Plan, the Asset Sale Transaction, or any document, instrument, or agreement (including the Restructuring Documents, and other documents, instruments, and agreements set forth in the Plan Supplement) executed to implement the Plan and (2) any indemnification obligations of the Term Loan Lenders owed to the Term Loan Agent pursuant to the Term Loan Credit Agreement and shall not result in a release, waiver, or discharge of any of the Debtors' or Wind-Down Debtors' assumed indemnification provisions as set forth in the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the third-party release, which includes by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Bankruptcy Court's finding that the third-party release is: (a) consensual; (b) essential to the confirmation of the Plan; (c) given in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the Asset Sale Transaction and implementing the Plan; (d) a good faith settlement and compromise of the Claims released by the third-party release; (e) in the best interests of the Debtors and their respective Estates; (f) fair, equitable, and reasonable; (g) given and made after due notice and opportunity for hearing; and (h) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to the third-party release.

#### **F. Exculpation**

Notwithstanding anything contained in the Plan to the contrary, no Exculpated Party shall have or incur liability for, and each Exculpated Party is released and exculpated from, any Cause of Action or any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Plan Support Agreement and related prepetition transactions, the DIP Senior Credit Facility, the Disclosure Statement, the Plan, the Plan Supplement, the ABL Claims, the ABL Documents, the ABL Obligations, the Term Loan Claims, the Term Loan Credit Agreement, or the Asset Sale Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Plan Support

Agreement, the DIP Senior Credit Facility, the Disclosure Statement, the Plan, the Plan Supplement, the ABL Claims, the ABL Documents, the ABL Obligations, the Term Loan Claims, the Term Loan Credit Agreement, the Chapter 11 Cases, the filing of the Chapter 11 Cases, the Restructuring Documents, solicitation of votes on the Plan, the prepetition negotiation and settlement of Claims, the pursuit of confirmation, the pursuit of consummation, the administration and implementation of the Plan, including the issuance or distribution of debt, and/or securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, except for Claims related to any act or omission that is determined in a final order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

The Exculpated Parties have, and upon confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes on, and distribution of consideration pursuant to, the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding anything to the contrary in the foregoing, the exculpation set forth above does not release or exculpate any Claim relating to any post-Effective Date obligations of any party or Entity under the Plan, the Asset Sale Transaction, or any document, instrument, or agreement (including the Restructuring Documents, and other documents, instruments and agreements set forth in the Plan Supplement) executed to implement the Plan.

#### **G. Injunction**

Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, Causes of Action, or liabilities that: (a) are subject to compromise and settlement pursuant to the terms of the Plan; (b) have been released by the Debtors pursuant to the Plan; (c) have been released by third parties pursuant to the Plan, (d) are subject to exculpation pursuant to the Plan; or (e) are otherwise discharged, satisfied, stayed or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, Wind-Down Debtors, the Released Parties, or the Exculpated Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, Causes of Action or liabilities; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, Causes of Action or liabilities; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or Estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, Causes of Action or liabilities; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in

connection with or with respect to any such Claims, Interests, Causes of Action or liabilities unless such Entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, Causes of Action or liabilities discharged, released, exculpated, or settled pursuant to the Plan.

#### **H. Protection Against Discriminatory Treatment**

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Wind-Down Debtors or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Wind-Down Debtors, or another Entity with whom the Wind-Down Debtors have been associated, solely because the Debtors have been debtors under chapter 11 of the Bankruptcy Code, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases), or have not paid a debt that is dischargeable in the Chapter 11 Cases.

#### **I. Recoupment**

In no event shall any Holder of a Claim be entitled to recoup against any claim, right, or Cause of Action of the Debtors or the Wind-Down Debtors, as applicable, unless such Holder actually has provided notice of such recoupment in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

#### **J. Subordination Rights.**

Any distributions under the Plan shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal process by any Holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

### **ARTICLE XI.**

#### **CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN**

##### **A. Conditions Precedent to the Effective Date**

It shall be a condition to Consummation of the Plan that the following conditions shall have been satisfied (or waived pursuant to the provisions of Article XI.B hereof):

1. The Plan Support Agreement shall remain in full force and effect and shall not have been terminated by the Debtors or the Required Consenting Term Lenders;
2. The Debtors shall not be in default under the DIP Credit Agreement or the DIP Order (or, to the extent that the Debtors have been or are in default on the proposed Effective Date, such default shall have been waived by the DIP Lenders or cured in a manner consistent with the DIP Credit Agreement and the DIP Order, as applicable);
3. The DIP Claims shall have been Paid in Full or otherwise satisfied in accordance with Article II.C of the Plan;
4. The Confirmation Order shall have been duly entered and in full force and effect;
5. The Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan and each of the other transactions contemplated by the Restructuring;
6. [The final version of the schedules, documents, and exhibits contained in the Plan Supplement, and all other schedules, documents, supplements and exhibits to the Plan, shall be consistent with the Plan Support Agreement in all material respects and otherwise approved by the Restructuring Support Parties and the Debtors consistent with their respective consent and approval rights as set forth in Section 3 of the Plan Support Agreement;]
7. All fees, expenses, and other amounts payable pursuant to the Plan Support Agreement and the DIP Order shall have been paid in full;
8. All Allowed Professional Fee Claims approved by the Bankruptcy Court shall have been paid in full or amounts sufficient to pay such Allowed Professional Fee Claims after the Effective Date shall have been placed in the Professional Fee Escrow Account pending approval of the Professional Fee Claims by the Bankruptcy Court; and
9. The Debtors shall have implemented the Restructuring Transactions in a manner consistent in all material respects with the Plan and the Plan Support Agreement.

**B. Waiver of Conditions**

The conditions to Confirmation of the Plan and to the Effective Date of the Plan set forth in this Article XI may be waived only by consent of the Debtors, and the Required Consenting Term Lenders without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan; *provided* however that the Debtors may not waive the condition set forth in Article XI.A.8; *provided further* that the consent of the DIP Agents, each in its sole discretion, is required for a waiver of the conditions set forth in Articles XI.A.2, XI.A.3 or XI.A.7.

**C. Substantial Consummation**

“Substantial Consummation” of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.



**D. Effect of Nonoccurrence of Conditions to the Effective Date**

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims or Interests; (2) prejudice in any manner the rights of the Debtors, any Holders of a Claim or Interest, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any Holders, or any other Entity in any respect; provided, that all provisions of the Plan Support Agreement that survive termination of those agreements shall remain in effect in accordance with the terms thereof.

**ARTICLE XII.  
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

**A. Modification and Amendments**

Subject to the limitations contained in the Plan and the Plan Support Agreement, the Debtors reserve the right to modify the Plan and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan and the Plan Support Agreement, the Debtors expressly reserve their rights to alter, amend, or modify materially the Plan, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

**B. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

**C. Revocation or Withdrawal of the Plan**

Subject to the provisions of the Plan Support Agreement, the Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date. If the Debtors revoke or withdraw the Plan, or if Confirmation and Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims or Interests; (ii) prejudice in any manner the rights of the Debtors or any other Entity, including the Holders of Claims; or (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity.

**ARTICLE XIII.  
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters arising out of or related to the Chapter 11 Cases and the Plan, including jurisdiction to:

1. Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims;

2. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals;

3. Resolve any matters related to: (a) the assumption or rejection of any Executory Contract or Unexpired Lease and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, cure amounts pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) the Wind-Down Debtors amending, modifying, or supplementing, after the Effective Date, pursuant to Article V hereof, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (c) any dispute regarding whether a contract or lease is or was executory or expired;

4. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

5. Adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. Adjudicate, decide, or resolve any and all matters related to Causes of Action;

7. Adjudicate, decide, or resolve any and all matters related to sections 1141 and 1145 of the Bankruptcy Code;

8. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

9. Enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

10. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

11. 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 or enforcement of the Plan;

12. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, discharges, releases, injunctions, exculpations, and other provisions contained in Article VIII hereof and enter such orders as may be necessary or appropriate to implement or enforce such releases, injunctions, and other provisions;

13. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI.H.1 hereof;

14. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

15. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement;

16. Adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

17. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

18. Determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

19. Hear and determine all disputes involving the Plan Support Agreement;

20. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

21. Hear and determine all disputes involving the existence, nature, or scope of the release provisions set forth in the Plan, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;

22. Enforce all orders previously entered by the Bankruptcy Court in the Chapter 11 Cases;

23. Hear any other matter not inconsistent with the Bankruptcy Code;

24. Enter an order closing the Chapter 11 Cases; and

25. Enforce the injunction, release, and exculpation provisions provided in Article VIII hereof.

**ARTICLE XIV.  
MISCELLANEOUS PROVISIONS**

**A. Immediate Binding Effect**

Subject to Article XI.A hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the final versions of the documents contained in the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors or the Wind-Down Debtors, as applicable, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

**B. Additional Documents**

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or advisable to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Wind-Down Debtors, as applicable, all Holders of Claims and Interests receiving distributions pursuant to the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

**C. Dissolution of the Creditors' Committee**

On the Effective Date, the Creditors' Committee, shall dissolve automatically and the members thereof shall be released and discharged from all rights, duties, responsibilities, and liabilities arising from, or related to, the Chapter 11 Cases and under the Bankruptcy Code, except for the limited purpose of prosecuting requests for payment of Professional Fee Claims for services and reimbursement of expenses incurred prior to the Effective Date by the Creditors' Committee and its Professionals; *provided, however*, that any confidentiality agreement entered into by and among the Debtors and the members of and advisors to the Creditors' Committee shall remain in full force and effect pursuant to the terms thereof. The Wind-Down Debtors shall no longer be responsible for paying any fees or expenses incurred by the members of or advisors to the Creditors' Committee after the Effective Date.

**D. Reservation of Rights**

Before the Effective Date, neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by any Debtor with respect to the Plan, the Disclosure

Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to any Claims or Interests.

**E. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor, assign, affiliate, officer, director, manager, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

**F. Service of Documents**

All notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, 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 as follows:

the Debtors: Pier 1 Imports, Inc.  
100 Pier 1 Place  
Fort Worth, Texas 76102  
Attn.: Ray McKown

with copies to:

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Attn.: Joshua A. Sussberg, P.C. and Emily Geier

Kirkland & Ellis LLP  
1301 Pennsylvania Ave, N.W.  
Washington, D.C. 20004  
Attn.: AnnElyse Gains

the Consenting Term Lenders: the address set forth on each such Consenting Term Lenders' signature page to the Plan Support Agreement (or as directed by any transferee thereof), as the case may be.

with copies to:

Brown Rudnick LLP  
Seven Times Square  
New York, New York 10036  
Attn: Robert J. Stark  
Brown Rudnick LLP  
One Financial Center  
Boston, Massachusetts 02111  
Attn: Sharon I. Dwoskin

counsel to the DIP Lenders:

Morgan Lewis & Bockius LLP  
One Federal Street  
Boston, Massachusetts 02110  
Attn: Marjorie S. Crider and Matthew F. Furlong

After the Effective Date, the Wind-Down Debtors shall have the authority to send a notice to parties in interest providing that, to continue to receive documents pursuant to Bankruptcy Rule 2002, such party must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Wind-Down Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

#### **G. Entire Agreement**

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

#### **H. Exhibits**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at <http://dm.epiq11.com/pier1> or the Bankruptcy Court's website at [www.vaeb.uscourts.gov](http://www.vaeb.uscourts.gov).

#### **I. Nonseverability of Plan Provisions**

If, before Confirmation, 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 will remain in full force and effect and will 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: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' or Wind-Down Debtors' consent, as applicable; and (3) nonseverable and mutually dependent.

**J. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and, pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties or individuals or the Wind-Down Debtors will have any liability for the violation of any applicable law (including the Securities Act), rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan and any previous plan.

**K. Waiver and Estoppel.**

Each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured, or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed before the Confirmation Date.

Respectfully submitted, as of the date first set forth above,

PIER 1 IMPORTS, INC. (on behalf of itself and all other Debtors)

Dated: June 23, 2020

/s/ Robert J. Riesbeck

Robert J. Riesbeck  
Chief Executive Officer and Chief Financial  
Officer of Pier 1 Imports, Inc.

Prepared by:

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Facsimile: (312) 862-2200

*Co-Counsel to the Debtors and Debtors in Possession*



**Exhibit B**

**Plan Support Agreement**

**[Filed at Docket No. 102, Ex. 4]**

**Exhibit 4**

**Plan Support Agreement**

THIS PLAN SUPPORT AGREEMENT IS NOT AN OFFER OR ACCEPTANCE WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. NOTHING CONTAINED IN THIS PLAN SUPPORT AGREEMENT SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE OCCURRENCE OF THE AGREEMENT EFFECTIVE DATE ON THE TERMS DESCRIBED HEREIN, DEEMED BINDING ON ANY OF THE PARTIES HERETO.

### ***PLAN SUPPORT AGREEMENT***

This PLAN SUPPORT AGREEMENT (including all exhibits, annexes, and schedules hereto in accordance with Section 14.02, this “**Agreement**”) is made and entered into as of February 16, 2020 (the “**Execution Date**”), by and among the following parties (each of the following described in sub-clauses (i) through (ii) of this preamble, collectively, the “**Parties**”):<sup>1</sup>

- i. Pier 1 Imports, Inc. a company incorporated under the Laws of Delaware (“**Pier 1**”), and each of its direct subsidiaries listed on **Exhibit A** to this Agreement that have executed and delivered counterpart signature pages to this Agreement to counsel to the Consenting Term Lenders (the Entities in this clause (i), collectively, the “**Company Parties**”); and
- ii. the undersigned holders of Term Loan Claims that have executed and delivered counterpart signature pages to this Agreement, a Joinder, or a Transfer Agreement to counsel to the Company Parties (collectively, the “**Consenting Term Lenders**”).

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<sup>1</sup> Capitalized terms used but not defined in the preamble and recitals to this Agreement have the meanings ascribed to them in Section 1.

### *RECITALS*

**WHEREAS**, the Company Parties and the Consenting Term Lenders have negotiated certain transactions with respect to the Company Parties on the terms set forth in this Agreement and as will be specified in a chapter 11 plan to be negotiated as set forth herein (the “**Plan**”), and in the bidding procedures related to a potential sale of assets, attached as **Exhibit B** hereto (as may be amended, modified, waived, or supplemented in accordance herewith, the “**Bidding Procedures**,” such transactions as described in this Agreement, the Plan, and the Bidding Procedures the “**Transactions**”);

**WHEREAS**, the Company Parties intend to implement the Transactions, including through the commencement of voluntary cases under chapter 11 of the Bankruptcy Code in the Bankruptcy Court (the “**Chapter 11 Cases**”); and

**WHEREAS**, the Parties have agreed to take certain actions in support of the Transactions on the terms and conditions set forth in this Agreement, the Plan, and the Bidding Procedures;

**NOW, THEREFORE**, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

### *AGREEMENT*

#### **Section 1. Definitions and Interpretation.**

1.01. **Definitions.** The following terms shall have the following definitions:

“**Administrative Claims Cap**” means the dollar amount of payments of Administrative and Priority Claims (as defined in the Plan) the Consenting Term Lenders will consent to be paid pursuant to the Plan.

“**Agreement**” has the meaning set forth in the preamble to this Agreement and, for the avoidance of doubt, includes all the exhibits, annexes, and schedules hereto in accordance with Section 14.02.

“**Agreement Effective Date**” means the date on which the conditions set forth in Section 2 have been satisfied or waived by the appropriate Party or Parties in accordance with this Agreement.

“**Agreement Effective Period**” means, with respect to a Party, the period from the Agreement Effective Date to the Termination Date applicable to that Party.

“**Alternative Transaction**” means any transaction not described by this Agreement, the Plan, and the Bidding Procedures proposed to the Company related to a debt or operational restructuring of the Company by any party.

“**Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

“**Bankruptcy Court**” means the United States Bankruptcy Court in which the Chapter 11 Cases are commenced or another United States Bankruptcy Court with jurisdiction over the Chapter 11 Cases.

“**Bidding Procedures**” has the meaning set forth in the recitals to this Agreement.

“**Business Day**” means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

“**Chapter 11 Cases**” has the meaning set forth in the recitals to this Agreement.

“**Claim**” has the meaning ascribed to it in section 101(5) of the Bankruptcy Code.

“**Company Parties**” has the meaning set forth in the recitals to this Agreement.

“**Confidentiality Agreement**” means an executed confidentiality agreement or confidentiality agreement provided for in the Term Loan Credit Agreement, including with respect to the issuance of a “cleansing letter” or other public disclosure, or disclosure to the “Private Side” lender site, as defined in the Term Loan Credit Agreement, of material non-public information, in connection with any proposed Transactions.

“**Confirmation Order**” means the confirmation order with respect to the Plan.

“**Consenting Term Lenders**” has the meaning set forth in the preamble to this Agreement.

“**Debtors**” means the Company Parties that commence Chapter 11 Cases.

“**Definitive Documents**” means the documents listed in Section 3.01.

“**Disclosure Statement**” means the related disclosure statement with respect to the Plan.

“**Disclosure Statement Motion**” means a motion filed with the Bankruptcy Court seeking, among other relief, approval of (i) the Disclosure Statement, (ii) a schedule of hearings related to the Plan confirmation process, and (iii) certain notices related thereto, and granting related relief.

“**Entity**” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

“**Equitization Restructuring**” means any Transaction whereby the New Pier 1 Interests are distributed to holders of existing Term Loan Claims pursuant to the Plan.

“**Equity Interests**” means, collectively, the shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits

interests of any Company Party, and options, warrants, rights, or other securities or agreements to acquire or subscribe for, or which are convertible into the shares (or any class thereof) of, common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Company Party (in each case whether or not arising under or in connection with any employment agreement).

“**Execution Date**” has the meaning set forth in the preamble to this Agreement.

“**First Day Pleadings**” means the first-day pleadings that the Company Parties determine are necessary or desirable to file.

“**Interim Period DIP Budget**” means that portion of the budget contemplated in the DIP Documents covering the period of time between the Petition Date and March 23, 2020.

“**Law**” means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

“**Lender Election**” means, in the event the Company Parties do not receive Qualified Bids (as defined in the Bidding Procedures) greater than or equal in value to the Reserve Price, the Required Consenting Term Lenders’ election to pursue (a) an Equitization Restructuring and cancellation of the Auction (as defined in the Bidding Procedures), or (b) an Auction as contemplated in Section 4 of this Agreement.

“**New Pier 1 Interests**” means equity interests in Reorganized Pier 1.

“**Parties**” has the meaning set forth in the preamble to this Agreement.

“**Permitted Transferee**” means each transferee of any Term Loan Claims who meets the requirements of Section 8.05.

“**Petition Date**” means the first date any of the Company Parties commences a Chapter 11 Case.

“**Plan**” has the meaning set forth in the recitals to this Agreement.

“**Plan Effective Date**” means the occurrence of the effective date of the Plan according to its terms.

“**Plan Supplement**” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan that will be filed by the Debtors with the Bankruptcy Court.

“**Qualified Marketmaker**” means an entity that (a) holds itself out to the public or the applicable private markets as standing ready in the ordinary course of business to purchase from customers and sell to customers Company Claims/Interests (or enter with customers into long and short positions in Term Loan Claims), in its capacity as a dealer or market maker in Term

Loan Claims and (b) is, in fact, regularly in the business of making a market in claims against issuers or borrowers (including debt securities or other debt).

“**Reorganized Pier 1**” means the Company, as reorganized pursuant to and under the Plan, or any successor thereto.

“**Required Consenting Term Lenders**” means, as of the relevant date, Consenting Term Lenders holding more than 50.00% of the aggregate outstanding principal amount of Term Loan Claims that are held by Consenting Term Lenders.

“**Reserve Price**” means the value, taking into account the Claims Estimation, at which the Term Loan Lenders would receive a cash recovery of \$104.7 million<sup>2</sup> (*i.e.* 55 cents on the dollar) on account of the Term Loan Claims.

“**Rules**” means Rule 501(a)(1), (2), (3), and (7) of the Securities Act.

“**Sale Transaction**” means a sale of some or all of the Debtors’ assets in accordance with the Bidding Procedures and Plan.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Term Loan**” means loans outstanding under the Term Loan Credit Agreement.

“**Term Loan Agent**” means any administrative agent, collateral agent, or similar Entity under the Term Loan, including any successors thereto.

“**Term Loan Claims**” means any Claim on account of the Term Loan.

“**Term Loan Credit Agreement**” means that certain Term Loan Credit Agreement, dated April 30, 2014, between Pier 1 Imports (U.S.), Inc., as lead borrower, the other facility guarantors party thereto, Wilmington Savings Fund Society, FSB, as successor administrative agent, and certain financial institutions, as lenders, as may be amended, supplemented, modified, refinanced, replaced, or extended.

“**Term Loan Credit Documentation**” means collectively, the Term Loan Credit Agreement and the other documents and instruments related thereto (including, without limitation, the notes, guarantees, collateral documents, amendments, and fee letters entered into in connection therewith).

“**Term Loan Lenders**” means the lenders to the Term Loan Credit Agreement.

“**Termination Date**” means the date on which termination of this Agreement as to a Party is effective in accordance with Sections 11.01, 11.02, 11.03, or 11.04.

“**Transactions**” has the meaning set forth in the recitals to this Agreement.

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<sup>2</sup> **Note to Draft:** Subject to ongoing review and discussions among Guggenheim and FTI.

“**Transfer**” means to sell, resell, reallocate, use, pledge, assign, transfer, hypothecate, participate, donate or otherwise encumber or dispose of, directly or indirectly (including through derivatives, options, swaps, pledges, forward sales or other transactions).

“**Transfer Agreement**” means an executed form of the transfer agreement providing, among other things, that a transferee is bound by the terms of this Agreement and substantially in the form attached hereto as **Exhibit C**.

“**Wind-Down Budget**” shall have the meaning set forth in the Plan and be reasonably acceptable to both the Company Parties and the Required Consenting Term Lenders. For the avoidance of doubt, the Wind-Down Budget (and any provisions in this Agreement with respect thereto) shall (i) only be of any force and effect with respect to the actual costs associated with winding down the Company’s chapter 11 estate, (2) shall be determined on the timeline set forth herein, and (c) once in place, shall replace any then-existing applicable 13-week cash forecast.

1.02. Interpretation. For purposes of this Agreement:

This Agreement is the product of negotiations among the Parties, and the enforcement or interpretation hereof is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement or any portion hereof shall not be effective in regard to the interpretation hereof.

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(d) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit shall mean such document, schedule, or exhibit, as it may have been or may be amended, restated, supplemented, or otherwise modified from time to time; provided that any capitalized terms herein which are defined with reference to another agreement, are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date hereof;

(e) unless otherwise specified, all references herein to “Sections” are references to Sections of this Agreement;



(f) the words “herein,” “hereof,” and “hereto” refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(g) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(h) references to “shareholders,” “directors,” and/or “officers” shall also include “members” and/or “managers,” as applicable, as such terms are defined under the applicable limited liability company Laws;

(i) the use of “include” or “including” is without limitation, whether stated or not;

(j) the phrase “counsel to the Consenting Term Lenders” refers in this Agreement to each counsel specified in Section 14.10 other than counsel to the Company Parties; and

(k) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

**Section 2. *Effectiveness of this Agreement.*** This Agreement shall become effective and binding upon each of the Parties at 12:00 a.m., prevailing Eastern Standard Time, on the Agreement Effective Date, which is the date on which all the following conditions have been satisfied or waived in accordance with this Agreement:

(a) each of the Company Parties shall have executed and delivered counterpart signature pages of this Agreement to counsel to each of the Parties; and

(b) holders of at least sixty-three point eight (63.8) percent of the aggregate outstanding principal amount of Term Loans shall have executed and delivered counterpart signature pages of this Agreement.

**Section 3. *Definitive Documents.***

3.01. The Definitive Documents governing the Transactions shall include the following: (a) the Plan; (b) the Confirmation Order; (c) the Disclosure Statement; (d) the order of the Bankruptcy Court approving the Disclosure Statement and the other Solicitation Materials; (e) the First Day Pleadings and all orders sought pursuant thereto; (f) the Plan Supplement, (g) any motion seeking approval of the Company Parties’ incurrence of postpetition financing and all agreements, documents, budgets, interim and final orders, and/or amendments in connection therewith (collectively, the “**DIP Documents**” and the budget(s) provided in the DIP Documents (and all amendments thereto), the “**DIP Budget**”); (h) the Wind-Down Budget; and (i) any motion seeking approval of bidding procedures and/or a sale of some or all of the Company Parties’ assets and all agreements, documents, orders, and/or amendments in connection therewith, including the Bidding Procedures, (collectively, the “**Sale Documents**”).

3.02. The Definitive Documents not executed or in a form attached to this Agreement as of the Execution Date remain subject to negotiation and completion. Upon completion, the Definitive Documents and every other document, deed, agreement, filing, notification, letter or

instrument related to the Transactions, or any amendments thereto, shall contain terms, conditions, representations, warranties, and covenants consistent with the terms of this Agreement, as they may be modified, amended, or supplemented in accordance with Section 13. Further, the Definitive Documents not executed or in a form attached to this Agreement as of the Execution Date (including, for the avoidance of doubt, the DIP Documents and any and all updated budgets related thereto) shall otherwise be in form and substance reasonably acceptable to the Company Parties and the Required Consenting Term Lenders.

#### **Section 4. *Milestones***<sup>3</sup>

On and after the Agreement Effective Date, the Company Parties shall use commercially reasonable efforts to implement the Transaction in accordance with the following milestones (the “**Milestones**”), as applicable, unless extended or waived in writing (which may be by electronic mail between applicable counsel) by the Company Parties and the Required Consenting Term Lenders. For the avoidance of doubt, nothing in these Milestones shall prevent the Debtors from exercising their respective fiduciary duties under applicable law:

(a) no later than 11:59 p.m. (prevailing Eastern time) on February 17, 2020, the Company Parties shall have commenced the Chapter 11 Cases in the Bankruptcy Court and shall have filed a motion for approval of the Bidding Procedures and assumption of this Agreement, consistent in all respects with this Agreement;

(b) no later than 11:59 p.m. (prevailing Eastern time) on February 18, 2020, the Debtors will have sought first day relief and the Bankruptcy Court shall have entered an order (i) providing interim approval of the applicable DIP Documents, (ii) approving the Bidding Procedure and (iii) approving assumption of this Agreement;

(c) as soon as reasonably practicable, but in no event later than seven (7) days after the Petition Date, the Company Parties shall have filed the Plan, the Disclosure Statement, and the Disclosure Statement Motion, each in form and substance reasonably acceptable to the Required Consenting Term Lenders;

(d) as soon as reasonably practicable, but in no event later than March 13, 2020, the Bankruptcy Court shall have entered the final order approving the applicable DIP Documents;

(e) as soon as reasonably practicable, but in no event later than three (3) Business Days prior to the first scheduled hearing on the Disclosure Statement Motion, the Company Parties and the Required Consenting Term Lenders shall agree to the Administrative Claims Cap<sup>4</sup>;

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<sup>3</sup> The date of each Milestone provided for in this Section 4 shall be calculated in accordance with Rule 9006 of the Federal Rules of Bankruptcy Procedure. Each Milestone may be extended or modified by agreement (which may be via e-mail) between counsel to the Company Parties and counsel to the Consenting Term Lenders.

<sup>4</sup> For the avoidance of doubt, notwithstanding anything in this Agreement, the Debtors’ professionals, and any professionals of the official committee of unsecured creditors appointed in the Chapter 11 Cases, shall be required to file retention papers and fee applications with the Bankruptcy Court, and the Consenting Term Lenders reserve all rights to review and object to any such retentions or payments in accordance with applicable laws.

(f) as soon as reasonably practicable, but in no event later than March 20, 2020, the Bankruptcy Court shall have entered the Disclosure Statement Order;

(g) the Bid Deadline in the Bidding Procedures shall be no later than 5:00 p.m. (prevailing Eastern time) on March 23, 2020;

(h) in the event that the Company Parties do not receive a Qualified Bid greater than or equal in value to the Reserve Price, then no later than 11:59 p.m. (prevailing Eastern time) on the date that is four (4) Business Days following the Bid Deadline, the Consenting Term Lenders shall notify the Company Parties (via electronic mail through applicable counsel) of their Lender Election;

(i) if applicable, as soon as reasonably practicable, but in no event later than March 31, 2020, the Auction shall have occurred;

(j) as soon as reasonably practicable, but in no event later than five (5) Business Days following selection of a Successful Bidder, the Company Parties and the Required Consenting Term Lenders shall agree to a Wind-Down Budget reasonably acceptable to the Required Consenting Term Lenders;

(k) as soon as reasonably practicable, but in no event later than April 23, 2020, the Bankruptcy Court shall have entered the Confirmation Order;<sup>5</sup> and

(l) as soon as reasonably practicable, but in no event later than May 30, 2020, the Plan Effective Date shall have occurred.

**Section 5. *Commitments of the Consenting Term Lenders.***

5.01. General Commitments, Forbearances, and Waivers.

(a) During the Agreement Effective Period, each Consenting Term Lender agrees (severally and not jointly), in respect of all its Term Loan Claims, to:

(i) use its commercially reasonable efforts to support the Transaction and to act in good faith and take all reasonable actions necessary to implement and consummate the Transaction in accordance with the terms, conditions, and applicable deadlines set forth in this Agreement, the Plan, and the Bidding Procedures, as applicable;

(ii) negotiate in good faith the applicable Definitive Documents and use its commercially reasonable efforts to agree to the form and substance of such Definitive Documents consistent with the terms of this Agreement;

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<sup>5</sup> As soon as reasonably practicable after closing the Auction, the Debtors shall finalize definitive documentation to implement the terms of the Successful Bid, and, as applicable, cause such definitive documentation to be filed with the Bankruptcy Court.

(iii) support the Transactions and vote and exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Transactions;

(iv) direct the Term Loan Agent (in accordance with the Term Loan Credit Documentation) to take all actions in furtherance of such Consenting Term Lender's respective obligations under this Agreement, and if the Term Loan Agent takes any action inconsistent with a Party's obligations under this Agreement, such Party shall promptly direct such Term Loan Agent to cease and refrain from taking any such action;

(v) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the Transactions contemplated herein, take all steps reasonably necessary and desirable to address any such impediment; provided that this Section 5.01(a)(v) shall not require any Consenting Term Lender to take any action for which they will incur additional out of pocket or legal expenses unless reimbursed by the Company Parties;

(vi) use commercially reasonable efforts to cooperate with and assist the Company Parties in obtaining additional support for the Transactions from the Company Parties' other stakeholders; provided that this Section 5.01(a)(vi) shall not require any Consenting Term Lender to take any action for which they will incur additional out of pocket or legal expenses unless reimbursed by the Company Parties;

(vii) use commercially reasonable efforts to oppose any party or person from taking any actions contemplated in Section 5.02(b); provided that this Section 5.01(a)(vii) shall not require any Consenting Term Lender to take any action for which they will incur additional out of pocket or legal expenses unless reimbursed by the Company Parties;

(viii) give any notice, order, instruction, or direction to the Term Loan Agent (in accordance with the Term Loan Credit Documentation) necessary to give effect to the Transactions;

(ix) use commercially reasonable efforts to obtain sixty-six and two-thirds (66 2/3) percent of Term Loan Lenders to execute and deliver counterpart signature pages to this Agreement; and

(x) negotiate in good faith and use commercially reasonable efforts to execute and implement the Definitive Documents that are consistent with this Agreement to which it is required to be a party.

(b) During the Agreement Effective Period, each Consenting Term Lender agrees (severally and not jointly), in respect of all its Term Loan Claims, that it shall not directly or indirectly:

(i) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Transactions;

(ii) direct the Term Loan Agent to take any action inconsistent with such Consenting Term Lender's respective obligations under this Agreement;

(iii) file any motion, pleading, or other document with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement or the Plan;

(iv) initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the Chapter 11 Cases, this Agreement, or the other Transactions contemplated herein against the Company Parties or the other Parties other than to enforce this Agreement or any Definitive Document or as otherwise permitted under this Agreement;

(v) exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any of Claims against or Interests in the Company Parties

(vi) exercise, or direct the Term Loan Agent to exercise, any rights pursuant to section 363(k) of the Bankruptcy Code to credit bid an amount greater than the Reserve Price at any Auction; or

(vii) object to, delay, impede, or take any other action to interfere with the Company Parties' ownership and possession of their assets, wherever located, or interfere with the automatic stay arising under section 362 of the Bankruptcy Code.

5.02. Commitments with Respect to Chapter 11 Cases.

(a) During the Agreement Effective Period, each Consenting Term Lender that is entitled to vote to accept or reject the Plan pursuant to its terms agrees that it shall, subject to receipt by such Consenting Term Lender, whether before or after the commencement of the Chapter 11 Cases, of the Solicitation Materials:

(i) vote each of its Term Loan Claims to accept the Plan by delivering its duly executed and completed ballot accepting the Plan on a timely basis following the commencement of the solicitation of the Plan and its actual receipt of the Solicitation Materials and the ballot;

(ii) support all the debtor and third-party releases, injunctions, discharge, and exculpation provisions provided in the Plan;

(iii) to the extent it is permitted to elect whether to opt out of the releases set forth in the Plan, elect not to opt out of the releases set forth in the Plan by timely delivering its duly executed and completed ballot(s) indicating such election; and

(iv) not change, withdraw, amend, or revoke (or cause to be changed, withdrawn, amended, or revoked) any vote or election referred to in clauses (i) through (iii) above.

(b) During the Agreement Effective Period, each Consenting Term Lender, in respect of each of its Term Loan Claims, will support, and will not directly or indirectly object to, delay,

impede, or take any other action to interfere with any motion or other pleading or document filed by a Company Party in the Bankruptcy Court that is contemplated by this Agreement.

(c) During the Agreement Effective Period, each Consenting Term Lender (severally, and not jointly) agrees, in its own discretion, to support, and will not directly or indirectly object to, delay, impede, or take any other action to interfere with any action in furtherance of the Company Parties' ordinary course postpetition compensation and employee benefit, retention, or incentive programs as long as such program is approved by any interim of the Bankruptcy Court and the Company (i) complies with any caps set forth in such orders and (ii) complies with the Interim Period DIP Budget with respect to such programs. For the avoidance of doubt, any compensation and employee benefit, retention, or incentive programs not authorized by an interim order of the Bankruptcy Court shall not be implemented without the consent of the Required Consenting Term Lenders (such consent not to be unreasonably withheld).

(d) During the Agreement Effective Period, each in its own discretion each Consenting Term Lender will support, and will not directly or indirectly object to, delay, impede, or take any other action to interfere with, nor will any Consenting Term Lender direct the Term Loan Agent to object to, delay, impede, or take any action to interfere with, any DIP Document filed by any Company Party in the Bankruptcy Court.

(e) During the Agreement Effective Period:

(i) If the Company Parties receive a Qualified Bid greater than or equal in value to the Reserve Price, then the Consenting Term Lenders agree (severally and not jointly), and agree to direct the Term Loan Agent (as applicable and in accordance with the Term Loan Credit Documentation), with respect to any Qualified Bid selected as the Successful Bid (as defined in the Bidding Procedures) at Auction or with respect to another Transaction that constitutes the end of the Debtors' sale process, to (a) with respect to any and all liens, encumbrances, and interests in the assets of the Company Parties, including all Collateral (as defined in the Term Loan Credit Agreement), including on account of the Term Loan Credit Documentation automatically release and discharge such liens, encumbrances, and interests upon the closing of the Transaction, without any further action of such Consenting Term Lender, provided that such liens, encumbrances, and interests continue to attach to the proceeds of such Transaction until such proceeds are distributed as provided for in the Plan; (b) consent to the Sale Transaction pursuant to the Auction and Plan, and (c) otherwise support, negotiate in good-faith, and implement such Sale Transaction. The Consenting Lenders agree to direct the Term Loan Agent (in accordance with the Term Loan Credit Documentation) to promptly execute and deliver any instruments, documentation and agreement necessary or desirable or reasonably requested by the Company Parties to evidence and confirm the release of all such liens, encumbrances, interests and claims pursuant to the forgoing Section 5.02(e)(i)(a).

(ii) If the Successful Bidder at the Auction is not a Consenting Term Lender, the Consenting Term Lenders agree (severally and not jointly), and agree to direct the Term Loan Agent (as applicable and in accordance with the Term Loan Credit Documentation), to: (a) with respect to any and all liens, encumbrances, and interests in the assets of the Company Parties, including all Collateral (as defined in the Term Loan Credit Agreement), including on



account of the Term Loan Credit Documentation automatically release and discharge, upon the closing of the Transaction, such liens, encumbrances, and interests without any further action of such Consenting Term Lender, provided that such liens, encumbrances, and interests continue to attach to the proceeds of such Transaction until such proceeds are distributed as provided for in the Plan; (b) consent to the Sale Transaction pursuant to the Auction and Plan; and (c) otherwise support, negotiate in good-faith, and implement such Sale Transaction. The Consenting Lenders agree to direct the Term Loan Agent (in accordance with the Term Loan Credit Documentation) to promptly execute and deliver any instruments, documentation and agreement necessary or desirable or reasonably requested by the Company Parties to evidence and confirm the release of all such liens, encumbrances, interests and claims pursuant to the forgoing Section 5.02(e)(ii)(b).

(iii) If the Consenting Term Lenders are the Successful Bidder at the Auction, the Consenting Term Lenders and the Company Parties shall agree to support and implement a Plan that, at the election of the Required Consenting Term Lenders, provides for either (a) the liquidation of the Company pursuant to the Plan or (b) an Equitization Restructuring. If a liquidation is pursued, the Company Parties and the Required Consenting Term Lenders shall use commercially reasonable efforts to promptly implement a value-maximizing liquidation. For the avoidance of doubt, in such a scenario, the store closings will be completed prior to the Plan Effective Date, but certain wind-down activities and asset sales may occur after the Plan Effective Date pursuant to any wind-down trust agreements, with proceeds and remaining cash to be distributed pursuant to the Plan.

(iv) The Consenting Term Lenders agree (severally and not jointly) to not exercise, or direct the Term Loan Agent to exercise, any rights pursuant to section 363(k) of the Bankruptcy Code to credit bid an amount greater than the value of the Reserve Price at any Auction.

(v) Each Consenting Term Lender will support, and will direct the Term Loan Agent (in accordance with the Term Loan Credit Documentation) to support, the Company Parties' Transactions and will not object to, delay, impede, or take any other action to interfere with entry of any Sale Document and/or consummation of any Sale Transaction, *provided* that such Sale Transaction complies with the Plan, the Bidding Procedures, and this Agreement.

(vi) In determining whether any Qualified Bid reaches the Reserve Price, the Company Parties and the Required Consenting Term Lenders shall work in good faith to reach an agreement on estimates of Claims and any and all other payments and obligations that are (i) required under the Plan or any other Definitive Document, including but not limited to the Wind-Down Budget and (ii) to be paid prior to the Term Loan Claims pursuant to the Plan, to the extent unknown and not already estimated as part of the Administrative Claims Cap, for the purpose of calculating the Reserve Price (collectively, the "**Claims Estimation**") and agree that such Claims Estimation shall be binding on the Parties so long as this Agreement remains in effect.

(vii) To the extent that the Consenting Term Lenders do not agree with the Debtors' selection of the Successful Bidder at the Auction, the Consenting Term Lenders and the Company Parties agree to seek expedited relief from the Bankruptcy Court to resolve the dispute

with such relief to be heard by the Bankruptcy Court no later than five (5) days after the conclusion of the Auction; *provided* that the Consenting Term Lenders and Company Parties agree that any determination by the Bankruptcy Court shall be binding on the Parties and shall not result in or cause the termination of this Agreement or serve as a valid justification for breach of either Parties' rights and obligations under this Agreement.

5.03. Additional Provisions Regarding the Consenting Term Lenders' Commitments.

(i) Notwithstanding anything contained in this Agreement, nothing in this Agreement shall: (a) affect the ability of any Consenting Term Lender to consult with any other Consenting Term Lender, the Company Parties, or any other party in interest in the Chapter 11 Cases (including any official committee and the United States Trustee), subject to all applicable Confidentiality Agreements; (b) impair or waive the rights of any Consenting Term Lender to assert or raise any objection permitted under this Agreement in connection with the Transactions; and (c) prevent any Consenting Term Lender from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement.

**Section 6. *Commitments of the Company Parties.***

6.01. General Commitments, Forbearances, and Waivers.

(a) Except as set forth in 6.03, during the Agreement Effective Period, the Company Parties agree to:

(i) support and take all steps reasonably necessary and desirable to consummate the Transactions in accordance with this Agreement including seeking Court approval of this Agreement pursuant to the motion to approve Bidding Procedures;

(ii) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the Transactions contemplated herein, take all steps reasonably necessary and desirable to address any such impediment;

(iii) use commercially reasonable efforts to obtain any and all required regulatory and/or third-party approvals for the Transactions;

(iv) negotiate the Definitive Documents in good faith, provide counsel for the Consenting Term Lenders commercially reasonable time to review draft copies of all Definitive Documents before filing, and use commercially reasonable efforts to execute and deliver the Definitive Documents and any other required agreements to effectuate and consummate the Transactions as contemplated by this Agreement;

(v) use commercially reasonable efforts to seek additional support for the Transactions from their other material stakeholders to the extent reasonably prudent;

(vi) to the extent the Company becomes aware of any Alternative Transaction, notify the Consenting Term Lenders within (1) Business Day.



(vii) provide counsel and advisors for the Consenting Term Lenders, upon reasonable advance notice to the Company Parties, timely and reasonable responses to all diligence requests; *provided* that the Company Parties shall not be required to distribute or share any documents that are or contain privileged materials, are otherwise subject to work-product or other attorney-client privilege, where applicable law restricts distribution, or is subject to confidentiality obligations of the Company Parties that prevent distribution; and

(viii) timely file a formal objection to any motion, application, or adversary proceeding challenging the validity, enforceability, perfection, or priority of, or seeking avoidance or subordination of, any portion of the Term Loan Claims.

(b) Negative Commitments. Except as set forth in 6.03, during the Agreement Effective Period, each of the Company Parties shall not directly or indirectly:

(i) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Transactions;

(ii) take any action that is inconsistent in any material respect with, or is intended to frustrate or impede approval, implementation and consummation of the Transactions described in, this Agreement or the Plan;

(iii) modify the Plan, in whole or in part, in a manner that is not consistent with this Agreement in all material respects; or

(iv) file any motion, pleading, or Definitive Documents with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement or the Plan.

#### 6.02. Commitments with Respect to Chapter 11 Cases

(i) in determining whether any Qualified Bid reaches the Reserve Price, the Company Parties and the Required Consenting Term Lenders shall work in good faith to reach an agreement on the Claims Estimation for the purpose of calculating the Reserve Price and agree that such Claims Estimation shall be binding on the Parties so long as this Agreement remains in effect;

(ii) to the extent that the Required Consenting Term Lenders do not agree with the Debtors' selection of the Successful Bidder at the Auction, the Consenting Term Lenders and the Company Parties agree to seek expedited relief from the Bankruptcy Court to resolve the dispute with such relief to be heard by the Bankruptcy Court no later than five (5) days after the conclusion of the Auction; *provided* that the Consenting Term Lenders and Company Parties agree that any determination by the Bankruptcy Court shall be binding on the Parties and shall not result in or cause the termination of this Agreement or serve as a valid justification for breach of either Parties' rights and obligations under this Agreement;

(iii) the Company Parties shall (i) provide counsel for the Consenting Term Lenders a commercially reasonable opportunity to review draft copies of all First Day Pleadings

and, (ii) to the extent reasonably practicable, provide a commercially reasonable opportunity to counsel to any Consenting Term Lenders materially affected by such filing to review draft copies of other documents that the Company Parties intend to file with Bankruptcy Court, as applicable;

(iv) Financial Reporting. During the Agreement Effective Period, the Company Parties agree to:

- (A) provide counsel and advisors for the Consenting Term Lenders with any financial reporting provided to the DIP Lenders with regard to compliance with the DIP Budget (at the same time as such information is shared with the DIP Lenders);<sup>6</sup>
- (B) provide counsel and advisors for the Consenting Term Lenders with an email on the second Business Day of each week, up to the Bid Deadline, regarding outreach to Potential Bidders (subject to applicable confidentiality provision);
- (C) provide counsel and advisors for the Consenting Term Lenders with an email on the fourth Business Day of each week including a tracker of the status of going-out-of-business sales (with the understanding the reporting would cease if the going-out-of-business sales are completed);
- (D) provide counsel and advisors for the Consenting Term Lenders with an email on the fourth Business Day of each week including mutually agreed key performance indicators (including a comparison to the then-current business plan);
- (E) provide counsel and advisors for the Consenting Term Lenders with an email on the fourth Business Day of each week including mutually agreed information associated with inventory receipts outlook;
- (F) provide counsel and advisors for the Consenting Term Lenders with an email on the fourth Business Day of each week including mutually agreed information on actual and forecasted accounts payable balances;
- (G) provide counsel and advisors for the Consenting Term Lenders with an email on the fourth Business Day of each week including a

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<sup>6</sup> To the extent not included in the financial reporting to the DIP Lenders, provide counsel and advisors for the Consenting Term Lenders with an email each Thursday including a rolling thirteen (13) week budget (“Rolling Budget”) including (i) a rolling weekly inventory roll forward in support of each Rolling Budget; (ii) a rolling accounts payable roll forward in support of each Rolling Budget; and (iii) estimated Administrative and Priority Claims, subject to satisfaction of covenants and reporting requirements in DIP Documents.

report summarizing all new purchase orders issued postpetition reflecting amount and target delivery date; and

- (H) host a weekly call (whether hosted by the Company Parties or by the Company Parties' advisors) for counsel and advisors for the Consenting Term Lenders on the first Business Day of each week to discuss questions related to the foregoing, provided that any questions to be raised on the weekly call are submitted in writing to the Company Parties' advisors on the last business day of the week prior to the weekly call.

6.03. Additional Provisions Regarding Company Parties' Commitments.

(i) Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall require a Company Party or the board of directors, board of managers, or similar governing body of a Company Party, after consulting with counsel, to take any action or to refrain from taking any action with respect to the Transactions to the extent taking or failing to take such action would be inconsistent with applicable Law or its fiduciary obligations under applicable Law, and any such action or inaction pursuant to this Section (i) shall not be deemed to constitute a breach of this Agreement.

(ii) Notwithstanding anything to the contrary in this Agreement (but subject to Section (i)), each Company Party and their respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the rights to: (a) consider, respond to, and facilitate alternative proposals; (b) provide access to non-public information concerning any Company Party to any Entity or enter into Confidentiality Agreements or nondisclosure agreements with any Entity; (c) maintain or continue discussions or negotiations with respect to alternative proposals; (d) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiations of alternative proposals; and (e) enter into or continue discussions or negotiations with holders of Claims against or Equity Interests in a Company Party (including any Consenting Term Lender), any other party in interest in the Chapter 11 Cases (including any official committee and the United States Trustee), or any other Entity regarding the Transactions or alternative proposals.

(iii) Nothing in this Agreement shall: (a) impair or waive the rights of any Company Party to assert or raise any objection permitted under this Agreement in connection with the Transactions; or (b) prevent any Company Party from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement.

**Section 7. Cooperation and Support**

Each Party hereby covenants and agrees to cooperate with the other Parties in good faith and shall coordinate their activities (to the extent practicable and subject to the terms hereof) with respect to, (i) all matters relating to their rights hereunder; (ii) all matters concerning the implementation of the Plan and the Transactions; and (iii) the pursuit, approval and support of the Transactions (including confirmation of the Plan). Furthermore, subject to the terms hereof,

each of the Parties shall take such action as may be reasonably necessary or reasonably requested by the other Parties to carry out the purposes and intent of this Agreement, or to effectuate the solicitation of the Plan and/or the Transactions, including making and filing any required regulatory filings, executing and delivering any other necessary agreements or instruments, and voting any claims against or interests in the Company Parties in favor of the Plan, and shall refrain from taking any action that would frustrate the purposes and intent of this Agreement.

**Section 8. *Transfer of Interests and Securities.***

8.01. During the Agreement Effective Period, no Consenting Term Lender shall Transfer any ownership (including any beneficial ownership as defined in the Rule 13d-3 under the Securities Exchange Act of 1934, as amended) in any Term Loan Claims to any person, including any affiliated or unaffiliated person in which it may hold a direct or indirect beneficial interest, unless the transferee either (i) executes and delivers to counsel to the Company Parties, at or before the time of the proposed Transfer, a Transfer Agreement or (ii) the transferee is a Consenting Term Lender and the transferee provides notice of such Transfer (including the amount and type of Company Claim/Interest Transferred) to counsel to the Company Parties at or before the time of the proposed Transfer. Notwithstanding the foregoing, compliance with this Section 10.01 shall not be required with respect to the acquisition of an indirect beneficial interest in a Consenting Term Lender's Term Loan Claims by an affiliate of such Consenting Term Lender.

8.02. Upon compliance with the requirements of Section 8.01, the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Agreement to the extent of the rights and obligations in respect of such transferred Term Loan Claims. Any Transfer in violation of Section 8.01 shall be void *ab initio*.

8.03. This Agreement shall in no way be construed to preclude the Consenting Term Lenders from acquiring additional Term Loan Claims; provided, however, that (a) such additional Term Loan Claims shall automatically and immediately upon acquisition by a Consenting Term Lender be deemed subject to the terms of this Agreement (regardless of when or whether notice of such acquisition is given to counsel to the Company Parties or counsel to the Consenting Term Lenders) and (b) such Consenting Term Lender must provide notice of such acquisition (including the amount and type of Company Claim/Interest acquired) to counsel to the Company Parties promptly and, in any event, within five (5) Business Days of such acquisition.

8.04. This Section 10 shall not impose any obligation on any Company Party to issue any "cleansing letter" or otherwise publicly disclose information for the purpose of enabling a Consenting Term Lender to Transfer any of its Term Loan Claims. Notwithstanding anything to the contrary herein, to the extent a Company Party and another Party have entered into a Confidentiality Agreement, the terms of such Confidentiality Agreement shall continue to apply and remain in full force and effect according to its terms, and this Agreement does not supersede any rights or obligations otherwise arising under such Confidentiality Agreements.

8.05. Notwithstanding Section 8.01, a Qualified Marketmaker that acquires any Term Loan Claims with the purpose and intent of acting as a Qualified Marketmaker for such Term Loan Claims shall not be required to execute and deliver a Transfer Agreement in respect of such Term Loan Claims if (a) such Qualified Marketmaker subsequently transfers such Term Loan Claims (by purchase, sale assignment, participation, or otherwise) within five (5) Business Days of its acquisition to a transferee that is an entity that is not an affiliate, affiliated fund, or affiliated entity with a common investment advisor; (b) the transferee otherwise is a Permitted Transferee under Section 8.01; and (c) the Transfer otherwise is a Permitted Transfer under Section 8.01. To the extent that a Consenting Term Lender is acting in its capacity as a Qualified Marketmaker, it may Transfer (by purchase, sale, assignment, participation, or otherwise) any right, title or interests in Term Loan Claims that the Qualified Marketmaker acquires from a holder of the Term Loan Claims who is not a Consenting Term Lender without the requirement that the transferee be a Permitted Transferee.

8.06. Notwithstanding anything to the contrary in this Section 10, the restrictions on Transfer set forth in this Section 10 shall not apply to the grant of any liens or encumbrances on any claims and interests in favor of a bank or broker-dealer holding custody of such claims and interests in the ordinary course of business and which lien or encumbrance is released upon the Transfer of such claims and interests.

**Section 9. *Representations and Warranties of Consenting Term Lenders.*** Each Consenting Term Lender severally, and not jointly, represents and warrants that, as of the date such Consenting Term Lender executes and delivers this Agreement and as of the Plan Effective Date:

(a) it is the beneficial or record owner of the face amount of the Term Loan Claims or is the nominee, investment manager, or advisor for beneficial holders of the Term Loan Claims reflected in, and, having made reasonable inquiry, is not the beneficial or record owner of any Term Loan Claims other than those reflected in, such Consenting Term Lender's signature page to this Agreement or a Transfer Agreement, as applicable (as may be updated pursuant to Section 7);

(b) it has the full power and authority to act on behalf of, vote and consent to matters concerning, such Term Loan Claims;

(c) such Term Loan Claims are free and clear of any pledge, lien, security interest, charge, claim, equity, option, proxy, voting restriction, right of first refusal, right of participation, or other limitation on disposition, transfer, or encumbrances of any kind, that would adversely affect in any way such Consenting Term Lender's ability to perform any of its obligations under this Agreement at the time such obligations are required to be performed; and

(d) it has the full power to vote, approve changes to, and transfer all of its Term Loan Claims referable to it as contemplated by this Agreement subject to applicable Law.

**Section 10. *Mutual Representations, Warranties, and Covenants.*** Each of the Parties represents, warrants, and covenants to each other Party, as of the date such Party executed and delivers this Agreement, on the Plan Effective Date:

(a) it is validly existing and in good standing under the Laws of the state of its organization, and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable Laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) except as expressly provided in this Agreement, the Plan, and the Bankruptcy Code, no consent or approval is required by any other person or entity in order for it to effectuate the Transactions contemplated by, and perform its respective obligations under, this Agreement;

(c) the entry into and performance by it of, and the transactions contemplated by, this Agreement do not, and will not, conflict in any material respect with any Law or regulation applicable to it or with any of its articles of association, memorandum of association or other constitutional documents;

(d) except as expressly provided in this Agreement, it has (or will have, at the relevant time) all requisite corporate or other power and authority to enter into, execute, and deliver this Agreement and to effectuate the Transactions contemplated by, and perform its respective obligations under, this Agreement; and

(e) except as expressly provided by this Agreement, it is not party to any restructuring or similar agreements or arrangements regarding the Company Parties with the other Parties to this Agreement that have not been disclosed to all Parties to this Agreement.

## **Section 11. *Termination Events.***

11.01. Consenting Term Lender Termination Events. This Agreement may be terminated with respect to the Consenting Term Lenders, by the Required Consenting Term Lenders, in each case, by the delivery to the Company Parties of a written notice in accordance with Section 14.10 hereof upon the occurrence of the following events:

(a) the breach in any material respect by a Company Party of any of the representations, warranties, or covenants of the Company Parties set forth in this Agreement that (i) is adverse to the Consenting Term Lenders seeking termination pursuant to this provision and (ii) remains uncured for one (1) business day after such terminating Consenting Term Lenders transmit a written notice in accordance with Section 14.10 hereof detailing any such breach;

(b) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Transactions and (ii) remains in effect for twenty (20) Business Days after such terminating Consenting Term Lenders transmit a written notice in accordance with Section 14.10 hereof detailing any such issuance; provided that this termination right may not be exercised by any Party that sought or requested such ruling or order in contravention of any obligation set out in this Agreement;



(c) the Milestones set forth in Section 4 have not been achieved, extended, or waived within one (1) Business Day after the date identified for completion of such Milestone (as such date may be extended or waived);<sup>7</sup>

(d) the Company Parties fail to abide by the Wind-Down Budget unless waived by the Required Consenting Term Lenders by written notice in accordance with Section 16.10 hereof; provided however that for the purposes of this section, the Company Parties shall be entitled to a variance of [\_] % from the Wind-Down Budget with respect to disbursements thereunder;

(e) the Company Parties seek approval of DIP Documents to which the Consenting Term Lenders have not consented;

(f) the Company Parties enter into or seek approval of exit financing to which the Consenting Term Lenders have not consented;

(g) the Company Parties make any payments with respect to the Company Parties' compensation programs not contemplated by this Agreement without the prior written consent of the Consenting Term Lenders;

(h) the Company Parties enter into a material executory contract, lease, or other arrangement outside of the ordinary course of business without the prior written consent of the Consenting Term Lenders;

(i) there is a default under any debtor-in-possession financing governed by the DIP Documents;

(j) the Company Parties withdraw the Plan or Disclosure Statement, file, propose, or otherwise support any plan of reorganization or liquidation other than the Plan, file any motion or pleading with the Bankruptcy Court that is not consistent with this Agreement and such motion or pleading has not been withdrawn prior to the earlier of (i) two (2) Business Days after the Company Parties receive written notice in accordance with Section 16.10 hereof from the Consenting Term Lenders that such motion or pleading is inconsistent with this Agreement and (ii) entry of an order of the Bankruptcy Court approving such motion or pleading;

(k) the Bankruptcy Court grants relief that is inconsistent with this Agreement in any materially adverse respect;

(l) the Bankruptcy Court enters an order denying confirmation of the Plan and the Company Parties are unable to obtain approval of the Plan within 15 Business Days; or

(m) the entry of an order by the Bankruptcy Court, or the filing of a motion or application by any Company Party seeking an order (without the prior written consent of the Required Consenting Term Lenders, not to be unreasonably withheld), (i) converting one or

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<sup>7</sup> For the avoidance of doubt, no Party may terminate this Agreement on account of failure to satisfy a Milestone to the extent that such failure is caused by or resulting from such Party's own action (or failure to act).

more of the Chapter 11 Cases of a Company Party to a case under chapter 7 of the Bankruptcy Code, (ii) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in one or more of the Chapter 11 Cases of a Company Party, or (iii) rejecting this Agreement.

11.02. Company Party Termination Events. Any Company Party may terminate this Agreement as to all Parties upon prior written notice to all Parties in accordance with Section 14.10 hereof upon the occurrence of any of the following events:

(a) the breach in any material respect by one or more of the Consenting Term Lenders of any provision set forth in this Agreement that remains uncured for a period of one (1) Business Day after the receipt by the Consenting Term Lenders of notice of such breach, including:

(i) Any direct or indirect objection, delay, impediment, or other action taken by a Consenting Term Lender against any action in furtherance of the Company Parties' employee compensation programs that are otherwise consistent with this Agreement;

(ii) Any direct or indirect objection, delay, impediment, or other action taken by a Consenting Term Lender or Term Loan Agent against any DIP Document filed by any Company Party in the Bankruptcy Court;

(iii) Any direct or indirect objection, delay, impediment, or other action taken by a Consenting Term Lender or Term Loan Agent opposing entry of any Sale Document and/or consummation of any Sale Transaction, provided that such Sale Transaction complies with this Agreement, the Plan, and the Bidding Procedures; or

(iv) The failure of the Consenting Term Lenders to negotiate in good faith, support, and implement a Sale Transaction if the Reserve Price is triggered or such Sale Transaction is occurring pursuant to the Lender Election.

(b) the Milestones set forth in Section 4 have not been achieved, extended, or waived within one (1) Business Days after the date identified for completion of such Milestone (as such date may be extended or waived);<sup>8</sup>

(c) the board of directors, board of managers, or such similar governing body of any Company Party determines, after consulting with counsel, (i) that proceeding with any of the Transactions would be inconsistent with the exercise of its fiduciary duties or applicable Law or (ii) in the exercise of its fiduciary duties, to pursue an Alternative Transaction;

(d) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Transactions and (ii) remains in effect for thirty (30) Business Days after such terminating Company Party transmits a written notice in accordance

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<sup>8</sup> For the avoidance of doubt, no Party may terminate this Agreement on account of failure to satisfy a Milestone to the extent that such failure is caused by or resulting from such Party's own action (or failure to act).



with Section 14.10 hereof detailing any such issuance; provided that this termination right shall not apply to or be exercised by any Company Party that sought or requested such ruling or order in contravention of any obligation or restriction set out in this Agreement; or

(e) the Bankruptcy Court enters an order denying confirmation of the Plan.

11.03. Mutual Termination. This Agreement, and the obligations of all Parties hereunder, may be terminated by mutual written agreement among all the following: (a) the Required Consenting Term Lenders; and (b) each Company Party.

11.04. Automatic Termination. This Agreement shall terminate automatically without any further required action or notice immediately after the Plan Effective Date.

11.05. Effect of Termination. Upon the occurrence of a Termination Date as to a Party, this Agreement shall be of no further force and effect as to such Party and each Party subject to such termination shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had, had it not entered into this Agreement, and shall be entitled to take all actions, whether with respect to the Transactions or otherwise, that it would have been entitled to take had it not entered into this Agreement, including with respect to any and all Claims or causes of action. Upon the occurrence of a Termination Date prior to the Confirmation Order being entered by a Bankruptcy Court, any and all consents or ballots tendered by the Parties subject to such termination before a Termination Date shall be deemed, for all purposes, to be null and void from the first instance and shall not be considered or otherwise used in any manner by the Parties in connection with the Transactions and this Agreement or otherwise; provided, however, that any Consenting Term Lender withdrawing or changing its vote pursuant to this Section 11.05 shall promptly provide written notice of such withdrawal or change to each other Party to this Agreement and, if such withdrawal or change occurs on or after the Petition Date, file notice of such withdrawal or change with the Bankruptcy Court. Nothing in this Agreement shall be construed as prohibiting a Company Party or any of the Consenting Term Lenders from contesting whether any such termination is in accordance with its terms or to seek enforcement of any rights under this Agreement that arose or existed before a Termination Date. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict (a) any right of any Company Party or the ability of any Company Party to protect and reserve its rights (including rights under this Agreement), remedies, and interests, including its claims against any Consenting Term Lender, and (b) any right of any Consenting Term Lender, or the ability of any Consenting Term Lender, to protect and preserve its rights (including rights under this Agreement), remedies, and interests, including its claims against any Company Party or Consenting Term Lender. No purported termination of this Agreement shall be effective under this Section 11.05 or otherwise if the Party seeking to terminate this Agreement is in material breach of this Agreement, except a termination pursuant to Section 11.02(c) or Section 11.02(e). Nothing in this Section 11.05 shall restrict any Company Party's right to terminate this Agreement in accordance with Section 11.02(c).

**Section 12. *Fees and Expenses.*** For as long as the Agreement is in full force and effect and the Consenting Term Lenders are not in default pursuant to its terms, and in accordance with and

subject to the DIP Documents (which orders shall provide for the payment of all of the fees and expenses described in this Agreement), the Company Parties shall pay or reimburse when due all reasonable and documented fees (incurred prior to or after the Petition Date) of the following: Brown Rudnick LLP (“Brown Rudnick”) as primary counsel, one local counsel, and FTI Consulting (“FTI”) as financial advisor, for all Consenting Term Lenders; in addition to the fees and expenses (including attorneys’ fees) of the Term Loan Agent. The Company Parties’ payment of fees and expenses owing to Brown Rudnick and FTI shall be in accordance with all applicable engagement letters executed between the Parties.

**Section 13. *Amendments and Waivers.***

(a) This Agreement may not be modified, amended, or supplemented, and no condition or requirement of this Agreement may be waived, in any manner except in accordance with this Section 13.

(b) This Agreement may be modified, amended, or supplemented, or a condition or requirement of this Agreement may be waived, in a writing signed by: (i) each Company Party and (ii) the Required Consenting Term Lenders, solely with respect to any modification, amendment, waiver or supplement that materially and adversely affects the rights of such Parties and unless otherwise specified in this Agreement; provided, however, that any waiver, modification, amendment, or supplement that materially adversely affects the economic recoveries or treatment of any Consenting Term Lender may not be made without the prior written consent of each such adversely affected Consenting Term Lender.

(c) Any proposed modification, amendment, waiver or supplement that does not comply with this Section 13 shall be ineffective and void *ab initio*.

(d) The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver of any such right, power or remedy or any provision of this Agreement, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy. All remedies under this Agreement are cumulative and are not exclusive of any other remedies provided by Law.

**Section 14. *Miscellaneous.***

14.01. Acknowledgement. Notwithstanding any other provision herein, this Agreement is not and shall not be deemed to be an offer with respect to any securities or solicitation of votes for the acceptance of a plan of reorganization for purposes of sections 1125 and 1126 of the Bankruptcy Code or otherwise. Any such offer or solicitation will be made only in compliance with all applicable securities Laws, provisions of the Bankruptcy Code, and/or other applicable Law.

14.02. Exhibits Incorporated by Reference; Conflicts. Each of the exhibits, annexes, signatures pages, and schedules attached hereto is expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include such exhibits, annexes, and schedules. In the event of any inconsistency between this Agreement (without reference to the exhibits, annexes, and schedules hereto) and the exhibits, annexes, and schedules hereto, this Agreement (without reference to the exhibits, annexes, and schedules thereto) shall govern.

14.03. Further Assurances. Subject to the other terms of this Agreement, the Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, or as may be required by order of the Bankruptcy Court, from time to time, to effectuate the Transactions, as applicable.

14.04. Complete Agreement. Except as otherwise explicitly provided herein, this Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any Confidentiality Agreement.

14.05. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. Each Party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement, to the extent possible, in the Bankruptcy Court (and if the Chapter 11 Cases are not filed, in the courts of New York State), and solely in connection with claims arising under this Agreement: (a) irrevocably submits to the exclusive jurisdiction of the Bankruptcy Court; (b) waives any objection to laying venue in any such action or proceeding in the Bankruptcy Court; and (c) waives any objection that the Bankruptcy Court is an inconvenient forum or does not have jurisdiction over any Party hereto.

14.06. TRIAL BY JURY WAIVER. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14.07. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

14.08. Rules of Construction. This Agreement is the product of negotiations among the Company Parties and the Consenting Term Lenders, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation

for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. The Company Parties and the Consenting Term Lenders were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

14.09. Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable. There are no third party beneficiaries under this Agreement, and the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other person or entity.

14.10. Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

(a) if to a Company Party, to:

Pier 1 Imports, Inc.  
Attention: Ray McKown  
E-mail address: grmckown@pier1.com

with copies to:

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022  
Attention: Joshua A. Sussberg, P.C. and Emily Geier  
E-mail address: joshua.sussberg@kirkland.com  
emily.geier@kirkland.com

and

Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
Attention: AnnElyse Scarlett Gains  
E-mail address: annelyse.gains@kirkland.com

and

Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, Illinois 60611  
Attention: Joshua Altman  
E-mail address: josh.altman@kirkland.com

(b) if to a Consenting Term Lender, to:

Brown Rudnick LLP  
7 Times Square  
New York, New York 10036  
Attention: Robert J. Stark  
E-mail address: rstark@brownrudnick.com

and

Brown Rudnick LLP  
One Financial Center  
Boston, Massachusetts 02111  
Attention: Sharon I. Dwoskin  
E-mail address: sdwoskin@brownrudnick.com

Any notice given by delivery, mail, or courier shall be effective when received.

14.11. Independent Due Diligence and Decision Making. Each Consenting Term Lender hereby confirms that its decision to execute this Agreement has been based upon its independent investigation of the operations, businesses, financial and other conditions, and prospects of the Company Parties.

14.12. Enforceability of Agreement. Each of the Parties to the extent enforceable waives any right to assert that the exercise of termination rights under this Agreement is subject to the automatic stay provisions of the Bankruptcy Code, and expressly stipulates and consents hereunder to the prospective modification of the automatic stay provisions of the Bankruptcy Code for purposes of exercising termination rights under this Agreement, to the extent the Bankruptcy Court determines that such relief is required.

14.13. Waiver. If the Transactions are not consummated, or if this Agreement is terminated for any reason, the Parties fully reserve any and all their rights. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

14.14. Specific Performance. It is understood and agreed by the Parties that money damages may be an insufficient remedy for any breach of this Agreement by any Party, and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach, including an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

14.15. Several, Not Joint, Claims. Except where otherwise specified, the agreements, representations, warranties, and obligations of the Parties under this Agreement are, in all respects, several and not joint.

14.16. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

14.17. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

14.18. Capacities of Consenting Term Lenders. Each Consenting Term Lender has entered into this agreement on account of all Term Loan Claims that it holds (directly or through discretionary accounts that it manages or advises) and, except where otherwise specified in this Agreement, shall take or refrain from taking all actions that it is obligated to take or refrain from taking under this Agreement with respect to all such Term Loan Claims.

14.19. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, pursuant to Section 3.02, Section 13, or otherwise, including a written approval by the Company Parties or the Required Consenting Term Lenders, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

**Company Parties' Signature Page to  
the Plan Support Agreement**

**PIER 1 IMPORTS, INC.  
PIER 1 IMPORTS (U.S.), INC.  
PIER 1 HOLDINGS, INC.  
PIER 1 ASSETS, INC.  
PIER 1 LICENSING, INC.  
PIER 1 SERVICES COMPANY  
PIER 1 VALUE SERVICES, LLC  
PIR TRADING, INC.**

By: \_\_\_\_\_

Name: Robert J. Riesbeck  
Authorized Signatory



**Consenting Term Lender Signature Page to  
the Plan Support Agreement**

**[CONSENTING TERM LENDER]**

Signature: \_\_\_\_\_

Name:

Title:

Address:

E-mail address(es):

<i>Aggregate Amounts Beneficially Owned or Managed on Account of:</i>	
Term Loan	
Revolving Loan	
Equity Interests	



**EXHIBIT A**

**Company Parties**

**Pier 1 Imports, Inc.**

**Pier 1 Assets, Inc.**

**Pier 1 Licensing, Inc.**

**Pier 1 Imports Holdings, Inc.**

**Pier 1 Services Company**

**Pier 1 Imports (U.S.), Inc.**

**Pier 1 Value Services, LLC**

**PIR Trading, Inc.**

**EXHIBIT B**

**Bidding Procedures**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

In re:	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (___)
Debtors.	)	(Joint Administration Requested)

**BIDDING PROCEDURES FOR THE DISPOSITION OF THE DEBTORS' ASSETS**

On [●], the United States Bankruptcy Court for the Eastern District of Virginia entered the *Order (I) Establishing Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Approving the Asset Purchase Agreement, (V) Authorizing Assumption of the Plan Support Agreement, and (VI) Granting Related Relief* [Docket No. [●]] (the "Order"),<sup>2</sup> by which the Court approved procedures setting forth the process by which the Debtors are authorized to solicit bids for and conduct an auction (the "Auction") for a sale or disposition (collectively, the "Sale," and each, a "Sale Transaction") of all or substantially all of the Debtors' Assets (as defined herein) or any portion thereof, either as a going-concern or as a liquidation (the "Bidding Procedures").

**I. DESCRIPTION OF THE ASSETS.**

The Debtors are seeking to sell all of their assets, or any portion thereof, either as a going-concern or as a liquidation. These assets include, but are not limited to, the Debtors' going-concern business, unexpired leases, executory contracts, equipment, inventory, supplies, intellectual property, insurance proceeds, receivables, prepaid expenses and deposits, and books and records, in each case, free and clear of all liens, claims, interests, or other encumbrances (collectively, the "Assets").

**II. SOLICITATION PROCESS; DISTRIBUTION OF BIDDING PROCEDURES**

For any sale of the Assets in these chapter 11 cases (the "Bankruptcy Case"), the Debtors and/or any agent of the Debtors shall, at the Debtors' direction, distribute these Bidding Procedures to any potential interested bidders. The Debtors, in the exercise of their reasonable business judgment may elect to exclude any Assets from these Bidding Procedures and sell such

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* filed contemporaneously herewith. The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Bidding Procedures Order.

Assets at either a private or public sale, subject to Court approval of any alternative sale method. Furthermore, the Debtors may determine in their discretion (upon consultation with the Consenting Term Lenders (as defined in the Plan Support Agreement, defined below) and the DIP Agents (as defined in the *Declaration of Robert J. Riesbeck, Chief Executive Officer, of Pier 1 Imports, Inc., in Support of Chapter 11 Petitions and First Day Motions*, the “First Day Declaration”)), whether to proceed with a sale of any Asset pursuant to these Bidding Procedures.

Notwithstanding anything herein to the contrary, all consultation, notification, or other rights of the Consenting Term Lenders and the DIP Agents are subject to, and expressly qualified by, any confidentiality obligation or agreement entered with the Potential Bidders (as defined herein).

### **III. PLAN SUPPORT AGREEMENT**

In connection with approval of these Bidding Procedures, the Debtors are also seeking Court approval of that certain plan support agreement (the “Plan Support Agreement”) entered into on February 16, 2020 by and between the Debtors and Consenting Term Lenders. The Plan Support Agreement provides, among other items, that the Consenting Term Lenders have consented to the sale of Assets as outlined herein.

### **IV. PARTICIPATION REQUIREMENTS.**

#### **A. Potential Bidders.**

To participate in the bidding process or otherwise be considered for any purpose hereunder, a person or entity interested in the Assets or part of the Assets (a “Potential Bidder”) must deliver to each of the Debtors’ advisors the following documents and information (unless the Debtors, in their business judgment, choose to waive any of the following requirements for any Potential Bidder):

1. an executed confidentiality agreement to the extent the Potential Bidder has not already executed a confidentiality agreement on terms acceptable to the Debtors (a “Confidentiality Agreement”);
2. identification of the Potential Bidder and any principals and representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated Sale Transaction(s); and
3. proof by the Potential Bidder of its financial capacity to close a proposed Sale Transaction(s), which may include financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the desired Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors (including in consultation with their advisors).

The Debtors, in consultation with their advisors, will determine and notify each Potential Bidder whether such Potential Bidder has submitted adequate documents so that such Potential Bidder may proceed to conduct due diligence and submit a bid (such Potential Bidder, an “Acceptable Bidder”). Notwithstanding anything herein to the contrary, the Debtors, reserve the right to work with a Potential Bidders to aggregate bids into a consolidated Qualified Bid prior to the Bid Deadline (each as defined below).

### **B. Obtaining Due Diligence.**

The Debtors, with their advisors, shall establish an electronic data room (the “Data Room”) that provides standard and customary diligence materials, including the necessary information to allow Acceptable Bidders to submit a Qualified Bid (as defined below) and to seek and obtain commitments for debt financing.

Only Acceptable Bidders shall be eligible to receive diligence materials and access to the Debtors’ Data Room and to additional non-public information regarding the Debtors and the Assets. The Debtors (with the assistance of their advisors) shall coordinate all reasonable requests from Acceptable Bidders for additional information and due diligence access; *provided* that (i) the Debtors shall have the right to reasonably limit the information and due diligence provided to competitors and (ii) the Debtors may decline to provide such information to Acceptable Bidders who, at such time and in the Debtors’ reasonable business judgment, have not established, or who have raised doubt, that such Acceptable Bidder intends in good faith to, or has the capacity to, consummate a proposed Sale Transaction. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information. Additional due diligence will not be provided after the Bid Deadline, unless otherwise deemed reasonably appropriate by the Debtors. The Debtors, their representatives and advisors are not responsible for, and will bear no liability with respect to, any information obtained by any Acceptable Bidder in connection with any Sale or Sale Transaction.

### **C. Non-Binding Indications of Interest.**

Any Potential Bidder interested in a Transaction (regardless of whether such party has been determined to be an Acceptable Bidder) shall submit a non-binding indication of interest (an “Indication of Interest”) by **[February 28], 2020, at 5:00 p.m. (prevailing Eastern Time)** (as may be extended without notice or hearing by the Debtors, the “Indication of Interest Deadline”). The indication of interest should (i) identify whether the party is interested in acquiring some or all of the Assets (and which Assets with reasonable specificity), (ii) set forth a proposed purchase price for the proposed Transaction, including by identifying separately any cash and non-cash components of the proposed Transaction consideration, including, for example, certain liabilities to be assumed, and (iii) identify any proposed conditions to closing the Transaction.

Indications of Interest should be submitted to the Debtors’ advisors by the Indication of Interest Deadline:

- (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua Sussberg ([joshua.sussberg@kirkland.com](mailto:joshua.sussberg@kirkland.com)), Emily Geier ([emily.geier@kirkland.com](mailto:emily.geier@kirkland.com)), and AnnElyse Scarlett Gains ([annelyse.gains@kirkland.com](mailto:annelyse.gains@kirkland.com)) and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman ([josh.altman@kirkland.com](mailto:josh.altman@kirkland.com));
- (ii) proposed co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia, 23219, Attn: Michael Condyles ([michael.condyles@kutakrock.com](mailto:michael.condyles@kutakrock.com)), Peter Barrett ([peter.barrett@kutakrock.com](mailto:peter.barrett@kutakrock.com)), Jeremy Williams ([jeremy.williams@kutakrock.com](mailto:jeremy.williams@kutakrock.com)), and Brian Richardson ([brian.richardson@kutakrock.com](mailto:brian.richardson@kutakrock.com)); and
- (iii) the Debtors' proposed investment banker, Guggenheim Securities, LLC, 330 Madison Avenue, New York, New York 10017, Attn: Durc Savini ([durc.savini@guggenheimpartners.com](mailto:durc.savini@guggenheimpartners.com)), Adam Rifkin ([adam.rifkin@guggenheimpartners.com](mailto:adam.rifkin@guggenheimpartners.com)), and Hend Abdallah ([hend.abdallah@guggenheimpartners.com](mailto:hend.abdallah@guggenheimpartners.com)).

The Debtors will provide copies of all Indications of Interest via electronic mail as soon as reasonably practicable to counsel for the Consenting Term Lenders and to counsel for the DIP Agents subject to any confidentiality obligation or agreement entered with the Potential Bidders.

Note that submitting an indication of interest by the Indication of Interest Deadline does not obligate the Potential Bidder to submit a formal bid or to participate in the sale process and does not exempt the Potential Bidder from also having to submit a Qualified Bid by the Bid Deadline to participate in the Auction (each as defined below). For the avoidance of doubt, the submission of an Indication of Interest by the Indication of Interest Deadline is not a prerequisite for Potential Bidders to submit a Qualified Bid.

#### **D. Bid Deadline.**

An Acceptable Bidder that desires to make a bid must transmit via email (in .pdf or similar format) **or** deliver written copies of its bid to the following parties so as to be received not later than **5:00 p.m. (prevailing Eastern Time) on [Monday, March 23], 2020** (the "**Bid Deadline**"):

- (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua Sussberg ([joshua.sussberg@kirkland.com](mailto:joshua.sussberg@kirkland.com)), Emily Geier ([emily.geier@kirkland.com](mailto:emily.geier@kirkland.com)), and AnnElyse Scarlett Gains ([annelyse.gains@kirkland.com](mailto:annelyse.gains@kirkland.com)) and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman ([josh.altman@kirkland.com](mailto:josh.altman@kirkland.com)); and
- (ii) proposed co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia, 23219, Attn: Michael Condyles

([michael.condyles@kutakrock.com](mailto:michael.condyles@kutakrock.com)), Peter Barrett  
([peter.barrett@kutakrock.com](mailto:peter.barrett@kutakrock.com)), Jeremy Williams  
([jeremy.williams@kutakrock.com](mailto:jeremy.williams@kutakrock.com)), and Brian Richardson  
([brian.richardson@kutakrock.com](mailto:brian.richardson@kutakrock.com)); and

- (iii) the Debtors' proposed investment banker, Guggenheim Securities, LLC, 330 Madison Avenue, New York, New York 10017, Attn: Durc Savini ([durc.savini@guggenheimpartners.com](mailto:durc.savini@guggenheimpartners.com)), Adam Rifkin ([adam.rifkin@guggenheimpartners.com](mailto:adam.rifkin@guggenheimpartners.com)), and Hend Abdallah ([hend.abdallah@guggenheimpartners.com](mailto:hend.abdallah@guggenheimpartners.com)).

The Debtors will provide copies of all Bids via electronic mail as soon as reasonably practicable to the Office of the United States Trustee for the Eastern District of Virginia (the "U.S. Trustee") and to counsel for the Consenting Term Lenders and to counsel for the DIP Agents subject to any confidentiality obligation or agreement entered with the Potential Bidders.

## V. QUALIFIED BIDS.

### A. Requirements for Qualified Bids.

Any proposal, solicitation, or offer (each, a "Bid") will be considered a qualified bid only if the Bid is submitted in writing by an Acceptable Bidder, by the Bid Deadline, and is deemed to comply with all of the following in the Debtors' business judgment (a "Qualified Bid" and such bidder a "Qualified Bidder"):

1. **Assets.** The Bid must clearly identify the following: (a) the particular Assets, or the portion thereof identified with reasonable specificity, to be purchased and/or liquidated or otherwise disposed of; (b) the liabilities and obligations to be assumed, including any debt to be assumed; and (c) whether the Acceptable Bidder intends to operate the Debtors' business as a going concern, or to liquidate the business.
2. **Purchase Price.** The Bid must (a) clearly set forth the purchase price to be paid (the "Purchase Price"), (b) identify separately the cash and non-cash components of the Purchase Price, (c) use commercially reasonable efforts to indicate the allocation of the Purchase Price between ABL Priority Collateral and Term Priority Collateral (each as defined in the Intercreditor Agreement), and (d) with respect to the Purchase Price attributable to the sale of the ABL Priority Collateral, include a cash component in an amount sufficient to pay in full in cash all outstanding obligations owed by the Debtors under the DIP Documents (as defined in the DIP Orders) and all obligations under the Prepetition ABL Documents (as defined in the DIP Order), to the extent that any Prepetition ABL Obligations (as defined in the DIP Order) are still outstanding.
3. **Deposit.** Each Bid must be accompanied by a cash deposit in the amount equal to 10 percent of the aggregate Purchase Price of the Bid to be held in an interest-bearing escrow account to be identified and established by the



Debtors (the “Deposit”), *provided* that if a Qualified Bidder increases its Bid at the Auction and is the Successful Bidder or Backup Bidder (each as defined herein), such bidder must increase its Qualified Bidder Deposit to match the proposed Purchase Price submitted at the Auction within three (3) business days after the Auction.

4. ***Bid Documents.*** Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid (the “Bid Documents”). The Bid Documents shall include: (a) a clearly marked version of the form purchase agreement attached hereto as **Exhibit 1** (the “Form Purchase Agreement”) showing all changes requested by the Acceptable Bidder, (b) a schedule of Assumed Contracts to the extent applicable to the Bid, (c) any other material documents integral to such Bid, and (d) a statement from the Acceptable Bidder that: (y) it is prepared to enter into and consummate the Transactions contemplated in the Form Purchase Agreement no later than fifteen (15) business days after the conclusion of the Auction (or, if no Auction is held, the Bid Deadline) and (z) the Qualified Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or the Backup Bid) until the consummation of the Sale Transaction.
5. ***Legal Capacity.*** Each Bid must demonstrate to the Debtors’ satisfaction that the Acceptable Bidder has the legal capacity to consummate the transaction it is proposing.
6. ***Committed Financing.*** To the extent that a Bid is not accompanied by evidence of the Acceptable Bidder’s capacity to consummate the proposed transactions set forth in its Bid with cash on hand, each Bid must include committed financing documented to the satisfaction of the Debtors (upon consultation with the Consenting Term Lenders and the DIP Agents) that demonstrates that the Acceptable Bidder has received sufficient unconditional debt and/or equity funding commitments to satisfy the Acceptable Bidder’s Purchase Price and other obligations under its Bid, including providing adequate assurance of future performance under all contracts proposed to be Assumed Contracts by such Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors, in consultation with their advisors, and upon consultation with the Consenting Term Lenders and the DIP Agents.
7. ***Contingencies.*** The Bid must not contain any contingencies as to the validity, effectiveness, and/or binding nature of the Bid, including, without limitation, contingencies for due diligence and inspection or financing of any kind (including any conditions pertaining to financial performance,



conditions, or prospects) and all diligence must be completed before the Bid Deadline.

8. **Identity.** The Bid must fully disclose the legal identity of each person or entity bidding or otherwise participating in connection with such Bid (including each equity holder or financial backer of the Acceptable Bidder if such Acceptable Bidder is an entity formed for the purpose of consummating the proposed transaction(s) contemplated by such Bid), and the complete terms of any such participation, and must also disclose any connections or agreements with the Debtors, any other known Potential Bidder, Acceptable Bidder, or Qualified Bidder, and/or any officer or director of the foregoing. Under no circumstances will any undisclosed principals, equity holders, or financial backers be associated with any Bid.
9. **Irrevocable.** ALL BIDS SHALL BE DEEMED IRREVOCABLE, NOTWITHSTANDING ANY CONDITIONS LISTED IN THE APPLICABLE AGREEMENT. IN THE EVENT THAT AN ACCEPTABLE BIDDER SEEKS TO REVOKE SUCH BID, THE DEBTORS SHALL BE ENTITLED TO KEEP SUCH BIDDER'S DEPOSIT AND PURSUE ALL OTHER CONTRACTUAL REMEDIES UNDER LAW OR EQUITY.
10. **Backup Bidder.** By submitting a Bid, each Acceptable Bidder agrees to be a Backup Bidder, should the Bid be so selected.
11. **As-Is, Where-Is.** The Bid must include the following representations and warranties (or the Acceptable Bidder otherwise agrees that such representations and warranties may be incorporated into the applicable Bid Documents should the Bid be selected as the Successful Bid): (a) expressly state that the Acceptable Bidder has had an opportunity to conduct any and all due diligence regarding the Debtors' businesses and the Assets prior to submitting its Bid; and (b) a statement that the Acceptable Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Assets in making its Bid and did not rely on any of the Debtors' or any of their advisors' written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors' businesses or the Assets or the completeness of any information provided in connection therewith, except (with respect to the Debtors only) as expressly stated in the representations and warranties contained in the Acceptable Bidder's Form Purchase Agreement ultimately accepted and executed by the Debtors.
12. **Authorization.** The Bid must include evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or comparable governing body) acceptable to the Debtors with respect to the submission, execution, and delivery of its Bid, participation in the

Auction, and closing of the proposed transaction(s) contemplated in such Bid. The Bid shall further state that any necessary filings under applicable regulatory, antitrust, and other laws will be made in a timely manner and that payment of the fees associated therewith shall be made by the Acceptable Bidder.

13. ***Disclaimer of Fees.*** Each Bid must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.
14. ***Adherence to Bid Procedures.*** Each Bid must include (a) a statement that the Acceptable Bidder has acted in good faith consistent with section 363(m) of the Bankruptcy Code, and (b) that the Bid constitutes a *bona fide* offer to consummate the proposed transactions, and agrees to be bound by these Bidding Procedures.
15. ***No Collusion.*** The Acceptable Bidder must acknowledge in writing that (a) in connection with submitting its Bid, it has not engaged in any collusion that would be subject to section 363(n) of the Bankruptcy Code with respect to any Bids or the Sale, specifying that it did not agree with any Potential Bidders, Acceptable Bidders or Qualified Bidders to control price; and (b) it agrees not to engage in any collusion that would be subject to section 363(n) of the Bankruptcy Code with respect to any Bids, the Auction, or the Sale.
16. ***Other Information.*** The Bid contains such other information as may be reasonably requested by the Debtors.

#### **B. Rejection of “Qualified Bid” Status for Non-Conforming Bids.**

The Debtors shall determine in their discretion (including in consultation with their advisors and with the Consenting Term Lenders and the DIP Agents) which bids qualify as Qualified Bids and which bids shall be rejected as non-confirming bids. In addition, the Debtors shall have the right to negotiate with any Acceptable Bidder with respect to clarification of any Bid.

#### **C. No Representation; Qualified Bidder’s Duty to Review.**

Neither the Debtors nor any of their advisors are making or have at any time made any warranties or representations of any kind or character, express or implied, with respect to the Assets, including, but not limited to, any warranties or representations as to operating history or projections, valuation, governmental approvals, the compliance of the Assets with governmental

laws, the truth, accuracy, or completeness of any documents related to the Assets, or any other information provided by or on behalf of the Debtors to a bidder, or any other matter or thing regarding the Assets. All bidders must acknowledge and agree that upon closing the Debtors shall sell and transfer to the Successful Bidder and the Successful Bidder shall accept the Assets, except to the extent expressly provided in the Bankruptcy Court's order approving the Sale. Neither the Debtors nor any of their advisors will be liable for or bound by any express or implied warranties, guaranties, statements, representations, or information pertaining to the Assets or relating thereto that the Debtors, any advisor, or agent representing or purporting to represent the Debtors to whomever might have made or furnished, directly or indirectly, orally or in writing, unless (with respect to the Debtors only) specifically set forth in the Bankruptcy Court's order approving the Sale.

## **VI. QUALIFICATION OF BIDDERS.**

No later than 11:59 p.m. (prevailing Eastern Time) on the date that is four (4) business days following the Bid Deadline, the Debtors shall notify each Acceptable Bidder whether such party is a Qualified Bidder.

If any Bid is determined by the Debtors (after consultation with the Consenting Term Lenders and the DIP Agents) not to be a Qualified Bid, the Debtors will refund such Acceptable Bidder's Deposit on or before the date that is five (5) business days after the Bid Deadline.

The Debtors may, in consultation with the Consenting Term Lenders and the DIP Agents, accept as a single Qualified Bid, multiple Bids for non-overlapping material portions of the Assets such that, when taken together in the aggregate, such Bids would otherwise meet the standards for a single Qualified Bid. The Debtors may permit otherwise Qualified Bidders who submitted Bids by the Bid Deadline for less than a substantial (but nevertheless a material) portion of the Assets but who were not identified as a component of a single Qualified Bid consisting of such multiple Bids, to participate in the Auction and to submit higher or otherwise better Bids that in subsequent rounds of bidding may be considered, together with other Bids for non-overlapping material portions of the Assets, as part of such a single Qualified Bid for Overbid (as defined herein) purposes.

Between the date that the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors (in consultation with the Consenting Term Lenders and the DIP Agents), a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided* that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

Notwithstanding anything herein to the contrary, the Debtors reserve the right (in consultation with the Consenting Term Lenders and the DIP Agents) to work with (a) Acceptable Bidders to aggregate two or more Bids into a single consolidated Qualified Bid prior to the Bid

Deadline or (b) Qualified Bidders to aggregate two or more Qualified Bids into a single Qualifying Bid prior to the conclusion of the Auction. The Debtors reserve the right to cooperate with any Acceptable Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids for non-overlapping material portions of the Assets such that, if the multiple Bids were taken together in the aggregate, they would otherwise meet the standards for a single Qualified Bid (in which event those multiple Acceptable Bidders shall be treated as a single Qualified Bidder for purposes of the Auction).

Each Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors regarding the ability of such Qualified Bidder to consummate its contemplated transaction. Failure by a Qualified Bidder to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors to determine that such Acceptable Bidder is no longer a Qualified Bidder or that a Bid made by such Acceptable Bidder is not a Qualified Bid.

## **VII. RIGHT TO CREDIT BID.**

Any Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; provided that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured.

Notwithstanding anything to the contrary herein, the Term Agent or its designee, the DIP Administrative Agent, and the Prepetition ABL Administrative Agent (each as defined in the First Day Declaration), on behalf of those Term Loan Lenders, DIP Lenders, and Prepetition ABL Lenders (each as defined in the First Day Declaration), shall be deemed to be a Qualified Bidder and, subject to section 363(k) of the Bankruptcy Code, may submit a credit bid of all or any portion of the aggregate amount of such Term Loan Lenders', DIP Lenders', or Prepetition ABL Lenders' secured claims pursuant to section 363(k) at any time during the Auction and any such credit bid will be considered a Qualified Bid, unless otherwise ordered by the Court for cause; *provided* that in accordance with the Plan Support Agreement, the Consenting Term Lenders shall not submit a bid that exceeds the value of the Reserve Price (as defined in the Plan Support Agreement) in accordance with the Plan Support Agreement.

Any credit bid submitted by a Secured Creditor shall be subject in each case to the rights and duties of the parties under the Intercreditor Agreement and Prepetition Documents (as defined in the DIP Orders) and to the provision of consideration sufficient to pay in full in cash all claims for which there are any senior liens on the collateral Assets included in such Bid that are senior in priority to those of the party seeking to credit bid (unless such senior lien holder consents to alternative treatment) that is subject to the credit bid.

Any counterparty to a Lease proposed to be sold or transferred at the Auction ("Lease Counterparty") shall be deemed a Qualified Bidder. Lease Counterparties may credit bid all or a portion of the applicable cure amount proposed by such Lease Counterparty. If such Lease Counterparty is the Successful Bidder on the applicable Lease, and it is later determined by this

Court or agreement by and among the Debtors and Lease Counterparty that the actual cure amount is a lesser amount, then the Lease Counterparty shall pay the difference in cash prior to the Sale Closing Deadline.

#### **VIII. STALKING HORSE BID AND BID PROTECTIONS.**

Upon entry of the Order, at any time until two (2) business days prior to the Auction, the Debtors shall be authorized, but not obligated, in an exercise of their business judgment, and in consultation with the Consenting Term Lenders and the DIP Agents, to (a) select one or more Acceptable Bidders to act as a stalking horse bidder in connection with the Auction (the “Stalking Horse Bidder”) and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder, (x) provide a breakup fee, (y) agree to reimburse the reasonable and documented out of pocket fees and expenses and/or (z) agree to pay a “work fee” or other similar cash fee ((x)-(z) collectively, the “Bid Protections”); *provided*, however, that any Bid Protections are reasonably acceptable to the Consenting Term Lenders and the DIP Agents.<sup>3</sup> Any such stalking horse Bid Protections are authorized pursuant to the Order.

#### **IX. THE AUCTION.**

If the Debtors receive more than one Qualified Bid for any particular Asset or portion of Assets, the Debtors shall conduct the Auction to determine the Successful Bidder with respect to such Assets or portion of Assets. If the Debtors do not receive a Qualified Bid for any particular Asset, the Debtors will not conduct the Auction with respect to such Asset in accordance with the Plan Support Agreement.

Absent the Debtors selection of a stalking horse bid pursuant to Section VIII above, no later than two days prior to the Auction, the Debtors will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, as determined in the Debtors’ reasonable business judgment and in consultation with the Consenting Term Lenders and the DIP Agents (the “Baseline Bid”), and provide copies of the Bid Documents supporting the Baseline Bid to all Qualified Bidders. The determination of which Qualified Bid constitutes the Baseline Bid shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the Debtors’ estates, including, but not limited to, among other things: (a) the number, type, and nature of any changes to the Form Purchase Agreement requested by the Qualified Bidder, including the type and portion of the Assets sought and Assumed Obligations to be assumed in the Qualified Bid; (b) the amount and nature of the total consideration; (c) the net economic effect of any changes to the value to be received by the Debtors’ estates from the transactions contemplated by the Bid Documents; (d) the tax consequences of such Qualified Bid; and (e) the ability and likelihood to close the transaction contemplated by the Qualified Bid (collectively, the “Bid Assessment Criteria”).

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<sup>3</sup> Prior to giving Bid Protections to Stalking Horse Bidder, the Debtors shall consult with the U.S. Trustee, as well as counsel for an official committee of unsecured creditors should one be appointed in these chapter 11 cases, one (1) day prior to providing Bid Protections pursuant to the Order.



#### D. Auction Participation

1. Time, Date and Location of Auction; Adjournment of Auction; Appearance of Qualified Bidders at Auction. The Auction shall take place at [●] a/p.m. (prevailing Eastern Time) on [Tuesday, March 31], 2020, at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, or such later date, time, and location as designated by the Debtors, after providing notice to the Notice Parties and Qualified Bidders and posting notice of such change on the Debtors' case website: <https://dm.epiq11.com/pier1>. The Debtors shall have the right to conduct any number of Auctions on that date to accommodate multiple bids that comprise a single Qualified Bid, if the Debtors determine, in their reasonable business judgment and upon consultation with the Consenting Term Lenders and the DIP Agents, that conducting such auctions would be in the best interests of the Debtors' estates.
2. *Participants and Attendees.*<sup>4</sup> Only Qualified Bidders are eligible to participate in the Auction, subject to other limitations as may be reasonably imposed by the Debtors in accordance with these Bidding Procedures. Qualified Bidders participating in the Auction must appear in person at the Auction, or through a duly authorized representative. The Auction will be conducted openly and all creditors may be permitted to attend; *provided* that the Debtors may, in their sole and exclusive discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder or creditor at the Auction. Any creditor wishing to attend the Auction may do so by contacting, no later than three (3) business days prior to the start of the Auction, the Debtors' advisors.

#### E. Auction Procedures.

The Debtors (in consultation with their advisors) shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids (as defined below) and shall be made and received on an open basis in the presence of all other Qualified Bidders, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. All Qualified Bidders shall have the right to submit additional bids and make modifications to any prior Qualified Bid or Overbid at the Auction to improve their bids; *provided* that any Overbid made by a Qualified

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<sup>4</sup> Permitted Attendees. Unless the Bankruptcy Court orders or directs otherwise, only the Debtors' representatives, any other parties that the Debtors have invited specifically, and any Qualified Bidders and the professionals for each of the foregoing shall be entitled to attend the Auction; *provided* that only Qualified Bidders shall be entitled to bid at the Auction. Any permitted attendee may attend the Auction telephonically; *provided*, further, that such permitted attendee must provide actual notice to Guggenheim, in its capacity as the Debtors' proposed investment banker, that it will make a telephonic appearance at least three (3) business day prior to the Auction. Notwithstanding any of the foregoing, the Consenting Term Lenders, the DIP Agents, and their professionals shall be entitled to attend the Auction.

Bidder (including with respect to any Backup Bid (as defined below) must remain open and binding on the Qualified Bidder until and unless the Debtors accept a higher or otherwise better Qualified Bid as the Leading Bid. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the Auction. The Debtors shall maintain a written transcript of the Auction and of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid (as defined below).

The Auction shall be governed by the following procedures, subject to the Debtors' right to modify such procedures in their reasonable business judgment:

1. **Baseline Bid as Price Floor.** Bidding shall commence at the amount of the Baseline Bid.
2. **Minimum Overbid.** Qualified Bidders may submit successive Bids higher than the previous Bid, based on and increased from the Baseline Bid for the relevant Assets (each such Bid, an "Overbid"). Any Qualified Bidder's initial Overbid and each subsequent Overbid shall be at least a 2% increase in cash, cash equivalents, or such other consideration that the Debtors deem equivalent, over the previous price (the "Minimum Overbid"). The Debtors may, in their reasonable business judgment, announce increases or reductions to the Minimum Overbid at any time during the Auction. For the avoidance of doubt, each successive Bid that a Qualified Bidder may submit at the Auction must contain a Purchase Price in cash, cash equivalents, or such other consideration that the Debtors deem equivalent that exceeds the then existing highest Bid by at least the Minimum Overbid Amount.
3. **Announcement of Rules.** At commencement of the Auction, the Debtors may announce procedural and related rules governing the Auction, including time periods available to all Qualified Bidders to submit successive bid(s).
4. **Overbid Alterations.** An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtors' estates than any prior Qualified Bid or Overbid, as determined in the Debtors' business judgment, but shall otherwise comply with the terms of these Bidding Procedures.
5. **Highest or Best Offer.** After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the Bid that they believe in their reasonable business judgment and upon consultation with their advisors and the Consenting Term Lenders and the DIP Agents to be the highest or otherwise best offer for the relevant Assets (the "Leading Bid"). Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent Bid with full knowledge of the Leading Bid.

6. **Rejection of Bids.** The Debtors, in their reasonable business judgment may reject, at any time before entry of an order of the Court approving a Successful Bid, any Bid that the Debtors determine is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale, or (iii) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders.
7. **Additional Information.** The Debtors have the right to request any additional information that will allow the Debtors to make a reasonable determination as to a Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtors believe is reasonably necessary to clarify and evaluate any Bid made by a Qualified Bidder during the Auction.
8. **Modification of Procedures.** The Debtors may (in consultation with the Consenting Term Lenders and the DIP Agents) announce at the Auction modified or additional procedures for conducting the Auction or otherwise modify these Bidding Procedures.
9. **No Collusion.** Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (i) it has not engaged in any collusion with respect to the bidding and (ii) its Qualified Bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

#### **F. Adjournment of the Auction.**

The Debtors reserve the right, in their reasonable business judgment and upon consultation with the Consenting Term Lenders and the DIP Agents, to adjourn the Auction one or more times to, among other things (i) facilitate discussions between the Debtors and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt or equity funding commitments to consummate the proposed Sale Transaction(s) at the prevailing Bid amount.

#### **G. Successful Bidder.**

Immediately prior to the conclusion of the Auction, the Debtors shall (i) determine, consistent with these Bidding Procedures and upon consultation with their advisors and the Consenting Term Lenders and the DIP Agents, which Bid constitutes the highest or otherwise best bid(s) for the applicable Assets (each such Bid, a "Successful Bid") using the Bid Assessment Criteria; and (ii) notify all Qualified Bidders at the Auction for the applicable Assets of the identity of the Qualified Bidder that submitted the Successful Bid (each such Qualified Bidder, the "Successful Bidder") and the amount of the Purchase Price and other material terms



of the Successful Bid. The terms of the Successful Bid shall be acceptable to the DIP Agents and shall, among other things, provide for cash proceeds in an amount sufficient to repay in full in cash the outstanding DIP Obligations under the DIP Documents (each as defined in the DIP Orders) and all of the Prepetition ABL Obligations (as defined in the DIP Orders), to the extent any Prepetition ABL Obligations are still outstanding; *provided* that if more than one Bid provides for payment in full in cash of the outstanding DIP Obligations, then the Debtors shall not be required to consult with the DIP Agents in selecting the Successful Bid.

The Debtors shall file a notice identifying the Successful Bidder and Backup Bidder (if selected) by 11:59 p.m. (prevailing Eastern Time) on the date that is one business day following the date the Auction is closed.

#### **H. Backup Bidder.**

Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction for the Assets, as determined by the Debtors in the exercise of their reasonable business judgment (the “Backup Bid”), shall be required to serve as a backup bidder and upon consultation with the Consenting Term Lenders and the DIP Agents (the “Backup Bidder”), and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated. The terms of the Backup Bid shall be acceptable to the DIP Agents and shall, among other things, provide for cash proceeds in an amount sufficient to repay in full in cash the outstanding DIP Obligations under the DIP Documents (each as defined in the DIP Orders) and all of the Prepetition ABL Obligations (as defined in the DIP Orders), to the extent any Prepetition ABL Obligations are still outstanding.

The identity of the Backup Bidder and the amount and material terms of the Qualified Bid of the Backup Bidder shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the identity of the Successful Bidder.

Notwithstanding anything to the contrary contained in the Bid Procedures, in the event that a Successful Bidder(s) does not consummate the sale and a Back-Up Bidder(s) has been previously identified, the Debtors shall (1) file and serve Notice of Intent To Proceed with Back-Up Bid, and (2) schedule a telephonic status conference, which may be expedited, upon reasonable notice under the circumstances (which shall be no less than three (3) court days), at which time a briefing and hearing schedule will be established for those landlords and counterparties to executory contracts that do not consent to a proposed assumption and assignment to the Back-Up Bidder(s). The Back-Up Bidder(s), as identified in the Notice of Results of Auction, shall not be considered or approved at the Sale Hearing nor shall affected landlords or counter-parties be required to object to Back-Up Bidder(s) prior to the filing and service of the Notice of Intent To Proceed with Back-Up Bid.

#### **X. ACCEPTANCE OF SUCCESSFUL BID.**

The Debtors’ presentation of a particular Successful Bid to the Court for approval does not constitute the Debtors’ acceptance of such Qualified Bid. The Debtors will be deemed to have accepted a Bid only when the Bid has been approved by the Court at the Sale/Confirmation

Hearing (as defined below) and in accordance with the Plan. The Debtors shall seek approval by the Court to consummate the Backup Bid, solely in the event the Successful Bidder fails to close the transaction as required and with all rights reserved against the Successful Bidder.

**XI. FREE AND CLEAR OF ANY AND ALL ENCUMBRANCES.**

Except as provided for in a Successful Bidder's Form Purchase Agreement, all rights, titles and interests in and to the Assets subject thereto shall be sold free and clear of all liens, claims, interests, and encumbrances (collectively, the "Encumbrances"), subject only to the Assumed Liabilities (as defined in the Successful Bidder's purchase agreement), if any, in accordance with Bankruptcy Code section 363(f), with such Encumbrances to attach to the net proceeds (if any) received by the Debtors from the Sale of the Assets in accordance with the Bankruptcy Code, applicable non-bankruptcy law and any prior orders of the Court.

**XII. DIP ORDERS.**

Notwithstanding anything to the contrary contained in these Bidding Procedures or otherwise: (i) the right of the DIP Agents to consent to the sale of any portion of their collateral, including, without limitation, any Assets, on terms and conditions acceptable to the DIP Agents, are hereby expressly reserved and not modified, waived or impaired in any way by these Bidding Procedures; (ii) unless otherwise ordered by the Court, all cash proceeds generated from the sale of any Assets shall be paid to the DIP Administrative Agent upon the closing of such sale for permanent application against the obligations owing by the Debtors under the DIP Documents in accordance with the terms and conditions of the DIP Order and the DIP Documents and thereafter, against the obligations owing by the Debtors under the Prepetition ABL Documents (to the extent any such obligations are still outstanding), in accordance with the terms and conditions of the Prepetition ABL Documents, until such time as all DIP Obligations and Prepetition ABL Obligations have been paid in full in cash in accordance with the terms and conditions of the DIP Documents, the DIP Order and the Prepetition ABL Documents, as applicable; and (iii) nothing in these Bidding Procedures shall amend, modify, or impair any provision of the DIP Order, or the rights of the Debtors or the DIP Agents or DIP Lenders thereunder.

**XIII. COMMISSIONS.**

The Debtors shall be under no obligation to pay commission to any agent(s), advisor(s), or broker(s), except, with respect to Guggenheim Securities, LLC ("Guggenheim"), as investment banker. All commissions, fees, or expenses for agents, other than Guggenheim, may be paid by bidders at such bidder's discretion. In no case shall any commissions, fees, or expenses be deducted from any proceeds derived from the Sale of the Assets or the agreed Successful Bid other than to the extent set forth in the Order.

**XIV. NOTICE PARTIES.**

The term "Notice Parties" as used in these Bidding Procedures shall mean:

- (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua Sussberg

([joshua.sussberg@kirkland.com](mailto:joshua.sussberg@kirkland.com)), Emily Geier ([emily.geier@kirkland.com](mailto:emily.geier@kirkland.com)), and AnnElyse Scarlett Gains ([annelyse.gains@kirkland.com](mailto:annelyse.gains@kirkland.com)) and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman ([josh.altman@kirkland.com](mailto:josh.altman@kirkland.com));

- (ii) proposed co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia, 23219, Attn: Michael Condyles ([michael.condyles@kutakrock.com](mailto:michael.condyles@kutakrock.com)), Peter Barrett ([peter.barrett@kutakrock.com](mailto:peter.barrett@kutakrock.com)), Jeremy Williams ([jeremy.williams@kutakrock.com](mailto:jeremy.williams@kutakrock.com)), and Brian Richardson ([brian.richardson@kutakrock.com](mailto:brian.richardson@kutakrock.com));
- (iii) the Debtors' proposed investment banker, Guggenheim Securities, LLC, 330 Madison Avenue, New York, New York 10017, Attn: Durc Savini ([durc.savini@guggenheimpartners.com](mailto:durc.savini@guggenheimpartners.com)), Adam Rifkin ([adam.rifkin@guggenheimpartners.com](mailto:adam.rifkin@guggenheimpartners.com)), Stuart Erickson ([stuart.erickson@guggenheimpartners.com](mailto:stuart.erickson@guggenheimpartners.com)), and Hend Abdallah ([hend.abdallah@guggenheimpartners.com](mailto:hend.abdallah@guggenheimpartners.com));
- (iv) co-counsel to the DIP Agents, Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Marjorie S. Crider ([Marjorie.crider@morganlewis.com](mailto:Marjorie.crider@morganlewis.com));
- (v) co-counsel to the DIP Agents, Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown ([tpbrown@huntonAK.com](mailto:tpbrown@huntonAK.com)) and Justin Paget ([jpaget@huntonAK.com](mailto:jpaget@huntonAK.com));
- (vi) co-counsel to the DIP Agents, Choate Hall & Stewart, Two International Place, Boston, MA 02110, Attn: Mark D. Silva ([msilva@choate.com](mailto:msilva@choate.com)), John F. Ventola ([jventola@choate.com](mailto:jventola@choate.com)), and Jonathan D. Marshall ([jmarshall@choate.com](mailto:jmarshall@choate.com));
- (vii) counsel to the Consenting Term Lenders, Brown Rudnick LLP, Seven Times Square, New York, New York 10036, Attn: Robert J. Stark ([rstark@brownrudnick.com](mailto:rstark@brownrudnick.com)), and Brown Rudnick LLP, One Financial Center, Boston, Massachusetts 02111, Attn: Sharon I. Dwoskin ([sdwoskin@brownrudnick.com](mailto:sdwoskin@brownrudnick.com)); and
- (viii) the U.S. Trustee.

## **XV. SALE/CONFIRMATION HEARING.**

A hearing to consider confirmation of a plan, including approval of the sale of the Debtors' Assets to the Successful Bidder(s), or Backup Bidder(s) (if applicable) (the "Sale/Confirmation Hearing") is currently scheduled to take place on **Thursday, April 23, 2020**, at [●], (prevailing Eastern Time), before the Honorable [●], at the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, 701 East Broad Street, Suite 4000, Richmond, Virginia 23219, or such other date and time that the Court may later direct and as agreed upon by the Debtors.

**The Sale/Confirmation Hearing may be continued to a later date by the Debtors (in consultation with the Consenting Term Lenders and the DIP Agents) by sending notice prior to, or making an announcement at, the Sale/Confirmation Hearing. No further notice of any such continuance will be required to be provided to any party.**

**XVI. RETURN OF DEPOSIT.**

The Deposit of the Successful Bidder shall be applied to the Purchase Price of such transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more accounts on terms acceptable to the Debtors in their sole discretion and shall be returned (other than with respect to the Successful Bidder and the Backup Bidder) on or before the date that is five business days after the Auction.

The Backup Bidder's Deposit shall be held in escrow until the closing of the Sale with the Successful Bidder. In the event the Successful Bidder fails to consummate the Sale Transaction(s) set forth in the Successful Bid and the Debtors opt to close on the Sale Transaction(s) set forth in the Backup Bid, the Backup Bidder's Deposit shall be applied to the Purchase Price of such transaction(s) at closing. In the event of a breach or failure to consummate a Sale by the Successful Bidder or the Backup Bidder, as applicable, the defaulting Successful Bidder's Deposit or Backup Bidder's Deposit, as applicable, shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available remedies against the defaulting Successful Bidder or Backup Bidder, as applicable.

**XVII. RESERVATION OF RIGHTS.**

The Debtors reserve their rights to modify these Bidding Procedures in their reasonable business judgment and upon consultation with the Consenting Term Lenders and the DIP Agents in any manner that will best promote the goals of the bidding process, or impose, at or prior to the conclusion of the Auction, additional customary terms and conditions on the sale of the Assets, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction and/or adjourning the Sale/Confirmation Hearing without further notice; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids.

**XVIII. CONSENT TO JURISDICTION.**

All Potential Bidders, Acceptable Bidders, and Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures, and/or the Bid Documents, as applicable.

**XIX. FIDUCIARY OUT.**

Nothing in these Bidding Procedures shall require the Debtors' (or any other debtors') management or board of directors to take any action or to refrain from taking any action with respect to these Bidding Procedures when the Debtors' management or board of directors (or other debtors' management or board of directors) determine, based on the advice of their

counsel, that taking such action or refraining from taking such action, as applicable, is required to comply with applicable law or their fiduciary obligations under applicable law.

**Exhibit 1**

**Form Purchase Agreement**

(Affixed to **Exhibit 1** to the Proposed Order)

**Exhibit C**

**Provision for Transfer Agreement**

The undersigned (“**Transferee**”) hereby acknowledges that it has read and understands the Plan Support Agreement, dated as of \_\_\_\_\_ (the “**Agreement**”),<sup>1</sup> by and among Pier 1 Imports, Inc. and its affiliates and subsidiaries bound thereto and the Consenting Term Lenders, including the transferor to the Transferee of any Term Loan Claims (each such transferor, a “**Transferor**”), and agrees to be bound by the terms and conditions thereof to the extent the Transferor was thereby bound, and shall be deemed a “Consenting Term Lender” under the terms of the Agreement.

The Transferee specifically agrees to be bound by the terms and conditions of the Agreement and makes all representations and warranties contained therein as of the date of the Transfer, including the agreement to be bound by the vote of the Transferor if such vote was cast before the effectiveness of the Transfer discussed herein.

Date Executed:

Signature: \_\_\_\_\_

Name:

Title:

Address:

E-mail address(es):

<i>Aggregate Amounts Beneficially Owned or Managed on Account of:</i>	
Term Loan	
Revolving Loan	
Equity Interests	

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall having the meaning ascribed to such terms in the Agreement.

**Exhibit C**

**Disclosure Statement Order**



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*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**ORDER (I) APPROVING THE ADEQUACY  
OF THE DISCLOSURE STATEMENT, (II) APPROVING  
THE SOLICITATION AND NOTICE PROCEDURES WITH  
RESPECT TO CONFIRMATION OF THE DEBTORS' PROPOSED  
JOINT CHAPTER 11 PLAN, (III) APPROVING THE FORMS OF BALLOTS  
AND NOTICES IN CONNECTION THEREWITH, (IV) SCHEDULING CERTAIN  
DATES WITH RESPECT THERETO, AND (V) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) pursuant to sections 105, 363, 1125, 1126, and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017, 3018, 3020 and Rules 2002-1 and 3016-1 of the Bankruptcy Local Rules for the Eastern District of Virginia (the “Local Bankruptcy Rules”), approving, (a) the adequacy of the *Disclosure Statement for the Amended Joint Chapter 11 Plan of Pier 1 Imports, Inc. and Its Debtor Affiliates* (the “Disclosure Statement”), (b) the Solicitation and Voting Procedures, (c) the Voting Record Date, Solicitation Deadline, and Voting Deadline (d) the manner and form of the Solicitation Packages and the materials contained therein, (e) the Plan Supplement Notice, (f) the Non-Voting Status Notices, (g) the form of notices to counterparties to Executory Contracts and Unexpired Leases that will be assumed or rejected pursuant to the Plan/Sale, (h) the Voting and Tabulation Procedures, (i) the Plan Objection Deadline, the Sale/Confirmation Hearing Date, the Sale/Confirmation Hearing Notice, and (j) certain dates and deadlines related thereto, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth in this Order.

**I. Approval of the Disclosure Statement.**

2. The Disclosure Statement, attached hereto as Schedule 1, is hereby approved as providing Holders of Claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan in accordance with section 1125(a)(1) of the Bankruptcy Code.

3. The Disclosure Statement (including all applicable exhibits thereto) provides Holders of Claims and Interests, and other parties in interest with sufficient notice of the injunction, exculpation, and release provisions contained in Article X of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

**II. Approval of the Solicitation and Voting Procedures.**

4. The Debtors are authorized to solicit, receive, and tabulate votes to accept the Plan in accordance with the Solicitation and Voting Procedures attached hereto as Schedule 2, which are hereby approved in their entirety.

**III. Approval of the Materials and Timeline for Soliciting Votes and the Procedures for Confirming the Plan.**

**A. Approval of Certain Dates and Deadlines with Respect to the Plan and Disclosure Statement.**

5. The following dates are hereby established (subject to modification as necessary) with respect to the solicitation of votes to accept, and voting on, the Plan as well as filing objections to the Plan and confirming the Plan, which includes approval of the Sale contemplated by the Bidding Procedures (all times prevailing Eastern Time):

Event	Date
Voting Record Date	June 16, 2020
Disclosure Statement Objection Deadline	June 19, 2020, at 4:00 p.m., prevailing Eastern Time
Disclosure Statement Hearing Date	June 23, 2020 at 2:00 p.m., prevailing Eastern Time
Solicitation Deadline	June 26, 2020 or as soon as reasonably possible thereafter
Publication Deadline	July 3, 2020 or as soon as reasonably possible thereafter
Voting Deadline	July 24, 2020, at 4:00 p.m., prevailing Eastern Time
Sale/Plan Objection Deadline	July 24, 2020, at 4:00 p.m., prevailing Eastern Time
Deadline to File Voting Report	July 27, 2020, at 5:00 p.m., prevailing Eastern Time
Deadline to File Confirmation Brief	July 28, 2020, at 4:00 p.m., prevailing Eastern Time
Sale/Plan Objection Response Deadline	July 28, 2020, at 4:00 p.m., prevailing Eastern Time
Sale/Confirmation Hearing Date	July 30, 2020, at 1:00 p.m., prevailing Eastern Time

**B. Approval of the Form of, and Distribution of, Solicitation Packages to Parties Entitled to Vote on the Plan.**

6. In addition to the Disclosure Statement and exhibits thereto, including the Plan and this Order (without exhibits, except the Solicitation Procedures), the Solicitation Packages to be transmitted on or before the Solicitation Deadline to those Holders of Claims in the Voting Classes entitled to vote on the Plan as of the Voting Record Date, shall include the following, the form of each of which is hereby approved:

- a. this Order (without exhibits except the Solicitation and Voting Procedures)
- b. an appropriate form of Ballot attached hereto as Schedule 3A and Schedule 3B respectively;<sup>3</sup>
- c. the Cover Letter attached hereto as Schedule 7; and
- d. the Sale/Confirmation Hearing Notice attached hereto as Schedule 8.

7. The Solicitation Packages provide the Holders of Claims entitled to vote on the Plan with adequate information to make informed decisions with respect to voting on the Plan in accordance with Bankruptcy Rules 2002(b) and 3017(d), the Bankruptcy Code, and the Local Bankruptcy Rules.

8. The Debtors shall distribute Solicitation Packages to all Holders of Claims entitled to vote on the Plan on or before the Solicitation Deadline. Such service shall satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

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<sup>3</sup> The Debtors will make every reasonable effort to ensure that any Holder of a Claim who has filed duplicate Claims against the Debtors (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class, receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class, regardless of whether the Debtors have objected to such duplicate Claims.

9. The Debtors are authorized, but not directed or required, to distribute the Plan and the Disclosure Statement to Holders of Claims entitled to vote on the Plan by providing instructions as part of the Solicitation Package for accessing these documents through the Debtors' restructuring website (<https://dm.epiq11.com/Pier1>), and if requested, a hard copy, flash drive, or CD-ROM within three (3) business days of receipt of such request.

10. On or before the Solicitation Deadline, the Debtors shall provide (a) complete Solicitation Packages (excluding the Ballots) to the U.S. Trustee and (b) the Disclosure Statement (and exhibits thereto, including the Plan) and this Order (both in electronic format), as well as Sale/Confirmation Hearing Notice to all parties on the 2002 List as of the Voting Record Date.

11. Any party that receives materials in electronic format, but would prefer to receive materials in paper format, may contact the Notice and Claims Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

12. The Notice and Claims Agent is authorized to assist the Debtors in (a) distributing the Solicitation Package, (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by Holders of Claims against the Debtors, (c) responding to inquiries from Holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, (d) soliciting votes on the Plan, and (e) if necessary, contacting creditors regarding the Plan.

13. The Notice and Claims Agent is also authorized to accept Ballots via electronic online transmission solely through a customized online balloting portal on the Debtors' case

website. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor's electronic signature will be deemed to be immediately legally valid and effective.

**C. Approval of the Sale/Confirmation Hearing Notice.**

14. The Sale/Confirmation Hearing Notice, in the form attached hereto as Schedule 8 filed by the Debtors and served upon parties in interest in the chapter 11 cases by June 26, 2020 (or as soon as reasonably practicable thereafter), constitutes adequate and sufficient notice of the hearings to consider approval of the Plan, the manner in which a copy of the Plan could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules. The Debtors shall publish the Sale/Confirmation Hearing Notice (in a format modified for publication) by July 3, 2020 (or as soon as reasonably practicable thereafter), in *USA Today* (national edition), and *The New York Times* (national edition).

**D. Approval of Notice of Filing of the Plan Supplement.**

15. The Debtors are authorized to send notice of the filing of the Plan Supplement, which will be filed and served no later than fourteen (14) days prior to the Voting Deadline, substantially in the form attached hereto as Schedule 9, on the date the Plan Supplement is filed pursuant to the terms of the Plan.

**E. Approval of the Form of Notices to Non-Voting Classes.**

16. Except to the extent the Debtors determine otherwise, the Debtors are not required to provide Solicitation Packages to Holders of Claims or Interests in Non-Voting Classes, as such Holders are not entitled to vote on the Plan. The Debtors shall mail each Holder of a Claim or Interest in the Non-Voting Classes a paper copy of the Non-Voting Status Notice by the

Solicitation Date; *provided, however*, that Holders of Class 8 Interests that have requested to receive notices with respect to such Interests from their bank, broker, or other nominee, or such firm’s agent, in electronic form only shall only receive electronic transmission of such notice, unless any such holder contacts the Notice and Claims Agent for a paper copy.

Class(es)	Status	Treatment
1, 2, 3, and 7	Unimpaired—Conclusively Presumed to Accept	Will receive a notice, substantially in the form attached to the Order as <u>Schedule 4</u> , in lieu of a Solicitation Package.
8 and 9	Impaired—Deemed to Reject	Will receive a notice, substantially in the form attached to the Order as <u>Schedule 5</u> , in lieu of a Solicitation Package.
N/A	Disputed Claims	Holders of Claims that are subject to a pending objection by the Debtors are not entitled to vote the disputed portion of their Claim. As such, Holders of such Claims will receive a notice, substantially in the form attached to the Order as <u>Schedule 6</u> (which notice shall be served together with such objection).

17. The Debtors will not provide the Holders of Class 6 Intercompany Claims with a Solicitation Package or any other type of notice in connection with solicitation.

18. The Debtors are not required to mail Solicitation Packages or other solicitation materials to: (a) Holders of Claims that have already been paid in full during the chapter 11 cases or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court; or (b) any party to whom the Disclosure Statement Hearing Notice was sent but was subsequently returned as undeliverable.

**F. Approval of Notices to Contract and Lease Counterparties.**

19. The Debtors are authorized to mail a notice of assumption or rejection of any Executory Contracts or Unexpired Leases (and any corresponding Cure Claims), in the forms attached hereto as Schedule 10 and Schedule 11 to the applicable counterparties to Executory



Contracts and Unexpired Leases that will be assumed or rejected pursuant to the Plan (as the case may be), within the time periods specified in the Plan.

**G. Approval of the Administrative/Priority Claim Consent Form Notice**

20. The Debtors are authorized to mail the Administrative/Priority Claim Consent Form Notice in the form attached hereto as Schedule 12, to all parties who filed Administrative Claims, all parties with whom the Debtors have transacted postpetition, and any other known holders of Administrative Claims. Parties who do not follow the procedures set forth thereon (or otherwise object to the Plan) will be deemed to consent to the treatment contemplated by the Plan on account of such party's Administrative and/or Priority Claims.

**H. Approval of the Procedures for Filing Objections to the Plan.**

21. Objections to the Plan will not be considered by the Court unless such objections are timely filed and properly served in accordance with this Order. Specifically, all objections to Confirmation of the Plan, which includes approval of the Sale contemplated by the Bidding Procedures, or requests for modifications to the Plan, if any, *must*: (a) be in writing; (b) conform to the Bankruptcy Rules and the Local Bankruptcy Rules; (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the notice parties identified in the Sale/Confirmation Hearing Notice.

**IV. Miscellaneous.**

22. The Debtors reserve the right to modify the Plan without further order of the Court in accordance with Article XII of the Plan, including the right to withdraw the Plan as to an individual Debtor at any time before the Sale/Confirmation Date.

23. Nothing in this Order shall be construed as a waiver of the right of the Debtors or any other party in interest, as applicable, to object to a proof of claim after the Voting Record Date.

24. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

25. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

26. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

27. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

28. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

29. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

30. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: Jun 24 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Jun 24 2020

**Schedule 2**

**Form of Solicitation and Voting Procedures**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

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**SOLICITATION AND VOTING PROCEDURES**

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**PLEASE TAKE NOTICE THAT** on June 24, 2020, the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”) entered an order (the “Disclosure Statement Order”): (a) authorizing Pier 1 Imports, Inc., and its affiliated debtors and debtors in possession (collectively, the “Debtors”), to solicit votes on the *Joint Chapter 11 Plan of Pier 1 Imports, Inc. and Its Debtor Affiliates* (as modified, amended, or supplemented from time to time, the “Plan”);<sup>2</sup> (b) approving the *Disclosure Statement for the Joint Chapter 11 Plan of Pier 1 Imports, Inc. and Its Debtor Affiliates* (the “Disclosure Statement”) as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

**A. The Voting Record Date.**

The Court has established **June 16, 2020**, as the record date for purposes of determining which Holders of Claims in Class 4 (Term Loan Claims) and Class 5 (General Unsecured Claims) are entitled to vote on the Plan (the “Voting Record Date”).

**B. The Voting Deadline.**

The Court has established **July 24, 2020, at 4:00 p.m.**, prevailing Eastern Time as the voting deadline (the “Voting Deadline”) for the Plan. The Debtors may extend the Voting Deadline, in their discretion, without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots (“Ballots”) must be properly executed, completed, and delivered by: (1) first class mail (using the reply envelope provided in the Solicitation Package or otherwise) to Pier 1 Ballot Processing, c/o Epiq Corporate Restructuring, LLC, 10300 SW Allen Boulevard, Beaverton, OR 97005; (2) overnight courier to Pier 1 Ballot Processing, c/o Epiq Corporate Restructuring, LLC, 10300 SW Allen Boulevard, Beaverton, OR 97005; (3) personal delivery; or (4) the online electronic ballot portal so that they are **actually received**, in any case, no later than the Voting Deadline by the Notice and Claims Agent. Delivery of a Ballot to the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Plan.

Notice and Claims Agent by facsimile or any other electronic means (other than as expressly provide herein) shall not be valid.

**C. Form, Content, and Manner of Notices.**

**1. The Solicitation Package.**

The following materials shall constitute the solicitation package (the “Solicitation Package”):

- a. the Disclosure Statement Order (without exhibits except these Solicitation and Voting Procedures);
- b. the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan, Including Approval of the Sale Contemplated by the Bidding Procedures, Filed By the Debtors and Related Voting and Objection Procedures*, in substantially the form annexed as Schedule 8 to the Disclosure Statement Order (the “Sale/Confirmation Hearing Notice”);
- c. a cover letter, in substantially the form annexed as Schedule 7 to the Disclosure Statement Order, describing the contents of the Solicitation Package and urging the Holders of Claims in the Voting Classes to vote to accept the Plan;
- d. the applicable form of Ballot, in substantially the form of the Ballot annexed as Schedule 3A and Schedule 3B to the Disclosure Statement Order, as applicable;
- e. a pre-addressed, postage pre-paid reply envelope; and
- f. any additional documents that the Court has ordered to be made available.

**2. Distribution of the Solicitation Package.**

The Solicitation Package shall provide instructions for accessing the Plan, the Disclosure Statement, and the Disclosure Statement Order electronically on the Debtors’ restructuring website: <https://dm.epiq11.com/Pier1>. Any party that receives the materials in electronic format but would prefer paper format or alternative electronic format may contact Epiq Corporate Restructuring, LLC (the “Notice and Claims Agent”) by: (a) calling the Debtors’ restructuring hotline at (866) 977-0883 (toll free) or (503) 520-4412 (international); (b) visiting the Debtors’ restructuring website at: <https://dm.epiq11.com/Pier1>; (c) writing to Pier 1 Ballot Processing, c/o Epiq Corporate Restructuring, LLC, Epiq Corporate Restructuring, LLC, 10300 SW Allen Boulevard, Beaverton, OR 97005; and/or (d) emailing [Tabulation@epiqglobal.com](mailto:Tabulation@epiqglobal.com) (please reference “Pier 1” in the subject line) and requesting paper copies, a hard drive, or a CD-ROM of the corresponding materials (to be provided at the Debtors’ expense).

The Debtors shall serve, or cause to be served, all of the materials in the Solicitation Package (excluding the Ballots) on the U.S. Trustee and all parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 as of the Voting Record Date. In addition, the Debtors shall mail, or cause to be mailed, the Solicitation Package to all Holders of Claims in the Voting Classes who are entitled to vote, as described in section D below, by June 26, 2020 (or as soon as reasonably practicable thereafter).

To avoid duplication and reduce expenses, the Debtors will make reasonable effort to ensure that any Holder of a Claim who has filed duplicative Claims against a Debtor (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one

Solicitation Package (and, therefore, one Ballot) on account of such Claim or Interest and with respect to that Class as against that Debtor.

**3. Resolution of Disputed Claims for Voting Purposes; Resolution Event.**

- a. Absent a further order of the Court, the Holder of a Claim in a Voting Class that is the subject of a pending objection on a “reduce and allow” basis shall be entitled to vote such Claim in the reduced amount contained in such objection.
- b. If a Claim in a Voting Class is subject to an objection other than a “reduce and allow” objection that is filed with the Court on or prior to seven days before the Voting Deadline: (i) the Debtors shall cause the applicable Holder to be served with a Disputed Claim Notice substantially in the form annexed as Schedule 6 to the Disclosure Statement Order (which notice shall be served together with such objection); and (ii) the applicable Holder shall not be entitled to vote to accept or reject the Plan on account of such claim unless a Resolution Event (as defined herein) occurs as provided herein.
- c. If a Claim in a Voting Class is subject to an objection other than a “reduce and allow” objection that is filed with the Court less than seven days prior to the Voting Deadline, the applicable Claim shall be deemed temporarily allowed for voting purposes only, without further action by the Holder of such Claim and without further order of the Court, unless the Court orders otherwise.
- d. A “Resolution Event” means the occurrence of one or more of the following events no later than two business days prior to the Voting Deadline:
  - i. an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
  - ii. an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
  - iii. a stipulation or other agreement is executed between the Holder of such Claim and the Debtors resolving the objection and allowing such Claim in an agreed upon amount; or
  - iv. the pending objection is voluntarily withdrawn by the objecting party.
- e. No later than one business day following the occurrence of a Resolution Event, the Debtors shall cause the Notice and Claims Agent to distribute via email, first-class mail, hand delivery, or overnight courier service a Solicitation Package (with instructions to access the website for electronic balloting) and a pre-addressed, postage pre-paid envelope to the relevant Holder to the extent such Holder has not already received a Solicitation Package containing a Ballot.

**4. Non-Voting Status Notices for Unimpaired Classes and Classes Deemed to Reject the Plan.**

Certain Holders of Claims and Interests that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are Unimpaired or otherwise presumed

to accept the Plan under section 1126(f) of the Bankruptcy Code will receive only the *Non-Voting Status Notice for Unimpaired Claims Conclusively Presumed to Accept the Plan*, substantially in the form annexed as Schedule 4 to the Disclosure Statement Order. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots). Certain Holders of Claims and Interests who are not entitled to vote because they are deemed to reject the Plan under section 1126(g) of the Bankruptcy Code will receive the *Non-Voting Status Notice to Holders of Impaired Claims and Equity Interests Deemed to Reject the Plan*, substantially in the form annexed as Schedule 5 to the Disclosure Statement Order. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots). In addition, Holders of Claims and Interests in the classes deemed to reject the Plan will also receive the Disclosure Statement (together with the Plan attached as Exhibit A thereto).

**5. Notices in Respect of Executory Contracts and Unexpired Leases.**

Counterparties to Executory Contracts and Unexpired Leases that receive an *Assumption Notice* or a *Rejection Notice*, substantially in the forms attached as Schedule 10 and Schedule 11 to the Disclosure Statement Order, respectively, may file an objection to the Debtors' proposed assumption, rejection, and/or cure amount, as applicable. Such objections must be *actually received* by the Notice and Claims Agent by **July 24, 2020, at 4:00 p.m.**, prevailing Eastern Time.

**D. Voting and Tabulation Procedures.**

**1. Holders of Claims Entitled to Vote.**

Only the following Holders of Claims in the Voting Classes shall be entitled to vote with regard to such Claims:

- a. Holders of Claims who, on or before the Voting Record Date, have timely filed a Proof of Claim that (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date; and (ii) is not the subject of a pending objection, other than a "reduce and allow" objection, filed with the Court at least seven days prior to the Voting Deadline, pending a Resolution Event as provided herein; *provided* that a Holder of a Claim that is the subject of a pending objection on a "reduce and allow" basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection absent a further order of the Court;
- b. Holders of Claims that are listed in the Schedules; *provided* that, to the extent the applicable Claims Bar Date has not yet expired prior to the Voting Record Date, Claims that are scheduled for \$0.00, or as contingent, unliquidated, or disputed (excluding such scheduled disputed, contingent, or unliquidated Claims that have been paid or superseded by a timely Filed Proof of Claim), shall be allowed to vote only in the amount of \$1.00;
- c. Holders whose Claims arise (i) pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Court, (ii) in an order entered by the Court, or (iii) in a document executed by the Debtors pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed;
- d. Holders of any Disputed Claim that has been temporarily allowed to vote on the Plan pursuant to Bankruptcy Rule 3018; and

- e. the assignee of any Claim that was transferred on or before the Voting Record Date by any Entity described in subparagraphs (a) through (d) above; *provided* that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register on the Voting Record Date.

**2. Establishing Claim Amounts for Voting Purposes.**

**Class 4 Claims.** The Claims amount of Class 4 Claims for voting purposes only will be established based on the amount of the applicable positions held by such Class 4 Claim Holder, as applicable, as of the Voting Record Date, as evidenced by the applicable records provided by the Term Loan Agent in electronic Microsoft Excel format to the Debtors or the Notice and Claims Agent no later than one (1) business day following the Voting Record Date.

**Class 5 Claims.** The Claims amount of Class 5 Claims for voting purposes only will be established based on the amount of the applicable positions held by such Class 5 Claim holder as of the Voting Record Date, as evidenced by (a) the Schedules and (b) the claims register maintained in these chapter 11 cases. Proofs of Claim filed for \$0.00 are not entitled to vote.

If a Proof of Claim is amended, the last filed claim shall be subject to these rules and will supersede any earlier filed claim, and any earlier filed claim will be disallowed for voting purposes. Except as otherwise ordered by the Court, any amendments to Proofs of Claim after the Voting Record Date shall not be considered for purposes of these tabulation rules.

**Filed and Scheduled Claims.** The Claim amount established herein shall control for voting purposes only and shall not constitute the Allowed amount of any Claim. Moreover, any amounts filled in on Ballots by the Debtors through the Notice and Claims Agent, as applicable, are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy shall be used to determine the amount of the Claim associated with each claimant's vote:

- a. the Claim amount (i) settled and/or agreed upon by the Debtors, as reflected in a document filed with the Court, (ii) set forth in an order of the Court, or (iii) set forth in a document executed by the Debtors pursuant to authority granted by the Court;
- b. the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event under section C.3(d) of these Solicitation and Voting Procedures;
- c. the Claim amount contained in a Proof of Claim that has been timely filed by the applicable Claims Bar Date (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; *provided, however*, that any Ballot cast by a Holder of a Claim who timely files a Proof of Claim in respect of (i) a contingent Claim or a Claim in a wholly-unliquidated or unknown amount (based on a reasonable review by the Debtors and/or the Notice and Claims Agent) that is not the subject of an objection will count toward satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as a Ballot for a Claim in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and (ii) a partially liquidated and partially unliquidated Claim, such Claim will be Allowed for voting purposes only in the liquidated amount; *provided further, however*, that to the extent the Claim amount contained in the Proof of Claim is different from the Claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the Claim



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)

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**SOLICITATION AND VOTING PROCEDURES**

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**PLEASE TAKE NOTICE THAT** on [●], 2020, the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”) entered an order (the “Disclosure Statement Order”): (a) authorizing Pier 1 Imports, Inc., and its affiliated debtors and debtors in possession (collectively, the “Debtors”), to solicit votes on the *Joint Chapter 11 Plan of Pier 1 Imports, Inc. and Its Debtor Affiliates* (as modified, amended, or supplemented from time to time, the “Plan”);<sup>2</sup> (b) approving the *Disclosure Statement for the Joint Chapter 11 Plan of Pier 1 Imports, Inc. and Its Debtor Affiliates* (the “Disclosure Statement”) as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

**A. The Voting Record Date.**

The Court has established **June 16, 2020**, as the record date for purposes of determining which Holders of Claims in Class 4 (Term Loan Claims) and Class 5 (General Unsecured Claims) are entitled to vote on the Plan (the “Voting Record Date”).

**B. The Voting Deadline.**

The Court has established **July 24, 2020, at 4:00 p.m.**, prevailing Eastern Time as the voting deadline (the “Voting Deadline”) for the Plan. The Debtors may extend the Voting Deadline, in their discretion, without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots (“Ballots”) must be properly executed, completed, and delivered by: (1) first class mail (using the reply envelope provided in the Solicitation Package or otherwise) to Pier 1 Ballot Processing, c/o Epiq Corporate Restructuring, LLC, 10300 SW Allen Boulevard, Beaverton, OR 97005; (2) overnight courier to Pier 1 Ballot Processing, c/o Epiq Corporate Restructuring, LLC, 10300 SW Allen Boulevard, Beaverton, OR 97005; (3) personal delivery; or (4) the online electronic ballot portal so that they are *actually received*, in any case, no later than the Voting Deadline by the Notice and Claims Agent. Delivery of a Ballot to the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Plan.

amount in the document filed with the Court shall supersede the Claim amount set forth on the respective Proof of Claim for voting purposes;

- d. the Claim amount listed in the Schedules (to the extent such Claim is not superseded by a timely filed Proof of Claim); *provided* that such Claim is not scheduled for \$0.00, or as contingent, disputed, or unliquidated and/or has not been paid; *provided, however*, that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules for \$0.00, or as contingent, disputed, or unliquidated, shall vote at \$1.00; and
- e. in the absence of any of the foregoing, such Claim shall be disallowed for voting purposes.

### **3. Voting and Ballot Tabulation Procedures.**

The following voting procedures and standard assumptions shall be used in tabulating Ballots, subject to the Debtors' right to waive any of the below specified requirements for completion and submission of Ballots so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Bankruptcy Rules:

- a. except as otherwise provided in the Solicitation and Voting Procedures, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the Debtors), the Debtors shall reject such Ballot as invalid and, therefore, shall not count it in connection with Confirmation of the Plan, which includes approval of the Sale contemplated by the Bidding Procedures;
- b. the Notice and Claims Agent will date-stamp all Ballots when received. The Notice and Claims Agent shall retain the original Ballots and an electronic copy of the same for a period of one year after the Effective Date of the Plan, unless otherwise ordered by the Court. The Notice and Claims Agent shall tabulate Ballots on a Debtor-by-Debtor basis;
- c. consistent with the requirements of Local Bankruptcy Rule 3016-1, the Debtors will file with the Court by no later than July 27, 2020, at 5:00 p.m., prevailing Eastern Time a voting report (the "Voting Report"). The Voting Report shall, among other things, delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile or damaged (collectively, in each case, the "Irregular Ballots"). The Voting Report shall indicate the Debtors' intentions with regard to each Irregular Ballot;
- d. the method of delivery of Ballots to be sent to the Notice and Claims Agent is at the election and risk of each Holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Notice and Claims Agent actually receives the executed Ballot;
- e. an executed Ballot is required to be submitted by the Entity submitting such Ballot (except with respect to Master Ballots submitted by Nominees). Delivery of a Ballot to the Notice and Claims Agent by facsimile, or any electronic means other

than as expressly approved by the Disclosure Statement Order or these Solicitation Procedures will not be valid;<sup>3</sup>

- f. no Ballot should be sent to the Debtors, the Debtors' agents (other than the Notice and Claims Agent), the Debtors' financial or legal advisors, and if so sent will not be counted;
- g. if multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that Holder's intent and will supersede and revoke any prior received Ballot;
- h. Holders must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims within the same Class, the applicable Debtor may, in its discretion, aggregate the Claims of any particular Holder within a Class for the purpose of counting votes;
- i. a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a Holder of Claims must indicate such capacity when signing, and if requested by the Notice and Claims Agent, the Debtors, or the Court, must submit proper evidence to the requesting party to so act on behalf of such Holder;
- j. the Debtors, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report;
- k. neither the Debtors, nor any other Entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;
- l. unless waived or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;
- m. in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected;

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<sup>3</sup> For the avoidance of doubt, a Ballot may be submitted via the online electronic ballot portal and, solely for the Nominees, via electronic mail to the Notice and Claims Agent at [Tabulation@epiqglobal.com](mailto:Tabulation@epiqglobal.com) (please reference "Pier 1" in the subject line).

- n. subject to any order of the Court, the Debtors reserve the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the Debtors, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; *provided* that any such rejections will be documented in the Voting Report;
- o. if a Claim has been estimated or otherwise Allowed only for voting purposes by order of the Court, such Claim shall be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- p. if an objection to a Claim is filed, such Claim shall be treated in accordance with the procedures set forth herein;
- q. the following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the Holder of such Claim; (ii) any Ballot cast by any Entity that does not hold a Claim in a Voting Class; (iii) any Ballot cast for a Claim scheduled for \$0.00, or as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed by the Voting Record Date (unless the applicable bar date has not yet passed, in which case such Claim shall be entitled to vote in the amount of \$1.00); (iv) any unsigned Ballot or Ballot lacking an original signature (for the avoidance of doubt, a Ballot submitted via the Notice and Claims Agent online balloting portal shall be deemed an original signature); (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (vi) any Ballot submitted by any Entity not entitled to vote pursuant to the procedures described herein;
- r. after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Debtors;
- s. the Debtors are authorized to enter into stipulations with the Holder of any Claim agreeing to the amount of a Claim for voting purposes; and
- t. where any portion of a single Claim has been transferred to a transferee, all Holders of any portion of such single Claim will be (i) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other voting and solicitation procedures set forth herein), and (ii) required to vote every portion of such Claim collectively to accept or reject the Plan. In the event that (i) a Ballot, (ii) a group of Ballots within a Voting Class received from a single creditor, or (iii) a group of Ballots received from the various Holders of multiple portions of a single Claim partially reject and partially accept the Plan, such Ballots shall not be counted.

**E. Amendments to the Plan and Solicitation and Voting Procedures.**

The Debtors reserve the right to make non-substantive or immaterial changes to the Disclosure Statement, Plan, Ballots, Sale/Confirmation Hearing Notice, and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors, if any, and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Package before their distribution.

Notice and Claims Agent by facsimile or any other electronic means (other than as expressly provide herein) shall not be valid.

**C. Form, Content, and Manner of Notices.**

**1. The Solicitation Package.**

The following materials shall constitute the solicitation package (the “Solicitation Package”):

- a. the Disclosure Statement Order (without exhibits except these Solicitation and Voting Procedures);
- b. the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan, Including Approval of the Sale Contemplated by the Bidding Procedures, Filed By the Debtors and Related Voting and Objection Procedures*, in substantially the form annexed as Schedule 8 to the Disclosure Statement Order (the “Sale/Confirmation Hearing Notice”);
- c. a cover letter, in substantially the form annexed as Schedule 7 to the Disclosure Statement Order, describing the contents of the Solicitation Package and urging the Holders of Claims in the Voting Classes to vote to accept the Plan;
- d. the applicable form of Ballot, in substantially the form of the Ballot annexed as Schedule 3A and Schedule 3B to the Disclosure Statement Order, as applicable;
- e. a pre-addressed, postage pre-paid reply envelope; and
- f. any additional documents that the Court has ordered to be made available.

**2. Distribution of the Solicitation Package.**

The Solicitation Package shall provide instructions for accessing the Plan, the Disclosure Statement, and the Disclosure Statement Order electronically on the Debtors’ restructuring website: <https://dm.epiq11.com/Pier1>. Any party that receives the materials in electronic format but would prefer paper format or alternative electronic format may contact Epiq Corporate Restructuring, LLC (the “Notice and Claims Agent”) by: (a) calling the Debtors’ restructuring hotline at (866) 977-0883 (toll free) or (503) 520-4412 (international); (b) visiting the Debtors’ restructuring website at: <https://dm.epiq11.com/Pier1>; (c) writing to Pier 1 Ballot Processing, c/o Epiq Corporate Restructuring, LLC, Epiq Corporate Restructuring, LLC, 10300 SW Allen Boulevard, Beaverton, OR 97005; and/or (d) emailing [Tabulation@epiqglobal.com](mailto:Tabulation@epiqglobal.com) (please reference “Pier 1” in the subject line) and requesting paper copies, a hard drive, or a CD-ROM of the corresponding materials (to be provided at the Debtors’ expense).

The Debtors shall serve, or cause to be served, all of the materials in the Solicitation Package (excluding the Ballots) on the U.S. Trustee and all parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 as of the Voting Record Date. In addition, the Debtors shall mail, or cause to be mailed, the Solicitation Package to all Holders of Claims in the Voting Classes who are entitled to vote, as described in section D below, by June 26, 2020 (or as soon as reasonably practicable thereafter).

To avoid duplication and reduce expenses, the Debtors will make reasonable effort to ensure that any Holder of a Claim who has filed duplicative Claims against a Debtor (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one

Solicitation Package (and, therefore, one Ballot) on account of such Claim or Interest and with respect to that Class as against that Debtor.

**3. Resolution of Disputed Claims for Voting Purposes; Resolution Event.**

- a. Absent a further order of the Court, the Holder of a Claim in a Voting Class that is the subject of a pending objection on a “reduce and allow” basis shall be entitled to vote such Claim in the reduced amount contained in such objection.
- b. If a Claim in a Voting Class is subject to an objection other than a “reduce and allow” objection that is filed with the Court on or prior to seven days before the Voting Deadline: (i) the Debtors shall cause the applicable Holder to be served with a Disputed Claim Notice substantially in the form annexed as Schedule 6 to the Disclosure Statement Order (which notice shall be served together with such objection); and (ii) the applicable Holder shall not be entitled to vote to accept or reject the Plan on account of such claim unless a Resolution Event (as defined herein) occurs as provided herein.
- c. If a Claim in a Voting Class is subject to an objection other than a “reduce and allow” objection that is filed with the Court less than seven days prior to the Voting Deadline, the applicable Claim shall be deemed temporarily allowed for voting purposes only, without further action by the Holder of such Claim and without further order of the Court, unless the Court orders otherwise.
- d. A “Resolution Event” means the occurrence of one or more of the following events no later than two business days prior to the Voting Deadline:
  - i. an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
  - ii. an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
  - iii. a stipulation or other agreement is executed between the Holder of such Claim and the Debtors resolving the objection and allowing such Claim in an agreed upon amount; or
  - iv. the pending objection is voluntarily withdrawn by the objecting party.
- e. No later than one business day following the occurrence of a Resolution Event, the Debtors shall cause the Notice and Claims Agent to distribute via email, first-class mail, hand delivery, or overnight courier service a Solicitation Package (with instructions to access the website for electronic balloting) and a pre-addressed, postage pre-paid envelope to the relevant Holder to the extent such Holder has not already received a Solicitation Package containing a Ballot.

**4. Non-Voting Status Notices for Unimpaired Classes and Classes Deemed to Reject the Plan.**

Certain Holders of Claims and Interests that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are Unimpaired or otherwise presumed

to accept the Plan under section 1126(f) of the Bankruptcy Code will receive only the *Non-Voting Status Notice for Unimpaired Claims Conclusively Presumed to Accept the Plan*, substantially in the form annexed as Schedule 4 to the Disclosure Statement Order. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots). Certain Holders of Claims and Interests who are not entitled to vote because they are deemed to reject the Plan under section 1126(g) of the Bankruptcy Code will receive the *Non-Voting Status Notice to Holders of Impaired Claims and Equity Interests Deemed to Reject the Plan*, substantially in the form annexed as Schedule 5 to the Disclosure Statement Order. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots). In addition, Holders of Claims and Interests in the classes deemed to reject the Plan will also receive the Disclosure Statement (together with the Plan attached as Exhibit A thereto).

**5. Notices in Respect of Executory Contracts and Unexpired Leases.**

Counterparties to Executory Contracts and Unexpired Leases that receive an *Assumption Notice* or a *Rejection Notice*, substantially in the forms attached as Schedule 10 and Schedule 11 to the Disclosure Statement Order, respectively, may file an objection to the Debtors' proposed assumption, rejection, and/or cure amount, as applicable. Such objections must be **actually received** by the Notice and Claims Agent by **July 24, 2020, at 4:00 p.m.**, prevailing Eastern Time.

**D. Voting and Tabulation Procedures.**

**1. Holders of Claims Entitled to Vote.**

Only the following Holders of Claims in the Voting Classes shall be entitled to vote with regard to such Claims:

- a. Holders of Claims who, on or before the Voting Record Date, have timely filed a Proof of Claim that (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date; and (ii) is not the subject of a pending objection, other than a "reduce and allow" objection, filed with the Court at least seven days prior to the Voting Deadline, pending a Resolution Event as provided herein; *provided* that a Holder of a Claim that is the subject of a pending objection on a "reduce and allow" basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection absent a further order of the Court;
- b. Holders of Claims that are listed in the Schedules; *provided* that, to the extent the applicable Claims Bar Date has not yet expired prior to the Voting Record Date, Claims that are scheduled for \$0.00, or as contingent, unliquidated, or disputed (excluding such scheduled disputed, contingent, or unliquidated Claims that have been paid or superseded by a timely Filed Proof of Claim), shall be allowed to vote only in the amount of \$1.00;
- c. Holders whose Claims arise (i) pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Court, (ii) in an order entered by the Court, or (iii) in a document executed by the Debtors pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed;
- d. Holders of any Disputed Claim that has been temporarily allowed to vote on the Plan pursuant to Bankruptcy Rule 3018; and

- e. the assignee of any Claim that was transferred on or before the Voting Record Date by any Entity described in subparagraphs (a) through (d) above; *provided* that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register on the Voting Record Date.

## **2. Establishing Claim Amounts for Voting Purposes.**

**Class 4 Claims.** The Claims amount of Class 4 Claims for voting purposes only will be established based on the amount of the applicable positions held by such Class 4 Claim Holder, as applicable, as of the Voting Record Date, as evidenced by the applicable records provided by the Term Loan Agent in electronic Microsoft Excel format to the Debtors or the Notice and Claims Agent no later than one (1) business day following the Voting Record Date.

**Class 5 Claims.** The Claims amount of Class 5 Claims for voting purposes only will be established based on the amount of the applicable positions held by such Class 5 Claim holder as of the Voting Record Date, as evidenced by (a) the Schedules and (b) the claims register maintained in these chapter 11 cases. Proofs of Claim filed for \$0.00 are not entitled to vote.

If a Proof of Claim is amended, the last filed claim shall be subject to these rules and will supersede any earlier filed claim, and any earlier filed claim will be disallowed for voting purposes. Except as otherwise ordered by the Court, any amendments to Proofs of Claim after the Voting Record Date shall not be considered for purposes of these tabulation rules.

**Filed and Scheduled Claims.** The Claim amount established herein shall control for voting purposes only and shall not constitute the Allowed amount of any Claim. Moreover, any amounts filled in on Ballots by the Debtors through the Notice and Claims Agent, as applicable, are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy shall be used to determine the amount of the Claim associated with each claimant's vote:

- a. the Claim amount (i) settled and/or agreed upon by the Debtors, as reflected in a document filed with the Court, (ii) set forth in an order of the Court, or (iii) set forth in a document executed by the Debtors pursuant to authority granted by the Court;
- b. the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event under section C.3(d) of these Solicitation and Voting Procedures;
- c. the Claim amount contained in a Proof of Claim that has been timely filed by the applicable Claims Bar Date (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; *provided, however*, that any Ballot cast by a Holder of a Claim who timely files a Proof of Claim in respect of (i) a contingent Claim or a Claim in a wholly-unliquidated or unknown amount (based on a reasonable review by the Debtors and/or the Notice and Claims Agent) that is not the subject of an objection will count toward satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as a Ballot for a Claim in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and (ii) a partially liquidated and partially unliquidated Claim, such Claim will be Allowed for voting purposes only in the liquidated amount; *provided further, however*, that to the extent the Claim amount contained in the Proof of Claim is different from the Claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the Claim



amount in the document filed with the Court shall supersede the Claim amount set forth on the respective Proof of Claim for voting purposes;

- d. the Claim amount listed in the Schedules (to the extent such Claim is not superseded by a timely filed Proof of Claim); *provided* that such Claim is not scheduled for \$0.00, or as contingent, disputed, or unliquidated and/or has not been paid; *provided, however*, that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules for \$0.00, or as contingent, disputed, or unliquidated, shall vote at \$1.00; and
- e. in the absence of any of the foregoing, such Claim shall be disallowed for voting purposes.

### **3. Voting and Ballot Tabulation Procedures.**

The following voting procedures and standard assumptions shall be used in tabulating Ballots, subject to the Debtors' right to waive any of the below specified requirements for completion and submission of Ballots so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Bankruptcy Rules:

- a. except as otherwise provided in the Solicitation and Voting Procedures, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the Debtors), the Debtors shall reject such Ballot as invalid and, therefore, shall not count it in connection with Confirmation of the Plan, which includes approval of the Sale contemplated by the Bidding Procedures;
- b. the Notice and Claims Agent will date-stamp all Ballots when received. The Notice and Claims Agent shall retain the original Ballots and an electronic copy of the same for a period of one year after the Effective Date of the Plan, unless otherwise ordered by the Court. The Notice and Claims Agent shall tabulate Ballots on a Debtor-by-Debtor basis;
- c. consistent with the requirements of Local Bankruptcy Rule 3016-1, the Debtors will file with the Court by no later than July 27, 2020, at 5:00 p.m., prevailing Eastern Time a voting report (the "Voting Report"). The Voting Report shall, among other things, delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile or damaged (collectively, in each case, the "Irregular Ballots"). The Voting Report shall indicate the Debtors' intentions with regard to each Irregular Ballot;
- d. the method of delivery of Ballots to be sent to the Notice and Claims Agent is at the election and risk of each Holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Notice and Claims Agent actually receives the executed Ballot;
- e. an executed Ballot is required to be submitted by the Entity submitting such Ballot (except with respect to Master Ballots submitted by Nominees). Delivery of a Ballot to the Notice and Claims Agent by facsimile, or any electronic means other

than as expressly approved by the Disclosure Statement Order or these Solicitation Procedures will not be valid;<sup>3</sup>

- f. no Ballot should be sent to the Debtors, the Debtors' agents (other than the Notice and Claims Agent), the Debtors' financial or legal advisors, and if so sent will not be counted;
- g. if multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that Holder's intent and will supersede and revoke any prior received Ballot;
- h. Holders must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims within the same Class, the applicable Debtor may, in its discretion, aggregate the Claims of any particular Holder within a Class for the purpose of counting votes;
- i. a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a Holder of Claims must indicate such capacity when signing, and if requested by the Notice and Claims Agent, the Debtors, or the Court, must submit proper evidence to the requesting party to so act on behalf of such Holder;
- j. the Debtors, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report;
- k. neither the Debtors, nor any other Entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;
- l. unless waived or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;
- m. in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected;

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<sup>3</sup> For the avoidance of doubt, a Ballot may be submitted via the online electronic ballot portal and, solely for the Nominees, via electronic mail to the Notice and Claims Agent at [Tabulation@epiqglobal.com](mailto:Tabulation@epiqglobal.com) (please reference "Pier 1" in the subject line).

- n. subject to any order of the Court, the Debtors reserve the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the Debtors, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; *provided* that any such rejections will be documented in the Voting Report;
- o. if a Claim has been estimated or otherwise Allowed only for voting purposes by order of the Court, such Claim shall be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- p. if an objection to a Claim is filed, such Claim shall be treated in accordance with the procedures set forth herein;
- q. the following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the Holder of such Claim; (ii) any Ballot cast by any Entity that does not hold a Claim in a Voting Class; (iii) any Ballot cast for a Claim scheduled for \$0.00, or as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed by the Voting Record Date (unless the applicable bar date has not yet passed, in which case such Claim shall be entitled to vote in the amount of \$1.00); (iv) any unsigned Ballot or Ballot lacking an original signature (for the avoidance of doubt, a Ballot submitted via the Notice and Claims Agent online balloting portal shall be deemed an original signature); (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (vi) any Ballot submitted by any Entity not entitled to vote pursuant to the procedures described herein;
- r. after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Debtors;
- s. the Debtors are authorized to enter into stipulations with the Holder of any Claim agreeing to the amount of a Claim for voting purposes; and
- t. where any portion of a single Claim has been transferred to a transferee, all Holders of any portion of such single Claim will be (i) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other voting and solicitation procedures set forth herein), and (ii) required to vote every portion of such Claim collectively to accept or reject the Plan. In the event that (i) a Ballot, (ii) a group of Ballots within a Voting Class received from a single creditor, or (iii) a group of Ballots received from the various Holders of multiple portions of a single Claim partially reject and partially accept the Plan, such Ballots shall not be counted.

**E. Amendments to the Plan and Solicitation and Voting Procedures.**

The Debtors reserve the right to make non-substantive or immaterial changes to the Disclosure Statement, Plan, Ballots, Sale/Confirmation Hearing Notice, and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors, if any, and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Package before their distribution.