

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY
<i>Caption in Compliance with D.N.J. LBR 9004-1(b)</i>
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In re: ALUMINUM SHAPES, L.L.C., Debtor.

Chapter 11

Case No. 21-16520-JNP

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS PLAN OF
LIQUIDATION**

Dated: May 6, 2022

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME	1
1.1 Defined Terms	1
1.2 Rules of Interpretation, Computation of Time, and Exhibits.....	1
1.2.1 Rules of Interpretation	1
1.2.2 Computation of Time	2
1.2.3 Exhibits.....	2
ARTICLE II CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS.....	2
2.1 Unclassified Claims.....	2
2.1.1 Payment of Administrative Claims	2
2.1.2 Payment of Priority Tax Claims	3
2.2 Classified Claims.....	4
2.2.1 Other Priority Claims (Class 1) – Unimpaired.	4
2.2.2 Other Secured Claims (Class 2) – Impaired.	4
2.2.3 General Unsecured Claims (Class 3) – Impaired.	5
2.2.4 General Unsecured Workers’ Compensation Claims (Class 4) – Impaired.....	5
2.2.5 United States of America Damage Claim (Class 5) – Impaired.	5
2.2.6 United States of America Penalty Claim (Class 6) – Impaired.....	5
2.2.7 Interests (Class 7) – Impaired.....	6
2.3 Special Provisions Relating to the Rights of Setoff of Creditors.....	6
ARTICLE III MEANS FOR IMPLEMENTATION OF THE PLAN.....	6
3.1 Wind Down of the Debtor and Summary of Division of Assets	6
3.2 Liquidating Trust	6
3.2.1 Liquidating Trust Generally	6
3.2.2 Funding of and Transfer of Assets into the Liquidating Trust.....	7
3.2.3 Liquidating Trustee and Trust Advisory Committee.....	8
3.2.4 Liquidating Trust Agreement	8
3.2.5 Reports to be Filed by the Liquidating Trustee.....	9
3.2.6 Fees and Expenses of the Liquidating Trust	9
3.2.7 Indemnification	9
3.2.8 Tax Treatment	9
3.2.9 Disposition of Assets by the Liquidating Trustee	10
3.2.10 Settlement of Causes of Actions and Disputed Claims	10
3.2.11 Preservation of Causes of Action	11
3.2.12 Privileges as to Certain Causes of Action.	11
3.3 Restructuring Transactions	11

3.4	Utility Deposits	11
3.5	Sources of Cash for Plan Distributions.....	12
3.6	HYG/Wells Settlement	12
3.7	Other Settlements	13
	ARTICLE IV EXECUTORY CONTRACTS AND UNEXPIRED LEASES	13
4.1	Rejection of Executory Contracts and Unexpired Leases.....	13
4.2	Bar Date for Rejection Damage Claims.....	13
4.3	Compensation and Benefit Programs.....	13
4.4	D&O Liability Insurance Policies	14
4.5	Provisions Governing Chubb Insurance Contracts.....	14
	ARTICLE V PROVISIONS GOVERNING DISTRIBUTIONS	15
5.1	Distributions for Claims Allowed as of the Effective Date	15
5.2	Method of Distributions to Holders of Claims	15
5.3	Delivery of Distributions and Undeliverable or Unclaimed Distributions.....	15
5.3.1	Delivery of Distributions.....	15
5.3.2	Undeliverable Distributions Held by Disbursing Agent.....	16
5.3.3	Tax Information.....	17
5.4	Timing and Calculation of Amounts to be Distributed.....	17
5.4.1	Distributions on Account of Certain Allowed Claims	17
5.4.2	Distributions on Account of Allowed Unsecured Claims	17
5.5	Other Provisions Applicable to Distributions in All Classes	19
5.5.1	Post-Petition Interest	19
5.5.2	Allocation of Distributions.....	19
5.6	Holders of Record.....	19
5.7	Means of Cash Payments.....	19
5.8	Withholding Requirements.....	19
5.8.1	Withholding.....	19
5.8.2	Distributions	20
5.9	Setoffs.....	20
	ARTICLE VI PROCEDURES FOR RESOLVING DISPUTED CLAIMS.....	20

6.1	No Distributions Pending Allowance	20
6.2	Prosecution of Objections to Claims	20
6.2.1	Objections to Claims	20
6.2.2	Authority to Prosecute Objections	20
6.2.3	Authority to Amend Schedules	21
6.2.4	Request for Extension of Claims Objection Bar Date.....	21
6.3	Distributions on Account of Disputed Claims Once Allowed.....	21
	ARTICLE VII CONFIRMATION OF THE PLAN.....	21
7.1	Conditions Precedent to the Effective Date.....	21
7.2	Waiver of Conditions of Effective Date	22
7.3	Cramdown	22
7.4	Effect of Nonoccurrence of Conditions to the Effective Date	22
7.5	Effect of Confirmation of the Plan.....	22
7.5.1	No Discharge	22
7.5.2	INJUNCTION	22
7.5.3	Exculpation.....	23
7.6	Request for Waiver of Stay of Confirmation Order.....	23
	ARTICLE VIII RETENTION OF JURISDICTION.....	23
	ARTICLE IX MISCELLANEOUS PROVISIONS	25
9.1	Amendment or Modification of the Plan	25
9.2	Revocation, Withdrawal, or Non-Consummation of the Plan	26
9.3	Severability of Plan Provisions.....	26
9.4	Dissolution of the Committee.....	26
9.5	Successors and Assigns	26
9.6	Notice.....	27
9.7	Effectuating Documents and Further Transactions	27
9.8	Corporate Action	27
9.9	Payment of Statutory Fees	28
9.10	Books and Records	28

9.11	Governing Law	28
9.12	Exhibits	28
9.13	Filing of Additional Documents	29

INTRODUCTION

The Official Committee of Unsecured Creditors (the “Plan Proponent”) proposes the following plan of liquidation for the resolution of the outstanding claims against and interests in the Debtor’s bankruptcy estate. Reference is made to the Disclosure Statement with respect to the Plan for a discussion of the history, business, property, and operations of the Debtor, a summary and analysis of this Plan, risk factors related to this Plan, and certain related matters. This Plan follows the closing of the sale of substantially all of the Debtor’s Assets and contemplates the liquidation of the Debtor’s unsold Assets and the distribution of the proceeds of the liquidation and the Sale pursuant to this Plan. Subject to certain restrictions and requirements set forth in 11 U.S.C. § 1127 and Fed. R. Bankr. P. 3019, the Plan Proponent reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to its substantial consummation.

ARTICLE I DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME

1.1 Defined Terms

As used in this Plan, capitalized terms have the meanings set forth in **Exhibit A**. Any term that is not otherwise defined in this Plan, but that is used in the Bankruptcy Code or the Bankruptcy Rules (as each term is defined in **Exhibit A**), will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

1.2 Rules of Interpretation, Computation of Time, and Exhibits

1.2.1 Rules of Interpretation

For purposes of this Plan, unless otherwise provided in this Plan: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) any reference in this Plan to an existing document or schedule Filed or to be Filed means such document or schedule, as it may have been or may be amended, modified, or supplemented pursuant to this Plan; (d) any reference to an Entity as a Holder of a Claim or Interest includes that Entity’s successors and assigns; (e) all references in this Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan; (f) the words “in this Plan,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (h) subject to the provisions of any contract, certificate of formation, limited liability operating agreement, instrument, release, or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules; and (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

1.2.2 Computation of Time

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

1.2.3 Exhibits

All Exhibits, including any Plan Supplement, are incorporated into and are a part of this Plan as if set forth in full herein, and, to the extent not annexed hereto, such Exhibits and Plan Supplement shall be filed with the Bankruptcy Court in accordance with this Plan. To the extent any Exhibits and the Plan Supplement are filed with the Court after the Plan is served and are not attached hereto, Holders of Claims and Interests shall receive by mail a copy of the filed Exhibits and Plan Supplement. Upon their filing, the Exhibits and Plan Supplement may also be inspected (a) in the office of the clerk of the Bankruptcy Court or its designee during normal business hours, (b) online at Aluminum Shapes, L.L.C. Bankruptcy Overview Case: 21-16520 | Epiq (epiq11.com); or (c) for a fee, at the Bankruptcy Court's website (www.njb.uscourts.gov) or through the Bankruptcy Court's PACER system. The documents contained in the Exhibits and Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order.

The Disclosure Statement may be used as an aid for interpretation of this Plan to the extent that any provision of this Plan is determined to be vague or ambiguous. However, to the extent any statement in the Disclosure Statement conflicts with any provision of this Plan, this Plan controls.

ARTICLE II CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

All Claims and Interests, except Administrative Claims, statutory fees payable pursuant to 28 U.S.C. § 1930 and Priority Tax Claims, are placed in the following Classes. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, statutory fees, and Priority Tax Claims, as described in Section 2.1, have not been classified and thus are excluded from the following Classes. 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 remainder of the Claim or Interest qualifies within the description of such other Classes.

2.1 Unclassified Claims

2.1.1 Payment of Administrative Claims

a. Administrative Claims in General

Except as otherwise specified in this Section 2.1, and subject to the Bar Date provisions in this Plan, unless an order of the Bankruptcy Court provides otherwise, each Holder of an Allowed Administrative Claim will receive, in full satisfaction of its Administrative Claim, Cash equal to the amount of such Allowed Administrative Claim on the later of (i) the Effective Date or (ii) the date on which such Administrative Claim becomes an Allowed Administrative Claim.

b. Statutory Fees

On or before the Effective Date, Administrative Claims for statutory quarterly fees payable pursuant to 28 U.S.C. § 1930 will be paid in Cash equal to the amount of such Allowed Administrative Claims. Statutory quarterly fees pursuant to 28 U.S.C. Section 1930 (a)(6) continue to be payable to the office of the United States trustee post-confirmation until such time as the case is converted, dismissed, or closed. The Debtor and the Liquidating Trust shall be jointly and severally liable and responsible for all statutory quarterly fee payment obligations. Disbursements pursuant to 28 U.S.C. § 1930 occur when the Debtor or Liquidating Trust disburses to creditors, not when the Debtor's estate transfers assets to the Liquidating Trust. The Debtor and the Liquidating Trust shall file any and all post-confirmation quarterly reports with the Court sufficient to allow the US Trustee to determine the amount of the Debtor's and/or the Liquidating Trust's receipts and disbursements and to collect all post-confirmation quarterly fee account balances.

c. Bar Dates for Administrative Claims

(i) General Administrative Claim Bar Date Provisions

Except as otherwise provided in this Plan or an order of the Bankruptcy Court, requests for payment of Administrative Claims must have been Filed with the Bankruptcy Court no later than the Administrative Claims Bar Date. Objections to any Administrative Claims must be Filed and served on the Notice Parties by the Claims Objection Bar Date. Holders of Administrative Claims that first arose or accrued as to or against the Debtor on or after August 15, 2021, through and including the Effective Date, that did not File and serve such a request by the Administrative Claims Bar Date are forever barred from asserting such Administrative Claims against the Debtor, the Liquidating Trust, or its property, and any such alleged Administrative Claims will be deemed disallowed as of the Effective Date.

(ii) Bar Dates for Professional Compensation

All unpaid Fee Claims incurred by Professionals prior to the Effective Date shall be subject to final allowance or disallowance upon application to the Bankruptcy Court pursuant to sections 328, 330, or 503(b)(4) of the Bankruptcy Code. Final applications for allowance of Fee Claims for services rendered in connection with the Chapter 11 Case shall be Filed with the Bankruptcy Court no later than thirty (30) days after the Effective Date. Objections to any Fee Claims must be filed and served on the Notice Parties and the requesting party by the later of: (a) sixty (60) days after the Effective Date; (b) thirty (30) days after the filing of the applicable request for payment of the Fee Claim; and (c) such other period of limitation as may be specifically fixed by a Final Order for objecting to such Fee Claim. To the extent necessary, the Confirmation Order will amend and supersede any previously entered order of the Bankruptcy Court regarding the payment of Fee Claims. Objections to all interim Fee Claims, if any, will be determined at the time of final allowance.

2.1.2 Payment of Priority Tax Claims

a. Priority Tax Claims

On, or as soon as reasonably practicable after, the later of (a) the Effective Date or (a) the

date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its Priority Tax Claim, (i) Cash equal to the amount of such Allowed Priority Tax Claim without interest or (ii) such other treatment as to which the Plan Proponent or the Liquidating Trustee, as applicable, and the Holder of the Allowed Priority Tax Claim shall have agreed upon in writing.

b. Other Provisions Concerning Treatment of Priority Tax Claims

Notwithstanding the provisions of Section 2.1.2.a, the Holder of an Allowed Priority Tax Claim will not be entitled to receive any payment on account of any penalty (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) arising with respect to or in connection with the Allowed Priority Tax Claim. The Holder of an Allowed Priority Tax Claim will not assess or attempt to collect such penalty from the Debtor, the Liquidating Trust, or its respective property.

2.2 Classified Claims

2.2.1 Other Priority Claims (Class 1) – Unimpaired.

Class 1 is comprised of Claims entitled to priority under section 507(a) of the Bankruptcy Code that are not Administrative Claims or Priority Tax Claims. Each Holder of an Allowed Other Priority Claim will receive, in full satisfaction of its Other Priority Claim, Cash equal to the amount of such Allowed Other Priority Claim on, or as soon as reasonably practicable after, the later of (a) the Effective Date or (b) the date on which such Other Priority Claim becomes an Allowed Other Priority Claim and only to the extent allowed (i) up to any statutory cap provided under section 507 (a) of the Bankruptcy Code and (ii) not already paid pursuant to the Order of the Bankruptcy Court granting the Debtor authority to pay certain prepetition wages, salaries and reimbursement of employee expenses dated August 19, 2021 [Docket No. 46]. Class 1 is unimpaired by the Plan and is deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

2.2.2 Other Secured Claims (Class 2) – Impaired.

Class 2 is comprised of Holders of Other Secured Claims. Unless the Holder of such Allowed Other Secured Claim and the Liquidating Trustee agree to a different treatment, thirty (30) days after the later of (a) the Effective Date and (b) the date on which the Other Secured Claim is Allowed, in full satisfaction of its Allowed Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive, at the option of the Liquidating Trustee: (x) the net proceeds of the sale of the property securing such Allowed Other Secured Claim, up to the Allowed amount of such Allowed Other Secured Claim; or (y) the return of property securing such Allowed Other Secured Claim; or (z) Cash equal to the value of the property securing such Allowed Other Secured Claim, up to the value of the Allowed Other Secured Claim; *provided, however*, if a Final Order has been entered prior to the Effective Date providing for treatment and distributions on account of an Allowed Other Secured Claim, the Allowed Other Secured Claim shall be treated as set forth in such Final Order. Pursuant to the HYG/Wells Settlement, HYG Financial Services Inc. and Wells Fargo Bank N.A., the only Allowed Other Secured Claims as of the date of the filing of this Plan, have agreed to accept payment of \$35,000.00 to Wells Fargo N.A. in full satisfaction of

Claims 40 and 41. The Claims of the Disputed Judgment Creditors also will be in this class to the extent the Disputed Secured Creditor Actions are unsuccessful. Class 2 is impaired by the Plan and is entitled to vote on the Plan.

2.2.3 General Unsecured Claims (Class 3) – Impaired.

Class 3 is comprised of Holders of General Unsecured Claims not provided for in Class 4, 5 or 6. On one or more Distribution Dates, each Holder of an Allowed General Unsecured Claim in Class 3 shall receive from time to time, a Pro Rata share of the net proceeds of the Liquidating Trust Assets after the payment of all Allowed Administrative Claims, Allowed Fee Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed Other Secured Claims, and the payment of all costs and expenses of the Liquidating Trust. For any Distribution to General Unsecured Creditors, the Liquidating Trustee shall follow the procedures of section 5.4.2.b of this Plan. Class 3 is impaired by the Plan and is entitled to vote on the Plan.

2.2.4 General Unsecured Workers' Compensation Claims (Class 4) – Impaired.

Class 4 is comprised of Holders of General Unsecured Worker's Compensation Claims. In exchange for a grant of relief from the automatic stay conditioned by section 362 of the Bankruptcy Code and/or the Injunction set forth in section 7.5.2 of this Plan, any holder of a Class 4 Claim shall be limited to recovery from the Debtor's applicable insurance policies and shall not receive a disbursement from the Liquidating Trust. Class 4 is impaired by the Plan and is entitled to vote on the Plan.

2.2.5 United States of America Damage Claim (Class 5) – Impaired.

Class 5 is comprised of the United States of America Damage Claim. The vast majority of the claimed \$70,258,760.08 in damages are a fine or penalty and not compensation for any actual pecuniary loss, and the Debtor or Liquidating Trustee may seek such a determination via an objection or adversary proceeding. The Debtor and the Committee object to this Claim.

To the extent the Court determines that this Claim is an Allowed Claim, this Class shall be subordinated to all General Unsecured Claims pursuant to 11 U.S.C. §510(c). On one or more Distribution Dates, each Holder of a Class 5 Claim shall receive from time to time, a Pro Rata share of the net proceeds of the Liquidating Trust Assets after the payment of all Allowed Administrative Claims, Allowed Fee Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed Other Secured Claims, Allowed Class 3 Claims and the payment of all costs and expenses of the Liquidating Trust. Class 5 is impaired by the Plan and is conclusively deemed to reject the Plan and not entitled to vote pursuant to section 1126(g) of the Bankruptcy Code.

2.2.6 United States of America Penalty Claim (Class 6) – Impaired.

Class 6 is comprised of the United States of America Penalty Claim. The Debtor and the Committee object to this Claim. To the extent the Court determines that this Claim is an Allowed Claim, this Class shall be subordinated to all General Unsecured Claims pursuant to 11 U.S.C. §510(c), and shall be further subordinated to Class 5 on account of its status as fines or penalties

pursuant to 11 U.S.C. §§ 510(c), 726(a)(4), and 1129(a)(7). On one or more Distribution Dates, each Holder of a Class 6 Claim shall receive from time to time, a Pro Rata share of the net proceeds of the Liquidating Trust Assets after the payment of all Allowed Administrative Claims, Allowed Fee Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed Other Secured Claims, Allowed Class 3 Claims, Allowed Class 5 Claims and the payment of all costs and expenses of the Liquidating Trust. Class 6 is impaired by the Plan and is conclusively deemed to reject the Plan and not entitled to vote pursuant to section 1126(g) of the Bankruptcy Code.

2.2.7 Interests (Class 7) – Impaired.

Class 7 is comprised of all Holders of Interests. On the Effective Date, all Interests shall be retained by existing holders. Holders of Interests shall receive no distribution under the Plan on account of their interests, unless and until all other Classes of Claims are paid in full. Class 7 is impaired under the Plan and is conclusively deemed to reject the Plan and not entitled to vote pursuant to section 1126(g) of the Bankruptcy Code.

2.3 Special Provisions Relating to the Rights of Setoff of Creditors

Nothing in this Plan shall expand or enhance a creditor's right of setoff, which shall be determined as of the Petition Date. Nothing in this Plan is intended to, or shall be interpreted to, approve any creditor's effectuation of a post-petition setoff, and creditors may not effectuate any post-petition setoff without the consent of the Plan Proponent or, after the Effective Date, the Liquidating Trustee, unless prior Bankruptcy Court approval has been obtained.

ARTICLE III MEANS FOR IMPLEMENTATION OF THE PLAN

3.1 Wind Down of the Debtor and Summary of Division of Assets

On the Effective Date, as set forth in more detail below, the Liquidating Trust Assets, including the Estate Funds and all Causes of Action, will be assigned and delivered to and vest in the Liquidating Trust and will be managed by the Liquidating Trustee.

3.2 Liquidating Trust

3.2.1 Liquidating Trust Generally

On or prior to the Effective Date, the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of providing a mechanism for the economical liquidation of the Estate and distribution of the proceeds thereof to creditors in accordance with the terms of the Plan and the Liquidating Trust Agreement. The Liquidating Trustee shall be Advisory Trust Group, LLC, chosen jointly by the Debtor and the Committee. Subject to and to the extent set forth in the Plan, the Confirmation Order, the Liquidating Trust Agreement, or other agreement (or any other order of the Bankruptcy Court entered pursuant to or in furtherance hereof), the Liquidating Trustee shall be empowered to: (a) effect all actions and execute all agreements, instruments and other documents necessary to implement the Liquidating Trust provisions of the Plan; (b) accept, preserve, receive, collect, manage, invest, supervise, prosecute, settle, and protect the Liquidating Trust Assets; (c) sell, liquidate, transfer, distribute, abandon, or

otherwise dispose of the Liquidating Trust Assets or any part thereof upon such terms as the Liquidating Trustee determines to be necessary, appropriate, or desirable; (d) calculate and make distributions to Holders of Allowed Claims pursuant to the procedures for allowing Claims and making distributions prescribed in the Plan; (e) comply with the Plan and exercise the Liquidating Trustee's rights and fulfill its fiduciary or other obligations thereunder; (f) review, reconcile, or object to Claims and resolve such objections after consultation with the Trust Advisory Committee, as set forth in the Plan; (g) pursue Causes of Action assigned and transferred to the Liquidating Trust; (h) subject to Sections 3.2.4, 3.2.6 and 3.5 of the Plan, retain and compensate professionals to represent the Liquidating Trustee, as necessary and appropriate to comply with the terms of this Plan and the Liquidating Trust Agreement without further authority from the Bankruptcy Court, except that the Liquidating Trustee shall retain counsel on a contingent fee basis for the prosecution of D&O Claims and Avoidance Actions; (i) establish and maintain a Disputed Claims Reserve; (j) file appropriate state and Federal Tax returns and other reports on behalf of the Liquidating Trust and pay Taxes or other obligations owed by the Liquidating Trust; (k) exercise such other powers as may be vested in the Liquidating Trustee under the Liquidating Trust Agreement or the Plan, or as deemed by the Liquidating Trustee to be necessary and proper to implement the provisions of the Plan and the Liquidating Trust Agreement; (l) object to the allowance of any Claim on the Schedules or filed proof of claim if the Liquidating Trustee determines in good faith that the Claim is invalid or has previously been paid or satisfied; (m) pay any and all residual statutory fees of the Debtor as provided in Section 2.1.1.b of this Plan; and (n) dissolve the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement upon completion of the liquidation process. Notwithstanding anything to the contrary in this Section, the Liquidating Trust's primary purpose is liquidating the Liquidating Trust Assets assigned and transferred to it by the Debtor and making distributions from the Liquidating Trust to Holders of Allowed Claims. Of the Liquidating Trust Assets, up to \$200,000.00, or such greater amount as may be approved from time to time by the Trust Advisory Committee, may be used to cover the expenses of the Liquidating Trustee's non-contingency retained professionals. For the avoidance of doubt, the Liquidating Trustee's \$5,000.00 monthly fee is excluded from the \$200,000.00 cap for non-contingency retained professionals.

3.2.2 Funding of and Transfer of Assets into the Liquidating Trust

On the Effective Date, other than those funds necessary to pay a) Allowed Administrative Claims, including any statutory fees owing pursuant to 28 U.S.C. § 1930 and unpaid Fee Claims, and b) Allowed Priority Tax Claims, and c) such other amounts (not to exceed \$10,000.00) necessary to file the Debtor's final tax returns for 2021 and 2022, all of which shall be paid by the Debtor on or before the Effective Date, the Liquidating Trust Assets, including, but not limited to the Estate Funds, the Escrow Deposit from the Asset Sale, and all Causes of Action, shall be deemed assigned and transferred to the Liquidating Trust and the Trustee shall thereafter make a good faith determination of the fair market value of the Liquidating Trust Assets after consultation with the Trust Advisory Committee. The Liquidating Trust Assets will be transferred to, vest in, and be preserved for the Liquidating Trust on the Effective Date, free and clear of all liens, claims, and other encumbrances. The Debtor will take such actions as requested by the Liquidating Trustee to effectuate the assignment and transfer of the Liquidating Trust Assets. All of the Causes of Action will be fully transferred to the Liquidating Trust. The Liquidating Trustee shall have standing to assert all of the Causes of Action. Any and all rights under the Debtor's applicable insurance policies shall be transferred to the Liquidating Trust. The Liquidating Trustee is a

fiduciary for Creditors and shall retain all cash proceeds in the Liquidating Trust in a prudent manner.

c. The act of transferring assets and rights to the Liquidating Trustee of the Liquidating Trust, as authorized by the Plan, shall not be construed as a taxable event or to destroy or limit any such assets or rights or be construed as a waiver of any right, and such rights may be asserted by the Liquidating Trust as if the asset or right was still held by the Debtor or the Committee. In connection with the transfer of the Liquidating Trust Assets, any attorney-client privilege, work product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) of the Debtor transferred to the Liquidating Trust shall vest in the Liquidating Trust and its representatives.

3.2.3 Liquidating Trustee and Trust Advisory Committee

The initial Liquidating Trustee shall be Advisory Trust Group, LLC, selected by the Debtor and the Committee. The powers, rights and responsibilities of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement to be drafted by the Committee and shall include the compensation to the Liquidating Trustee as well as the authority and responsibility to fulfill the rights and obligations identified in this Plan. The Liquidating Trustee shall have exclusive standing to pursue all Causes of Action not already commenced by the Debtor or the Committee. Upon occurrence of the Effective Date of the Plan, the Liquidating Trustee shall be automatically substituted for the Debtor and the Committee as plaintiff in all pending actions without further action. Other rights and duties of the Liquidating Trustee and the beneficiaries of the Liquidating Trust shall be as set forth in the Liquidating Trust Agreement. The Liquidating Trust Agreement will also provide for a Trust Advisory Committee, the initial composition of which shall include the current Committee members willing to serve without charge, to approve certain material decisions of the Liquidating Trustee, including (i) the sale or liquidation of non-Cash Liquidating Trust Assets for greater than \$250,000, (ii) the settlement, compromise, abandonment, or withdrawal of any Cause of Action with face value greater than \$100,000, (iii) the settlement or compromise of any Disputed Claims with face value greater than \$50,000 for an Administrative Claim, Priority Tax Claim, or Other Priority Claim, or greater than \$250,000 for a General Unsecured Claim; and (iv) the retention of professionals by the Liquidating Trust.

3.2.4 Liquidating Trust Agreement

The Liquidating Trust Agreement generally will provide for, among other things: (a) the payment of reasonable compensation to the Liquidating Trustee not to exceed \$5,000.00 per month; (b) the payment of other expenses of the Liquidating Trust, including an estimate of the projected cost of pursuing the claims, rights, and Causes of Action assigned to the Liquidating Trust; (c) the retention of counsel including but not limited to, counsel to pursue the D&O Claims and Avoidance Actions on a contingent fee basis, accountants, financial advisors, or other professionals and the payment of their compensation; (d) the investment of Cash by the Liquidating Trustee within certain limitations; (e) the preparation and filing of appropriate Tax returns and other reports on behalf of the Liquidating Trust and the payment of Taxes or other obligations owed by the Liquidating Trust; (f) the orderly liquidation of the Liquidating Trust Assets; and (g) the litigation, settlement, abandonment, or dismissal of any claims, rights, or Causes of Action assigned to the Liquidating Trust.

3.2.5 Reports to be Filed by the Liquidating Trustee

The Liquidating Trustee, on behalf of the Liquidating Trust, shall File with the Bankruptcy Court (and provide to any other party entitled to receive any such report pursuant to the Liquidating Trust Agreement), as soon as practicable but in no event later than forty-five (45) days after March 31, June 30, September 30 and December 31 of each calendar year, a quarterly report regarding the administration of property subject to its ownership and control pursuant to the Plan, distributions made by it, and other matters relating to the implementation of the Plan, until the later of the Liquidating Trustee disbursing all of the proceeds of the Liquidating Trust or the date the Debtor's case is closed.

3.2.6 Fees and Expenses of the Liquidating Trust

Except as otherwise ordered by the Bankruptcy Court, the reasonable and necessary fees and expenses of the Liquidating Trust (including the reasonable and necessary fees and expenses of any professionals assisting the Liquidating Trustee in carrying out its duties under the Plan) will be funded by the Liquidating Trust Assets in accordance with the Liquidating Trust Agreement without further order from the Bankruptcy Court. The Liquidating Trust Agreement shall expressly limit the Liquidating Trustee to hiring counsel only on a contingency fee basis in the event that the Liquidating Trustee determines that it will prosecute the D&O Claims or Avoidance Actions. Of the Liquidating Trust Assets, up to \$200,000.00, or such greater amount as may be approved from time to time by the Trust Advisory Committee, may be used to cover the expenses of the Liquidating Trustee's non-contingency retained professionals. For the avoidance of doubt, the Liquidating Trustee's \$5,000.00 monthly fee is excluded from the \$200,000.00 cap for non-contingency retained professionals.

3.2.7 Indemnification

The Liquidating Trust Agreement may include reasonable and customary indemnification provisions for the benefit of the Liquidating Trustee and/or other parties. Any such indemnification shall be the sole responsibility of the Liquidating Trust and payable solely from the Liquidating Trust Assets.

3.2.8 Tax Treatment

The Liquidating Trust is intended to be treated for U.S. federal income tax purposes in part as a liquidating trust described in Treasury Regulation § 301.7701-4(d) and in part as one or more Disputed Claims reserves treated either as discrete trusts taxed pursuant to Section 641 *et seq.* of the Internal Revenue Code or as disputed ownership funds described in Treasury Regulation § 1.468B-9. For federal income tax purposes, the transfer of assets by the Debtor to the Liquidating Trust will be treated in part as the transfer of assets by the Debtor to the Holders of Allowed Claims, followed by the transfer of such Assets by such Holders to the Liquidating Trust in exchange for interests in the trust, and in part as the transfer of Assets by the Debtor to one or more Disputed Claims reserves. The Holders of Allowed Claims will be treated for federal income tax purposes as the grantors and deemed owners of their respective shares of the Assets in the Liquidating Trust (subject to such Liabilities), depending on their rights to distributions under the Plan. As grantors and deemed owners of such Assets, the Holders of Allowed Claims will be

required to include in income their respective shares of the income, deductions, gains, losses and credits attributable to such Assets. The Holders of Allowed Claims will be required to use the values assigned to such Assets by the Liquidating Trustee for all federal tax purposes, including the recognition of income, deduction, gain or loss with respect to their Allowed Claims and any gain or loss recognized on the subsequent disposition of an asset in which the Holder holds an interest.

The Liquidating Trust Agreement will contain certain provisions to comply with IRS guidance for trusts treated as liquidating trusts. Among other things, the agreement will (a) require that the Liquidating Trust terminate no later than five (5) years after the Effective Date, subject to extension with Bankruptcy Court approval within six (6) months of the beginning of the extended term, (b) limit the Liquidating Trustee's investment powers, (c) limit the business operations carried on by the Liquidating Trust to activities reasonably necessary to and consistent with the Liquidating Trust's liquidating purpose, (d) prohibit the Liquidating Trust from receiving or retaining Cash or Cash equivalents in excess of an amount reasonably necessary to meet Claims and contingent Liabilities or to maintain the value of the Liquidating Trust Assets during liquidation and, (e) distribute at least annually to the Holders of Allowed General Unsecured Claims the Liquidating Trust's net income in excess of an amount reasonably necessary to meet senior Claims and contingent Liabilities (including Disputed Claims) and to maintain the value of the Liquidating Trust Assets. Liquidating Trust Assets reserved for Holders of Disputed Claims will be treated as one or more Disputed Claims reserves for tax purposes, which will be subject to an entity-level Tax on some or all of their net income or gain. No Holder of a Claim will be treated as the grantor or deemed owner of an asset reserved for Disputed Claims until such Holder receives or is allocated an interest in such asset.

The Liquidating Trustee will file all Tax returns for the Liquidating Trust on a basis consistent with the treatment of the Liquidating Trust in part as a liquidating trust (and grantor trust pursuant to Treasury Regulation § 1.671-1(a)) and, in part as one or more Disputed Claims reserves taxed as discrete trusts or disputed ownership funds. Income tax liabilities of a Disputed Claims reserve shall be paid from the Liquidating Trust assets allocable to such Disputed Claims reserve. A MORE FULSOME DESCRIPTION OF THE TAX RAMIFICATIONS CAN BE FOUND IN THE DISCLOSURE STATEMENT.

Debtor's Final Tax Returns shall be prepared for and filed by the Debtor, and at least ten (10) Business Days prior to filing, if before the Effective Date, Debtor's Final Tax Returns shall be provided to the Committee for review, and if after the Effective Date, the Liquidating Trustee shall have the right to review and approve the Debtor's Final Tax Returns.

3.2.9 Disposition of Assets by the Liquidating Trustee

Subject to the provisions of the Liquidating Trust Agreement, the Liquidating Trustee may, without further order of the Bankruptcy Court, conduct any sales or liquidations of non-Cash Liquidating Trust Assets from the Liquidating Trust on any terms it deems reasonable.

3.2.10 Settlement of Causes of Actions and Disputed Claims

Subject to the provisions of the Liquidating Trust Agreement, the Liquidating Trustee may

settle, compromise, abandon, or withdraw any Disputed Claim or Cause of Action, including any Avoidance Action or D&O Claim, on any grounds or terms it deems reasonable, without further order of the Bankruptcy Court.

3.2.11 Preservation of Causes of Action

On the Effective Date, the Debtor and, to the extent necessary, the Committee will assign and transfer to the Liquidating Trustee, and the Liquidating Trustee will have the standing to pursue, as the representative of the Estate under section 1123(b) of the Bankruptcy Code, all Causes of Action and the Liquidating Trustee may enforce any Causes of Action that the Debtor or the Estate may hold against any Entity to the extent not expressly released under the Plan or by any Final Order of the Bankruptcy Court, including but not limited to those items identified in the Plan Supplement.

3.2.12 Privileges as to Certain Causes of Action.

Notwithstanding the establishment of the Liquidating Trust or the appointment of the Liquidating Trustee, the Privileges of the Debtor, including any Privileges relating to any existing Causes of Action pursued, investigated, or considered by the Debtor prior to the Effective Date, will not be waived or released. The Liquidating Trustee will share and be entitled to use all Privileges of the Debtor. No such Privilege will be deemed waived by the disclosures to the Liquidating Trustee of the Debtor's documents, information, or communications subject to the attorney-client privilege, work product privilege or other immunities (including those related to common interest or joint defense with third parties), or protections from disclosure held by the Debtor. The Debtor's Privileges will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement. For the avoidance of doubt, nothing contained in the Plan or the establishment of the Liquidating Trust or the appointment of the Liquidating Trustee will be deemed to waive or release the Debtor's Privileges or affect in any way the right to assert such Privileges.

3.3 Restructuring Transactions

The Liquidating Trustee will be authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan. Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp Tax, real estate transfer Tax, mortgage recording Tax, sales or use Tax, or similar Tax: (a) the creation of any mortgage, deed of trust, lien, or other security interest; (b) the making or assignment of any lease or sublease; or (c) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale, or assignments executed in connection with any of the foregoing or pursuant to the Plan.

3.4 Utility Deposits

All utilities holding a Utility Deposit shall immediately after the Effective Date return or refund such Utility Deposit to the Liquidating Trust without reduction or setoff. At the sole option

of the Liquidating Trustee, the Liquidating Trust may apply any Utility Deposit that has not been refunded to the Liquidating Trustee in satisfaction of any payments due or to become due from the Liquidating Trust to a utility holding such a Utility Deposit.

3.5 Sources of Cash for Plan Distributions

Except as otherwise provided in this Plan or the Confirmation Order, all Cash necessary for the payments pursuant to this Plan shall be obtained from the Liquidating Trust Assets or the proceeds of the Liquidating Trust Assets.

3.6 HYG/Wells Settlement

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates and implements the HYG/Wells Settlement between the Debtor and HYG Financial Services Inc. and Wells Fargo Bank N.A.

In exchange for the treatment provided by this Plan, the Debtor and HYG Financial Services Inc. and Wells Fargo Bank N.A. agree to the following terms:

- POC 41 is allowed as a secured claim in the amount of \$36,200.00.
- POC 40 is allowed as a secured claim in the amount of \$13,000.00.
- HYG Financial Services Inc. and Wells Fargo Bank N.A. waive any unsecured portion of these Claims.
- Payment to Wells Fargo Bank N.A. of \$35,000.00 pursuant to this Plan shall fully satisfy POC 40 and 41. Wells Fargo Bank N.A. and HYG Financial Services Inc. may divide this payment between them as they shall agree.
- HYG Financial Services Inc. and Wells Fargo Bank N.A. and the Debtor hereby forever mutually release and discharge the other, and their corporate shareholders, officers, administrators, executors, servants, agents, employees, successors, assigns, attorneys and insurers, from any and all manner of actions, causes of action, suits, debts, accounts, contracts, agreements, controversies, judgments, damages, claims, liabilities and demands of any nature whatsoever which the other ever had, now has, or hereafter can, shall or may have for, upon or by reason of any act, transaction, practice, conduct, matter, cause or thing of any kind whatsoever that arose or occurred prior to the date hereof, whether or not now known, including but not limited to any action, cause of action, suit, debt, account, contract, agreement, controversy, judgment, damage, claim, liability and demand of any nature whatsoever asserted, arising out of, relating to or based upon, in whole or in part (1) any debts, contracts, or invoices between the HYG Financial Services Inc. or Wells Fargo Bank N.A. and the Debtor involving the forklifts and/or forklift leases identified in POC 40 or 41; (2) any act, transaction, practice, or conduct arising or occurring prior to the date hereof, which is actionable, or claimed to be actionable, under any statutory or common law of the United States or any state thereof; (3) any

effect which existed or occurred, or presently exists, or may in the future exist or occur, as a result of any act, transaction, practice, or conduct that occurred prior to the date hereof; and (4) any other act, transaction, practice, or conduct that occurred prior to the date hereof, whether or not presently known.

3.7 Other Settlements

The Debtor and the Committee may make other settlements with parties in interest prior to confirmation of the Plan. Such a settlement will not diminish distributions under the Plan, but may result in enhanced distributions to creditors holding Allowed General Unsecured Claims. In such an event, the terms of the proposed settlement may be included in the Plan Supplement, or other supplemental filing, and the parties may request that the Bankruptcy Court approve the settlement by the Confirmation Order.

ARTICLE IV EXECUTORY CONTRACTS AND UNEXPIRED LEASES

4.1 Rejection of Executory Contracts and Unexpired Leases

To the extent not previously assumed or rejected in accordance with an Order of the Bankruptcy Court or assumed pursuant to section 4.4 of this Plan, all Executory Contracts, Unexpired Leases, or other agreements will be deemed rejected as of the Confirmation Date. Entry of the Confirmation Order shall constitute, pursuant to sections 365 and 1123 of the Bankruptcy Code, an order rejecting of all Executory Contracts and Unexpired Leases.

4.2 Bar Date for Rejection Damage Claims

To the extent not previously rejected in accordance with an Order of the Bankruptcy Court, claims arising out of the rejection of an Executory Contract or Unexpired Lease pursuant to Section 4.1 must be Filed with the Bankruptcy Court and served on the Notice Parties by no later than thirty (30) days after the notice of entry of the Confirmation Order. Allowed rejection damages claims shall be Class 3 General Unsecured Claims. Any Claims not filed within such applicable time periods will be forever barred from receiving a distribution from the Debtor, the Estate, and/or the Liquidating Trust. This provision shall not affect or extend any previously set Bar Date entered by the Bankruptcy Court prior to the Confirmation Date for the filing of any Claim.

4.3 Compensation and Benefit Programs

All employment and severance contracts and policies, and all compensation and benefit plans, policies, and programs of the Debtor applicable to its officers, employees, retirees, and non-employee directors, including, without limitation, all deferred compensation plans, savings plans, pension plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, life, and accidental death and dismemberment insurance plans and contracts to the extent still in effect, are deemed and treated as executory contracts under the Plan and on the Effective Date will be rejected and terminated pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code. However, the rejection of any such agreement shall not deprive the

contract party with rights under any such plan, policy or program from asserting a claim arising under or pursuant to any such plan, policy or program. The Debtor and the Liquidating Trustee shall have no further obligation to perform under the foregoing programs other than as the Liquidating Trustee deems necessary in the performance of its duties, in its sole discretion.

4.4 D&O Liability Insurance Policies

Notwithstanding anything in the Plan to the contrary, effective as of the Effective Date, the Debtor will be deemed to have assumed all D&O Liability Insurance Policies pursuant to Sections 105 and 365(a) of the Bankruptcy Code. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtor's assumption of each of the unexpired D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained in the Plan or Confirmation Order, confirmation of the Plan will not discharge, release, impair, or otherwise modify any obligations, including but not limited to, indemnity obligations of the insurers or the Chubb Companies under the D&O Liability Insurance Policies assumed by the foregoing assumption of the D&O Liability Insurance Policies, any agreements, documents, and instruments related thereto, and each such indemnity obligation, if any, will be deemed and treated as an Executory Contract that has been assumed by the Debtor under the Plan as to which no proof of Claim, Administrative Claim, or Cure Amount Claim need be filed; provided that notice of such claim be delivered to (i) the Debtor or after the Effective Date, the Liquidating Trustee and (ii) if different, any insured; and that any and all rights of the Debtor, any insured or Liquidating Trust to dispute such indemnity obligation are expressly reserved.

4.5 Provisions Governing Chubb Insurance Contracts

Notwithstanding anything to the contrary in the Disclosure Statement, Plan (including Section 3.2.2. of the Plan), Plan Supplement, Confirmation Order, Liquidating Trust Agreement, any other document related to any of the foregoing, or any other order of the Bankruptcy Court (including, without limitation, any other provision that confers jurisdiction, purports to be preemptory or supervening, or grants an injunction or release):

a. on the Effective Date, all Chubb Insurance Contracts which identify the Debtor as first named insured or as a counterparty thereto shall vest unaltered in their entirety with the Liquidating Trust;

b. nothing shall alter, modify, amend, affect, impair or prejudice the legal, equitable or contractual rights, obligations, and defenses of the Chubb Companies, the Debtor (or, after the Effective Date, the Liquidating Trust), or any other individual or Entity, as applicable, under any of the Chubb Insurance Contracts, and any such rights and obligations shall be determined under the Chubb Insurance Contracts and applicable non-bankruptcy law;

c. to the extent the Debtor (or, after the Effective Date, the Liquidating Trust) seeks coverage or payment under any Chubb Insurance Contracts, the Chubb Companies shall be entitled to payment or reimbursement in full from the applicable Debtor or Liquidating Trust, to the extent required under the applicable Chubb Insurance Contract, in the ordinary course and without the need for the Chubb Companies to file a proof of Claim, Administrative Claim, or Cure Amount Claim; provided that any and all rights of the Debtor and Liquidating Trust to dispute

such payments or reimbursements are expressly reserved; further provided that notice of such payment or reimbursement be provided to the Debtor or after the Effective Date, the Liquidating Trustee, and provided, further, that the Liquidating Trust shall not be entitled to coverage as an “insured” (as defined or described in the Chubb Insurance Contracts) under the Chubb Insurance Contracts at any time without the express written consent of the Chubb Companies; and

d. the automatic stay of section 362(a) of the Bankruptcy Code and the injunctions set forth in Section 7.5 of the Plan, if and to the extent applicable, shall be deemed lifted without further order of this Bankruptcy Court, solely to permit: (1) claimants with valid workers’ compensation claims or direct action claims against the Chubb Companies under applicable non-bankruptcy law to proceed with their claims solely with respect to insurance proceeds; (2) the Chubb Companies to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of this Bankruptcy Court, (A) workers’ compensation claims, (B) claims where a claimant asserts a direct claim against the Chubb Companies or third party administrator under applicable non-bankruptcy law, or an order has been entered by this Bankruptcy Court granting a claimant relief from the automatic stay or the injunctions set forth in Section 7.5 of the Plan to proceed with its claim solely as to insurance proceeds, and (C) all costs in relation to each of the foregoing; and (3) subject to the terms of the Chubb Insurance Contracts and/or applicable non-bankruptcy law, the Chubb Companies to (A) only after notice to the Debtor (or after the Effective Date, the Liquidating Trustee), cancel any policies under the Chubb Insurance Contracts, pay the invoices of the attorney’s handling the D&O defendants defense, or effectuate a setoff, and (B) take other actions relating to the Chubb Insurance Contracts.

ARTICLE V PROVISIONS GOVERNING DISTRIBUTIONS

5.1 Distributions for Claims Allowed as of the Effective Date

Except as otherwise provided in this Article V, distributions of Cash to be made on the Effective Date to Holders of Claims as provided by Article II that are Allowed as of the Effective Date shall be deemed made on the Effective Date if made on the Effective Date or as promptly thereafter as practicable, but in any event no later than thirty (30) days after the Effective Date; or, with respect to undeliverable distributions, when the provisions of Section 5.4.2 are satisfied. Distributions on account of Claims that become Allowed after the Effective Date will be made pursuant to Section 5.4.

5.2 Method of Distributions to Holders of Claims

The Liquidating Trustee, or any Disbursing Agent as the Liquidating Trustee may employ in its sole discretion, will make all distributions of Cash and other instruments or documents required under the Plan. Any Disbursing Agent will serve without bond.

5.3 Delivery of Distributions and Undeliverable or Unclaimed Distributions

5.3.1 Delivery of Distributions

Distributions to Holders of Allowed Claims will be made: (i) at the addresses set forth on

the respective proofs of Claim or request for payment of Administrative Claim Filed by Holders of such Claims, as applicable; (ii) at the address for a Claim transferee set forth in a valid and timely notice of transfer of Claim Filed with the Bankruptcy Court; (iii) at the addresses set forth in any written notice of address change Filed with the Bankruptcy Court or delivered to the Claims and Noticing Agent after the date of Filing of any related proof of Claim; (iv) at the addresses reflected in the Debtor's Schedules if no proof of Claim has been Filed and the Claims and Noticing Agent has not received a written notice of a change of address; or (v) if clauses (i) through (iv) are not applicable, at the last address known or directed by such Holder after such Claim becomes an Allowed Claim.

5.3.2 Undeliverable Distributions Held by Disbursing Agent

a. Holding of Undeliverable Distributions

Subject to Section 5.3.2.c, distributions returned to a Disbursing Agent or otherwise undeliverable will remain in the possession of the Disbursing Agent until such time as a distribution becomes deliverable. The Liquidating Trustee holding undeliverable Cash will invest such Cash in a manner consistent with the Liquidating Trust Agreement.

b. After Distributions Become Deliverable

On each Distribution Date, the Disbursing Agent will make all distributions that became deliverable to Holders of Allowed Claims since the previous Distribution Date; *provided, however*, that the Disbursing Agent may, as directed by the Liquidating Trustee, establish a record date prior to each Distribution Date, such that only Allowed Claims as of the record date will participate in such distribution. Notwithstanding the foregoing, the Disbursing Agent reserves the right, after approval by the Liquidating Trustee, to the extent it determines a distribution on any Distribution Date is uneconomical or unfeasible, or is otherwise inadvisable, to postpone a Distribution Date.

c. Failure to Claim Undeliverable Distributions

Any Holder of an Allowed Claim that does not assert its right to an undeliverable distribution within ninety (90) days after the date of such distribution will be forever barred from asserting any such Claim against the Debtor, the Liquidating Trustee, and their respective property or accounts. In such cases, unclaimed distributions held by a Disbursing Agent will be returned to the Liquidating Trust for distribution to other creditors, and the Liquidating Trustee shall have no responsibility to make further distributions to such creditor. Any unclaimed distributions or any distributions that are returned as undeliverable and unclaimed under this Section 5.3.2.c, will become property of the Liquidating Trust free of any restrictions thereon. Any distributions that are made on the Final Distribution Date and that are undeliverable or (in the event of a distribution made by check) remain uncashed for ninety (90) days after the Final Distribution Date shall be redistributed to other Holders of Allowed Claims in such Class. Upon such distribution, the Liquidating Trustee shall be deemed to have satisfied his or her obligations to make distributions under the Plan and shall not be required to make additional distributions. Nothing contained in the Plan will require the Debtor, the Liquidating Trustee, or a Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

5.3.3 Tax Information

The Liquidating Trustee may require Holders of Allowed Claims to furnish to the Liquidating Trustee an employer or tax identification number as assigned by the IRS or any other applicable governmental Entity or social security number. The Liquidating Trustee may condition any Distribution to any Holder of an Allowed Claim upon receipt of such identification number if that information is necessary for the Liquidating Trustee's tax reporting.

5.4 Timing and Calculation of Amounts to be Distributed

5.4.1 Distributions on Account of Certain Allowed Claims

Distributions to be made to Holders of Allowed Other Priority Claims and Allowed Other Secured Claims shall be made within thirty (30) days of such Claim becoming an Allowed Claim or the Effective Date, whichever is later.

5.4.2 Distributions on Account of Allowed Unsecured Claims

a. Selection of Distribution Dates for Unsecured Claims

Except where this Plan requires the making of a distribution on account of a particular Allowed Claim within a particular time, the Liquidating Trustee shall have the authority to select Distribution Dates that, in the judgment of the Liquidating Trustee, provide Holders of Allowed Claims with payments as quickly as reasonably practicable while limiting the costs incurred by the distribution process.

b. Calculation of Amounts to be Distributed to Holders of Allowed Unsecured Claims

Prior to any distribution to holders of Allowed General Unsecured Claims, the Liquidating Trustee shall estimate the amount of Cash on hand (the "Net Available Cash") that will remain after funding (without duplication) the Disputed Claims Reserve and the Cash Reserve. Such estimation of Net Available Cash shall utilize assumptions that (a) litigation with claimants with respect to any issue that is being reasonably contested, including litigation with respect to the Disputed Secured Claims, will be unsuccessful; (b) all Disputed Claims will be deemed Allowed Claims; (c) any unresolved Causes of Action shall result in no recovery for the Liquidating Trust; and (d) remaining non-Cash Assets shall produce no recovery for the Liquidating Trust. Only if, after applying such assumptions, the estimated Net Available Cash is greater than zero shall the Liquidating Trustee be permitted to make any distributions to holders of Allowed General Unsecured Claims, unless the Liquidating Trustee obtains an order of the Bankruptcy Court allowing a distribution on other terms.

c. Distributions to Holders of Allowed Unsecured Claims

On each Distribution Date, holders of Allowed General Unsecured Claims shall receive a distribution of any Net Available Cash such that each holder of an Allowed General Unsecured Claim has received, in the aggregate, its Pro Rata share of the Net Available Cash. All distributions shall be made pursuant to the terms and conditions of this Plan and the Liquidating Trust

Agreement and shall be subject to the Debtor's or the Liquidating Trustee's rights of setoff or deduction.

d. Estimation of Claims

The Liquidating Trustee may, at any time, request that the Bankruptcy Court, on proper notice, estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Disputed Claim, including during the pendency of any appeal relating to any such objection. If the Bankruptcy Court estimates any Disputed Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation of such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate Distribution on such Claim. All of the objection, estimation, settlement, and resolution procedures set forth in the Plan are cumulative and not necessarily exclusive of one another. Disputed Claims may be estimated and subsequently comprised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

e. *De Minimis* Distributions

On each Distribution Date prior to the Final Distribution Date, the Liquidating Trustee shall not distribute Cash to the Holder of an Allowed General Unsecured Claim if the amount of Cash to be distributed on account of such Claim is less than \$50.00 in the aggregate. Any Cash not distributed pursuant to this Section 5.4.2.e will be retained in the Liquidating Trust until the next Distribution Date. On the Final Distribution Date, if the aggregate amount of distributions to be made to such claimant is \$50.00 or greater, such distribution shall be made. Otherwise, the amount shall be redistributed to other Holders of Allowed Claims in such Class and such Holder of an Allowed Claim will be forever barred from asserting its Claim for such distribution against the Liquidating Trust or its property.

f. Provisions for Excess Funds

After the Final Distribution Date, if the Liquidating Trust receives or retains any funds and, in good faith, does not believe that an additional distribution will be cost effective or materially beneficial to creditors, the Liquidating Trustee may donate such excess funds to a charitable organization of his or her choice.

g. Provisions Governing Disputed Claims Reserve

(i) Funding

On the Effective Date or otherwise prior to the initial distributions under Section 5.4.2, the Disputed Claims Reserve will be established by the Liquidating Trustee for the benefit of Holders of Disputed Claims that become Allowed Claims. Solely for the purpose of calculating the Assets to be contributed to the Disputed Claims Reserve, all Disputed Claims will be treated as Allowed Claims in the Face Amount of such Claims as of the Effective Date. In making and establishing the Disputed Claims Reserve with respect to unliquidated claims, the Liquidating Trustee may rely on the Debtor's estimates as to Disputed Claims and will have no liability therefore in the absence

of bad faith or gross negligence, and the Debtor shall have no liability for its estimation of unliquidated Disputed Claims in the absence of bad faith or gross negligence. As Disputed Claims are resolved, the Liquidating Trustee shall make adjustments to the reserves for Disputed Claims, but neither the Debtor nor the Liquidating Trustee shall be required to increase such reserves from and after the Effective Date. The Liquidating Trustee may File a motion seeking an order of the Bankruptcy Court approving additional procedures for the establishment of the Disputed Claims Reserve

5.5 Other Provisions Applicable to Distributions in All Classes

5.5.1 Post-Petition Interest

On and after the Petition Date, no Claim shall be entitled to the payment of post-petition interest, except as allowed by Final Order of the Bankruptcy Court pursuant to section 506(b) of the Bankruptcy Code.

5.5.2 Allocation of Distributions

All distributions to a Holder of an Allowed Claim that has components of principal and interest will be deemed to apply first to the principal amount of such Claim until such principal amount is paid in full, and then the remaining portion of such distributions, if any, will be deemed to apply to any applicable accrued interest included in such Claim to the extent interest is payable under this Plan.

5.6 Holders of Record

Transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 for which a notice of transfer has been Filed on or prior to the close of business on the Confirmation Date will be treated as the Holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Confirmation Date. No transfers Filed with the Bankruptcy Court after the Confirmation Date shall be recognized by the Liquidating Trustee.

5.7 Means of Cash Payments

Except as otherwise specified in this Plan, Cash payments made pursuant to the Plan will be in U.S. currency by checks drawn on a domestic bank selected by the Liquidating Trustee.

5.8 Withholding Requirements

5.8.1 Withholding

In connection with the Plan, to the extent applicable, each Disbursing Agent will comply with all applicable Tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan will be subject to applicable withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Liquidating Trustee will be authorized to take any actions that may be necessary or appropriate to comply with such withholding and reporting requirements, including, without limitation,

liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding Taxes or establishing any other mechanisms the Liquidating Trustee believes are reasonable and appropriate, including requiring Claim Holders to submit appropriate Tax and withholding certifications. To the extent any Claim Holder fails to submit appropriate Tax and withholding certifications as required by the Liquidating Trustee, such Claim Holder's distribution will be deemed undeliverable and subject to Section 5.4.2.

5.8.2 Distributions

Notwithstanding any other provision of the Plan, each Entity receiving a distribution of Cash pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on it by any governmental unit on account of the distribution, including income, withholding and other Tax obligations.

5.9 Setoffs

Except with respect to claims of the Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Debtor or the Liquidating Trustee on behalf of the Debtor may, pursuant to section 553 of the Bankruptcy Code or applicable nonbankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim) the claims, rights, and causes of action of any nature that the Debtor or Liquidating Trust may hold against the Holder of such Allowed Claim; *provided, however*, that neither the failure to effect a setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the Debtor or the Liquidating Trustee of any claims, rights, and causes of action that the Debtor or Liquidating Trustee may possess against a Claim Holder, which are expressly preserved by the Plan.

ARTICLE VI PROCEDURES FOR RESOLVING DISPUTED CLAIMS

6.1 No Distributions Pending Allowance

Notwithstanding any other provision of the Plan, no payments or distributions will be made on account of a Disputed Claim until such Claim becomes an Allowed Claim, if ever.

6.2 Prosecution of Objections to Claims

6.2.1 Objections to Claims

All objections to Claims must be Filed and served on the Holders of such Claims, and any amendment to the Schedules to reduce the scheduled Claim of such Holder, must be made by the Liquidating Trustee by the Claims Objection Bar Date. Prior to the Effective Date, any party in interest with standing can object to Claims.

6.2.2 Authority to Prosecute Objections

On or after the Effective Date, the Liquidating Trustee will have the sole authority to File,

settle, compromise, withdraw or litigate to judgment objections to Claims with the exception of objections to Claims already filed by a party in interest with standing prior to the Effective Date.

6.2.3 Authority to Amend Schedules

The Liquidating Trustee will have the authority to amend the Schedules with respect to any Claim, and to make distributions based on such amended Schedules without approval of the Bankruptcy Court, *provided, however*, that the Liquidating Trustee will seek prior approval from the Bankruptcy Court prior to increasing by more than \$50,000 the proposed Allowed amount of any Claim on the Schedules. In addition, if any such amendment to the Schedules reduces the amount of a Claim or changes the nature or priority of a Claim, the Liquidating Trustee will provide the Holder of such Claim with written notice of such amendment and such Holder will have thirty (30) days to File an objection to such amendment with the Bankruptcy Court. The notice shall contain the same specificity to affected creditors that would be required if the Schedules amendment was a Claim objection. If no such objection is Filed, the Liquidating Trustee may proceed with distributions based on such amended Schedules without approval of the Bankruptcy Court. Notwithstanding anything contained in this Section 6.2.3 or this Plan to the contrary, the Liquidating Trustee shall have the authority to object to the amount of any Claim indicated on the Schedules if the Liquidating Trustee determines in good faith that the Claim is fully or partially invalid or has previously been paid or satisfied.

6.2.4 Request for Extension of Claims Objection Bar Date

Upon motion to the Bankruptcy Court, the Liquidating Trustee may request, and the Bankruptcy Court may grant, an extension to the Claims Objection Bar Date generally or with respect to a specific list of Claims. Any extension granted by the Bankruptcy Court shall not be considered to be a Plan modification under section 1127 of the Bankruptcy Code.

6.3 Distributions on Account of Disputed Claims Once Allowed

Distributions on account of Disputed Claims that become Allowed Claims after the Effective Date shall be made in accordance with Section 5.4 of the Plan.

ARTICLE VII CONFIRMATION OF THE PLAN

7.1 Conditions Precedent to the Effective Date

The Effective Date will not occur, and the Plan will not be consummated, unless and until each of the following conditions have been satisfied or duly waived pursuant to Section 7.2:

A. The Bankruptcy Court shall have entered the Confirmation Order, and the Confirmation Order shall be a Final Order.

B. No stay of the Confirmation Order shall then be in effect.

C. The Liquidating Trust Agreement shall be executed, the Liquidating Trust shall be

created, and the Liquidating Trustee shall have been appointed and accepted such appointment.

7.2 Waiver of Conditions of Effective Date

The conditions to Confirmation and the conditions to the Effective Date may be waived in whole or in part at any time only by the Plan Proponent without an order of the Bankruptcy Court.

7.3 Cramdown

The Plan Proponent requests Confirmation under section 1129(b) of the Bankruptcy Code with respect to any Class that is determined to be impaired or any creditor that has not accepted or is deemed not to have accepted the Plan pursuant to section 1126 of the Bankruptcy Code, including, to the extent necessary, Disputed Claims not entitled to vote under the Plan.

7.4 Effect of Nonoccurrence of Conditions to the Effective Date

If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Section 7.2, then upon motion by a Plan Proponent or any party-in-interest made before the time that each of such conditions has been satisfied and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order will be vacated by the Bankruptcy Court; *provided, however*, that, notwithstanding the Filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is satisfied or waived before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to this Section 7.4: (1) the Plan will be null and void in all respects; (2) nothing contained in the Plan will (a) constitute a waiver or release of any Claims by or against the Debtor or (b) prejudice in any manner the rights of the Debtor or any other party in interest; and (3) the Liquidating Trust, if already created, shall be promptly dissolved.

7.5 Effect of Confirmation of the Plan

7.5.1 No Discharge

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtor.

7.5.2 INJUNCTION

ALL INJUNCTIONS OR STAYS PROVIDED FOR IN THE CHAPTER 11 CASE UNDER SECTIONS 105 OR 362 OF THE BANKRUPTCY CODE, OR OTHERWISE, AND IN EXISTENCE ON THE CONFIRMATION DATE, WILL REMAIN IN FULL FORCE AND EFFECT UNTIL THE EFFECTIVE DATE. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, OR TO THE EXTENT NECESSARY TO ENFORCE THE TERMS AND CONDITIONS OF THE PLAN, THE CONFIRMATION ORDER, OR A SEPARATE ORDER OF THE BANKRUPTCY COURT, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR EQUITY INTERESTS IN THE DEBTOR, WILL BE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE DEBTOR, ITS ESTATE, OR ANY OF ITS PROPERTY ON

ACCOUNT OF ANY SUCH CLAIM OR EQUITY INTEREST: (A) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION OR OTHER PROCEEDING; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN OR ENCUMBRANCE; (D) ASSERTING A SETOFF, RIGHT OF SUBROGATION, OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY, OR OBLIGATION DUE TO THE DEBTOR, EXCEPT AS OTHERWISE SET FORTH IN THE PLAN; AND (E) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN, PROVIDED, HOWEVER, THAT SUCH ENTITIES WILL NOT BE PRECLUDED FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THE PLAN, THE CONFIRMATION ORDER, OR THE LIQUIDATING TRUST AGREEMENT.

7.5.3 Exculpation

Neither (a) the Debtor, nor any of its officers, directors, employees, managers, members or Bankruptcy Court appointed advisors, attorneys, professionals or agents, or (b) the Committee, nor any of its Bankruptcy Court appointed members, attorneys, or professionals, shall have or incur any liability to any holder of a Claim, for any act or omission in connection with, related to, or arising out of, the Chapter 11 Case, the pursuit or consummation of the sales of its assets pursuant to the Final APA to VV9000, the pursuit of the Hydro transaction, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property of the Debtor to be realized, liquidated, retained or distributed under the Plan, except for willful misconduct, gross negligence, or a breach of fiduciary duty, and, in all respects, the Debtor, and its respective members, managers, officers, directors, employees, and Bankruptcy Court appointed advisors, professionals and agents and the Committee and its Bankruptcy Court appointed members, attorneys and professionals shall be entitled to rely upon the advice of counsel with respect to its duties and responsibilities under the Plan.

7.6 Request for Waiver of Stay of Confirmation Order

This Plan will serve as a motion seeking a waiver of the stay of the Confirmation Order imposed by Bankruptcy Rule 3020(e). Any objection to this request for waiver shall be Filed with the Bankruptcy Court and served on the parties listed in Section 9.6 on or before the date fixed by the Bankruptcy Court for filing objections to Confirmation of the Plan. In the event any such objections are timely Filed, a hearing with respect thereto will occur at the Confirmation Hearing.

ARTICLE VIII RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain such jurisdiction over the Chapter 11 Case after the Effective Date as is legally permissible, including jurisdiction to:

A. Allow, disallow, determine, liquidate, reduce, classify, re-classify, estimate, or establish the priority or secured or unsecured status of any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the amount, allowance, priority, or classification of Claims;

B. Resolve any issues arising under the Sale Order;

C. Either grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;

D. Resolve any matters related to the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which the Debtor is a party or with respect to which the Debtor may be liable and to hear, determine, and, if necessary, liquidate any Claims arising therefrom, including any Cure Amount Claims;

E. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

F. Decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and either grant or deny any applications involving the Debtor that may be pending on the Effective Date or brought thereafter;

G. Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents entered into or delivered in connection with the Plan, the Liquidating Trust Agreement, the Disclosure Statement, or the Confirmation Order;

H. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan, the Liquidating Trust Agreement, or any contract, instrument, release, or other agreement or document that is entered into or delivered pursuant to the Plan, the Liquidating Trust Agreement, or any Entity's rights arising from or obligations incurred in connection with the Plan, the Liquidating Trust Agreement, or such documents;

I. Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code; modify the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement, or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement,

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

J. Issue injunctions, enforce the injunctions or releases contained in the Plan and the Confirmation Order, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with consummation, implementation, or enforcement of the Plan or the Confirmation Order;

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

L. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

M. Enforce or clarify any orders previously entered by the Bankruptcy Court in the Chapter 11 Case;

N. Enter a final decree or decrees closing the Chapter 11 Case;

O. Determine matters concerning state, local, and federal Taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code, including any Disputed Claims for Taxes;

P. Hear all matters arising out of the consummation of the Sale;

Q. Recover all Assets of the Debtor and its Estate, wherever located; and

R. Hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE IX MISCELLANEOUS PROVISIONS

9.1 Amendment or Modification of the Plan

Subject to the restrictions on alteration, amendment and modification set forth in section 1127 of the Bankruptcy Code, the Plan Proponent reserve the right to alter, amend, or modify the

Plan before the Effective Date. A Holder of an impaired Claim that has voted to accept this Plan shall be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim or such Holder.

9.2 Revocation, Withdrawal, or Non-Consummation of the Plan

The Plan Proponent reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to file subsequent plans of liquidation. If the Plan Proponent revokes or withdraws this Plan, or if confirmation or consummation does not occur, then: (a) this Plan shall be null and void in all respects; (b) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), rejection of executory contracts or leases affected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void; and (c) nothing contained in this Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Person, (ii) prejudice in any manner the rights of the Debtor or any other Person or Entity, or (iii) constitute an admission of any sort by the Debtor or any other Person or Entity.

9.3 Severability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, 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 will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

9.4 Dissolution of the Committee

On the Effective Date, the Committee shall dissolve and all members, employees or agents thereof shall be discharged from all rights and duties arising from or related to the Chapter 11 Case and the Trust Advisory Committee shall be immediately effective; *provided, however*, that the Liquidating Trustee shall be substituted for the Committee with respect to any pending litigation or contested matter to which the Committee is a party, with full standing to pursue such action(s), and the Committee shall remain intact with respect to any appeals filed regarding Confirmation and the resolution of applications for Fee Claims by the Debtor's and the Committee's Professionals. Up to and until the Liquidating Trustee engages its own professionals, the Liquidating Trustee shall continue to compensate the Debtor and the Committee's Professionals for reasonable services requested by the Liquidating Trustee and provided by such professionals in connection with any of the foregoing post-Effective Date activities requested by the Liquidating Trustee.

9.5 Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor, and its successors

and assigns, including, without limitation, the Liquidating Trustee. The rights, benefits, and obligations of any Entity or Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Entity or Person.

9.6 Notice

All notices, requests, and demands to or upon the Plan Proponent to be effective shall be in writing 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:

FOX ROTHSCHILD LLP

Martha B. Chovanes, Esquire
Michael J. Viscount, Jr., Esquire
2000 Market Street, 20th Floor
Philadelphia, PA 19103
Telephone: 215-299-2019
Fax: 215-299-2150
mchovanes@foxrothschild.com
mviscount@foxrothschild.com

and

FOX ROTHSCHILD LLP

Joseph J. DiPasquale, Esquire
49 Market Street
Morristown, NJ 07960
Telephone: (973) 548-3368
Fax: (973) 992-9125
jdipasquale@foxrothschild.com

9.7 Effectuating Documents and Further Transactions

The Committee and Debtor are authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of this Plan.

9.8 Corporate Action

Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under this Plan that would otherwise require approval of the interest owners, managers, or directors of the Debtor shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date without any requirement of further action by the interest owners, managers, or directors of the Debtor.

9.9 Payment of Statutory Fees

On or before the Effective Date, Administrative Claims for statutory quarterly fees payable pursuant to 28 U.S.C. § 1930 will be paid in Cash equal to the amount of such Allowed Administrative Claims. Statutory quarterly fees pursuant to 28 U.S.C. Section 1930 (a)(6) continue to be payable to the office of the United States trustee post-confirmation until such time as the case is converted, dismissed, or closed. The Debtor and the Liquidating Trust shall be jointly and severally liable and responsible for all statutory quarterly fee payment obligations. Disbursements pursuant to 28 U.S.C. § 1930 occur when the Debtor or Liquidating Trust disburses to creditors, not when the Debtor's estate transfers assets to the Liquidating Trust. The Debtor and the Liquidating Trust shall file any and all post-confirmation quarterly reports with the Court sufficient to allow the US Trustee to determine the amount of the Debtor's and/or the Liquidating Trust's receipts and disbursements and to collect all post-confirmation quarterly fee account balances.

9.10 Books and Records

(a) On the Effective Date, the Debtor's books and records (excluding (a) any books and records sold to Purchaser pursuant to the Final APA; and (b) any electronic mail or other correspondence between the Debtor and its counsel subject to a Privilege) (the "Books and Records") will be transferred to the Liquidating Trust. The Trustee will be mindful of the expense of retention and shall promptly dispose of all records not required to be retained for purposes of the Liquidating Trust. The Liquidating Trustee will be free to abandon, destroy, or otherwise dispose of any such Books and Records in compliance with applicable non-bankruptcy law at any time on or after the Effective Date, without the need for any other or further court order.

(b) With respect to (i) any Books and Records relevant to claims handled by the Chubb Companies that are maintained by the Liquidating Trust, the Liquidating Trust shall not destroy or transfer such Books and Records without providing the Chubb Companies access to a copy of such documents or the appropriate contact at the storage facility where the records are held and whatever authorization the storage facility requires to allow the Chubb Companies no less than thirty (30) days to take possession of copies of all or any portion of such Books and Records at Chubb Companies' sole expense and cost, or (ii) copies of any documents, books and records relevant to claims handled by the Chubb Companies and that have been or will be transferred to the Purchaser or its assignee pursuant to the Final APA, the Liquidating Trust shall be deemed to have authorized the Purchaser to provide the Chubb Companies upon request from the Chubb Companies, with such documents, books and records.

9.11 Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules, or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of New Jersey, without giving effect to the principles of conflicts of law of such jurisdiction.

9.12 Exhibits

All exhibits to this Plan, including the Plan Supplement, are incorporated and are a part

of this Plan as if set forth in full herein.

9.13 Filing of Additional Documents

On or before substantial consummation of this Plan, the Plan Proponent shall File such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

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Respectfully submitted,

**OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF ALUMINUM SHAPES, L.L.C.**

Dated: May 6, 2022

By: 
Ajay Raju, Chairperson

FOX ROTHCHILD LLP

Joseph J. DiPasquale, Esquire
Michael J. Viscount, Jr., Esquire
Martha B. Chovanes, Esquire

*Counsel to the Official Committee of Unsecured
Creditors*

EXHIBIT A

DEFINED TERMS

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

1. **“Administrative Claim”** means any Claim for costs and expenses of administration of a Chapter 11 Case that is Allowed under section 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (x) actual and necessary costs and expenses incurred after the Petition Date in connection with preserving the Debtor’s Estate and operating the business of the Debtor; (y) compensation for legal, financial, advisory, accounting, and other services and reimbursement of expenses Allowed by the Bankruptcy Court under sections 328, 330, 331, or 503(b) of the Bankruptcy Code to the extent incurred prior to the Effective Date; and (z) all Statutory Fees pursuant to 28 U.S.C. § 1930(a)(6).

2. **“Allowed... Claim”** means an Allowed Claim in the particular Class or category specified.

3. **“Allowed Claim”** when used herein means:

- a. a Claim that (i) has been listed by the Debtor on its Schedules as other than disputed, contingent, or unliquidated and (ii) is not a Disputed Claim;
- b. a Claim (i) for which a proof of Claim or request for payment of Administrative Claim (or similar request) has been Filed by the applicable Bar Date or otherwise has been deemed timely Filed under applicable law and (ii) that is not a Disputed Claim;
- c. a Claim that is expressly allowed: (i) in any stipulation or agreed order of the Bankruptcy Court executed by the Debtor, the Committee (or after the Effective Date the Liquidating Trustee) and the Claim Holder; (ii) in any contract, instrument, or other agreement entered into in connection with the Plan and, if prior to the Effective Date, approved by the Bankruptcy Court; (iii) in a Final Order; or (iv) pursuant to the terms of the Plan; or
- d. a Claim that the Liquidating Trustee determines prior to the Claims Objection Bar Date (i) will not be subject to an objection or to an amendment to the Schedules and (ii) will be satisfied in accordance with the terms of the Plan.

4. **“Allowed General Unsecured Claim”** means that portion of a Claim, if any, that is determined by a Final Order to be (x) an Allowed Claim and (y) a General Unsecured Claim.

5. **“Assets”** means all of the Debtor’s property, rights, and interests that are property of the Debtor’s Estate pursuant to section 541 of the Bankruptcy Code.

6. **“Avoidance Actions”** means, collectively and individually, preference actions, fraudulent

conveyance actions and any other claims or causes of action, including but not limited to under sections 510, 542, 544, 547, 548, 549, 550, 551, 553, and other applicable provisions of the Bankruptcy Code and other similar state law claims and causes of action, whether or not such action was commenced prior to the Effective Date.

7. **“Bankruptcy Rules”** means, collectively, the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended, as applicable to this Chapter 11 Case.

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

9. **“Cash”** means legal tender of the United States of America and equivalents thereof.

10. **“Cause of Action” or “Causes of Action”** means, individually or collectively and without limitation, any action, cause of action, liability, obligation, right to legal or equitable remedies, suit, debt, sum of money, damage, judgment, claim and demand whatsoever, whether known or unknown, matured or unmatured, disputed or undisputed and whether asserted or assertable directly or derivatively in law, equity or otherwise held by the Debtor, the Committee, or the Estate as of the Effective Date, including, without limitation, Avoidance Actions, commercial tort claims as defined in Article 9 of the UCC, the Disputed Secured Creditor Actions, the D&O Claims and any and all claims and causes of action against the Debtor’s current or former directors, managers, members, officers, and employees, and any and all proceeds of the foregoing Causes of Action.

11. **“Chapter 11 Case”** means the case commenced under Chapter 11 of the Bankruptcy Code by the Debtor in the Bankruptcy Court under Case No. 21-16520.

12. **“Chubb Companies”** means ACE American Insurance Company and Federal Insurance Company, and each of their U.S.-based affiliates and predecessors and each in their capacity as an insurer. For the avoidance of doubt the term “Chubb Companies” shall not include Century Indemnity Company, successor to CCI Insurance Company, successor to the Insurance Company of North America.

13. **“Chubb Insurance Contracts”** means all insurance policies that have been issued by any of the Chubb Companies and provide coverage at any time to the Debtor, and all agreements, documents or instruments relating thereto that were not transferred to the Purchaser pursuant to the Final APA and the Sale Order. Notwithstanding the foregoing, the Chubb Insurance Contracts shall not include any insurance policies issued prior to November 12, 2012 to Shapes L.L.C., now known as SLLC Oldco, L.L.C., and/or any other Entity that is or is alleged to be a predecessor-in-interest of the Debtor, which insurance policies are not property of the Debtor’s Estate.

14. **“Claim”** means a claim (as defined in section 101(5) of the Bankruptcy Code) against the Debtor.

15. **“Claims and Noticing Agent”** means Epiq Bankruptcy Solutions, LLC.

16. **“Claims Objection Bar Date”** means, for all Claims (other than Fee Claims, which are treated in Section 2.1.1.c.ii of the Plan), the latest of: (x) 180 days after the Effective Date, subject to extension by order of the Bankruptcy Court; and (y) such other period of limitation as may be specifically fixed by the Plan, the Confirmation Order, the Bankruptcy Rules, or a Final Order for objecting to such a Claim.

17. **“Class”** means a class of Claims or Interests, as described in Article II of the Plan.
18. **“Committee”** means the statutory official committee of unsecured creditors appointed by the United States Trustee in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code on September 1, 2021 [Docket No. 77].
19. **“Confirmation”** means the entry of the Confirmation Order on the docket of the Bankruptcy Court.
20. **“Confirmation Date”** means the date on which the Bankruptcy Court enters the Confirmation Order on its docket within the meaning of Bankruptcy Rules 5003 and 9021.
21. **“Confirmation Hearing”** means the hearing held by the Bankruptcy Court on Confirmation of the Plan, as such hearing may be continued from time to time.
22. **“Confirmation Order”** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.
23. **“Cure Amount Claim”** means any Claim based upon the Debtor’s monetary defaults under an Executory Contract or Unexpired Lease that is to be paid in connection with the assumption of such contract or lease under section 365 of the Bankruptcy Code by the Debtor.
24. **“D&O Claims”** means potential causes of action, excluding Avoidance Actions, against the Debtor’s Insiders.
25. **“D&O Liability Insurance Policies”** means insurance policies issued by the Chubb Companies, XL Specialty Insurance Company and any other insurance policy, including tail insurance policies, providing for coverage for Insiders at any time, and all agreements, documents or instruments relating thereto.
26. **“Debtor”** means Aluminum Shapes, L.L.C.
27. **“Disputed Claim”** means any Claim: (x) as to which a Plan Proponent, the Liquidating Trustee, or another party in interest with standing has interposed a timely objection or otherwise contested or disputed the Claim or interposed a request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by the Bankruptcy Court pursuant to a Final Order, (y) that is listed on the Schedules as unliquidated, disputed, or contingent or held by a party that is adverse to the Debtor in any litigation or contested matter and as to which no Final Order resolving such litigation or contested matter has been entered. A Claim or Interest that is Disputed as to its amount shall not be Allowed in any amount until it is no longer a Disputed Claim or Disputed Interest. For the avoidance of doubt, any Claim of the Disputed Secured Claimants and any Claim of the United States of America attributable to claimed damages arising from a purported violation of the False Claims Act shall be deemed Disputed Claims under this Plan until a Final Order allowing such Claims in whole or in part is entered by the Court.
28. **“Disputed Claims Reserve”** means the reserve of Liquidating Trust Assets to be maintained as part of the Liquidating Trust, which reserve will maintain such assets in trust for Pro Rata distributions to Holders of Disputed Claims that become Allowed Claims.

29. **“Disputed Judgment Creditors”** shall mean, among others, Talen Energy Marketing, LLC; Direct Energy Business, LLC; Combined Metal Industries, Inc.; and UGI Energy Services, LLC. Prior to the Effective Date, a number of these claims may be stipulated or adjudicated to be Class 3 Unsecured Claims.

30. **“Disputed Secured Creditor Actions”** means the Disputed Claims of the Creditors who are the defendants of Avoidance Actions related to alleged liens on the Debtor’s Assets, including Pyrotek, Inc. (Adv. Pro. No 21-01464), Talen Energy Marketing, LLC (Adv. Pro. No. 21-01465), IFM Efector Inc. (Adv. Pro. No. 21-01466), Direct Energy Business, LLC and Direct Energy Business Marketing, LLC (Adv. Pro. No. 21-01467), Euler Hermes North America Insurance Co., subrogee of Northeast Metal Traders, Inc. (Adv. Pro. No. 21-01469), Combined Metal Industries, Inc. (Adv. Pro. No. 21-01470), Equipment Depot Pennsylvania, Inc. d/b/a Equipment Depot (Adv. Pro. No. 21-01471), UGI Energy Services, LLC (Adv. Pro. No. 21-01472), and Eastern Lift Truck Co., Inc. (Adv. Pro. No. 21-01473), and any other Claims whose designation as a secured claim is challenged.

31. **“Distribution Date”** means a date or dates selected by any Disbursing Agent in accordance with the terms of the Plan, the Liquidating Trust Agreement, or other applicable documents to make distributions on account of Allowed Claims.

32. **“Effective Date”** means a day, as determined by the Plan Proponent that is the Business Day as soon as reasonably practicable after all conditions to the Effective Date in Section 7.1 of the Plan have been met or waived in accordance with Section 7.2 of the Plan; *provided, however*, the Plan Proponent reserves the right to request that the Bankruptcy Court establish a date certain for the Effective Date in the Confirmation Order.

33. **“Entities”** means as described in section 101(15) of the Bankruptcy Code.

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

35. **“Estate Funds”** means the Cash proceeds of the Sale of the Debtor’s Assets to VV9000 and any other cash in the Debtor in Possession account less reasonable reserves for ongoing expenses of the Debtor’s bankruptcy estate. As of March 1, 2022, there is approximately \$11,000,000.00 in Estate Funds with Allowed Administrative Claims continuing to accrue through the Effective Date.

36. **“Executory Contract or Unexpired Lease”** means a contract or lease to which the Debtor is a party that is subject to assumption, assumption and assignment, or rejection under section 365 of the Bankruptcy Code, and includes any modifications, amendments, addenda, or supplements thereto or restatements thereof.

37. **“Face Amount”** means either: (x) the full stated amount claimed by the Holder of a Claim in any proof of Claim Filed by the Bar Date or otherwise deemed timely Filed under applicable law, if the proof of Claim specifies only a liquidated amount; (y) if no proof of Claim is Filed by the Bar Date or otherwise deemed timely Filed under applicable law, the full amount of the Claim listed on the Debtor’s Schedules, *provided that* such amount is not listed as disputed, contingent, or unliquidated; or (z) the amount of the Claim (i) acknowledged by the Debtor or Liquidating Trustee in any objection Filed to such Claim, (ii) estimated by the Bankruptcy Court for such purpose pursuant to section 502(c) of the Bankruptcy Code, or (iii) proposed by the Debtor, the Committee, or the Liquidating Trustee, as the case may be, if (A) no proof of Claim has been Filed by the Bar Date or has otherwise been deemed timely Filed under applicable law and such amount is not listed in the Debtor’s Schedules or is listed in the Debtor’s Schedules

as disputed, contingent, or unliquidated or (B) the proof of Claim specifies an unliquidated amount (in whole or in part).

38. **“Fee Claim”** means any Claim under sections 328, 330(a), 331, 333, 503, or 1103 of the Bankruptcy Code for compensation of a Professional or other Person retained for services rendered or expenses incurred in the Chapter 11 Case.

39. **“File”, “Filed” or “Filing”** means file, filed, or filing with the Bankruptcy Court or its authorized designee in this Chapter 11 Case.

40. **“Final APA”** means the fully executed Asset Purchase Agreement dated November 12, 2021 by and between the Debtor and VV9000.

41. **“Final DIP Order”** means that certain Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, and 507 and Fed. R. Bankr. P. 2002, 4001, 6003, 6004 and 9014 (I) Authorizing Debtor to Obtain Post-petition Financing, (II) Granting Liens and Superpriority Claims, (III) Authorizing Use of Cash Collateral, and (IV) Modifying the Automatic Stay dated September 29, 2021(Docket No. 116), as amended by the Order Modifying Final Order Authorizing Debtor to, Among Other Things, Obtain Post-petition Financing (II) Granting Liens and Superpriority Claims (III) Authorizing Use of Cash Collateral and (IV) Modifying the Automatic Stay dated November 5, 2021(Docket No. 230).

42. **“Final Order”** means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Case, or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, modified, or amended, and as to which the time to appeal or petition for certiorari or move, under Bankruptcy Rule 9023 and/or Rule 59 of the Federal Rules of Civil Procedure, for a new trial, reargument, or rehearing has expired, and no appeal or petition for certiorari or other proceeding 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 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 or resulted in no modification of such order.

43. **“Final Tax Return”** means the Debtor’s tax returns for the 2021 and later tax years through and including the year in which the Effective Date occurs.

44. **“General Unsecured Claim”** means any Claim that is not an Administrative Claim, Fee Claim, Priority Tax Claim, Other Priority Claim, Interest, Other Secured Claim, General Unsecured Workers’ Compensation Claim, United State of America Damages Claim or United States of America Penalty Claim.

45. **“General Unsecured Worker’s Compensation Claims”** means any Claim arising out of a currently pending claim for workers’ compensation benefits. In exchange for a grant of relief from the automatic stay conditioned by section 362 of the Bankruptcy Code and/or the Injunction set forth in section 7.5.2 of the Plan, any holder of a Class 4 Claim shall be limited to recovery from the Debtor’s applicable insurance policies and shall not receive a disbursement from the Liquidating Trust.

46. **“Holder”** means a party that holds or is deemed to hold a Claim or Interest, as the case may be.

47. **“HYG/Wells Settlement”** means the settlement pursuant to Bankruptcy Rule 9019 between HYG Financial Services Inc., Wells Fargo N.A. and the Debtor as described in Section 3.6 of the

Plan and Section 2.7 of the Disclosure Statement.

48. **“Impaired”** means, when used in reference to a Claim or Interest Holder, a Claim or Interest Holder that is “impaired” within the meaning of Section 101(27) of the Bankruptcy Code.

49. **“Insider”** means a Person which is or at any relevant time was an officer, manager, member or director of the Debtor.

50. **“Interest”** means the rights and interest of the holder of any instrument evidencing an ownership interest in the Debtor.

51. **“Liabilities”** means any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, arising in law, equity, or otherwise, that are based in whole or in part on any act, event, injury, omission, transaction, agreement, employment, exposure, or other occurrence taking place on or prior to the Effective Date.

52. **“Lien”** means any mortgage, pledge, deed of trust, assessment, security interest, lease, lien, adverse claim, levy, charge or other encumbrance of any kind, including any “lien” as defined in Section 101(37) of the Bankruptcy Code, or a conditional sale contract, title retention contract or other contract to give any of the foregoing, which is fully perfected and not subject to dispute or avoidance.

53. **“Liquidating Trust”** means the trust established pursuant to Section 3.2 of the Plan to administer the Liquidating Trust Assets and to make distributions to Holders of Allowed Claims.

54. **“Liquidating Trust Agreement”** means the trust agreement governing the Liquidating Trust entered into between the Debtor, the Committee, and the Liquidation Trustee to be dated on or prior to the Effective Date, and to be effective as of the Effective Date, which will be substantially in the form filed as part of the Plan Supplement.

55. **“Liquidating Trust Assets”** means, collectively, all of the Debtor’s Assets as of the Effective Date, including but not limited to, Cash, any Estate Funds remaining in the Estate on the Effective Date, and any Causes of Action. After the funding of the Liquidating Trust, the Liquidating Trust Assets shall also include any fiduciary accounting income and appreciation in trust principal.

56. **“Liquidating Trustee”** means Advisory Trust Group, LLC (or any successor trustee in his/her capacity as the trustee of the Liquidating Trust), chosen jointly by the Debtor and the Committee.

57. **“Net Available Cash”** has the meaning ascribed to such term in Section 5.4.2.b of the Plan.

58. **“Notice Parties”** means: (x) prior to the Effective Date, counsel for the Debtor, counsel for the Committee, the United States Trustee and all persons (and counsel thereto) that have filed notices of appearance and requests for notice in the main bankruptcy case and (y) on or after the Effective Date, the United States Trustee, the Liquidating Trustee and his or her counsel and all person who have submitted to the Liquidating Trustee a written request for notices.

59. **“Noticing Agent”** means Epiq Bankruptcy Solutions, LLC (“Epiq”).

60. **“Other Priority Claim”** means any Claim that is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code and that is not an Administrative Claim or a Priority Tax Claim.

61. **“Other Secured Claim”** means any Secured Claim that is not a Disputed Secured Claim.
62. **“Person”** means any individual, firm, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, or other Entity.
63. **“Petition Date”** means August 15, 2021, the date on which the Debtor Filed its petition for relief and commenced the Chapter 11 Case.
64. **“Plan”** means the plan of liquidation filed by the Official Committee of Unsecured Creditors of Aluminum Shapes, L.L.C., as the same may be amended, modified, or supplemented.
65. **“Plan Proponent”** means the Official Committee of Unsecured Creditors of Aluminum Shapes L.L.C.
66. **“Plan Supplement”** means a supplement to the Plan, as such documents and exhibits may be altered, amended, modified, or supplemented from time to time, which shall be filed with the Bankruptcy Court no later than fourteen (14) days prior to the Confirmation hearing, and include, among other things, the following documents: (i) the Liquidating Trust Agreement; (ii) the identity of the Liquidating Trustee; (iii); and the schedule of Causes of Action to be retained by the Estate subsequent to the Effective Date.
67. **“Priority Tax Claim”** means any Claim that is entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.
68. **“Privilege”** means the attorney client privilege, work product protections or other immunities (including those related to common interests or joint defenses with other parties), or protections from disclosure of any kind held by the Debtor or its Estate.
69. **“Pro Rata”** means, when used with reference to a distribution of property to Holders of Allowed Claims in a particular Class or other specified group of Claims pursuant to Article II of the Plan, proportionately so that with respect to a particular Allowed Claim in such Class or in such group, the ratio of (x) the amount of property to be distributed on account of such Claim to the amount of such Claim, which is the same as the ratio of (y) the amount of property to be distributed on account of all Allowed Claims in such Class or group of Claims to the amount of all Allowed Claims, as the case may be, in such Class or group of Claims. Until all Disputed Claims in a Class are resolved, Disputed Claims shall be treated as Allowed Claims in their Face Amount for purposes of calculating the Pro Rata distribution of property to Holders of Allowed Claims in such Class.
70. **“Professional”** means any professional employed in the Chapter 11 Case pursuant to sections 327, 328, 333, 363, or 1103 of the Bankruptcy Code, or any professional or other Person seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.
71. **“Representatives”** means, with respect to any Person, such Person’s successor, predecessor, officer, director, trustee, partner, employee, agent, attorney, advisor, investment banker, financial advisor, accountant, or other Professional of such Person, and committee of which such Person is a member, in each case in such capacity.
72. **“Sale”** means the sale of substantially all the Assets of the Debtor.
73. **“Sale Order”** means that certain Order Authorizing the Sale of substantially all of the Debtor’s Assets under Bankruptcy Code § 363 [Docket No. 282].

74. **“Schedules”** means the schedules of assets and liabilities and the Statements of Financial Affairs Filed by the Debtor on September 12, 2021, as required by section 521 of the Bankruptcy Code, as the same may have been or may be amended, modified, or supplemented.

75. **“Secured Claim”** means any Claim that is secured by a valid and fully perfected lien on property in which the Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder’s interest in the Estate’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 and, if applicable, section 1129(b) of the Bankruptcy Code.

76. **“Tax”** means: (x) any net income, alternative, or add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental, excise, or other tax, assessment, or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax, or additional amount) imposed by any federal, state, local, or foreign taxing authority.

77. **“United States of America Damage Claim”** means the portion of proof of claim 10041 filed by the United States of America that is attributable to claimed damages arising from a purported violation of the False Claims Act. The vast majority of the claimed \$70,258,760.08 in damages are a fine or penalty and not compensation for any actual pecuniary loss, and the Plan Proponent or Liquidating Trustee may seek such a determination via an objection or adversary proceeding.

78. **“United States of America Penalty Claim”** means the portion of proof of claim 10041 filed by the United States of America that is attributable to penalties and punitive damages in the amount of at least \$140,759,519.90 arising from a purported violation of the False Claims Act.

79. **“United States Trustee”** means the Office of the United States Trustee for the District of New Jersey.

80. **“Utility Deposits”** means deposits with utilities made by the Debtor after the Petition Date pursuant to section 366(b) of the Bankruptcy Code.

81. **“Voting Deadline”** means the deadline for submitting Ballots to either accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code that is specified in the Disclosure Statement, the Ballots, or related solicitation documents approved by the Bankruptcy Court.