

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

In re:

PHF, INC., *et al*,¹

Debtors.

Chapter 11

Case No. 23-11235 (MFW)

(Jointly Administered)

**COMBINED DISCLOSURE STATEMENT AND JOINT CHAPTER 11
PLAN OF PHF, INC. AND ITS AFFILIATED DEBTORS**

Dated: January 10, 2024
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Michael R. Nestor (No. 3526)
Kenneth J. Enos (No. 4544)
S. Alexander Faris (No. 6278)
Kristin L. McElroy (No. 6871)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6000
Facsimile: (302) 571-1253
Email: mnestor@ycst.com
kenos@ycst.com
afaris@ycst.com
kmcelroy@ycst.com

Counsel for Debtors and Debtors in Possession

¹ The Debtors in these chapter 11 cases, along with the last four digits of their federal tax identification numbers, are PHF, Inc. (0867) (f/k/a Pegasus Home Fashions, Inc.); PHF Intermediate Inc. (3275) (f/k/a Pegasus Home Fashions Intermediate Inc.); PHF Purchaser Inc. (2857) (f/k/a Pegasus Home Fashions Purchaser Inc.); and WCC TX Inc. (1078) (f/k/a Weatherford Cushion Co.). The Debtors' mailing address for the purposes of these chapter 11 cases is P.O. Box 2019, Ocean, NJ 07712.

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DISCLAIMER

THIS COMBINED DISCLOSURE STATEMENT AND PLAN WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE, INFORMATION, AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE (I) DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, (II) ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR (III) DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE COMBINED DISCLOSURE STATEMENT AND PLAN ON THE DEBTORS OR HOLDERS OF CLAIMS OR INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF. HOLDERS OF CLAIMS OR INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THIS COMBINED DISCLOSURE STATEMENT AND PLAN AND THE TRANSACTIONS CONTEMPLATED HEREBY.

NO PARTY IS AUTHORIZED TO GIVE ANY INFORMATION WITH RESPECT TO THIS COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY HAVE BEEN AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. ANY INFORMATION, REPRESENTATIONS OR INDUCEMENTS MADE TO OBTAIN AN ACCEPTANCE OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY ANY HOLDER OF A CLAIM OR INTEREST. THE COMBINED DISCLOSURE STATEMENT AND PLAN HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND BANKRUPTCY RULE 3016(b) AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-APPLICABLE BANKRUPTCY LAWS.

SEE ARTICLE V HEREIN, ENTITLED “CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING,” FOR A DISCUSSION OF CERTAIN CONSIDERATIONS IN CONNECTION WITH A DECISION BY A HOLDER OF AN IMPAIRED CLAIM TO ACCEPT THE COMBINED DISCLOSURE STATEMENT AND PLAN.

INTRODUCTION²

The Debtors hereby propose the following combined Disclosure Statement and Plan for the liquidation of the Debtors’ remaining Assets and distribution of the proceeds of the Sale and the remaining Assets to the Holders of Allowed Claims against the Debtors as set forth herein. Each Debtor is a proponent of the Plan within the meaning of Bankruptcy Code section 1129.

This combined Disclosure Statement and Plan contains, among other things, a discussion of the Debtors’ history, businesses, properties, operations, the Chapter 11 Cases, risk factors, summary and analysis of the Plan, and certain other related matters.

ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS ARE ENCOURAGED TO READ THE COMBINED DISCLOSURE STATEMENT AND PLAN IN ITS ENTIRETY, AND TO CONSULT WITH AN ATTORNEY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN BANKRUPTCY CODE SECTION 1127, BANKRUPTCY RULE 3019, AND IN THE PLAN, THE DEBTORS RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THE PLAN, OR ANY PART THEREOF, AT ANY TIME, INCLUDING PRIOR TO ITS SUBSTANTIAL CONSUMMATION.

THE DEBTORS BELIEVE THE PLAN IS IN THE BEST INTEREST OF CREDITORS AND THEREFORE RECOMMEND THAT ALL HOLDERS OF CLAIMS RECEIVING A BALLOT VOTE IN FAVOR OF THE PLAN.

ARTICLE I **DEFINED TERMS AND RULES OF INTERPRETATION**

Defined Terms

1.1 “503(b)(9) Claims” shall mean Claims arising under Bankruptcy Code section 503(b)(9).

1.2 “Administrative Claim” shall mean a Claim for costs and expenses of administration of the Chapter 11 Cases allowed under Bankruptcy Code sections 503(b), 507(a)(2), 507(b) or, if applicable, 1114(e)(2), including, but not limited to: (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors (including, but not limited to, wages, salaries, commissions for services and payments for inventory, leased equipment and premises) and Claims by Governmental Units for taxes (including Claims related to taxes which accrued after the Petition Date, but excluding Claims related to taxes which accrued on or before the Petition Date); (b) compensation for legal, financial,

² Capitalized terms not defined in this Introduction shall have the meanings ascribed below.

advisory, accounting and other services and reimbursement of expenses allowed by the Bankruptcy Court under Bankruptcy Code sections 328, 330, 331, 363 or 503(b) to the extent incurred on or prior to the Effective Date; (c) all fees and charges assessed against the Estates under United States Code title 28 section 1930; (d) any 503(b)(9) Claims; and (e) any Claims that have been designated “Administrative Claims” by Final Order of the Bankruptcy Court.

1.3 “Affiliate” shall mean “affiliate” as defined in Bankruptcy Code section 101(2).

1.4 “Allowed” shall mean all or a portion of a Claim against the Debtors or an Interest in the Debtors (a) that has been listed by the Debtors in the Schedules as liquidated in amount and not “disputed” or “contingent,” and with respect to which no contrary Proof of Claim or Proof of Interest has been filed, (b) as to which no objection or request for estimation has been Filed on or before the Claims Objection Deadline or the expiration of such other applicable period fixed by the Bankruptcy Court, (c) as to which any objection has been settled, waived, withdrawn or denied by a Final Order, or (d) that is allowed (i) by a Final Order, (ii) pursuant to the terms of the Plan, or (iii) by a Stipulation between the Holder of such Claim or Interest and the Liquidation Trustee on or after the Effective Date. For purposes of computing Distributions under the Plan, a Claim or Interest that has been deemed “Allowed” shall not (other than with respect to DIP Loan Claims and as provided for by the Global Settlement) include interest, costs, fees or charges on such Claim or Interest from and after the Petition Date.

1.5 “Assets” shall mean any and all right, title, and interest of the Debtors and the Estates in and to property of whatever type or nature, including their books and records and any and all rights and benefits under any purchase agreement with respect to the Sale.

1.6 “Avoidance Actions” shall mean any and all avoidance or equitable subordination or recovery actions under the Bankruptcy Code, including sections 105(a), 502(d), 510, 542 through 551, and 553, or any similar federal, state, or common law causes of action; provided, however, that any avoidance or equitable subordination or recovery actions sold or otherwise transferred in connection with the Sale shall not constitute Avoidance Actions for the purposes hereof.

1.7 “Ballot” shall mean the ballot form distributed to each Holder of a Claim entitled to vote to accept or reject this Plan.

1.8 “Bankruptcy Code” shall mean title 11 of the United States Code, 11 U.S.C. §§ 101–1532, and as such title has been, or may be, amended from time to time, to the extent that any such amendment is applicable to the Chapter 11 Cases.

1.9 “Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Delaware.

1.10 “Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure, as has been, or may be, amended from time to time, to the extent that any such amendment is applicable to the Chapter 11 Cases.

1.11 “Bar Date” shall mean, with respect to any particular Claim, the specific date set by the Bankruptcy Court as the last day for Filing Proofs of Claim against the Debtors in the Chapter 11 Cases for that specific Claim.

1.12 “Bar Date Order” shall mean that certain *Order (I) Establishing Bar Dates for Filing Proofs of Prepetition Claims, Including 503(b)(9) Claims; and (II) Approving the Form and Manner of Notice Thereof* [D.I. 195].

1.13 “Beneficiary” shall mean a holder of a Liquidation Trust Interest, whether individually or as agent on behalf of one or more other Entities. To the extent Holders of Allowed Claims are entitled to a Distribution from the Liquidation Trust pursuant to the terms of the combined Disclosure Statement and Plan, such Holders are each a Beneficiary.

1.1 “Bidding Procedures Order” shall mean that certain *Order (I) Approving Bidding Procedures in Connection with Sale of the Debtors’ Assets and Related Expense Reimbursement; (II) Approving Form and Manner of Notice; (III) Scheduling Auction and Sale Hearing; (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Contracts and Unexpired Leases; and (V) Granting Related Relief* [D.I. 136].

1.2 “Blue Torch” shall mean Blue Torch Finance, LLC.

1.3 “Business Day” shall mean any day, other than a Saturday, Sunday or a legal holiday (as that term is defined in Bankruptcy Rule 9006(a)).

1.4 “Budget” shall have the meaning set forth in the Final DIP Order.

1.5 “Cash” shall mean money that is legal tender of the United States of America.

1.6 “Causes of Action” shall mean all Claims, actions, causes of action, choses in action, suits, debts, dues, damages, defenses, judgments, third-party claims, counterclaims, and cross claims that are or may be pending or existing on the Effective Date against any Entity, based in law or equity, including, but not limited to, under the Bankruptcy Code, whether direct, indirect, known or unknown, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order, and including the unknown Causes of Action that have not been released by the Plan or any order of the Bankruptcy Court.

1.7 “Chapter 11 Cases” shall mean the chapter 11 cases commenced by the Debtors and jointly administered under case number 23-11235 (MFW) in the Bankruptcy Court.

1.8 “Claim” shall mean a claim against any Debtor, as such term is defined in Bankruptcy Code section 101(5).

1.9 “Claims Agent” shall mean the Debtors’ claims agent, Epiq Corporate Restructuring, LLC.

1.10 “Claims Objection Deadline” shall mean one hundred eighty (180) days after the Effective Date, or such later date as may be ordered by the Bankruptcy Court; *provided however*, that the Liquidation Trustee may seek extensions of this date from the Bankruptcy Court at any time.

1.11 “Class” shall mean each category or group of Holders of Claims or Interests that has been designated as a class in Article II of this combined Disclosure Statement and Plan.

1.12 “Committee” shall mean the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases.

1.13 “Committee Supplemental Fee Reserve Amount” shall mean \$175,000.00 to be funded by the Debtors to the Professional Fee Reserve Account to be used solely to pay any Allowed Professional Fee Claims of the Committee’s Professionals not accounted for in the Professional Fee Reserve Amount; *provided that* any amounts not used to pay Allowed Professional Fee Claims of the Committee’s Professionals shall become part of the Liquidation Trust Assets.

1.14 “Confirmation” shall mean entry of the Confirmation Order by the Bankruptcy Court on the docket of the Chapter 11 Cases.

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

1.16 “Confirmation Hearing” shall mean the hearing held by the Bankruptcy Court to consider confirmation of the Plan and final approval of the Disclosure Statement, as such hearing may be adjourned or continued from time to time.

1.17 “Confirmation Notice” shall mean the notice of the Confirmation Hearing to be delivered pursuant to Bankruptcy Rules 2002(c)(3) and 2002(f).

1.18 “Confirmation Order” shall mean the order of the Bankruptcy Court confirming the Plan pursuant to, among others, Bankruptcy Code section 1129 in a form and substance acceptable to the Debtors, the Committee, and Blue Torch.

1.19 “Consummation” shall mean the occurrence of the Effective Date.

1.20 “Contingent” shall mean, with reference to a Claim, a Claim that has not accrued or is not otherwise payable and the accrual of which, or the obligation to make payment on which, is dependent upon a future event that may or may not occur.

1.21 “Creditor” shall have the meaning ascribed to such term in Bankruptcy Code section 101(10).

1.22 “D&O Policies” means, collectively, the Debtors’ director and officer liability insurance, including primary insurance, excess insurance, or tail insurance policies.

1.23 “Debtors” shall mean, collectively, PHF, Inc. (f/k/a Pegasus Home Fashions, Inc.); PHF Intermediate Inc. (f/k/a Pegasus Home Fashions Intermediate Inc.); PHF Purchaser Inc. (f/k/a Pegasus Home Fashions Purchaser Inc.); and WCC TX Inc. (f/k/a Weatherford Cushion Co.).

1.24 “DIP Agents” shall mean Blue Torch, in its capacity as DIP Term Administrative Agent, and Webster Business Credit, a division of Webster Bank, N.A., in its capacity as DIP Revolver Administrative Agent.

1.25 “DIP Loan Documents” shall have the meaning ascribed to it in the Final DIP Order.

1.26 “DIP Lenders” shall mean the lenders from time to time party to the DIP Loan Agreements.

1.27 “DIP Loan Agreements” shall mean the DIP Term Loan Note and Revolver DIP Agreement (each as defined in the Final DIP Order).

1.28 “DIP Loan Claims” shall mean any DIP Obligations (as defined in the Final DIP Order) or other Claims of the DIP Secured Parties arising under or related to the DIP Loan Agreements, the Final DIP Order, or any other DIP Loan Documents.

1.29 “DIP Revolver Administrative Agent” shall mean Webster Business Credit, a division of Webster Bank, N.A., as administrative agent and collateral agent.

1.30 “DIP Secured Parties” shall mean the DIP Lenders and the DIP Agents.

1.31 “DIP Term Administrative Agent” shall mean Blue Torch, in its capacity as administrative agent and collateral agent under the DIP Term Loan Facility (as defined in the Final DIP Order).

1.32 “Disallowed” shall mean, with respect to any Claim or Interest or portion thereof, any Claim against or Interest in a Debtor which: (i) has been disallowed, in whole or part, by a Final Order; (ii) has been withdrawn, in whole or in part, by the Holder thereof; (iii) is listed in the Schedules as zero or as Disputed, Contingent or Unliquidated and in respect of which a proof of Claim or a proof of Interest, as applicable, has not been timely Filed or deemed timely Filed pursuant to the Plan, the Bankruptcy Code or any Final Order or other applicable law; (iv) has been reclassified, expunged, subordinated or estimated to the extent that such reclassification, expungement, subordination or estimation results in a reduction in the Filed amount of any proof of Claim or proof of Interest; (v) is unenforceable to the extent provided in Bankruptcy Code section 502(b); or (vi) the Holder of a Claim is an Entity from which property is recoverable under Bankruptcy Code sections 542, 543, 550, or 553 or that is a transferee of a transfer avoidable under Bankruptcy Code sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a), unless such Entity or transferee has paid the amount, or turned over any such Property, for which such Entity or transferee is liable under Bankruptcy Code section 522(i), 542, 543, 550, or 553, and, if required by the Bankruptcy Code, an Objection or adversary proceeding has been Filed. For the avoidance of doubt, part (vi) of this Section 1.32 shall not apply to the Claims held by any Entity subject to potential Avoidance Actions sold or otherwise transferred in connection with the Sale. In each case a Disallowed Claim or a Disallowed Interest is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination, or estimation.

1.33 “Disbursing Agent” shall mean the Liquidation Trustee; *provided, however*, that the Liquidation Trustee may, in its discretion, retain a third party to act as Disbursing Agent.

1.34 “Disclosure Statement” shall mean this combined Disclosure Statement and Chapter 11 Plan, as amended, supplemented, or modified from time to time, that is embodied within the combined Disclosure Statement and Plan and distributed in accordance with, among others, Bankruptcy Code sections 1125, 1126(b), and 1145, Bankruptcy Rule 3018 and other applicable law.

1.35 “Disputed” shall mean any Claim or Interest which has not yet been Allowed or Disallowed in accordance with the terms of the Plan.

1.36 “Disputed Claim Reserve” shall mean the reserve established and maintained by the Liquidation Trustee for payment of Disputed Claims, which reserve shall be established in an amount equal to the face value of all Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and Disputed Other Secured Claims, or such other amount as may be ordered by the Bankruptcy Court.

1.37 “Distributable Liquidation Trust Assets” means the Liquidation Trust Assets, less the Liquidation Trust Funding. For the avoidance of doubt, except as otherwise expressly provided by this Plan or the Confirmation Order, Holders of Allowed Claims in Class 3, Class 4, and Class 5 shall only be entitled to a distribution on any Allowed Claims from the Distributable Liquidation Trust Assets.

1.38 “Distribution” shall mean a delivery of Cash by the Disbursing Agent to the Holders of Allowed Claims pursuant to the Plan.

1.39 “Distribution Date” shall mean the date on which a Distribution is made pursuant to the Plan.

1.40 “Distribution Record Date” shall mean the date established for determining the Holders of Allowed Claims entitled to Distributions pursuant to the Plan, which shall be the date that the Solicitation Procedures Order is entered, or other such date established by order of the Bankruptcy Court, including the Confirmation Order.

1.41 “Effective Date” shall mean the first Business Day after the later of the date on which (a) all conditions in Article XIII of the Plan have been satisfied or waived in accordance with that Article and (b) no stay of the Confirmation Order is in effect.

1.42 “Effective Date Distributions” means all the Distributions required to be made by the Debtors on the Effective Date under this Plan to the Holders of Claims that are Allowed as of the Effective Date.

1.43 “Effective Date Notice” shall mean the notice of the Effective Date.

1.44 “Entity” shall have the meaning ascribed to such term in Bankruptcy Code section 101(15).

1.45 “Estate” shall mean each of the Debtors’ estates created by Bankruptcy Code section 541 upon the commencement of the Chapter 11 Cases on the Petition Date.

1.46 “Exculpated Parties” shall mean each of, solely in their capacities as such, (a) the Debtors and their Estates, (b) the Debtors’ officers, directors, and managers that served in such capacity during any portion of these cases; (c) the Professionals retained by the Debtors pursuant to a Final Order of the Bankruptcy Court; (d) the Committee; (e) the present and former members of the Committee; and (f) the Professionals retained by the Committee pursuant to a Final Order of the Bankruptcy Court.

1.47 “Executory Contract” shall mean a contract or unexpired lease to which the Debtor is a party that is subject to assumption or rejection under Bankruptcy Code section 365.

1.48 “File,” “Filed,” or “Filing” shall mean, respectively, file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

1.49 “Administrative Claim Bar Date” shall mean the date that is thirty (30) days after the date the Effective Date Notice is Filed and served, which date shall be the deadline for filing requests for payment of Administrative Claims.

1.50 “Final Distribution” shall mean the final Distributions to Holders of Allowed Claims.

1.51 “Final DIP Order” shall mean the *Final Order Pursuant To 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 And 507 (I) Authorizing The Debtors To Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens And Superpriority Administrative Expense Claims And (B) Adequate Protection To Certain Prepetition Lenders; (III) Authorizing Use Of Cash Collateral; (IV) Scheduling A Final Hearing; And (V) Granting Related Relief* [D.I. 133].

1.52 “Final Order” shall mean an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, that is not subject to stay or appeal, and for which the applicable time within which to take such action has expired, or for which such actions has been adjudicated by the highest court with jurisdiction over the matter.

1.53 “First Day Declaration” shall mean the *Declaration of Timothy Boates in Support of Chapter 11 Petitions and First Day Motions* [D.I. 2].

1.54 “General Bar Date” shall mean 5:00 p.m. (prevailing Eastern Time) on November 22, 2023, as established by the Bar Date Order.

1.55 “General Unsecured Claim” shall mean a Claim against a Debtor, but excluding any Administrative Claims (including Professional Fee Claims), Priority Tax Claims, Priority Non-Tax Claims, Other Secured Claims, Prepetition Prepayment Premium Claim, Intercompany Claims, and Interests.

1.56 “Global Settlement” shall mean the settlement by and among the Debtors, the Committee, Blue Torch Finance, LLC, and the Stalking Horse Purchaser as approved in the Global Settlement Order, addressing, among other things, (a) any potential Committee Challenges (as defined in the Final DIP Order), (b) a framework for closing the Sale, (c) the orderly liquidation of the Debtors’ remaining assets and distributions to creditors through the filing of a chapter 11 plan, (d) the resolution of any Committee objections to Blue Torch’s claims and liens, and (e) any potential Committee objections to this Plan, which settlement is incorporated into the terms of this Plan.

1.57 “Global Settlement Order” shall mean that certain order entered by the Court on November 20, 2023 approving the Global Settlement [D.I. 269].

1.58 “Global Settlement Proceeds” shall mean all cash contributed to the Estates and/or the Liquidation Trust by Blue Torch pursuant to the Global Settlement, including (i) the Wind Down Amount, (ii) amounts necessary to fund the Professional Fee Reserve Amount; (iii) amounts

necessary to fund the Committee Supplemental Fee Reserve Amount; and (iv) the Investigation Fund.

1.59 “Governmental Unit” shall have the meaning ascribed to such term in Bankruptcy Code section 101(27).

1.60 “Holder” shall mean any Entity holding a Claim or Interest.

1.61 “Impaired” shall mean, when used in reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of Bankruptcy Code section 1124.

1.62 “Impaired Class” shall mean a Class of Claims or Interests that is Impaired.

1.63 “Insurance Contract” shall mean all insurance policies that have been issued at any time to or provide coverage to any of the Debtors and all agreements, documents or instruments relating thereto.

1.64 “Intercompany Claim” shall mean a Claim held by a Debtor against another Debtor.

1.65 “Interests” shall mean the legal interests, equitable interests, contractual interests, equity interests or ownership interests, or other rights of any Entity in the Debtors including all capital stock, stock certificates, common stock, preferred stock, partnership interests, limited liability company or membership interests, rights, treasury stock, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtors, partnership interests in the Debtors’ stock appreciation rights, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights, subscription rights and liquidation preferences, puts, calls, awards or commitments of any character whatsoever relating to any such equity, common stock, preferred stock, ownership interests or other shares of capital stock of the Debtors or obligating the Debtors to issue, transfer or sell any shares of capital stock whether or not certificated, transferable, voting or denominated “stock” or a similar security.

1.66 “Investigation Fund” shall mean the \$125,000.00 contributed by Blue Torch to the Debtors on the Sale closing date to be paid to the Liquidation Trust on the Effective Date, which Blue Torch is entitled to recover subject to the terms of this Plan and the Global Settlement.

1.67 “Investigation Fund Repayment” shall mean a distribution from the Liquidation Trust Assets (which distribution may come from the Liquidation Trust Funding) in the amount of \$125,000.00 on account of Blue Torch’s recovery of its advancement for the Investigation Fund.

1.68 “IRC” shall mean the Internal Revenue Code of 1986, as amended.

1.69 “IRS” shall mean the Internal Revenue Service.

1.70 “Liquidation Trust” shall mean the trust established under the combined Disclosure Statement and Plan and the Liquidation Trust Agreement to hold legal and equitable title to the Liquidation Trust Assets and administered in accordance with the terms of the Liquidation Trust Agreement and Article IX and Article X hereof.

1.71 “Liquidation Trust Agreement” shall mean the trust agreement in the form and substance reasonably satisfactory to the Debtors, the Committee and Blue Torch that, together with the terms of the combined Disclosure Statement and Plan, establishes the Liquidation Trust and governs the powers, duties, and responsibilities of the Liquidation Trustee. The Liquidation Trust Agreement shall include, among other things, the governance structure of the Liquidation Trust, including the establishment of the Oversight Committee. The Liquidation Trust Agreement shall be filed as part of the Plan Supplement.

1.72 “Liquidation Trust Assets” shall consist of the following: (i) all Retained Causes of Action and the proceeds thereof; (ii) the remaining Cash of the Debtors or the Estates after (a) paying Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Claims, and Allowed Other Priority Claims, as set forth in Article VI herein; and (b) paying Allowed Professional Fee Claims from the Professional Fee Reserve Account in accordance with the terms of this Plan and Global Settlement; (iii) the Global Settlement Proceeds; and (iv) Assets excluded from the Sale.

1.73 “Liquidation Trustee” shall mean the Entity designated by the Committee, in consultation with the Debtors and Blue Torch, and retained as the trustee of the Liquidation Trust, as of the Effective Date or as soon as reasonably practicable thereafter, as the fiduciary responsible for administering the Liquidation Trust, and any successor subsequently appointed pursuant to the Liquidation Trust Agreement. The identity and compensation of the Liquidation Trustee shall be disclosed in the Plan Supplement.

1.74 “Liquidation Trust Expenses” means all actual and necessary fees, costs, expenses and obligations incurred by or owed to the Liquidation Trustee and his or her agents, employees, attorneys, advisors and other professionals in administering this Plan and the Liquidation Trust, including, without limitation, (i) reasonable compensation for services rendered, and reimbursement for actual and necessary expenses incurred by the Liquidation Trustee and his or her agents, employees and professionals after the Effective Date through and including the date upon which the Bankruptcy Court enters a final decree closing the Chapter 11 Case, and (ii) all fees payable pursuant to Article XVI of this Plan.

1.75 “Liquidation Trust Funding” means the following Liquidation Trust Assets: cash in the amount of (i) the remaining amount of the Wind Down Amount as of the Effective Date, (ii) the Investigation Fund, and (iii) any portion of the Committee Supplemental Fee Reserve Amount not used to pay Allowed Professional Fee Claims of the Committee’s Professionals. For the avoidance of doubt, except as otherwise expressly provided by this Plan or the Confirmation Order, Liquidation Trust Funding shall be used solely by the Liquidation Trustee to pay Liquidation Trust Expenses.

1.76 “Liquidation Trust Interests” shall mean the non-transferable interests in the Liquidation Trust issued to each Beneficiary of the Liquidation Trust pursuant to the terms, conditions, and priorities set out in the combined Disclosure Statement and Plan and the Liquidation Trust Agreement entitling each Beneficiary to *pro rata* Distributions or proceeds (if any) of the Liquidation Trust. For the avoidance of doubt, such Distributions do not include the payment of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Claims, and Allowed Other Priority Claims.

1.77 “Local Rules” shall mean the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

1.78 “OCP Order” shall mean the *Order Authorizing (A) the Debtors to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Effective as of the Petition Date and (B) Waiving Certain Information Requirements of Local Rule 2016-2* [D.I. 101].

1.79 “Objection” shall mean any objection, application, motion, complaint or any other legal proceeding seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify, or establish the priority, expunge, subordinate or estimate any Claim (including the resolution of any request for payment of any Administrative Claim).

1.80 “Other Secured Claim” shall mean any Secured Claim other than a Prepetition Prepayment Premium Claim or a DIP Loan Claim.

1.81 “Oversight Committee” shall have the meaning set forth in the Liquidation Trust Agreement.

1.82 “Petition Date” shall mean August 24, 2023, the date on which the Debtors commenced the Chapter 11 Cases in the Bankruptcy Court.

1.83 “Plan” shall mean this combined Disclosure Statement and Chapter 11 Plan as it may be altered, amended, modified or supplemented from time to time including in accordance with any documents submitted in support hereof and the Bankruptcy Code or the Bankruptcy Rules.

1.84 “Plan Supplement” shall mean the ancillary documents necessary to the implementation and effectuation of the Plan, including the Liquidation Trust Agreement, which shall be in form and substance satisfactory to the Debtors, Blue Torch, and the Committee, and Filed on or before the date that is fourteen (14) days prior to the Voting Deadline, *provided, however*, that the Debtors, with the written consent of the Committee and Blue Torch, shall have the right to amend documents contained in, and exhibits to, the Plan Supplement.

1.85 “Person” has the meaning set forth in section 101(41) of the Bankruptcy Code.

1.86 “Prepetition ABL Agent” shall mean Webster Business Credit, a division of Webster Bank, N.A., as administrative agent and collateral agent under the Prepetition ABL Credit Agreement.

1.87 “Prepetition ABL Credit Agreement” shall mean that certain Revolving Loan Agreement dated as of August 5, 2021, as amended, restated, supplemented, or otherwise modified from time to time, by and among the Prepetition ABL Obligors, the Prepetition ABL Lenders, and the Prepetition ABL Agent.

1.88 “Prepetition ABL Facility” shall mean the asset-based revolving credit facility provided under the Prepetition ABL Credit Agreement.

1.89 “Prepetition ABL Lenders” shall mean the financial institutions from time to time as lenders under the Prepetition ABL Credit Agreement.

1.90 “Prepetition ABL Loan Documents” shall mean the Prepetition ABL Credit Agreement and together with all other agreements, documents, and instruments executed and/or delivered with, to or in favor of the Prepetition ABL Agent and the Prepetition ABL Lenders, including, without limitation, all security agreements, deposit account control agreements (including, without limitation, control agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements, documents, and instruments, including any fee letters, executed and/or delivered in connection therewith or related thereto).

1.91 “Prepetition ABL Obligations” shall mean the obligations outstanding under the Prepetition ABL Facility in the form of “Advances” (as defined under the Prepetition ABL Credit Agreement), plus interest accrued and accruing at the rates set forth in the Prepetition ABL Credit Agreement (together with any other amounts outstanding under the Prepetition ABL Loan Documents, including, without limitation, obligations in respect of fees, expenses, and indemnity).

1.92 “Prepetition ABL Obligors” shall mean Pegasus Home Fashions Purchaser, Inc. as borrower, and Pegasus Home Fashions Intermediate, Inc. and certain other parties designated as guarantors under the Prepetition ABL Credit Agreement.

1.93 “Prepetition Agents” shall mean the Prepetition Term Loan Agent and the Prepetition ABL Agent.

1.94 “Prepetition Intercreditor Agreement” shall mean that certain Second Amended and Restated Intercreditor Agreement, dated as of March 30, 2023, between the Prepetition ABL Agent and the Prepetition Term Loan Agent.

1.95 “Prepetition Lenders” shall mean the Prepetition Term Loan Lenders and the Prepetition ABL Lenders.

1.96 “Prepetition Prepayment Premium Claim” shall mean the secured Claim of the Prepetition Term Loan Agent, on behalf of the Prepetition Term Loan Lenders, arising under and related to the Prepetition Term Loan Documents in the Allowed amount of \$7,600,560.49.

1.97 “Prepetition Secured Parties” shall mean the Prepetition Agents and the Prepetition Lenders.

1.98 “Prepetition Term Loan Agent” shall mean Blue Torch in its capacity as administrative agent and collateral agent under the Prepetition Term Loan Agreement.

1.99 “Prepetition Term Loan Agreement” shall mean that certain Financing Agreement, dated as of August 5, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified, and as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among the Prepetition Term Loan Obligors, the Prepetition Term Loan Agent, and the Prepetition Term Loan Lenders.

1.100 “Prepetition Term Loan Documents” shall mean the Prepetition Term Loan Agreement and all other agreements, documents, and instruments executed and/or delivered with, to or in favor of the Prepetition Term Loan Secured Parties, including, without limitation, all security agreements, deposit account control agreements (including, without limitation, control agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements, documents, and instruments, including any fee letters, executed and/or delivered in connection therewith or related thereto).

1.101 “Prepetition Term Loan Lenders” shall mean the financial institutions from time to time as lenders under the Prepetition Term Loan Agreement.

1.102 “Prepetition Term Loan Obligors” shall mean Pegasus Home Fashions Purchaser, Inc. as borrower, and Pegasus Home Fashions Intermediate, Inc. and certain other parties designated as guarantors under the Prepetition Term Loan Agreement.

1.103 “Prepetition Term Loan Secured Parties” shall mean the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders.

1.104 “Priority Non-Tax Claim” shall mean any and all Claims accorded priority in right of payment under Bankruptcy Code section 507(a), other than Priority Tax Claims and Administrative Claims.

1.105 “Prepetition Obligors” shall mean the Prepetition Term Loan Obligors and the Prepetition ABL Obligors.

1.106 “Priority Tax Claim” shall mean a Claim or a portion of a Claim for which priority is asserted under Bankruptcy Code section 507(a)(8).

1.107 “Professional” shall mean an Entity (other than Entities retained pursuant to the OCP Order) retained pursuant to a Final Order in accordance with Bankruptcy Code sections 327, 328, 330, 363, 1103 and to be compensated for services rendered prior to the Confirmation Date, pursuant to Bankruptcy Code sections 327, 328, 329, 330, and 331, or for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to Bankruptcy Code section 503(b)(4).

1.108 “Professional Fee Claims Bar Date” shall mean the deadline for Filing all applications for Professional Fee Claims, which shall be forty-five (45) days after the Filing and service of the Effective Date Notice, *provided, however*, for the avoidance of doubt, any Professional retained under section 363 of the Bankruptcy Code shall not be required to file final fee applications unless required by a Final Order.

1.109 “Professional Fee Claims” shall mean all fees and expenses (including but not limited to, transaction fees and success fees) for services rendered by Professionals in connection with the Chapter 11 Cases from the Petition Date through and including the Effective Date.

1.110 “Professional Fee Reserve Account” shall mean the reserve account held by Young Conaway Stargatt & Taylor, LLP and funded by the Debtors in Cash on the Effective Date, pursuant to Section 6.1(e) of the Plan, in an amount equal to the Professional Fee Reserve Amount

plus the Committee Supplemental Fee Reserve Amount; *provided, however*, the Committee Supplemental Fee Reserve Amount shall be used only to pay Allowed Professional Fee Claims of the Committee's Professionals in excess of Allowed Professional Fee Claims of the Committee's Professionals accounted for in the Professional Fee Reserve Amount.

1.111 "Professional Fee Reserve Amount" shall mean the aggregate amount of Professional Fee Claims and other unpaid fees and expenses that the Professionals have incurred or estimate they will incur in rendering services to the Debtors or the Committee prior to the Effective Date, which estimates Professionals shall deliver to the Debtors and the Committee as set forth in Section 6.1(e) of the Plan, which amounts shall not exceed the amounts set forth in the Budget attached to the Final DIP Order.

1.112 "Related Parties" shall mean, with respect to any Person or Entity, such Person's or Entity's respective current and former (i) officers, (ii) managers, (iii) directors, (iv) employees, (v) partners, (vi) affiliates and subsidiaries, (vii) professionals, (viii) advisors and advisory board members, (ix) agents, (x) members and shareholders, (xi) owners, (xii) affiliated investment funds or investment vehicles, (xiii) managed, advised or sub-advised accounts, (xiv) funds or other entities, (xv) investment advisors, sub-advisors or managers, and (xvi) other representatives, including, without limitation, attorneys, accountants, consultants, investment bankers and financial advisors and the predecessors, successors, assigns or heirs of such Person or Entity (in each case, in their respective capacities as such).

1.113 "Release Opt-In Election" shall mean the timely election of Holders of General Unsecured Claims to "opt in" to being a Releasing Party by submitting a Ballot by the Voting Deadline that selects the option set forth on the Ballot to grant the releases set forth in Section 14.1(c) of this Plan.

1.114 "Released Parties" shall mean, each solely in their capacity as such, (a) the Debtors' officers and directors as of the Petition Date, (b) the Prepetition Agents, (c) the Prepetition Lenders, (d) the DIP Lenders, (e) the DIP Agents, (f) Blue Torch, (g) the Stalking Horse Purchaser, (h) the Committee, including its members, in their capacity as such, and (i) with respect to each of the foregoing, their Related Parties; *provided that* for the avoidance of doubt, the Released Parties shall not include any of the Debtors' current or former officers and directors, shareholder, member, manager, employee, "insider" of the Debtors (as defined in section 101(31) of the Bankruptcy Code), or lender and any Affiliate or family member of any of the foregoing, except for (y) Blue Torch and its Affiliates (including any Person who would constitute a Blue Torch Released Party (as defined in the Final DIP Order)),³ and (z) the following officers and directors of the Debtors: Tim Boates; Patrick Carew; Matt Kahn; and Sanjay Marken.

1.115 "Releasing Parties" shall mean (a) the Prepetition Agents, (b) the Prepetition Lenders, (c) the DIP Lenders, (d) the DIP Agents, (e) Blue Torch, (f) the Stalking Horse Purchaser, (g) the Committee, including its members, in their capacity as such, (h) Holders of General Unsecured

³ "Blue Torch Released Parties" means Blue Torch and its each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns.

Claims that have made a Release Opt-In Election; and (i) with respect to (a) through (g), their Related Parties; *provided, however*, that a Related Party of an entity in clause (a) through (h) is a Releasing Party solely to the extent such Related Party would be obligated to grant a release under principles of agency if it were so directed by the Person or Entity in the foregoing clauses (a) through (h) to whom they are related.

1.116 “Retained Insider Avoidance Actions” shall mean Avoidance Actions against any current or former officer, director, shareholder, member, manager, employee, insiders of the Debtors, or lender and any Affiliate or family member of any of the foregoing, except for (i) Blue Torch and its Affiliates (including any Person who would constitute a Blue Torch Released Party (as defined in the Final DIP Order)), and (ii) the following officers and directors of the Debtors: Tim Boates; Patrick Carew; Matt Kahn; and Sanjay Marken.

1.117 “Retained Insider and Commercial Tort Claims” means (i) direct or derivative claims or causes of action against any current or former officer, director, shareholder, member, manager, employee or “insider” of the Debtors (as defined in section 101(31) of the Bankruptcy Code), and any Affiliate or family member of any of the foregoing, including but not limited to for breach of fiduciary duty or aiding and abetting breach of fiduciary duty, or corporate waste, and (ii) all commercial tort claims of the Debtors that were not acquired by the Stalking Horse Purchaser in connection with the Sale, against any former officer, director, shareholder, member, manager, employee, “insider” of the Debtors (as defined in section 101(31) of the Bankruptcy Code), or lender and any Affiliate or family member of any of the foregoing, except for (x) Blue Torch and its Affiliates (including any Person who would constitute a Blue Torch Released Party (as defined in the Final DIP Order)), and (y) the following officers and directors of the Debtors: Tim Boates; Patrick Carew; Matt Kahn; and Sanjay Marken.

1.118 “Retained Causes of Action” shall mean all Causes of Actions, including, without limitation, Retained Insider Avoidance Actions and Retained Insider and Commercial Tort Claims. For the avoidance of doubt, the Retained Causes of Action include all direct or derivative claims or Causes of Action against any current or former officer, director, shareholder, member, manager, employee, insiders of the Debtors, or lender and any Affiliate or family member of any of the foregoing, including, but not limited to, for breach of fiduciary duty or aiding and abetting breach of fiduciary duty, or under and pursuant to any Insurance Contract, including not limited to any primary director and officer liability, employment practices liability, or fiduciary liability insurance policies (including for bad faith) maintained by the Debtors, and all other rights, claims or Causes of Action not transferred to the Stalking Horse Purchaser pursuant to the Sale excluding: (i) claims against counterparties with contracts assigned to and cured by the Stalking Horse Purchaser under the Sale, (ii) claims, including Avoidance Actions, sold to the Stalking Horse Purchaser under the Sale, (iii) claims released or exculpated pursuant to this Plan, and (iv) claims against Blue Torch, Webster, the Prepetition Secured Parties, and the DIP Secured Parties released pursuant to the Final DIP Order.

1.119 “Sale” shall mean the sale of substantially all of the Debtors’ Assets to the Stalking Horse Purchaser, as approved by that certain *Order Authorizing (I) the Sale of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (II) the Debtors to Enter Into and Perform their Obligations Under the Asset Purchase Agreement and Related Documents; (III) the Debtors to Assume and Assign Certain Contracts and Unexpired Leases; (IV) Waiver of the*

Stay Periods Under Bankruptcy Rules 6004(h) and 6006(d); and (V) Granting Related Relief [D.I. 255].

1.120 “Schedules” shall mean the schedules of assets and liabilities and statements of financial affairs Filed by the Debtors pursuant to Bankruptcy Code section 521 and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

1.121 “Secured Claim” shall mean, pursuant to Bankruptcy Code section 506, that portion of a Claim that is (a) secured by a valid, perfected and enforceable security interest, lien, mortgage, or other encumbrance, that is not subject to avoidance under applicable bankruptcy or non-bankruptcy law, in or upon any right, title or interest of the Debtors in and to property of the Estates, to the extent of the value of the Holder’s interest in such property as of the relevant determination date, or (b) Allowed as such pursuant to the terms of the Plan (subject to the Confirmation Order becoming a Final Order). The defined term Secured Claim includes any Claim that is (i) subject to an offset right under applicable law as of the Petition Date, and (ii) a secured claim against the Debtors pursuant to Bankruptcy Code sections 506(a) and 553 to the extent a proof of claim asserting setoff rights was timely filed by the Bar Date or a motion seeking relief to assert setoff rights is filed before the Confirmation Date.

1.122 “Solicitation Procedures Order” shall mean that certain *Order (I) Approving the Combined Disclosure Statement and Plan on an Interim Basis for Solicitation Purposes Only; (II) Establishing Solicitation and Tabulation Procedures; (III) Approving the Forms of Ballots and Solicitation Materials; (IV) Establishing the Voting Record Date; (V) Fixing the Date, Time, and Place for the Combined Hearing and the Deadline for Filing Objections Thereto; (VI) Establishing Bar Date for Filing Requests for Allowance of Initial Administrative Claims; and (VII) Granting Related Relief [D.I. 368].*

1.123 “Stalking Horse Purchaser” shall mean Pegasus Home Fashions Acquisition, LLC.

1.124 “Stalking Horse Agreement” shall mean that certain *Asset Purchase Agreement by and Among Pegasus Home Fashions Acquisition LLC, Pegasus Home Fashions Purchaser Inc., Pegasus Home Fashions, Inc., and Weatherford Cushion Company*, dated as of August 25, 2023.

1.125 “Unclassified Claims” shall mean any Administrative Claims, Professional Fee Claims, and Priority Tax Claims.

1.126 “Unimpaired” shall mean, when used in reference to a Claim or Interest, any Claim or Interest that is not impaired within the meaning of Bankruptcy Code section 1124.

1.127 “U.S. Trustee Fees” shall mean fees payable pursuant to 28 U.S.C. § 1930.

1.128 “Voting Deadline” shall mean **February 12, 2024, at 4:00 p.m. (prevailing Eastern Time)**, the date and time by which ballots to accept or reject the Plan must be received to be counted, as set forth by the Solicitation Procedures Order.

1.129 “Wind Down Amount” shall mean \$628,000 in Cash paid by the Stalking Horse Purchaser to the Debtors on the closing date of the Sale.

Rules of Interpretation

1.130 For purposes of the Plan, except as expressly provided or unless the context otherwise requires, (a) any capitalized term used in the combined Disclosure Statement and Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable, (b) whenever the context requires, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine, or neuter shall include the masculine, feminine and the neuter, (c) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (d) any reference in the Plan to an existing document or exhibit means such document or exhibit as it may be amended, modified, or supplemented from time to time, (e) unless otherwise specified, all references in the Plan to sections, articles, schedules, and exhibits are references to sections, articles, schedules, and exhibits of or to the Plan, (f) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan in its entirety rather than to any particular paragraph, subparagraph, or clause contained in the Plan, (g) captions and headings to articles and sections are inserted for convenience of reference only and shall not limit or otherwise affect the provisions hereof or the interpretation of the Plan, and (h) the rules of construction set forth in Bankruptcy Code section 102 and in the Bankruptcy Rules shall apply.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS AND ESTIMATED RECOVERIES

THE PROJECTED RECOVERIES SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND ARE THEREFORE SUBJECT TO MATERIAL CHANGE.

2.1 Classification. The information in the table below is provided in summary form for illustrative purposes only and is subject to material change based on certain contingencies, including related to the claims reconciliation process. Actual recoveries may widely vary within these ranges, and any changes to any of the assumptions underlying these amounts could result in material adjustments to recovery estimates provided herein and/or the actual distribution received by Creditors. The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors’ estimates as of the date hereof only. In addition to the cautionary notes contained elsewhere in the combined Disclosure Statement and Plan, it is underscored that the Debtors make no representation as to the accuracy of these recovery estimates. The Debtors expressly disclaim any obligation to update any estimates or assumptions after the date hereof on any basis (including new or different information received and/or errors discovered).

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date.

All Claims and Interests, except Administrative Claims, Professional Fee Claims, DIP Loan Claims, and Priority Tax Claims, are placed in the Classes set forth below. In accordance with Bankruptcy Code section 1123(a)(1), Administrative Claims (including Professional Fee Claims), and Priority Tax Claims, as described herein, have not been classified, and the respective treatment of such Unclassified Claims is set forth below in Article VI of the Plan. The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, confirmation and distribution pursuant to the Plan and pursuant to Bankruptcy Code sections 1122 and 1123(a)(1).

Class/ Designation	Plan Treatment	Estimated Amount of Total Claims⁴	Status / Voting Rights	Projected Recovery
Class 1: Priority Non-Tax Claims	Each Holder of an Allowed Priority Non-Tax Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 1 Claim: (A) Cash equal to the amount of such Allowed Priority Non-Tax Claim; or (B) such other treatment which the Debtors or the Liquidation Trustee, as applicable, and the Holder of such Allowed Priority Non-Tax Claim have agreed upon in writing.	\$0.00	Unimpaired / Deemed to accept Plan	100%
Class 2: Other Secured Claims	Each Holder of an Allowed Class 2 Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 2 Claim: (A) return of the collateral securing such Allowed Other Secured Claim; or (B) Cash equal to the amount of such Allowed Other Secured Claim; or (C) such other treatment which the Debtors or the Liquidation Trustee, as applicable, and the Holder of such Allowed Other Secured Claim have agreed upon in writing.	\$0.00	Unimpaired / Deemed to accept Plan	100%
Class 3: Prepetition Prepayment Premium Claim	Blue Torch, as the Holder of the Class 3 Prepetition Prepayment Premium Claim, shall receive in full and final satisfaction, settlement and release of and in exchange for such Allowed Class 3 Claim after payment of any Liquidation Trust Expenses (i) the Investigation Fund Repayment; (ii) 60% of the liquidated value of any Distributable Liquidation Trust Assets	\$7,600,560.49	Impaired/ Entitled to vote	3.95% to 5.53%

⁴ The Debtors are continuing to refine their analysis of claims and recoveries. Accordingly, the projections set forth in this chart are subject to change

Class/ Designation	Plan Treatment	Estimated Amount of Total Claims⁴	Status / Voting Rights	Projected Recovery
	(which shall be paid concurrently with any distributions to Holders of Allowed Class 4 General Unsecured Claims) (the “ 60% Distribution ”); and (iii) upon payment in full of all Allowed Class 4 General Unsecured Claims, payment in full of any remaining portion of the Prepetition Prepayment Premium Claim from the Liquidation Trust Assets.			
Class 4: General Unsecured Claims	Unless the Holder agrees to a different treatment, each Holder of a General Unsecured Claim shall receive, upon payment in full of the Investigation Fund Repayment and after payment of any Liquidation Trust Expenses, and, such Holder’s <i>pro rata</i> share of 40% of the liquidated value of the Distributable Liquidation Trust Assets until all Class 4 Unsecured Claims are paid in full. For the avoidance of doubt, Distributions to Holders of Allowed Class 4 General Unsecured Claims shall occur concurrently with the 60% Distribution described in section 7.3(ii) of this combined Disclosure Statement and Plan.	\$14,248,679.59	Impaired/ Entitled to vote	1.00%
Class 5: Subordinated Claims	If all Class 1, Class 2, Class 3, and Class 4 Allowed Claims are paid in full, Allowed Subordinated Claims, if any, shall be entitled to receive a <i>pro rata</i> share of the remaining Distributable Liquidation Trust Assets after payment of the Liquidation Trust Expenses.	N/A	Impaired/ Deemed to reject Plan	0%
Class 6: Intercompany Claims	Holders of Intercompany Claims shall receive no Distribution on account of their Intercompany Claims.	N/A	Impaired/ Deemed to reject Plan	0%
Class 7: Interests	On the Effective Date, all Interests shall be extinguished, and owners thereof shall receive no Distribution on account of such Interests.	N/A	Impaired/ Deemed to reject Plan	0%

ARTICLE III BACKGROUND AND DISCLOSURES

3.1 General Background

(a) The Debtors' Business

Prior to the Sale, the Debtors were manufacturers of bedding and home products, with operations spanning several states in the United States. Pegasus Home Fashions, Inc. (“**Pegasus Home Fashions**”) was founded in 1990 and established itself as a significant player in the middle-market home furnishings space. The Pegasus Home Fashions’ offerings historically included bed pillows (both poly-filled and memory foam), quilts, bedspreads, blankets, throws, sheet sets, decorative pillows, chair pads, pet beds, furniture protectors, pillow protectors, and mattress pads and protectors. Pegasus Home Fashions had experience selling to various channels of distribution, including specializations in mid-size, big box, discounters, department stores, off-price, television and internet, catalog, wholesale (including manufacturers, branded, and private label), and hospitality channels. Pegasus Home Fashions also works with wholesale customers such as Walmart, Sam’s Club, Costco, and The TJX Companies.

Among its diversified products, Pegasus Home Fashions not only sold under its own proprietary brands, but also manufactured for a portfolio of licensed brands. Additionally, Pegasus Home Fashions utilized innovative technologies embedded within its products, including Latex Plus Fiber Fill, Hypo-Allergenic High Loft Blend 33 Fiber Fill, Cool Touch Technology, Tencel, Quick Dry Wicking, Rayon made from Bamboo, and White Goose Down, which historically contributed to its success.

Prior to the Sale, the Debtors operated in South Carolina, Texas, Pennsylvania, and New Jersey, with primary manufacturing facilities situated in Denmark, South Carolina; Philadelphia, Pennsylvania; and Weatherford, Texas. Prior to the Sale, Debtors Pegasus Home Fashions and Weatherford Cushion Company (“**Weatherford**”) were each operating entities that ran the Debtors’ manufacturing and sales operations.

Effective as of August 5, 2021, a significant corporate transaction led to Pegasus Home Fashions and Weatherford becoming wholly-owned subsidiaries of Debtor Pegasus Home Fashions Purchaser, Inc. (“**PHFP**”), itself a subsidiary of H.I.G. Capital, LLC (“**HIG**”). This transaction was achieved through a series of stock transactions (collectively, the “**2021 Transaction**”).

The 2021 Transaction consisted of a cash payment and the net proceeds from a term loan, a revolver, a promissory note, and seller equity. In exchange, the former owners of Pegasus Home Fashions and Weatherford transferred all equity holdings in Pegasus Home Fashions to PHFP and an intermediate entity, Pegasus Home Fashions Intermediate, Inc. (“**Intermediate**”). Additionally, all equity in Weatherford was contributed to the same entity. Upon the completion of the transaction, Intermediate had the following equity ownership structure: HIG (through a subsidiary) owned 85% of the outstanding shares and Carmine Spinella (“**Mr. Spinella**”) owned 15% of the outstanding shares.

In 2022, to resolve the Debtors' liquidity issues, Blue Torch agreed to provide additional financing during the first quarter of 2023. As part of Blue Torch's agreement to increase funding under the Prepetition Term Loan Agreement, HIG transferred its ownership of Intermediate to Pegasus Home Fashions Holdings LLC ("**HoldCo**"). The ownership interests in HoldCo were then divided among Mr. Spinella, his trust, an entity formed by Blue Torch, and an entity formed by HIG (such transaction, the "**2023 Transaction**"). In return, Blue Torch provided Pegasus with additional liquidity, agreed to waive certain defaults and events of default under the Prepetition Term Loan Agreement, and replaced a \$3 million guarantee from HIG in favor of Webster Business Credit, a division of Webster Bank, N.A, the prepetition agent under the Prepetition ABL Credit Agreement. Following the 2023 Transaction, the Pegasus enterprise consists of five entities, four of which constitute the Debtors.

(b) ***The Debtors' Equity Ownership and Capital Structure***

i. Equity Ownership

As stated above, prior to the Sale, Pegasus Home Fashions and Weatherford were each operating entities that ran the Debtors' manufacturing and sales operations. Pegasus Home Fashions (n/k/a PHF, Inc.) and Weatherford (n/k/a WCC TX Inc.) are wholly-owned subsidiaries of PHFP (n/k/a PHF Purchaser Inc.), and PHFP is a wholly-owned subsidiary of Intermediate (n/k/a PHF Intermediate Inc.). In turn, Intermediate is a wholly owned subsidiary of HoldCo. HoldCo is owned by BT Pegasus Aggregator LLC (an affiliate of Blue Torch), H.I.G. Pegasus Home Fashions, L.P. (an affiliate of HIG), and Mr. Spinella (in his individual capacity and through the Carmine Spinella 2021 GRAT).

ii. Capital Structure

a. Prepetition ABL Credit Agreement

As of the Petition Date, the Prepetition ABL Obligors, Prepetition ABL Lenders, and the Prepetition ABL Agent (the Prepetition ABL Agent and the Prepetition ABL Lenders are referred to herein as the "**Prepetition ABL Secured Parties**"), were parties to the **Prepetition ABL Credit Agreement** and the other Prepetition ABL Loan Documents.

The Prepetition ABL Credit Agreement provided Prepetition ABL Obligors with the Prepetition ABL Facility, an asset-based revolving credit facility with \$30,000,000 of maximum aggregate availability to the borrowers thereunder, subject to a borrowing base (as reduced by reserves), as set forth in the Prepetition ABL Credit Agreement. As of the Petition Date, the Prepetition ABL Obligations consisted of approximately \$15,047,555 in principal was outstanding under the Prepetition ABL Facility in the form of "**Advances**" (as defined under the Prepetition ABL Credit Agreement), plus interest accrued and accruing at the rates set forth in the Prepetition ABL Credit Agreement.

The Prepetition ABL Facility was secured by (a) first priority security interests in and liens (subject only to certain of the liens permitted under the Prepetition ABL Loan Documents) on certain of the Debtors' property, including (i) all Accounts (other than Accounts which constitute identifiable proceeds of Term Priority Collateral), (ii) cash, money and cash equivalents (other than, in each instance, as set forth in the Prepetition Intercreditor Agreement), (iii) all Deposit

Accounts, Securities Accounts, Security Entitlements and Securities credited to such a Securities Account and Commodity Accounts and commodity contracts and, in each case, all cash, money, cash equivalents, checks and other property held therein or credited thereto (other than, in each instance, as set forth in the Prepetition Intercreditor Agreement), (iv) all Inventory, (v) to the extent relating to or arising from, evidencing or governing any of the items referred to in clauses (i) through (iv) above constituting ABL Priority Collateral, all Documents, General Intangibles (including all rights under contracts but excluding any Intellectual Property), Instruments (including Promissory Notes other than the Intercompany Note), Chattel Paper (including Tangible Chattel Paper and Electronic Chattel Paper) and Commercial Tort Claims, (other than, in each instance as set forth in the Prepetition Intercreditor Agreement), (vi) all Supporting Obligations and Letter-of-Credit Rights with respect to the ABL Priority Collateral (other than as set forth in the Prepetition Intercreditor Agreement), (vii) all books and Records constituting ABL Priority Collateral as set forth in the Prepetition Intercreditor Agreement, (viii) all collateral security and guarantees with respect to any of the items referred to in the preceding clauses (i) through (vii) and all cash, money, cash equivalents, insurance proceeds, Instruments, Securities and Financial Assets received as proceeds of any of the foregoing constituting ABL Priority Collateral, and (ix) all Proceeds of any of the items referred to in the preceding clauses (i) through (viii) (such property, whether now existing or hereafter arising or acquired, in clauses (i) through (ix), and including for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code (or any similar provision of any foreign Debtor Relief Laws), collectively, the **“Prepetition ABL Priority Collateral”**); and (b) second priority security interests in and liens on certain of the Debtors’ property, including all Property of the Borrowers and Guarantors, whenever arising and wherever located, on which a Lien is granted as security for any Prepetition Term Loan Obligations and that does not constitute Prepetition ABL Priority Collateral, including, without limitation, equipment, real estate, Intellectual Property and Equity Interests (such property, whether now existing or hereafter arising or acquired, the **“Prepetition Term Priority Collateral”** and, together with the Prepetition ABL Priority Collateral, the **“Prepetition Collateral”** and, such liens and security interests in clauses (a) and (b), the **“Prepetition ABL Liens”**).

b. Prepetition Term Loan Agreement

As of the Petition Date, Pegasus Home Fashions Purchaser Inc., as borrower, Holdings, and certain of its affiliates designated therein as **“Guarantors”**, the Prepetition Term Loan Lenders, and the Prepetition Term Loan Agent, were parties to the Prepetition Term Loan Agreement. Pursuant to the Prepetition Term Loan Agreement, the Prepetition Term Loan Lenders made term loans in the aggregate principal amount of \$60,850,000 (the **“Prepetition Term Loans”**).

On August 23, 2023, the Prepetition Term Loan Lenders sent the Debtors a Notice of Default and Acceleration, which alleged that the Debtors breached Section 7.01(c)(iv) of the Prepetition Term Loan Agreement as the result of their failure to deliver a Compliance Certificate on August 14, 2023 (the **“Specified Event of Default”**). As a result of the alleged Specified Event of Default, the Prepetition Term Loan Agent declared the entire unpaid principal of and any accrued interest and premium (including the Prepetition Prepayment Premium Claim) on the Prepetition Term Loans, and all fees, and all other Prepetition Term Loan Obligations payable under the Prepetition Term Loan Agreement and the other Prepetition Term Loan Agreement to

be immediately due and payable.

As of the Petition Date, approximately \$64,096,112.30 of indebtedness under the Prepetition Term Loan Agreement was outstanding, which amount did not include the Prepetition Prepayment Premium Claim, but was comprised of principal, and accrued and unpaid interest (and, together with any other amounts outstanding under the Prepetition Term Loan Documents, including interest, fees, and expenses, the “**Prepetition Term Loan Obligations**” and, together with the Prepetition ABL Obligations, the “**Prepetition Obligations**”). The Prepetition Term Loans were secured by: (a) first priority security interests in and liens (subject only to certain of the liens permitted under the Prepetition Term Loan Documents) on the Prepetition Term Priority Collateral; and (b) second priority security interests in and liens on the Prepetition ABL Priority Collateral.

c. Subordinated Promissory Note

In addition to the Prepetition ABL Credit Agreement and the Prepetition Term Loan Credit Agreement, PHFP and Carmine Spinella 2021 GRAT, dated March 15, 2021, and Mr. Spinella, as holders, are parties to that certain Subordinated Promissory Note, dated August 5, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the “**Subordinated Promissory Note**”). The obligations under the Subordinated Promissory Note are unsecured. As of the Petition Date, PHFP owed approximately \$2.1 million under the Subordinated Promissory Note.

3.2 Events Leading to Chapter 11

Mr. Spinella had served as chief executive officer of the Company until April 2023, when he resigned. In addition, around the same time, Webster informed the Company that it would not renew a \$6 million unsecured line of credit that Pegasus had relied on to finance some of its trade debt and Webster demanded a full payoff of that line of credit by the end of April, 2023. This demand exacerbated the Company’s liquidity problems, particularly at a time when significant capital expenditures have been identified as being necessary to keep the business competitive.

Recognizing that changes needed to be made, the Debtors first took steps to stabilize operations. In April 2023, the Debtors retained RAS Management Advisors, LLC (“**RAS**”) to provide an interim chief executive officer (“**CEO**”) and other associated personnel. On April 18, 2023, each Debtor board authorized the appointment of Timothy Boates as Interim CEO.

Following negotiations with the Prepetition Secured Parties, an agreement was reached with Blue Torch whereby Blue Torch agreed to provide additional funding to the Company under the Prepetition Term Loan to replace not only the unsecured line, but also to provide the working capital which the Company needed to continue operating. Additionally, the Debtors’ facility in Phoenix, Arizona was consequently shut down due to its high costs and lack of return. Moreover, a program was introduced to monetize “dead” inventory involving a careful evaluation of what needed to be sold to generate immediate cash flow, as well as the coordination of related sales and manufacturing efforts.

However, despite the above efforts, market fluctuations, an increasingly competitive environment, and other unanticipated challenges led to the loss of revenue streams from one of four major customers late in the second quarter of 2023. This significant loss negatively impacted the Debtors' liquidity. Additionally, much of the Debtors' equipment is tailored to manufacture fiber-based products, which limited the Debtors when market demands for these products began to decline.

The Debtors began to work with Blue Torch to identify a strategic buyer to engage in a sale transaction. After several months of negotiations to structure a sale with the strategic buyer, however, it eventually became apparent that an agreement would not come to fruition on a timeline that was acceptable to the Debtors. Accordingly, the Debtors quickly pivoted toward pursuing a value-maximizing transaction through a chapter 11 process with an affiliate of Blue Torch acting as the stalking horse purchaser.

After carefully considering, among other things, the Debtors' cash position, feedback received through the prepetition marketing process, the increasing pressure from the Debtors' vendor base, and the advice of the Debtors' professionals, the members of the Board determined that the only viable path to preserving and maximizing the value of the Debtors' assets was to commence these Chapter 11 Cases. Around the same time, the Board determined that it was in the Debtors' best interest to sell substantially all of their assets through a Court-approved marketing and sale process (the "**Sale Process**").

On August 25, 2023, the Debtors and the Stalking Horse Purchaser agreed on the terms of a stalking horse bid, and executed the Stalking Horse Agreement. Under the Stalking Horse Agreement, the Stalking Horse Purchaser agreed to provide the following consideration to acquire substantially all of the Debtors' Assets: (i) the assumption by the Stalking Horse Purchaser of certain assumed liabilities; (ii) payment in cash of all obligations outstanding under the Prepetition Revolving Facility, if any, and the DIP Revolving Facility as of the Closing Date; (iii) a credit bid pursuant to Section 363(k) of the Bankruptcy Code of all DIP Term Loan Obligations (as defined in the Final DIP Order) and Prepetition Term Loan Obligations outstanding as of the Closing; and (iv) cash in the aggregate amount of the Wind-Down Amount.

The Stalking Horse Agreement served as the baseline for all prospective bidders to negotiate from and would be subject to higher or otherwise better bids for the Assets in accordance with the Bidding Procedures. The Debtors' entry into the Stalking Horse Agreement, together with the liquidity provided under the DIP Facility (as defined below) and consensual use of cash collateral, permitted the Debtors to conduct a value-maximizing Sale Process that was backstopped by the Stalking Horse Purchaser.

3.3 The Chapter 11 Cases

(a) Generally

On the Petition Date, each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The commencement of a chapter 11 case creates an estate that is composed of all of the legal and equitable interests of the debtor as of that date. The Bankruptcy Code provides that the debtor may continue to operate its business and

remain in possession of its property as a “debtor in possession.” Prior to the closing of the Sale, the Debtors operated their businesses and managed their properties as debtors and debtors in possession. By Order entered on August 25, 2023, the Chapter 11 Cases are being jointly administered for procedural purposes only. No trustee or examiner has been appointed in the Chapter 11 Cases. On September 12, 2023, the Office of the United States Trustee for the District of Delaware appointed the Committee.

The filing of the Debtors’ bankruptcy petitions on the Petition Date triggered the immediate imposition of the automatic stay under Bankruptcy Code section 362, which, with limited exceptions, enjoins all collection efforts and actions by creditors, the enforcement of liens against property of the Debtors and both the commencement and the continuation of prepetition litigation against the Debtors. With certain limited exceptions and/or modifications as permitted by order of the Bankruptcy Court, the automatic stay will remain in effect from the Petition Date until the Effective Date of the Plan.

(b) “First Day” Motions and Related Applications

Commencing on the Petition Date, the Debtors filed the following “first-day” motions and applications designed to ease the Debtors’ transition into chapter 11, maximize the value of the Assets, and minimize the effects of the commencement of the Chapter 11 Cases (collectively, the “First Day Motions”):

- i. *Debtors’ Motion for an Order, Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1, Authorizing the Joint Administration of the Debtors’ Chapter 11 Cases [D.I. 4] (“Joint Administration Motion”).*
- ii. *Debtors’ Application for the Retention and Appointment of Epiq Corporate Restructuring, LLC as Claims and Noticing Agent [D.I. 5] (“Claims Agent Retention Motion”).*
- iii. *Debtors’ Motion for Interim and Final Orders, Pursuant to Sections 105(a) and 366 of the Bankruptcy Code, (A) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (B) Deeming Utility Companies Adequately Assured of Future Payment, (C) Establishing Procedures for Determining Additional Adequate Assurance of Payment, and (D) Setting a Final Hearing Related Thereto [D.I. 6] (“Utility Motion”).*
- iv. *Debtors’ Motion for Interim and Final Orders, Pursuant to Sections 105(a), 363, and 364 of the Bankruptcy Code, (A) Authorizing (I) Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection with Insurance Programs, Including Payment of Policy Premiums and Broker Fees, and (II) Continuation of Insurance Premium Financing Programs; (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto, and (III) Scheduling A Final Hearing [D.I. 7] (“Insurance Motion”).*
- v. *Debtors’ Motion for Interim and Final Orders, Pursuant to Sections 105(a), 345, 363, 1107(a) and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015,*

And Local Rule 2015- 2, (A) Authorizing And Approving Continued Use Of Cash Management System, (B) Authorizing Use Of Prepetition Bank Accounts And Business Forms, (C) Waiving The Requirements Of Section 345(B) On An Interim Basis, And (D) Granting Certain Related Relief [D.I. 8] (“Cash Management Motion”).

- vi. *Debtors’ Motion Entry of Interim and Final Orders (A) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors and Service Providers; (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (C) Granting Related Relief [D.I. 9] (“Critical Vendors Motion”).*
- vii. *Debtors’ Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Maintain and Honor Certain Prepetition Customer Programs, (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto, and (C) Granting Related Relief [D.I. 10] (“Customer Programs Motion”).*
- viii. *Debtors’ Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, (A) Authorizing (I) Payment of Accrued Prepetition Employee Wages, Salaries, and Other Compensation; (II) Payment of Accrued Prepetition Obligations Owed to Independent Contractors; (III) Continuation of Bonus Obligations to be Paid in the Ordinary Course; (IV) Payment of Prepetition Employee Business Expenses; (V) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (VI) Payment of Workers’ Compensation Obligations; (VIII) Payments for Which Prepetition Payroll Deductions Were Made; (IX) Payment of all Costs and Expenses Incident to the Foregoing Payments and Contributions; and (X) Payment to Third Parties of all Amounts Incident to the Foregoing Payments and Contributions; and (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto [D.I. 11] (the “Wages Motion”).*
- ix. *Debtors’ Motion for Interim and Final Orders (I) Authorizing Payment of Certain Prepetition Shipping, Warehousing, Delivery, and Customs Charges, and (II) Authorizing Banks to Honor all Related Checks and Electronic Payment Requests [D.I. 12] (the “Shippers Motion”).*
- x. *Debtors’ Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Lenders; (III) Authorizing Use of Cash Collateral; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief [D.I. 13] (the “DIP Motion”).*

On August 25, 2023, the Bankruptcy Court entered orders (i) approving the relief requested in the Joint Administration Motion [D.I. 24], the Claims Agent Retention Application [D.I. 25] on a final basis, and (ii) approving the relief requested in the Utilities Motion [D.I. 27], the Insurance

Motion [D.I. 28], the Cash Management Motion [D.I. 29], the Critical Vendors Motion [D.I. 30], the Customer Programs Motion [D.I. 31], the Employee Wages Motion [D.I. 32], the Shippers Motion [D.I. 33] and the DIP Motion [D.I. 34] on an interim basis.

On September 25, 2023, the Bankruptcy Court entered orders approving, on a final basis, the relief requested in Insurance Motion [D.I. 102], the Cash Management Motion [D.I. 104], the Critical Vendors Motion [D.I. 105], the Customer Programs Motion [D.I. 110], the Employee Wages Motion [D.I. 111], and the Shippers Motion [D.I. 112]. On September 28, 2023, the Bankruptcy Court entered an order approving, on a final basis, the relief requested in the DIP Motion [D.I. 133].

Pursuant to the Final DIP Order, Webster, in its respective capacity as Prepetition ABL Agent, converted all amounts owing under the Prepetition ABL Credit Agreement to DIP Loan Claims held by Webster in its capacity as DIP Revolver Administrative Agent on behalf of the DIP Revolver Secured Parties. Pursuant to the Final DIP Order, the DIP Secured Parties were granted first priority security interests in substantially all of the Debtors' assets. Their security interests were only subject to Challenge (as defined in the Final DIP Order) until the expiration of the Challenge Period (as defined in the Final DIP Order). The Challenge Period expired with no Challenge having been asserted in connection with the Global Settlement.

(c) Retention of Professional Advisors

In the wake of their liquidity constraints and operational challenges, in early 2023, the Board began to increasingly consider the need for the Debtors to restructure or otherwise receive a cash infusion to ensure that the Debtors could move forward as a viable business. In April of 2023, the Debtors engaged RAS, to provide the Debtors with a CEO and certain additional personnel, and in May 2023, engaged Young Conaway Stargatt & Taylor, LLP, as restructuring counsel. In April of 2023, the Debtors appointed Matthew Kahn and Sanjay Marken—seasoned financial and restructuring professionals—as independent directors and members of the Board. On April 25, 2023, all other directors, except for Matthew Kahn and Sanjay Marken, were removed from the Board by the Debtors.

Pursuant to orders entered on September 25, 2023, the Bankruptcy Court authorized the Debtors to retain and employ (i) Young Conaway Stargatt & Taylor, LLP as their bankruptcy counsel [D.I. 98]; (ii) RAS, to provide the Debtors with an interim CEO and certain other personnel [D.I. 99]; (iii) Epiq Corporate Restructuring, LLC as administrative advisor [D.I. 96]; and (iv) SSG Advisors LLC (“SSG”) as investment banker [D.I. 96]. The Bankruptcy Court also authorized, through the OCP Order, the Debtors to retain and employ certain professionals utilized by the Debtors in the ordinary course of business prior to the Petition Date [D.I. 101].

Pursuant to orders entered on October 19, 2023, the Bankruptcy Court authorized the Committee to retain and employ (i) Lowenstein Sandler LLP and Morris James LLP as its legal counsel [D.I. 188 and 189] and (ii) Alvarez & Marsal North America, LLC as its financial advisor [D.I. 226].

(d) *The Sale*

Shortly prior to the Petition Date, SSG began a formal marketing process for the sale of the Debtors' assets, both on an integrated basis as well as on a business line basis. As part of these efforts, SSG crafted detailed marketing materials and assembled related diligence information for a confidential electronic data room (the "**Data Room**") and a confidential information presentation with the assistance of the Debtors and their other professional advisors.

On August 25, 2023, the Debtors filed a motion (the "**Bidding Procedures Motion**") seeking authority to proceed with a bidding and auction process to consummate a sale or series of sales (the "**Sale Process**") that the Debtors expected would generate maximum value for their assets. To facilitate the Sale Process, the Debtors, in consultation with SSG and their other professional advisors, proposed certain customary bidding procedures (the "**Bidding Procedures**") to preserve flexibility in the Sale Process, generate the greatest level of interest in the Debtors' assets, and result in the highest or otherwise best value for those assets. Given the Debtors' liquidity situation at the outset of the Chapter 11 Cases, the Debtors believed that a timely sale of their assets would maximize value to the greatest extent possible under the circumstances of these Chapter 11 Cases, and generate the highest possible recoveries in the most efficient and expeditious manner possible, which would inure to the benefit of the Debtors' creditors and other stakeholders. The Debtors also believed that it would ensure, to the benefit of their estates, that the market had certainty around the parameters of the Sale Process.

The Debtors, in consultation with SSG and their other professional advisors, worked extensively to implement a robust and expeditious Sale Process. On September 28, 2023, the Bankruptcy Court entered the Bidding Procedures Order, approving the Bidding Procedures and establishing, among other things, October 24, 2023, as the bid deadline, October 27, 2023, as the auction date, to the extent applicable, and November 2, 2023, as the hearing to approve the Sale. In accordance with the Bidding Procedures Order, the Sale Notice was published in the national edition of *USA Today* on October 17, 2023.

The Stalking Horse Agreement served as the baseline for all prospective bidders to negotiate from, and was subject to higher or otherwise better bids for the Assets pursuant to the Bidding Procedures. Throughout the Sale Process, SSG continuously engaged with interested parties. SSG contacted over 222 interested parties and circulated teasers and non-disclosure agreements to the interested parties. Ultimately, twenty-six (26) parties executed non-disclosure agreements and were granted access to the Data Room. However, despite SSG's efforts, no Qualified Bids other than the Stalking Horse Agreement were received prior to the Bid Deadline, therefore the Auction was cancelled, and the Stalking Horse Purchaser was declared the successful bidder.

The Bankruptcy Court held a hearing and approved the Sale on November 9, 2023, and entered the order approving the Sale on November 13, 2023 [D.I. 255]. The Sale closed on December 1, 2023. At or following the Sale closing, the DIP Loan Claims were deemed satisfied in full by virtue of the Stalking Horse Purchaser's (i) credit bid of all amounts owed under the DIP Term Loan Facility and (ii) payment to the DIP Revolver Administrative Agent in full and final satisfaction of all amounts outstanding under the DIP Revolver Facility.

(e) ***Schedules and Bar Dates***

On October 19, 2023, the Bankruptcy Court entered the Bar Date Order, granting the relief requested in the Bar Date Motion [D.I. 195]. The Bar Date established the General Bar Date as November 22, 2023 at 5:00 p.m. (prevailing Eastern Time).

On October 6, 2023, the Debtors filed the Schedules. Among other things, the Schedules set forth the Claims of known or putative creditors against the Debtors as of the Petition Date, based upon the Debtors' books and records.

As described in detail below, the Plan contemplates the establishment of an Administrative Claim Bar Date and Professional Fee Bar Date pursuant to the Confirmation Order.

The projected recoveries set forth in the Plan are based on certain assumptions, including the Debtors' estimates of the Claims that will eventually be Allowed in various Classes. There is no guarantee that the ultimate amount of each of such categories of Claims will correspond to the Debtors' estimates. The Debtors or the Liquidation Trustee, as applicable, and their professionals will investigate Claims filed against the Debtors to determine the validity of such Claims. The Debtors or the Liquidation Trustee, as applicable, may file objections to Claims that are filed in improper amounts or classifications, or are otherwise subject to objection under the Bankruptcy Code or other applicable law.

(f) ***The Global Settlement***

Following the Petition Date, the Debtors and Blue Torch produced to the Committee certain information and documents in connection with the Committee's investigation of claims held by, and potential Claims against, Blue Torch, in its capacity as Prepetition Term Loan Agent and DIP Term Administrative Agent and the other Prepetition Lenders. Pursuant to the Final DIP Order, the Committee was afforded until November 7, 2023, which deadline was then further extended (the "**Challenge Deadline**"), to assert a challenge (a "**Challenge**") to the various stipulations and admissions by the Debtors in the Final DIP Order regarding, among other things, the extent, validity, and priority of the liens and claims of the Prepetition Lenders.

Following thorough arms-length discussions between the parties, the Debtors, the Committee, Blue Torch, and the Stalking Horse Purchaser (the "**Settlement Parties**") reached a global settlement as set forth in that certain *Settlement Term Sheet*, substantially in the form attached to the Global Settlement Order, regarding (i) the provision of additional funding for administrative expenses through confirmation of a plan of liquidation, (ii) the allowance of Blue Torch's prepetition secured claims, (iii) the provision of post-confirmation funding for a Liquidation trust, (iv) the allowance and treatment of the Prepetition Prepayment Premium Claim and agreed allocation of proceeds of estate claims and causes of action amongst general unsecured creditors and Blue Torch, and (e) the Committee's support of the sale of the Debtors' assets to Blue Torch.

On November 10, 2023, the Debtors, together with the Committee, filed the *Joint Motion of Debtors and Creditors' Committee to Approve Settlement Term Sheet Among Debtors, Creditors' Committee, Blue Torch Finance LLC, and the Stalking Horse Purchaser* (the

“Settlement Motion”) [D.I. 253]. The Settlement Term Sheet and Settlement Motion provide the terms of the Global Settlement including, but not limited to, the following salient points of which are:⁵

- i. Blue Torch’s prepetition claims (including all claims for principal, interest, fees, expenses, and the Prepetition Prepayment Premium Claim) will be deemed “allowed” subject to the terms set forth in the Settlement Term Sheet. The Challenge Period expired with no challenge having been filed.
- ii. The Stalking Horse Purchaser agreed to assume postpetition ordinary course accounts payables and any Allowed Administrative Claims pursuant to section 503(b)(9) of the Bankruptcy Code.
- iii. In addition to the Wind Down Amount, the Liquidation Trust shall be funded as follows:
 - a. The Estates will be entitled to retain all amounts funded into the professional fee escrow (which should be comprised of the full amount budgeted for both the Debtors’ and the Committee’s professionals), to the extent not utilized to pay allowed fees and expenses of the Debtors’ and the Committee’s professionals.
 - b. The Stalking Horse Purchaser and Blue Torch will provide (i) a \$125,000 advance to fund an investigation into claims and causes of action vesting in the Liquidation Trust, and (ii) \$175,000 of additional funding to solely cover the Committee’s professional fees in excess of the Budget. Any amounts not used for such purpose may be rolled into the Liquidation Trust Assets.
 - c. Trust Recoveries—all proceeds recovered by the Liquidation Trust from the Liquidation Trust Assets will be distributed as follows:
 1. First, to pay accrued and unpaid Liquidation Trust Expenses;
 2. Second, to repay Blue Torch for the \$125,000 advance of the Investigation Fund;
 3. Third, Blue Torch and Holders of Allowed General Unsecured Claims shall split the next dollars recovered as follows: (a) 60% of the recovered amount to Blue Torch, and (b) 40% of the recovered amount to Holders of Allowed General Unsecured Claims (other than subordinated insider claims), until Holders of Allowed General Unsecured Claims are paid in full;

⁵ Any descriptions of the Global Settlement in this combined Disclosure Statement and Plan are qualified in their entirety by the terms of the Global Settlement Order. *See* [D.I. 269].

4. Fourth, Blue Torch shall receive 100% of all recovered proceeds until its allowed claims have been paid in full;
 5. Fifth, to Allowed Subordinated Claims.
- iv. The Liquidation Trust Agreement, Liquidation Trustee, and governance structure shall be reasonably acceptable to Blue Torch and the Committee and shall afford Blue Torch and the Committee participation in the oversight of the Liquidation Trust. The Liquidation Trustee shall provide a budget to the Oversight Committee and the Oversight Committee shall have approval rights with respect to prosecution of claims and means for funding prosecution of claims, including, but not limited to, contingency fees and litigation funding.
 - v. The Plan shall contain a customary release, exculpation, and injunction provisions in favor of Blue Torch, the Committee, and their respective professionals.

On November 20, 2023, the Court entered an Order approving the Global Settlement [D.I. 269]. On December 1, 2023, in connection with the Sale closing, Blue Torch made all payments required by the Global Settlement.

(g) The Wind-down of the Estates

Following the closing of the Sale, the Debtors will focus principally on efficiently winding down their businesses, preserving Cash held in the Estates, monetizing or transferring to the Liquidation Trust their remaining Assets and pursuing confirmation of this Plan. The remaining Assets are expected to consist of, among other things, the Liquidation Trust Assets. This combined Disclosure Statement and Plan provides for the Assets, to the extent not already liquidated or sold through the Sale, to vest in the Liquidation Trust and to be liquidated over time and the proceeds thereof to be distributed to Holders of Allowed Claims in accordance with the terms of the Plan and the treatment of Allowed Claims described more fully herein. The Liquidation Trustee will effect such liquidation and distributions. The Debtors will be dissolved as soon as practicable after the Effective Date.

ARTICLE IV

CONFIRMATION AND VOTING PROCEDURES

4.1 Confirmation Procedure. The Solicitation Procedures Order, among other things, conditionally approves this combined Disclosure Statement and Plan for solicitation purposes only and authorizes the Debtors to solicit votes to accept or reject the Plan. The Confirmation Hearing has been scheduled for **February 20, 2024 at 11:30 a.m. (prevailing Eastern Time)** at the Bankruptcy Court, 824 North Market Street, Wilmington, Delaware 19801 to consider (a) final approval of the Disclosure Statement as providing adequate information pursuant to Bankruptcy Code section 1125 and (b) confirmation of the Plan pursuant to Bankruptcy Code section 1129. The Confirmation Hearing may be adjourned from time to time by the Debtors without further

notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by filing a notice with the Bankruptcy Court.

4.2 Procedure for Objections. Any objection to final approval of the combined Disclosure Statement and Plan as providing adequate information pursuant to Bankruptcy Code section 1125 or confirmation of the Plan must be made in writing and filed with the Bankruptcy Court and served on (a) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, (Attn: Michael R. Nestor, Esq. (mnestor@ycst.com), Kenneth J. Enos, Esq. (kenos@ycst.com), and Alexander Faris, Esq. (afaris@ycst.com)); (b) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, DE, 19801, (Attn: Joseph Cudia (joseph.cudia@usdoj.gov)); (c) counsel to Blue Torch, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022 (Attn: Adam Harris, Esq. (adam.harris@srz.com) and Reuben Dizengoff, Esq. (reuben.dizengoff@srz.com)); and (d) counsel to the Committee (i) Lowenstein Sandler LLP, 1251 Avenue of the Americas, 17th Floor, New York, NY 10020, Attn: Jeffrey Cohen, Esq. (jcohen@lowenstein.com); Eric S. Chafetz, Esq. (echafetz@lowenstein.com); and Jordana L. Renert, Esq. (jrenert@lowenstein.com), and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) (collectively, the “**Objection Recipients**”), in each case, by no later than **February 12, 2024 at 4:00 p.m. (prevailing Eastern Time)**. Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court at the Confirmation Hearing.

4.3 Requirements for Confirmation. The Bankruptcy Court will confirm the Plan only if it meets all the applicable requirements of Bankruptcy Code section 1129. Among other requirements, the Plan (i) must be accepted by all Impaired Classes of Claims or Interests or, if rejected by an Impaired Class, the Plan must not “discriminate unfairly” against, and be “fair and equitable” with respect to, such Class; and (ii) must be feasible. The Bankruptcy Court must also find that: (a) the Plan has classified Claims and Interests in a permissible manner; (b) the Plan complies with the technical requirements of chapter 11 of the Bankruptcy Code; and (c) the Plan has been proposed in good faith.

4.4 Classification of Claims and Interests.

Bankruptcy Code section 1123 provides that a plan must classify the claims and interests of a debtor’s creditors and equity interest holders. In accordance with Bankruptcy Code section 1123, the Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than those claims which pursuant to Bankruptcy Code section 1123(a)(1) need not be and have not been classified). The Debtors also are required, under Bankruptcy Code section 1122, to classify Claims and Interests into Classes that contain Claims or Interests that are substantially similar to the other Claims or Interests in such Class.

Further, the Bankruptcy Code requires that a plan provide the same treatment for each claim or interest of a particular class unless the claim holder or interest holder agrees to a less favorable treatment of its claim or interest. The Debtors believe that the Plan complies with such standard. If the Bankruptcy Court finds otherwise, however, it could deny confirmation of the Plan if the holders of Claims or Interests affected do not consent to the treatment afforded them under the Plan.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim also is placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

The Debtors believe that the Plan has classified all Claims and Interests in compliance with the provisions of Bankruptcy Code section 1122 and applicable case law. It is possible that a Holder of a Claim or Interest may challenge the Debtors' classification of Claims or Interests and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. If such a situation develops, the Debtors intend, in accordance with the terms of the Plan, to make such permissible modifications to the Plan as may be necessary to permit its confirmation. Any such reclassification could adversely affect holders of Claims by changing the composition of one or more Classes and the vote required of such Class or Classes for approval of the Plan.

EXCEPT AS SET FORTH IN THE PLAN, UNLESS SUCH MODIFICATION OF CLASSIFICATION MATERIALLY ADVERSELY AFFECTS THE TREATMENT OF A HOLDER OF A CLAIM AND REQUIRES RE-SOLICITATION, ACCEPTANCE OF THE PLAN BY ANY HOLDER OF A CLAIM PURSUANT TO THIS SOLICITATION WILL BE DEEMED TO BE A CONSENT TO THE PLAN'S TREATMENT OF SUCH HOLDER OF A CLAIM REGARDLESS OF THE CLASS AS TO WHICH SUCH HOLDER ULTIMATELY IS DEEMED TO BE A MEMBER.

The amount of any Impaired Claim that ultimately is Allowed by the Bankruptcy Court may vary from any estimated Allowed amount of such Claim and, accordingly, the total Claims that are ultimately Allowed by the Bankruptcy Court with respect to each Impaired Class of Claims may also vary from any estimates contained herein with respect to the aggregate Claims in any Impaired Class. Thus, the actual recovery ultimately received by a particular Holder of an Allowed Claim may be adversely or favorably affected by the aggregate amount of Claims Allowed in the applicable Class. Additionally, any changes to any of the assumptions underlying the estimated Allowed amounts could result in material adjustments to recovery estimates provided herein or the actual Distribution received by Creditors. The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors' views as of the date hereof only.

The classification of Claims and Interests and the nature of distributions to members of each Class are summarized herein. The Debtors believe that the consideration, if any, provided under the Plan to holders of Claims reflects an appropriate resolution of their Claims taking into account the differing nature and priority (including applicable contractual subordination) of such Claims and Interests. The Bankruptcy Court must find, however, that a number of statutory tests are met before it may confirm the Plan. Many of these tests are designed to protect the interests of holders of Claims or Interests who are not entitled to vote on the Plan, or do not vote to accept the Plan, but who will nonetheless be bound by the provisions of the Plan if it is confirmed by the Bankruptcy Court.

4.5 Unimpaired Claims and Impaired Claims or Interests

Pursuant to the provisions of the Bankruptcy Code, only classes of claims or interests that are “impaired” (as defined in Bankruptcy Code section 1124) under a plan may vote to accept or reject such plan. Generally, a claim or interest is impaired under a plan if the holder’s legal, equitable, or contractual rights are changed under such plan. In addition, if the holders of claims or interests in an impaired class do not receive or retain any property under a plan on account of such claims or interests, such impaired class is deemed to have rejected such plan under Bankruptcy Code section 1126(g) and, therefore, such holders are not entitled to vote on such plan.

Under the Plan, Holders of Claims in Classes 3 and 4 are Impaired and are entitled to vote on the Plan. Under the Plan, Holders of Claims or Interests in Classes 5, 6 and 7 are Impaired and will not receive or retain any property under the Plan on account of such Claims or Interests and, therefore, are not entitled to vote on the Plan and deemed to reject the Plan.

Under the Plan, Holders of Claims in Classes 1, and 2 are Unimpaired and, therefore, not entitled to vote on the Plan and are deemed to accept the Plan.

ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE PLAN IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASSES 3 AND 4.

4.6 Confirmation Without Necessary Acceptances; Cramdown

In the event that any impaired class of claims or interests does not accept a plan, a debtor nevertheless may move for confirmation of the plan. A plan may be confirmed, even if it is not accepted by all impaired classes, if the plan has been accepted by at least one impaired class of claims, and the plan meets the “cramdown” requirements set forth in Bankruptcy Code section 1129(b). Bankruptcy Code section 1129(b) requires that a court find that a plan (a) “does not discriminate unfairly” and (b) is “fair and equitable,” with respect to each non-accepting impaired class of claims or interests. Here, because Holders of Claims and Interests in Classes 5, 6, and 7 are deemed to reject the Plan, the Debtors will seek confirmation of the Plan by the Bankruptcy Court by satisfying the “cramdown” requirements set forth in Bankruptcy Code section 1129(b). The Debtors believe that such requirements are satisfied, as no Holder of a Claim or Interest junior to those in Classes 5, 6, or 7 are entitled to receive any property under the Plan.

A plan does not “discriminate unfairly” if (a) the legal rights of a nonaccepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are similar to those of the nonaccepting class and (b) no class receives payments in excess of that which it is legally entitled to receive for its claims or interests. The Debtors believe that, under the Plan, all Impaired Classes of Claims or Interests are treated in a manner that is consistent with the treatment of other Classes of Claims or Interests that are similarly situated, if any, and no Class of Claims or Interests will receive payments or property with an aggregate value greater than the aggregate value of the Allowed Claims or Allowed Interests in such Class. Accordingly, the Debtors believe that the Plan does not discriminate unfairly as to any Impaired Class of Claims or Interests.

The Bankruptcy Code provides a nonexclusive definition of the phrase “fair and equitable.” To determine whether a plan is “fair and equitable,” the Bankruptcy Code establishes “cramdown” tests for secured creditors, unsecured creditors and equity holders, as follows:

(a) Secured Creditors. Either (i) each impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred Cash payments having a present value equal to the amount of its allowed secured claim, (ii) each impaired secured creditor realizes the “indubitable equivalent” of its allowed secured claim or (iii) the property securing the claim is sold free and clear of liens with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds to be as provided in clause (i) or (ii) above.

(b) Unsecured Creditors. Either (i) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

(c) Interests. Either (i) each holder of an equity interest will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest or (ii) the holder of an interest that is junior to the nonaccepting class will not receive or retain any property under the plan.

As discussed above, the Debtors believe that the distributions provided under the Plan satisfy the absolute priority rule, where required.

4.7 Feasibility

Bankruptcy Code section 1129(a)(11) requires that confirmation of a plan not be likely to be followed by the liquidation, or the need for further financial reorganization of the Debtors or any successor to the Debtors (unless such liquidation or reorganization is proposed in the Plan). Inasmuch as the Assets have been, or will be, liquidated, and the Plan provides for the Distribution of all of the Cash proceeds of the Assets to Holders of Claims that are Allowed in accordance with the Plan, for purposes of this test, the Debtors have analyzed the ability of the Liquidation Trustee to meet its obligations under the Plan. Based on the Debtors’ analysis, the Liquidation Trustee will have sufficient assets to accomplish its tasks under the Plan. Therefore, the Debtors believe that the liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

4.8 Best Interests Test and Liquidation Analysis

Even if a plan is accepted by the holders of each class of claims and interests, the Bankruptcy Code requires the Bankruptcy Court to determine that such plan is in the best interests of all holders of claims or interests that are impaired by the plan and that have not accepted the plan. The “best interests” test, as set forth in Bankruptcy Code section 1129(a)(7), requires a court to find either that all members of an impaired class of claims or interests have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of

a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtors were liquidated under chapter 7 of the Bankruptcy Code. A liquidation analysis is attached hereto as **Exhibit A**.

To calculate the probable distribution to holders of each impaired class of claims and interests if the debtor was liquidated under chapter 7, a court must first determine the aggregate dollar amount that would be generated from a debtor's assets if its chapter 11 cases were converted to cases under chapter 7 of the Bankruptcy Code. To determine if a plan is in the best interests of each impaired class, the present value of the distributions from the proceeds of a liquidation of the debtor's unencumbered assets and properties, after subtracting the amounts attributable to the costs, expenses and administrative claims associated with a chapter 7 liquidation, must be compared with the value offered to such impaired classes under the plan. If the hypothetical liquidation distribution to holders of claims or interests in any impaired class is greater than the distributions to be received by such parties under the plan, then such plan is not in the best interests of the holders of claims or interests in such impaired class.

Because the Plan is a liquidating plan, the "liquidation value" in the hypothetical chapter 7 liquidation analysis for purposes of the "best interests" test is substantially similar to the estimates of the results of the chapter 11 liquidation contemplated by the Plan. However, the Debtors believe that in a chapter 7 liquidation, (i) Holders of General Unsecured Claims may not receive the value greater than the value being provided under this Plan, and (ii) there would be additional costs and expenses that the Estates would incur as a result of liquidating the Estates in a chapter 7 case.

The costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as the costs of counsel and other professionals retained by the trustee. The Debtors believe such amount would exceed the amount of expenses that would be incurred in implementing the Plan and winding up the affairs of the Debtors. Conversion also would likely delay the liquidation process and ultimate distribution of the Assets. The Estates would also be obligated to pay all unpaid expenses incurred by the Debtors during the Chapter 11 Cases (such as compensation for Professionals) that are allowed in the chapter 7 cases.

Accordingly, the Debtors believe that Holders of Allowed Claims would receive less than anticipated under the Plan if the Chapter 11 Cases were converted to chapter 7 cases, and therefore, the classification and treatment of Claims and Interests in the Plan complies with Bankruptcy Code section 1129(a)(7).

4.9 Acceptance of the Plan

The rules and procedures governing eligibility to vote on the Plan, solicitation of votes, and submission of ballots are set forth in the Solicitation Procedures Order.

For the Plan to be accepted by an Impaired Class of Claims, a majority in number and two-thirds in dollar amount of the Claims voting in such Class must vote to accept the Plan. At least one Voting Class, excluding the votes of insiders, must actually vote to accept the Plan.

IF YOU ARE ENTITLED TO VOTE ON THE PLAN, YOU ARE URGED TO COMPLETE, DATE, SIGN, AND PROMPTLY SUBMIT THE BALLOT YOU RECEIVE.

PLEASE BE SURE TO COMPLETE ALL BALLOT ITEMS PROPERLY AND LEGIBLY. IF YOU ARE A HOLDER OF A CLAIM ENTITLED TO VOTE ON THE PLAN AND YOU DID NOT RECEIVE A BALLOT, YOU RECEIVED A DAMAGED BALLOT, OR YOU LOST YOUR BALLOT, OR IF YOU HAVE ANY QUESTIONS CONCERNING THE PLAN OR PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT THE SOLICITATION AND CLAIMS AGENT BY EMAIL AT: PEGASUS@EPIQGLOBAL.COM. THE SOLICITATION AND CLAIMS AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.

HOLDERS OF CLAIMS IN CLASSES 3 AND 4 WHO WISH TO PROVIDE THE RELEASES SET FORTH IN SECTION 14.1(c) HEREIN MUST AFFIRMATIVELY INDICATE SO BY CHECKING THE “OPT-IN” BOX ON THEIR BALLOT.

PLEASE BE ADVISED THAT ALL HOLDERS OF CLAIMS IN CLASSES 3 AND 4 THAT DO NOT MAKE A RELEASE OPT-IN ELECTION SHALL BE DEEMED TO HAVE NOT CONSENTED TO THE RELEASES SET FORTH IN SECTION 14.1(c).

ARTICLE V
CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING

THE PLAN AND ITS IMPLEMENTATION ARE SUBJECT TO CERTAIN RISKS, INCLUDING, BUT NOT LIMITED TO, THE RISK FACTORS SET FORTH BELOW. HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS, AS WELL AS THE OTHER INFORMATION SET FORTH IN THE PLAN AND THE DOCUMENTS DELIVERED TOGETHER HERewith OR REFERRED TO OR INCORPORATED BY REFERENCE HEREIN, BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THESE FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

5.1 The Plan May Not Be Accepted

The Debtors can make no assurances that the requisite acceptances to the Plan will be received, and the Debtors may need to obtain acceptances of an alternative plan of liquidation for the Debtors, or otherwise, that may not have the support of the Creditors and/or may be required to liquidate the Estates under chapter 7 of the Bankruptcy Code. There can be no assurance that the terms of any such alternative restructuring arrangement or plan would be similar to or as favorable to Creditors as those proposed in the Plan.

5.2 The Plan May Not Be Confirmed

Even if the Debtors receive the requisite acceptances, there is no assurance that the Bankruptcy Court, which may exercise substantial discretion as a court of equity, will confirm the Plan. Even if the Bankruptcy Court determined that the combined Disclosure Statement and Plan and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline

to confirm the Plan if it finds that any of the statutory requirements for confirmation had not been met. Moreover, there can be no assurance that modifications to the combined Disclosure Statement and Plan will not be required for Confirmation or that such modifications would not necessitate the re-solicitation of votes. If the Plan is not confirmed, it is unclear what distributions Holders of Claims or Interests ultimately would receive with respect to their Claims or Interests in a subsequent plan of liquidation or a conversion to chapter 7.

If the Plan is not confirmed, the Plan will need to be revised, and it is unclear whether a chapter 11 reorganization or liquidation of the Debtors' assets could be implemented and what distribution the holders of Allowed Claims would receive. If an alternative could not be agreed to, it is possible that the Debtors would have to liquidate their remaining assets in chapter 7, in which case it is likely that the holders of Allowed Claims would receive substantially less favorable treatment than they would receive under the Plan. There can be no assurance that the terms of any such alternative would be similar to or as favorable to the Debtors' creditors as those proposed in the Plan.

5.3 Distributions to Holders of Allowed Claims under the Plan May Be Inconsistent with Projections and Reductions to Creditor Recoveries

Projected Distributions are based upon good faith estimates of the total amount of Claims ultimately Allowed (denominator) and the funds available for Distribution (numerator). There can be no assurance that the estimated Claim amounts set forth in the Plan are correct. These estimated amounts are based on certain assumptions with respect to a variety of factors. Both the actual amount of Allowed Claims in a particular Class and the funds available for distribution to such Class may differ from the Debtors' estimates. If the total amount of Allowed Claims in a Class is higher than the Debtors' estimates, or the funds available for distribution to such Class are lower than the Debtors' estimates, the percentage recovery to Holders of Allowed Claims in such Class will be less than projected. Thus, the Allowed amount of Claims in any Class could be greater than projected, which, in turn, could cause the amount of distributions to Creditors in such Class to be reduced substantially. The amount of Cash realized from the liquidation of the Debtors' remaining Assets could be less than anticipated, which could cause the amount of Distributions to Creditors to be reduced substantially.

5.4 Objections to Classification of Claims

Bankruptcy Code section 1122 requires that the Plan classify Claims and Interests. The Bankruptcy Code also provides that the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests of such Class. The Debtors believe that all Claims and Interests have been appropriately classified in the Plan. To the extent that the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtors would seek to (i) modify the Plan to provide for whatever classification might be required for Confirmation and (ii) use the acceptances received from any Holder of Claims pursuant to this solicitation for the purpose of obtaining the approval of the Class or Classes of which such Holder ultimately is deemed to be a member. Any such reclassification of Claims, although subject to the notice and hearing requirements of the Bankruptcy Code, could adversely affect the Class in which such Holder was initially a member, or any other Class under the Plan, by changing the composition of such Class and the vote required for approval of the Plan.

There can be no assurance that the Bankruptcy Court, after finding that a classification was inappropriate and requiring a reclassification, would approve the Plan based upon such reclassification. Except to the extent that modification of classification in the Plan requires re-solicitation, the Debtors will, in accordance with the Bankruptcy Code and the Bankruptcy Rules, seek a determination by the Bankruptcy Court that acceptance of the Plan by any Holder of Claims pursuant to this solicitation will constitute a consent to the Plan's treatment of such Holder, regardless of the Class as to which such Holder is ultimately deemed to be a member. The Debtors believe that under the Bankruptcy Rules, they would be required to resolicit votes for or against the Plan only when a modification adversely affects the treatment of the Claim or Interest of any Holder.

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or Interest of a particular Class unless the Holder of a particular Claim or Interest agrees to a less favorable treatment of its Claim or Interest. The Debtors believe that the Plan complies with the requirement of equal treatment. To the extent that the Bankruptcy Court finds that the Plan does not satisfy such requirement, the Bankruptcy Court could deny confirmation of the Plan. Issues or disputes relating to classification and/or treatment could result in a delay in the confirmation and consummation of the Plan and could increase the risk that the Plan will not be consummated.

5.5 Failure to Consummate the Plan

The Plan provides for certain conditions that must be satisfied (or waived) prior to the Confirmation Date and for certain other conditions that must be satisfied (or waived) prior to the Effective Date. As of the date of the Plan, there can be no assurance that any or all of the conditions in the Plan will be satisfied (or waived). Accordingly, there can be no assurance that the Plan will be confirmed by the Bankruptcy Court. Further, if the Plan is confirmed, there can be no assurance that the Plan will be consummated.

5.6 Plan Releases May Not Be Approved

There can be no assurance that the releases, as provided in Article XIV of the Plan, will be granted. Failure of the Bankruptcy Court to grant such relief may result in a plan of liquidation that differs from the Plan or the Plan not being confirmed.

5.7 Certain Tax Considerations

There are a number of material income tax considerations, risks, and uncertainties associated with the plan of liquidation of the Debtors, certain of which are described in this combined Disclosure Statement and Plan, as discussed further in Section 9.12 below.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. NOTHING HEREIN SHALL CONSTITUTE TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE U.S. FEDERAL, STATE AND LOCAL, AND APPLICABLE NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

ARTICLE VI
TREATMENT OF UNCLASSIFIED CLAIMS

6.1 Administrative Claims. Except as otherwise set forth in this Article VI, or as soon as practicable after the Administrative Claim Bar Date, each Holder of an Allowed Administrative Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Administrative Claim: (i) Cash equal to the amount of such Allowed Administrative Claim; or (ii) such other treatment as to which the Debtors or the Liquidation Trustee, as applicable, and the Holder of such Allowed Administrative Claim shall have agreed upon in writing; *provided, however*, that each Holder of an Allowed 503(b)(9) Claim shall be paid by the Stalking Horse Purchaser on or before the Effective Date in accordance with the terms of this combined Disclosure Statement and Plan and the Global Settlement.

(a) **Administrative Claim Bar Date.** Holders of Administrative Claims, other than Professional Fee Claims or 503(b)(9) Claims, shall file with the Claims Agent and serve on the Liquidation Trustee requests for payment, in writing, together with supporting documents, substantially complying with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, so as to actually be received on or before the Administrative Claim Bar Date. The Effective Date Notice shall set forth the Administrative Claim Bar Date and shall constitute notice of such Bar Date. Absent further Court order, any Administrative Claim not filed by the Administrative Claim Bar Date shall be deemed waived and the Holder of such Administrative Claim shall be forever barred from receiving payment on account thereof.

(b) **Objections by the Liquidation Trustee.** Objections to requests for payment of Administrative Claims, other than requests for payment of Professional Fee Claims, must be Filed and served on the requesting party by the Claims Objection Deadline.

(c) **Professional Fee Claims.** All applications for allowance and payment of Professional Fee Claims shall be Filed on or before the Professional Fee Claims Bar Date. If an application for a Professional Fee Claim is not Filed by the Professional Fee Claims Bar Date, such Professional Fee Claim shall be deemed waived and the Holder of such Claim shall be forever barred from receiving payment on account thereof. The Effective Date Notice shall set forth the Professional Fee Claims Bar Date and shall constitute notice of such Professional Fee Claim Bar Date. Objections to any Professional Fee Claims must be Filed and served on the Liquidation Trustee and the requesting party by no later than twenty-one (21) days after service of the applicable final application for allowance and payment of Professional Fee Claims. Allowed Professional Fee Claims shall be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court upon the earlier of (i) the Effective Date or (ii) the date upon which an order relating to any such Allowed Professional Fee Claim is entered, and in each case, as soon as reasonably practicable. For the avoidance of doubt, Professionals or Entities retained pursuant to section 363 of the Bankruptcy Code shall not be required to file Professional Fee Claims unless otherwise required by a Final Order of the Bankruptcy Court. Unless required to file an application by the OCP Order, ordinary course professionals are not required to file a Professional Fee Claim.

(d) **Payment of United States Trustee Quarterly Fees.** All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code (“**Quarterly Fees**”) prior to the Effective Date shall be paid by the Debtors on the Effective Date. After the Effective Date, the post-Effective Date Debtors shall be jointly and severally liable to pay any and all Quarterly Fees when due and payable. Within two business days of the Effective Date, the Debtors and any other authorized parties who have been charged with administering the confirmed plan shall file a Notice of Occurrence of the Effective Date, identifying the Effective Date and indicating that it has occurred. The Debtors shall file all monthly operating reports due prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, each of the Debtors shall file with the Bankruptcy Court separate UST Form 11-PCR reports when they become due. Notwithstanding the deemed substantive consolidation provided for under this Plan, each and every one of the Debtors shall remain obligated to pay Quarterly Fees to the Office of the U.S. Trustee until the earliest of that particular Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be required to file any Administrative Claim in the case, and shall not be treated as providing any release under the Plan.

(e) **Source of Payment.** All Allowed Administrative Claims and U.S. Trustee Fees shall be paid from the Debtors’ Cash or Liquidation Trust Assets (which, subject to the terms of this Plan, and the Global Settlement, may consist of the Liquidation Trust Funding). With respect to Professional Fee Claims, prior to the Effective Date, the Debtors shall establish and fund the Professional Fee Reserve Account with Cash equal to the Professional Fee Reserve Amount plus the Committee Supplemental Fee Reserve Amount. The Professional Fee Reserve Account shall be maintained in trust for the Professionals (other than professionals retained pursuant to the OCP Order); *provided, however* the Committee Supplemental Fee Reserve Amount shall only be used to satisfy Allowed Professional Fees of the Committee’s Professionals. All amounts remaining in the Professional Fee Reserve Account after all Allowed Professional Fee Claims have been paid in full shall vest in the Liquidation Trust. All of the Debtors’ Cash as of the Effective Date shall be paid to the Liquidation Trust; *provided that* Young Conaway Stargatt & Taylor, LLP shall hold and maintain the Professional Fee Reserve Account until all Allowed Professional Fee Claims are paid in full.

6.2 Priority Tax Claims. Within the time period provided in Article X of the Plan and in this Article 6.2, each Holder of an Allowed Priority Tax Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Priority Tax Claim: (i) Cash equal to the amount of such Allowed Priority Tax Claim; or (ii) such other treatment as to which the Debtors or the Liquidation Trustee, as applicable, and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing. For the avoidance of doubt, and pursuant to section 1129(a)(9)(C)(ii) of the Bankruptcy Code, each Holder of an Allowed Priority Tax Claim shall receive the distribution described in this section 6.2 of this Plan in full and final satisfaction, settlement, and release of such Allowed Priority Tax Claim no later than five (5) years from the Effective Date.

ARTICLE VII

TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

All Claims and Interests are classified in the Classes set forth below in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date

Unless the Holder of an Allowed Claim and the Debtors or the Liquidation Trustee, as applicable, agree to a different treatment, each Holder of an Allowed Claim shall receive the following Distributions in accordance with Article X of the Plan:

7.1 Class 1: Priority Non-Tax Claims. Each Holder of an Allowed Priority Non-Tax Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 1 Claim: (A) Cash equal to the amount of such Allowed Priority Non-Tax Claim; or (B) such other treatment which the Debtors or the Liquidation Trustee, as applicable, and the Holder of such Allowed Priority Non-Tax Claim have agreed upon in writing.

7.2 Class 2: Other Secured Claims. Each Holder of an Allowed Other Secured Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 2 Claim: (A) return of the collateral securing such Allowed Other Secured Claim; or (B) Cash equal to the amount of such Allowed Other Secured Claim; or (C) such other treatment which the Debtors or the Liquidation Trustee, as applicable, and the Holder of such Allowed Other Secured Claim have agreed upon in writing.

7.3 Class 3: Prepetition Prepayment Premium Claim. Blue Torch, as the Holder of the Class 3 Prepetition Prepayment Premium Claim, shall receive in full and final satisfaction, settlement and release of and in exchange for such Allowed Class 3 Claim after payment of any Liquidation Trust Expenses (i) the Investigation Fund Repayment; (ii) 60% of the liquidated value of any Distributable Liquidation Trust Assets (which shall be paid concurrently with any distributions to Holders of Allowed Class 4 General Unsecured Claims) (the “**60% Distribution**”); and (iii) upon payment in full of all Allowed Class 4 General Unsecured Claims, payment in full of any remaining portion of the Prepetition Prepayment Premium Claim from the Liquidation Trust Assets.

7.4 Class 4: General Unsecured Claims. Unless the Holder agrees to a different treatment, each Holder of a General Unsecured Claim shall receive, upon payment in full of the Investigation Fund Repayment and after payment of any Liquidation Trust Expenses, such Holder’s *pro rata* share of 40% of the liquidated value of the Distributable Liquidation Trust Assets until all Class 4 Unsecured Claims are paid in full. For the avoidance of doubt, Distributions to Holders of Allowed Class 4 General Unsecured Claims shall occur concurrently with the 60% Distribution described in section 7.3(ii) of this combined Disclosure Statement and Plan.

7.5 Class 5: Subordinated Claims. If all Class 1, Class 2, Class 3, and Class 4 Allowed Claims are paid in full, Allowed Subordinated Claims, if any, shall be entitled to receive a *pro rata* share of the liquidated value of the Distributable Liquidation Trust Assets after payment of any Liquidation Trust Expenses.

7.6 Class 6: Intercompany Claims. Holders of Intercompany Claims shall receive no Distribution on account of their Intercompany Claims.

7.7 Class 7: Interests. On the Effective Date, all Interests shall be extinguished and owners thereof shall receive no Distribution on account of such Interests.

7.8 Reservation of Rights Regarding Claims and Interests. Except as otherwise explicitly provided in the Plan, nothing shall affect the Debtors' rights and defenses, both legal and equitable, with respect to any Claims or Interests, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

ARTICLE VIII

ACCEPTANCE OR REJECTION OF THE PLAN

8.1 Class Entitled to Vote. Because Claims in Class 3 and Class 4 are Impaired, and Holders thereof will receive or retain property or an interest in property under the Plan, only a Holder of Claims in Class 3 and Class 4 shall be entitled to vote to accept or reject the Plan.

8.2 Acceptance by Impaired Classes of Claims or Interests. In accordance with Bankruptcy Code section 1126(c), and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Claims shall have accepted the Plan if the Plan is timely accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject the Plan.

8.3 Deemed Acceptance by Unimpaired Classes. Because Claims in Classes 1 and 2 are Unimpaired pursuant to Bankruptcy Code section 1126(f), Holders of Claims in Classes 1 and 2 are deemed to have accepted the Plan and, therefore, such Holders of Claims are not entitled to vote to accept or reject the Plan.

8.4 Presumed Rejections by Impaired Classes. Because Holders of Claims or Interests in Classes 5, 6, and 7 are not entitled to receive or retain any property under the Plan, pursuant to Bankruptcy Code section 1126(g), such Holders of Claims or Interests are presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

8.5 Confirmation Pursuant to Bankruptcy Code Section 1129(b). To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, the Debtors reserve the right to request confirmation of the Plan, as it may be modified from time to time, under Bankruptcy Code section 1129(b). The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan, the documents submitted in support thereof or any schedule or exhibit, including to amend or modify it to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary.

8.6 Controversy Concerning Impairment. If a controversy arises as to whether any Claim or Interest is Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

8.7 Elimination of Vacant Classes. Any Class of Claims or Interests that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of an Allowed Claim or Interest, or a Holder of a Claim temporarily allowed under Bankruptcy Rule 3018, shall be deemed deleted from the Plan for all purposes, including for purposes of determining acceptance of the Plan by such Class under Bankruptcy Code section 1129(a)(8).

ARTICLE IX

IMPLEMENTATION OF THE PLAN AND THE LIQUIDATION TRUST

9.1 Implementation of the Plan. The Plan will be implemented by, among other things, the establishment of the Liquidation Trust, the vesting in and transfer to the Liquidation Trust of the Liquidation Trust Assets, and the making of Distributions by the Liquidation Trust in accordance with the Plan and Liquidation Trust Agreement.

9.2 Substantive Consolidation. Given the limited amount of funds available for distribution and the expense involved in winding down the Estates and administering Distributions, recoveries will be maximized by consolidating the Assets and liabilities of the Debtors as provided herein.

(a) Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Code sections 105(a) and 1123(a)(5)(C), effective as of the Effective Date, of the deemed substantive consolidation of the Estates of the Debtors for the purposes of confirming and consummating the Plan, including, but not limited to, voting, Confirmation and Distributions.

(b) On and after the Effective Date, (i) all Assets and liabilities of the Debtors shall be treated as though they were pooled, (ii) each Claim filed or to be filed against any Debtor, as to which two or more Debtors are jointly liable as a legal or contractual matter, shall be deemed filed as a single Claim against, and a single obligation of, the Debtors, (iii) all Claims held by a Debtor against any other Debtor shall be cancelled or extinguished, (iv) no Distributions shall be made under the Plan on account of any Claim held by a Debtor against any other Debtor, (v) all Interests shall be cancelled, (vi) no Distributions shall be made under the Plan on account of any Interest held by a Debtor in any other Debtor, (vii) all guarantees of any Debtors of the obligations of any other Debtor shall be eliminated so that any Claim against any Debtor and any Claim based upon a guarantee thereof executed by any other Debtor shall be treated as one Claim against the substantively-consolidated Debtors, and (viii) any joint or several liability of any of the Debtors shall be one obligation of the substantively consolidated Debtors and any Claims based upon such joint or several liability shall be treated as one Claim against the substantively-consolidated Debtors.

(c) The deemed substantive consolidation of the Debtors under the Plan shall not (other than for purposes related to funding Distributions under the Plan) affect (i) the legal and organizational structure of the Debtors, (ii) executory contracts or unexpired leases that

were entered into during the Chapter 11 Cases or that have been or will be assumed or rejected, (iii) any agreements entered into by the Liquidation Trust on or after the Effective Date, (iv) the Debtors' or the Liquidation Trust's ability to subordinate or otherwise challenge Claims on an entity-by-entity basis, (v) any Retained Causes of Action or defenses thereto, which in each case shall survive entry of the Confirmation Order as if there had been no substantive consolidation of the Estates of the Debtors, and (vi) distributions to the Debtors or the Liquidation Trust under any Insurance Contracts or the proceeds thereof, including the D&O Policies. Notwithstanding the substantive consolidation called for herein, each and every Debtor shall remain responsible for the payment of U.S. Trustee Fees until its particular case is closed (pursuant to this Plan or otherwise), dismissed or converted.

(d) This combined Disclosure Statement and Plan shall serve as, and shall be deemed to be, a motion for entry of an Order of the Bankruptcy Court approving the substantive consolidation of the Estates and Chapter 11 Cases. If no objection to the Plan is timely filed and served by any Holder of an Impaired Claim affected by the Plan as provided herein on or before the Voting Deadline or such other date as may be established by the Bankruptcy Court, the Plan, including the substantive consolidation of the Estates and Chapter 11 Cases, may be approved by the Bankruptcy Court as part of the Confirmation Order. If any such objections are timely filed and served, the Plan and the objections thereto shall be considered by the Bankruptcy Court at the Confirmation Hearing.

(e) Nothing in this Section 9.2 shall augment or increase the property that constitutes collateral or any offset or similar right securing any Claim or otherwise increase the secured portion of any Claim under Bankruptcy Code section 506(a).

(f) If the Bankruptcy Court determines that the deemed substantive consolidation of any given Debtors is not appropriate, then the Debtors may request that the Bankruptcy Court otherwise confirm the Plan and approve the treatment of and Distributions to the different Classes under the Plan on an adjusted, Debtor-by-Debtor basis. Furthermore, the Debtors reserve their rights: (i) to seek confirmation of the Plan without implementing deemed consolidation of any given Debtor, and, in the Debtors' reasonable discretion, to request that the Bankruptcy Court approve the treatment of and Distributions to any given Class under the Plan on an adjusted, Debtor-by-Debtor basis; and (ii) to seek deemed consolidation of all Debtors whether or not all Impaired Classes entitled to vote on the Plan vote to accept the Plan.

9.3 Debtors' Directors and Officers.

On the Effective Date and (a) upon (i) the Debtors, or such entity designated by the Debtors, making the Effective Date Distributions and, (ii) the Debtors causing the Liquidation Trust Assets to be transferred to the Liquidation Trust, the Debtors shall have no further duties or responsibilities in connection with implementation of this Plan in accordance with Article IX of this Plan, and (b) upon the Debtors' material completions of all other duties and functions set forth herein as soon as practicable after the Effective Date, the members of the board of directors and officers of the Debtors shall be deemed to have resigned and the employees of the Debtors terminated. Upon completion of the Debtors' final tax return by the Liquidation Trustee and the

entry of a final decree closing the Chapter 11 Cases, the Debtors shall be deemed dissolved for all purposes in accordance with applicable state law.

From and after the Effective Date, the Liquidation Trustee shall be deemed to be the sole officer and director of each Debtor (and all charters, bylaws, and other organic documents are deemed amended by this combined Disclosure Statement and Plan to permit and authorize such admission and appointment), and the Liquidation Trustee shall serve in such capacity through the earlier of the date the applicable Debtor is dissolved in accordance with this combined Disclosure Statement and Plan and the date that such Liquidation Trustee resigns, is terminated, or is otherwise unable to serve, *provided that* any successor Liquidation Trustee shall serve in such capacities after the effective date of such appointment as the Liquidation Trustee.

9.4 Wind-Up and Dissolution of the Debtors. On the Effective Date or as soon thereafter as is reasonably practicable, the Liquidation Trustee, under the oversight of the Oversight Committee, shall wind-up the affairs of the Debtors. Upon completion of the winding-up of the Debtors' affairs and without the need for any corporate action or approval and without the need for any corporate filings, the Liquidation Trustee shall dissolve the Debtors and neither the Debtors nor the Liquidation Trustee shall be required to pay any taxes or fees to cause such dissolution. The Liquidation Trust shall bear the cost and expense of the wind-up of the affairs of the Debtors, if any, and the cost and expense of the preparation and filing of the final tax returns for the Debtors.

9.5 Preservation of Rights. Under the Plan, the Liquidation Trustee retains any and all rights of, and on behalf of, the Debtors, the Estates, and the Liquidation Trust to commence and pursue any and all Retained Causes of Action, including, without limitation, setoff, offset and recoupment rights, regardless of whether or not such rights are specifically enumerated in the Plan, Disclosure Statement, Plan Supplement, or elsewhere, and all such rights shall not be deemed modified, waived, released in any manner, nor shall confirmation of the Plan or the Confirmation Order act as res judicata or limit any of such rights of the Liquidation Trustee to commence and pursue any and all Retained Causes of Action, including, without limitation, setoff, offset and recoupment rights, to the extent the Liquidation Trustee deems appropriate. Any and all Retained Causes of Action, including, without limitation, setoff, offset and recoupment rights, may, but need not, be pursued by the Debtors prior to the Effective Date and by the Liquidation Trustee after the Effective Date, to the extent warranted. Unless any Retained Causes of Action against a Creditor or other Person or Entity is expressly waived, relinquished, released, compromised or settled in this Plan, or any Final Order, including the Sale Order, the Debtors expressly reserve any and all Retained Causes of Action, including, without limitation, setoff, offset and recoupment rights, for later enforcement and prosecution by the Liquidation Trustee (including, without limitation, any Retained Causes of Action set forth in the Plan Supplement, or not specifically identified herein, in the Disclosure Statement, or otherwise, or which the Debtors may presently be unaware of, or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time, or facts or circumstances which may change or be different from those which the Debtors now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), or laches shall apply to such any and all Retained Causes of Action, including, without limitation, setoff, offset and recoupment rights, upon or after the

confirmation or consummation of this Plan based on the Disclosure Statement, this Plan, the Plan Supplement or the Confirmation Order.

In addition, the Liquidation Trust expressly reserves the right to pursue or adopt any and all Retained Causes of Action, including, without limitation, setoff, offset and recoupment rights, alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, subject to the provisions of this Plan or any Final Order. The Debtors and the Liquidation Trustee (as applicable) do not intend, and it should not be assumed (nor shall it be deemed) that because any existing or potential Retained Causes of Action, including, without limitation, setoff, offset and recoupment rights, have not yet been pursued by the Debtors or are not set forth herein, in the Disclosure Statement, or otherwise, that any and all Retained Causes of Action, including, without limitation, setoff, offset and recoupment rights, has been waived or expunged. Notwithstanding anything set forth herein that may be construed to the contrary, nothing in this section 9.5 shall preserve any Causes of Action that the Debtors, their Estates, or the Liquidation Trust may have against the Debtors' directors and officers as of the Petition Date that are otherwise subject to the provisions of Article XIV of this Plan.

9.6 Privileges. Other than the Retained Privileges (defined below), on and subject to the terms of this Plan, all of the Debtors' privileges (the "Privileges"), including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections relating to the Retained Claims and Causes of Action, in each instance arising on or after the later of (a) two (2) years prior to the Petition Date and (b) the applicable statute of limitations governing any such Estate Claim (but in no event more than six (6) years prior to the Petition Date) (the "Transferred Privileges"), shall be transferred, assigned and delivered to the Liquidation Trust, without waiver, limitation or release, and shall vest with the Liquidation Trust on the Effective Date and be jointly held by the Debtors and the Liquidation Trust on and after the Effective Date; provided, however, that notwithstanding the foregoing, Transferred Privileges do not include Privileges relating in any way to any rights, claims, or causes of action sold to the Stalking Horse Purchaser. The Liquidation Trust and Debtors shall each hold and be the beneficiary of all Transferred Privileges and entitled to assert all Transferred Privileges. No Privilege shall be waived by disclosures to the Liquidation Trustee of the Debtors' documents, information or communications subject to any privilege, protection or immunity or protections from disclosure jointly held by the Debtors and the Liquidation Trust. The Liquidation Trustee shall have until two (2) years after the Effective Date to request documents or information subject to the Transferred Privileges (each an "Information Request"); provided, however, that with respect to any action involving Transferred Privileges filed on or before two (2) years after the Effective Date, the Liquidation Trustee may make an Information Request subject to the Transferred Privileges involved in such action until the final resolution of such action, including any appeals.

9.7 Books and Record. On the Effective Date, the Liquidation Trust shall: (i) take possession of all books, records, and files of the Debtors and the Estates that were not sold and transferred in connection with the Sale and that relate to the operation and business of the Liquidation Trust; and (ii) provide for the retention and storage of such books, records, and files until such time as the

Liquidation Trustee determines, in accordance with the Liquidation Trust Agreement, that retention of same is no longer necessary or beneficial.

On or after the Effective Date, in accordance with the terms of the Stalking Horse Agreement and this Plan (as applicable), the Stalking Horse Purchaser shall provide reasonable and timely cooperation to effectuate the provisions of the Plan as the Liquidation Trustee might otherwise reasonably request, including, but not limited to, executing such documents to carry out the terms of the Plan.

9.8 Creation and Governance of the Liquidation Trust. On the Effective Date, the Debtors and the Liquidation Trustee shall execute the Liquidation Trust Agreement and shall take all steps necessary to establish the Liquidation Trust in accordance with the Plan and the beneficial interests therein, which shall be for the benefit of the Beneficiaries. Additionally, on the Effective Date the Debtors shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Liquidation Trust all of their rights, title, and interest in and to all of the Liquidation Trust Assets, and in accordance with Bankruptcy Code section 1141, except as specifically provided in the Plan or the Confirmation Order, the Liquidation Trust Assets shall automatically vest in the Liquidation Trust free and clear of all Claims, liens, encumbrances, or interests subject only to the Liquidation Trust Interests and the Liquidation Trust Expenses, as provided for in the Plan, Confirmation Order, and the Liquidation Trust Agreement, and Claims required to be paid by the Liquidation Trust pursuant to the Plan with priority over General Unsecured Claims, including, without limitation, Administrative Claims and Professional Fee Claims. Such transfer of the Liquidation Trust Assets to the Liquidation Trust shall be exempt from any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax. The Liquidation Trustee shall be the exclusive trustee of the Liquidation Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to Bankruptcy Code section 1123(b)(3)(B) solely with respect to the Liquidation Trust Assets. The Liquidation Trust shall be governed by the Liquidation Trust Agreement and administered by the Liquidation Trustee, with oversight from the Oversight Committee. The powers, rights, and responsibilities of the Liquidation Trustee shall be specified in the Liquidation Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IX of this Plan. The Liquidation Trust shall hold and distribute the Liquidation Trust Assets in accordance with the provisions of the Plan, Confirmation Order, the Global Settlement, and the Liquidation Trust Agreement. Other rights and duties of the Liquidation Trustee and the Beneficiaries shall be as set forth in the Liquidation Trust Agreement. For the avoidance of doubt, after the Effective Date, the Debtors and the Estates shall have no interest in the Liquidation Trust Assets, the transfer of the Liquidation Trust Assets to the Liquidation Trust is absolute, and the Liquidation Trust Assets shall not be held or deemed to be held in trust by the Liquidation Trustee on behalf of any of the Debtors or the Estates. The Oversight Committee shall be established on the Effective Date and shall have the rights, powers, and obligations set forth in the Liquidation Trust Agreement.

On the Effective Date, the Debtors shall fund the Liquidation Trust Funding to the Liquidation Trust in accordance with the terms of this Plan. The Liquidation Trust Funding shall vest with the Liquidation Trust on the Effective Date, *provided that* any amount remaining in the Committee Professional Supplemental Fee Reserve shall be paid and shall vest in the Liquidation Trust after payment of Allowed Professional Fee Claims of the Committee's Professionals. The Liquidation

Trust Funding shall be used by the Liquidation Trust solely to pay Liquidation Trust Expenses. Any unused portion of the Liquidation Trust Funding shall be paid to Blue Torch at the dissolution of the Liquidation Trust.

9.9 Purpose of the Liquidation Trust. The Liquidation Trust shall be established for the purpose of: (i) liquidating the Liquidation Trust Assets; (ii) reconciling and objecting to Claims, as provided for in the Plan; and (iii) making Distributions to the Beneficiaries in accordance with the Global Settlement and Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust.

9.10 Liquidation Trustee and Liquidation Trust Agreement. The Liquidation Trust Agreement generally will provide for, among other things: (i) the payment of the Liquidation Trust Expenses; (ii) the payment of other reasonable expenses of the Liquidation Trust; (iii) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; (iv) the investment of Cash by the Liquidation Trustee within certain limitations, including those specified in the Plan; (v) the orderly liquidation of the Liquidation Trust Assets; (vi) litigation of any Retained Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Retained Causes of Action; (vii) the prosecution and resolution of objections to Claims; (viii) the establishment of such Disputed Claim Reserves as the Liquidation Trustee deems appropriate; and (ix) the appointment of an Oversight Committee who shall oversee, and have certain approval and/or consultation rights over, certain of the acts of the Liquidation Trustee.

The Liquidation Trust Agreement shall provide that the Liquidation Trustee shall be indemnified by and receive reimbursement from the Liquidation Trust Assets against and from any and all loss, liability, expense (including reasonable attorneys' fees), or damage which the Liquidation Trustee incurs or sustains, in good faith and without either willful misconduct, gross negligence or fraud, acting as Liquidation Trustee under or in connection with the Liquidation Trust Agreement.

On and after the Effective Date, the Liquidation Trustee shall have the power and responsibility to do all acts contemplated by the Plan to be done by the Liquidation Trustee and all other acts that may be necessary or appropriate in connection with the disposition of the Liquidation Trust Assets and the distribution of the proceeds thereof, as contemplated by the Plan and in accordance with the Liquidation Trust Agreement. In all circumstances, the Liquidation Trustee shall act in its reasonable discretion in the best interests of the Beneficiaries pursuant to the terms of the Plan and the Liquidation Trust Agreement.

9.11 Compensation and Duties of Liquidation Trustee. The salient terms of the Liquidation Trustee's employment, including the Liquidation Trustee's duties and compensation, shall be set forth in the Liquidation Trust Agreement. The Liquidation Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases. The Liquidation Trustee shall also be reimbursed for all documented, actual,

reasonable, and necessary out-of-pocket expenses incurred in the performance of his or her duties under the Liquidation Trust Agreement.

9.12 United States Federal Income Tax Treatment of the Liquidation Trust, the Debtors, and Holders of Claims

(a) General. **HOLDERS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND ADVISORS. THE BELOW TAX SUMMARY HAS BEEN PROVIDED FOR GENERAL INFORMATIONAL PURPOSES ONLY. THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX, AND THIS DISCLOSURE STATEMENT DOES NOT ADDRESS THE POSSIBLE TAX CONSEQUENCES OF THE PLAN. NOTHING HEREIN SHALL CONSTITUTE TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES.**

The following discussion summarizes certain United States federal income tax consequences of the Plan to the Debtors and to certain Holders of Claims. This discussion is based on the IRC, the Treasury Regulations promulgated thereunder, judicial decisions, and published administrative rulings and pronouncements of the IRS, all as in effect on the date hereof. Legislative, judicial, or administrative changes in law or its interpretation, as well as other events occurring after the date of this Disclosure Statement, and which may be retroactive, could materially alter the tax treatment described below. Furthermore, this discussion is not binding on the IRS or any other tax authority. There is no assurance that a tax authority will not take, or that a court will not sustain, a position with respect to the tax consequences of the Plan that differs from the tax consequences described below. No ruling has been or will be sought from the IRS, no opinion of counsel has been or will be obtained, and no representations are made regarding any tax aspect of the Plan.

The following discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular Holder in light of such Holder's facts and circumstances, or to certain types of Holders subject to special treatment under the IRC (for example, governmental entities and entities exercising governmental authority, non-U.S. taxpayers, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, regulated investment companies, persons holding a Claim as part of a hedge, straddle, constructive sale, conversion transaction, or other integrated transaction, Holders that are or hold their Claims through a partnership or other pass-through entity, and Persons that have a functional currency other than the U.S. dollar). This summary does not address state, local, or non-United States tax consequences of the Plan, nor does this summary address federal taxes other than income taxes. Furthermore, this discussion generally does not address U.S. federal income tax consequences to Holders that are unimpaired under the Plan or that are not entitled to receive or retain any property under the Plan or to Persons who are deemed to have rejected the Plan.

(b) Liquidation Trust.

(i) Grantor Trust. It is intended that the Liquidation Trust qualify as a grantor trust for U.S. federal income tax purposes within the meaning of sections 671 through 679 of the

IRC, and that the Beneficiaries are treated as grantors and deemed owners thereof for federal income tax purposes. As described more fully in the Plan and the Disclosure Statement, the transfer of the Liquidation Trust Assets will be treated for federal income tax purposes as a deemed transfer to the Beneficiaries, followed by a deemed transfer from such Beneficiaries to the Liquidation Trust, provided, however, that the Liquidation Trust Assets will be subject to any post-Effective Date obligations incurred by the Liquidation Trust relating to the pursuit of Liquidation Trust Assets. Accordingly, the Beneficiaries will be treated for United States federal income tax purposes as the grantors and deemed owners of their respective share of the Liquidation Trust Assets. Subject to Section 9.12(b)(v) of the Plan, all items of income, gain, loss, deduction, and credit will be included in the income of the Beneficiaries as if such items had been recognized directly by the Beneficiaries in the proportions in which they own beneficial interests in the Liquidation Trust. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

(ii) *Reporting.* The Liquidation Trustee shall comply with all tax reporting requirements, including, without limitation, filing returns for the Liquidation Trust as a grantor trust pursuant to Treasury Regulation § 1.671-4(a) and the guidelines set forth for a “liquidating trust” in Revenue Procedure 94-95, 1994-2 C.B. 684. In connection therewith, the Liquidation Trustee may require Beneficiaries to provide certain tax information as a condition to receipt of Distributions, including certification of the Beneficiary’s Taxpayer or Employer Identification Number.

(iii) *Valuation.* Except to the extent definitive guidance from the IRS or a court of competent jurisdiction (including the issuance of applicable Treasury Regulations or the receipt by the Liquidation Trustee of a private letter ruling if the Liquidation Trustee so requests one) indicates that such valuation is not necessary to maintain the treatment of the Liquidation Trust as a liquidating trust for purposes of the IRC and applicable Treasury Regulations, as soon as reasonably practicable after the Liquidation Trust Assets are transferred to the Liquidation Trust, the Liquidation Trustee shall make a good faith valuation of the Liquidation Trust Assets. Such valuation shall be made available from time to time to all parties to the Liquidation Trust Agreement and to all Beneficiaries, to the extent relevant to such parties for tax purposes, and shall be used consistently by such parties for all United States federal income tax purposes.

(iv) *Tax Returns.* In accordance with the provisions of section 6012(b)(3) of the IRC, the Liquidation Trustee shall cause to be prepared, at the cost and expense of the Liquidation Trust, the tax returns (federal, state and local) of the Debtors (to the extent such returns have not already been filed by the Effective Date) and of the Liquidation Trust that are required to be filed. The Liquidation Trustee shall timely file each such tax return with the appropriate taxing authority and shall pay out of the Liquidation Trust Assets all taxes due with respect to the period covered by each such tax return.

(v) *Disputed Ownership Fund Election.* The Plan permits the Liquidation Trustee to establish Disputed Claim Reserves. The Liquidation Trustee may, at the Liquidation Trustee’s sole discretion, file a tax election to treat any such Disputed Claim Reserve as a Disputed Ownership Fund as described in Treasury Regulation § 1.468B-9 or other taxable entity rather than as a part of the Liquidation Trust for federal income tax purposes. If such election is made, the Liquidation Trust shall comply with all tax reporting and tax compliance requirements applicable

to the Disputed Ownership Fund or other taxable entity, including, but not limited to, the filing of separate income tax returns for the Disputed Ownership Fund or other taxable entity and the payment of any federal, state or local income tax due.

(vi) *Attribution of Income.* Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Liquidation Trustee of a private letter ruling if the Liquidation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidation Trustee), attribution of Liquidation Trust taxable income or loss shall be by reference to the manner in which any economic gain or loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidation Trust Assets. The tax book value of the Liquidation Trust Assets for purpose of this paragraph shall equal their fair market value on the date the Liquidation Trust Assets are transferred to the Liquidation Trust, adjusted in accordance with tax accounting principles prescribed by the IRC, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

(vii) *Income Taxed on a Current Basis.* All income of the Liquidation Trust will be subject to tax on a current basis. The Plan requires the Debtors, the Liquidation Trust, and the Beneficiaries to report consistently with characterization of the Liquidation Trust as a grantor trust and requires the Liquidation Trustee to file tax returns treating the Liquidation Trust as a “grantor trust” pursuant to Treasury Regulation section 1.671-4(a) and to report to each Beneficiary a statement of the Beneficiary’s share of Liquidation Trust income, gain, loss, deduction, and credit for inclusion in the Beneficiary’s U.S. federal income tax return. Beneficiaries therefore may owe tax on Liquidation Trust income, without regard to whether cash distributions are made to beneficial owners by the Liquidation Trust. The Liquidation Trust shall be responsible for payment, out of the Liquidation Trust Assets, of any taxes imposed on the Liquidation Trust (including any Disputed Ownership Fund). In accordance therewith, any taxes imposed on any Disputed Ownership Fund or its assets will be paid out of the assets of the Disputed Ownership Fund and netted against any subsequent distribution in respect of the allowance or disallowance of such Claims. In the event, and to the extent, that any Cash in any Disputed Ownership Fund is insufficient to pay the portion of any taxes attributable to taxable income arising from assets of the Disputed Ownership Fund, assets of the Disputed Ownership Fund (including those otherwise distributable) may be sold to pay such taxes.

(viii) *Tax Identification Numbers.* Amounts paid to Beneficiaries are subject to generally applicable withholding, information, and backup withholding rules. The Liquidation Trustee may require any Beneficiary to furnish to the Liquidation Trustee its Employer or Taxpayer Identification Number as assigned by the IRS or certify to the Liquidation Trustee’s satisfaction that Distributions to the Beneficiary are exempt from backup withholding. The Liquidation Trustee may condition any Distribution to any Beneficiary upon receipt of such identification number. If within ninety (90) days of the request by the Liquidation Trustee, any Beneficiary fails to provide such identification number to the Liquidation Trustee, the Liquidation Trustee shall deem such Beneficiary’s Claim as Disallowed and no Distribution shall be made on account of such Beneficiary’s Claim.

(ix) *Notices.* The Liquidation Trustee shall distribute notices to the Beneficiaries as the Liquidation Trustee determines are necessary or desirable.

(x) *Expedited Determination.* The Liquidation Trustee may request an expedited determination of taxes of the Debtors or of the Liquidation Trust under Bankruptcy Code section 505(b) for all tax returns filed for, or on behalf of, the Debtors and the Liquidation Trust for all taxable periods through the dissolution of the Liquidation Trust.

(c) *Federal Income Tax Consequences to the Debtors.*

(i) *Sale of Assets.* The Sale will constitute a taxable disposition of the Debtors' assets. The Debtors will recognize gain or loss equal to the difference between the amount received for those assets in the Sale and the Debtors' adjusted tax basis in those assets. The Debtors may have tax losses generated from other activities in the current year that may be used to offset gain from the Sale. For NOLs arising prior to 2018, such NOLs can generally be carried forward for 20 years to offset taxable income. As a result of the enactment of the Tax Cuts and Jobs Act of 2017, NOLs arising in 2018 and thereafter can be carried forward indefinitely, but can only offset 80% of taxable income for a taxable year. The Debtors have not done an analysis of the amount of pre-2018 NOLs and NOLs arising in 2018 and thereafter to determine if all taxable income arising from the Debtors' asset sales can be offset with prior NOLs. To the extent current year losses and NOLs and other tax deductions are not available to offset the Debtors' gain from the Sale, the Debtors will owe tax on such gains. Any such tax will be an Administrative Claim.

(ii) *Cancellation of Indebtedness and Reduction of Tax Attributes.* For U.S. federal income tax purposes, gross income generally includes income from cancellation of indebtedness ("COD"). In general, the Debtors will have COD income equal to the excess of the amount of debt discharged pursuant to the Plan over the adjusted issue price of the debt, less the amount of cash and the fair market value of property distributed to holders of the debt. Various statutory or judicial exceptions limit the incurrence of COD income (such as where payment of the cancelled debt would have given rise to a tax deduction). COD income also includes interest accrued on obligations of the Debtors but unpaid at the time of discharge. An exception to the recognition of COD income applies to a debtor in a chapter 11 bankruptcy proceeding. Bankrupt debtors generally do not include COD in taxable income, but must instead reduce certain tax attributes (such as NOLs, capital losses, certain credits, and the excess of the tax basis of the debtor's property over the amount of liabilities outstanding after discharge) by the amount of COD income that was excluded under the bankruptcy exception. Tax benefits are reduced after the tax is determined for the year of discharge. Existing NOLs will therefore be available to offset gains on asset sales in the year of the discharge regardless of the amount by which NOLs are reduced due to COD income.

(d) *Federal Income Tax Consequences to Holders.*

(i) *Characterization.* The tax treatment of Holders, and the character, amount, and timing of income, gain, or loss recognized as a consequence of the Plan and any Distributions pursuant to the Plan may vary, depending upon, among other things: (A) whether the Claim (or a portion of the Claim) is for principal or interest; (B) the type of consideration the Holder receives for the Claim, (C) whether the Holder receives Distributions under the Plan in more than one

taxable year; (D) the manner in which the Holder acquired the Claim; (E) the length of time that the Claim has been held; (F) whether the Claim was acquired at a discount; (G) whether the Holder of the Claim has taken a bad debt deduction with respect to part or all of the Claim; (H) whether the Holder of the Claim has previously included in income accrued but unpaid interest on the Claim; (I) the Holder's method of tax accounting; (J) whether the Claim is an installment obligation for U.S. federal income tax purposes; (K) whether the Claim, and any instrument received in exchange for the Claim, is a "security" for U.S. federal income tax purposes; and (L) whether and the manner in which the "market discount" rules of the IRC apply to the Holder of the Claim.

(ii) *Gain and Loss Recognition.* Holders that receive cash and property other than stock and securities for their Claim will recognize gain or loss for U.S. federal income tax purposes equal to the difference between the "amount realized" by the Holder and the Holder's tax basis in the Claim. The "amount realized" is the sum of the amount of cash and the fair market value of any other property received under the Plan in respect of the Claim (other than amounts received in respect of a Claim for accrued unpaid interest). The Holder's tax basis in the Claim (other than a Claim for accrued unpaid interest) is generally the Holder's cost, though tax basis could be more or less than cost depending on the specific facts of the Holder. Any gain or loss realized may be capital gain or loss or ordinary gain or loss, depending on the circumstances of the Holder.

(iii) *Interest Issues.* Holders that previously included in income accrued but unpaid interest on a Claim may be entitled to a deductible loss to the extent such interest is not satisfied under the Plan. Conversely, a Holder has ordinary income to the extent of the amount of cash or the fair market value of property received in respect of a Claim for (or the portion of a Claim treated as allocable to) accrued unpaid interest that was not previously included in income by the Holder. The Plan treats all amounts payable to a Holder as principal until the principal amount of the Claim has been paid in full. The Debtors' tax returns will be filed in a manner consistent with this allocation, but it is uncertain whether this allocation will be respected by the IRS. The IRS may take the position that payments should be allocated first to interest or should be pro-rated between principal and interest. If the IRS prevails in this assertion, Holders may be required to recognize ordinary interest income even though they have an overall loss (and possibly a capital loss, the deductibility of which may be limited) with respect to such Holder's Claims. Each Holder is urged to consult such Holder's own tax advisor regarding the amount of such Holder's Claim allocable to accrued unpaid interest and the character of any loss with respect to accrued but unpaid interest that the Holder previously included in income.

(iv) *Bad Debt and Worthless Security Deductions.* A Holder who receives, in respect of such Holder's Claim, an amount that is less than such Holder's tax basis in the Claim may be entitled to a bad debt or worthless securities deduction. The rules governing the character, timing, and amount of these deductions depend upon the facts and circumstances of the Holder, the obligor, and the instrument with respect to which the deduction is claimed, including whether (i) the Holder is a corporation or (ii) the Claim constituted (a) a debt created or acquired (as the case may be) in connection with the Holder's trade or business or (b) a debt, the loss from worthlessness of which is incurred in the Holder's trade or business. A Holder that has previously recognized a loss or deduction in respect of such Holder's Claim may be required to include in income amounts received under the Plan that exceed the Holder's adjusted basis in its Claim.

(iv) *Installment Obligations.* A Holder of a Claim that is an installment obligation for U.S. federal income tax purposes may be required to recognize any gain remaining with respect to such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than its face value, distributed, transmitted, sold, or otherwise disposed of within the meaning of Section 453B of the IRC.

(v) *Market Discount.* A Holder of a Claim that acquires a Claim at a market discount generally is required to treat any gain realized on the disposition of the Claim as ordinary income to the extent of the market discount that accrued during the period the Claim was held by the Holder and that was not previously included in income by the Holder.

(vi) *Withholding.* Amounts paid to Holders are subject to generally applicable withholding, information, and backup withholding rules. The Plan authorizes the Debtors and the Liquidation Trustee, as applicable, to withhold and report amounts required by law to be withheld and reported. Amounts properly withheld from Distributions to a Holder and paid over to the applicable taxing authority for the account of such Holder will be treated as amounts distributed to such Holder. Holders are required to provide the Debtors and the Liquidation Trustee, as applicable, with the information necessary to effect information reporting and withholding as required by law. Notwithstanding any other provision of the Plan, Holders of Claims that receive a Distribution pursuant to the Plan are responsible for the payment and satisfaction of all tax obligations, including income, withholding, and other tax obligations imposed with respect to the Distribution, and no Distribution shall be made until a Holder has made arrangements satisfactory to the Debtors or the Liquidation Trustee, as applicable, for the payment and satisfaction of such obligations.

(vii) *Backup Withholding.* Holders may be subject to backup withholding on payments pursuant to the Plan unless the Holder (A) is not a corporation and is not otherwise exempt from backup withholding and, when required, provides evidence establishing such status or (B) provides a correct taxpayer identification and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of previous failure to report dividend and interest income. Amounts withheld due to backup withholding will be credited against the Holder's federal income tax liability and excess withholding may be refunded if a timely claim for refund (generally, a U.S. federal income tax return) is filed with the IRS.

(viii) *Certain Disclosure Requirements.* Treasury regulations require tax return disclosure of certain types of transactions that result in the taxpayer claiming a loss in excess of specified thresholds. Holders are urged to consult their own tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and would require such disclosure.

9.13 Abandonment, Disposal, and Destruction of Records. The Liquidation Trustee shall be authorized pursuant to Bankruptcy Code section 554, in its sole discretion, without any further notice to any party or action, order or approval of the Bankruptcy Court, to abandon, dispose of, or destroy in any commercially reasonable manner all originals and/or copies of any documents, books and records, including any electronic records, of the Debtors that are transferred to the

Liquidation Trust and which the Liquidation Trustee reasonably concludes are burdensome or of inconsequential value and benefit to the Liquidation Trust.

9.14 Distributions by Liquidation Trustee. Following the transfer of the Liquidation Trust Assets to the Liquidation Trust, the Liquidation Trustee shall make continuing efforts to liquidate all Liquidation Trust Assets in accordance with the Plan, the Global Settlement, and the Liquidation Trust Agreement, *provided* that the timing of all Distributions made by the Liquidation Trustee to Beneficiaries shall be in accordance with the Liquidation Trust Agreement. Any Distributions shall be subject to the terms of the Global Settlement and this Plan.

9.15 Cash Investments. Funds in the Liquidation Trust shall be invested in demand and time deposits in FDIC Insured banks or other savings institutions, or in other temporary, liquid investments, such as Treasury bills, consistent with the liquidity needs of the Liquidation Trust as determined by the Liquidation Trustee, in accordance with Bankruptcy Code section 345, unless the Bankruptcy Court otherwise requires; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

9.16 Dissolution of the Liquidation Trust. The Liquidation Trustee shall be discharged and the Liquidation Trust shall be terminated, at such time as: (a) (i) all Disputed Claims have been resolved; (ii) all of the Liquidation Trust Assets have been liquidated; (iii) all duties and obligations of the Liquidation Trustee under the Liquidation Trust Agreement have been fulfilled; (iv) all Distributions required under the Plan and the Liquidation Trust Agreement have been made; and (v) the Chapter 11 Cases have been closed, or (b) as otherwise provided in the Liquidation Trust Agreement; *provided* that, the Liquidation Trust shall be dissolved within a reasonable time based on all facts and circumstances, and, in any event, shall be dissolved no later than five (5) years from the Effective Date. If warranted by the facts and circumstances, and subject to the approval of the Bankruptcy Court, that an extension is necessary to the liquidating purpose of the Liquidation Trust, the term of the Liquidation Trust may be extended. Any such extension must be approved by the Bankruptcy Court within six (6) months of the beginning of the extended term.

If at any time the Liquidation Trustee determines, in reliance upon such professionals as the Liquidation Trustee may retain, (i) that the expense of administering a Liquidation Trust so as to make a final distribution to Liquidation Trust Beneficiaries is likely to exceed the value of the assets remaining in such Liquidation Trust, (ii) all Allowed Claims (other than those whose distributions are deemed undeliverable under the Plan) have been paid in full, or (iii) the amount of any final distributions to holders of Allowed Claims would be \$100.00 or less and the aggregate amount of Cash available for distributions to holders of Allowed General Unsecured Claims is less than \$25,000.00, then the Liquidation Trustee may transfer any remaining Liquidation Trust Assets to a charitable organization(s) or sold as part of a remnant asset sale without further order of the Bankruptcy Court.

9.17 Control Provisions. To the extent there is any inconsistency between the combined Disclosure Statement and Plan as it relates to the Liquidation Trust and the Liquidation Trust Agreement, the terms of the Liquidation Trust Agreement shall control.

9.18 Limitation of Liability; Indemnification. The Liquidation Trustee and all of its respective designees, employees, agents, representatives or professionals shall not be liable for the act or omission of any other member, designees, agent or representative of the Liquidation Trustee, nor shall they be liable for any act or omission taken or omitted to be taken in their respective capacities, other than acts or omission resulting from willful misconduct, gross negligence, or fraud. The Liquidation Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee. The Liquidation Trustee may, in connection with the performance of their functions, and in their sole and absolute discretion, consult with attorneys, accountants, financial advisors and agents, which consultation may act as a defense for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons. Notwithstanding such authority, the Liquidation Trustee shall not be under any obligation to consult with attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability, unless such determination is based on willful misconduct, gross negligence or fraud. The Liquidation Trust shall indemnify and hold harmless the Liquidation Trustee and its designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses, including, but not limited to attorneys' fees and costs arising out of or due to such actions or omissions, or consequences of their actions or omissions with respect or related to the performance of their duties or the implementation or administration of the Plan; provided, however, that no such indemnification will be made to such persons for such actions and in connection with the Liquidation Trust Agreement omissions as a result of willful misconduct, gross negligence or fraud.

9.19 Corporate Action. On the Effective Date, all matters expressly provided for under this Plan that would otherwise require approval of the equity holders or directors of one or more of the Debtors, including but not limited to, the dissolution or merger of any of the Debtors, shall be deemed to have occurred and shall be in effect upon the Effective Date pursuant to the applicable general corporation law of the states in which the Debtors are incorporated without any requirement of action by the equity holders or directors of the Debtors.

ARTICLE X

PROVISIONS GOVERNING DISTRIBUTIONS

10.1 Distributions for Allowed Claims

Except as otherwise provided herein or as ordered by the Bankruptcy Court, all Distributions to Beneficiaries as of the applicable distribution date shall be made on or as soon as practicable after the applicable distribution date. Distributions on account of Claims that first become Allowed Claims after the applicable distribution date shall be made pursuant to the terms of this Plan and on the day selected by the Liquidation Trustee.

The Liquidation Trustee may accelerate any Distribution date with respect to Distributions if the facts and circumstances so warrant and to the extent not inconsistent with the Plan or the Liquidation Trust Agreement.

Distributions made as soon as reasonably practicable after the Effective Date or such other date set forth herein shall be deemed to have been made on such date.

10.2 Interest of Claims. Except to the extent provided in Bankruptcy Code section 506(b), the Plan, or the Confirmation Order, or as required under applicable non-bankruptcy law, post-petition interest shall not accrue or be paid on Claims, and no Holder of an Allowed Claim shall be entitled to interest accruing on any Claim from and after the Petition Date.

10.3 Distributions by Liquidation Trustee as Disbursement Agent. From and after the Effective Date, the Liquidation Trustee may serve as the Disbursement Agent under the Plan with respect to Distributions to Holders of Allowed Claims (provided that the Liquidation Trustee may hire professionals or consultants to assist with making disbursements or to act as the Disbursement Agent). The Liquidation Trustee shall cause to be made all Distributions required to be made to such Holders of Allowed Claims pursuant to the Plan and the Liquidation Trust Agreement. The Liquidation Trustee shall not be required to give any bond or surety or other security for the performance of the Liquidation Trustee's duties as Disbursement Agent to the extent applicable, unless otherwise ordered by the Bankruptcy Court.

10.4 Means of Cash Payment.

Cash payments under the Plan shall be made, at the option, and in the sole discretion, of the Liquidation Trustee, by wire, check, or such other method as the Liquidation Trustee deems appropriate under the circumstances. Cash payments to foreign creditors may be made, at the option, and in the sole discretion, of the Liquidation Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Pursuant to Section 10.8 of the Plan, cash payments in the form of checks issued by the Liquidation Trustee shall be null and void if not cashed within ninety (90) days of the date of the issuance thereof and deemed undeliverable Distributions. Following the expiration of ninety (90) days after issuance of such null and void checks, in accordance with Section 10.13 of the Plan, amounts in respect of these undeliverable Distributions shall become unrestricted Liquidation Trust Assets redistributed to the other Beneficiaries after reserving as necessary for payment of Liquidation Trust Expenses. Such Holder shall be deemed to have forfeited its right to any reserved and future Distributions from the Liquidation Trust and any Liquidation Trust Interests held by such Holder shall be deemed cancelled, and the Claims of such Holder shall be forever barred without further order of the Court.

For purposes of effectuating Distributions under the Plan, any Claim denominated in foreign currency shall be converted to U.S. Dollars pursuant to the applicable published exchange rate in effect on the Petition Date.

10.5 Fractional Distributions. Notwithstanding anything in the Plan to the contrary, no payment of fractional cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up and fractions less than half of a cent being rounded down.

10.6 De Minimis Distributions. Notwithstanding anything to the contrary contained in the Plan, the Liquidation Trustee shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$100; *provided that*, if any Distribution is not made pursuant to this Article 10.6 of the Plan because it does not meet the \$100 threshold, such

Distribution shall be added to any subsequent Distribution to be made on account of such Holder's Allowed Claim if such Distribution would meet the \$100 threshold. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$100 shall be forever barred from asserting such Claim against Liquidation Trust Assets.

10.7 Delivery of Distributions; Unclaimed Distributions. All Distributions to Holders of Allowed Claims shall be made at the address of such Holder as set forth in the claims register maintained in the Chapter 11 Cases (subject to any transfer effectuated pursuant to Bankruptcy Rule 3001(e) or, after the Effective Date, a change of address notification provided by a Holder in a manner reasonably acceptable to the Liquidation Trustee) or, in the absence of a Filed proof of Claim, the Schedules. The responsibility to provide the Liquidation Trustee a current address of a Holder of Claims shall always be the responsibility of such Holder and at no time shall the Liquidation Trustee have any obligation to determine a Holder's current address. Nothing contained in the Plan shall require the Liquidation Trustee to attempt to locate any Holder of an Allowed Claim. Amounts in respect of undeliverable Distributions made by the Liquidation Trustee shall be held in trust on behalf of the Holder of the Claim to which they are payable by the Liquidation Trust until the earlier of the date that such undeliverable Distributions are claimed by such Holder and the date ninety (90) days after the date the undeliverable Distributions were made. Following the expiration of ninety (90) days after the date the undeliverable Distributions were made, the amounts in respect of undeliverable Distributions shall become unrestricted Liquidation Trust Assets redistributed to the Beneficiaries after reserving as necessary for payment of Liquidation Trust Expenses without further order of the Bankruptcy Court. Such Holder shall be deemed to have forfeited its right to any reserved and future Distributions from the Liquidation Trust and any Liquidation Trust Interests held by such Holder shall be deemed cancelled, and the Claims of such Holder shall be forever barred.

10.8 Application of Distribution Record Date. At the close of business on the Distribution Record Date, the Debtors' claims registers shall be closed, and there shall be no further changes in the record holders of Claims or Interests. Beneficial interests in the Liquidation Trust shall be non-transferable except upon death of the interest holder or by operation of law. Except as provided herein, the Liquidation Trustee and the Liquidation Trustee's respective agents, successors, and assigns shall have no obligation to recognize any transfer of any Claim or Interest occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the claims registers as of the close of business on the Distribution Record Date irrespective of the number of Distributions to be made under the Plan to such Entities or the date of such Distributions.

10.9 Withholding, Payment and Reporting Requirements With Respect to Distributions. All Distributions under the Plan shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions shall be subject to any such withholding, payment, and reporting requirements. Notwithstanding any provision in the Plan or Liquidation Trust Agreement to the contrary, the Debtors and the Liquidation Trustee (as applicable) shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements, including liquidating a portion of the distribution to made under the Plan or Liquidation Trust Agreement to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information

necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Liquidation Trustee may require, in the Liquidation Trustee's sole and absolute discretion and as a condition to the receipt of any Distribution, that the Holder of an Allowed Claim complete and return to the Liquidation Trust the appropriate Form W-8 or Form W-9, as applicable, to each Holder. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed upon the Liquidation Trust in connection with such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements reasonably satisfactory to the Liquidation Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Liquidation Trust in connection with such Distribution. If such request is made by the Liquidation Trustee or such other Person designated by the Liquidation Trustee and the Holder fails to comply before the date that is ninety (90) calendar days after the request is made, the amount of such Distribution shall irrevocably revert to the Liquidation Trustee and, the Holder shall be forever barred from asserting any right to such distribution against any Debtors, the Debtors' Estates and the Liquidation Trustee.

10.10 Setoffs. The Liquidation Trust may, but shall not be required to, set off against any Claim or any Allowed Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors or the Liquidation Trust may have against the Holder of such Claim; *provided, however*, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidation Trust of any such claim that it may have against such Holder. In no event shall any Holder of Claims be entitled to setoff or recoup any such Claim against any claim, right, or Cause of Action of the Debtors or the Liquidation Trust (as applicable), unless such Holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff or recoupment on or before the Confirmation Date, and notwithstanding any indication in any timely filed proof of claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff or recoupment pursuant to section 553 of the Bankruptcy Code or otherwise.

10.11 No Distribution in Excess of Allowed Amounts. Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim.

10.12 Allocation of Distributions. The Liquidation Trustee may, in the Liquidation Trustee's sole discretion, make Distributions jointly to any Holder of a Claim and any other Entity who has asserted, or whom the Liquidation Trustee has determined to have, an interest in such Claim; *provided, however*, that the Liquidation Trust shall provide notice of such Distribution to any Holder of a Claim or other Entity that has asserted an interest in such Claim.

10.13 Forfeiture of Distributions. If the Holder of a Claim fails to cash a check payable to it within the time period set forth in Article 10.4, fails to claim an undeliverable Distribution within the time limit set forth in Article 10.7, or fails to complete and return to the Liquidation Trust the appropriate Form W-8 or Form W-9 within ninety (90) days of the request by the Liquidation Trust

for the completion and return to it of the appropriate form pursuant to Article 10.09, then such Holder shall be deemed to have forfeited its right to any reserved and future Distributions from the Liquidation Trust and any Liquidation Trust Interests held by such Holder shall be deemed cancelled, and the Claims of such Holder shall be forever barred without further order from the Court. The forfeited Distributions shall become unrestricted Liquidation Trust Assets and shall be redistributed to the Beneficiaries after reserving as necessary for payment of Liquidation Trust Expenses and otherwise in compliance with the Plan and the Liquidation Trust Agreement. In the event the Liquidation Trustee determines, in the Liquidation Trustee's sole discretion, that any such amounts are too small in total to redistribute cost-effectively to the Beneficiaries or if the aggregate amount of Cash available for Distributions to Holders of Allowed General Unsecured Claims is less than \$25,000.00, the Liquidation Trustee may instead donate them to a charitable organization(s) free of any restrictions thereon, notwithstanding any federal or state escheat laws to the contrary.

ARTICLE XI

PROVISIONS FOR CLAIMS OBJECTIONS AND ESTIMATION OF CLAIMS

11.1 Claims Administration Responsibility.

Except as otherwise specifically provided in the Plan and the Liquidation Trust Agreement, after the Effective Date, the Liquidation Trustee shall have the authority (a) to file, withdraw, or litigate to judgment objections to Claims, (b) to settle, compromise, or Allow any Claim or Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court, (c) to amend the Schedules in accordance with the Bankruptcy Code, and (d) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. Any agreement entered into by the Liquidation Trustee (acting in accordance with the terms of the Liquidation Trust Agreement) with respect to the Allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

11.2 Claims Objections. All objections to Claims shall be Filed by the Liquidation Trustee on or before the Claims Objection Deadline, which date may be extended by the Bankruptcy Court upon a motion filed by the Liquidation Trustee on or before the Claims Objection Deadline with notice only to those parties entitled to notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 as of the filing of such motion. If a timely objection has not been Filed to a proof of Claim or the Schedules have not been amended with respect to a Claim that was scheduled by the Debtors but was not set forth in the Schedules by the Debtors as contingent, unliquidated, and/or disputed, then the Claim to which the proof of Claim or the Claim set forth in the Schedules relates will be treated as an Allowed Claim.

11.3 Estimation of Contingent or Unliquidated Claims. The Liquidation Trustee may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Bankruptcy Code section 502(c), regardless of whether the Debtors have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court so estimates any contingent or unliquidated Claim, that

estimated amount shall constitute the Allowed amount of such Claim. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and are not necessarily exclusive of one another.

11.4 Distributions on Account of Disputed Claims. Distributions may be made on account of an undisputed portion of a Disputed Claim. The Liquidation Trustee may, on the applicable distribution date, make Distributions on account of any Disputed Claim (or portion thereof) that has become an Allowed Claim. Such Distributions shall be based upon the Distributions that would have been made to the Holder of such Claim under the Plan if such Claim had been an Allowed Claim on the Effective Date in the amount ultimately Allowed.

11.5 Reserve on Account of Disputed Claims. The Liquidation Trustee shall reserve an amount sufficient to pay Holders of Disputed Claims the amount such Holders would be entitled to receive under the Plan if such Claims were to become Allowed Claims. In the event the Holders of Allowed Claims have not received payment in full on account of their Claims after the resolution of all Disputed Claims, then the Liquidation Trustee shall make a final distribution to all Holders of Allowed Claims.

Except as otherwise provided in the Plan, a Final Order, or as agreed to by the relevant parties, Distributions on account of Disputed Claims that become Allowed after the Effective Date shall be made on the next periodic Distribution Record Date that is at least forty-five (45) days after the Disputed Claim becomes an Allowed Claim; *provided that*, (i) Disputed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business that become Allowed after the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice, (ii) Disputed Priority Tax Claims that become Allowed Priority Tax Claims after the Effective Date shall be treated as Allowed Priority Tax Claims in accordance with the Plan, solely to the extent not assumed by the stalking horse purchaser pursuant to the Sale, and (iii) the Liquidation Trustee shall administer the tax obligations of each Debtor and the Debtors' Estates, including (a) filing tax returns and paying tax obligations, if any, (b) requesting, if necessary, an expedited determination of any unpaid tax liability for all taxable periods ending after the Effective Date through the liquidation of the Debtors, if any, as determined under applicable law, and (c) representing the interests and account of each Debtor and the Debtors' Estates before any taxing authority in all matters including, without limitation, any action, suit, proceeding or audit.

11.6 Amendments to Claims. On or after the Effective Date, a Claim may not be filed or amended to increase liability or to assert new liabilities without the prior authorization of the Bankruptcy Court or the Liquidation Trustee and any such new or amended Claim filed without prior authorization shall be deemed Disallowed in full without any further action. **Claims Paid and Payable by Third Parties.** A Claim shall be Disallowed without an Objection thereto having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not the Debtors, the Liquidation Trust, or the Liquidation Trustee. Distributions under the Plan shall be made on account of any Allowed Claim that is payable pursuant to one of the Insurance Contract(s) solely up to the amount of the portion of such Allowed Claim that is (i) within the self-insured retention under such Insurance Contract(s) and/or (ii) in excess of any

aggregate limits under such Insurance Contract(s). No Entity shall have any other recourse against the Debtors, the Estates, the Liquidation Trust, or any of their respective properties or assets on account of a self-insured retention under an Insurance Contract; *provided, however*, that, except as otherwise required under the applicable Insurance Contracts and applicable non-bankruptcy law, an Insurer shall not be obligated to pay amounts within any self-insured retention or other self-insured layer.

11.8 Adjustment to Claims Without Objection. Any Claim that has been paid or otherwise satisfied may be designated on the Claims Register as such at the direction of the Liquidation Trustee by the Filing of a Notice of Satisfaction by the Liquidation Trustee, and without any further notice to or action, order, or approval of the Bankruptcy Court.

ARTICLE XII

EXECUTORY CONTRACTS

12.1 Executory Contracts Deemed Rejected. All Executory Contracts will be deemed rejected upon entry of the Confirmation Order in accordance with, and subject to, the provisions and requirements of Bankruptcy Code sections 365 and 1123, except to the extent: (a) the Debtors previously have assumed, assumed and assigned or rejected such Executory Contract, or (b) prior to entry of the Confirmation Order, the Debtors have Filed a motion to assume, assume and assign, or reject an Executory Contract on which the Bankruptcy Court has not ruled and such motion remains pending. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of all rejections of Executory Contracts pursuant to this Article and Bankruptcy Code sections 365(a) and 1123. Any and all Claims arising from the rejection of Executory Contracts under this Plan must be filed and served on the Liquidation Trustee no later than thirty days after the Effective Date, provided that the foregoing deadline shall apply only to Executory Contracts that are rejected automatically by operation of this Article XII of the Plan.

12.2 Insurance Neutrality. Nothing in the Plan or the Confirmation Order, shall in any way operate to, or have the effect of, impairing, altering, supplementing, changing, expanding, decreasing, or modifying (a) the rights or obligations of any insurer, or (b) any rights or obligations of the Debtors or the Liquidation Trust arising out of or under any Insurance Contract. The insurers, Debtors, and Liquidation Trust, as applicable, shall retain all rights and defenses under such Insurance Contracts, and such Insurance Contracts shall apply to, and be enforceable by and against, the insureds and the Debtors and the Liquidation Trust

12.3 Insurance. Confirmation of the Plan and the occurrence of the Effective Date shall have no effect on insurance policies of the Debtors in which the Debtors are or were insured parties, including the D&O Policies. Each insurance company is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering, or delaying coverage on any basis regarding or related to the Chapter 11 Cases, the Plan or any provision within the Plan, including the treatment or means of liquidation set out within the Plan for insured Claims.

ARTICLE XIII

CONFIRMATION AND CONSUMMATION OF THE PLAN

13.1 Conditions Precedent to the Effective Date. Each of the following is a condition precedent to the occurrence of the Effective Date:

- (a) the Confirmation Order shall have been entered by the Bankruptcy Court and shall be a Final Order;
- (b) the Professional Fee Reserve Account shall have been funded in accordance with the terms of the Plan;
- (c) the Liquidation Trust Agreement shall have been fully executed; and
- (d) the Oversight Committee shall have been appointed.

13.2 Notice of Effective Date. On or before five (5) Business Days after the Effective Date, the Debtors shall mail or cause to be mailed to all Holders of Claims a notice that informs such Entities of (a) the occurrence of the Effective Date, (b) notice of the Administrative Claim Bar Date and Professional Fee Claim Bar Date, and (c) such other matters as the Liquidation Trustee deems appropriate or as may be ordered by the Bankruptcy Court.

13.3 Waiver of Conditions Precedent to the Effective Date. The Debtors, with the prior written consent of Blue Torch and the Committee, may at any time, without notice or authorization of the Bankruptcy Court, waive in writing any or all of the conditions precedent to the Effective Date set forth in this Article, whereupon the Effective Date shall occur without further action by any Entity, *provided, however*, that the condition specified in section 13.1(a) may not be waived. The Debtors reserve the right to assert that any appeal from the Confirmation Order shall be moot after the Effective Date of the Plan.

13.4 Effect of Non-Occurrence of Effective Date. If each of the conditions specified in this Article have not been satisfied or waived in the manner provided herein within sixty (60) calendar days after the Confirmation Date (or such later date as may be agreed to by the Debtors, the Prepetition Term Loan Agent, and the Committee), then: (i) the Confirmation Order shall be vacated and of no further force or effect; (ii) no Distributions under the Plan shall be made; (iii) the Debtors and all Holders of Claims against or Interests in the Debtors shall be restored to the status quo as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred including any rejection of Executory Contracts pursuant to section 12.1 of the Plan; and (iv) all of the Debtors' obligations with respect to Claims and Interests shall remain unaffected by the Plan and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other Entity or to prejudice in any manner the rights of the Debtors or any Entity in any further proceedings involving the Debtors, and the Plan shall be deemed withdrawn. Upon such occurrence, the Debtors shall File a written notification with the Bankruptcy Court and serve it upon such parties as the Bankruptcy Court may direct.

ARTICLE XIV
EFFECTS OF CONFIRMATION

14.1 Exculpation, Releases, and Injunctions

The exculpations, releases, and injunctions provided for in Section 14.1 of the Plan shall be effective upon the Effective Date.

(a) **Exculpation and Limitation of Liability.** Notwithstanding any other provision of the Plan, the Exculpated Parties shall not have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or agents acting in such capacity, or Affiliates, or any of their successors or assigns, for any act or omission relating to, in any way, or arising from the Petition Date through the Effective Date related to: (i) the Chapter 11 Cases, (ii) formulating, negotiating or implementing the combined Disclosure Statement and Plan or any contract, instrument, release or other agreement or document created or entered into in connection with the combined Disclosure Statement and Plan; (iii) the Sale; (iv) any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring, sale or liquidation of the Debtors; (v) the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the Confirmation of the Plan, the Consummation of the Plan or (vi) the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence, willful misconduct, or fraud as determined by a Final Order, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting the Exculpated Parties from liability.

(b) **Releases by the Debtors.** Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, for good and valuable consideration, each of the Debtors, on their own behalf and as a representative of their respective Estates, shall, and shall be deemed to, completely and forever release, waive, void, and extinguish unconditionally, each and all of the Released Parties of and from any and all Claims, Causes of Action, obligations, suits, judgments, damages, debts, rights, remedies and liabilities of any nature whatsoever, whether liquidated or unliquidated, fixed or Contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Effective Date (including prior to the Petition Date) in connection with or related to any of the Debtors, their respective Assets, the Estates, the Chapter 11 Cases, the Prepetition Financing Documents, the DIP Loan Documents, the Final DIP Order, the Global Settlement, any of the Debtors' in- or out-of-court restructuring efforts, the Sale or the combined Disclosure Statement and Plan, that may be asserted by or on behalf of any of the Debtors or their respective Estates, against any of the Released Parties, except for their gross negligence, willful misconduct, or fraud as determined

by a Final Order, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. For the avoidance of doubt, the Released Parties shall not include any of the Debtors' current or former officers and directors, shareholder, member, manager, employee, "insider" of the Debtors (as defined in section 101(31) of the Bankruptcy Code), or lender and any Affiliate or family member of any of the foregoing, except for (i) Blue Torch and its Affiliates (including any Person who would constitute a Blue Torch Released Party), and (ii) the following officers and directors of the Debtors: Tim Boates; Patrick Carew; Matt Kahn; and Sanjay Marken.

(c) Consensual Third-Party Releases by Holders of Claims. As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Releasing Parties shall be deemed to forever release and waive the Released Parties of all claims, obligations, suits, judgments, damages, demands, debts, rights, remedies, causes of action and liabilities of any nature whatsoever in connection with or related to any of the Debtors, their respective Assets, the Estates, the Chapter 11 Cases, the Prepetition Financing Documents, the DIP Loan Documents, the Final DIP Order, the Global Settlement, any of the Debtors' in- or out-of-court restructuring efforts, the Sale or the combined Disclosure Statement and Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or hereafter arising, in law, equity, or otherwise that are or may be based in whole or in part upon any act, omission, transaction, event, or other occurrence taking place or existing on or prior to the Effective Date (including prior to the Petition Date) (other than the rights of Holders of Allowed Claims to enforce the obligations under the Confirmation Order and the Plan); *provided, however*, that nothing in this section shall be deemed a waiver or release of any right of such Releasing Party to receive a Distribution pursuant to the terms of the Plan or other rights set forth in the Plan or the Confirmation Order; *provide further, however*, nothing in this section shall operate as a release, waiver or discharge of any causes of action or liabilities unknown to such Entity as of the Petition Date arising out of gross negligence, willful misconduct, fraud, or criminal acts of any such Released Party as determined by a Final Order.

The foregoing release provisions in Section 14.1(c) of the Plan shall not operate to waive, release or otherwise impair the rights of Creditors with setoff, subrogation or recoupment rights against the Debtors if such creditors have reserved such rights in a timely filed proof of claim or motion filed in the Bankruptcy Court or exercised such right of setoff prepetition.

Notwithstanding anything to the contrary in the Plan, the United States is not a Releasing Party under the Plan and is not providing a release.

For avoidance of doubt, unless a Related Party receives notice and elects to be a Releasing Party under the Plan, direct claims of Related Parties against the Released Parties are not released pursuant to Section 14.1(c) of the Plan.

(d) Non-Discharge of the Debtors; Injunction. In accordance with Bankruptcy Code section 1141(d)(3), the Plan does not discharge the Debtors. Bankruptcy Code section 1141(c) nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Interests against the Debtors. As such, no Entity holding a Claim against the Debtors may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Entity under the Plan. All parties are precluded from asserting against any property to be distributed under the Plan any Claims, rights, Causes of Action, liabilities, or Interests based upon any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, all Persons and Entities are permanently enjoined, on and after the Effective Date through and until the date upon which all remaining property of the Debtors' Estates vested in the Liquidation Trust has been liquidated and distributed to creditors or otherwise in accordance with the terms of the Plan and the Liquidation Trust Agreement and the Plan has been fully administered, subject to further extension or reduction by motion on notice, with all parties' rights with respect to such extension or reduction reserved, on account of any Claim or Interest, from:

- (1) commencing or continuing in any manner any action or other proceeding of any kind against any of the Estates, the Liquidation Trust, their successors and assigns, and any of their assets and properties;
- (2) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against any Estate, the Liquidation Trust, their successors and assigns, and any of their assets and properties;
- (3) creating, perfecting or enforcing any encumbrance of any kind against any Estate, the Liquidation Trust, their successors and assigns, and any of their assets and properties;
- (4) asserting any right of setoff or subrogation of any kind against any obligation due from any Estate, the Liquidation Trust or their successors and assigns, or against any of their assets and properties, except to the extent a right to setoff or subrogation is asserted with respect to a timely filed proof of Claim or motion filed with the Bankruptcy Court; or
- (5) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Interest or Cause of Action released under Article XIV of the Plan.

Any Entity injured by any willful violation of such injunction may seek actual damages and, in appropriate circumstances, may seek punitive damages from the willful violator.

14.2 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Chapter 11 Cases under Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the closing of the Chapter 11 Cases.

ARTICLE XV

RETENTION OF JURISDICTION

15.1 Jurisdiction of Bankruptcy Court. Pursuant to Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases, the Plan, the Sale, the Confirmation Order and the Plan Supplement to the fullest extent permitted by law, including, among other things, jurisdiction to:

- (a) allow, disallow, determine, subordinate, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest (whether filed before or after the Effective Date and whether or not Contingent, Disputed or unliquidated or for contribution, indemnification or reimbursement), including the compromise, settlement and resolution of any request for payment of any Claims or Interests, the resolution of any Objections to the allowance or priority of Claims or Interests and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any Objection to such Claim or Interest to the extent permitted under applicable law;
- (b) 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;
- (c) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters, including, but not limited to, all Retained Causes of Action, and consider and act upon the compromise and settlement of any Claim or Interest, or Retained Cause of Action;
- (d) determine and resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract to which the Debtors are a party or with respect to which the Debtors may be liable, and to hear, determine and, if necessary, liquidate any Claims arising there from;
- (e) ensure that all Distributions to Holders of Allowed Claims under the Plan and the performance of the provisions of the Plan are accomplished as provided herein and resolve any issues relating to Distributions to Holders of Allowed Claims pursuant to the provisions of the Plan and Liquidation Trust Agreement;

(f) construe, take any action and issue such orders, prior to and following the Confirmation Date and consistent with Bankruptcy Code section 1142, as may be necessary for the enforcement, implementation, execution and Consummation of the Plan and all contracts, instruments, releases, other agreements or documents created in connection with the Plan, including, without limitation, the Disclosure Statement, the Confirmation Order, and Liquidation Trust Agreement, for the maintenance of the integrity of the Plan in accordance with Bankruptcy Code sections 524 and 1141 following the occurrence of the Effective Date;

(g) determine and resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation, implementation or enforcement of the Plan (and all exhibits and schedules to the Plan including, but not limited to, the Liquidation Trust Agreement) or the Confirmation Order, including the releases, exculpation, and injunction provisions set forth in and contemplated by the Plan or the Confirmation Order, or any entity's rights arising under or obligations incurred in connection therewith;

(h) modify the combined Disclosure Statement and Plan or the Confirmation Order before or after the Effective Date, pursuant to Bankruptcy Code section 1127, as well as any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, including, but not limited to, the Liquidation Trust Agreement, 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 created in connection with the combined Disclosure Statement and Plan or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code and the Plan;

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

(j) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(k) determine any other matters that may arise in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with the combined Disclosure Statement and Plan or the Confirmation Order including, but not limited to, the Liquidation Trust Agreement;

(l) determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(m) hear and determine matters concerning state, local and federal taxes in accordance with Bankruptcy Code sections 346, 505 and 1146;

- (n) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;
- (o) determine and resolve controversies related to the Estates, the Debtors, or the Liquidation Trust from and after the Effective Date;
- (p) hear and determine any other matter relating to the combined Disclosure Statement and Plan; and
- (q) enter a final decree closing any or all the Chapter 11 Cases.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

16.1 Modification of the Plan. The Debtors, in consultation with the Committee and Blue Torch, may alter, amend, or modify the Plan or any exhibits or schedules hereto under Bankruptcy Code section 1127(a) at any time prior to or after the Confirmation Date but prior to the substantial Consummation of the Plan, provided, however, that any such alteration, amendment or modification does not materially and adversely affect the treatment of Holders of Claims or Interests under the Plan. Any Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim of such Holder.

16.2 Revocation, Withdrawal, or Non-Confirmation of the Plan. The Debtors, in consultation with the Committee and Blue Torch, reserve the right to revoke or withdraw the Plan prior to the Confirmation Hearing. If the Plan is revoked or withdrawn prior to the Confirmation Hearing, or if the Plan is not confirmed by the Bankruptcy Court, then:

- (a) the Plan shall be null and void in all respects, and
- (b) nothing contained in the combined Disclosure Statement and Plan shall
 - (i) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors or any other Entity, (ii) prejudice in any manner the rights of the Debtors or any other Entity, or (iii) constitute an admission of any sort by the Debtors or any other Entity.

16.3 Binding Effect. Except as otherwise provided in Bankruptcy Code section 1141(d)(3) and subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any Holder of a Claim against, or Interest in, the Debtors and such Holder's respective successors and assigns, whether or not the Claim or Interest of such Holder is Impaired under the Plan and whether or not such Holder has voted to accept the Plan.

16.4 Subordination Rights. The classification and manner of satisfying all Claims and the respective Distributions and treatments hereunder take into account and/or conform to the relative priority and rights of the Claims in each Class in connection with the contractual, legal and equitable subordination rights relating thereto, whether arising under contract, general principles of equitable subordination, Bankruptcy Code section 510(b) Code or otherwise. All subordination rights that a Holder of a Claim may have with respect to any Distribution to be made

under the Plan shall be implemented through the Plan, and all actions by such Holder of a Claim related to the enforcement of such subordination rights shall be enjoined permanently. The provisions of any contractual or structural subordination of Claims shall remain enforceable by the Liquidation Trustee on behalf of the Estates after the occurrence of the Effective Date. Without limitation hereunder, the Liquidation Trustee, on behalf of the Estates, may likewise enforce any right of the Debtors or the Estates to equitably or otherwise subordinate Claims under Bankruptcy Code section 510, which rights are deemed transferred to, remain and are preserved in the Liquidation Trust, except as otherwise expressly set forth herein or as expressly provided in a Final Order of the Bankruptcy Court in the Chapter 11 Cases.

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

16.6 Payment of Statutory Fees; Filing of Quarterly Reports. All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code, together with the statutory rate of interest set forth in section 3717 of Title 31 of the U.S. Code to the extent applicable (“**Quarterly Fees**”) prior to the Effective Date shall be paid by the Debtors on the Effective Date. After the Effective Date, the Debtors and the Liquidation Trust shall be jointly and severally liable to pay any and all Quarterly Fees when due and payable. The Debtors shall file all monthly operating reports due prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, the Debtors and Liquidation Trust shall file with the Bankruptcy Court separate UST Form 11-PCR reports when they become due. Notwithstanding the deemed substantive consolidation of the Debtors, or anything called for in the Plan to the contrary, each and every one of the Debtors shall remain obligated to pay Quarterly Fees to the Office of the U.S. Trustee and make such reports until the earliest of any such Debtor case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be required to file any Administrative Claim in the case and shall not be treated as providing any release under the Plan.

16.7 Dissolution of the Committee. The Committee shall dissolve on the Effective Date and the members of such Committee shall be released and discharged from all further rights and duties arising from or related to the Chapter 11 Cases, except with respect to, and to the extent of any applications for Professional Fee Claims or expense reimbursements for members of such Committee. The Committee and its retained Professionals may also participate in any appeal pending as of the Effective Date or filed thereafter, the outcome of which could affect the treatment of prepetition creditors (including Holders of Allowed Priority Claims and 503(b)(9) Claims), including, but not limited to, any cases, controversies, suits or disputes arising in connection with the Consummation, interpretation, implementation or enforcement of the Plan or the Confirmation Order. The Professionals retained by the Committee shall not be entitled to assert any

Administrative Claims nor shall they have an Allowed Administrative Claims for any services rendered or expenses incurred after the Effective Date except in respect of the preparation and prosecution of or any objection to any Filed fee application and participation in any appeals.

16.8 Exemption from Section 1146. Pursuant to Bankruptcy Code section 1146(a), under the Plan, (i) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtors; or (ii) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be taxed under any law imposing a stamp tax or similar tax. To the extent that the Debtors or Liquidation Trustee elect to sell any property prior to or after the Confirmation Date, such sales of property will be exempt from any transfer taxes in accordance with Bankruptcy Code section 1146(c). All subsequent issuances, transfers or exchanges of securities, or the making or delivery of any instrument of transfer by the Debtors in the Chapter 11 Cases shall be deemed to be or have been done in furtherance of the Plan.

16.9 Closing of Chapter 11 Cases; Caption Change. Anytime subsequent to the Effective Date, the Liquidation Trustee may file a motion to close the Chapter 11 Cases of all of the Debtors except for PHF, Inc., and changing the caption of the Chapter 11 Cases accordingly. Nothing in the Plan shall authorize the closing of any case *nunc pro tunc* to a date that precedes the date any such order is entered. Upon the Filing of a motion to close the Chapter 11 Case of PHF, Inc., the Liquidation Trustee shall file a final report with respect to all of the Chapter 11 Cases pursuant to Local Rule 3022-1(c).

16.10 Filing of Additional Documents. On or before the Effective Date of the Plan, the Debtors may issue, execute, deliver, and File with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate and further evidence the terms and conditions of the Plan.

16.11 Successors and Assigns. The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Entity.

16.12 Governing Law. Except to the extent that the Bankruptcy Code or Bankruptcy Rules or other federal laws is applicable, and subject to the provisions of any contract, instrument, release, or other agreement or document entered into in connection with the Plan, the construction, implementation and enforcement of the Plan and all rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to conflicts of law principles which would apply the law of a jurisdiction other than the State of Delaware or the United States of America. **Exhibits and Schedules.** All exhibits and schedules annexed hereto including, but not limited to the Liquidation Trust Agreement, and all documents submitted in support hereof, are incorporated into and are a part of the Plan as if set forth in full herein. Holders of Claims and Interests may obtain copies of the Filed exhibits including, but not limited to the Liquidation Trust Agreement and schedules upon written request to the Debtors. Upon their Filing, the exhibits and schedules may be inspected in the Office of the Clerk of the Bankruptcy Court or its designee during normal business hours.

The documents contained in the exhibits and schedules shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. To the extent any exhibit or schedule annexed hereto is inconsistent with the Plan, the contents of the Plan shall control. **Computation of Time.** In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

16.15 Reservation of Rights. The Filing of the combined Disclosure Statement and Plan, any statement or provision contained in the combined Disclosure Statement and Plan, or the taking of any action by the Debtors with respect to the Plan shall not be, and shall not be deemed to be, an admission or waiver of any rights of the Debtors with respect to the Holders of Claims and Interests.

Dated: January 10, 2024

By: /s/ Patrick Carew
Name: Patrick Carew
Title: Chief Executive Officer

EXHIBIT A

Liquidation Analysis

I. Issues and Qualifying Factors⁶

The Debtors believe, based on the following hypothetical analysis (the “Liquidation Analysis”) that the Plan meets the “best interest of creditors” test as set forth in section 1129(a)(7) of the Bankruptcy Code. There is at least one Impaired Class of Claims contemplated to receive recoveries under the Plan. Further, each Holder of an Impaired Claim will receive under the Plan value on the Effective Date that is not less than the value such Holder would receive if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code (“Chapter 7”) on the Effective Date. The Debtors believe the Liquidation Analysis and the conclusions set forth herein are fair and accurate, and represent the Debtors’ best judgment with regard to the results of a Chapter 7 liquidation of the Debtors. The analysis was prepared solely to assist the Court in making this determination, and should not be used for any other purpose. The Liquidation Analysis was prepared by the Debtors and is based on the Debtors’ unaudited balance sheet as of December, 2023.

The Liquidation Analysis is based on a number of estimates and assumptions that are inherently subject to significant uncertainties and contingencies that are beyond the control of the Debtors. There can be no assurances that the values assumed in the accompanying analysis would be realized if the Debtors were, in fact, liquidated under Chapter 7. Accordingly, actual recovery values and recovery percentages could vary from the amounts set forth herein and such variances could be material.

The Debtors are being substantively consolidated under the Plan, and therefore the Liquidation Analysis is presented on a consolidated basis. The Liquidation Analysis also assumes that the Chapter 7 liquidation process would be uncontested and cooperative. To the extent this were not the case, the recoveries on the Assets could be lower than assumed in this Liquidation Analysis.

The Liquidation Analysis necessarily contains an estimate of the amount of Claims that will ultimately become Allowed Claims. Estimates for various Classes of Claims are based solely upon the Debtors’ continuing review of the Debtors’ books and records. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims at the projected levels set forth in the Liquidation Analysis. In preparing the Liquidation Analysis, the Debtors have projected amounts of Claims that are consistent with the estimated Claims reflected in the Disclosure Statement.

II. General Assumptions

The following is a list of key assumptions that were utilized in the Liquidation Analysis:

1. The basis for the Liquidation Analysis is (i) the Asset values in the Debtors’ unaudited balance sheet, (ii) information included in the Disclosure Statement and the Plan, and (iii) amounts presented in the Schedules filed on October 6, 2023.
2. The Liquidation Analysis assumes that the liquidation of the Debtors would commence on February 20, 2024 under the direction of a court-appointed Chapter 7 trustee. The Liquidation Analysis reflects the liquidation of substantially all of the Assets. Any Cash proceeds, net of liquidation-related costs, would be distributed to satisfy Claims.

⁶ Terms not otherwise defined herein shall be given the meanings ascribed to them in the Plan.

IV. Notes to Liquidation Analysis

(1) Cash

Pursuant to the Sale Order, the Stalking Horse Purchaser acquired all of the Debtors' Cash, other than the Winddown Amount.

(2) Retained Causes of Action

The Liquidation Analysis assumes that there are no recoveries from the pursuit of any potential preferences, fraudulent conveyances or other causes of action and does not include the estimated costs of pursuing those actions. The Debtors reserve all rights in connection with any preferences, fraudulent conveyances, or other causes of action.

(3) Professional Fee Reserve Account

This figure reflects the gross amount of Cash funded to the Professional Fee Reserve Account on account of the Professional Fee Reserve Amount, and does not take into account any Professional Fee Claims already paid. The Professional Fee Reserve Amount will be used to pay unpaid Allowed Professional Fee Claims. Pursuant to the Final DIP Order, any unused portion of the Professional Fee Reserve Amount is to be returned to the DIP Administrative Agent.

Under the Plan, and in accordance with the Global Settlement, the Professional Fee Reserve Account includes an additional \$175,000 in funding to cover the Professional Fees of the Committee in excess of the DIP Budget. This funding is not reflected in the Liquidation Analysis, because the Stalking Horse Purchaser would not be required to fund this additional amount in the event of a liquidation.

(4) Winddown Amount

This figure reflects the amount funded to the Debtors by the Stalking Horse Purchaser on the closing date of the Sale in accordance with the Final DIP Order. The Wind Down Amount is to be used by the Debtors to pay expenses incurred after the closing of the Sale, and is thus subject to material change as of the Effective Date.

(5) Chapter 7 Trustee Fees

Amount represents the preliminary estimated Chapter 7 trustee costs. The Chapter 7 trustee fees are calculated based upon the statutory scale set forth in section 326(a) of the Bankruptcy Code, which provides for fees equal to 25% of the first \$5,000 of distributions; 10% of the next \$45,000 of distributions; 5% of the next \$950,000 of distributions; and 3% of distributions in excess of \$1,000,000.

(6) Chapter 7 Trustee's Professional Fees

It is assumed that the Chapter 7 trustee will hire advisors to assist in the administration of the Chapter 7 liquidation. The Debtors have assumed \$50,000 to \$100,000 for the compensation of the trustee's legal and financial professionals including accounting and tax support.

(7) Chapter 11 Professional Fee Claims

The amount reflected on this line reflects all Allowed Professional Fee Claims for which Professionals will seek allowance on a final basis following the Effective Date. The projections herein assume that the full

amount of the Professional Fee Reserve Amount is used to pay Allowed Professional Fee Claims. Any amount of Professional Fee Claims in excess of the Professional Fee Reserve Amount would be an Administrative Claim that would need to be satisfied from Liquidation Proceeds.

(8) Administrative Claims

This liquidation analysis assumes Administrative Claims, aside from Professional Fee Claims in excess of the Professional Fee Reserve Amount, have been paid current during the Bankruptcy Cases.

(9) Priority Tax Claims

This liquidation analysis assumes Priority Tax Claims have been paid current during the Chapter 11 Cases.

(10) Class 1: Other Priority Claims

This liquidation analysis assumes Other Priority Claims have been paid current during the Chapter 11 Cases.

(11) Class 2: Other Secured Claims

The Debtors are not aware of any Other Secured Claims. To the extent any exist, in the case of liquidation, Other Secured Claims would receive no recovery.

(12) Class 3: Prepetition Prepayment Premium Claim

In the case of liquidation, all proceeds available for distribution after liquidation costs would be distributed to the Prepetition Term Loan Lenders on account of the Prepetition Prepayment Premium Claim.

(13) Class 4: General Unsecured Claims

In the case of liquidation, General Unsecured Claims would have no recovery.

V. Comparison to Hypothetical Recovery Under the Plan

The Plan estimates a recovery of 100% to Unclassified: Professional Fee Claims, Administrative Claims, and Priority Tax Claims, Class 1: Other Priority Claims, and Class 2: Other Secured Claims. Recoveries for Class 3: Prepetition Prepayment Premium Claims and Class 4: General Unsecured Claims are contingent upon the proceeds obtained from the prosecution of the claims and causes of action vesting in the Liquidation Trust. Pursuant to the Global Settlement, the Liquidating Trustee will be provided \$125,000 to investigate these claims and causes of action. The Debtors believe the estimates are fair and accurate, and represent the Debtors' best judgment with regard to the results of the confirmation of the Plan. The estimated recoveries under the Plan are based on a number of estimates and assumptions that are inherently subject to significant uncertainties and contingencies and that are beyond the control of the Debtors. There can be no assurances that the recoveries assumed would be realized if the Plan was, in fact, confirmed. Accordingly, actual recovery values and recovery percentages could vary from the amounts set forth in the Plan and such variances could be material.

The Plan estimates that each holder of an Impaired Claim will receive value on the Effective Date that is not less than the value such Holder would receive if the Debtors were to be liquidated under Chapter 7 on the Effective Date. The Debtors believe that the Plan meets the "best interest of creditors" test as set forth in section 1129(a)(7) of the Bankruptcy Code.