

**THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT.**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)**

In re:	)	
	)	
TMST, INC., f/k/a THORNBURG	)	Case Nos. 09-17787, 17790-17792
MORTGAGE, INC., <i>et al.</i>	)	Chapter 11
	)	(Jointly Administered Under
Debtors. <sup>1</sup>	)	Case No. 09-17787-NVA)
	)	

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**DISCLOSURE STATEMENT REGARDING TRUSTEE'S JOINT CHAPTER 11 PLAN OF LIQUIDATION OF (i) TMST, INC. F/K/A THORNBURG MORTGAGE INC., (ii) TMST HOME LOANS, INC. F/K/A THORNBURG MORTGAGE HOME LOANS, INC., (iii) TMST ACQUISITION SUBSIDIARY, INC. F/K/A THORNBURG ACQUISITION SUBSIDIARY, INC. AND (iv) TMST HEDGING STRATEGIES, INC. F/K/A THORNBURG MORTGAGE HEDGING STRATEGIES, INC.**

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**Dated: June 8, 2022**

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<sup>1</sup> The Debtors in these jointly administered Chapter 11 cases are: (i) TMST, Inc., f/k/a Thornburg Mortgage, Inc., (Case No. 09-17787); (ii) TMST Acquisition Subsidiary, Inc., f/k/a Thornburg Acquisition Subsidiary, Inc. (Case No. 09-17790); (iii) TMST Home Loans, Inc., f/k/a Thornburg Mortgage Home Loans, Inc. (Case No. 09-17791); and (iv) TMST Hedging Strategies, Inc., f/k/a Thornburg Mortgage Hedging Strategies, Inc (Case No. 09-17792).

**THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS 4:00 P.M. [ ] 2022 PREVAILING EASTERN TIME UNLESS EXTENDED BY THE TRUSTEE. TO BE COUNTED, YOUR BALLOT MUST BE RECEIVED ON OR BEFORE THE VOTING DEADLINE IN ACCORDANCE WITH THE VOTING PROCEDURES.**

**CERTAIN INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT, THE PLAN AND ANY EXHIBITS ATTACHED HERETO IS SPECULATIVE, AND PERSONS SHOULD NOT RELY ON SUCH DOCUMENTS IN MAKING INVESTMENT DECISIONS WITH RESPECT TO (A) THE DEBTORS OR (B) ANY OTHER ENTITIES THAT MAY BE AFFECTED BY THE DEBTORS' CHAPTER 11 CASES.**

JOEL I. SHER, IN HIS CAPACITY AS TRUSTEE (THE “TRUSTEE”) FOR (i) TMST, INC. F/K/A THORNBURG MORTGAGE INC., (ii) TMST HOME LOANS, INC. F/K/A THORNBURG MORTGAGE HOME LOANS, INC., (iii) TMST ACQUISITION SUBSIDIARY, INC. F/K/A THORNBURG ACQUISITION SUBSIDIARY, INC. AND (iv) TMST HEDGING STRATEGIES, INC. F/K/A/ THORNBURG MORTGAGE HEDGING STRATEGIES, INC (COLLECTIVELY THE “DEBTORS”) IS PROVIDING THE INFORMATION IN THE DISCLOSURE STATEMENT FOR THE CHAPTER 11 TRUSTEE’S JOINT CHAPTER 11 PLAN OF LIQUIDATION OF THE DEBTORS TO HOLDERS OF CLAIMS AND INTERESTS FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE PLAN. YOU SHOULD NOT RELY UPON OR USE THE INFORMATION IN THE DISCLOSURE STATEMENT FOR ANY OTHER PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN.

THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS 4:00 P.M. (PREVAILING EASTERN TIME) ON [ ], 2022, UNLESS EXTENDED BY THE TRUSTEE (THE “VOTING DEADLINE”). TO BE COUNTED, BALLOTS MUST BE RECEIVED BY EPIQ CORPORATE RESTRUCTURING, LLC (“EPIQ”) ON OR BEFORE THE VOTING DEADLINE.

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

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AGAINST, AND HOLDERS OF INTERESTS IN, THE DEBTORS (INCLUDING, WITHOUT LIMITATION, THOSE HOLDERS OF CLAIMS OR INTERESTS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN OR WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

THE DISCLOSURE STATEMENT MAY CONTAIN “FORWARD-LOOKING STATEMENTS” WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD-LOOKING TERMINOLOGY SUCH AS “MAY,” “EXPECT,” “ANTICIPATE,” “ESTIMATE” OR “CONTINUE” OR THE NEGATIVE THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. THE READER IS CAUTIONED THAT ALL FORWARD-LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE REFERRED TO IN SUCH FORWARD-LOOKING STATEMENTS. THE DISTRIBUTION PROJECTIONS AND OTHER INFORMATION CONTAINED HEREIN AND ATTACHED HERETO ARE ESTIMATES ONLY, AND THE TIMING AND AMOUNT OF ACTUAL DISTRIBUTIONS TO HOLDERS OF ALLOWED CLAIMS MAY BE

AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED. THEREFORE, ANY ANALYSES, ESTIMATES OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT TO BE ACCURATE. DUE TO THESE UNCERTAINTIES, READERS CANNOT BE ASSURED THAT ANY FORWARD-LOOKING STATEMENTS WILL PROVE TO BE CORRECT. THE TRUSTEE IS UNDER NO OBLIGATION TO (AND EXPRESSLY DISCLAIMS ANY OBLIGATION TO) UPDATE OR ALTER ANY FORWARD-LOOKING STATEMENTS WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE, UNLESS INSTRUCTED TO DO SO BY THE BANKRUPTCY COURT.

NO LEGAL OR TAX ADVICE IS PROVIDED TO YOU BY THE DISCLOSURE STATEMENT. THE TRUSTEE URGES EACH HOLDER OF A CLAIM OR AN INTEREST TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVICE IN REVIEWING THE DISCLOSURE STATEMENT, THE PLAN AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY. FURTHERMORE, THE BANKRUPTCY COURT'S APPROVAL OF THE ADEQUACY OF DISCLOSURE CONTAINED IN THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE MERITS OF THE PLAN.

IT IS THE TRUSTEE'S POSITION THAT THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION OR WAIVER. RATHER, HOLDERS OF CLAIMS AND INTERESTS AND OTHER ENTITIES SHOULD CONSTRUE THE DISCLOSURE STATEMENT AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS.

NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR CAUSE OF ACTION, CLAIM OR PROJECTED OBJECTION TO A PARTICULAR CLAIM IS, OR IS NOT, IDENTIFIED IN THE DISCLOSURE STATEMENT. THE PLAN ADMINISTRATOR MAY SEEK TO INVESTIGATE, FILE AND PROSECUTE CLAIMS AND MAY OBJECT TO CLAIMS AFTER THE CONFIRMATION OR EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THE DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS. THE PLAN RESERVES FOR THE PLAN ADMINISTRATOR THE RIGHT TO BRING CAUSES OF ACTION (DEFINED IN THE PLAN) AGAINST ANY ENTITY OR PARTY IN INTEREST EXCEPT THOSE SPECIFICALLY RELEASED.

THE DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN EVENTS IN THE DEBTORS' CHAPTER 11 CASES AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. ALTHOUGH THE TRUSTEE BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A

DESCRIPTION IN THE DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. THE TRUSTEE DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

THE DEBTORS' REMAINING PERSONNEL AND THE TRUSTEE'S FINANCIAL ADVISORS HAVE REVIEWED THE FINANCIAL INFORMATION PROVIDED IN THE DISCLOSURE STATEMENT. ALTHOUGH THE AFORESAID HAVE USED REASONABLE BUSINESS JUDGMENT TO ENSURE THE ACCURACY OF THIS FINANCIAL INFORMATION, NO ENTITY HAS AUDITED THE FINANCIAL INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THE DISCLOSURE STATEMENT.

THE TRUSTEE IS MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE TRUSTEE MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THE DISCLOSURE STATEMENT, THE TRUSTEE HAS NO AFFIRMATIVE DUTY TO DO SO. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THE DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THE TRUSTEE FILED THE DISCLOSURE STATEMENT. HOLDERS OF CLAIMS AND INTERESTS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN MUST RELY ON THEIR OWN EVALUATION AND THEIR OWN ANALYSIS OF THE TERMS OF THE PLAN, INCLUDING, WITHOUT LIMITATION, ANY RISK FACTORS CITED HEREIN, IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER OF A CLAIM IN A VOTING CLASS SHOULD CONSIDER CAREFULLY ALL OF THE INFORMATION IN THE DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN GREATER DETAIL HEREIN.

ALL CAPITALIZED TERMS IN THE DISCLOSURE STATEMENT NOT OTHERWISE DEFINED HEREIN HAVE THE MEANINGS GIVEN TO THEM IN THE PLAN, ATTACHED TO THE DISCLOSURE STATEMENT AS *EXHIBIT A*.

**THE TRUSTEE SUPPORTS CONFIRMATION OF THE PLAN AND URGES ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED TO ACCEPT THE PLAN.**

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THE DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR**

INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE TRUSTEE OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

**EXHIBITS**

**EXHIBIT A** – CHAPTER 11 TRUSTEE’S JOINT CHAPTER 11 PLAN OF LIQUIDATION DATED AS OF JUNE 8, 2022

**EXHIBIT B** – ORDER (I) APPROVING THE PROPOSED DISCLOSURE STATEMENT AND FORM AND MANNER OF NOTICE OF DISCLOSURE STATEMENT HEARING, (II) ESTABLISHING SOLICITATION AND VOTING PROCEDURES, (III) SCHEDULING CONFIRMATION HEARING, (IV) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF THE PROPOSED PLAN, AND (V) GRANTING RELATED RELIEF [MOTION TO BE FORTHCOMING]

[TO BE SUPPLEMENTED]

<p><b>THE TRUSTEE HEREBY ADOPTS AND INCORPORATES EACH EXHIBIT ATTACHED TO THIS DISCLOSURE STATEMENT BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN.</b></p>
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## **ARTICLE I**

### **INTRODUCTION AND OVERVIEW**

#### **Section 1.01. General.**

Joel I. Sher, Trustee (the “Trustee”) for (i) TMST, Inc. f/k/a Thornburg Mortgage, Inc. (“TMST”), (ii) TMST Acquisition Subsidiary, Inc. f/k/a Thornburg Acquisition Subsidiary, Inc. (“TAS”), (iii) TMST Home Loans, Inc. f/k/a Thornburg Mortgage Home Loans, Inc. (“TMHL”), and (iv) TMST Hedging Strategies, Inc. f/k/a Thornburg Mortgage Hedging Strategies, Inc. (“TMHS”) (collectively, the “Debtors”), hereby transmits the Disclosure Statement (as may be amended, supplemented or otherwise modified from time to time, the “Disclosure Statement”) pursuant to section 1125 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”), in connection with the Trustee’s solicitation of votes (the “Solicitation”) to confirm the Chapter 11 Trustee’s Joint Chapter 11 Plan of Liquidation dated as of June 8, 2022, 2022, a copy of which is attached to this Disclosure Statement as **Exhibit A** (as may be amended, the “Plan”).<sup>2</sup>

The purpose of the Disclosure Statement is to set forth information concerning: (i) the history of the Debtors and their businesses; (ii) the Chapter 11 Cases; and (iii) the Plan. The Disclosure Statement also notifies Holders of Claims and Interests of their rights under the Plan, and guides Holders of Claims entitled to vote on the Plan, so they may make an informed judgment regarding whether they should vote to accept or reject the Plan.

The Plan described in the Disclosure Statement is a liquidating plan and provides for the distribution of the Debtors’ assets, which have already been liquidated, or will be liquidated in the future, to Holders of Allowed Claims in accordance with the terms of the Plan. As of the date of the Disclosure Statement, the Debtors’ remaining assets have largely been reduced to Cash. The Plan provides for the appointment of a Plan Administrator as a means to implement the Plan. The Plan Administrator shall be empowered to, among other things, administer and liquidate any and all remaining assets and object to and settle Claims, in accordance with the Plan.

On [\_\_\_ \_\_], 2022, after notice and a hearing, the Bankruptcy Court entered an Order (I) Approving the Proposed Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of the Proposed Plan, and (V) Granting Related Relief (“Approval Order”), a copy of which is attached to this Disclosure Statement as **Exhibit B**. **The Approval Order establishes [ ], 2022 at 4:00 p.m. (prevailing Eastern Time) as the deadline for the return of Ballots accepting or rejecting the Plan (the “Voting Deadline”).**

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in Section 1.01. of the Plan.

**APPROVAL OF THE DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.**

The Approval Order sets forth in detail the deadlines, procedures and instructions for voting to accept or reject the Plan, and for filing objections to confirmation of the Plan, the record date for voting purposes and the applicable standards for tabulating Ballots. In addition, detailed voting instructions accompany each Ballot. Each Holder of a Claim entitled to vote on the Plan should read the Disclosure Statement and the Exhibits hereto, including the Plan and the Approval Order, as well as the instructions accompanying the Ballot in their entirety before voting on the Plan. These documents contain important information concerning the classification of Claims and Interests for voting purposes and the tabulation of votes. No solicitation of votes may be made except pursuant to the Disclosure Statement and section 1125 of the Bankruptcy Code. In voting on the Plan, Holders of Claims entitled to vote should not rely on any information relating to the Debtors and their business other than the information contained in the Disclosure Statement, the Plan and all Exhibits hereto and thereto.

THE DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE A CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN. THE DISCLOSURE STATEMENT IS INTENDED TO AID AND SUPPLEMENT THAT REVIEW. THE DESCRIPTION OF THE PLAN HEREIN IS ONLY A SUMMARY. HOLDERS OF CLAIMS AND INTERESTS AND OTHER PARTIES-IN-INTEREST ARE CAUTIONED TO REVIEW THE PLAN AND ANY RELATED EXHIBITS AND ATTACHMENTS FOR A FULL UNDERSTANDING OF THE PLAN'S PROVISIONS. THE DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN.

Additional copies of the Disclosure Statement (including the Exhibits hereto) are available at <https://dm.epiq11.com/tmst>.

In addition, a Ballot for voting to accept or reject the Plan is enclosed with the Disclosure Statement for the Holders of Claims that are entitled to vote to accept or reject the Plan. If you are a Holder of a Claim entitled to vote on the Plan and did not receive a Ballot, received a damaged Ballot or lost your Ballot, or if you have any questions concerning the procedures for voting on the Plan, please contact the counsel for the Trustee at the address and phone number listed herein.

Each Holder of a Claim entitled to vote on the Plan should read the Disclosure Statement, the Plan, the other Exhibits attached hereto and the instructions accompanying the Ballots in their entirety before voting on the Plan. These documents contain important information concerning the classification of Claims and Interests for voting purposes and the tabulation of votes.

The Plan organizes the Debtors' creditor and equity constituencies into groups called "Classes." For each Class, the Plan describes (a) the underlying "Claim" or "Interest," (b) whether the Class is "Impaired" under the Plan, meaning that each Holder will receive less than the full value on account of its Claim or Interest or that the rights of Holders under law will be altered in some way, and (c) the form of consideration (*e.g.*, Cash), if any, that such Holders will receive on account of their respective Claims or Interests.

### **SUMMARY OF TREATMENT OF CLAIMS AND INTERESTS**

The Trustee believes that the Plan provides the best recoveries possible for Holders of Allowed Claims and Interests and strongly recommends that, if such Holders are entitled to vote, they vote to accept the Plan.

#### **Section 1.02. Classification of Claims and Interests.**

The following table designates the Classes of Claims against and Interests in the Debtors, and specifies which Classes are (a) Impaired or Unimpaired by the Plan, (b) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, and (c) the Trustee's current estimate of Allowed Claims.

<u>Class</u>	<u>Designation</u>	<u>Impairment</u>	<u>Entitled to Vote</u>	<u>Estimated Allowed Claims</u>
Class 1	Priority Non-Tax Claims against any Debtor	No	No	\$0.00
Class 2a	Senior Noteholder Claims Against TMST, TMHL, TMHS and TMAS	Yes	Yes	\$304,742,654
Class 2b	Senior Subordinated Noteholder Claims Against TMST, TMHL, TMHS and TMAS	Yes	Yes	\$1,335,365,965
Class 2c	Junior Noteholders Claims against TMHL and TMST	Yes	Yes	\$244,529,398
Class 3a	Unsecured Claims against TMST	Yes	Yes	\$2,700,000
Class 3b	Unsecured Claims against TMHL	Yes	Yes	\$4,700,000
Class 3c	Unsecured Claims against TMAS	Yes	Yes	\$0.00
Class 3d	Unsecured Claims against TMHS	Yes	Yes	\$0.00
Class 4a	Interests in TMST	Yes	No	N/A
Class 4b	Interests in TMHL	No	No	N/A
Class 4c	Interests in TMAS	No	No	N/A
Class 4d	Interests in TMHS	No	No	N/A

#### **Section 1.03. Voting; Holders of Claims Entitled to Vote.**

Pursuant to the provisions of the Bankruptcy Code, only holders of allowed claims or equity interests in classes of claims or equity interests that are impaired and that are not deemed to

have rejected a plan of liquidation are entitled to vote to accept or reject such proposed plan. Generally, a claim or interest is impaired under a plan if the holder's legal, equitable or contractual rights are altered under such plan. Classes of claims or equity interests under a chapter 11 plan in which the holders of claims or equity interests are unimpaired are deemed to have accepted such plan and are not entitled to vote to accept or reject the proposed plan. In addition, classes of claims or equity interests in which the holders of claims or equity interests will not receive or retain any property on account of their claims or equity interests are deemed to have rejected the plan and are not entitled to vote to accept or reject the plan.

In connection with the Plan:

Claims in Classes 2a, 2b, 2c, 3a, 3b, 3c, and 3d are Impaired. As a result, Holders of Claims in Classes 2a, 2b, 2c, 3a, 3b, 3c, and 3d, are entitled to vote to accept or reject the Plan;

Interests in Class 4a are deemed to have rejected the Plan and are not entitled to vote; Interests in Classes 4b, 4c and 4d are deemed to have accepted the Plan and are not entitled to vote; and

Claims in Class 1 are Unimpaired. As a result, Holders of Claims in Class 1 are deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan; and

The Bankruptcy Code defines "acceptance" of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the claims that cast ballots for acceptance or rejection of the plan. **Your vote on the Plan is important.** The Bankruptcy Code requires as a condition to confirmation of a plan that each class that is impaired and entitled to vote under a plan vote to accept such plan, unless the provisions of section 1129(b) of the Bankruptcy Code are met.

The Trustee may request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code. Section 1129(b) of the Bankruptcy Code permits the confirmation of a plan of reorganization notwithstanding the non-acceptance of a plan by one or more impaired classes of claims or equity interests, so long as, among other requirements, that at least one impaired class of claims or interests votes to accept the plan. Under that section, a plan may be confirmed by a bankruptcy court if it does not "discriminate unfairly" and is "fair and equitable" with respect to each non-accepting class.

If you are entitled to vote to accept or reject the Plan, a Ballot is enclosed for the purpose of voting on the Plan. The Disclosure Statement, the Exhibits attached hereto, the Plan and the related documents are the only materials the Trustee is providing to creditors for their use in determining whether to vote to accept or reject the Plan, and such materials may not be relied upon or used for any purpose other than to vote to accept or reject the Plan.

**PLEASE COMPLETE, EXECUTE AND RETURN YOUR BALLOT(S) to EPIQ CORPORATE RESTRUCTURING, LLC.** Ballots can be returned in the pre-addressed envelope provided with your Ballot package or via one of the following methods:

E-Ballot Portal:

To submit your Ballot via the E-Balloting Portal, visit <https://dm.epiq11.com/tmst>, click on the “E-Ballot” section of Epiq’s website for the Debtors and follow the instructions.

Hard copy of your Ballot:

By first class mail to:

TMST, Inc. f/k/a Thornburg Mortgage, Inc.  
Ballot Processing c/o Epiq Corporate Restructuring, LLC  
P.O. Box 4422  
Beaverton, OR 97076-4422

Via overnight courier or hand delivery to:

TMST, Inc. f/k/a Thornburg Mortgage, Inc.  
Ballot Processing c/o Epiq Corporate Restructuring, LLC  
10300 SW Allen Boulevard  
Beaverton, OR 97005

**TO BE COUNTED, YOUR ORIGINAL BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE ACTUALLY RECEIVED BY EPIQ CORPORATE RESTRUCTURING, LLC NO LATER THAN 4:00 P.M., PREVAILING EASTERN TIME, ON [    ], 2022, UNLESS EXTENDED BY THE TRUSTEE. ALL BALLOTS MUST BE SIGNED.**

The Ballots have been specifically designed for the purpose of soliciting votes on the Plan from the Classes entitled to vote with respect thereto. Accordingly, in voting on the Plan, please use only the Ballots sent to you with the Disclosure Statement or provided by Epiq Corporate Restructuring, LLC or the Trustee’s counsel.

The Court has fixed **4:00 p.m. (prevailing Eastern Time) on [    ], 2022** (the “Voting Record Date”), as the time and date for the determination of Persons who are entitled to receive a copy of the Disclosure Statement and all of the related materials and to vote whether to accept or reject the Plan. Accordingly, only Holders of record of Claims as of the Voting Record Date that are entitled to vote on the Plan, will receive a Ballot and may vote on the Plan.

All properly completed Ballots received prior to the Voting Deadline will be counted for purposes of determining whether a voting Class of impaired Claims has accepted the Plan. The Trustee, with the assistance of Epiq, will prepare and file with the Bankruptcy Court a certification of the results of the balloting with respect to the Class entitled to vote.



THE TRUSTEE BELIEVES THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF ALL HOLDERS OF CLAIMS AND RECOMMENDS THAT ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN.

The Trustee's legal advisor is SHAPIRO SHER GUINOT & SANDLER, and can be contacted at:

SHAPIRO SHER GUINOT & SANDLER  
250 West Pratt Street, Suite 2000  
Baltimore, Maryland 21201

Joel I. Sher, Esquire ([jis@shapirosher.com](mailto:jis@shapirosher.com))  
Richard M. Goldberg, Esquire ([rmg@shapirosher.com](mailto:rmg@shapirosher.com))  
Daniel J. Zeller, Esquire ([djz@shapirosher.com](mailto:djz@shapirosher.com))  
Anastasia M. McCusker, Esquire ([alm@shapirosher.com](mailto:alm@shapirosher.com))

The Creditors' Committee legal advisor is QUINN EMANUEL URQUHART OLIVER & HEDGES, and can be contacted at:

QUINN EMANUEL URQUHART OLIVER & HEDGES  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010

James C. Tecce, Esquire ([jamestecce@quinnemanuel.com](mailto:jamestecce@quinnemanuel.com))

#### **Section 1.04. Solicitation Process.**

The following documents and materials will constitute the Trustee's Solicitation Package which may be sent, at the Trustee's option, by hard copy or electronic means:

1. Plan;
2. Disclosure Statement;
3. Approval Order;
4. Notice of the hearing at which confirmation of the Plan will be considered ("Confirmation Hearing Notice");
5. Appropriate ballot and voting instructions; and
6. Pre-addressed, postage prepaid return envelope.

The Trustee intends for Epiq to distribute the Solicitation Packages no fewer than twenty-eight (28) calendar days before the Voting Deadline or on such other schedule as is approved by the Bankruptcy Court. The Trustee submits that distribution of the Solicitation Package at least twenty-eight (28) calendar days prior to the Voting Deadline or on such other schedule as is approved by the Bankruptcy Court will provide the requisite materials to Holders of Claims entitled to vote on the Plan in compliance with Bankruptcy Rules 3017(d) and 2002(b).

The Solicitation Package will be distributed to Holders of Claims in Classes 2a, 2b, 2c, 3a, 3b, 3c, and 3d as of the Voting Record Date and in accordance with the Approval Order. The Solicitation Package (except the Ballots) is also available at Epiq's website, <https://dm.epiq11.com/tmst>.

Other parties entitled to receive the Solicitation Packages, including the IRS and other relevant taxing authorities, will be served paper or electronic copies of the order approving the Disclosure Statement, the Disclosure Statement and all exhibits to the Disclosure Statement, including the Plan, and the Confirmation Hearing Notice.

#### **Section 1.05. Confirmation Hearing.**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan.

**The Confirmation Hearing will commence on [ ], 2022 at [ ].m., prevailing Eastern Time,** before the Honorable Nancy V. Alquist, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Maryland (Baltimore). The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof. The Confirmation Hearing may be conducted via videoconference.

**The Plan Objection Deadline is 4:00 p.m. prevailing Eastern Time on [ ], 2022.** All objections to the Plan must be filed with the Bankruptcy Court and served on the Trustee and certain other parties in accordance with the Approval Order on or before the Plan Objection Deadline. In accordance with the Confirmation Hearing Notice filed with the Bankruptcy Court, objections to the Plan or requests for modifications to the Plan, if any, must:

1. Be in writing;
2. Conform to the Bankruptcy Rules and the Local Bankruptcy Rules;
3. State the name and address of the objecting Creditor and the amount and nature of the Claim or Interest of such Creditor;
4. State with particularity the basis and nature of the objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and
5. Be filed, contemporaneously with proof of service, with the Bankruptcy Court and served so that it is **actually received** by the notice parties identified in the Confirmation Hearing Notice on or prior to the Plan Objection Deadline.

**THE BANKRUPTCY COURT MAY NOT CONSIDER OBJECTIONS TO THE PLAN UNLESS THEY ARE TIMELY SERVED AND FILED IN COMPLIANCE WITH THE PROCEDURES SET FORTH IN THE DISCLOSURE STATEMENT ORDER.**

## **Section 1.06. Important Matters.**

The Disclosure Statement contains projected financial information and certain other forward-looking statements, all of which are based on various estimates and assumptions and will not be updated to reflect events occurring after the date hereof. Such information and statements are subject to inherent uncertainties and to a wide variety of significant business, economic and competitive risks, including, among others, those described herein. Consequently, actual events, circumstances, effects and results may vary significantly from those included in or contemplated by such projected financial information and such other forward-looking statements. The projected financial information contained herein and in any Exhibits annexed hereto is, therefore, not necessarily indicative of the future financial condition which may vary significantly from those set forth in such projected financial information. Consequently, the projected financial information and other forward-looking statements contained herein should not be regarded as representations by any of the Trustee, the Plan Administrator, their advisors, or any other Person that the projected financial conditions or results of operations can or will be achieved.

## **ARTICLE II**

### **BACKGROUND TO THESE CHAPTER 11 CASES**

## **Section 2.01. General Historical Information about the Debtors**

### **1. The Debtors' Corporate Structure**

TMST is a real estate investment trust ("REIT"). Until it was delisted in December 2008, the common stock of TMST was traded on the New York Stock Exchange. TMST is incorporated under the laws of Maryland, with its principal place of business in Santa Fe, New Mexico.

TMHL is a wholly-owned taxable REIT subsidiary of TMST and organized under the laws of Delaware, with its principal place of business in Santa Fe, New Mexico. Adfitech Inc. ("Adfitech") was an independently operated, wholly-owned subsidiary of TMHL that provided mortgage-related auditing and quality control consulting services. Adfitech is no longer a debtor in the Debtors' Chapter 11 Cases and is not part of the Plan.

TMHS is a wholly-owned subsidiary of TMST and organized under the laws of Delaware. TAS is a wholly-owned subsidiary of TMHL and organized under the laws of Delaware.

### **2. The Debtors' Business Operations**

Prior to their bankruptcy cases, the Debtors' business operations centered around residential mortgage-backed securities ("MBS") and residential mortgage loans. Specifically, TMST principally invested in high quality residential MBS. TMHL originated, acquired, securitized, and serviced residential mortgage loans, and operated as a single-family residential mortgage lender in all fifty (50) states. TMST was managed by a non-debtor entity, Thornburg Mortgage Advisory Corporation ("TMAC"), pursuant to a management services agreement.

TMHS entered into derivative auction swap transactions to support TMHL's securitizations. TMST guaranteed TMHS's auction swap obligations.

TMST's primary assets were its investments in "ARM Assets", consisting of "Purchased ARM Assets" (MBS that represent interests in pools of adjustable-rate mortgage ("ARM") loans) and "ARM Loans" (residential mortgage loans that TMHL securitized from its own loan origination or acquisition activities, loans that TMHL used as collateral to support the issuance of collateralized mortgage debt, or loans pending securitization). TMST's income was generated primarily from the net spread between the interest income it earned on its ARM Assets and the cost of borrowings (such as through the Financing Agreements, discussed *infra*). Its strategy was to maximize the long-term sustainable difference between the yield on its ARM Assets and the cost of financing those assets, and to maintain that difference through interest rate and credit cycles.

### **3. The Financing Agreements**

Prior to the Petition Date, TMST and certain of its subsidiaries, including TMHL and TMHS, entered into, among other things, "Repo Agreements" (reverse repurchase agreements), securities lending agreements, and auction-related market value swap agreements with certain financial institutions to finance its securities or loan portfolios or, in the case of the auction-related marked value swap agreements, to indirectly support payment obligations of certain securitization trusts organized by TMHL. Although the Repo Agreements were often stated in terms of a purchase and sale, they were for all intents and purposes, secured loans, where TMST's pledged MBS acted as collateral and the difference between the purchase and repurchase price was the cost of financing. These agreements are generally referred to herein as Financing Agreements. As of the Petition Date, the remaining counterparties to the Debtors' Financing Agreements were the Override Defendants (defined *infra*). Generally, a counterparty to these Financing Agreements could issue margin calls to the Debtors under the Financing Agreements if the market value of the pledged MBS diminished beyond a certain agreed-to-level.

### **4. The Senior Secured Notes, Senior Subordinated Notes, and Junior Notes**

On May 15, 2003, TMST entered into an indenture and a first supplemental indenture with Deutsche Bank Trust Company Americas as indenture trustee ("Senior Note Indenture Trustee"), authorizing the issuance of \$200 million in unsecured senior notes (the "Senior Notes"). On March 31, 2008, TMST, TMHL, TMHS, Adfitech and TAS entered into a second supplemental indenture for the Senior Notes which provided that the Senior Notes were guaranteed by TMHL, TMHS, Adfitech and TAS.

In connection with the Override Agreement (discussed below), on March 31, 2008, TMST entered into an indenture with Wilmington Trust Company as Trustee authorizing the issuance of \$1.15 billion in senior subordinated notes (the "Senior Subordinated Notes") maturing on March 31, 2015. TMHL, TMHS, Adfitech and TAS guaranteed payment of the Senior Subordinated Notes on a senior subordinated basis.

The Debtors also issued three series of junior subordinate unsecured Notes. First, on September 29, 2005, TMHL entered into an indenture with Wells Fargo Bank, N.A. ("Wells

Fargo”) as trustee authorizing the issuance of \$140 million in unsecured junior subordinated notes maturing on October 30, 2035. Second, on December 22, 2005, TMHL entered into an indenture with Wells Fargo as trustee authorizing the issuance of \$50 million in additional unsecured junior subordinated notes maturing on January 30, 2036. Third, on March 30, 2006, TMHL entered into an indenture with Wells Fargo as trustee authorizing the issuance of \$50 million in additional unsecured junior subordinated notes maturing on April 30, 2036. TMST guaranteed all of the Junior Notes. In July of 2008, TMST became an additional obligor in an amendment to the indenture and certain noteholders subsequently.

### **ARTICLE III**

#### **EVENTS LEADING TO THE CHAPTER 11 CASES**

##### **Section 3.01. MBS Market Disruption, the Override Agreement, and Disputes with Override Defendants Related Thereto.**

During February of 2008, prices of MBS began to significantly decline and the liquidity and market prices for the high-quality MBS, such as those in TMST’s portfolio decreased. During this period, TMST received significant margin calls relating to its Financing Agreements. On the morning of February 28, 2008, TMST issued its 2007 10-K, in which it revealed that since February 14, 2008, it had met margin calls in excess of \$300 Million, but that “in the short term, the sudden decline in the valuation of these securities has left us with reduced readily available liquidity to meet future margin calls...” Thereafter, through March 6, 2008, TMST received margin calls from various counterparties that it could not immediately satisfy, in the aggregate approximate amount of \$610 Million. Certain counterparties closed out their positions. Thereafter, TMST entered into negotiations with JPMorgan Chase Funding Inc. (as successor to Bear Stearns Investment Products Inc.) (“JPMorgan”), (ii) Citigroup Global Markets Limited (“CGML”), and Citigroup Global Markets, Inc. (“CGMI”, and collectively with CGML, “Citi”), (iii) Credit Suisse Securities (USA) LLC (“CSSU”), and Credit Suisse International (“CSI”, and collectively with CSSU, “Credit Suisse”), and (iv) UBS AG (as successor in interest to UBS Securities LLC) (“UBS”), and (v) NatWest Markets Securities Inc. (f/k/a RBS Securities Inc., f/k/a Greenwich Capital Markets, Inc.), Greenwich Capital Derivatives Inc., and NatWest Markets Plc (f/k/a The Royal Bank of Scotland plc) (together “RBS”) (hereinafter sometimes referred to as the “Counterparties” or the “Override Defendants”), and on March 17, 2008, TMST and TMHS entered into the “Override Agreement” with those Counterparties which, among other things, provided for a standstill on additional margin calls or the exercise of remedies by the Counterparties through March 16, 2009.

The Override Agreement required TMST to effectuate a capital raise of at least \$ 1 Billion. On March 24, 2008, TMA received a proposal from MP TMA LLC, MP TMA (Cayman) LLC, and MatlinPatterson LLC (collectively, “MatlinPatterson”) to participate as the lead investor in a private placement of, *inter alia*, (i) \$1.15 billion in principal amount of the Senior Subordinated Notes and (ii) warrants representing a 90% ownership stake in TMST on a fully diluted basis. A significant portion of the funds raised through the Senior Subordinated Notes were used to pay TMST’s then outstanding margin calls, including those of the Counterparties.

The Override Agreement restricted the Debtors' business by precluding TMST from entering into any new financing agreements and limited the amount outstanding under TMHL's warehouse lending agreements, which were the financing method by which TMHL originated and/or acquired new mortgage loans to be used for securitizations or general business purposes. Pursuant to the Override Agreement, TMST and TMHL granted the Counterparties a security interest in a certain portion of TMHL's mortgage servicing rights, which became the subject of the MSR Litigation (defined below).

Beginning in July of 2008, the Counterparties began making a series of margin calls based on certain rating agency downgrades of the MBS subject to their respective Financing Agreements. Disputes arose as to, among other things, whether such margin calls were allowed or precluded because of the margin call standstill under the Override Agreement. The Counterparties withheld MBS interest payments otherwise payable to TMST under the Override Agreement and the Debtors disputed such withholdings. During this time, the Counterparties obtained monetary transfers from the Debtors (including the withheld interest), which the Trustee later challenged in the JPM Adversary (described below). Due to TMST's cash constraints and the unresolved issues relating to the Override Agreement, TMST requested and received the consent of the holders of approximately 98.6% of the holders of the outstanding Senior Subordinated Notes to PIK the interest payment due them on September 30, 2008, in the form of additional Senior Subordinated Notes in lieu of cash. As a result, \$102.0 million in principal amount of additional Senior Subordinated Notes were issued to such holders. Effective December 12, 2008, the parties amended and restated the Override Agreement, in a new agreement referred to as the Amended Override Agreement. Pursuant to the Amended Override Agreement, the Counterparties obtained additional monetary transfers from the Debtors, which the Trustee challenged in the JPM Adversary.

### **Section 3.02. The Forbearance Agreements, Liquidation of TMST'S MBS, and Chapter 11 Bankruptcy Filings**

The Amended Override Agreement expired on March 16, 2009. On that date, three of the Counterparties agreed that they would forbear from demanding payment or exercising any remedies under their respective Financing Agreements through March 31, 2009. The other two Counterparties, Citi and UBS, entered into separate agreements with TMST pursuant to which TMST transferred its pledged MBS to Citi and UBS for a set amount and Citi and UBS agreed to forbear from asserting any deficiency claim for a short period of time. The parties entered into a subsequent amendment to the aforesaid forbearance agreements. Subsequently each of the Counterparties liquidated their positions with the Debtors and asserted deficiency claims against the Debtors' Estates for amounts claimed due under their respective Financing Agreements. The five Counterparties filed proofs of claim for these alleged deficiencies, in the aggregate approximate amount of \$2.588 Billion. In the JPM Adversary, the Trustee challenged the Citi and UBS sales and the other three Counterparties' liquidations, as well as the amounts claimed in the proofs of claim.



## **ARTICLE IV**

### **ADMINISTRATION OF THE CHAPTER 11 CASES**

#### **Section 4.01 Overview of a Liquidating Chapter 11.**

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of its stakeholders. Chapter 11 also allows a debtor to formulate and consummate a plan of liquidation. A plan of liquidation sets forth the means for satisfying claims against and interests in a debtor.

#### **Section 4.02. Relevant Case Background.**

The following is a brief description of certain significant events that have occurred during the pendency of the Chapter 11 Cases. Creditors may also look on the docket on file with the Bankruptcy Court for copies of any specific motions or other case background.

##### **1. The Bankruptcy Filings.**

On May 1, 2009 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. As of the Petition Date, the Debtors continued to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors filed the bankruptcy cases as liquidating Chapter 11 cases to windup their businesses. At that time, Larry A. Goldstone (“Mr. Goldstone”) and Clarence G. Simmons (“Mr. Simmons”) were the Debtors’ two top officers, serving as CEO and CFO, respectively.

##### **2. Joint Administration.**

On May 6, 2009, the Bankruptcy Court entered an order providing for the joint administration of the Debtors’ cases [ECF No. 54], as amended on November 2, 2009 [ECF No. 516], severing the case of Adfitech, Inc. from the Debtors.

##### **3. Adfitech.**

On May 1, 2009, Adfitech filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the Debtors. Initially, Adfitech was part of the Debtors’ jointly administered cases. On November 2, 2009, the Bankruptcy Court entered an order severing the joint administration as to Adfitech’s Chapter 11 case. [ECF No. 516]. On January 28, 2010, the Bankruptcy Court entered an order approving the severance of identified proofs of claim against Adfitech from the Debtors’ claims register. [ECF No. 629]. Adfitech proceeded to administer its bankruptcy case separate and apart from the Debtors. On March 2, 2010, the Bankruptcy Court entered a Order Confirming the Second Amended Chapter 11 plan of Reorganization for Adfitech [Case No. 09-17788, ECF No. 170]. On August 5, 2010, the Bankruptcy Court entered the Final



Decree in Adfitech's bankruptcy case, which provided that the estate of Adfitech had been fully administered and its Chapter 11 case closed. As discussed below, the holders of the Senior Notes received a distribution from the Adfitech plan of reorganization.

#### **4. First Day Orders.**

On the Petition Date, the Debtors filed a number of "first day" motions with the Bankruptcy Court seeking immediate relief to aid in the administration of the Chapter 11 Cases. The Debtors also filed several customary motions and applications to retain professionals and to streamline the administration of the Chapter 11 Cases. Thereafter, as discussed below, the Bankruptcy Court appointed the Trustee. With respect to the Debtors' Motions, the Bankruptcy Court entered orders granting such motions, including:

- Order Authorizing the Debtors to Pay Certain Business License Fees [ECF No. 43];
- Order Authorizing the Debtors to File Consolidated Mailing Matrix and Consolidated List of 20 Largest Unsecured Creditors [ECF No. 42];
- Order Authorizing the Debtors to Maintain and Administer Customer Programs and Honor Prepetition Obligations Related Thereto [ECF No. 40];
- Order Authorizing the Debtors to Employ and Retain EPIQ Bankruptcy Solutions, LLC as Notice, Claims, and Solicitation Agent to the Debtors and Debtors in Possession [ECF No. 56];
- Order Authorizing the Debtors to Continue Using Their Existing Cash Management System, Bank Accounts, and Business Forms [ECF No. 53];
- Order Granting Request for Designation as Complex Chapter 11 Bankruptcy Cases [ECF No. 51];
- Order (I) Authorizing The Debtors To Pay And Honor Certain Prepetition (A) Wages, Salaries, Commissions, And Other Compensation, And Related Administrative Expenses (B) Deductions And Payroll Taxes, (C) Reimbursable Employee Expenses, And (D) Employee Medical And Similar Benefits; (II) Authorizing Continuation Of Reimbursement Payments Under The Amended TMAC Management Agreement; And (III) Authorizing And Directing Banks And Other Financial Institutions To Honor All Related Checks And Electronic Payment Requests [ECF No. 50];
- Order Authorizing Debtors To: (A) Honor Existing Obligations And Incur New Obligations In The Ordinary Course Of Their Business In Connection With The Servicing Of Loans; And (B) Honor Existing Obligations And Incur New Obligations In The Ordinary Course Of The Debtors' Business In Connection With Loan Auditing And Fulfillment Services [ECF No. 49];
- Administrative Order Pursuant To 11 U.S.C. §§ 105, 328 And 331 Establishing Procedures For Interim Compensation And Reimbursement Of Professionals [ECF No. 85]; and
- Order Authorizing The Debtors To Retain And Compensate Certain Professionals Utilized In The Ordinary Course Of Business [Ecf No. 84].

**5. The Creditors' Committee.**

Pursuant to section 1102(a)(1) of the Bankruptcy Code, on May 7, 2009, the United States Trustee for Region Four (the "U.S. Trustee") appointed the Creditors' Committee.

The Creditors' Committee retained the law firms of Quinn Emanuel Urquhart & Sullivan, LLP and Tydings & Rosenberg LLP as its bankruptcy counsel

**6. Schedules and Statements.**

In June of 2009, the Debtors filed with the Bankruptcy Court the Schedules and Statement of Financial Affairs (collectively, the "Schedules").

**7. Claims Bar Dates.**

On June 15, 2009, the Bankruptcy Court entered the Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [ECF No. 172] (the "Bar Date Order"), which established:

- (a) 5:00 p.m. (prevailing Eastern Time) on August 3, 2009, as the deadline for all persons or entities (including, without limitation, individuals, partnerships, corporations, limited liability companies, joint ventures, and trusts) that assert a claim, as defined in § 101(5) of title 11 of the United States Code (the "Bankruptcy Code"), against any one or more of the Debtors which arose on or prior to the Petition Date, to file a proof of any such claim (the "General Bar Date"); and
- (b) 5:00 p.m. (prevailing Eastern Time) on October 28, 2009, as the deadline for all governmental units, as defined in section 101(27) of the Bankruptcy Code, to file a proof of any such claim (the "Government Bar Date").

The Bar Date Order also provides for the procedures for filing proofs of claim and a list of persons or entities that need not file a Proof of Claim on or prior to any applicable Bar Date, including any person or entity having a claim under section 503(b) or 507(a) of the Bankruptcy Code as an administrative expense of the Debtors' Chapter 11 Cases. Additionally, pursuant to the Bar Date Order, any person or entity that holds a claim that arises from the rejection of an executory contract or unexpired lease must file a Proof of Claim based on such rejection by the later of (i) the applicable Bar Date or (ii) the date that is 30 days following the effective date of such rejection (unless the order authorizing such rejection orders otherwise).

As provided in the Bar Date Order and pursuant to Bankruptcy Rule 3003(c)(2), all holders of claims that fail to comply with the Bar Date Order by timely filing a Proof of Claim in appropriate form are forever barred from asserting such claim against any of the Debtors (or filing a Proof of Claim with respect thereto), are not treated as a creditor with respect to such claim for the purposes of voting and distribution, and shall not receive further notices regarding such claim; provided, however, that a Proof of Claim may be filed to the extent and under the conditions stated in Bankruptcy Rule 3002(c)(2), (c)(3) and (c)(6).

As proscribed by the Bar Date Order, the Debtors served the “Bar Date Notice” on the parties listed in the Bar Date Order. On July 2, 14, and 28, 2009, the Debtors filed Affidavits of Service reflecting the service of the Bar Date Notice on all parties in interest. [ECF Nos. 235, 244, and 270].

#### **8. Section 341 Meeting.**

The meeting of the creditors pursuant to section 341(a) of the Bankruptcy Code took place on June 10, 2009.

#### **9. Executory Contracts and Unexpired Leases.**

On May 22, 2009, the Debtors filed the First Omnibus Motion for an Order Approving Rejection of Certain Unexpired Leases of Real Property Effective as of the Petition Date, in which the Debtors sought to reject the leases for certain office space in Arizona and New Jersey that was no longer needed for business operations. On June 19, 2009, the Bankruptcy Court entered an Order Approving Rejection of Certain Unexpired Leases of Real Property Effective as of the Petition Date [ECF No. 184].

#### **10. Appointment of the Trustee.**

On or about August 25, 2009, counsel for the Creditors’ Committee received an anonymous letter asserting that certain senior officers of the Debtors were misappropriating assets of the Debtors in order to fund a new start-up company (the “Whistle-Blower Letter”). The start-up was later identified as SAF Financial, Inc. (“SAF”). On September 16, 2009, the U.S. Trustee filed a Motion for an Order Directing the Appointment of a Trustee or, in the Alternative, an Examiner (the “Trustee Motion”). [ECF No. 362]. The Trustee Motion was supported by the Creditors Committee and the Counterparties. On October 23, 2009, the Bankruptcy Court granted the Trustee Motion and entered an Order Requiring Appointment of Trustee. [ECF No. 490]. On October 28, 2009, on application of the UST, the Bankruptcy Court entered an Order Approving Appointment of Joel I. Sher as Trustee. [ECF No. 506]. As discussed *infra*, after his appointment the Trustee sued, among others, Messrs. Goldstone and Simmons and SAF in connection with the matters referred to in the Whistle-Blower Letter.

#### **11. Retention of Professionals.**

The Trustee has obtained court approval for the engagement of the following professionals throughout the Debtors’ bankruptcy cases:

- **SSG&S:** On November 23, 2009, the Bankruptcy Court entered an Order authorizing the employment of Shapiro Sher Guinot & Sandler (“SSG&S”) as counsel to the Trustee [ECF No. 535]. The Order approving SSG&S’ retention was modified in part by a March 27, 2015 Order [ECF No. 2191], which authorized SSG&S to act as co-counsel to Susman Godfrey in the JPM Adversary litigation described below.

- **Susman Godfrey:** On April 22, 2011, the Bankruptcy Court entered an Order authorizing the employment of Susman Godfrey LLP (“Susman Godfrey”) as special litigation counsel to the Trustee in *Joel I. Sher, in his capacity as Trustee for TMST, et al. v. Barclays Capital Inc.* [Adv. Pro. 11-00326; Civil Action No. 11-01982]. [ECF No. 1316]. On March 27, 2015, the Bankruptcy Court entered an Order authorizing, among other things, the employment of Susman Godfrey as special litigation counsel to the Trustee in *Joel I. Sher, in his capacity as Trustee for TMST, et al. v. JPMorgan Chase Funding Inc., et al.* [Adv. P. 11-00340]. [ECF No. 2191].
- **Goldin:** On December 7, 2009, the Bankruptcy Court entered an Order authorizing the employment of Goldin Associates, LLC (“Goldin”) as financial advisors to the Trustee [ECF No. 565].
- **Grant Thornton:** On October 10, 2018, the Bankruptcy Court entered an Order authorizing the employment of Grant Thornton LLP (“Grant Thornton”) as financial advisors to the Trustee [ECF No. 2751]. Grant Thornton replaced Goldin as the Trustee’s financial advisors as of August 30, 2018.
- **KPMG:** On May 26, 2010, the Bankruptcy Court entered an Order authorizing the employment of KPMG LLP (“KPMG”) as tax compliance and consultants to the Trustee [ECF No. 879].
- **Level 1:** On November 8, 2010, the Bankruptcy Court entered an Order authorizing the employment of Level 1 Loans (“Level 1”) as financial consultant to the Trustee [ECF No. 1093].
- **BroadSolutions:** On November March 18, 2011, the Bankruptcy Court entered an Order authorizing the employment of BroadSolutions, LLC f/k/a Broadstreet Capital Partners, LP as analytic consultant for the Trustee [ECF No. 1251].

The Creditors’ Committee has obtained court approval for the engagement of the following professionals throughout the Debtors’ bankruptcy cases:

- **Quinn:** On June 12, 2009, the Bankruptcy Court entered an Order authorizing the employment of Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn”) as counsel for the Committee [ECF No. 165].
- **Tydings:** On June 12, 2009, the Bankruptcy Court entered an Order authorizing the employment of Tydings & Rosenberg LLP (“Tydings”) as co-counsel for the Committee [ECF No. 166].
- **J.H. Cohn:** On June 12, 2009, the Bankruptcy Court entered an Order authorizing the employment of J.H. Cohn LLP (“J.H. Cohn”) as financial advisors and forensic accountants to the Committee [ECF No. 167].

The Debtors, prior to appointment of the Trustee, obtained court approval for the engagement of the following professionals:

- **Venable:** On May 22, 2009, the Bankruptcy Court entered an Order authorizing the employment of Venable LLP (“Venable”) as counsel to the Debtors and Debtors in Possession [ECF No. 115]. After appointment of the Trustee, SSG&S replaced Venable as counsel to the Trustee.
- **Protiviti:** On May 22, 2009, the Bankruptcy Court entered an Order authorizing the employment of Protiviti, Inc. (“Protiviti”) as financial advisors to the Debtors and Debtors in Possession [ECF No. 114]. After appointment of the Trustee, Goldin replaced Protiviti as the financial advisors to the Trustee.
- **Orrick:** On May 22, 2009, the Bankruptcy Court entered an Order authorizing the employment of Orrick, Herrington, & Sutcliffe LLP (“Orrick”) as special counsel to the Debtors and Debtors in Possession [ECF No. 112]. On March 27, 2012, the Bankruptcy Court entered a Stipulation and Consent Order Vacating Retention Order whereby the Bankruptcy Court vacated its order authorizing employment of Orrick [ECF No. 1558].
- **Houlihan:** On June 5, 2009, the Bankruptcy Court entered an Order authorizing the employment of Houlihan Lokey Howard & Zukin Capital, Inc. (“Houlihan”) by the Debtors and Debtors in Possession as investment banker for the Adfitech Sale while the Debtors and Adfitech were still jointly administered [ECF No. 157].

#### **Section 4.03                      The MSR Litigation and MSR Sale.**

Prior to the Petition Date, TMST, TMHS and TMHL entered into a Security Agreement dated as of April 1, 2008, with the Override Defendants<sup>3</sup> and Credit Suisse Securities (USA) LLC (“CSSU”), as their Collateral Agent. Pursuant to the Security Agreement, CSSU as Collateral Agent was granted a security interest in certain Collateral (as defined in the Security Agreement), including certain portions of the Debtors’ mortgage servicing rights. On August 28, 2009, CSSU, in its capacity as Collateral Agent, instituted an adversary proceeding against the Debtors, *Credit Suisse Securities (USA) LLC, as Collateral Agent v. TMST, Inc., et al.* [Adv. Proc. No. 09-00574] (the “MSR Litigation”). In the Complaint, the Collateral Agent sought relief with respect to the mortgage servicing rights which it asserted constituted its “Collateral” under the Security Agreement. Following his appointment as Trustee for the Debtors, by operation of Fed. R. Bankr. P. 2012(a), the Trustee was automatically substituted as a party defendant in the MSR Litigation as the representative of the Debtors’ Estates.

After the initiation of the MSR Litigation, in February 2010, the Trustee conducted an auction sale of the Debtors’ mortgage servicing rights. On February 16, 2010, the Bankruptcy Court entered an Order authorizing the sale of the largest portion of the “MSR portfolio” to Select Portfolio Servicing as the high bidder at the auction and, on February 22, 2010, the Bankruptcy Court entered an order authorizing the sale of the remaining portion of the “MSR portfolio” to FOCOC TMST Trust and FCOF SNPWL Trust. [ECF Nos. 665, 675]. The sale proceeds of the MSR portfolio consisted of (i) the Select Portfolio Servicing high bid price of \$78,689,255.86

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<sup>3</sup> The Override Defendants are the named defendants in the JPM Adversary discussed *infra*.

together with its reimbursement to the Estate of \$16,882,896.95 of funds (“Reimbursements”) the Estate had advanced to Cenlar, the servicer, and (ii) \$193,467.94 (FOCOC TMST Trust and FCOF SNPWL Trust sale), collectively the “MSR Sale Proceeds.”

In the MSR Litigation, the Collateral Agent asserted that its security interest encumbered the totality of the MSR sale proceed consisting of both the MSR Sale Proceeds and the \$16.9 million in Reimbursements. The Trustee contested the relief sought by the Collateral Agent, asserting that the granting language of the Security Agreement neither encumbered the Reimbursements nor the entirety of the MSR Sale Proceeds.

After discovery, the parties in the MSR Litigation filed cross-motions for summary judgment as to the validity, extent, and enforceability of the Collateral Agent’s security interest. On October 25, 2010, the Bankruptcy Court entered an Order Determining Motions for Summary Judgment in which the Bankruptcy Court denied in part and granted in part the Collateral Agent’s summary judgment motion and denied the Trustee’s cross motion for summary judgment. [Adv. Pro. No. 09-00574, ECF No. 129]. After a three-day trial to determine the scope and extent of the Collateral Agent’s security interest in the MSR Sale Proceeds and Reimbursements, on February 22, 2012, the Bankruptcy Court issued an Order holding that 95% of the MSR Sale Proceeds were impressed with the Collateral Agent’s security interest, while the Debtors owned the remaining 5% of the MSR Sale Proceeds and the entirety of the Reimbursements free and clear of the liens and security interest of the Collateral Agent. [Adv. Pro. No. 09-00574, ECF Nos. 218, 219]. Therefore, the Estate recovered the 5% interest in the amount of \$3,029,432 and the \$16,882,896.95 of Reimbursements free and clear of the Counterparties security interest.

On May 31, 2012, the Trustee filed a Motion Pursuant to Section 506(c) (the “Surcharge Motion”), in which the Trustee sought to recover from the MSR Sale Proceeds payable to the Collateral Agent (i) the Estates’ out-of-pocket costs and expenses expended in the preservation and disposition of the MSR portfolio and (ii) amounts for payment of the Trustee’s statutory commissions. Thereafter, the parties reached a settlement resolving the MSR Litigation. On August 28, 2012, the Bankruptcy Court entered an order approving the settlement agreement. [ECF No. 1638]. Subsequently, the Trustee, the Collateral Agent and the Override Defendants reached a partial settlement of the Surcharge Motion pursuant to which the sum of \$666,500.00 was paid to the Debtors’ Estates from the encumbered MSR Sale Proceeds in satisfaction of the Trustee’s claim for reimbursement of out-of-pocket costs and expenses. In addition, the Trustee was authorized to reserve \$2,253,359.78 for payment of his statutory commission arising from the distribution of the MSR Sale Proceeds to the Counterparties. On December 7, 2012, the Bankruptcy Court entered an order approving the aforesaid settlement. [ECF No. 1720]. The reserve amount was later turned over to the Counterparties subject to a full reservation of rights.

#### **Section 4.04 Other Adversary Proceedings and Litigation.**

During the course of the Chapter 11 Cases, the Trustee prosecuted a series of adversary proceedings, in which he pursued, among other things: (1) avoidance claims under Chapter 5 of the Bankruptcy Code arising from prepetition transfers of the Debtors’ property; (2) the Debtors’ prepetition claims for breach of contract against certain counterparties to repurchase agreements arising from their liquidation of TMST’s MBS; and/or (3) claims related to reducing, eliminating, or subordinating appreciable proofs of claims filed in the Debtors’ bankruptcy cases. The most



significant, complex adversary proceeding initiated by the Trustee was *Sher v. JPMorgan Chase Funding, et al.*, Adv. Pro. No. 11-00340 (the “JPM Adversary”), in which the Trustee sought to, *inter alia*, avoid significant prepetition transfers to the Override Defendants and reduce, eliminate, or subordinate those defendants’ \$2.588 Billion in proofs of claim. Susman Godfrey and SSG&S litigated the JPM Adversary on behalf of the Trustee. The Trustee also initiated an adversary proceeding against certain of the Debtors’ insiders and SAF arising from such insiders’ diversion of the Debtors’ resources and assets to SAF.

As the result of the Trustee’s and his counsel’s efforts, all of the adversary proceedings concluded in court-approved settlements that resulted in the respective defendant, *inter alia*, making payments to the Trustee for the benefit of the Debtors’ bankruptcy estates, releasing claims against the Debtors’ Estates, and/or agreeing to the disallowance of substantial proofs of claim. The following chart summarizes those proceedings:

Case Name and Number	Disposition
<i>Joel I. Sher, in his capacity as Trustee for TMST, et al. v. JPMorgan Chase Funding Inc., et al.</i> [Adv. P. 11-00340]	Settled
<i>Joel I. Sher, in his capacity as Trustee for TMST, et al. v. Barclays Capital Inc.</i> [Adv. Proc. No. 11-00329, Civil Action No. 11-01982]	Settled
<i>Joel I. Sher, in his capacity as Trustee for TMST, et al. v. RBC Capital Markets Corporation and RBC Dominion Securities Corporation</i> [Adv. Proc. No. 11-00339, Civil Action No. 11-01998]	Settled
<i>Joel I. Sher, in his capacity as Trustee for TMST, et al. v. Goldstone, et al.</i> [Adv. Pro. No. 10-00137, Civil Action No. 10-01895]	Settled
<i>Joel I. Sher, in his capacity as Trustee for TMST, et al. and Zuni Investors, LLC v. Countrywide Home Loans, Inc. and Bank of America Corporation</i> [Adv. Pro. No. 11-00337; Civil Action No. 11-03192; California District Court Case No. 12-07289]	Settled
<i>Joel I. Sher, in his capacity as Trustee for TMST, et al. v. Luxury Mortgage Corp.</i> [Adv. Pro. No. 10-00898; Civil Action No. 11-03656]	Settled



Case Name and Number	Disposition
<i>Joel I. Sher, in his capacity as Trustee for TMST, et al. v. Countrywide Home Loans, Inc. and Bank of America Corporation</i> [Adv. Pro. No. 10-00909]	Settled
<i>Joel I. Sher, in his capacity as Trustee for TMST, et al. v. Ketchum Communications, Inc.</i> [Adv. Pro. 11-00331]	Settled
<i>Joel I. Sher, in his capacity as Trustee for TMST, et al. v. Big Tree Inc. f/k/a Mortgage Cadence, Inc.</i> [Adv. Pro. 11-00330]	Settled
<i>Joel I. Sher, in his capacity as Trustee for TMST, et al. v. SS&amp;C Technologies, Inc.</i> [Adv. Pro. No. 11-00332; Civil Action No. 12-01446]	Settled
<i>Joel I. Sher, in his capacity as Trustee for TMST, et al. v. Goldman Sachs &amp; Co.</i> [Adv. Pro. 11-00338; Civil Action No. 11-02796]	Settled

### 1. The SAF Litigation.

On March 2, 2010, the Trustee filed a Complaint against Larry A. Goldstone, Clarence G. Simmons, III, SAF, Amy Pell, Deborah J. Burns, Karen A. Dempsey, Esquire, and Orrick Herrington & Sutcliffe LLP (collectively the “SAF Defendants”) in the Bankruptcy Court (the “SAF Adversary”). [Adv. Pro. No. 10-00137]. In the SAF Adversary, the Trustee asserted a variety of claims against the SAF Defendants and sought damages against SAF Defendants Goldstone, Simmons, Burns, Pell, Dempsey, and Orrick. SSG&S represented the Trustee in the SAF Litigation (defined below).

On July 22, 2010, the United States District Court for the District of Maryland granted the motions of Goldstone, Simmons, SAF, Pell, and Burns to withdraw the reference to the Bankruptcy Court, Civil Action No. 10-01895. The case then proceeded in the District Court. Thereafter, Messrs. Goldstone and Simmons filed a counterclaim against the Trustee and a third-party complaint against Garrett Thornburg and Thornburg Mortgage Advisory Corporation (“TMAC”). The Trustee filed a crossclaim against Mr. Thornburg and TMAC for damages. Mr. Thornburg and TMAC filed a counterclaim against the Trustee seeking damages against the Debtors.

On April 22, 2010, the United States Trustee filed a Complaint against Orrick (the “Orrick Adversary”, together with the SAF Adversary, the “SAF Litigation”). [Adv. Pro. No. 10-00249]. In the Orrick Adversary, the United States Trustee requested that the Bankruptcy Court deny all post-petition compensation Orrick sought from the Debtors’ Estates; require Orrick to disgorge all

post-petition compensation received; and vacate the order employing Orrick as special counsel to the Debtors. The District Court consolidated the SAF Adversary and Orrick Adversary.

The parties in the SAF Litigation each sought to dismiss the claims brought against them and after an extensive period of motions practice and series of hearings, the District Court dismissed certain counts of certain parties' complaints but allowed a substantial portion of the various claims to proceed. The parties also disputed numerous substantive and procedural issues, many of which resulted in additional motions practice and hearings before the District Court. Thereafter, the parties conducted discovery, including document production and depositions. The District Court thereafter referred the SAF Litigation to the Honorable Magistrate Judge Susan Gauvey for mediation. After a comprehensive four-day mediation, the Parties reached a global settlement of the SAF Litigation (the "SAF Settlement"). On March 5, 2012, the Bankruptcy Court entered an order approving the SAF Settlement. [ECF No. 1539]. Pursuant to the SAF Settlement, the Trustee received a payment of \$6,500,000.00 from the Defendants, and Mr. Thornburg and TMAC withdrew with prejudice approximately \$3 million in administrative claims they had asserted in the Debtors' bankruptcy cases.

## **2. The RBC Litigation.**

On April 30, 2011, the Trustee filed a Complaint for Damages against RBC Capital Markets Corporation and RBC Dominion Securities Corporation ("RBC") in the Bankruptcy Court (the "RBC Litigation"). [Adv. Proc. No. 11-00339]. SSG&S represented the Trustee in the RBC Litigation.

In the RBC Litigation, the Trustee asserted claims for breach of contract against RBC relating to certain repurchase transactions entered into between RBC and TMST. Specifically, the Trustee alleged that during August of 2007 RBC improperly liquidated TMST's collateral consisting of twenty-seven (27) MBS in respect of such repurchase transactions. On August 1, 2011, the District Court granted RBC's motion to withdraw the reference to the Bankruptcy Court, Civil Action No. 11-01998. After the District Court denied RBC's motion to dismiss the Chapter 11 Trustee's breach of contract claim, the parties conducted expansive fact and expert discovery from April 2012 until November 2014. After the conclusion of discovery, RBC filed a motion for summary judgment seeking summary judgment in its favor on all claims at issue in the RBC Litigation. The Trustee opposed RBC's request and filed a cross summary judgment on his breach of contract claim, including on damages. On August 26, 2015, the District Court issued a Memorandum Opinion and Order denying RBC's summary judgment request and granting the Trustee's cross summary judgment motion, entering judgment in favor of the Trustee and against RBC in the amount of \$26,259,118, plus prejudgment interest at the rate of nine (9) percent from August 14, 2007, through the date of judgment. On September 15, 2016, the District Court issued a Memorandum denying RBC's motion to alter or amend the judgment with respect to the measure of prejudgment interest awarded, determining the Trustee was entitled to prejudgment interest at the rate provided in the summary judgment opinion and order.

RBC appealed to the United States Court of Appeals for the Fourth Circuit the District Court's summary judgment decision in favor of the Trustee and denial of RBC's motion to alter or amend the judgment. The Trustee filed a notice of cross appeal. After the docketing of the

appeals, the parties engaged in extensive mediation with the assistance of a mediator appointed by the Fourth Circuit. After the final mediation session, the parties reached an agreed settlement of the RBC Litigation and the pending appeals. On February 27, 2017, the Bankruptcy Court entered an order approving the settlement with RBC (the “RBC Settlement”). [ECF No. 2495]. Pursuant to the RBC Settlement, RBC paid the Trustee for the benefit of TMST’s bankruptcy estate \$30,125,000.00 in full and final satisfaction of any and all claims that could have been asserted or relate to the allegations at issue in the RBC Litigation.

### **3. The Barclays Litigation.**

On April 28, 2011, the Trustee filed a Complaint for Damages against Barclays Capital Inc. (“Barclays”) in the Bankruptcy Court (the “Barclays Litigation”). [Adv. Proc. No. 11-00329]. Susman Godfrey acted as lead special litigation counsel to the Trustee in the Barclays Litigation, and SSG&S acted as co-counsel.

In the Barclays Litigation, the Trustee asserted claims against Barclays for breach of contract relating to certain repurchase transactions entered into between Barclays and TMST in August 2007, and margin calls and the liquidation of collateral in respect of such transactions. On August 1, 2011, the United States District Court for the District of Maryland (the “District Court”) granted Barclays’ motion to withdraw the reference to the Bankruptcy Court, Civil Action No. 11-01982. After the District Court denied Barclays’ motion to dismiss the Trustee’s breach of contract claim, the parties conducted full and expansive fact and expert discovery from on or about November 9, 2011 to on or about November 20, 2013. After the conclusion of discovery, Barclays filed a motion for summary judgment seeking summary judgment in its favor on all claims at issue in the Barclays Litigation; the Trustee opposed Barclays’ request and sought partial summary judgment in his favor; and the District Court conducted a hearing on the matter. On August 1, 2014, the District Court issued a Memorandum Opinion and Order denying in total the respective summary judgment motions. Following the District Court’s summary judgment denial, the Trustee and Barclays reached an agreed settlement of the Barclays Litigation. On September 22, 2014, the Bankruptcy Court entered an order approving the settlement with Barclays (the “Barclays Settlement”). [ECF No. 2048]. Pursuant to the Barclays Settlement, Barclays paid the Trustee for the benefit of TMST’s bankruptcy estate \$23,000,000.00 in full and final satisfaction of all claims that could have been asserted or relate to the allegations at issue in the Barclays Litigation.

### **4. The JPM Adversary.**

On April 30, 2011, the Trustee filed a Complaint (as amended on June 8, 2011) against the Override Defendants in the Bankruptcy Court, Adversary Proceeding Number 11-00340 (the “JPM Adversary”). As discussed above, the Override Defendants were parties to Financing Agreements with the Debtors, which were collateralized by the Debtors’ MBS. On or about March 16, 2008, the Override Defendants and certain of the Debtors entered into the Override Agreement, which overrode certain terms of the Financing Agreements during the Override Period. After the expiration of the Override Period, the Override Defendants liquidated the Debtors’ MBS collateral. The Defendants filed Proofs of Claim in the Debtors’ bankruptcy cases in the approximate aggregate amount of \$2.588 Billion for amounts claimed due under the Financing Agreements.

In the Complaint, the Trustee set forth claims for, *inter alia*, avoidance of certain monetary transfers made to the Override Defendants during the Override Period under 11 U.S.C. § 548(a)(1)(A), breach of contract, equitable subordination of the Override Defendants' Proofs of Claim, and claims to reduce or eliminate the Defendants' Proofs of Claim. The below chart briefly summarizes just a few of the motions filed in the JPM Adversary.

<b><u>Motion</u></b>	<b><u>Party Seeking Relief</u></b>	<b><u>Disposition</u></b>
Motion to Withdraw the Reference	Override Defendants	Denied
Motion to Dismiss First Amended Complaint	Override Defendants	Granted in part, denied in part
Motion for Reconsideration of Dismissal of Citi Global LTD from Count 27 of Amended Complaint	Trustee	Granted
Motion for Revision/Clarification to the extent the Bankruptcy Court's September 25, 2014 Decision and September 25, 2014 Order Implementing that Decision that Decision Did Not Dismiss Count 16 of the First Amended Complaint	Override Defendants	Denied
Renewed Motion to Withdraw the Reference	Override Defendants	Denied
Motion to Compel Production of Documents	Override Defendants	Granted in part, denied in part
Motion to Compel Production of Documents by Non-Party MatlinPatterson	Override Defendants	Granted in part, denied in part
Motion for Reconsideration of the Court's December 2, 2016 Order Granting in Part and Denying In Part Defendants' Motion to Compel the Production of Documents by the Trustee	Citi	Denied
Motion to Compel Production of Documents by Non-Party Legacy DCP, LLC (f/k/a Dynamic Credit Partners, LLC)	Override Defendants	Granted
Motion to Compel Production of Documents	Override Defendants	Granted in part, denied in part
Motion to Compel Citi Interrogatory Response for Its Basis for Withholding Interest, or in the alternative, to Preclude Citi from Presenting Evidence or Argument on Such Matters	Trustee	Granted in part, denied in part
Motion to Compel UBS Interrogatory Responses	Trustee	Granted as to Trustee's amended motion to compel

<u><b>Motion</b></u>	<u><b>Party Seeking Relief</b></u>	<u><b>Disposition</b></u>
Motion to Compel Interrogatory Responses from the Trustee	UBS	Denied in part, resolved in part by agreement
Motion for an Order to Show Cause Why the Trustee Should Not be Denied Leave to Amend the Complaint and Why His Interrogatory Responses Should Not Be Stricken	Override Defendants	Denied, but granting Trustee leave to file a second amended complaint to add allegations of Debtors' actual fraudulent intent
Motion to Dismiss Second Amended complaint	Override Defendants	Denied
Motion to Compel Production of Documents Defendants Withheld Under the Community-of-Interest or Joint Client Doctrines	Trustee	Granted as to "Common Interest Documents" and denied as to the "MSR Documents"
Letter Request re Discovery Disputes regarding Federal Rule of Civil Procedure 30(b)(6) Notices	Trustee	Granted in part, denied in part
Letter Request re Privilege Waiver	Override Defendants (excluding RBS)	Granted in part, denied in part

The parties in the JPM Adversary engaged in extensive fact discovery, including requesting and responding to interrogatories, making substantial document productions in response to document requests, obtaining third party discovery, and depositions. In October 2018 and in March 2022, the Trustee and the Override Defendants reached settlements resolving the JPM Adversary. Specifically, the Trustee initially settled with RBS and, thereafter, reached a settlement with JPM, Credit Suisse, Citi, and UBS. On October 26, 2018, the Bankruptcy Court entered an order approving the settlement with RBS (the "RBS Settlement"). [Adv. Pro. No. 11-00340; ECF. No. 524]. Pursuant to the RBS Settlement, RBS paid the Trustee for the benefit of the Debtors' Estates the sum of \$23,500,000.00 in full and final satisfaction of, *inter alia*, the claims asserted in the Complaint and RBS agreed its proofs of claim would be deemed disallowed in the Debtors' bankruptcy cases. On May 11, 2022, the Bankruptcy Court entered an order approving the settlement with JPM, Credit Suisse, Citi, and UBS (the "JPM Settlement"). [Adv. Pro. No. 11-00340; ECF. No. 701]. Pursuant to the JPM Settlement, the remaining Override Defendants paid the Trustee for the benefit of the Debtors' Estates the sum of \$38,000,000.00 in aggregate consideration in full and final satisfaction of, *inter alia*, the claims asserted in the Complaint and the remaining Override Defendants agreed that their proofs of claim would be deemed disallowed in the Debtors' bankruptcy cases. Thus, the Trustee recovered the aggregate sum of \$61.5 million for the Debtors' Estates and eliminated over \$2.6 billion in Proof of Claims.

### 5. Remaining Adversary Proceedings and Contested Matters.

The Trustee prosecuted other adversary proceedings and contested matters for the benefit of the Debtors' Estates. Such proceedings and matters are summarized below (in alphabetical order):

Caption/Case Number	Nature of Case	Summary of Result
<i>Sher v. Big Tree Inc. f/k/a Mortgage Cadence, Inc.</i> Adv. Pro. 11-00330	Complaint to avoid and recover fraudulent transfer	Settled.
<i>Sher v. Countrywide Home Loans, Inc. and Bank of America Corporation</i> Adv. Pro. No. 10-00909	Complaint for damages and other relief related to a loan TMHL purchased from Countrywide	Settled.
<i>Sher and Zuni Investors, LLC v. Countrywide Home Loans, Inc. and Bank of America Corporation</i> Adv. Pro. No. 11-00337; Civil Action No. 11-03192; California District Court Case No. 12-07289	Complaint for breach of contract of Mortgage Loan Purchase and Servicing Agreement and Master Mortgage Loan Purchase and Servicing Agreement	Settled.
<i>Sher v. Goldman Sachs &amp; Co.</i> Adv. Pro. 11-00338; Civil Action No. 11-02796	Complaint for breach of contract	Settled.
<i>Sher v. Ketchum Communications, Inc.</i> Adv. Pro. 11-00331	Complaint to avoid and recover preferential transfers and fraudulent transfers	Settled.
<i>Sher v. Luxury Mortgage Corp.</i> Adv. Pro. No. 10-00898; Civil Action No. 11-03656	Complaint for damages, indemnification, and specific performance;	Settled.



Caption/Case Number	Nature of Case	Summary of Result
	Crossclaim against Commonwealth Land Title Insurance Co.	
<i>Sher v. SS&amp;C Technologies, Inc.</i> Adv. Pro. No. 11-00332; Civil Action No.12-1446	Complaint to avoid and recover fraudulent transfers	Settled.

#### Section 4.05 RMBS Class Actions and Related Settlements.

During the Debtors' bankruptcy cases, the Trustee became aware of several class action lawsuits filed on behalf of entities who had acquired MBS pursuant to certain registration statements and prospectus supplements. These class action lawsuits concerned claims arising from information, statements, or representations contained in those offering documents. Upon notice of a settlement of the class action lawsuits, the Trustee submitted the substantive forms required to be included in the class settlement distributions. This required the Trustee and the Debtors' employees to gather a large volume of historical information and other data concerning the Debtors' investments in MBS. As a result of these efforts, the Trustee received for the benefit of the Debtors' bankruptcy Estates certain monetary payments in the following class action cases:

Case Information
<i>In re Wells Fargo Mortgage-Backed Certificates Litigation</i>
<i>Plumbers' &amp; Pipefitters' Local #562 Supplemental Plan &amp; Trust, et al., v. J.P. Morgan Acceptance Corporation I, et. al.</i> (E.D.N.Y. Case No. 08-cv-1713)
<i>In re LIBOR-Based Financial Instruments Antitrust Lit.</i> , 11-MD-2262 (NRB)
<i>Alaska Electrical Pension Fund, et al., v. Bank of America, N.A., et al.</i> , (S.D.N.Y. Lead Case No. 14-cv-7126)

#### Section 4.06. Liberty Mutual and the Surety Bonds.

TMHL, prior to the Petition Date, operated as a single-family residential mortgage lender and servicer in all fifty states and the District of Columbia. TMHL was required to hold a mortgage lender license or other similar license, to transact business in most states and, as a condition thereto, to post one or more surety bonds with the various states. The nature, penal sum, cancellation requirements and cancellation effective dates, license and surety bond termination requirements and effective dates, and persons authorized to make a claim under the surety bond vary from state to state. Prior to the Petition Date, Liberty Mutual, issued or renewed 36 surety bonds (the "Surety Bonds") listing TMHL as the Principal, the penal sums of which totaled \$3,540,000.00. After July 2008, TMHL ceased originating mortgages in any state. As of September 2011, all TMHL's



mortgage licenses had been surrendered or revoked, and all of the Surety Bonds had been cancelled and/or terminated. As of this date, the Trustee is aware of no claims that have been made on any of the Surety Bonds.

As of the Petition Date, Liberty Mutual held approximately \$3,605,000.00 in proceeds from letters of credit securing its obligations on the Surety Bonds. Each Surety Bond has a different applicable statute of limitations or period during which a claim on the bond must be made, the end of which being the “Claims Deadline.” While Liberty Mutual and the Trustee agreed on the Claims Deadline for certain of the Surety Bonds, they disagreed on others. The Trustee and Liberty Mutual entered into a settlement agreement resolving certain of their disputes and agreeing that Liberty Mutual’s contingent Proof of Claim in the Debtors’ bankruptcy cases be disallowed (the “Liberty Agreement”). On August 27, 2013, the Bankruptcy Court entered an order approving the Liberty Agreement. [ECF No. 1881]. Pursuant to the Liberty Agreement, Liberty Mutual paid the Trustee \$2,177,642.68, representing the sum of the penal sum of 15 of the Surety Bonds, less certain expenses incurred by Liberty Mutual. Liberty Mutual agreed that the Claims Deadline on 16 of the Surety Bonds would expire on agreed upon dates after execution of the Liberty Agreement. Based on that agreement, Liberty Mutual paid the Trustee an amount representing the sum of the penal sum of the sixteen (16) Surety Bonds, less certain expenses incurred by Liberty Mutual. The Liberty Agreement left unresolved the parties’ dispute over the Claims Deadline for the five (5) remaining Surety Bonds. Of those five Surety Bonds, the Claims Deadline has since expired for three (3) of those Surety Bonds under Liberty Mutual’s interpretation and based thereon, Liberty Mutual paid additional amounts to the Trustee, representing the sum of the penal sum of the three (3) Surety Bonds, less certain expenses incurred by Liberty Mutual. From 2014 to 2021, Liberty Mutual a total of \$1,065,089.64 with respect to the aforesaid nineteen (19) Surety Bonds.

To date, Liberty Mutual holds approximately \$150,000, representing the sum of the penal sum of the remaining two (2) Surety Bonds for which Liberty Mutual contends the Claims Deadline is May 2029 and September 2031, respectively. After the effective date, the Plan Administrator will work to monetize such remaining amounts, which will be added to the Cash distributed under the Plan.

As a result of the foregoing litigation matters and other matters pursued by the Trustee, the Trustee recovered significant sums for the Debtors’ Estates as detailed in the following chart:

TMST, Inc., et.al. - Receipts Summary				
	<b><u>Refunds &amp; Expense Reimbursements</u></b>			
	Retainer Balance Refund		1,700,570	
	Return of Cash Balance		278,350	
	Expense reimbursement		857,952	
	Tax Refund		410,273	
	Misc Refunds		106,934	
	Miscellaneous		15	
	<b>Refunds &amp; Expense Reimbursements</b>			<b>\$ 3,354,095</b>
	<b><u>Whole Loans &amp; Servicing</u></b>			
	Whole Loan Principal & Interest_Credit Suisse <sup>(a)</sup>		2,356,420	
	Whole Loan Principal & Interest		1,219,600	
	Servicing Income		1,732,269	
	Return of P&I Advances		4,834,977	
	Credit Risk Advisor Fees		120,618	
	Whole Loan Premium Recapture		24,937	
	Reinvestment Income		371,775	
	Prepayment Penalty		51,571	
	<b>Whole Loans &amp; Servicing</b>			<b>\$ 10,712,168</b>
	<b><u>Asset Sales</u></b>			
	Whole Loan Sale		3,029,432	
	Sale of Servicing Rights <sup>(b)</sup>	Proceeds	79,302,558	
	Sale of Servicing Rights <sup>(b)</sup>	Servicing Accounts Receivable	18,573,522	
	<b>Asset Sales</b>			<b>\$ 100,905,512</b>
	<b><u>Class Action Recoveries</u></b>			
	JPMorgan RMBS Settlement		6,676,008	
	Wells Fargo MBS Settlement		4,323,648	
	ISDA Fix Antitrust Litigation Settlement		52,074	
	US Dollar Libor Settlement		6,164	
	AT&T Mobility Settlement		453	
	<b>Class Action Recoveries</b>			<b>\$ 11,058,345</b>
	<b><u>Settlement or Resolution of Litigation</u></b>			
4/14/2011	Bank of America	Settlement and Compromise	950,000	
8/31/2011	Ketchum Communications, Inc.	Settlement and Compromise	161,500	
3/23/2012	SAF Financial, Inc., et al.,	Settlement and Compromise	6,500,000	
3/30/2012	3T Systems, Inc.	Settlement and Compromise	100,000	
5/17/2013	Zuni Investors, LLC	Countrywide Settlement	3,000,000	
8/8/2013	Luxury Mortgage Corp	Settlement and Compromise	330,000	
8/8/2013	Commonwealth Land Title Insurance Co.	Settlement and Compromise	700,000	
8/27/2013	Liberty Mutual Insurance Company	Settlement and Compromise	3,242,732	
10/30/2013	SS&C Technologies	Settlement and Compromise	40,000	
8/13/2014	Confidential Settlement	Settlement and Compromise	1,500,000	
10/20/2014	Barclays Capital Inc.	Settlement and Compromise	23,000,000	
3/7/2017	RBC Capital Markets, LLC	Settlement and Compromise	30,125,000	
11/16/2018	RBS Defendants	Settlement and Compromise	23,500,000	
12/24/2018	ADCO Trust Parties	Settlement and Compromise	812,915	
5/11/2022	JPMorgan, Citigroup, Credit Suisse, and UBS Defendants <sup>(a)</sup>	Settlement and Compromise	38,000,000	
	<b>Settlement or Resolution of Litigation</b>			<b>\$ 131,962,147</b>
	<b>Interest Earnings</b>			<b>\$ 2,168,350</b>
	<b>Total Receipts <sup>(a)</sup></b>			<b>\$ 257,804,198</b>
(a) The Defendants have agreed to pay the Trustee a total sum of \$38 million, including a contribution by Credit Suisse of \$2,356,420 Whole Loan principal & interest. This contribution is only counted once for Total Receipts.				
(b) 5% of Proceeds and 100% of Accounts Receivable were awarded to the Trustee in the MSR Litigation by Memorandum of Decision in Adv. Proc. 09-00574 [Dkt. No. 218].				

## **Section 4.07. Claim Reconciliation and Related Matters.**

### **1. Unsecured Claims**

The Trustee has attempted to estimate the amount of Allowed Unsecured Claims against the Debtors. In that regard the Trustee has reviewed the Schedules filed by the Debtors and the 1,176 Proof of Claims that have been filed to date against the Debtors. As originally filed those Proof of Claims are in the aggregate approximate amount of \$24 Billion, including the claims of the Counterparties, intercompany claims (which are eliminated under the Plan), claims of common stockholders and numerous duplicate claims of the Noteholders.

To ensure that only valid claims are allowed under the Plan, the Trustee has filed a series of objections to claims that he has determined are not valid. In that regard, as of June 8, 2022, the Bankruptcy Court has entered the following order in response to objections to proofs of claim filed by the Trustee:

- Stipulation and Consent Order Sustaining Chapter 11 Trustee's Objection to Century Bank's Proof of Claim [ECF No. 3202], disallowing Epiq Claim Nos. 288 and 289 (TMST) and 287 (TMHL) in full.

As of June 8, 2022, the Trustee has also filed the following objections to claims that have not yet been resolved by the Bankruptcy Court:

- Objection to Proof of Claim Filed by Department of the Treasury – Internal Revenue Service Against Thornburg Mortgage Hedging Strategies, Inc. [ECF No. 3198, April 20, 2022]
- First Omnibus Objection to Proofs of Claim (Equity Interest Claims) [ECF No. 3211, May 17, 2022]
- Second Omnibus Objection to Proofs of Claim (Duplicate Bond Claims) [ECF No. 3214, May 18, 2022]
- Objection to Proof of Claim Filed by NM Taxation & Revenue Department Against Thornburg Mortgage Hedging Strategies, Inc. [ECF No. 3219, May 24, 2022]
- Third Omnibus Objection To Proofs Of Claim (Scheduled Satisfied Claims) [ECF No. 3223, May 27, 2022]

The Trustee's analysis of the proofs of claim filed against the Debtors is ongoing and the Trustees expects to file additional omnibus and specific objections.

There can be no certainty that the filed, or to be filed objections will be sustained. Therefore, the Trustee cannot predict with certainty the final amount of Allowed Unsecured Claims against each Debtor. However, in order to better estimate the amount of Unsecured Claims which will ultimately be allowed, the Trustee has, among other things: (a) eliminated duplicate and superseded proofs of claim; (b) adjusted or eliminated proofs of claim that have been disallowed, withdrawn, or subject to a court-approved settlement or stipulation; (c) eliminated any proofs of claim and scheduled amounts that have been satisfied subsequent to the Petition Date; and (d) discounted to \$0 the amounts of any proofs of claim which are subject to a filed, or to be filed objection. After accounting for the foregoing, the Trustee current estimate of Allowed

Unsecured Claims, as presently filed, total approximately \$7.4 million, of which \$4.7 million will be against TMHL and \$2.7 million will be against TMST. These Claims include, without limitation, (a) accrued and unpaid trade and other unsecured debt incurred in the ordinary course of the Debtors' business; (b) Claims by vendors under contracts; and (c) litigation and litigation-related Claims. The total amount of Allowed General Unsecured Claims may be materially more or less than the estimate set forth herein. As provided in the Plan, the Plan Administrator will continue the claims reconciliation process following the Effective Date. Pursuant to the Plan, a Disputed Claim Reserve will be established and administered by the Plan Administrator for the payment of Disputed Claims that become Allowed Claims after the Effective Date.

## **2. The Noteholder Claims.**

Prior to the Petition Date, the Debtors issued three (3) separate indentures that governed notes issues in conjunction with each. The indentures are the Senior Indenture, the Senior Subordinated Indenture, and the Junior Indenture. The claims of holders of the notes issued in conjunction with these indentures are referred to in the Plan as the Senior Noteholder Claims, the Senior Subordinated Noteholder Claims, and the Junior Noteholder Claims. The holders of these notes through their respective indentures will have allowed claims under the Plan as follows:

- Senior Noteholder Claims: \$304,742,654.67<sup>4</sup>
- Senior Subordinated Noteholder Claims: \$1,335,365,965.42
- Junior Noteholder Claims: \$244,529,398.62.

By virtue of subordination provisions contained in the indentures the Senior Noteholder Claims are first in priority of payment, the Senior Subordinated Noteholder Claims are next in priority and the Junior Noteholder Claims are in last priority of payment.

The Indenture Trustees for the Senior Indenture, the Senior Subordinated Indenture, and the Junior Indenture also incurred, and continue to incur, fees and expenses that are reimbursable under the documents governing the Noteholder Claims and section 503(b)(5) of the Bankruptcy Code. As provided in the Plan, the Indenture Trustee Fees shall be Allowed Administrative Claims; provided however, no later than ten (10) days before the Confirmation Hearing, each Indenture Trustee shall submit a statement to the Trustee and the Committee detailing the amount of Indenture Trustee Fees each is seeking to be paid under the Plan. Assuming the Effective Date occurs on or about October 30, 2022, the Indenture Trustees presently estimate their fees and expenses will total approximately: \$160,000 (Senior Indenture Trustee); \$200,000 (Senior Subordinate Indenture Trustee); and \$170,000 (Junior Indenture Trustee). The Indenture Trustees

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<sup>4</sup> The holders of the Senior Notes received certain distributions under the Adfitech plan of reorganization, consisting of their pro rata share of (i) cash in the amount of \$2,250,000 (\$7.65728 per \$1,000 of Senior Notes); (ii) \$23,000,000 in new notes issued under a secured first lien indenture (the "New Notes") (\$78.27 in New Notes per \$1,000 of Senior Notes); and (iii) 5,876,760 shares of common stock in the reorganized Adfitech (the "New Common Stock") (20 shares of New Common Stock per \$1,000 of Senior Notes). As a result of this post-petition distribution, the holders of the Senior Notes were deemed to have received consideration in the aggregate amount of \$38,630,416.

may supplement their fee statements for any fees incurred between the date on which the statement is submitted and the Effective Date.

### **3. Trustee Commission.**

Prior to the Confirmation Date, the Trustee will file with the Bankruptcy Court an application for his statutorily allowed trustee commission pursuant to section 326(a) of the Bankruptcy Code. Section 326(a) of the Bankruptcy Code provides for reasonable compensation under section 330 of this title for a trustee's services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtors, but including holders of secured claims. While the commission is to be based upon all moneys disbursed or turned over in a case, the Trustee agreed in conjunction with the order modifying SSG&S' retention [ECF No. 2191] that any moneys arising from the JPM Adversary will not be considered in calculating the Trustee's commission. Net of the \$61.5 million of JPM Adversary settlement proceeds, the Trustee estimates that he will have disbursed or turned over funds from the date of his appointment through the Effective Date in the approximate amount of \$220 million. Based on those amounts the commission awardable to the Trustee under section 326(a) of the Bankruptcy Code is approximately \$6.6 million. The Trustee will submit an application to the Bankruptcy Court seeking an award of these commissions.

## **ARTICLE V**

### **SUMMARY OF THE PLAN**

#### **Section 5.01. Overview.**

**THE FOLLOWING IS A SUMMARY OF SOME OF THE SIGNIFICANT ELEMENTS OF THE PLAN AND THE PLAN'S GENERAL STRUCTURE. THE DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED INFORMATION SET FORTH IN THE PLAN AND THE EXHIBITS AND SCHEDULES THERETO.**

The Plan is a liquidating Plan and provides for the distribution of the Debtors' assets, which have been liquidated, or will be liquidated in the future, to Holders of Allowed Claims in accordance with the terms of the Plan. As of the date of the Disclosure Statement, the assets of the Debtors' Estates are largely liquidated and consist primarily of Cash held by the Trustee and available for distribution, subject to the Reserves identified in the Plan. There remain a few assets that will be monetized in the future and added to the Cash available for Distribution. An example is that TMST continues to receive monthly advisor fees from the MBS securitizations its sponsored. During the Chapter 11 Cases, TMST has received approximately \$120,000.00 in such fees.

The Plan is a joint Plan for the Debtors' jointly administered Estates. The Plan does not provide for the consolidation of the Debtors' Estates for purposes of implementing the Plan or making Distributions thereunder.

The Plan provides for the appointment of a Plan Administrator to implement the Plan. The Plan Administrator shall be empowered to, among other things, administer and liquidate all remaining assets and object to and settle Claims, in accordance with the Plan. The Plan also provides for the Plan Administrator to make Distributions to Holders of Allowed Claims, including Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, Priority Non-Tax Claims, and Indenture Trustee Fee Claims. In addition, the Plan cancels all Equity Interests in the TMST, and provides for the dissolution and wind-up of the remaining affairs of the Debtors. However, and to avoid negative tax consequences and enable the Debtors to maintain the ability to file their respective tax returns as part of a consolidated tax group, TMST and TMHL retains their respective interests in each of TMHL, TMHS and TMAS, and if necessary the Plan Administrator shall cause TMST to transfer the sum of \$500,000.00 to each of TMHL and TMHS, and TMHL to transfer the sum of \$500,000.00 to TMAS, as necessary, to retain their interests therein.

The Plan contemplates a distribution on the Initial Distribution Date of an amount equal to all Cash on hand less the amount of the Effective Date Reserves, which is made up of the Disputed Claim Reserve, Professional Fee Claim Reserve, and Wind Down Reserve. The Initial Distribution Date means the Business Day determined by the Plan Administrator in his sole discretion, but not later than sixty (60) days after the Effective Date. Assuming a speedy confirmation process for the Plan, the Trustee presently expects that date and the initial distribution to creditors will occur no later than December 15, 2022.

As detailed in the most recently filed Monthly Operating Report for the Period Ending April 30, 2022 [ECF No. 3228], the Debtor's Cash Balance Summary as of the end of that period was \$65,983,239. The Trustee estimates that after receipt of the JPM Adversary settlement proceeds and payment of the contingency fees associated therewith, the Debtors will have approximately \$91 million of Cash on hand. The cash is held in a series of bank and investment accounts and not allocated specifically between Debtors. However, based on allocating all post-petition receipts to the Debtors that was the most likely recipient of those funds, an allocation of those funds among Debtors could theoretically be estimated as follows: (i) TMST: \$49.4 million, (ii) TMHL: \$41.2 million, (iii) TMAS: \$0.00, and (iv) TMHS: \$400,000.

The Wind Down Reserve is the estimated amount of Cash sufficient to fund the wind down costs and expenses of the Debtors, including for the payment of the preparation and filing of tax returns, employees of the Debtors needed in the wind down, fees and expenses of the Plan Administrator and his professionals and other operational costs of the wind down of the Debtors. The Trustee and his financial advisors continue to examine the projects amount needed for this reserve. As of the date of the filing of this Disclosure Statement, the Trustee estimates that the sum of \$2 million will be needed to fund the Wind Down Reserve. That amount may vary as the Trustee refines his budget analysis.

The Disputed Claim Reserve is the reserve established and administered by the Plan Administrator for the payment of Disputed Claims that become Allowed Claims after the Effective



Date. As noted above there were significant proofs of claims filed that the Trustee has objected to and will be objecting to. Due to the large amount of those claims versus what the Trustee contends should be allowed, and the pendency of the objections filed to date, the Trustee cannot determine as of the filing of the Disclosure Statement the amount of the claims that will be Disputed Claim. As a result, the Trustee cannot estimate the amount of the Disputed Claim Reserve. Once the objections are resolved Trustee will attempt to make that estimate and expects to provide further detail in any Plan Supplement that will be filed prior to the Confirmation Hearing.

The Professional Fee Claim Reserve is the amount of cash needed for the payment of any Professional Fee Claim that become Allowed Claims after the Effective Date. The Trustee's and the Creditor Committee's professionals are being paid on an ongoing interim basis pursuant to the Administrative Order Pursuant To 11 U.S.C. §§ 105, 328 And 331 Establishing Procedures For Interim Compensation And Reimbursement Of Professionals [ECF No. 85]. While at the present time the Trustee does not anticipate that significant sums will become allowed after the Effective Date for the payment of those Professionals, the amount of that reserve cannot be determined with certainty.

The Plan classifies Claims and Interests separately in accordance with the Bankruptcy Code and provides different treatment for different Classes of Claims and Interests. Claims and Interests shall be included in a particular Class only to the extent such Claims or Interests qualify for inclusion within such Class. The Plan separates the various Claims (other than those that do not need to be classified) into separate Classes. These Classes take into account the differing nature and priority of Claims against, and Interests in, the Debtors.

The Confirmation Date will be the date that the Confirmation Order is entered by the Clerk of the Bankruptcy Court. The Effective Date will be the first Business Day on or after the Confirmation Date and on which all of the conditions to the Effective Date specified the Plan have been satisfied or waived and the parties have consummated the transactions contemplated by the Plan.

The Trustee anticipates that the Effective Date will occur on or about to October 30, 2022. Resolution of any challenges to the Plan may take time and, therefore, the actual Effective Date cannot be predicted with certainty.

Other than as specifically provided in the Plan, the treatment under the Plan of each Claim will be in full satisfaction, settlement, release and discharge of all Claims. The Plan Administrator will make all payments and other distributions to be made under the Plan unless otherwise specified. All Claims and Interests, except Administrative Expense Claims, Fee Claims, United States Trustee Fees, and Priority Tax Claims, are placed in the Classes set forth in the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Fee Claims, U.S. Trustee Fees and Priority Tax Claims have not been classified, and the holders thereof are not entitled to vote on 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.



The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, their Estates, Holders of Claims and other parties in interest, and are fair, equitable and reasonable.

## **Section 5.02. Provisions for Treatment of Unclassified Claims.**

### **1. Administrative Claims.**

Except to the extent that a Holder of an Allowed Administrative Claim agrees to less favorable treatment, or as otherwise provided for in the Plan, the Plan Administrator shall pay to each Holder of an Allowed Administrative Claim, Cash in an amount equal to the amount of such Allowed Administrative Claim on, or as soon thereafter as is reasonably practicable, the later of (i) the Effective Date, and (ii) the first Business Day after the date that is thirty (30) calendar days after the date an Administrative Claim becomes an Allowed Administrative Claim, or as soon thereafter as is reasonably practicable; *provided, however*, that Allowed Ordinary Course Administrative Claims may be paid by the Plan Administrator in the ordinary course of business consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions. Notwithstanding anything to the contrary herein, the Indenture Trustee Fees shall be Allowed Administrative Claims under the Plan and paid as provided in the Plan; provided however, no later than ten (10) days before the Confirmation Hearing, each Indenture Trustee shall submit a statement to the Trustee and the Creditors Committee detailing the amount of Indenture Trustee Fees each is seeking to be paid under the Plan, provided however, that the Indenture Trustees may supplement such fee statements for any fees incurred between the date on which the statement is submitted and the Effective Date.

The Confirmation Order or separate bankruptcy court order will establish the Administrative Claims Bar Date for filing applications for the allowance of Administrative Claims (except for Fee Claims, claims pursuant to section 503(b)(9) of the Bankruptcy Code, Ordinary Course Administrative Claims, and any fees or charges assessed against the Estates under section 1930 of title 28 of the United States Code and any applicable interest thereon). A notice setting forth the Administrative Claim Bar Date shall be filed on the Bankruptcy Court's docket. Any requests for payment of an Administrative Claim that are not properly filed and served by the Administrative Claim Bar Date shall be disallowed automatically without the need for any objection from the Trustee or any action by the Bankruptcy Court. The Plan Administrator shall have until 120 days after the Administrative Claims Bar Date (or such longer period as may be allowed by order of the Bankruptcy Court) to review and object to all applications for the allowance of Administrative Claims. Unless the Trustee of the Plan Administrator, as applicable, objects to a timely-filed and properly served Administrative Claim, such Administrative Claim shall be deemed Allowed in the amount requested.

### **2. Fee Claims.**

Any entity seeking an award by the Bankruptcy Court of compensation or reimbursement of Fee Claims pursuant to sections 327, 328, 330, 331, 503 or 1103 of the

Bankruptcy Code for services rendered prior to the Effective Date, shall file and serve on the Trustee of the Plan Administrator, as applicable, and their counsel, the United States Trustee, counsel to the Creditors' Committee, and such other entities who are designated by the Bankruptcy Rules, the Confirmation Order or any other order(s) of the Court, its final application for allowance of such compensation and/or reimbursement by no later than sixty (60) days after the Effective Date or such other date as may be fixed by the Bankruptcy Court. Holders of Fee Claims that are required to file and serve applications for final allowance of their Fee Claims and that do not file and serve such applications by the required deadline shall be forever barred from asserting such Fee Claims against the Debtors, or their respective Property, and such Fee Claims shall be deemed discharged as of the Effective Date. Objections to any Fee Claims must be filed and served on the Trustee or the Plan Administrator, as applicable, and their counsel and the requesting party no later than thirty (30) days (or such longer period as may be allowed by order of the Bankruptcy Court) after the date on which an application for final allowance of such Fee Claims was filed and served.

As noted above, the Trustee's and the Creditor Committee's professionals are being paid on an ongoing interim basis. The Trustee expects the majority of 20% portion of those fees held back under the Interim Compensation Order will be paid as Administrative Claims on or before the Effective Date. As also noted above the Trustee will be seeking an award of this statutorily authorized commission. Lastly, Susman Godfrey is eligible to seek a further fee award to the extent the reduction of claims achieved in the JPM Adversary results in an incremental distribution to creditors of allowed claims. Based on the approximate \$2.6 billion of claims waived by the Override Defendants pursuant to the terms of the JPM Settlement, the Trustee estimates that Susman Godfrey is eligible to obtain a further fee award of approximately \$2.3 million. Other creditors have filed administrative claims in the approximate amount of \$34,000.00, which the Trustee is currently reviewing.

The Plan Administrator may, without application to or approval by the Bankruptcy Court, retain professionals and pay reasonable professional fees and expenses in connection with services rendered to the Plan Administrator after the Effective Date.

### **3. United States Trustee Fee Claims.**

On the Effective Date or as soon as practicable thereafter, the Plan Administrator shall pay all United States Trustee Fee Claims.

### **4. Priority Tax Claims.**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a different treatment, or the Bankruptcy Court has previously ordered otherwise, each Holder of an Allowed Priority Tax Claim shall receive, in full and complete satisfaction, settlement, and release of, and in exchange for such Allowed Priority Tax Claim, on, or as soon thereafter as is reasonably practicable, the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date a Priority Tax Claim becomes an Allowed Claim, Cash in an amount equal to such Allowed Priority Tax Claim. All Allowed Priority Tax Claims which are not due and payable on or before the Effective Date shall be paid in the ordinary course of business. The Plan Administrator shall retain the right to pay any Allowed Priority Tax Claim, or any remaining balance of such claim, in full at any time without premium or penalty. Subject to the

resolutions of the Objections to Proof of Claim Filed by Department of the Treasury – Internal Revenue Service [ECF No. 3198, April 20, 2022] and to the Proof of Claim Filed by NM Taxation & Revenue Department Against Thornburg Mortgage Hedging Strategies, Inc. [ECF No. 3219, May 24, 2022], the Trustee anticipate that there will be approximately \$20,000 in Allowed Priority Tax Claim.

## **5. Ordinary Course Liabilities.**

Except as provided herein, Holders of Administrative Claims based on liabilities incurred in the ordinary course of the Debtors' business (other than Claims of governmental units for taxes or Claims and/or penalties related to such taxes) shall not be required to file any request for payment of such Claims. Such Administrative Claims shall be assumed and paid by the Plan Administrator, pursuant to the terms and conditions of the particular transactions giving rise to such Ordinary Course Administrative Claims, without any further action by the Holders of such Claims. Any dispute with respect to ordinary course liabilities shall be submitted to the Bankruptcy Court for resolution unless resolved by agreement of the parties.

### **Section 5.03. Provisions for Treatment of Classified Claims.**

#### **1. Class 1 – Priority Non-Tax Claims.**

A. Treatment. The legal, equitable and contractual rights of the holders of Priority Non-Tax Claims (Class 1 Claims) are unaltered by the Plan. Except to the extent a Holder of a Priority Non-Tax Claim agrees to different treatment, each Holder of an Allowed Priority Non-Tax Claim will be paid, in full and complete satisfaction, settlement, and release of and in exchange for such Allowed Priority Non-Tax Claim, the Allowed Amount of such Allowed Priority Non-Tax Claim in full in Cash on later of the Effective Date and the first Distribution Date subsequent to the date such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim. At present a total of \$16,000 in Priority Non-Tax Claims have been filed. The Trustee believes that the claimants asserting these Priority Non-Tax Claims are not entitled to priority status. The Trustee will object to these claims and assumes that the claims will be denied priority status.

B. Voting. In accordance with section 1126(f) of the Bankruptcy Code, the holders of Allowed Priority Non-Tax Claims are conclusively presumed to accept the Plan and the votes of such holders will not be solicited with respect to such Allowed Priority Non-Tax Claims.

#### **2. Class 2a – Senior Noteholder Claims Against TMST, TMHL, TMHS and TMAS.**

A. Allowance. The Senior Noteholder Claims shall be Allowed in the aggregate amount of \$304,742,654.67.

B. Treatment. On each Distribution Date, the holders of Allowed Senior Noteholder Claims shall receive their Pro Rata Share of Distributions as provided in section 3.02.c. of the Plan.

C. Voting. The Class 2a Claims are entitled to vote to accept or reject the Plan.

**3. Class 2b – Senior Subordinated Noteholder Claims against TMST, TMHL, TMHS and TMAS.**

A. Allowance. The Allowed Senior Subordinated Noteholder Claims, (as evidenced by the Allowed Senior Subordinated Noteholder Proof of Claim), shall be Allowed in the aggregate amount of \$1,335,365,965.42.

B. Treatment. On each Distribution Date, the holders of Allowed Senior Subordinated Noteholder Claims shall receive their Pro Rata Share, if any, of Distributions as provided in section 3.02.c. of the Plan

C. Voting. The Class 2b Claims are entitled to vote to accept or reject the Plan.

**4. Class 2c – Junior Noteholder Claims against TMST and TMHL.**

A. Allowance. The Junior Noteholder Claims shall be Allowed in the aggregate amount of \$244,529,398.62.

B. Treatment. On each Distribution Date, the holders of Allowed Junior Noteholder Claims shall receive their Pro Rata Share, if any, of Distributions as provided in section 3.02.c. of the Plan.

C. Voting. The Class 2c Claims are entitled to vote to accept or reject the Plan.

**5. Class 3a – Unsecured Claims Against TMST.**

A. Treatment. The Holders of Allowed Class 3a Claims shall receive their Pro Rata share of Distributions as provided in section 3.02c. of this Plan.

B. Voting. The Class 3a Claims are entitled to vote to accept or reject the Plan.

**6. Class 3b – Unsecured Claims Against TMHL.**

A. Treatment. The Holders of Allowed Class 3b Claims shall receive their Pro Rata share of Distribution as provided in section 3.02.c. of this Plan.

B. Voting. The Class 3b Claims are entitled to vote to accept or reject the Plan.

**7. Class 3c – Unsecured Claims Against TMAS.**

A. Treatment. The Holders of Allowed Class 3c Claims shall receive their Pro Rata share of Distribution as provided in section 3.02.c. of this Plan.

B. Voting. The Class 3c Claims are entitled to vote to accept or reject the Plan.

**8. Class 3d – Unsecured Claims Against TMHS.**

A. Treatment. The Holders of Allowed Class 3d Claims shall receive their Pro Rata share of Distribution as provided in section 3.02.c. of this Plan.

B. Voting. The Class 3d Claims are entitled to vote to accept or reject the Plan.

**9. Class 4a – Interests in TMST.**

A. Treatment. The Holders of Class 4a Interests will not receive or retain any distribution or other property under the Plan. Class 4a Interests will be deemed cancelled on the Effective Date.

B. Voting. In accordance with section 1126(f) of the Bankruptcy Code, the holders of Class 4a Interests are conclusively presumed to reject the Plan and the votes of such holders will not be solicited.

**10. Class 4b – Interests in TMHL.**

A. Treatment. TMHL shall remain as a wholly owned subsidiary of TMST for all purposes, and TMST shall retain its interests therein.

**11. Class 4c – Interests in TMAS.**

A. Treatment. TMAS shall remain as a wholly owned subsidiary of TMHL for all purposes, and TMHL shall retain its interests therein.

**12. Class 4d – Interests in TMHS.**

A. Treatment. TMHS shall remain as a wholly owned subsidiary of TMST for all purposes, and TMST shall retain its interests therein.

**Section 5.04. Distributions.**

1. On the Initial Distribution Date, the Plan Administrator shall distribute an amount equal to all Cash on hand less the amount of the Effective Date Reserves as follows:

A. On a *Pari Passu* basis to the holders of Class 2.A. Senior Noteholder Claims and the holders of Allowed Class 3a, 3b, 3c and 3d Unsecured Claims, if any, as determined on a Debtor-by Debtor basis.

2. On each subsequent Distribution Date, the Plan Administrator shall distribute an amount equal to all Cash on hand less the amounts remaining in the Effective Date Reserves as follows:

A. On a *Pari Passu* basis to the holders of Class 2a Senior Noteholder Claims and the remaining holders of Allowed Class 3a, 3b, 3c and 3d Unsecured Claims, if any, as determined on a Debtor-by Debtor basis.

3. The holders of Allowed Class 2b Senior Subordinated Noteholder Claims shall not receive any distribution, unless and until the holders of Allowed Class 2a Senior Noteholder Claims have been satisfied in full.

4. The holders of Allowed Class 2c Junior Noteholder Claims shall not receive any distribution, unless and until the holders of Allowed Class 2a Senior Noteholder Claims and Allowed Class 2b Senior Subordinated Noteholder Claims have been satisfied in full.

## **Section 5.05. Acceptance or Rejection of the Plan.**

### **1. Each Impaired Class Entitled to Vote Separately.**

Each Impaired Class of Claims that is to receive a Distribution under the Plan will be entitled to vote separately to accept or reject the Plan. Except as provided herein, each Person that, as of the Voting Record Date, holds a Claim in an Impaired Class will receive a Ballot that will be used to cast its vote to accept or reject the Plan. In the event of a controversy as to whether any Class of Claims or Interests is Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy.

### **2. Acceptance by a Class of Claims.**

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

### **3. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code or “Cram down.”**

With respect to the Impaired Classes of Claims and Equity Interests that reject or that are deemed to have rejected the Plan, the Trustee will request that the Bankruptcy Court confirm the Plan in accordance with Section 1129(b) of the Bankruptcy Code with respect to such non-accepting Classes, in which case the Plan shall constitute a motion for such relief. The Trustee reserves the right to alter, amend, modify, revoke or withdraw the Plan or any Plan Document in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

### **4. Retention of Interests in Subsidiaries.**

To the extent required to satisfy the requirements of section 1129(b) of the Bankruptcy Code and to maintain the Debtors ability to file their respective tax returns as part of a consolidated tax group, on the Effective Date, the Plan Administrator shall cause TMST to transfer the sum of \$500,000 to each of TMHL and TMHS, and TMHL to transfer the sum of \$500,000 to TMAS, as necessary, so that TMST and TMHL retains their respective interests in each of TMHL, TMHS and TMAS.

**5. Voting Classes.**

If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be deemed accepted by the Holders of such Claims or Interests in such Class.

**6. Confirmation of All Cases.**

Confirmation of the Plan shall be determined on a Debtor-by-Debtor basis, and the Bankruptcy Court may enter a Confirmation Order for all or less than all the Debtors, as applicable.

**Section 5.06. Means of Implementation**

**1. Appointment of the Plan Administrator.**

The Confirmation Order shall provide that on the Effective Date the Trustee shall be appointed as the Plan Administrator. The Plan Administrator shall be deemed the Estate's representative in accordance with section 1123 of the Bankruptcy Code and shall have all powers, authority, and responsibilities specified in the Plan, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code.

**2. Powers and Duties of the Plan Administrator.**

The Plan Administrator will act for the Debtors in a fiduciary capacity as applicable to a board of directors or trustees, subject to the provisions of the Plan. The powers and duties of the Plan Administrator shall include, without limitation:

- (a) investing Cash, and withdrawing and making Distributions of Cash to holders of Allowed Claims and paying taxes and other obligations owed by the Debtors or incurred in connection with winding down the Estate;
- (b) engaging attorneys, consultants, agents, employees, and any other professional persons to assist the Plan Administrator with respect to his responsibilities;
- (c) executing and delivering all documents and taking all actions necessary to consummate the Plan and wind up the Debtors' businesses;
- (d) coordinating the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any retained assets;
- (e) coordinating the collection of outstanding accounts receivable;
- (f) coordinating the storage and maintenance of the Debtors' books and records;
- (g) coordinating the destruction of records and data in connection with the winding down of the Debtors' Estates;



- (h) overseeing compliance with the Debtors' accounting, finance, regulatory and reporting obligations;
- (i) preparing financial statements and United States Trustee post-confirmation quarterly reports, until such time as a final decree has been entered;
- (j) overseeing the filing of final tax returns, refund requests, audits, and other corporate dissolution documents, as required;
- (k) performing any additional corporate actions as necessary to carry out the wind up and liquidation of the Debtors;
- (l) paying the fees and expenses of the attorneys, consultants, agents, employees, and other professional persons engaged by Plan Administrator and to pay all other expenses for winding down the affairs of the Debtors, subject to the terms of the Plan;
- (m) disposing of, and delivering title to others of, or otherwise realizing the value of, any remaining assets of the Debtors;
- (n) objecting to, compromising, and settling Claims;
- (o) acting on behalf of the Debtors in all adversary proceedings and contested matters (including, without limitation, any Causes of Action), then pending or that can be commenced in the Bankruptcy Court and in all actions and proceedings pending or commenced elsewhere, and to settle, retain, enforce, dispute, or adjust any claim and otherwise pursue actions involving the Debtors' assets that could arise or be asserted at any time under the Bankruptcy Code, unless otherwise waived or relinquished in the Plan;
- (p) implementing and/or enforcing all provisions of the Plan; and
- (q) such other powers as may be vested in or assumed by the Plan Administrator pursuant to the Plan or other Order of the Bankruptcy Court, or as may be needed or appropriate to carry out the provisions of the Plan.

Additionally, during the pendency of the Chapter 11 Cases, the Trustee expended significant resources preserving certain of the Debtors' hardware, documents, electronically stored information, and records to, among other things, have the aforesaid available for litigation pursued on behalf of the Debtors' Estates or for compliance with litigation hold obligations. With the wind down of the Debtors' Chapter 11 Cases and conclusion of all pending litigation, there is no longer a need to expend resources to maintain all or most of the Debtors' hardware, documents, electronically stored information, and other records. The Trustee has already begun to take action to dispose of the Debtors' hardware and the Trustee or Plan Administrator, as applicable, will continue to proceed to dispose of documents, electronically stored information, and other records in an appropriate manner.

### **3. Resignation or Removal of Plan Administrator.**

If the Plan Administrator resigns or is removed, dies, dissolves, or is incapacitated, the Bankruptcy Court shall designate another Person to become the Plan Administrator and thereupon the successor Plan Administrator, without further act, shall become fully vested with all the rights, powers, duties, and obligations of his or her predecessor, including the compensation of the predecessor Plan Administrator. No successor Plan Administrator hereunder shall in any event have any liability or responsibility for the acts or omissions of any of his or her predecessors.

### **4. Corporate Action.**

The Plan will be administered by the Plan Administrator and all actions taken under the Plan in the name of the Debtors shall be taken through the Plan Administrator. Upon the distribution of all Assets pursuant to the Plan and the filing by the Plan Administrator of a certification to that effect with the Bankruptcy Court (which may be included in the application for the entry of the final decree), the Debtors shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith, provided, however, that the Debtors may, but will not be required to, take appropriate action to dissolve under applicable law.

### **5. Effective Date Funding.**

On the Effective Date, all Cash, and other Assets shall be turned over by the Trustee to the Plan Administrator, who shall use such Cash and Assets to fund all payments required under the Plan.

### **6. Effective Date Reserves.**

Prior to the Effective Date, the Trustee shall determine the amount of the Effective Date Reserves. On the Effective Date the Plan Administrator shall fund the Effective Date Reserves. Thereafter, from time to time, the Plan Administrator may increase or decrease the amount of the Effective Date Reserves, as applicable, to ensure that such reserves contain sufficient amounts to fund the Disputed Claim Reserve, Professional Fee Claim Reserve, and Wind Down Reserve.

### **7. Withholding Taxes.**

The Plan Administrator shall not be required to withhold taxes or comply with any applicable reporting requirements. The recipients of Distributions will be required to comply with all applicable laws and regulations concerning the reporting and taxing of the Distributions. If requested by the recipient of a Distribution, the Plan Administrator may, in his sole discretion, issue an IRS Form 1099.

### **8. Intercompany Claims.**

No Distributions shall be made under the Plan on account of intercompany Claims among the Debtors and all such Claims shall be eliminated as of the Effective Date.

## **9. Class 2 Distributions.**

On the Effective Date, or as soon as reasonably practicable thereafter, the Plan Administrator shall issue a letter to the Depository Trust Company (“DTC”) requesting DTC to (a) chill each of the respective existing CUSIPs for the Noteholder Claims and (b) exchange positions in each of the respective existing CUSIPs for non-transferable escrow CUSIPs which will represent the right to receive cash from the Plan Administrator pursuant to this Plan. All Distributions, if any, on account of Allowed Class 2.A, 2.B or 2.C Claims shall be paid to the respective Senior Noteholder Indenture Trustee, Senior Subordinated Noteholder Indenture Trustee, or the Junior Subordinated Noteholder Indenture Trustee, as applicable, who shall be responsible for the distribution of such amounts to the holders of Allowed Class 2.A, 2.B or 2.C and, subject to the provisions of this section of the Plan, such funds shall be distributed Pro Rata based upon the books and records of the respective Senior Noteholders Indenture Trustee, Senior Subordinated Noteholder Indenture Trustee, or the Junior Subordinated Noteholder Indenture Trustee, as applicable, pursuant to Bankruptcy Rule 3021. In the event the Plan Administrator determines in the future to distribute property other than Cash to Holders of Allowed Class 2a, 2b, or 2c Claims, the Plan Administrator shall establish procedures consistent with ordinary DTC practice for distributing such property.

With respect to distributions under the Plan, the Plan Administrator and the Senior Noteholder Indenture Trustee, Senior Subordinated Noteholder Indenture Trustee, and the Junior Subordinated Noteholder Indenture Trustee shall be entitled to recognize and deal for all purposes hereunder with only those holders of the non-transferable escrow CUSIPs at the time of such distributions. Prior to making any distribution to holders of Allowed Class 2.A, 2.B or 2.C Claims, the Senior Noteholder Indenture Trustee, Senior Subordinated Noteholder Indenture Trustee, and the Junior Subordinated Noteholder Indenture Trustee, as applicable, may, if applicable, satisfy or reserve for its actual and reasonably expected compensation and expense reimbursement claims from the funds and other property distributed under the Plan.

## **10. Late Claims.**

Except as provided in the Plan or otherwise agreed, any and all Holders of proofs of claim filed after the applicable Bar Date, including for the avoidance of doubt, the originally applicable Bar Date with respect to any transferred Claim, including any Claim acquired by right of subrogation, shall not be treated as Creditors for purposes of Distribution pursuant to Bankruptcy Rule 3003(c)(2) and the Bar Date and shall be deemed disallowed without further order of the Bankruptcy Court unless, on or before the Confirmation Date, such late Claim has been deemed timely allowed by a Final Order. Even if such late Claim has been deemed timely filed by a Final Order, it still may be objected to as set forth in this Plan or the Bankruptcy Code.

## **11. Obligations Incurred After the Effective Date.**

Payment obligations incurred after the Effective Date, including, without limitation, the professional fees of the Debtors or the Plan Administrator, will not be subject to application or Proof of Claim and may be paid by the Plan Administrator in the ordinary course of business and without further Bankruptcy Court approval.

## **12. Post-Confirmation Reports and United States Trustee Fees.**

The Plan Administrator shall be responsible for the preparation and filing of operating reports until entry of a final decree in this case. Quarterly fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930 and any applicable interest thereon shall be paid by the Debtors until the entry of an order converting, dismissing or granting a final decree in these cases.

### **Section 5.07. Preservation and Prosecution of Causes of Action Held by the Debtors**

In accordance with section 1123(b) of the Bankruptcy Code, all claims and causes of action of the Debtors are retained and preserved. The Plan Administrator shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Claims, Causes of Action, rights of setoff, or any legal or equitable defenses that the Plan Administrator may choose to assert on behalf of their respective estates under any provision of the Bankruptcy Code or any applicable non-bankruptcy law. The Plan Administrator's right to commence, prosecute, settle, or abandon Claims, Causes of Action, rights of setoff, or any legal or equitable defenses shall be preserved, notwithstanding the occurrence of the Effective Date. No entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Claim, Cause of Action, rights of setoff, or any legal or equitable defenses against them as any indication that the Plan Administrator, will not pursue any and all available Claims, Causes of Action, rights of setoff, or any legal or equitable defenses against them. Unless any Claims, Causes of Action, rights of setoff, or any legal or equitable defenses against an entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order of the Bankruptcy Court, the Trustee or the Plan Administrator, as applicable, expressly reserve all Claims, Causes of Action, rights of setoff, or any legal or equitable defenses, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply upon, after, or as a consequence of the Confirmation Order.

### **Section 5.08. Provisions for Treatment of Disputed Claims**

#### **1. Objection to Claims.**

As of the Effective Date the Plan Administrator, shall have the right to object to the allowance of any Claims or Interests with respect to which there is any dispute, including as to liability, priority, and/or amount other than the Noteholder Claims (which are allowed pursuant to the Plan). The Plan Administrator shall be substituted for the Trustee with respect to any objections to claims that have been filed prior to the Effective Date. Any Objections to Claims that have been filed on or before the Confirmation Date, shall be served and filed as soon as practicable, but, in each instance, no later than: (a) 180 days after the Effective Date; or (b) such other date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (a) hereof. The Filing of a motion to extend such objection deadline shall automatically extend such deadline until a Final Order is entered on such motion. In the event that such a motion to extend the objection deadline is denied by the Bankruptcy Court, or approved by the Bankruptcy

Court and reversed on appeal, such objection deadline shall be the later of the current deadline (as previously extended, as applicable) or 30 days after entry of a Final Order denying the motion to extend the objection deadline.

## **2. No Payment or Distribution Pending Allowance.**

Notwithstanding any other provision in the Plan, if any portion of a Claim is a Disputed Claim, no Distribution provided for hereunder shall be made on account of such Claim unless and until the Disputed Claim becomes an Allowed Claim. To the extent a Disputed Claim is Disallowed in whole or in part, the Holder of such Claim will not receive any Distribution on account of the portion of such Claim (including the whole, if applicable) that is Disallowed.

## **3. Disputed Distributions.**

If any dispute arises as to the identity of a Holder of an Allowed Claim who is to receive any Distribution, in lieu of making a distribution to such Person, the Plan Administrator may reserve or deposit the Distribution at issue or the disputed portion thereof into a segregated account for Disputed Distributions until the disposition thereof is determined by a Final Order or by written agreement among the interested parties to such dispute.

## **4. Estimation.**

The Trustee or the Plan Administrator, as applicable, shall have the right, but not the obligation, at any time to seek an order of the Bankruptcy Court, after notice and a hearing (which hearing may be held on an expedited basis), estimating for final Distribution purposes any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Trustee or Plan Administrator, as applicable, previously objected to such Claim. If the Bankruptcy Court estimates any contingent, Disputed or unliquidated Claim, the estimated amount shall constitute either the Allowed Amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court, including for purposes of the Disputed Claims Reserve; *provided, however*, that if the estimate constitutes the maximum limitation on such Claim, the Trustee or the Plan Administrator as the as applicable, may elect to pursue supplemental proceedings to object to any ultimate allowance of such Claim. On or after the Confirmation Date, Claims that have been estimated may be compromised, settled, withdrawn, or otherwise resolved subsequently, without further order of the Bankruptcy Court.

## **5. Reserve Account for Disputed Claims.**

On or after the Effective Date, the Plan Administrator shall hold in the Disputed Claims Reserve, Cash in an aggregate amount sufficient to compensate each Holder of a Disputed Claim, which the Plan Administrator is ultimately responsible for disbursing, with (i) the amount that such Holder would have been entitled to receive under the Plan if such Claim had been an Allowed Claim on the Effective Date, (ii) to the extent the value of a Disputed Claim has been estimated in accordance with Section 7.04 of the Plan, the estimated value of such Disputed Claim, or (iii) such other amount as may be agreed upon by the Holder of such Disputed Claim and the Plan Administrator. The Plan Administrator may pool funds in the Disputed Claims Reserves with

other funds; *provided, however*, the Plan Administrator shall treat all such funds as segregated accounts in the respective books and records.

**6. Release of Funds from Disputed Claims Reserve.**

When a Disputed Claim becomes, in whole or in part, an Allowed Claim, the Plan Administrator, shall distribute to the Holder thereof the distribution, if any, to which such Holder is then entitled under the Plan. To the extent a Disputed Claim is Disallowed or Allowed in a lesser amount than has been reserved for such Disputed Claim, the Cash reserved for such Disputed Claim or the difference between the amount reserved for such Disputed Claim and the lesser amount at which such Disputed Claim is ultimately Allowed, as applicable, be returned from the Disputed Claims Reserve to the Cash available for Distribution.

**Section 5.09. Distributions Under the Plan.**

**1. Limitation to Full Recovery.**

Notwithstanding anything herein to the contrary, no Holder of any Claim will be entitled to a Distribution more than 100% of the Allowed amount of its Claims.

**2. Timing of Distributions.**

Distributions under the Plan shall be made as set forth in the Plan or as soon as reasonably practicable thereafter. If a Claim is not an Allowed Claim as of the Effective Date, Distributions will be made only if and when the Claim is Allowed and, to the extent a Disputed Claim is the subject of estimation in accordance with Section 7.04 of the Plan, in an amount no greater than the amount reserved in the Disputed Claims Reserve.

**3. Distribution Record Date.**

Except as otherwise provided in a Final Order that is not subject to any stay, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 and Filed with the Bankruptcy Court on or prior to the Distribution Record Date will be treated as the Holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer may not have expired by the Distribution Record Date. As of the close of business on the Distribution Record Date, any transfer ledgers, transfer books, registers and any other records will be closed and, for purposes of the Plan, there shall be no further changes in the record Holders of such Claims. The Debtors shall have no obligation to recognize the transfer of any Claim occurring after the Distribution Record Date, and will be entitled for all purposes to recognize and deal only with those Holders of Claims and Interests as of the close of business on the Distribution Record Date, as reflected on the ledgers, books, registers or records of the Debtors and the Bankruptcy Court. For avoidance of doubt the term Distribution Record Date shall not apply to Class 2a, 2b or 2c, as the Noteholder Claims are publicly traded securities and shall receive distributions, if any, in accordance with the applicable procedures of DIC.



#### **4. Delivery of Distributions.**

Subject to the treatment of Disputed Distributions as set forth in Article VII of the Plan, Distributions shall be made to Holders of Allowed Claims at the addresses set forth on the Debtors' books and records or the Proofs of Claim, if any, Filed by such Creditors or at the last known addresses of such Creditors or, in the case of transferred Claims, on the notice of transfer Filed with the Bankruptcy Court pursuant to Bankruptcy Rule 3001, each as of the Distribution Record Date. If any such Creditor's Distribution is returned as undeliverable, no further Distribution shall be made to such Creditor unless and until the Plan Administrator is notified of such Creditor's then-current address, at which time any missed Distribution shall be made to such Creditor to the extent of available Cash; *provided* that in no event are the Debtors required to make Distributions to a Creditor whose Distribution is returned as undeliverable and becomes Unclaimed Property.

#### **5. Method of Cash Distributions.**

The Plan Administrator shall make all Distributions contemplated by the Plan. Any Cash payment to be made pursuant to the Plan shall be made by check drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Plan Administrator. If a Creditor holds more than one Claim in any one Class, all Allowed Claims of the Creditor in that Class may, at the Plan Administrator's option, be aggregated and one Distribution may be made with respect thereto.

#### **6. Unclaimed Property.**

All Property distributed on account of Claims must be claimed within the later of ninety (90) days after (i) the Distribution Date and (ii) the date such Distribution is made to such Holder *provided, however*, in the case of a Distribution made in the form of a check, must be negotiated or a request for reissuance made directly to the Plan Administrator by the Creditor that was originally issued such check and shall be made within ninety (90) days after the date the Distribution is made to the applicable Creditor. Nothing contained in the Plan shall require the Plan Administrator to attempt to locate any Holder of an Allowed Claim, other than as provided herein. Pursuant to Bankruptcy Code sections 347(b) and 1143, all Claims in respect of Unclaimed Property shall be deemed Disallowed and the Holder of any Claim Disallowed is forever barred, expunged, estopped and enjoined from asserting such Claim in any manner against the Debtors or the Estates.

#### **7. Setoffs.**

Except as otherwise provided in the Plan, the Confirmation Order, or in an agreement approved by a Final Order of the Bankruptcy Court, the Trustee or the Plan Administrator, as applicable, may, pursuant to applicable law (including section 553 of the Bankruptcy Code), setoff against any Distribution amounts related to any Claim before any Distribution is made on account of such Claim, any and all of the Claims, rights and causes of action of any nature that the Debtors, or the Estates may hold against the Holder of such Claim, *provided, however*, that neither the failure to effect such a setoff, the allowance of any Claim hereunder, any other act or omission of the Trustee or the Plan Administrator, nor any provision of the Plan will constitute a waiver or



release by the Debtors or the Reorganized Debtors of any such claims, rights or causes of action that the Debtors or the Reorganized Debtors may possess against such Holder.

### **8. Distributions Under Fifty Dollars.**

No Distribution of Cash in an amount less than fifty dollars (\$50.00) will be made by the Plan Administrator to any Holder of an allowed Claim unless a request is made in writing to the Plan Administrator. If no such request is made, all such Distributions will be treated as Unclaimed Property.

## **Section 5.10. Effect of Confirmation.**

### **1. Binding Effect.**

The Plan shall be binding and inure to the benefit of the Trustee, the Plan Administrator, the Debtors, all Holders of Claims and Interests, and their respective successors and assigns.

### **2. Continuing Existence.**

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, with all the powers of a corporation pursuant to the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation or bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation or bylaws (or other formation documents) are amended by the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval.

### **3. Vesting of Assets in the Debtors.**

On the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, the Property of each Estate shall vest in the applicable Debtor, free and clear of all Claims, Liens, encumbrances, charges, and other Interests subject to the rights of the Plan Administrator set forth in the Plan. From and after the Effective Date, the Debtors, by the Plan Administrator, may operate their businesses and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending case under any chapter or provision of the Bankruptcy Code, subject to the terms and conditions of the Plan and the Confirmation Order.

### **4. Discharge of Claims Against and Interests in the Debtors.**

Upon the Effective Date and in consideration of the distributions to be made hereunder, except as otherwise provided herein or in the Confirmation Order, each Person that is a Holder (as well as any trustees and agents on behalf of such Person) of a Claim or Interest and any affiliate of such Holder shall be deemed to have forever waived, released, and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided herein, upon the Effective Date, all such Holders of Claims and Interests and their

affiliates shall be forever precluded and enjoined, pursuant to sections 105, 524, 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in any Debtor.

## **5. Cancellation of Existing Securities and Agreements.**

Except as otherwise provided for in the Plan, on the later of the Effective Date and the date on which the relevant distributions are made pursuant to Article III of the Plan and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity, the obligations of the Debtors under the Junior Indenture, the Senior Indenture and the Senior Subordinated Indenture shall be cancelled as to each applicable Debtor and each applicable Debtor shall not have any continuing obligations thereunder; provided, that the Junior Indenture, the Senior Indenture and the Senior Subordinated Indenture and each agreement or other document respectively related thereto will continue in effect for the limited purpose of allowing Holders of the claims arising thereunder to receive, and allowing and preserving the rights of the Indenture Trustees to make, or cause to be made the distributions under or in connection with this Plan to the applicable Holders; provided, further, that, upon completion of the distribution with respect to Holders of the claims arising thereunder any and all documents, notes, securities and instruments issued in connection therewith shall terminate automatically and completely without further notice or action and be deemed surrendered and the Indenture Trustees shall be released of any obligations and shall have no further obligations whatsoever except as expressly provided in the Plan; provided, further, that the Junior Indenture, the Senior Indenture and the Senior Subordinated Indenture and all documents, notes securities and instruments issued in connection therewith shall continue in effect for the limited purpose of allowing and preserving all of the rights, privileges, benefits, indemnities, and protections of the respective Indenture Trustees (acting in any capacity, including as a Distribution Agent) thereunder, including, without limitation, permitting the Indenture Trustees to exercise any and all liens granted to it under their respective indentures against such distributions for payment of any fees and expenses of Indenture Trustees.

Upon the final distribution (if any) on account of the Holders of Allowed Class 2a, 2b, or 2c Claims, as applicable, (a) such notes shall be deemed to be worthless, and (b) the Plan Administrator shall submit a request to DTC in a letter prepared in accordance with DTC procedures to remove the relevant positions relating to such Noteholder Claims, and such letter shall not contain the indemnity language that might otherwise be required, nor shall the Plan Administrator or the Debtors be authorized to provide such indemnity.

Except for the purpose of evidencing a right to payment under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all agreements, instruments, and other documents evidencing any Claim or Interest and any rights of any holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect and the obligations of the Debtor[s] thereunder shall be deemed fully satisfied, released, and discharged.

## **6. Releases.**

**UPON THE EFFECTIVE DATE AND IN CONSIDERATION OF THE DISTRIBUTIONS TO BE MADE UNDER THE PLAN, EXCEPT AS OTHERWISE**

**PROVIDED IN THE PLAN OR IN THE CONFIRMATION ORDER, EACH PERSON THAT IS A HOLDER (AS WELL AS ANY TRUSTEES AND AGENTS ON BEHALF OF SUCH PERSON) OF A CLAIM OR INTEREST AND ANY AFFILIATE OR SUBSIDIARY OF SUCH HOLDER SHALL BE DEEMED TO HAVE FOREVER WAIVED, RELEASED, AND DISCHARGED THE TRUSTEE, THE CREDITORS' COMMITTEE, THE INDENTURE TRUSTEES, AND EACH OF THEIR RESPECTIVE EMPLOYEES, CONSULTANTS, ATTORNEYS, ACCOUNTANTS, FINANCIAL ADVISORS AND OTHER REPRESENTATIVES (SOLELY IN THEIR CAPACITIES AS SUCH) FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, EVENT OR OTHER OCCURRENCE FROM AND AFTER THE PETITION DATE THROUGH AND INCLUDING THE EFFECTIVE DATE IN ANY WAY RELATING TO THE CHAPTER 11 CASES, THIS PLAN OR THE DISCLOSURE STATEMENT.**

## **7. Compromise and Settlement.**

Notwithstanding anything contained in this Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and their respective Distributions and treatments under this Plan take into account and conform to the relative priority and rights of the Claims and the Interests in each Class with due regard to any contractual, legal and equitable subordination rights relating thereto, including but not limited to the subordination provisions governing both the Senior Subordinated Noteholder Claims and the Junior Noteholder Claims whether arising under general principles of equitable subordination, sections 510(b) and (c) of the Bankruptcy Code or otherwise. As of the Effective Date, any and all such rights described in the preceding sentence are settled and compromised pursuant to this Plan. The Confirmation Order will constitute the Court's finding and determination that the settlements reflected in this Plan are (1) in the best interests of the Debtors, their Estates and all Holders of Claims, (2) fair, equitable and reasonable, (3) made in good faith and (4) approved by the Court pursuant to Bankruptcy Rule 9019.

## **Section 5.11. Retention of Jurisdiction (Exclusive Jurisdiction of the Bankruptcy Court).**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction of all matters arising out of, arising in or related to, the Chapter 11 Cases, the Plan and the Confirmation Order to the fullest extent permitted by applicable law, including, without limitation, jurisdiction to:

(i) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim (whether Filed before or after the Effective Date and whether or not contingent, Disputed or unliquidated), including the compromise, settlement and resolution of any request for payment of any Claim, the resolution of any Objections to the allowance or priority of any Claim and the resolution of any dispute as to the treatment necessary to reinstate a Claim pursuant to the Plan 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;

(ii) Grant or deny any applications for allowance of compensation or reimbursement of expenses for Professionals authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

(iii) Hear and determine motions, applications, adversary proceedings, contested matters and other litigated matters pending on, Filed on or commenced after the Effective Date, including proceedings with respect to the rights of the Estates to recover Property under sections 542 or 543 of the Bankruptcy Code;

(iv) Determine and resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract or unexpired lease 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 therefrom;

(v) Ensure that all payments due under the Plan and 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;

(vi) Following the Effective Date and consistent with section 1142 of the Bankruptcy Code, construe, take any action and issue such orders as may be necessary for the enforcement, implementation, execution and consummation of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan and the Confirmation Order, for the maintenance of the integrity of the Plan and protection of the Estates following consummation in accordance with sections 524 and 1141 of the Bankruptcy Code;

(vii) Determine and resolve any case, controversy, suit or dispute that may arise in connection with the consummation, interpretation, implementation or enforcement of the Plan or the Confirmation Order, including the indemnification, release and injunction provisions set forth in the Plan, or any Person's rights arising under or obligations incurred in connection therewith;

(viii) Modify the Plan after the Effective Date pursuant to section 1127 of the Bankruptcy Code and the Plan or modify the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with the Plan, or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order or the Confirmation Order;

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

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

(xi) Determine any other matters that may arise in connection with or relating to the Plan, the Plan Summary, the Confirmation Order and the Bankruptcy Code;

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

(xiii) Continue to enforce the automatic stay through the Effective Date;

(xiv) Hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan, and issues presented or arising under the Plan, including but not limited to disputes among Holders and arising under agreements, documents or instruments executed in connection with or governed by the Plan;

(xv) Hear and determine any other matter relating to the Plan, its interpretation or enforcement; and

(xvi) Enter a final decree and close the Chapter 11 Cases.

## **Section 5.12. Confirmation and Effectiveness of the Plan**

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

The following conditions precedent to the occurrence or the confirmation must be satisfied unless any such condition shall have been waived by the Trustee:

(a) a Confirmation Order, in form and substance satisfactory to the Trustee, having become a Final Order;

(b) the Plan, in form and substance satisfactory to the Trustee, being executed and delivered, and any conditions (other than the occurrence of the Effective Date or certification by the Debtors that the Effective Date has occurred) contained therein having been satisfied or waived in accordance therewith;

(c) The Disputed Claims Reserve, Professional Fee Claim Reserve and the Wind Down Reserve having been established;

(d) The Trustee having been appointed as Plan Administrator in accordance with the terms and conditions of the Plan; and

(e) all other actions and documents necessary to implement the Plan shall have been effected or executed and shall be reasonably acceptable to the Plan Administrator.

### **2. Termination of Appointment of Trustee.**

Upon the Effective Date, the appointment of the Trustee shall be deemed terminated and the Trustee shall be discharged from all further obligations and duties as a Chapter 11 Trustee under the terms of the Bankruptcy Code. At such time the Trustee shall simultaneously be appointed as the Plan Administrator with all duties and rights as set forth in the Plan.

Notwithstanding the foregoing, the Trustee shall continue to serve after such date with respect to (i) any applications filed pursuant to sections 326, 330 and 331 of the Bankruptcy Code seeking the payment of compensation, fee and expenses, and (ii) to effectuate any transition from Trustee to Plan Administrator consistent with the Plan

**3. Notice of Occurrence of the Effective Date.**

The Plan Administrator shall file a Notice of the Occurrence of the Effective Date within five (5) Business Days after the Effective Date. Failure to file such Notice shall not prevent the effectiveness of the Plan, Plan Supplement or any related documents.

**4. Dissolution of Creditors' Committee.**

Upon the Effective Date, the Creditors' Committee shall be dissolved and the current and former members of the Creditors' Committee and any other creditor, equity or other committee appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Cases, and their respective officers, employees, counsel, advisors and agents, shall be released and discharged of and from all further authority, duties, responsibilities and obligations related to and arising from and in connection with the Chapter 11 Cases and the retention or employment of the Creditors' Committee's attorneys, accountants, and other agents, if any, shall terminate, except for purposes of filing and prosecuting Final Fee Applications or any appeal of the Confirmation Order.

**5. Waiver of Conditions Precedent and Bankruptcy Rule 3020(e) Automatic Stay.**

The Trustee or the Plan Administrator, as applicable, shall have the right to waive one or more of the conditions precedent set forth above at any time without leave of or notice to the Bankruptcy Court and without formal action other than proceeding with confirmation of the Plan.

If any condition precedent to the Effective Date is waived pursuant to this Section and the Effective Date occurs, the waiver of such condition shall benefit from the "mootness doctrine", and the act of consummation of the Plan shall foreclose any ability to challenge the Plan in any court.

**6. Waiver of Bankruptcy Rule 7062.**

The Trustee may request that the Confirmation Order include (a) a finding that Bankruptcy Rule 7062 shall not apply to the Confirmation Order and the Plan be immediately binding and enforceable; and (b) authorization for the Trustee and the Plan Administrator to consummate the Plan immediately after entry of the Confirmation Order.

**7. Consequences of Non-Occurrence of Effective Date.**

If the Confirmation Order is vacated, (a) the Plan shall be null and void in all respects, and (b) any settlement or release of claims provided for hereby shall be null and void without further Order of the Bankruptcy Court.



## ARTICLE VI

### CERTAIN FACTORS TO BE CONSIDERED REGARDING THE PLAN

Holders of Claims and Interests against the Debtors should read and consider carefully the factors set forth below, as well as the other information set forth in the Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference), prior to voting to accept or reject the Plan. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation.

#### **Section 6.01. Certain Bankruptcy Law Considerations.**

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

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

2. The Conditions Precedent to the Effective Date May Not Occur. As more fully set forth in Article XII of the Plan, the Confirmation Date and the Effective Date are subject to several conditions precedent. If such conditions precedent are not met or waived, the Confirmation Date or the Effective Date will not take place.

3. The Trustee May Fail to Satisfy Voting Requirements. If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Trustee intends to seek, as promptly as practicable thereafter, confirmation of the Plan. In the event that sufficient votes are not received, the Trustee may seek to confirm an alternative chapter 11 plan. There can be no assurance that the terms of any such alternative chapter 11 plan would be similar or as favorable to the Holders of Allowed Claims as those proposed in the Plan.

4. The Trustee May Not Be Able to Secure Confirmation of the Plan. There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim might challenge either the adequacy of the Plan or whether the voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that the Plan, the balloting procedures, and the voting results are appropriate, the Bankruptcy Court could still decline to confirm the Plan if it



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

If the Plan is not confirmed, it is unclear what Distributions, if any, Holders of Allowed Claims will receive on account of such Allowed Claims. The Trustee, subject to the terms and conditions of the Plan, reserves the right, upon reasonable prior notice to modify the terms and conditions of the Plan as necessary for confirmation. Any such modifications could result in less favorable treatment of any non-accepting Class, as well as any Class junior to such non-accepting Class, than the treatment currently provided in the Plan.

5. Nonconsensual Confirmation. In the event that any Impaired class of claims or interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm a plan at the proponents’ request if at least one Impaired class (as defined under section 1124 of the Bankruptcy Code) has accepted the plan (with such acceptance being determined without including the vote of any “insider” in such class), and, as to each Impaired class that has not accepted the plan, the Bankruptcy Court determines that the plan “does not discriminate unfairly” and is “fair and equitable” with respect to the dissenting Impaired class(es). The Trustee believes that the Plan satisfies these requirements, and the Trustee may request such nonconsensual confirmation in accordance with subsection 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion. In addition, the pursuit of nonconsensual confirmation of the Plan may result in, among other things, increased expenses relating to professional compensation.

6. The Chapter 11 Cases May Be Converted to Cases under Chapter 7 of the Bankruptcy Code. If the Bankruptcy Court finds that it would be in the best interests of creditors and/or the debtor in a chapter 11 case, the Bankruptcy Court may convert a chapter 11 bankruptcy case to a case under chapter 7 of the Bankruptcy Code. In such event, a chapter 7 trustee would be appointed or elected to liquidate the debtor’s assets for distribution in accordance with the priorities established by the Bankruptcy Code. The Trustee believes that liquidation under chapter 7 would result in smaller Distributions being made to Holders of Allowed Claims than those provided for in the Plan because of the (a) additional administrative expenses involved in the appointment of a chapter 7 trustee and (b) additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation.

7. The Trustee or Plan Administrator May Object to the Amount or Classification of a Claim. Except as otherwise provided in the Plan, the Trustee or Plan Administrator, as applicable, reserves the right to object to the amount or classification of any Claim under the Plan. The estimates set forth in the Plan cannot be relied upon by any Holder of a Claim, as the Trustee or the Plan Administrator may seek to object to Claims after confirmation of the Plan.

8. Contingencies Could Affect Votes of Impaired Classes to Accept or Reject the Plan. The Distributions available to Holders of Allowed Claims under the Plan can be affected by a variety of contingencies. The occurrence of any and all such contingencies, which could affect Distributions available to Holders of Allowed Claims under the Plan, will not affect the validity of the vote taken by the Impaired Classes to accept or reject the Plan or require any sort of revote by the Impaired Classes.

9. Risk of Non-Occurrence of the Effective Date. Although the Trustee believes that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether the Effective Date will, in fact, occur. If the Effective Date does not occur, the Plan shall be null and void in all respects.

## **Section 6.02. Risks Related to Recoveries Provided Under the Plan.**

Various factors will impact the amount of recoveries that Holders of Allowed Claims receive, including, without limitation, the degree to which objections to Claims are successful. Further, due to the nature of litigation, it may take a long period to fully adjudicate, decide, or resolve objections to Claims. As a result, Holders of Allowed Claims may not receive final Distributions in accordance herewith for a period of time following the Effective Date.

## **Section 6.03. Tax Consequences.**

THE FEDERAL AND STATE TAX CONSEQUENCES OF THE PLAN FOR EACH CREDITOR OR INTEREST HOLDER ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. SUCH TAX CONSEQUENCES MAY ALSO VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF AN ALLOWED CLAIM OR INTEREST IN THE DEBTORS. ACCORDINGLY, EACH HOLDER OF AN ALLOWED CLAIM OR EQUITY INTEREST IS STRONGLY ADVISED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF THE PLAN. THE TRUSTEE DOES NOT INTEND TO REQUEST A TAX RULING FROM THE INTERNAL REVENUE SERVICE OR ANY OTHER TAXING AUTHORITY WITH RESPECT TO ANY OF THE TAX CONSEQUENCES OF THE PLAN.

### **1. Federal Income Tax Consequences to the Debtors.**

The federal and state income tax consequences with respect to the liquidation of the Debtors' Assets and the Debtors' other tax items have been or will be reflected on federal and/or state income tax returns filed or to be filed by the Trustee or Plan Administrator, as applicable.

### **2. Federal Income Tax Consequences to Creditors.**

Holders of Allowed Claims should consult their tax advisors for information that may be relevant to their particular situations and circumstances and the particular tax consequences to such Holders as a result thereof.

## **ARTICLE VII**

### **FEASIBILITY OF THE PLAN AND BEST INTERESTS OF CREDITORS**

#### **Section 7.01. Feasibility of the Plan.**

The Bankruptcy Code requires that confirmation of a plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the debtor. The Plan provides for the Distribution of the Debtors' Assets, which have already been liquidated, or will be liquidated in the future, to Holders of Allowed Claims in accordance with the terms of the Plan. As of the date of the Disclosure Statement, substantially all of the Debtors' remaining assets have been reduced to Cash. The Plan provides for the appointment of a Plan Administrator as a means to implement the Plan. The Plan Administrator shall be empowered to, among other things, administer and liquidate any and all remaining assets and object to and settle Claims, in accordance with the Plan. Since no further financial reorganization of the Debtors will be possible, the Trustee believes that the Plan meets the feasibility requirement.

#### **Section 7.02. Acceptance of the Plan.**

As a condition to confirmation of the Plan, the Bankruptcy Code requires that an impaired class must vote to accept the Plan.

Bankruptcy Code Section 1126(c) defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject a plan. Thus, Impaired Classes under the Plan will have voted to accept the Plan only if two-thirds (2/3) in amount and a majority in number actually voting in each Class cast their Ballots in favor of acceptance. Holders of Claims who fail to vote for the Plan are not counted as either accepting or rejecting that Plan.

#### **Section 7.03. Liquidation Analysis; Best Interests of Creditors.**

Pursuant to the provisions of Bankruptcy Code § 1129(a)(7), all holders of Claims against the Debtors must receive payment under the Plan on account of those claims in an amount not less than the amount that the holder of such Claim would receive in a chapter 7 liquidation. Aside from the Effective Date Reserves, the remaining Cash held by the Debtors' Estates shall be distributed by the Plan Administrator not later than sixty (60) days after the Effective Date as provided in the Plan.

By way of contrast, in the event of a conversion of these Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code, Allowed Claims will receive less in the way of a distribution. Further, any such distribution in a Chapter 7 case will take a longer period of time to occur than as provided in the Plan. The Trustee notes that upon any such conversion to chapter 7, proceedings in the Chapter 7 case (including the appointment of a new trustee) will precede any distribution of the Assets, and the expense of those proceedings, including the fees and expenses of a newly appointed Chapter 7 Trustee will consume a portion of those Assets. The Trustee believes that the prospects for recoveries by Holders of Allowed Claims would be enhanced by Confirmation of the

Plan and an initial distribution can occur during 2022. Conversely, if the case were converted to a Chapter 7 the Trustee believes that no distribution would occur until 2023 and the amount distributed would be diminished

## **ARTICLE VIII**

### **ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

The Trustee believes that the Plan affords Holders of Claims the potential for a better realization on the Debtors' Assets than a Chapter 7 liquidation, and, therefore, is in the best interests of such Holders.

#### **Section 8.01. Alternative Plans.**

If the requisite acceptances are not received or if the Plan is not confirmed, the Trustee or any other party in interest could attempt to formulate and propose a different plan or plans of reorganization or liquidation.

With respect to an alternative liquidation plan, the Trustee has explored other alternatives in connection with the negotiation process involved in the formulation and development of the Plan. The Trustee believes that the Plan enables Creditors to realize the greatest possible value under the circumstances, and, as compared to any other plan of liquidation, has the greatest chance to be confirmed and consummated.

## **ARTICLE IX**

### **RECOMMENDATION AND CONCLUSION**

For the reasons set forth in this Disclosure Statement, the 11 Trustee believes that confirmation and consummation of the Plan is preferable to all other alternatives, and the Chapter 11 Trustee urges all creditors and parties in interest to vote in favor of the Plan.

Dated: June 8, 2022

/s/ Joel I. Sher

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8th day of June, 2022, I reviewed the Court's CM/ECF system and it reports that an electronic copy of the *Disclosure Statement Regarding the Chapter 11 Trustee's Joint Chapter 11 Plan of Liquidation* will be served electronically by the Court's CM/ECF system on the following:

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/s/ Joel I. Sher

Joel I. Sher

## EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)**

In re:	)	
	)	
TMST, INC., f/k/a THORNBURG	)	Case Nos. 09-17787, 17790-17792
MORTGAGE, INC., <i>et al.</i>	)	Chapter 11
	)	(Jointly Administered Under
Debtors. <sup>1</sup>	)	Case No. 09-17787-NVA)
	)	

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**CHAPTER 11 TRUSTEE'S JOINT CHAPTER 11 PLAN OF LIQUIDATION OF (i) TMST, INC. F/K/A THORNBURG MORTGAGE INC., (ii) TMST HOME LOANS, INC. F/K/A THORNBURG MORTGAGE HOME LOANS, INC., (iii) TMST ACQUISITION SUBSIDIARY, INC. F/K/A THORNBURG ACQUISITION SUBSIDIARY, INC. AND (iv) TMST HEDGING STRATEGIES, INC. F/K/A THORNBURG MORTGAGE HEDGING STRATEGIES, INC.**

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**Dated: June 8, 2022**

**SHAPIRO SHER GUINOT & SANDLER, P.A.**

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TMST, Inc., et. al.*

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<sup>1</sup> The Debtors in these jointly administered Chapter 11 cases are: (i) TMST, Inc., f/k/a Thornburg Mortgage, Inc., (Case No. 09-17787); (ii) TMST Acquisition Subsidiary, Inc., f/k/a Thornburg Acquisition Subsidiary, Inc. (Case No. 09-17790); (iii) TMST Home Loans, Inc., f/k/a Thornburg Mortgage Home Loans, Inc. (Case No. 09-17791); and (iv) TMST Hedging Strategies, Inc., f/k/a Thornburg Mortgage Hedging Strategies, Inc (Case No. 09-17792).

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## **INTRODUCTION**

Joel I. Sher, in his capacity as Chapter 11 Trustee for TMST, Inc. f/k/a Thornburg Mortgage, Inc., TMST Home Loans, Inc. f/k/a Thornburg Mortgage Home Loans, Inc., TMST Acquisition Subsidiary, Inc. f/k/a Thornburg Acquisition Subsidiary, Inc., and TMST Hedging Strategies, Inc. f/k/a Thornburg Mortgage Hedging Strategies, Inc. (collectively, the “Debtors”), proposes the following Plan<sup>2</sup> for the resolution of the outstanding Claims against and Interests in the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, operations, Chapter 11 Cases, risk factors, a summary and analysis of the Plan, and certain related matters including, certain tax matters. The Trustee reserves the right to alter, amend, modify, revoke or withdraw the Plan prior to its substantial consummation.

## **ARTICLE I**

### **DEFINITIONS, RULES OF CONSTRUCTION AND EXHIBITS**

#### **Section 1.01. Definitions.**

Unless otherwise provided in the Plan, all terms used herein shall have the meanings ascribed to such terms in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure. For the purpose of the Plan, the following terms (which appear in the Plan in capitalized form) shall have the meanings set forth below, and such meanings shall be equally applicable to the singular and to the plural form of the terms defined, unless the context otherwise requires:

1. “***Administrative Claim(s)***” means a Claim for any (a) cost or expense of administration of the Chapter 11 Cases, of the kind specified in section 503(b), including section 503(b)(9), and 507(a)(2) of the Bankruptcy Code, including, but not limited to (i) any actual and necessary post-petition costs or expenses of preserving the Estates of the Debtors, (ii) any actual and necessary costs and expenses of operating the businesses of the Debtors, (iii) any indebtedness or obligations incurred or assumed by the Debtors in connection with the conduct of their business, (iv) amounts owed to vendors providing goods and services to the Debtors during the Chapter 11 Cases, (v) tax obligations incurred after the Petition Date, (vi) Professional Fee Claims, whether fixed before or after the Effective Date, (vii) United States Trustee’s Fee Claims, and (viii) the Indenture Trustee Fees and expenses for post-petition and pre-Effective Date services.

2. “***Administrative Claims Bar Date***” means the date that is sixty (60) days after the Effective Date or such other date as the Bankruptcy Court determines.

3. “***Adfitech***” means Adfitech, Inc., formerly a wholly-owned direct subsidiary of TMHL and wholly-owned indirect subsidiary of TMST.

4. “***Allowed***” means with respect to any Claim (including any Administrative Claim) and/or Interest or portion thereof (to the extent such Claim or Interest is not Disputed or Disallowed): (a) any Claim or Interest, proof of which (i) was timely Filed with the Bankruptcy Court, (ii) was deemed timely Filed pursuant to section 1111(a) of the Bankruptcy Code, or (iii)

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<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings set forth in Article I herein.



was not required to be Filed pursuant to a Final Order; (b) any Claim or Interest that has been, or hereafter is, listed in the Schedules as of the Effective Date as (i) liquidated in an amount other than zero, or (ii) not Disputed or a Contingent Claim (or as to which the applicable Proof of Claim has been withdrawn or Disallowed); (c) any Claim or Interest which has been allowed (whether in whole or in part) by a Final Order (but only to the extent so allowed), and, in (a) and (b) above, as to which no objection to the allowance thereof, or action to subordinate, avoid, classify, reclassify, expunge, estimate or otherwise limit recovery with respect thereto, has been Filed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or a Final Order; (d) any Claim or Interest allowed under or pursuant to the terms of the Plan; (e) any Claim arising from the recovery of property under sections 550 or 553 of the Bankruptcy Code which has been allowed in accordance with section 502(h) of the Bankruptcy Code; (f) any Claim relating to a rejected Executory Contract or rejected Unexpired Lease that either (i) is not Disputed or (ii) has been allowed by a Final Order, in either case only if a Proof of Claim has been filed by the applicable Bar Date or has a Claim for which a fee award amount has been approved by Final Order; provided, however, that Claims or Interests allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed” hereunder.

5. **“Allowed Senior Subordinated Proof of Claim”** means the Senior Subordinated Noteholder Claims evidenced by Proof of Claim Nos. 918, 930, 931, and 934, filed by Wilmington Trust Company as Indenture Trustee.

6. **“Assets”** means property of the Estates pursuant to section 541 of the Bankruptcy Code, including Cash, Causes of Action, accounts receivable, tax refunds, claims of right, interests and property, real and personal, tangible and intangible, and proceeds from all of the foregoing.

7. **“Avoidance Action(s)”** means any and all Causes of Action which a trustee, debtors-in-possession, the Estates or other appropriate party in interest may assert under Chapter 5 of the Bankruptcy Code, including, but not limited to, sections 502(d), 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code.

8. **“Ballot”** means the form distributed to each Holder of an Impaired Claim entitled to vote on the Plan on which is to be indicated the acceptance or rejection of the Plan.

9. **“Bankruptcy Code”** means title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, together with all amendments and modifications thereto as applicable to the Chapter 11 Cases.

10. **“Bankruptcy Court”** means the United States Bankruptcy Court for the District of Maryland (Baltimore Division) or, if such court ceases to exercise jurisdiction over these proceedings, the court or adjunct thereof that exercises jurisdiction over the Chapter 11 Cases.

11. **“Bankruptcy Rule(s)”** means (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under 28 U.S.C. § 2075, (b) the applicable Federal Rules of Civil Procedure, as amended and promulgated under 28 U.S.C. § 2072, (c) the applicable Local Rules of Civil Practice and Procedure of the United States District Court for the District of Maryland, to the extent applicable, and (d) any local rules and standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition

Date, together with all amendments and modifications thereto that were subsequently made applicable to the Chapter 11 Cases or proceedings therein, as the as applicable.

12. “**Bar Date**” means the general bar date and governmental bar date as set forth in the Bar Date Notice, or any other date set therefore by order of the Bankruptcy Court.

13. “**Bar Date Notice**” means the notice of the Bar Dates approved by the Bankruptcy Court by order entered June 15, 2009 (ECF No. 172).

14. “**Business Day(s)**” means any day which is not a Saturday, a Sunday, a “legal holiday” as defined in Bankruptcy Rule 9006(a), or a day on which banking institutions in the State of New York are authorized or obligated by law, executive order or governmental decree to be closed.

15. “**Cash**” or “**\$**” means the lawful currency of the United States of America and its equivalents including bank deposits and checks.

16. “**Cause(s) of Action**” means any and all actions, proceedings, obligations, judgments, debts, accounts, claims, rights, defenses, third-party claims, damages, executions, demands, crossclaims, counterclaims, suits, causes of action (including against insiders), choses in action, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims whatsoever (and any rights to any of the foregoing), whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, then existing or thereafter arising, secured or unsecured and whether asserted or assertable directly, indirectly or derivatively, at law, in equity or otherwise, including, without limitation, any recharacterization, subordination, avoidance, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any similar provisions of applicable state or federal law.

17. “**Chapter 11 Cases**” or “**Cases**” means the jointly administered chapter 11 cases of the Debtors herein pending in the Bankruptcy Court.

18. “**Claim(s)**” means a “claim” as defined in section 101(5) of the Bankruptcy Code against any one or more of the Debtors, or their property, whether or not asserted.

19. “**Class**” means each group or category of Claims or Interests as classified herein.

20. “**Confirmation**” means the entry by the Bankruptcy Court of the Confirmation Order.

21. “**Confirmation Date**” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court with respect to the Plan.

22. “**Confirmation Hearing**” means the hearing held before the Bankruptcy Court to consider Confirmation of the Plan pursuant to sections 1128(a) and 1129 of the Bankruptcy Code, as it may be adjourned or continued from time to time.

23. **“Confirmation Order”** means the order entered by the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

24. **“Creditor”** means any Person that is the Holder of any Claim against the Debtors.

25. **“Creditors’ Committee”** means the statutory committee of unsecured creditors that was appointed in these Cases by the United States Trustee on May 7, 2009 [ECF No. 59], as the same may be reconstituted from time to time.

26. **“Debtors”** means TMST, TMHL, TMAS and TMHS (as each is hereinafter defined).

27. **“Disallowed”** means any Claim against the Debtors which, in whole or in part, (i) has been disallowed by a Final Order; (ii) has been withdrawn by agreement of the Holder thereof and the Debtors; (iii) has been withdrawn by the Holder thereof; (iv) is listed in the Schedules as a zero amount or as Disputed, contingent or unliquidated and in respect of which a Proof of Claim has not been timely Filed or deemed timely Filed pursuant to the Plan, the Bankruptcy Code or any Final Order or other applicable law; (v) has been reclassified, expunged, subordinated or estimated resulting in a reduction in the Filed amount of any Proof of Claim; (vi) is evidenced by a Proof of Claim that is required to be Filed, but was not timely or properly Filed; (vii) is unenforceable against the Debtors and the Property of the Debtors, under any agreement or applicable law for a reason other than because such Claim is contingent or unmatured; (viii) includes unmatured interest, penalties or late charges; (ix) is for reimbursement or contribution that is contingent as of the time of allowance or disallowance of such claim; or (x) is a Claim or portion thereof for any fine, penalty, forfeiture, attorneys’ fees (to the extent such attorneys’ fees are punitive in nature), or for multiple, exemplary or punitive damages, to the extent that such fine, penalty, forfeiture, attorneys’ fees or damages does not constitute compensation for the Creditor’s actual pecuniary loss. In each case a Disallowed Claim is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination or estimation.

28. **“Disallowed Claim”** means a Claim that is Disallowed, or the Disallowed portion thereof.

29. **“Disallowed Senior Subordinated Proofs of Claim”** means the Senior Subordinated Noteholder Claims evidenced by Proof of Claim Nos. 901, 902, 904, 907, 909, 910, 911, 928, 929, and 1023, filed by Wilmington Trust Company as Indenture Trustee.

30. **“Disclosure Statement”** means the disclosure statement dated June 8, 2022, related to the Plan as such disclosure statement may be amended, modified or supplemented from time to time, and all exhibits and schedules annexed thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

31. **“Disputed”** means with respect to any Claim (a) if no Proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law: (i) a Claim that is listed on the Schedules as other than disputed, contingent or unliquidated, but as to which the Debtors or, prior to the Confirmation Date, any other party in interest, has Filed an objection by the Claims Objection Bar Date, and such objection has not been withdrawn or denied by a Final Order; or (ii) a Claim that is listed on the Claim Request has been Filed by the applicable

Bar Date or has otherwise been deemed timely Filed under applicable law: (i) a Claim for which no corresponding Claim is listed on the Schedules; (ii) a Claim for which a corresponding Claim is listed on the Schedules as other than disputed, contingent or unliquidated, but the nature or amount of the Claim as asserted in the Proof of Claim varies from the nature and amount of such Claim as it is listed on the Schedules; (iii) a Claim for which a corresponding Claim is listed on the Schedules as disputed, contingent or unliquidated; (iv) a Claim for which an objection has been Filed by the Trustee or Plan Administrator or, prior to the Confirmation Date, any other party-in-interest, by the Claims Objection Bar Date, and such objection has not been withdrawn or denied by a Final Order; (v) a Claim which asserts it is contingent or unliquidated in whole or in part; or (vi) a tort claim.

32. ***“Disputed Claims Reserve(s)”*** means the reserve(s) established in accordance with Section 5.07 of the Plan and administered by the Plan Administrator, for the payment of Disputed Claims that become Allowed Claims after the Effective Date, and which shall hold Cash, for the benefit of the holders of Disputed Claims.

33. ***“Disputed Distribution”*** means any dispute that arises as to the identity of a Holder of an Allowed Claim who is to receive any Distribution.

34. ***“Distribution”*** means Cash, property, interests in property or other value distributed under the Plan to the Holders of Allowed Claims.

35. ***“Distribution Address”*** means the address set forth in the applicable Proof of Claim, as such address may have been updated pursuant to Bankruptcy Rule 2002(g). If no Proof of Claim is or has been filed in respect of a particular Claim, "Distribution Address" means the address set forth in the [applicable] Debtor's Schedules, as such address may have been updated pursuant to Bankruptcy Rule 2002(g).

36. ***“Distribution Date”*** means the Initial Distribution Date or the date every six (6) months subsequent to the Initial Distribution Date, or as soon thereafter as is reasonably practicable, unless the Plan Administrator determines, in its reasonable discretion, that such Distribution would be economically impracticable.

37. ***“Distribution Record Date”*** means, other than with respect to Class 2a, 2b, or 2c, for purposes of determining the Holders of Claims entitled to receive Distributions under the Plan on account of such Claims, the Confirmation Date. For avoidance of doubt the Distribution Record Date shall not apply to the Noteholder Claims, which as publicly traded securities shall receive Distributions, if any, in accordance with the applicable procedures of DTC.

38. ***“DTC”*** means The Depository Trust Company or any successor thereto.

39. ***“DTC Exchange Instruction Letter”*** means a letter, in form and substance reasonably acceptable to the Plan Administrator and the Indenture Trustees, to be sent by the Plan Administrator to DTC on the Effective Date, or as soon reasonably practicable thereafter, requesting DTC to (a) chill each of the respective existing CUSIPs for the Noteholder Claims and (b) exchange positions in each of the respective existing CUSIPs for the Noteholder Claims for Noteholder Claim Escrow CUSIPs.

40. “**Effective Date**” means the first Business Day on which all conditions to the Effective Date set forth in Section 12.01 of the Plan have been satisfied or waived.

41. “**Effective Date Reserves**” means the Disputed Claim Reserve, Professional Fee Claim Reserve and the Wind Down Reserve.

42. “**Estates**” means the estates of the Debtors created by operation of law on the Petition Date pursuant to section 541 of the Bankruptcy Code.

43. “**Executory Contract**” means a written contract between the Debtors and any other Person entered into prior to and in effect as of the Petition Date under which performance remains due on both sides.

44. “**Fee Claim**” means an Administrative Claim under sections 330(a), 331 or 503 of the Bankruptcy Code for compensation of a Professional or other Person for services rendered or expenses incurred in the Chapter 11 Case on or prior to the Effective Date.

45. “**Final Order**” means an order, ruling, judgment, the operation or effect of a judgment or other decree issued and entered by the Bankruptcy Court or by any state or other federal court or other court of competent jurisdiction which has not been reversed, vacated, stayed, modified or amended, and as to which (i) the time to appeal or petition for review, rehearing, certiorari, reargument or retrial has expired and as to which no appeal or petition for review, rehearing, certiorari, reargument or retrial is pending, or (ii) any appeal or petition for review, rehearing, certiorari, reargument or retrial has been finally decided and no further appeal or petition for review, rehearing, certiorari, reargument or retrial can be taken for granted.

46. “**Holder(s)**” means the legal or beneficial holder of a Claim or Interest (and, if used in conjunction with a Class or type of Claim or Interest, means a holder of a Claim or Interest in such Class or of such type).

47. “**Initial Distribution Date**” means the Business Day determined by the Plan Administrator in his sole discretion, but not later than sixty (60) days after the Effective Date, when the Plan Administrator shall make his first Distribution pursuant to the terms of the Plan.

48. “**Indenture Trustees**” mean the Junior Indenture Trustee, the Senior Indenture Trustee, and the Senior Subordinated Indenture Trustee.

49. “**Indenture Trustee Fees**” means the reasonable fees and expenses of the Indenture Trustees.

50. “**Impaired**” means, when used with reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

51. “**Interest(s)**” means any share, equity or warrant in any one or more of the Debtors.

52. “**IRS**” means the Internal Revenue Service.

53. “**Junior Indenture**” means collectively that certain Indenture dated as of September 28, 2005, December 22, 2005, and March 30, 2006, among TMHL and TMST, and Wells Fargo Bank, N.A as Indenture Trustee, as such agreement has been amended from time to time pursuant to which TMHL issued Junior Subordinated Notes due 2036.

54. “**Junior Indenture Trustee**” means Wells Fargo Bank, N.A.

55. “**Junior Noteholder Claims**” means the unsecured claims of the Junior Indenture Trustee on behalf of the holders of notes arising under the Junior Indenture.

56. “**Lien**” means, with respect to any asset or Property (or the Cash, rent, revenue, income, profit or proceed therefrom), and in each case, whether the same is consensual or nonconsensual or arises by contract, operation of law, legal process or otherwise: (a) any and all mortgages, liens, pledges, attachments, charges, leases evidencing a capitalizable lease obligation, conditional sale or other title retention agreement, or other security interest or encumbrance or other legally cognizable security devices of any kind in respect of any asset or Property, or upon the Cash, rents, revenues, income, profits or proceeds therefrom; or (b) any arrangement, express or implied, under which any Property is transferred, sequestered or otherwise identified for the purpose of subjecting or making available the same for the payment of debt or performance of any other obligation in priority to the payment of General Unsecured Creditors.

57. “**Noteholder Claims**” means the Claims of the Junior Noteholder Claims, the Senior Noteholder Claims and the Senior Subordinated Noteholder Claims.

58. “**Noteholder Claims Escrow CUSIP**” means the non-transferable escrow CUSIPs expected to be established by DTC pursuant to the DTC Exchange Instruction Letter, representing the right to receive cash from the Plan Administrator pursuant to this Plan.

59. “**Objection**” means any objection, application, motion, complaint or other legal, equitable or administrative proceeding brought by any party (including arbitration, mediation, summary proceeding, adversary proceeding or other litigation if applicable) seeking to disallow, determine, liquidate, classify, reclassify or establish the priority, expunge, avoid, subordinate, estimate or otherwise limit recovery, in whole or in part, with respect to any Claim (including the resolution of any request for payment of any Administrative Claim).

60. “**Ordinary Course Administrative Claims**” means Administrative Claims against the Debtors that represent liabilities incurred in the ordinary course of business of the Debtors.

61. “**Pari Passu**” means the aggregate amount that Allowed Claims in a particular Class or Classes bears to the aggregate amount of all Allowed Claims (including Disputed Claims, but excluding Disallowed Claims) in another Class or Classes, unless the Plan provides otherwise.

62. “**Person(s)**” means a corporation, governmental unit and person, each as respectively defined in sections 101(9), (27) and (41) of the Bankruptcy Code, including a natural person, individual, partnership, corporation, or other domestic or foreign entity or organization.

63. “**Petition Date**” means May 1, 2009, the date upon which the Chapter 11 Cases were commenced in the Bankruptcy Court.



64. **“Plan”** means this plan of liquidation proposed by the Trustee, including all exhibits, appendices, schedules and annexes, if any, attached or to be attached thereto or filed or considered in connection therewith including a Plan Supplement, if any, as such plan and related documents may be further altered, amended, supplemented or modified from time to time in accordance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and/or the Confirmation Order.

65. **“Plan Administrator”** means the Trustee, who shall be deemed appointed as of the Effective Date to act as a fiduciary responsible for implementing the terms of the Plan.

66. **“Plan Document”** means collectively the Plan and or any schedule, appendix or exhibit thereto, including, but not limited to any Plan Supplement.

67. **“Plan Supplement”** means (if any) such exhibits, documents, lists or schedules as may be Filed prior to Confirmation Hearing, or such other date as the Bankruptcy Court may establish.

68. **“Priority Non-Tax Claim”** means any Claims entitled to priority in payment pursuant to sections 507(a)(3) and 507(a)(4) of the Bankruptcy Code.

69. **“Priority Tax Claim”** means any Claims of a governmental unit (as defined in section 101(27) of the Bankruptcy Code) of the kind entitled to priority in payment pursuant to sections 502(i) and 507(a)(8) of the Bankruptcy Code.

70. **“Professional”** shall mean any professional retained by Order of the Bankruptcy Court in these Chapter 11 Cases in accordance with sections 327, 328, 330 or 1103 of the Bankruptcy Code.

71. **“Professional Fee Claim”** means a Claim for compensation of a Professional for services rendered or expenses incurred in the Chapter 11 Cases.

72. **“Professional Fee Claim Reserve”** means the reserve(s) established in accordance with Section 5.07 of the Plan and administered by the Plan Administrator, for the payment of any Professional Fee Claim that become Allowed Claims after the Effective Date, and which shall hold Cash, for the benefit of the holders of holders of a Professional Fee Claim.

73. **“Proof(s) of Claim”** means any proof of claim Filed or that should have been Filed with the Bankruptcy Court in the Case pursuant to Bankruptcy Rules 3001 or 3002, the Bar Date Notice, or other order of the Bankruptcy Court.

74. **“Property”** means, as to the Debtors, any and all assets or property of the Debtors, of any kind, nature or description whatsoever, real or personal, tangible or intangible, as defined in section 541 of the Bankruptcy Code.

75. **“Pro Rata Share”** means the proportion that the face amount of a Claim in a particular Class or Classes bears to the aggregate face amount of all Claims (including Disputed Claims, but excluding Disallowed Claims) in such Class or Classes, unless the Plan provides otherwise.



76. “***Schedules***” means the Schedules, Statements and Lists filed with the Bankruptcy Court by the Debtors pursuant to Bankruptcy Code section 521(1) and Bankruptcy Rule 1007, as they have been or may be amended or supplemented from time to time in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court prior to the entry of the final decree in these Cases.

77. “***Senior Indenture***” means that certain Indenture dated May 15, 2003 (as amended, modified, and supplemented by the First Supplemental Indenture, dated as of May 15, 2003, and the Second Supplemental Indenture, dated as of March 31, 2008, among TMST, TMHL, TMHS, TMAS and Adfitech, and Deutsche Bank Trust Company Americas as Indenture Trustee, governing the 8% notes due May 15, 2013.

78. “***Senior Noteholder Indenture Trustee***” means Deutsche Bank Trust Company Americas.

79. “***Senior Noteholder Claims***” means the unsecured claims of the Senior Noteholder Indenture Trustees on behalf of the Holders of notes arising under the Senior Indenture.

80. “***Senior Subordinated Indenture***” means that certain Indenture dated March 31, 2008, among TMST, TMHL, TMHS, TMAS and Adfitech, and Wilmington Trust Company as Indenture Trustee, as such agreement has been amended from time to time, governing the senior subordinated notes due March 31, 2015.

81. “***Senior Subordinated Indenture Trustee***” means Wilmington Trust Company

82. “***Senior Subordinated Noteholder Claims***” means the unsecured claim of the Senior Subordinated Indenture Trustee on behalf of the Holders of notes arising under the Senior Subordinated Indenture.

83. “***Tax(es)***” means any tax, charge, fee, levy, or other assessment by any federal, state, local or foreign governmental authority, including, without limitation, income, excise, property, sales, transfer, employment, payroll, franchise, profits, license, use, ad valorem, estimated, severance, stamp, occupation and withholding tax, together with any interest, penalties, fines or additions attributable to, imposed on, or collected by any such federal, state, local or foreign governmental authority.

84. “***TMST***” means TMST, Inc. f/k/a Thornburg Mortgage, Inc.

85. “***TMHL***” means TMST Home Loans, Inc. f/k/a Thornburg Mortgage Home Loans, Inc.,

86. “***TMAS***” means TMST Acquisition Subsidiary, Inc. f/k/a Thornburg Acquisition Subsidiary, Inc.,

87. “***TMHS***” means TMST Hedging Strategies, Inc. f/k/a Thornburg Mortgage Hedging Strategies, Inc.

88. “***Trustee***” means Joel I. Sher, in his capacity as Chapter 11 Trustee of the Debtors.

89. “**Unclaimed Property**” means any unclaimed Distribution of Cash or any other Property made pursuant to the Plan to the Holder of an Allowed Claim pursuant to the Plan, including checks that are either not cashed for ninety (90) days after issuance or which are returned as undeliverable without a proper forwarding address, and any Distribution not delivered because no mailing address was available as of the applicable Distribution Date.

90. “**Unimpaired**” means any Claim that is not Impaired.

91. “**United States Trustee**” means the United States Trustee appointed under section 581(a)(2) of title 28 of the United States Code to serve in the Chapter 11 Cases.

92. “**United States Trustee Fee Claims**” means fees arising under 28 U.S.C. § 1930(a)(6) or accrued interest thereon arising under 31 U.S.C. § 3717.

93. “**Unsecured Claim(s)**” means any Claim which arose prior to the Petition Date, is not subject to any priority under the Bankruptcy Code and is not secured by a Lien on a Debtors’ Property, including, but not limited to any Claim arising from the rejection of an Executory Contract in accordance with sections 365 or 1123(b)(2) of the Bankruptcy Code, but excluding the Junior Noteholder Claims, the Senior Noteholder Claims and the Senior Subordinated Noteholder Claims.

94. “**Voting Record Date**” means the record date for voting on the Plan that is designated in the Disclosure Statement Order.

95. “**Wind Down Reserve**” means the reserve(s) established from time to time by the Plan Administrator in accordance with section 5.07 of the Plan, to hold Cash sufficient to fund the wind down costs and expenses of the Debtors, including for the payment of the preparation and filing of tax returns, employees of the Debtors needed in the wind down, fees and expenses of the Plan Administrator and his professionals and other operational costs of the wind down.

## **Section 1.02. Interpretation; Application of Definitions and Rules of Construction.**

a. Whenever from the context it appears appropriate, 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 neutral gender shall include the masculine, feminine and the neuter.

b. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular paragraph, subparagraph, or clause contained in the Plan.

c. The words “includes” and “including” are not limiting and mean that the things specifically identified are set forth for purposes of illustration, clarity or specificity and do not in any respect qualify, characterize or limit the generality of the class within which such things are included.

d. The captions and headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof.

e. Any term used in the Plan that is not defined in the Plan, either in Article I of the Plan or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning assigned to that term in (and shall be construed in accordance with the rules of construction under) the Bankruptcy Code or the Bankruptcy Rules (with the Bankruptcy Code controlling in the case of a conflict or ambiguity). Without limiting the preceding sentence, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply to the Plan, unless superseded herein.

f. To the extent that the description of the Plan or any Plan document is inconsistent with the actual terms or conditions of the Plan or any Plan document, the terms and conditions of the Plan or Plan Document, as applicable, shall control.

### **Section 1.03. Exhibits.**

Any and all exhibits to the Plan and any documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full herein, regardless of when Filed. All references to “the Plan” herein shall be construed, where applicable, to include references to this document and any amendments and exhibits hereto, the Plan Supplement and any amendments thereto, and all of their respective exhibits, appendices, schedules and annexes.

## **ARTICLE II**

### **CLASSIFICATION OF CLAIMS AND INTERESTS**

#### **Section 2.01. General.**

Pursuant to section 1122 of the Bankruptcy Code, a Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of the Class and is classified in a different Class to the extent the Claim or Interest qualifies within the description of that different Class. A Claim or Interest is 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 or an Allowed Interest in that Class and such Claim or Interest has not been paid, released, settled or otherwise satisfied prior to the Effective Date.

#### **Section 2.02. Unclassified Claims (Not entitled to vote on the Plan).**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Fee Claims, United States Trustee Fees and Priority Tax Claims are not classified. The treatment accorded Administrative Claims, Fee Claims, United States Trustee Fees and Priority Tax Claims is set forth in Article 3.02.a.1-4 of the Plan.

#### **Section 2.03. Classification of Claims and Interests.**

The following table designates the Classes of Claims and Interests in the Debtors, and specifies which Classes are (a) Impaired or Unimpaired by the Plan, (b) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, or (c) deemed to accept or reject the Plan:

<u>Class</u>	<u>Designation</u>	<u>Impairment</u>	<u>Entitled to Vote</u>
Class 1	Priority Non-Tax Claims against any Debtor	No	No (deemed to accept)
Class 2a	Senior Noteholder Claims Against TMST, TMHL, TMHS and TMAS	Yes	Yes
Class 2b	Senior Subordinated Noteholder Claims Against TMST, TMHL, TMHS and TMAS	Yes	Yes
Class 2c	Junior Noteholders Claims against TMHL and TMST	Yes	Yes
Class 3a	Unsecured Claims against TMST	Yes	Yes
Class 3b	Unsecured Claims against TMHL	Yes	Yes
Class 3c	Unsecured Claims against TMAS	Yes	Yes
Class 3d	Unsecured Claims against TMHS	Yes	Yes
Class 4a	Interests in TMST	Yes	No (deemed to reject)
Class 4b	Interests in TMHL	No	No (deemed to accept)
Class 4c	Interests in TMAS	No	No (deemed to accept)
Class 4d	Interests in TMHS	No	No (deemed to accept)

**Section 2.04. Unimpaired Classes of Claims and Interests.**

Class 1 of Claims and Classes 4b, 4c, and 4d of Interests are unimpaired, and therefore are deemed to have accepted the Plan and are not entitled to vote on the Plan under section 1126(f) of the Bankruptcy Code, unless otherwise provided in this Section.

**Section 2.05. Impaired Classes of Claims and Interests.**

All other classes of Claims and Interests are impaired other than those set forth in section 2.04.

### **ARTICLE III**

#### **TREATMENT OF CLAIMS AND INTERESTS**

##### **Section 3.01. Satisfaction of Claims and Interests.**

The treatment of and consideration to be received by Holders of Allowed Claims or Allowed Interests pursuant to the Plan shall be in full satisfaction, settlement, release, extinguishment and discharge of their respective Claims against or Interests in the Debtors and the Debtors' Property.

##### **Section 3.02. Treatment of Claims and Interests.**

###### **a. Provisions for Treatment of Unclassified Claims.**

###### **1. Administrative Claims.**

Except to the extent that a Holder of an Allowed Administrative Claim agrees to less favorable treatment, or as otherwise provided for in the Plan, the Plan Administrator shall pay to each Holder of an Allowed Administrative Claim, Cash in an amount equal to the amount of such Allowed Administrative Claim on, or as soon thereafter as is reasonably practicable, the later of (i) the Effective Date, and (ii) the first Business Day after the date that is thirty (30) calendar days after the date an Administrative Claim becomes an Allowed Administrative Claim, or as soon thereafter as is reasonably practicable; *provided, however*, that Allowed Ordinary Course Administrative Claims may be paid by the Plan Administrator in the ordinary course of business consistent with past practice and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions. Notwithstanding anything to the contrary herein, the Indenture Trustee Fees shall be Allowed Administrative Claims under the Plan and paid as provided herein; provided however, no later than ten (10) days before the Confirmation Hearing, each Indenture Trustee shall submit a statement to the Trustee and the Creditors' Committee detailing the amount of Indenture Trustee Fees each is seeking to be paid under the Plan, provided however, that the Indenture Trustees may supplement such fee statements for any fees incurred between the date on which the statement is submitted and the Effective Date.

The Confirmation Order or separate bankruptcy court order will establish the Administrative Claims Bar Date for filing applications for the allowance of Administrative Claims (except for Fee Claims, claims pursuant to section 503(b)(9) of the Bankruptcy Code, Ordinary Course Administrative Claims, and any fees or charges assessed against the Estates under section 1930 of title 28 of the United States Code and any applicable interest thereon). A notice setting forth the Administrative Claim Bar Date shall be filed on the Bankruptcy Court's docket. Any requests for payment of an Administrative Claim that are not properly filed and served by the Administrative Claim Bar Date shall be disallowed automatically without the need for any objection from the Trustee or any action by the Bankruptcy Court. The Plan Administrator shall have until 120 days after the Administrative Claims Bar Date (or such longer period as may be allowed by order of the Bankruptcy Court) to review and object to all applications for the allowance of Administrative Claims. Unless the Trustee or the Plan Administrator, as applicable,

objects to a timely-filed and properly served Administrative Claim, such Administrative Claim shall be deemed Allowed in the amount requested.

## **2. Fee Claims.**

Any entity seeking an award by the Bankruptcy Court of compensation or reimbursement of Fee Claims pursuant to sections 327, 328, 330, 331, 503 or 1103 of the Bankruptcy Code for services rendered prior to the Effective Date, shall file and serve on the Trustee of the Plan Administrator, as applicable, and their counsel, the United States Trustee, counsel to the Creditors' Committee, and such other entities who are designated by the Bankruptcy Rules, the Confirmation Order or any other order(s) of the Bankruptcy Court, its final application for allowance of such compensation and/or reimbursement by no later than sixty (60) days after the Effective Date or such other date as may be fixed by the Bankruptcy Court. Holders of Fee Claims that are required to file and serve applications for final allowance of their Fee Claims and that do not file and serve such applications by the required deadline shall be forever barred from asserting such Fee Claims against the Debtors and such Fee Claims shall be deemed discharged as of the Effective Date. Objections to any Fee Claims must be filed and served on the Trustee or the Plan Administrator, as applicable, and their counsel and the requesting party no later than thirty (30) days (or such longer period as may be allowed by order of the Bankruptcy Court) after the date on which an application for final allowance of such Fee Claims was filed and served.

The Plan Administrator may, without application to or approval by the Bankruptcy Court, retain professionals and pay reasonable professional fees and expenses in connection with services rendered to the Plan Administrator after the Effective Date.

## **3. United States Trustee Fee Claims.**

On the Effective Date or as soon as practicable thereafter, the Plan Administrator shall pay all United States Trustee Fee Claims.

## **4. Priority Tax Claims.**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a different treatment, or the Bankruptcy Court has previously ordered otherwise, each Holder of an Allowed Priority Tax Claim shall receive, in full and complete satisfaction, settlement, and release of, and in exchange for such Allowed Priority Tax Claim, on, or as soon thereafter as is reasonably practicable, the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date a Priority Tax Claim becomes an Allowed Claim, Cash in an amount equal to such Allowed Priority Tax Claim. All Allowed Priority Tax Claims which are not due and payable on or before the Effective Date shall be paid in the ordinary course of business. The Plan Administrator shall retain the right to pay any Allowed Priority Tax Claim, or any remaining balance of such claim, in full at any time without premium or penalty.

## **5. Ordinary Course Liabilities.**

Except as provided herein, Holders of Administrative Claims based on liabilities incurred in the ordinary course of the Debtors' business (other than Claims of governmental units for taxes or Claims and/or penalties related to such taxes) shall not be required to file any request for

payment of such Claims. Such Administrative Claims shall be assumed and paid by the Plan Administrator, pursuant to the terms and conditions of the particular transactions giving rise to such Ordinary Course Administrative Claims, without any further action by the Holders of such Claims. Any dispute with respect to ordinary course liabilities shall be submitted to the Bankruptcy Court for resolution unless resolved by agreement of the parties.

**b. Provisions for Treatment of Classified Claims.**

**1. Class 1 – Priority Non-Tax Claims.**

A. Treatment. The legal, equitable and contractual rights of the holders of Class 1 Claims are unaltered by the Plan. Except to the extent a Holder of a Priority Non-Tax Claim agrees to different treatment, each Holder of an Allowed Priority Non-Tax Claim will be paid, in full and complete satisfaction, settlement, and release of and in exchange for such Allowed Priority Non-Tax Claim, the Allowed Amount of such Allowed Priority Non-Tax Claim in full in Cash on later of the Effective Date and the first Distribution Date subsequent to the date such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim.

B. Voting. In accordance with section 1126(f) of the Bankruptcy Code, the holders of Allowed Priority Non-Tax Claims are conclusively presumed to accept the Plan and the votes of such holders will not be solicited with respect to such Allowed Priority Non-Tax Claims.

**2. Class 2a – Senior Noteholder Claims Against TMST, TMHL, TMHS and TMAS.**

A. Allowance. The Senior Noteholder Claims shall be Allowed in the aggregate amount of \$304,742,654.67.

B. Treatment. On each Distribution Date, the holders of Allowed Senior Noteholder Claims shall receive their Pro Rata Share of Distributions as provided in section 3.02.c. of the Plan.

C. Voting. The Class 2a Claims are entitled to vote to accept or reject the Plan.

**3. Class 2b – Senior Subordinated Noteholder Claims against TMST, TMHL, TMHS and TMAS.**

A. Allowance. The Allowed Senior Subordinated Noteholder Claims, as evidenced by the Allowed Senior Subordinated Noteholder Proof of Claim, shall be Allowed in the aggregate amount of \$1,335,365,965.42. Each of the Disallowed Senior Subordinated Noteholder Claim shall be disallowed as duplicative of, or amended by, the Allowed Senior Subordinated Noteholder Proof of Claim. The claims register shall be deemed updated to reflect the disallowance of the Disallowed Senior Subordinated Noteholder Proofs of Claim.



B. Treatment. On each Distribution Date, the holders of Allowed Senior Subordinated Noteholder Claims shall receive their Pro Rata Share, if any, of Distributions as provided in section 3.02.c. of the Plan

C. Voting. The Class 2b Claims are entitled to vote to accept or reject the Plan.

4. **Class 2c -Junior Noteholder Claims against TMST and TMHL.**

A. Allowance. The Junior Noteholder Claims shall be Allowed in the aggregate amount of \$244,529,398.62.

B. Treatment. On each Distribution Date, the holders of Allowed Junior Noteholder Claims shall receive their Pro Rata Share, if any, of Distributions as provided in section 3.02.c. of the Plan

C. Voting. The Class 2c Claims are entitled to vote to accept or reject the Plan.

5. **Class 3a – Unsecured Claims Against TMST.**

A. Treatment. The Holders of Allowed Class 3a Claims shall receive their Pro Rata share of Distributions as provided in section 3.02.c. of this Plan.

B. Voting. The Class 3a Claims are entitled to vote to accept or reject the Plan.

6. **Class 3b – Unsecured Claims Against TMHL.**

A. Treatment. The Holders of Allowed Class 3b Claims shall receive their Pro Rata share of Distributions as provided in section 3.02.c. of this Plan.

B. Voting. The Class 3b Claims are entitled to vote to accept or reject the Plan.

7. **Class 3c – Unsecured Claims Against TMAS.**

A. Treatment. The Holders of Allowed Class 3c Claims shall receive their Pro Rata share of Distributions as provided in section 3.02.c. of this Plan.

B. Voting. The Class 3c Claims are entitled to vote to accept or reject the Plan.

8. **Class 3d – Unsecured Claims Against TMHS.**

A. Treatment. The Holders of Allowed Class 3d Claims shall receive their Pro Rata share of Distributions as provided in section 3.02.c. of this Plan.

B. Voting. The Class 3d Claims are entitled to vote to accept or reject the Plan.

9. **Class 4a – Interests in TMST.**

A. Treatment. The Holders of Class 4a Interests will not receive or retain any Distribution or other property under the Plan. Class 4a Interests will be deemed cancelled on the Effective Date.

B. Voting. In accordance with section 1126(f) of the Bankruptcy Code, the holders of Class 4a Interests are conclusively presumed to reject the Plan and the votes of such holders will not be solicited.

10. **Class 4b – Interests in TMHL.**

A. Treatment. TMHL shall remain as a wholly owned subsidiary of TMST for all purposes, and TMST shall retain its interests therein.

11. **Class 4c – Interests in TMAS.**

A. Treatment. TMAS shall remain as a wholly owned subsidiary of TMHL for all purposes, and TMHL shall retain its interests therein.

12. **Class 4d – Interests in TMHS.**

A. Treatment. TMHS shall remain as a wholly owned subsidiary of TMST for all purposes, and TMST shall retain its interests therein.

**c. Distributions.**

1. On the Initial Distribution Date, the Plan Administrator shall distribute an amount equal to all Cash on hand less the amount of the Effective Date Reserves as follows:

A. On a Pari Passu basis to the holders of Class 2a Senior Noteholder Claims and the holders of Allowed Class 3a, 3b, 3c and 3d Unsecured Claims, if any, as determined on a Debtor-by Debtor basis.

2. On each subsequent Distribution Date, the Plan Administrator shall distribute an amount equal to all Cash on hand less the amounts remaining in the Effective Date Reserves as follows:

A. On a Pari Passu basis to the holders of Class 2a Senior Noteholder Claims and the remaining holders of Allowed Class 3a, 3b, 3c and 3d Unsecured Claims, if any, as determined on a Debtor-by Debtor basis.

3. The holders of Allowed Class 2b Senior Subordinated Noteholder Claims shall not receive any Distribution, unless and until the holders of Allowed Class 2a Senior Noteholder Claims have been satisfied in full.

4. The holders of Allowed Class 2c Junior Noteholder Claims shall not receive any Distribution, unless and until the holders of Allowed Class 2a Senior Noteholder Claims and Allowed Class 2b Senior Subordinated Noteholder Claims have been satisfied in full.

## **ARTICLE IV**

### **ACCEPTANCE OR REJECTION OF THE PLAN**

#### **Section 4.01. Each Impaired Class Entitled to Vote Separately.**

Each Impaired Class of Claims that is eligible to receive a Distribution under the Plan will be entitled to vote separately to accept or reject the Plan. Except as provided herein, each Person that, as of the Voting Record Date, holds a Claim in such an Impaired Class will receive a Ballot that will be used to cast its vote to accept or reject the Plan. In the event of a controversy as to whether any Class of Claims or Interests is Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy.

#### **Section 4.02. Acceptance by a Class of Claims.**

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

#### **Section 4.03. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code or “Cram down.”**

With respect to the Impaired Classes of Claims and Interests that reject or that are deemed to have rejected the Plan, the Trustee hereby requests, without any delay in the occurrence of the Confirmation Hearing or Effective Date, that the Bankruptcy Court confirm the Plan in accordance with Section 1129(b) of the Bankruptcy Code with respect to such non-accepting Classes, in which case the Plan shall constitute a motion for such relief. The Trustee reserves the right to alter, amend, modify, revoke or withdraw the Plan or any Plan Document in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

#### **Section 4.04. Retention of Interests in Subsidiaries.**

To the extent required to satisfy the requirements of section 1129(b) of the Bankruptcy Code and to maintain the Debtors’ ability to file their respective tax returns as part of a consolidated tax group, on the Effective Date, the Plan Administrator shall cause TMST to transfer the sum of \$500,000 to each of TMHL and TMHS, and TMHL to transfer the sum of \$500,000 to TMAS, as necessary, so that TMST and TMHL retains their respective interests in each of TMHL, TMHS and TMAS.

**Section 4.05. Voting Classes.**

If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be deemed accepted by the Holders of such Claims or Interests in such Class.

**Section 4.06. Confirmation of All Cases.**

Confirmation of the Plan shall be determined on a Debtor-by-Debtor basis, and the Bankruptcy Court may enter a Confirmation Order for all or less than all the Debtors, as applicable.

**ARTICLE V**

**MEANS OF PLAN IMPLEMENTATION**

**Section 5.01. Appointment of the Plan Administrator.**

The Confirmation Order shall provide that on the Effective Date the Trustee shall be appointed as the Plan Administrator. The Plan Administrator shall be deemed the Estates representative in accordance with section 1123 of the Bankruptcy Code and shall have all powers, authority, and responsibilities specified in the Plan, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code.

**Section 5.02. Powers and Duties of the Plan Administrator.**

The Plan Administrator will act for the Debtors in a fiduciary capacity as applicable to a board of directors or trustees, subject to the provisions of the Plan. The powers and duties of the Plan Administrator shall include, without limitation:

- (a) investing Cash, and withdrawing and making Distributions of Cash to holders of Allowed Claims and paying taxes and other obligations owed by the Debtors or incurred in connection with winding down the Estates;
- (b) engaging attorneys, consultants, agents, employees, and any other professional persons to assist the Plan Administrator with respect to his responsibilities;
- (c) executing and delivering all documents and taking all actions necessary to consummate the Plan and wind up the Debtors' businesses;
- (d) coordinating the turnover of property, if any, subject to rejected executory contracts or abandonment or liquidation of any retained assets;
- (e) coordinating the collection of outstanding accounts receivable;
- (f) coordinating the storage and maintenance of the Debtors' books and records;

- (g) coordinating the destruction of records and data in connection with the winding down of the Debtors' Estates;
- (h) overseeing compliance with the Debtors' accounting, finance, regulatory and reporting obligations;
- (i) preparing financial statements and United States Trustee post-confirmation quarterly reports, until such time as a final decree has been entered;
- (j) overseeing the filing of final tax returns, refund requests, audits, and other corporate dissolution documents, as required;
- (k) performing any additional corporate actions as necessary to carry out the wind up and liquidation of the Debtors;
- (l) paying the fees and expenses of the attorneys, consultants, agents, employees, and other professional persons engaged by Plan Administrator and to pay all other expenses for winding down the affairs of the Debtors, subject to the terms of the Plan;
- (m) disposing of, and delivering title to others of, or otherwise realizing the value of, any remaining assets of the Debtors;
- (n) objecting to, compromising, and settling Claims;
- (o) acting on behalf of the Debtors in all adversary proceedings and contested matters (including, without limitation, any Causes of Action), then pending or that can be commenced in the Bankruptcy Court and in all actions and proceedings pending or commenced elsewhere, and to settle, retain, enforce, dispute, or adjust any claim and otherwise pursue actions involving the Debtors' assets that could arise or be asserted at any time under the Bankruptcy Code, unless otherwise waived or relinquished in the Plan;
- (p) implementing and/or enforcing all provisions of the Plan; and
- (q) such other powers as may be vested in or assumed by the Plan Administrator pursuant to the Plan or other Order of the Bankruptcy Court, or as may be needed or appropriate to carry out the provisions of the Plan.

**Section 5.03. Resignation or Removal of Plan Administrator.**

If the Plan Administrator resigns or is removed, dies, dissolves, or is incapacitated, the Bankruptcy Court shall designate another Person to become the Plan Administrator and thereupon the successor Plan Administrator, without further act, shall become fully vested with all the rights, powers, duties, and obligations of his or her predecessor, including the compensation of the predecessor Plan Administrator. No successor Plan Administrator hereunder shall in any event have any liability or responsibility for the acts or omissions of any of his or her predecessors.

**Section 5.04. No Agency Relationship.**

The Plan Administrator shall not be deemed to be the agent for any of the Holders of Claims in connection with the funds held or distributed pursuant to the Plan. The Plan Administrator shall not be liable for any mistake of fact or law or error of judgment or any act or omission of any kind unless it constitutes gross negligence or willful misconduct or breach of fiduciary duty. The Plan Administrator shall be indemnified and held harmless, including the cost of defending such claims and attorneys' fees in seeking indemnification, by the Estates against any and all claims arising out of his or her duties under the Plan, except to the extent his or her actions constitute gross negligence or willful misconduct or breach of fiduciary duty. The Plan Administrator may conclusively rely and shall be fully protected personally in acting upon any statement, instrument, opinion, report, notice, request, consent, order, or other instrument or document which he or she believes to be genuine and to have been signed or presented by the proper party or parties. The Plan Administrator may rely upon information previously generated by the Debtors and such additional information provided to him or her by present or former employees of the Debtors.

**Section 5.05. Corporate Action.**

The Plan will be administered by the Plan Administrator and all actions taken under the Plan in the name of the Debtors shall be taken through the Plan Administrator. Upon the Distribution of all Assets pursuant to the Plan and the filing by the Plan Administrator of a certification to that effect with the Bankruptcy Court (which may be included in the application for the entry of the final decree), the Debtors shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith, provided, however, that the Debtors may, but will not be required to, take appropriate action to dissolve under applicable law.

**Section 5.06. Effective Date Funding.**

On the Effective Date, all Cash, and other Assets shall be deemed turned over by the Trustee to the Plan Administrator, who shall use such Cash and Assets to fund all payments required under the Plan.

**Section 5.07. Effective Date Reserves.**

Prior to the Effective Date, the Trustee shall determine the amount of the Effective Date Reserves. On the Effective Date the Plan Administrator shall fund the Effective Date Reserves. Thereafter, from time to time, the Plan Administrator may increase or decrease the amount of the Effective Date Reserves, as applicable, to ensure that such reserves contain sufficient amounts to fund the Disputed Claim Reserve, Professional Fee Claim Reserve, and Wind Down Reserve.

**Section 5.08. Withholding Taxes.**

The Plan Administrator shall not be required to withhold taxes or comply with any applicable reporting requirements. The recipients of Distributions will be required to comply with all applicable laws and regulations concerning the reporting and taxing of the Distributions. If requested by the recipient of a Distribution, the Plan Administrator may, in his sole discretion, issue an IRS Form 1099.

**Section 5.09. Intercompany Claims.**

No Distributions shall be made under the Plan on account of intercompany Claims among the Debtors and all such Claims shall be eliminated as of the Effective Date.

**Section 5.10. Class 2 Distributions.**

On the Effective Date, or as soon as reasonably practicable thereafter, the Plan Administrator shall issue the DTC Exchange Instruction Letter. All Distributions, if any, on account of Allowed Class 2a, 2b or 2c Claims shall be paid to the respective Senior Noteholder Indenture Trustee, Senior Subordinated Noteholder Indenture Trustee, or the Junior Subordinated Noteholder Indenture Trustee, as applicable, who shall be responsible for the Distribution of such amounts to the holders of Allowed Class 2a, 2b or 2c Claims and, subject to the provisions of this section of the Plan, such funds shall be distributed Pro Rata based upon the books and records of the respective Senior Noteholders Indenture Trustee, Senior Subordinated Noteholder Indenture Trustee, or the Junior Subordinated Noteholder Indenture Trustee, as applicable, pursuant to Bankruptcy Rule 3021. In the event the Plan Administrator determines in the future to distribute property other than Cash to Holders of Allowed Class 2a, 2b, or 2c Claims, the Plan Administrator shall establish procedures consistent with ordinary DTC practice for distributing such property.



With respect to Distributions under the Plan, the Plan Administrator and the Senior Noteholder Indenture Trustee, Senior Subordinated Noteholder Indenture Trustee, and the Junior Subordinated Noteholder Indenture Trustee shall be entitled to recognize and deal for all purposes hereunder with only those holders of the non-transferrable Noteholder Claim Escrow CUSIPs at the time of such Distributions. Prior to making any Distribution to holders of Allowed Class 2a, 2b or 2c Claims, the Senior Noteholder Indenture Trustee, Senior Subordinated Noteholder Indenture Trustee, and the Junior Subordinated Noteholder Indenture Trustee, as applicable, may, if applicable, satisfy or reserve for its actual and reasonably expected compensation and expense reimbursement claims from the funds and other property distributed under the Plan.

**Section 5.11. Late Claims.**

Except as provided herein or otherwise agreed, any and all Holders of proofs of claim filed after the applicable Bar Date, including for the avoidance of doubt, the originally applicable Bar Date with respect to any transferred Claim, including any Claim acquired by right of subrogation, shall not be treated as Creditors for purposes of Distribution pursuant to Bankruptcy Rule 3003(c)(2) and the Bar Date and shall be deemed disallowed without further order of the Bankruptcy Court unless, on or before the Confirmation Date, such late Claim has been deemed timely allowed by a Final Order. Even if such late Claim has been deemed timely filed by a Final Order, it still may be objected to as set forth in this Plan or the Bankruptcy Code.

**Section 5.12. Obligations Incurred After the Effective Date.**

Payment obligations incurred after the Effective Date, including, without limitation, the professional fees of the Debtors or the Plan Administrator, will not be subject to application or Proof of Claim and may be paid by the Plan Administrator in the ordinary course of business and without further Bankruptcy Court approval.

**Section 5.13. Post-Confirmation Reports and United States Trustee Fees.**

The Plan Administrator shall be responsible for the preparation and filing of operating reports until entry of a final decree in this case. Quarterly fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930 and any applicable interest thereon shall be paid by the Debtors until the entry of an order converting, dismissing or granting a final decree in these cases.

**ARTICLE VI**

**PRESERVATION AND PROSECUTION OF CAUSES OF ACTION HELD BY THE DEBTORS**

**Section 6.01. Preservation and Prosecution of Causes of Action.**

In accordance with section 1123(b) of the Bankruptcy Code, all claims and causes of action of the Debtors are retained and preserved. The Plan Administrator shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Claims, Causes of Action, rights of setoff, or any legal or equitable defenses that the Plan Administrator may choose to assert on behalf of their respective estates under any provision of the Bankruptcy Code or any applicable non-bankruptcy law. The Plan Administrator's right to commence, prosecute, settle, or abandon

Claims, Causes of Action, rights of setoff, or any legal or equitable defenses shall be preserved, notwithstanding the occurrence of the Effective Date. No entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Claim, Cause of Action, rights of setoff, or any legal or equitable defenses against them as any indication that the Plan Administrator, will not pursue any and all available Claims, Causes of Action, rights of setoff, or any legal or equitable defenses against them. Unless any Claims, Causes of Action, rights of setoff, or any legal or equitable defenses against an entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order of the Bankruptcy Court, the Trustee or the Plan Administrator, as applicable, expressly reserve all Claims, Causes of Action, rights of setoff, or any legal or equitable defenses, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply upon, after, or as a consequence of the Confirmation Order.

## **ARTICLE VII**

### **PROVISIONS FOR TREATMENT OF DISPUTED CLAIMS**

#### **Section 7.01. Objections to Claims.**

As of the Effective Date, the Plan Administrator shall have the right to object to the allowance of any Claims or Interests with respect to which there is any dispute, including as to liability, priority, and/or amount other than the Noteholder Claims (which are allowed pursuant to the Plan). The Plan Administrator shall be substituted for the Trustee with respect to any objections to claims that have been filed prior to the Effective Date. Any Objections to Claims that have not been filed on or before the Confirmation Date, shall be served and filed as soon as practicable, but, in each instance, no later than: (a) 180 days after the Effective Date; or (b) such other date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (a) hereof. The Filing of a motion to extend such objection deadline shall automatically extend such deadline until a Final Order is entered on such motion. In the event that such a motion to extend the objection deadline is denied by the Bankruptcy Court, or approved by the Bankruptcy Court and reversed on appeal, such objection deadline shall be the later of the current deadline (as previously extended, as applicable) or 30 days after entry of a Final Order denying the motion to extend the objection deadline.

#### **Section 7.02. No Payment or Distribution Pending Allowance.**

Notwithstanding any other provision in the Plan, if any portion of a Claim is a Disputed Claim, no Distribution provided for hereunder shall be made on account of such Claim unless and until the Disputed Claim becomes an Allowed Claim. To the extent a Disputed Claim is Disallowed in whole or in part, the Holder of such Claim will not receive any Distribution on account of the portion of such Claim (including the whole, if applicable) that is Disallowed.

#### **Section 7.03. Disputed Distributions.**

If any dispute arises as to the identity of a Holder of an Allowed Claim who is to receive any Distribution, in lieu of making a Distribution to such Person, the Plan Administrator may

reserve or deposit the Distribution at issue or the disputed portion thereof into a segregated account for Disputed Distributions until the disposition thereof is determined by a Final Order or by written agreement among the interested parties to such dispute.

**Section 7.04. Estimation.**

The Trustee or the Plan Administrator, as applicable, shall have the right, but not the obligation, at any time to seek an order of the Bankruptcy Court, after notice and a hearing (which hearing may be held on an expedited basis), estimating for final Distribution purposes any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Trustee or Plan Administrator, as applicable, previously objected to such Claim. If the Bankruptcy Court estimates any contingent, Disputed or unliquidated Claim, the estimated amount shall constitute either the Allowed Amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court, including for purposes of the Disputed Claims Reserve; *provided, however*, that if the estimate constitutes the maximum limitation on such Claim, the Trustee or the Plan Administrator as the as applicable, may elect to pursue supplemental proceedings to object to any ultimate allowance of such Claim. On or after the Confirmation Date, Claims that have been estimated may be compromised, settled, withdrawn, or otherwise resolved subsequently, without further order of the Bankruptcy Court.

**Section 7.05. Reserve Account for Disputed Claims.**

On or after the Effective Date, the Plan Administrator shall hold in the Disputed Claims Reserve, Cash in an aggregate amount sufficient to compensate each Holder of a Disputed Claim, which the Plan Administrator is ultimately responsible for disbursing, with (i) the amount that such Holder would have been entitled to receive under the Plan if such Claim had been an Allowed Claim on the Effective Date, (ii) to the extent the value of a Disputed Claim has been estimated in accordance with Section 7.04 above, the estimated value of such Disputed Claim, or (iii) such other amount as may be agreed upon by the Holder of such Disputed Claim and the Plan Administrator. The Plan Administrator may pool funds in the Disputed Claims Reserves with other funds; *provided, however*, the Plan Administrator shall treat all such funds as segregated accounts in the respective books and records.

**Section 7.06. Release of Funds from Disputed Claims Reserve.**

At such time as a Disputed Claim becomes, in whole or in part, an Allowed Claim, the Plan Administrator, shall distribute to the Holder thereof the Distribution, if any, to which such Holder is then entitled under the Plan. To the extent a Disputed Claim is Disallowed or Allowed in a lesser amount than has been reserved for such Disputed Claim, the Cash reserved for such Disputed Claim or the difference between the amount reserved for such Disputed Claim and the lesser amount at which such Disputed Claim is ultimately Allowed, as applicable, be returned from the Disputed Claims Reserve to the Cash available for Distribution.

## **ARTICLE VIII**

### **DISTRIBUTIONS UNDER THE PLAN**

#### **Section 8.01. Limitation to Full Recovery.**

Notwithstanding anything herein to the contrary, no Holder of any Claim will be entitled to a Distribution in excess of 100% of the Allowed amount of its Claims.

#### **Section 8.02. Timing of Distributions.**

Distributions under the Plan shall be made as set forth in the Plan or as soon as reasonably practicable thereafter. If a Claim is not an Allowed Claim as of the Effective Date, Distributions will be made only if and when the Claim is Allowed and, to the extent a Disputed Claim is the subject of estimation in accordance with Section 7.04 of the Plan, in an amount no greater than the amount reserved in the Disputed Claims Reserve.

#### **Section 8.03. Saturdays, Sundays, or Legal Holidays.**

If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, and shall be deemed to have been completed as of the required date.

#### **Section 8.04. Distribution Record Date.**

Except as otherwise provided in a Final Order that is not subject to any stay, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 and Filed with the Bankruptcy Court on or prior to the Distribution Record Date will be treated as the Holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer may not have expired by the Distribution Record Date. As of the close of business on the Distribution Record Date, any transfer ledgers, transfer books, registers and any other records will be closed and, for purposes of the Plan, there shall be no further changes in the record Holders of such Claims. The Debtors shall have no obligation to recognize the transfer of any Claim occurring after the Distribution Record Date, and will be entitled for all purposes to recognize and deal only with those Holders of Claims as of the close of business on the Distribution Record Date, as reflected on the ledgers, books, registers or records of the Debtors and the Bankruptcy Court.

#### **Section 8.05. Delivery of Distributions.**

Subject to the treatment of Disputed Distributions as set forth in Article VII of the Plan, Distributions shall be made to Holders of Allowed Claims at the addresses set forth on the Debtors' books and records or the Proofs of Claim, if any, Filed by such Creditors or at the last known addresses of such Creditors or, in the case of transferred Claims, on the notice of transfer Filed with the Bankruptcy Court pursuant to Bankruptcy Rule 3001, each as of the Distribution Record Date. If any such Creditor's Distribution is returned as undeliverable, no further Distribution shall be made to such Creditor unless and until the Plan Administrator is notified of

such Creditor's then-current address, at which time any missed Distribution shall be made to such Creditor to the extent of available Cash; *provided* that in no event are the Debtors required to make Distributions to a Creditor whose Distribution is returned as undeliverable and becomes Unclaimed Property.

#### **Section 8.06. Method of Cash Distributions.**

The Plan Administrator shall make all Distributions contemplated by the Plan. Any Cash payment to be made pursuant to the Plan shall be made by check drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Plan Administrator. If a Creditor holds more than one Claim in any one Class, all Allowed Claims of the Creditor in that Class may, at the Plan Administrator's option, be aggregated and one Distribution may be made with respect thereto.

#### **Section 8.07. Unclaimed Property.**

All Property distributed on account of Claims must be claimed within the later of ninety (90) days after (i) the Distribution Date and (ii) the date such Distribution is made to such Holder *provided, however*, in the case of a Distribution made in the form of a check, it must be negotiated or a request for reissuance made directly to the Plan Administrator by the Creditor that was originally issued such check within ninety (90) days after the date the Distribution is made to the applicable Creditor. Nothing contained in the Plan shall require the Plan Administrator to attempt to locate any Holder of an Allowed Claim, other than as provided herein. Pursuant to Bankruptcy Code sections 347(b) and 1143, all Claims in respect of Unclaimed Property shall be deemed Disallowed and the Holder of any Claim Disallowed is forever barred, expunged, estopped and enjoined from asserting such Claim in any manner against the Debtors or the Estates.

#### **Section 8.08. Setoffs.**

Except as otherwise provided in the Plan, the Confirmation Order, or in an agreement approved by a Final Order of the Bankruptcy Court, the Trustee or the Plan Administrator, as applicable, may, pursuant to applicable law (including section 553 of the Bankruptcy Code), setoff against any Distribution amounts related to any Claim before any Distribution is made on account of such Claim, any and all of the Claims, rights and causes of action of any nature that the Debtors, or the Estates may hold against the Holder of such Claim, *provided, however*, that neither the failure to effect such a setoff, the allowance of any Claim hereunder, any other act or omission of the Trustee or the Plan Administrator, nor any provision of the Plan will constitute a waiver or release by the Debtors of any such claims, rights or causes of action that the Debtors may possess against such Holder.

#### **Section 8.09. Documentation Necessary to Release Lien.**

Each Creditor who is a Holder of a Lien satisfied, discharged and released under the Plan and who is to receive a Distribution under the Plan shall not receive such Distribution until such Creditor executes and delivers any documents necessary to release all Liens arising under any applicable security agreement or non-bankruptcy law (in recordable form, if appropriate) in connection with such Claim and such other documents as the Trustee or Plan Administrator, as applicable to document satisfaction of the Lien.

**Section 8.10. Distributions Under Fifty Dollars.**

No Distribution of Cash in an amount less than fifty dollars (\$50.00) will be made by the Plan Administrator to any Holder of an allowed Claim unless a request is made in writing to the Plan Administrator. If no such request is made, all such Distributions will be treated as Unclaimed Property.

**ARTICLE IX**

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES;  
INDEMNIFICATION OBLIGATIONS**

**Section 9.01. General Treatment.**

Unless otherwise provided in the Plan, prior to the Effective Date, the Trustee will have rejected or filed a motion to assume or reject all executory contracts or unexpired leases of the Debtor not previously (a) assumed or (b) terminated or expired by their terms. Any executory contracts that were not expressly assumed, terminated or expired by their terms shall be deemed rejected upon entry of the Confirmation Order.

**Section 9.02. Bar Date for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan.**

Claims arising out of the rejection of an Executory Contract or unexpired lease pursuant to Section 9.01 of the Plan must be filed with the Bankruptcy Court and served upon the Trustee or Plan Administrator, as applicable, no later than thirty (30) days after the later of (i) notice of entry of an order approving the rejection of such Executory Contract or unexpired lease, and (ii) notice of entry of the Confirmation Order. All such Claims not filed within such time will be forever barred from assertion against the Debtors and their Estates.

**Section 9.03. Treatment of Rejection Claims.**

Any Allowed Claim arising out of the rejection of an Executory Contract or unexpired lease pursuant to the Plan (as opposed to a separate order of the Bankruptcy Court) shall, pursuant to section 502(g) of the Bankruptcy Code, be an Unsecured Claim.

**Section 9.04. Reinstatement and Continuation of Insurance Policies.**

Unless otherwise assumed during the pendency of the Chapter 11 Cases, from and after the Effective Date, and notwithstanding Section 9.01 of the Plan, each of the Debtors' insurance policies in existence on and as of the Confirmation Date shall be reinstated and continued in accordance with its terms and, to the extent applicable, shall be deemed assumed by the Plan Administrator notwithstanding Section 9.01 of the Plan. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that Debtors may hold against any entity, including, without limitation, the insurer under any of the Debtors' insurance policies.



The discharge and release from all Claims and Interests, as provided herein, shall not diminish or impair the enforceability of any insurance policy that may cover Claims against the Debtors, or any other person or entity.

## **ARTICLE X**

### **EFFECT OF CONFIRMATION**

#### **Section 10.01. Binding Effect.**

The Plan shall be binding and inure to the benefit of the Trustee, the Plan Administrator, the Debtors, all Holders of Claims and Interests, and their respective successors and assigns.

#### **Section 10.02. Continuing Existence.**

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, with all the powers of a corporation pursuant to the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation or bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation or bylaws (or other formation documents) are amended by the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval.

#### **Section 10.03. Vesting of Assets in the Debtors.**

On the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, the Property of each Estate shall vest in the applicable Debtor, free and clear of all Claims, Liens, encumbrances, charges, and other Interests subject to the rights of the Plan Administrator set forth in the Plan. From and after the Effective Date, the Debtors, by the Plan Administrator, may operate their businesses and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending case under any chapter or provision of the Bankruptcy Code, subject to the terms and conditions of the Plan and the Confirmation Order.

#### **Section 10.04. Discharge of Claims Against and Interests in the Debtors.**

Upon the Effective Date and in consideration of the Distributions to be made hereunder, except as otherwise provided herein or in the Confirmation Order, each Person that is a Holder (as well as any trustees and agents on behalf of such Person) of a Claim or Interest and any affiliate of such Holder shall be deemed to have forever waived, released, and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided herein, upon the Effective Date, all such Holders of Claims and Interests and their affiliates shall be forever precluded and enjoined, pursuant to sections 105, 524, 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in any Debtor.



### **Section 10.05. Cancellation of Existing Securities and Agreements.**

Except as otherwise provided for in the Plan, on the later of the Effective Date and the date on which the relevant Distributions are made pursuant to Article III of the Plan and without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity, the obligations of the Debtors under the Junior Indenture, the Senior Indenture and the Senior Subordinated Indenture shall be cancelled as to each applicable Debtor and each applicable Debtor shall not have any continuing obligations thereunder; provided, that the Junior Indenture, the Senior Indenture and the Senior Subordinated Indenture and each agreement or other document respectively related thereto will continue in effect for the limited purpose of allowing Holders of the claims arising thereunder to receive, and allowing and preserving the rights of the Indenture Trustees to make, or cause to be made the Distributions under or in connection with this Plan to the applicable Holders; provided, further, that, upon completion of the Distribution with respect to Holders of the claims arising thereunder, any and all documents, notes, securities and instruments issued in connection therewith shall terminate automatically and completely without further notice or action and be deemed surrendered and the Indenture Trustees shall be released of any obligations and shall have no further obligations whatsoever except as expressly provided in the Plan; provided, further, that the Junior Indenture, the Senior Indenture and the Senior Subordinated Indenture and all documents, notes securities and instruments issued in connection therewith shall continue in effect for the limited purpose of allowing and preserving all of the rights, privileges, benefits, indemnities, and protections of the respective Indenture Trustees (acting in any capacity, including as a Distribution Agent) thereunder, including, without limitation, permitting the Indenture Trustees to exercise any and all liens granted to it under their respective indentures against such Distributions for payment of any fees and expenses of Indenture Trustees.

Upon the final Distribution (if any) on account of the Holders of Allowed Class 2a, 2b, or 2c Claims, as applicable, (a) such notes shall be deemed to be worthless, and (b) the Plan Administrator shall submit a request to DTC in a letter prepared in accordance with DTC procedures to remove the relevant positions relating to such Noteholder Claims, and such letter shall not contain the indemnity language that might otherwise be required, nor shall the Plan Administrator or the Debtors be authorized to provide such indemnity.

Except for the purpose of evidencing a right to payment under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all agreements, instruments, and other documents evidencing any Claim or Interest and any rights of any holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect and the obligations of the Debtor[s] thereunder shall be deemed fully satisfied, released, and discharged.

### **Section 10.06. Releases.**

**UPON THE EFFECTIVE DATE AND IN CONSIDERATION OF THE DISTRIBUTIONS TO BE MADE UNDER THE PLAN, EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR IN THE CONFIRMATION ORDER, EACH PERSON THAT IS A HOLDER (AS WELL AS ANY TRUSTEES AND AGENTS ON BEHALF OF SUCH PERSON) OF A CLAIM OR INTEREST AND ANY AFFILIATE OR SUBSIDIARY OF SUCH HOLDER SHALL BE DEEMED TO HAVE FOREVER WAIVED, RELEASED,**

**AND DISCHARGED THE TRUSTEE, THE CREDITORS' COMMITTEE, THE INDENTURE TRUSTEES, AND EACH OF THEIR RESPECTIVE EMPLOYEES, CONSULTANTS, ATTORNEYS, ACCOUNTANTS, FINANCIAL ADVISORS AND OTHER REPRESENTATIVES (SOLELY IN THEIR CAPACITIES AS SUCH) FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, EVENT OR OTHER OCCURRENCE FROM AND AFTER THE PETITION DATE THROUGH AND INCLUDING THE EFFECTIVE DATE IN ANY WAY RELATING TO THE CHAPTER 11 CASES, THIS PLAN OR THE DISCLOSURE STATEMENT.**

**Section 10.07. Compromise and Settlement.**

Notwithstanding anything contained in this Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and their respective Distributions and treatments under this Plan take into account and conform to the relative priority and rights of the Claims and the Interests in each Class with due regard to any contractual, legal and equitable subordination rights relating thereto, including but not limited to the subordination provisions governing both the Senior Subordinated Noteholder Claims and the Junior Noteholder Claims, whether arising under general principles of equitable subordination, sections 510(a), (b) and (c) of the Bankruptcy Code, or otherwise. As of the Effective Date, any and all such rights described in the preceding sentence are settled and compromised pursuant to this Plan. The Confirmation Order will constitute the Bankruptcy Court's finding and determination that the settlements reflected in this Plan are (1) in the best interests of the Debtors, their Estates and all Holders of Claims, (2) fair, equitable and reasonable, (3) made in good faith and (4) approved by the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

**ARTICLE XI**

**RETENTION OF JURISDICTION**

**Section 11.01. Exclusive Jurisdiction of Bankruptcy Court.**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction of all matters arising out of, arising in or related to, the Chapter 11 Cases, the Plan and the Confirmation Order to the fullest extent permitted by applicable law, including, without limitation, jurisdiction to:

(i) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim (whether Filed before or after the Effective Date and whether or not contingent, Disputed or unliquidated), including the compromise, settlement and resolution of any request for payment of any Claim, the resolution of any Objections to the allowance or priority of any Claim and the resolution of any dispute as to the treatment necessary to reinstate a Claim pursuant to the Plan 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;

(ii) Grant or deny any applications for allowance of compensation or reimbursement of expenses for Professionals authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

(iii) Hear and determine motions, applications, adversary proceedings, contested matters and other litigated matters pending on, Filed on or commenced after the Effective Date, including proceedings with respect to the rights of the Estates to recover Property under sections 542 or 543 of the Bankruptcy Code;

(iv) Determine and resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract or unexpired lease 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 therefrom;

(v) Ensure that all payments due under the Plan and 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;

(vi) Following the Effective Date and consistent with section 1142 of the Bankruptcy Code, construe, take any action and issue such orders as may be necessary for the enforcement, implementation, execution and consummation of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan and the Confirmation Order, for the maintenance of the integrity of the Plan and protection of the Estates following consummation in accordance with sections 524 and 1141 of the Bankruptcy Code;

(vii) Determine and resolve any case, controversy, suit or dispute that may arise in connection with the consummation, interpretation, implementation or enforcement of the Plan or the Confirmation Order, including the indemnification, release and injunction provisions set forth in the Plan, or any Person's rights arising under or obligations incurred in connection therewith;

(viii) Modify the Plan after the Effective Date pursuant to section 1127 of the Bankruptcy Code and the Plan or modify the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with the Plan, or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order or the Confirmation Order;

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

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

(xi) Determine any other matters that may arise in connection with or relating to the Plan, the Plan Summary, the Confirmation Order and the Bankruptcy Code;

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

(xiii) Continue to enforce the automatic stay through the Effective Date;

(xiv) Hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan, and issues presented or arising under the Plan, including but not limited to disputes among Holders and arising under agreements, documents or instruments executed in connection with or governed by the Plan;

(xv) Hear and determine any other matter relating to the Plan, its interpretation or enforcement; and

(xvi) Enter a final decree and close the Chapter 11 Cases.

## **ARTICLE XII**

### **CONFIRMATION AND EFFECTIVENESS OF THE PLAN**

#### **Section 12.01. Conditions Precedent to the Effective Date.**

The following conditions precedent to the occurrence or the confirmation must be satisfied unless any such condition shall have been waived by the Trustee:

(a) a Confirmation Order, in form and substance satisfactory to the Trustee, having become a Final Order;

(b) the Plan, in form and substance satisfactory to the Trustee, being executed and delivered, and any conditions (other than the occurrence of the Effective Date or certification by the Debtors that the Effective Date has occurred) contained therein having been satisfied or waived in accordance therewith;

(c) The Disputed Claims Reserve, Professional Fee Claim Reserve and the Wind Down Reserve having been established;

(d) The Trustee having been appointed as Plan Administrator in accordance with the terms and conditions of the Plan; and

(e) all other actions and documents necessary to implement the Plan shall have been effected or executed and shall be reasonably acceptable to the Plan Administrator.

**Section 12.02. Termination of Appointment of Trustee.**

Upon the Effective Date, the appointment of the Trustee shall be deemed terminated and the Trustee shall be discharged from all further obligations and duties as a Chapter 11 Trustee under the terms of the Bankruptcy Code. At such time the Trustee shall simultaneously be appointed as the Plan Administrator with all duties and rights as set forth in the Plan. Notwithstanding the foregoing, the Trustee shall continue to serve after such date with respect to (i) any applications filed pursuant to sections 326, 330 and 331 of the Bankruptcy Code seeking the payment of compensation, fee and expenses, and (ii) to effectuate any transition from Trustee to Plan Administrator consistent with the Plan

**Section 12.03. Notice of Occurrence of the Effective Date.**

The Plan Administrator shall file a Notice of the Occurrence of the Effective Date within five (5) Business Days after the Effective Date. Failure to file such Notice shall not prevent the effectiveness of the Plan, Plan Supplement or any related documents.

**Section 12.04. Dissolution of Creditors' Committee.**

Upon the Effective Date, the Creditors' Committee shall be dissolved and the current and former members of the Creditors' Committee and any other creditor, equity or other committee appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Cases, and their respective officers, employees, counsel, advisors and agents, shall be released and discharged of and from all further authority, duties, responsibilities and obligations related to and arising from and in connection with the Chapter 11 Cases and the retention or employment of the Creditors' Committee's attorneys, accountants, and other agents, if any, shall terminate, except for purposes of filing and prosecuting Final Fee Applications or any appeal of the Confirmation Order.

**Section 12.05. Waiver of Conditions Precedent and Bankruptcy Rule 3020(e) Automatic Stay.**

The Trustee or the Plan Administrator, as applicable, shall have the right to waive one or more of the conditions precedent set forth above at any time without leave of or notice to the Bankruptcy Court and without formal action other than proceeding with confirmation of the Plan.

If any condition precedent to the Effective Date is waived pursuant to this Section and the Effective Date occurs, the waiver of such condition shall benefit from the "mootness doctrine", and the act of consummation of the Plan shall foreclose any ability to challenge the Plan in any court.

**Section 12.06. Waiver of Bankruptcy Rule 7062.**

The Trustee may request that the Confirmation Order include (a) a finding that Bankruptcy Rule 7062 shall not apply to the Confirmation Order and the Plan be immediately binding and enforceable; and (b) authorization for the Trustee and the Plan Administrator to consummate the Plan immediately after entry of the Confirmation Order.

**Section 12.07. Consequences of Non-Occurrence of Effective Date.**

If the Confirmation Order is vacated, (a) the Plan shall be null and void in all respects, and (b) any settlement or release of claims provided for hereby shall be null and void without further Order of the Bankruptcy Court.

**ARTICLE XIII**

**MISCELLANEOUS PROVISIONS**

**Section 13.01. Binding Effect of Plan.**

The provisions of the Plan shall be binding upon and inure to the benefit of the Trustee, the Plan Administrator, the Debtors, any Holder of any Claim or Interest treated herein and each of their respective heirs, executors, administrators, representatives, predecessors, successors, assigns, agents, officers and directors, and, to the fullest extent permitted under the Bankruptcy Code and other applicable law, each other Person affected by the Plan.

**Section 13.02. Severability.**

Should the Bankruptcy Court determine prior to entry of the Confirmation Order, that any provision of the Plan is either illegal or unenforceable on its face or illegal or unenforceable as applied to any Claim or Interest, such provision shall be unenforceable as to all Holders of Claims or Interests or to the specific Holder of such Claim or Interest, as applicable, as to which the provision is illegal. Unless otherwise determined by the Bankruptcy Court, such a determination shall in no way limit or affect the enforceability and operative effect of any other provisions of the Plan. The Trustee reserve the right not to proceed with Confirmation and/or consummation of the Plan if any such ruling occurs.

**Section 13.03. Governing Law.**

Except to the extent that the Bankruptcy Code or Bankruptcy Rules or other federal laws are 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 Maryland, without giving effect to conflicts of law principles which would apply the law of a jurisdiction other than the State of Maryland or the United States of America.

**Section 13.04. Notices.**

Any notice required or permitted to be provided under the Plan shall be in writing and served by either prepaid (i) certified mail, return receipt requested, (ii) hand delivery, or (iii) overnight delivery service, to be addressed as follows:

If to the Plan Administrator:

SHAPIRO SHER GUINOT & SANDLER  
250 West Pratt Street, Suite 2000  
Baltimore, Maryland 21201  
Attn: Joel I. Sher, Esquire  
Richard Goldberg, Esquire  
Daniel Zeller, Esquire  
Anastasia L. McCusker, Esquire

**Section 13.05. Filing of Additional Documents.**

On or before substantial consummation of the Plan, or such later time as may be authorized by the Bankruptcy Court, the Trustee or the Debtors are authorized to issue, execute, deliver or 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 implementation of the terms and conditions of the Plan.

**Section 13.06. Time.**

Unless otherwise specified herein, in computing any period of time prescribed or allowed by the Plan, the day of the act or event from which the designated period begins to run shall not be included. The last day of the period so computed shall be included, unless it is not a Business Day, in which event the period runs until the end of next succeeding day that is a Business Day. Otherwise, the provisions of Bankruptcy Rule 9006 shall apply.

**Section 13.07. Exhibits/Schedules.**

All exhibits and schedules to the Plan and any Plan Supplement are incorporated into and constitute a part of the Plan as if fully set forth herein.

**Section 13.08. Defenses with Respect to Impaired or Unimpaired Claims.**

Except as otherwise specifically provided in the Plan, nothing shall affect the Trustee's or the Plan Administrator's rights and/or legal and equitable defenses with respect to any Impaired or Unimpaired Claim, including but not limited to all rights relating to legal and equitable defenses to setoffs or recoupments against any Unimpaired Claim.

**Section 13.09. No Injunctive Relief.**

No Claim shall be entitled to specific performance or other injunctive, equitable or other prospective relief except as may be specified in the Plan.



**Section 13.10. No Admissions.**

Notwithstanding anything herein to the contrary, prior to the Effective Date, nothing contained in the Plan shall be deemed an admission by the Trustee with respect to any matter set forth herein, including, without limitation, liability on any Claim or the propriety of any classification of any Claim.

**Section 13.11. Extension of Time.**

Any period of time or deadline under the Plan may be extended by agreement of the parties affected thereby, or by order of the Bankruptcy Court upon good cause shown.

**Section 13.12. Payment of Statutory Fees.**

All fees payable on or before the Effective Date pursuant to section 1930 of title 28 of the United States Code, and any applicable interest thereon, shall be paid by the Trustee on or before the Effective Date, and all such fees payable after the Effective Date shall be paid by the Plan Administrator as and when such fees become due. Any deadline for filing Administrative Claims shall not apply to fees payable pursuant to section 1930 of title 28 of the United States Code.

**Section 13.13. Conflict.**

To the extent that terms of Confirmation Order or the Plan are inconsistent with the Disclosure Statement or any agreement entered into between the Trustee and any other party, the terms of the Plan control the Disclosure Statement and any such agreement, and the provisions of the Confirmation Order (and any Final Orders entered by the Bankruptcy Court after the date of the Plan) control the terms of the Plan.

**Section 13.14. Reservation of Rights.**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained herein, or the taking of any action by the Trustee with respect to the Plan shall be or shall be, deemed to be, an admission or waiver of any rights with respect to any Claims or Interests prior to the Effective Date.

**Section 13.15. Modifications and Amendments.**

The Trustee or the Plan Administrator, as applicable, may alter, amend, or modify the Plan or any Plan Document under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date.

The Trustee or the Plan Administrator, as applicable shall provide parties-in-interest with notice of such amendments or modifications as may be required by the Bankruptcy Rules or order of the Bankruptcy Court. A Holder of a Claim or Interest that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified, or clarified, if the proposed alteration, amendment, modification, or clarification does not materially and adversely change the treatment of the Claim or Interest of such Holder.

After the Confirmation Date and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of the Plan, the Trustee or the Plan Administrator, as applicable, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement approved with respect to the Plan, or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims or Interests in the Debtors under the Plan; provided, however, that, to the extent required, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or an order of the Bankruptcy Court. A Holder of a Claim or Interest that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim or Interest of such Holder.

**Section 13.16. Revocation, Withdrawal, or Non-Consummation.**

The Trustee reserves the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to File subsequent plans of liquidation or reorganization. If the Trustee revokes or withdraws the Plan prior to the Confirmation Date, or if the Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and not acts taken in preparation for consummation of the Plan, shall (i) constitute or to be deemed to constitute a waiver or release of any Claims against, or any Interests in, the Debtors, or any Avoidance Actions or other claims by or against Debtors or any Person or Entity, (ii) prejudice in any manner the rights of the Trustee or any Person or Entity in any further proceedings involving the Debtors, or (iii) constitute an admission of any sort by the Trustee any other Person or Entity.

Dated: June 8, 2022

/s/ Joel I. Sher

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 for TMST, Inc., et. al.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8th day of June, 2022, I reviewed the Court's CM/ECF system and it reports that an electronic copy of the *Chapter 11 Trustee's Joint Chapter 11 Plan of Liquidation* will be served electronically by the Court's CM/ECF system on the following:

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