

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
	)	
SOURCE HOME ENTERTAINMENT, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 14-11553 (KG)
	)	
Debtors.	)	Jointly Administered
	)	

DISCLOSURE STATEMENT FOR THE DEBTORS' JOINT PLAN OF  
LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE CHAPTER 11 PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THE DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL TO THE BANKRUPTCY COURT BUT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT.

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Dated: October 6, 2014

<sup>1</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Source Home Entertainment, LLC (8517); Directtough, Inc. (4741); RDS Logistics, LLC (0305); Retail Vision, LLC (2023); Source Interlink Distribution, LLC (3387); Source Interlink International, Inc. (1428); Source Interlink Manufacturing, LLC (7123); and Source Interlink Retail Services, LLC (6967). The location of the Debtors' corporate headquarters and the service address for all Debtors is: 27500 Riverview Center Boulevard, Suite 400, Bonita Springs, Florida 34134.



THE DEBTORS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT TO CERTAIN HOLDERS OF CLAIMS FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE DEBTORS' JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE RELIED UPON OR USED BY ANY ENTITY FOR ANY OTHER PURPOSE. PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER ENTITLED TO VOTE SHOULD CAREFULLY CONSIDER ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN ARTICLE IX HEREIN.

THE DEBTORS URGE 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 THIS DISCLOSURE STATEMENT, THE PLAN, AND ALL OF THE ACTIONS NECESSARY TO EFFECTUATE THE PLAN. FURTHERMORE, THE BANKRUPTCY COURT'S APPROVAL OF THE ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE PLAN.

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

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

THIS DISCLOSURE STATEMENT WAS NOT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE AUTHORITY AND NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS FORWARD-LOOKING STATEMENTS WITHIN THE MEANING OF SECTION 27A AND SECTION 21E OF THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). SUCH STATEMENTS MAY CONTAIN WORDS SUCH AS "MAY," "WILL," "MIGHT," "EXPECT," "BELIEVE," "ANTICIPATE," "COULD," "WOULD," "ESTIMATE," "CONTINUE," "PURSUE," OR THE NEGATIVE THEREOF OR COMPARABLE TERMINOLOGY, AND MAY INCLUDE, WITHOUT LIMITATION, INFORMATION REGARDING THE DEBTORS' EXPECTATIONS WITH RESPECT TO FUTURE EVENTS. FORWARD-LOOKING STATEMENTS ARE INHERENTLY UNCERTAIN AND ARE SUBJECT TO CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL RESULTS TO DIFFER FROM THOSE EXPRESSED OR IMPLIED IN THIS DISCLOSURE STATEMENT AND THE FORWARD-LOOKING STATEMENTS CONTAINED HEREIN. MAKING INVESTMENT DECISIONS BASED ON THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND/OR THE PLAN IS, THEREFORE, SPECULATIVE.

IN PREPARING THIS DISCLOSURE STATEMENT, THE DEBTORS RELIED ON FINANCIAL DATA DERIVED FROM THEIR BOOKS AND RECORDS OR THAT WAS OTHERWISE MADE

AVAILABLE TO THEM AT THE TIME OF SUCH PREPARATION AND ON VARIOUS ASSUMPTIONS REGARDING THE DEBTORS' BUSINESSES. ALTHOUGH THE DEBTORS BELIEVE THAT SUCH FINANCIAL INFORMATION FAIRLY REFLECTS THE FINANCIAL CONDITION OF THE DEBTORS AS OF THE DATE HEREOF AND THAT THE ASSUMPTIONS REGARDING FUTURE EVENTS REFLECT REASONABLE BUSINESS JUDGMENTS, NO REPRESENTATIONS OR WARRANTIES ARE MADE AS TO THE ACCURACY OF THE FINANCIAL INFORMATION CONTAINED HEREIN OR ASSUMPTIONS REGARDING THE DEBTORS' BUSINESSES AND THEIR FUTURE RESULTS AND OPERATIONS. THE DEBTORS EXPRESSLY CAUTION READERS NOT TO PLACE UNDUE RELIANCE ON ANY FORWARD-LOOKING STATEMENTS CONTAINED HEREIN.

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

THE DEBTORS ARE MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTORS MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTORS HAVE NO AFFIRMATIVE DUTY TO DO SO, AND EXPRESSLY DISCLAIM ANY DUTY TO PUBLICLY UPDATE ANY FORWARD-LOOKING STATEMENTS, WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THIS DISCLOSURE STATEMENT WAS FILED. INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. THE DEBTORS RESERVE THE RIGHT TO FILE AN AMENDED PLAN AND RELATED AMENDED DISCLOSURE STATEMENT FROM TIME TO TIME, SUBJECT TO THE TERMS OF THE PLAN.

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

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

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AND INTERESTS (INCLUDING THOSE HOLDERS OF CLAIMS 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 ANY TRANSACTIONS CONTEMPLATED THEREBY.

THE DEBTORS SUPPORT CONFIRMATION OF THE PLAN AND URGE ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED TO ACCEPT THE PLAN.

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**EXHIBITS**

EXHIBIT A Debtors' Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code

## ARTICLE I.

## INTRODUCTION

This disclosure statement (this “Disclosure Statement”) provides information regarding the *Debtors’ Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”), which the Debtors are seeking to have confirmed by the Bankruptcy Court.<sup>1</sup> A copy of the Plan is attached hereto as Exhibit A. The rules of interpretation set forth in Article I of the Plan shall govern the interpretation of this Disclosure Statement.

**Each of the Debtors’ boards of managers or directors, sole member, or sole shareholder has approved the Plan and believes the Plan is in the best interests of the Debtors’ Estates. As such, the Debtors recommend that all Holders of Claims entitled to vote accept the Plan by returning their ballots (each, a “Ballot”) so as to be actually received by the Notice and Claims Agent no later than December 11, 2014, at 5:00 p.m. (prevailing Pacific Time). Assuming the requisite acceptances to the Plan are obtained, the Debtors will seek the Bankruptcy Court’s approval of the Plan at the Confirmation Hearing on December 18, 2014, at 10:00 a.m. (prevailing Eastern Time).**

The privately-held Debtors were industry leaders in the manufacturing of front-end retail checkout displays and, up to shortly before the Petition Date, were one of the leading wholesale distributors of books, periodicals, and other printed material in North America. Headquartered in Bonita Springs, Florida, the Debtors were comprised of two primary units: (a) the distribution business (the “Distribution Business”), which was primarily operated by Source Interlink Distribution, LLC (“Source Distribution”); and (b) the retail checkout display manufacturing business (the “Retail Display Business”), which is primarily operated by Source Interlink Manufacturing, LLC (“Source Manufacturing”), which the Debtors intend to sell pursuant to the Sale Transaction.

A. *The Plan*

As more fully described below, the Debtors filed for chapter 11 bankruptcy protection on the Petition Date. The purpose of a chapter 11 bankruptcy case is to resolve the affairs of a debtor and distribute the proceeds of the debtor’s estate pursuant to a confirmed chapter 11 plan. To that end, the Debtors filed the Plan, the terms of which are more fully described herein, on October 6, 2014. The Plan contemplates a liquidation of each of the Debtors and their Estates and is therefore referred to as a “plan of liquidation.” The primary objective of the Plan is to maximize the value of recoveries to all Holders of Allowed Claims and Allowed Interests and to distribute all property of the Estates that is or becomes available for distribution generally in accordance with the priorities established by the Bankruptcy Code. The Debtors believe that the Plan accomplishes this objective and is in the best interest of the Estates and therefore seek to confirm the Plan. Generally speaking, the Plan: (a) provides for the full and final resolution of certain funded debt obligations; (b) appoints a Plan Administrator to wind down the Debtors’ businesses and affairs and administer Priority Claims; (c) establishes a Liquidating Trust that will undertake (i) the liquidation of certain avoidance actions after the Effective Date, and (ii) the distribution of the Liquidating Trust Assets to Holders of Allowed General Unsecured Claims; and (d) provides for 100% recoveries for Holders of Allowed Administrative Claims, Priority Tax Claims, Professional Fee Claims, Other Priority Claims, Other Secured Claims, and Revolving Credit Facility Claims. The Debtors believe that Confirmation of the Plan will avoid the lengthy delay and significant cost of liquidation under chapter 7 of the Bankruptcy Code.

The Plan classifies Holders of Claims and Interests according to the type of the Holder’s Claim or Interest, as more fully described below. Only those Holders of Claims in Class 4 (Term Loan Claims) and Class 5 (General Unsecured Claims) are entitled to vote to accept or reject the Plan. Holders of Allowed Claims in Class 4 will receive Pro Rata distributions of the Term Loan Lender Assets on account of such Claims. Holders of Allowed Claims in Class 5 will receive a Pro Rata beneficial interest in the assets of the Liquidating Trust on account of such Claims.

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<sup>1</sup> Unless otherwise specified herein, capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Plan.

B. *The Sale Transaction*

A key component of the Plan is the Sale Transaction. Prior to the Petition Date, the Debtors engaged in arm's-length negotiations with the Term Loan Lenders regarding a potential sale of substantially all of the assets of the Retail Display Business. These negotiations culminated with the execution of that certain asset purchase agreement, dated June 22, 2014, by and among the Debtors and Cortland Capital Market Services LLC<sup>2</sup> (as may be amended, supplemented, or otherwise modified from time to time, the "Purchase Agreement"). On June 30, 2014, the Debtors Filed a motion [Docket No. 77] (the "Bidding Procedures Motion") seeking, in part, approval of bidding procedures for a sale of the Retail Display Business through an auction pursuant to section 363 of the Bankruptcy Code. On July 21, 2014, the Bankruptcy Court entered an order [Docket No. 160] (the "Bidding Procedures Order") approving the Bidding Procedures Motion and related sale procedures. The Bidding Procedures Order established, among other things, Cortland as the stalking horse bidder.<sup>3</sup> The Debtors continued to market the Retail Display Business in order to obtain Qualified Bids (as defined in the Bidding Procedures Order), but were unable to do so prior to the September 12, 2014 bid deadline despite the Debtors' best efforts. Accordingly, the sale transaction contemplated by the Purchase Agreement was the successful bid. Pursuant to the Purchase Agreement:<sup>4</sup>

- the Purchaser will credit bid \$24 million of its secured claims under the Term Loan Facility in exchange for substantially all of the assets comprising the Retail Display Business and \$4 million in cash and cash equivalents, subject to certain adjustments;
- the Purchaser will assume certain material liabilities in connection with the Retail Display Business, including certain cure obligations and employee- and payroll-related liabilities; and
- the Retail Display Business will continue to operate for the benefit of all interested parties, including its employees.

On September 19, 2014, the Bankruptcy Court held a hearing to consider the Sale Transaction and entered an order [Docket No. 319] approving same. The Debtors have worked, and will continue to work, diligently with the Purchaser to consummate the Sale Transaction on or before October 21, 2014.

C. *The Adequacy of this Disclosure Statement*

Before soliciting acceptances of a proposed plan, section 1125 of the Bankruptcy Code requires a plan proponent to prepare a written disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of a chapter 11 plan. The Debtors submit this Disclosure Statement in accordance with such requirements. This Disclosure Statement includes, without limitation, information about:

- the Debtors' corporate history and structure, business operations, and prepetition capital structure and indebtedness (Article IV hereof);
- the events leading to the Chapter 11 Cases (Article V hereof);
- the significant pleadings Filed in the Chapter 11 Cases and certain relief granted by the Bankruptcy Court in connection therewith (Article VI hereof);

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<sup>2</sup> Cortland Capital Market Services LLC ("Cortland") is the Term Loan Agent.

<sup>3</sup> Cortland later assigned its rights and obligations under the Purchase Agreement to [•] (the "Purchaser").

<sup>4</sup> The Purchase Agreement—see Docket No. 319—controls the terms of the Sale Transaction. In the event of any conflict between the summary provided in this Disclosure Statement and the Purchase Agreement, the terms of the Purchase Agreement shall control.



- the classification and treatment of Claims and Interests under the Plan, including identification of the Holders of Claims entitled to vote, the procedures for voting on the Plan, and projected recoveries (Articles II and VII hereof);
- the method of distribution of any recoveries that may be available to certain Holders of Claims pursuant to the Plan, the process for resolving Disputed Claims, and other significant aspects of the Plan (0 hereof);
- the releases contemplated by the Plan that are integral to the overall settlement of Claims pursuant to the Plan (0 hereof);
- the statutory requirements for confirming the Plan (Article VIII hereof);
- certain risk factors that Holders of Claims should consider before voting to accept or reject the Plan and information regarding alternatives to Confirmation of the Plan (Article IX hereof); and
- certain United States federal income tax consequences of the Plan (Article X hereof).

In light of the foregoing, the Debtors believe that this Disclosure Statement contains “adequate information” to enable a hypothetical reasonable investor to make an informed judgment about the Plan and complies with all aspects of section 1125 of the Bankruptcy Code.

The Plan and all documents to be executed, delivered, assumed, and/or performed in connection with the Consummation of the Plan, including the documents to be included in the Plan Supplement, are subject to revision and modification from time to time prior to the Effective Date (subject to the terms of the Plan).

## ARTICLE II.

### TREATMENT OF CLAIMS AND INTERESTS

As set forth in Articles II and III of the Plan, and in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code, all Claims and Interests (other than Administrative Claims, Priority Tax Claims, and Professional Fee Claims, which are unclassified Claims under the Plan) are classified into Classes for all purposes, including voting, Confirmation, and distributions pursuant to the Plan. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class. A Claim or Interest is also classified 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 Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The table below summarizes the treatment of all unclassified Claims under the Plan. The treatment and projected recoveries of unclassified Claims are described in summary form below for illustrative purposes only. To the extent that any inconsistency exists between the summary contained in this Disclosure Statement and the Plan, the terms of the Plan shall govern.

Unclassified Claim	Plan Treatment	Projected Amount of Allowed Claims	Projected Plan Recovery
Administrative Claims	Unimpaired	[•]	100%
Priority Tax Claims	Unimpaired	[•]	100%
Professional Fee Claims	Unimpaired	[•]	100%

The table below summarizes the classification and treatment of all classified Claims and Interests under the Plan.<sup>5</sup>

The classification, treatment, and projected recoveries of classified Claims are described in summary form below for illustrative purposes only and are subject to material change. *Additionally, recoveries available to Holders of Claims are estimates and actual recoveries may materially differ based on, among other things, the amount of Claims actually Allowed. Depending on the amount of Allowed Claims, the recoveries available to Holders of Allowed Claims could be materially lower compared to the estimates provided below. To the extent that any inconsistency exists between the summaries contained in this Disclosure Statement and the Plan, the terms of the Plan shall govern.*

Class	Claim or Interest	Plan Treatment	Voting Rights	Projected Amount of Allowed Claims or Interests <sup>6</sup>	Projected Plan Recovery
1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)	[•]	100%
2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)	[•]	100%
3	Revolving Credit Facility Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)	[•]	100%
4	Term Loan Claims	Impaired	Entitled to Vote	[•]	[•]
5	General Unsecured Claims	Impaired	Entitled to Vote	[•]	Less than 1%
6	Intercompany Claims	Impaired	Not Entitled to Vote (Deemed to Reject)	N/A	0%

<sup>5</sup> As described below and in the Plan, the Debtors seek authority to consolidate the Estates for all purposes associated with Confirmation and Consummation of the Plan.

<sup>6</sup> The General Claims Bar Date (as defined herein) occurred on October 3, 2014. The Debtors will update the projected amount of Allowed Claims in each Class as soon as reasonably practicable following the filing of this Disclosure Statement but no later than the hearing on the adequacy of this Disclosure Statement.

Class	Claim or Interest	Plan Treatment	Voting Rights	Projected Amount of Allowed Claims or Interests <sup>6</sup>	Projected Plan Recovery
7	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)	[•]	0%
8	Intercompany Interests	Impaired	Not Entitled to Vote (Deemed to Reject)	N/A	0%
9	Holdings Interests	Impaired	Not Entitled to Vote (Deemed to Reject)	N/A	0%

Except to the extent that the Debtors and a Holder of an Allowed Claim or Interest, as applicable, agree to a less favorable treatment, such Holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, and release of and in exchange for such Holder's Allowed Claim or Interest. Unless otherwise indicated, each Holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter.

A. *Class 1—Other Priority Claims*

1. *Classification:* Class 1 consists of any Other Priority Claims against any Debtor.
2. *Treatment:* Each Holder of an Allowed Class 1 Claim shall receive Cash in an amount equal to such Allowed Class 1 Claim.
3. *Voting:* Class 1 is Unimpaired. Holders of Allowed Class 1 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 1 Claims are not entitled to vote to accept or reject the Plan.

B. *Class 2—Other Secured Claims*

1. *Classification:* Class 2 consists of all Other Secured Claims, including all Secured Tax Claims, against any Debtor.
2. *Treatment:* Each Holder of an Allowed Class 2 Claim shall receive, as the Debtors determine:
  - (a) payment in full in Cash of such Holder's Allowed Other Secured Claim;
  - (b) the Collateral securing such Holder's Allowed Other Secured Claim; or
  - (c) such other treatment rendering such Holder's Allowed Other Secured Claim Unimpaired in accordance with section 1124(1) or (2) of the Bankruptcy Code.

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

C. *Class 3—Revolving Credit Facility Claims*

1. *Classification:* Class 3 consists of any Revolving Credit Facility Claims.
2. *Treatment:* Each Holder of an Allowed Class 3 Claim shall receive the treatment set forth in Article IV.D of the Plan and have its Allowed Class 3 Claim rendered Unimpaired in accordance with section 1124(1) or (2) of the Bankruptcy Code.
3. *Voting:* Class 3 is Unimpaired. Holders of Allowed Class 3 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 3 Claims are not entitled to vote to accept or reject the Plan.

D. *Class 4—Term Loan Claims*

1. *Classification:* Class 4 consists of all Term Loan Claims.
2. *Allowance:* Term Loan Claims shall be Allowed in the aggregate principal amount of \$51,858,488.37 as of the Petition Date,<sup>7</sup> plus any accrued but unpaid interest thereon payable at the applicable interest rate(s) in accordance with the Term Loan Agreement.
3. *Treatment:* Each Holder of an Allowed Class 4 Claim shall receive its Pro Rata share of the Term Loan Lender Distribution.
4. *Voting:* Class 4 is Impaired. Holders of Allowed Class 4 Claims are entitled to vote to accept or reject the Plan.

E. *Class 5—General Unsecured Claims*

1. *Classification:* Class 5 consists of all General Unsecured Claims against any Debtor.
2. *Treatment:* Each Holder of an Allowed Class 5 Claim shall receive a beneficial interest in its Pro Rata share of the Liquidating Trust Assets.
3. *Voting:* Class 5 is Impaired. Holders of Claims in Class 5 are entitled to vote to accept or reject the Plan.

F. *Class 6—Intercompany Claims*

1. *Classification:* Class 6 consists of all Intercompany Claims.
2. *Treatment:* Class 6 Claims will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 6 Claims will not receive any distribution on account of such Class 6 Claims.
3. *Voting:* Class 6 is Impaired. Holders of Claims in Class 6 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

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<sup>7</sup> This amount is subject to adjustment on account of the Sale Transaction.

G. *Class 7—Section 510(b) Claims*

1. *Classification:* Class 7 consists of all Section 510(b) Claims.
2. *Treatment:* Class 7 Claims will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 7 Claims will not receive any distribution on account of such Class 7 Claims.
3. *Voting:* Class 7 is Impaired. Holders of Claims in Class 7 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

H. *Class 8—Intercompany Interests*

1. *Classification:* Class 8 consists of all Intercompany Interests.
2. *Treatment:* Class 8 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 8 Interests will not receive any distribution on account of such Class 8 Interests.
3. *Voting:* Class 8 is Impaired. Holders of Interests in Class 8 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

I. *Class 9—Holdings Interests*

1. *Classification:* Class 9 consists of all Holdings Interests.
2. *Treatment:* Class 9 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 9 Interests will not receive any distribution on account of such Class 9 Interests.
3. *Voting:* Class 9 is Impaired. Holders of Interests in Class 9 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

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**ARTICLE III.****VOTING AND CONFIRMATION**

On October 6, 2014, the Debtors Filed a motion [Docket No. [•]] seeking entry of a proposed Disclosure Statement Order. On November 10, 2014, the Bankruptcy Court entered the Disclosure Statement Order [Docket No. [•]].

**A. *Classes Entitled to Vote on the Plan***

The following Classes are the only Classes entitled to vote to accept or reject the Plan (the “Voting Classes”):

<b>Class</b>	<b>Claim</b>	<b>Status</b>
4	Term Loan Claims	Impaired
5	General Unsecured Claims	Impaired

If your Claim or Interest is not included in one of the Voting Classes, you are not entitled to vote and you will not receive a Solicitation Package or a Ballot. If your Claim or Interest is included in one of the Voting Classes, you should read your Ballot and carefully follow the instructions set forth therein. Please use only the Ballot that accompanies this Disclosure Statement or the Ballot that the Debtors, or the Notice and Claims Agent on behalf of the Debtors, otherwise provide to you.

**B. *Votes Required for Acceptance by a Class***

Under the Bankruptcy Code, acceptance of a plan of reorganization by a class of claims or interests is determined by calculating the amount and, if a class of claims, the number, of claims and interests voting to accept, as a percentage of the allowed claims or interests, as applicable, that have voted. Each Class of Claims entitled to vote on the Plan will have accepted the Plan if: (a) the Holders of at least two-thirds in dollar amount of the Claims actually voting in each Class vote to accept the Plan; and (b) the Holders of more than one-half in number of the Claims actually voting in each Class vote to accept the Plan.

**C. *Certain Factors to Be Considered Prior to Voting***

There are a variety of factors that all holders of Claims entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors may impact recoveries under the Plan, including:

- the financial information contained in this Disclosure Statement has not been audited and is based on an analysis of data available at the time of the preparation of the Plan and this Disclosure Statement;
- although the Debtors believe that the Plan complies with all applicable provisions of the Bankruptcy Code, the Debtors can neither assure such compliance nor that the Bankruptcy Court will confirm the Plan;
- the Debtors may request Confirmation without the acceptance of all Impaired Classes entitled to vote in accordance with section 1129(b) of the Bankruptcy Code; and
- any delays of either Confirmation or Consummation could result in, among other things, increased Administrative Claims or Professional Fee Claims.

While these factors could affect distributions available to Holders of Allowed Claims under the Plan, the occurrence or impact of such factors will not necessarily affect the validity of the vote of Holders within the Voting Classes or necessarily require a re-solicitation of the votes of Holders of Claims in such Voting Classes.

For a further discussion of risk factors, please refer to Article IX hereof, entitled “Certain Risk Factors to be Considered Before Voting.”

**D. *Classes Not Entitled to Vote on the Plan***

Under the Bankruptcy Code, holders of claims and interests are not entitled to vote if their contractual rights are unimpaired by the proposed plan, in which case they are conclusively presumed to accept the proposed plan, or if they will receive no property under the plan, in which case they are deemed to reject the proposed plan. Accordingly, the following Classes of Claims and Interests are not entitled to vote to accept or reject the Plan:

<b>Class</b>	<b>Claim or Interest</b>	<b>Status</b>	<b>Voting Rights</b>
1	Other Priority Claims	Unimpaired	Presumed to Accept
2	Other Secured Claims	Unimpaired	Presumed to Accept
3	Revolving Credit Facility Claims	Unimpaired	Presumed to Accept
6	Intercompany Claims	Impaired	Deemed to Reject
7	Section 510(b) Claims	Impaired	Deemed to Reject
8	Intercompany Interests	Impaired	Deemed to Reject
9	Holdings Interests	Impaired	Deemed to Reject

**E. *Solicitation Procedures***

**1. *Solicitation Agent***

The Debtors retained Kurtzman Carson Consultants, LLC (“KCC”)—the Notice and Claims Agent—to act, among other things, as the solicitation agent in connection with the solicitation of votes to accept or reject the Plan.

**2. *Solicitation Package***

Pursuant to the Disclosure Statement Order, Holders of Claims who are entitled to vote to accept or reject the Plan as of November 10, 2014 (the “Voting Record Date”), will receive appropriate solicitation materials (the “Solicitation Package”), which will include, in part, the following:

- the appropriate Ballot(s) and applicable voting instructions, together with a pre-addressed, postage pre-paid return envelope; and
- this Disclosure Statement, including the Plan as an exhibit thereto.

**3. *Distribution of the Solicitation Package and Plan Supplement***

The Debtors will cause KCC to distribute the Solicitation Packages to Holders of Claims in the Voting Classes on or before November 13, 2014, which will be at least 28 days before the Voting Deadline (*i.e.*, 5:00 p.m. prevailing Pacific Time on December 11, 2014).

The Solicitation Package (except for the Ballots) may also be obtained: (a) from KCC by (i) visiting <http://www.kccllc.net/source>; (ii) writing to Source Home Entertainment, LLC, Ballot Processing Center, c/o KCC, 2335 Alaska Avenue, El Segundo, CA 90245; or (iii) calling (877) 759-8815; or (b) for a fee via PACER (except for Ballots) at <http://www.deb.uscourts.gov>.

At least fourteen (14) days prior to the Confirmation Hearing, the Debtors intend to file the Plan Supplement. If the Plan Supplement is updated or otherwise modified, such modified or updated documents will be made available on the Debtors' restructuring website. The Debtors will not serve paper or CD-ROM copies of the Plan Supplement; however, parties may obtain a copy of the Plan Supplement (a) from KCC by (i) visiting <http://www.kccllc.net/source>; (ii) writing to Source Home Entertainment, LLC, Ballot Processing Center, c/o KCC, 2335 Alaska Avenue, El Segundo, CA 90245; or (iii) calling (877) 759-8815; or (b) for a fee via PACER (except for Ballots) at <http://www.deb.uscourts.gov>.

As described above, certain Holders of Claims may not be entitled to vote because they are Unimpaired or are otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code. In addition, certain Holders of Claims and Interests may be Impaired but are receiving no distribution under the Plan, and are therefore deemed to reject the Plan and are not entitled to vote. Such Holders will receive only the Confirmation Hearing Notice and a non-voting status notice. The Debtors are only distributing a Solicitation Package, including this Disclosure Statement and a Ballot to be used for voting to accept or reject the Plan, to the Holders of Claims or Interests entitled to vote to accept or reject the Plan as of the Voting Record Date.

#### F. *Voting Procedures*

If, as of the Voting Record Date, you are a Holder of a Claim in Class 4 or Class 5—the Voting Classes—you may vote to accept or reject the Plan in accordance with the Solicitation Procedures by completing the Ballot and returning it in the envelope provided. If your Claim or Interest is not included in one of the Voting Classes, you are not entitled to vote and you will not receive a Solicitation Package. Except as otherwise set forth herein, the Voting Record Date and all of the Debtors' solicitation and voting procedures shall apply to all of the Debtors' creditors and other parties in interest.

##### 1. *Voting Deadline*

The Disclosure Statement Order established a deadline to vote on the Plan of December 11, 2014, at 5:00 p.m., prevailing Pacific Time (the "Voting Deadline"). To be counted as a vote to accept or reject the Plan, a Ballot must be properly executed, completed, and delivered, whether by first class mail, overnight delivery, or personal delivery, so that the Ballot is **actually received** by KCC no later than the Voting Deadline.

##### 2. *Voting Instructions*

As described above, the Debtors have retained KCC to serve as the solicitation agent for purposes of the Plan. KCC is available to answer questions, provide additional copies of all materials, oversee the voting process, and process and tabulate Ballots for each Class entitled to vote to accept or reject the Plan.

BALLOTS
<p>To be counted, all Ballots must be <b><u>actually received</u></b> by KCC by the Voting Deadline, which is December 11, 2014, at 5:00 p.m., prevailing Pacific Time, at the following address:</p> <p style="text-align: center;">Source Home Entertainment, LLC Ballot Processing Center c/o KCC 2335 Alaska Avenue El Segundo, CA 90245</p> <p>If you have any questions on the procedure for voting on the Plan, please call the Debtors' restructuring hotline maintained by KCC at:</p> <p style="text-align: center;">(877) 759-8815</p>



More detailed instructions regarding the procedures for voting on the Plan are contained on the Ballots distributed to Holders of Claims that are entitled to vote to accept or reject the Plan. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first class mail, in the return envelope provided with each Ballot; (b) overnight delivery; or (c) personal delivery, so that the Ballots are **actually received** by KCC no later than the Voting Deadline at the return address set forth in the applicable Ballot. Any Ballot that is properly executed by the Holder of a Claim entitled to vote that does not clearly indicate an acceptance or rejection of the Plan or that indicates both an acceptance and a rejection of the Plan will not be counted. Ballots received by facsimile or by electronic means will not be counted.

Each Holder of a Claim entitled to vote to accept or reject the Plan may cast only one Ballot for each Claim held by such Holder. By signing and returning a Ballot, each Holder of a Claim entitled to vote will certify to the Bankruptcy Court and the Debtors that no other Ballots with respect to such Claim have been cast or, if any other Ballots have been cast with respect to such Claim, such earlier Ballots are superseded and revoked.

All Ballots will be accompanied by postage prepaid return envelopes. It is important to follow the specific instructions provided on each Ballot, as failing to do so may result in your Ballot not being counted.

G. *Plan Objection Deadline*

The Disclosure Statement Order established December 11, 2014, at 4:00 p.m., prevailing Eastern Time, as the deadline to object to Confirmation of the Plan (the “Plan Objection Deadline”). All objections to the Plan must be Filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest in accordance with the Disclosure Statement Order so that they are **actually received** on or before the Plan Objection Deadline.

H. *Confirmation Hearing*

Assuming the requisite acceptances are obtained for the Plan, the Debtors intend to seek Confirmation of the Plan at the Confirmation Hearing. The Disclosure Statement Order scheduled the Confirmation Hearing to commence on December 18, 2014, at 10:00 a.m., prevailing Eastern Time, before the Honorable Kevin Gross, United States Bankruptcy Judge, in Courtroom No. 3 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment Filed with the Bankruptcy Court and served on the entities who have Filed objections to the Plan, without further notice to other parties in interest. The Bankruptcy Court, in its discretion and before the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. The Plan may be modified, if necessary, before, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

## ARTICLE IV.

### BUSINESS DESCRIPTION

A. *Corporate History*

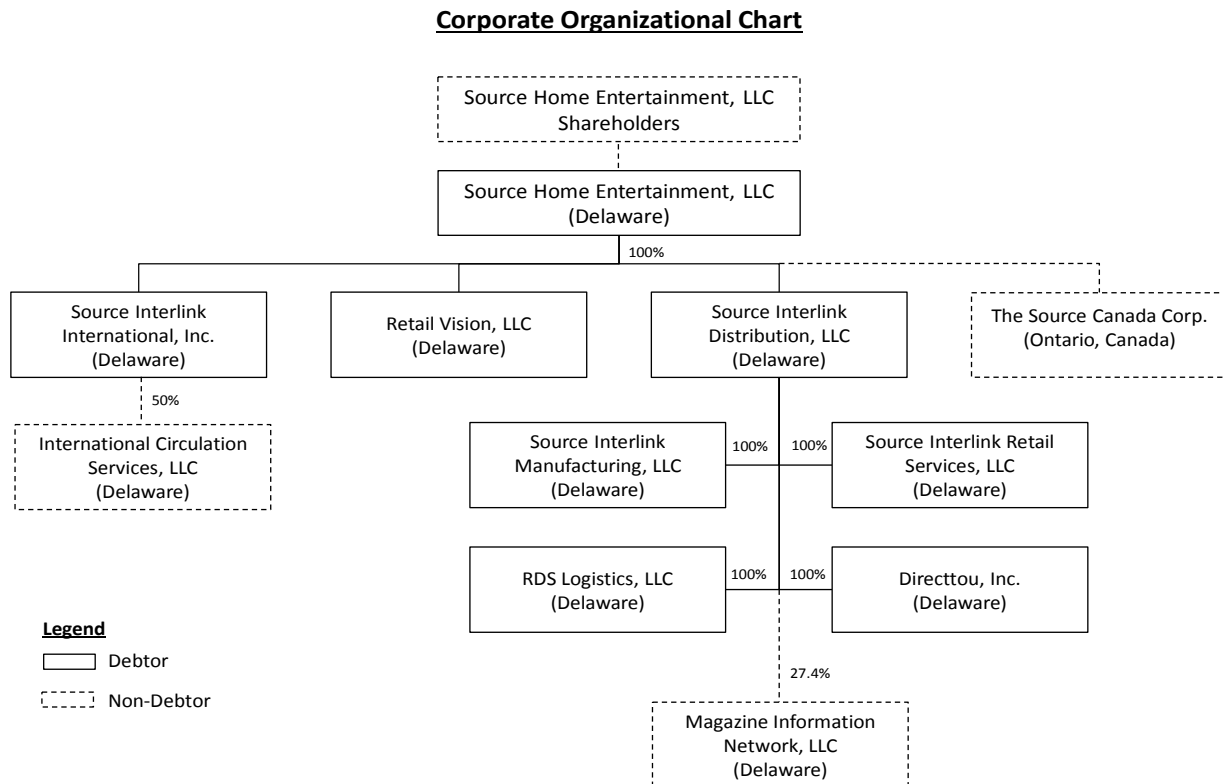
The Debtors and certain of their former Affiliates were founded in 1995. In 1997, the company changed its name to The Source Information Management Company, conducted its initial public offering, and became admitted for trading on the NASDAQ stock market. In 1998, the company positioned itself as a leader of direct magazine distribution, an information repository, and the preeminent front-end checkout management provider for major retail chains by acquiring ten magazine retail display companies. Following its acquisition of The Interlink Companies, Inc., another leading direct distributor of magazines, the company changed its name to Source Interlink Companies, Inc. (“Source Interlink Companies”) in 2002. A series of transactions from 2002 until the October 2013 Restructuring (as defined below) resulted in a corporate structure in which the Debtors were the logistics and distribution business segment of Source Interlink Companies, with Source Interlink Companies’ other primary business division being Source Interlink Media, LLC (“Source Media”). Source Media produces print and digital

content for consumers in both North America and abroad under a variety of enthusiast brands, including *Motor Trend* and *Hot Rod*, via a number of media platforms, including print, digital, mobile applications, and social media.

Due to, in part, liquidity constraints and declining revenues, on April 27, 2009, certain of the Debtors and their then-Affiliates (collectively, the “2009 Debtors”) filed for chapter 11 protection with the Bankruptcy Court in cases consolidated under the caption *In re Source Interlink Companies, Inc.*, No. 09-11424 (KG) (Bankr. D. Del.). On April 28, 2009, the 2009 Debtors filed a prepackaged plan of reorganization (the “2009 Plan”) [Docket No. 17]. The 2009 Plan deleveraged the 2009 Debtors by approximately \$732 million, or about one-half of the 2009 Debtors’ funded debt obligations (the “2009 Restructuring”). On May 28, 2009, the Bankruptcy Court entered an order confirming the 2009 Plan [Docket No. 237], and the effective date of the 2009 Plan occurred on June 19, 2009, with the 2009 Debtors exiting chapter 11 on that date.

The Debtors continued to face operational and financial difficulties following their exit from bankruptcy in 2009. In October, 2013, on account of, among other things, decreased demand for print media and upcoming debt maturities, Source Interlink Companies undertook a corporate reorganization (the “October 2013 Restructuring”) pursuant to which the Debtors were separated from Source Interlink Companies and Source Media while equitizing approximately \$436 million of debt pursuant to an out-of-court transaction with their secured lenders that, together with the 2009 Restructuring, resulted in many Holders of Holdings Interests acquiring their respective positions.

A graphical depiction of the Debtors’ organizational structure appears below.



B. *Products and Services*

Prior to the Petition Date, through the Distribution Business, the Debtors operated a distribution network that spanned over 32,500 retail locations in the United States and internationally, including, among others, leading mass merchandise retailers, grocery stores, bookstore chains, drug stores, and other specialty retailers. In addition, through the Retail Display Business, the Debtors designed, manufactured, and installed front-end retail display fixtures and manage rebates and other sale incentive programs for certain retailer and publisher customers. As described above, the Debtors sold the Retail Display Business pursuant to the Sale Transaction.

1. *Distribution Business*

Source Distribution and its subsidiaries were the Debtor entities primarily responsible for operating the Debtors' distribution network for domestic periodicals, including non-subscription magazine distribution, as well as offering certain in-store services to retailers and wholesalers in the United States and Canada. The Debtors operated distribution centers located in Lancaster, Pennsylvania, McCook, Illinois, and Ontario, California, as well as depots and warehouses throughout the United States and Canada. The Debtors' customers included many of the nation's leading retailers, such as Barnes & Noble, Wal-Mart, Costco, CVS, Safeway, Supervalu, Target, and Walgreens. The Debtors obtained the vast majority of their magazine distribution supply pursuant to agreements (the "Distribution Agreements") with four national distributors: (a) Comag Marketing Group, LLC; (b) Curtis Circulation Company, LLC ("Curtis"); (c) Kable Distribution Services, Inc.; and (d) Time/Warner Retail Sales & Marketing, Inc. ("TWRS"). As of 2014 and prior to the Debtors' wind down of the Distribution Business, the Debtors held approximately 30% market share of the single-copy magazine distribution market in the United States.

Source Interlink International, Inc. ("Source International") was a leading international importer and exporter of periodicals. Source International exported domestic titles to more than 100 markets worldwide and imported more than 1,400 foreign titles to the United States and Canada. Through a 50% equity stake in a joint venture with Curtis called International Circulation Services, LLC ("ICS"), Source International also offered a global export marketing service for US publishers with a portfolio in excess of 700 titles and a reach that included key markets such as the United Kingdom, Continental Europe, the Far East, Australia, Mexico, the Caribbean, and overseas U.S. military installations. The Debtors' international distribution network also used a series of domestic and international freight forwarding vendors to import and export their products, clear customs, and pay applicable taxes and tariffs.

2. *Retail Display Business*

Source Manufacturing primarily operated the Retail Display Business. Headquartered in Rockford, Illinois with approximately 101 employees, Source Manufacturing is the market-leading manufacturer of wire-based checkout displays, recognized for its expertise in the design, construction, shipping, and installation of custom wire fixtures and other retail front-end displays for major retail chains, supplying approximately 60% of the checkout fixtures in the United States. The Retail Display Business has remained profitable during the Chapter 11 Cases.

C. *Employees*

As of the Petition Date, the Debtors employed 166 full-time employees, many of which continue to service the Retail Display Business while the others are engaged in winding down the Distribution Business. The employees overseeing the Debtors' wind-down efforts primarily have been tasked with providing accounting, finance, and information technology functions to bill customers and collect receivables, secure and sell assets, and wind down the Distribution Business in the near term, in addition to performing accounting and administrative functions in support of the Retail Display Business.

On or about May 30, 2014, the Debtors reduced their workforce upon the cessation of the Distribution Business, making the difficult decision to lay off more than 5,000 full- and part-time employees.<sup>8</sup> In

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<sup>8</sup> The staffing level discussed above reflects this reduction.

connection therewith, the Debtors terminated certain of their collective bargaining agreements. None of the Debtors' active employees were subject to a collective bargaining agreement as of the Petition Date.

**D. Directors and Officers**

As of the date of this Disclosure Statement, the Debtors' officers include: (a) Stephen Dubé, Chief Restructuring Officer, and (b) Joshua Korsower, Chief Financial Officer. Additionally, the members of the Holdings' board of managers include: Greg Mays, Peter Nurge, Robert Guth, Steve Shapiro, Ted Lodge, John Forsgren, Michael Sullivan, and Robert Rosenberg. The Debtors appointed Robert Rosenberg as an independent manager to the Holdings board shortly after the Effective Date.

Holdings maintains a director and officer insurance program for the policy period September 26, 2013 to September 26, 2014, which is comprised of a primary policy issued by National Union Fire Insurance Company of Pittsburgh, PA and two excess policies issued by Chubb and Starr Indemnity & Liability Company. The three policies together provide \$25.5 million aggregate limits. Among other things, the D&O Policies provide what is commonly referred to as "Side A," "Side B," and "Side C" coverage. Subject to the D&O Policy's terms and conditions, Side A coverage provides coverage to the directors and officers of Holdings and its subsidiaries for "Loss" arising from claims made against such directors and officers alleging any "Wrongful Act," except when and to the extent that Holdings or its subsidiaries has indemnified such directors and officers. Side B coverage reimburses Holdings or its subsidiaries where the companies indemnify their directors and/or officers for claims that are otherwise covered under the D&O Policies. Side C coverage reimburses Holdings and its subsidiaries for claims made directly against the companies alleging any "Wrongful Act." The Side A coverage does not have a deductible. Claims covered under Side B and Side C of the D&O Policies are subject to a \$100,000 deductible.

**E. Prepetition Capital Structure**

As of the Petition Date, the Debtors' consolidated long-term debt obligations totaled approximately \$65.1 million and consisted of, among other things, the Revolving Credit Facility, the Term Loan Facility, the Coral Springs Mortgage, and the Time Promissory Note. As of the Petition Date, the Debtors' funded debt obligations were:

<b>Debt Obligation</b>	<b>Amount Outstanding (\$ millions)</b>
Revolving Credit Facility	\$ 0.0
Term Loan Facility	\$ 51.9
Coral Springs Mortgage	\$ 12.6
Time Promissory Note	\$ 0.6
<b>Total:</b>	<b>\$ 65.1</b>

**1. The Revolving Credit Facility**

Each Debtor is party to the Revolving Credit Agreement. The Revolving Credit Agreement provided the Debtors with a revolving asset based loan credit and letter of credit facility with a maturity date of October 4, 2016 and maximum availability of \$35 million, subject to a monthly borrowing base determination (the "Revolving Credit Facility"). As of the Petition Date, there were no borrowings under the Revolving Credit Facility.

In connection with the Revolving Credit Facility, the Debtors have obtained certain Letters of Credit, the entirety of which is scheduled to expire by the end of June 2015, to provide credit support for, among other things, the Debtors' workers' compensation obligations. As of the Petition Date, approximately \$17.3 million under the Letters of Credit was undrawn and outstanding. Obligations arising under the Revolving Credit Facility are secured

by substantially all of the Debtors' assets, subject to the Intercreditor Agreement, as well as the below-described Revolving Cash Reserve.

Prior to the Petition Date, the Revolving Credit Facility Agent withheld approximately \$18.5 million of the Debtors' cash—the Revolving Cash Reserve—which collateralized approximately 105% of the aggregate face amount of all obligations outstanding under the Revolving Credit Facility as of the Petition Date, including, without limitation, the Letters of Credit.

## 2. *The Term Loan Facility*

Each Debtor is party to the Term Loan Agreement. The Term Loan Agreement provided the Debtors with a term loan in the aggregate amount of \$50 million that matures on October 4, 2018 (the "Term Loan Facility"). As of the Petition Date, approximately \$51.9 million in aggregate principal amount was outstanding under the Term Loan Facility.

Amortization under the Term Loan Facility is approximately \$1 million per year, and interest is payable quarterly at approximately 8.0% per annum in cash or in-kind at the Debtors' election. Obligations arising under the Term Loan Facility are secured by substantially all of the Debtors' assets, subject to the Intercreditor Agreement.

## 3. *The Intercreditor Agreement*

Each of the Debtors, the Revolving Credit Facility Agent, and the Term Loan Agent are party to the Intercreditor Agreement. The Intercreditor Agreement divides the shared collateral under the Revolving Credit Facility and the Term Loan Facility into two pools consisting generally of: (a) the Debtors' stock, equipment, real estate assets and fixtures (subordinate to any mortgages on such real estate assets and fixtures), and general intangibles (relating to such stock, equipment, and real estate assets and fixtures) (collectively, the "Fixed Asset Collateral"); and (b) all of the Debtors' other assets or property, whether real, personal, or mixed (collectively, the "Current Asset Collateral"). The Intercreditor Agreement grants: (x) the Term Loan Lenders (i) a first priority Lien on the Fixed Asset Collateral and (ii) a second priority Lien on the Current Asset Collateral; and (y) the Revolving Lenders (i) a first priority Lien on the Current Asset Collateral and (ii) a second priority Lien on the Fixed Asset Collateral. The Intercreditor Agreement also imposes certain limitations on, among other things, the rights and remedies available to the collateral agents in an event of default and the ability of the collateral agents to challenge the validity or priority of each other's Liens.

## 4. *Coral Springs Mortgage*

Source Distribution is party to a loan agreement and related promissory note, dated as of October 12, 2005, by and between Source Distribution and Wachovia Bank, National Association ("Wachovia"), in the amount of approximately \$20 million (the "Coral Springs Loan"). The Coral Springs Loan matures on October 13, 2015 and is secured by a mortgage and security agreement, dated as of October 12, 2005, by and between Source Distribution and Wachovia, on the real property located at 4250 Coral Ridge Drive, Coral Springs, Florida (the "Coral Springs Mortgage"). The Coral Springs Mortgage is guaranteed by Source Interlink Companies pursuant to that certain Guaranty, dated as of October 12, 2005, by and between Source Interlink Companies and Wachovia. As of the Petition Date, approximately \$12.6 million remained outstanding under the Coral Springs Loan. The Coral Springs property has been marketed for sale since June 2010, and the Debtors continue to assess whether its appraisal value meets or exceeds amounts owed under the Coral Springs Loan.

## 5. *Time Promissory Note*

On May 10, 2005, Source Distribution issued an unsecured promissory note in the amount of approximately \$9.1 million to TWRS (the "Promissory Note"). Interest on the Promissory Note accrues at 5.00% per annum, and obligations under the Promissory Note matured on August 31, 2014. The Promissory Note is guaranteed by Source Interlink Companies pursuant to that certain Guarantee Agreement, dated as of May 10, 2005, by and between Source Interlink Companies and TWRS. As of the Petition Date, approximately \$600,000 remained outstanding under the Promissory Note.

## ARTICLE V.

## EVENTS LEADING TO THE CHAPTER 11 CASES

A number of factors plagued the Debtors in the years prior to the Petition Date—namely, the lingering effects of the global economic recession, decreased consumer demand for print periodicals, narrow margins on retail sales, and highly unfavorable Distribution Agreements. Although the Debtors emerged from the October 2013 Restructuring with substantially less debt, the Debtors' actual performance did not meet their business plan and financial forecasts. Many of the factors that resulted in the Debtors commencing the Chapter 11 Cases are discussed below.

A. *Challenging Operating Environment*

Consumer demand for print media has declined precipitously—as evidenced by the recent returns to bankruptcy for both Reader's Digest Association, Inc. and Houghton Mifflin Harcourt Publishing Company, as well as chapter 11 filings by Borders Group, Inc., Dex One Corporation, American Media, Inc., and chapter 7 filings by, among others, Anderson News Group, Inc.<sup>9</sup>—while consumption of online and digital content has increased exponentially. Two of the largest legacy print platforms—newspapers and magazines—have experienced year-over-year revenue declines since 2009 due to the continuing and fundamental technological shift away from traditional consumption of print media and toward online magazines and e-book readers. Readers are migrating quickly to digital and mobile platforms, a move that has accelerated with the proliferation of tablets and smart phones. This migration has been compounded by the sluggish growth of the U.S. economy and consumers' reluctance to spend on print media. The decline in overall demand for print media also led to increased competition for retailer customers among wholesale distributors. Indeed, over the course of just 19 years, the number of wholesalers in the Debtors' industry fell from approximately 400 in 1995 to just three major wholesalers in 2014, including the Debtors.

The Debtors also experienced a number of operational setbacks. In 2011, for instance, Borders Group, Inc., a key customer, filed for bankruptcy and liquidated their stores, representing a \$48 million reduction in revenue for Source Distribution and a corresponding \$6 million decline in EBITDA. Kroger and Albertsons, other key customers, moved their magazine supply and in-store merchandising to competitor wholesalers. These customer-specific issues were exacerbated by, among other things, increases in the costs of fuel and other raw materials, continued same store sales declines for Source Distribution, lower worldwide sales by Source International, and lower-than-expected profitability from Source Manufacturing.

These developments negatively impacted the Debtors' revenue, which declined from approximately \$824.5 million in 2010 to approximately \$600 million in 2014. Meanwhile, the Debtors faced challenges in recalibrating their operating costs to declining business volumes. For example, falling sales of individual titles did not result in fewer deliveries or proportionate reductions in the number of containers shipped to a store. This negative impact on the Debtors' cash flow constrained their ability to invest in necessary capital expenditures and service their debt obligations. At the same time, the Debtors were unable to raise prices or reduce the number of publications they purchased to offset the high fixed costs and declining revenues because publishers and national distributors set both the amount of magazines a wholesaler must purchase as well as the magazine cover prices under certain distribution agreements.

B. *The Distribution Agreements*

In addition to the challenging operating environment, the Debtors also were saddled with unsustainable Distribution Agreements. Among other things, the Distribution Agreements allowed suppliers to impose an artificially high volume of magazines upon the Debtors—amounts vastly greater than would ever be sold at retail—

<sup>9</sup> See *In re RDA Holding Co.*, No. 13-22233 (Bankr. S.D.N.Y.); *In re Houghton Mifflin Harcourt Publ'g Co.*, No. 12-15610 (Bankr. S.D.N.Y.); *In re Borders Grp., Inc.*, No. 11-10614 (Bankr. S.D.N.Y.); *In re Dex One Corp.*, No. 13-10533 (Bankr. D. Del.); *In re Am. Media, Inc.*, No. 10-16140 (Bankr. S.D.N.Y.); and *In re Anderson News, LLC*, No. 09-10695 (Bankr. D. Del.).

and the Debtors' inability to manage the resulting economic and operational difficulties drained the Debtors of the liquidity necessary to run the Distribution Business efficiently and profitably.

Typically, major publishers publish magazines and set their cover prices. To effectuate single-copy magazine sales, each publisher retains a national distributor to serve as a broker whose function is to manage the publisher's relationships with its wholesalers and, in some cases, guarantee the wholesalers' payment obligations to the publisher. National distributors are compensated with a percentage of the retail sales value of the magazines they deliver to wholesalers. Pursuant to allotment orders provided by the national distributor, the publishers' magazines are shipped to wholesalers, who, in turn, ship the magazines to retailers. Wholesalers are responsible for merchandising (display and removal), picking up, transporting, counting, tabulating, and destroying copies of magazines that remain unsold. Wholesalers, like the Debtors, can be forced to absorb the cost for unsold products which were accidentally destroyed or lost by a retailer (commonly referred to as "shrink" in the industry) under distribution agreements.

This process engendered gross market inefficiencies. For example, because a national distributor would fix the number of magazines or other printed material the Debtors had to purchase under the Distribution Agreements, publishers and national distributors would flood a marketplace with quantities of magazines that far exceeded what is sold in fact by a retailer to ensure broader retail display of their products. The Debtors and their retailer customers were then forced to purchase, transport, and carry a glut of magazines that would not be sold. To offset the costs of over-purchasing these products, the Debtors and their retailers took return credits against their next purchase for unsold product. However, the Debtors could only take advantage of these return credits if, at their own cost, they collected unsold inventory from each retail location, transported them back to a distribution center or other location, processed the returns, and then destroyed the product—an expensive and time-consuming process.

### C. *Prepetition Restructuring Efforts and Wind Down*

As described in Article IV.A hereof, the Debtors consummated an out-of-court restructuring transaction in October 2013 to right-size their capital structure and reorganize the Distribution Business and Retail Display Business into separate corporate structures. Following the October 2013 Restructuring, the Debtors implemented a new business plan to combat the prevailing economic environment and issues under the Distribution Agreements by, among other things, adding new retailer customers, expanding their Retail Display Business and merchandising services business, and reducing operating costs. While certain of the Debtors' business initiatives achieved operating improvements, the Debtors were unable to overcome the inability to operate profitably under the existing Distribution Agreements. Faced with a series of liquidity crises and the prospect of being unable to continue operations under their existing Distribution Agreements, the Debtors and their advisors engaged their national distributors and publishers to modify the Distribution Agreements.

Beginning in January 2014 and continuing for four months thereafter, the Debtors and their four largest national distributors and certain publishers they represent held extensive negotiations to restructure the Distribution Agreements. By May 2014, the Debtors had reached agreements in principle with certain of their national distributors and were in the process of finalizing term sheets and drafting definitive documentation with certain other industry participants that would have provided the Debtors with additional liquidity and a feasible path forward for the Distribution Business. But, on May 25, 2014, without notice and at a time when the Debtors believed a fully-negotiated term sheet was close to execution, the Debtors' largest national distributor and related publisher—an economically indispensable business partner—abruptly withdrew from all negotiations, terminated the applicable Distribution Agreement, and thereafter ceased transacting business with the Debtors.

Without a Distribution Agreement with their largest national distributor and publisher—and despite substantial progress in their negotiations with other critical business partners—the Debtors operating the Distribution Business simply were unable to continue as going concerns. Accordingly, the Debtors immediately began winding down their distribution operations, making the difficult determination to lay off approximately 5,500 employees. At the same time, the Debtors entered into discussions with the Revolving Credit Facility Agent regarding the Debtors' consensual use of cash collateral to help fund a chapter 11 case and potential sale process. Despite efforts by both parties, these negotiations ultimately were unsuccessful, and the Revolving Credit Facility Agent withheld approximately \$12 million of the Debtors' cash. As noted above, together with approximately \$6.5 million of cash previously withheld, the Revolving Credit Facility Agent was cash collateralized as of the

Petition Date in an amount equal to approximately 105% of the aggregate face amount of obligations outstanding under the Revolving Credit Facility.

D. *The Purchase Agreement*

As described above, in connection with the Debtors' prepetition efforts to wind down the Distribution Business, the Debtors explored and negotiated various restructuring transactions to maximize stakeholder value. In particular, the Debtors engaged in extensive arm's-length discussions with the Term Loan Lenders regarding the potential sale of the Retail Display Business. These discussions culminated in the parties' entry into the Purchase Agreement, whereby the Term Loan Lenders agreed to serve as a stalking horse for the sale of the Retail Display Business pursuant to an open and robust sale process. On June 23, 2014, the Debtors commenced the Chapter 11 Cases primarily to effectuate the sale of the Retail Display Business and wind down the Distribution Business.

## ARTICLE VI.

### EVENTS OF THE CHAPTER 11 CASES

A. *First Day Pleadings and Other Case Matters*

1. *First and Second Day Relief*

The Debtors Filed on, or shortly after, the Petition Date certain motions and applications requesting various types of "first day" and "second day" relief. The relief granted enabled the Debtors to preserve value and efficiently administer the Chapter 11 Cases, including, among other things: (a) an order authorizing the Debtors to use cash collateral during the Chapter 11 Cases and granting certain adequate protection to certain secured parties [Docket No. 162]; (b) an order authorizing the Debtors to continue using their existing cash management system, honor certain prepetition obligations related thereto, maintain existing business forms, and continue to perform intercompany transactions [Docket No. 42]; (c) orders authorizing payment on account of prepetition Claims of certain critical vendors, shippers, lienholders, 503(b)(9) claimants, and taxing authorities [Docket Nos. 37, 40, 139]; (d) an order directing joint administration of the various Debtors' Chapter 11 Cases [Docket No. 35]; (e) an order granting authority to pay employees' wage Claims and related obligations in the ordinary course of business and continue certain employee benefit programs [Docket No. 41]; (f) an order approving procedures for, among other things, determining adequate assurance for utility providers, prohibiting utility providers from altering, refusing, or discontinuing services, and determining that the Debtors are not required to provide additional adequate assurance [Docket No. 138]; (g) an order establishing procedures for the sale, transfer, and abandonment of certain de minimis assets [Docket No. 146]; and (h) an order granting authority to pay their obligations under insurance policies entered into prepetition, continue paying brokerage fees, and renew, supplement, modify, and purchase insurance coverage in the ordinary course of business [Docket No. 39].

2. *Retention of Chapter 11 Professionals*

To assist the Debtors in carrying out their duties as debtors-in-possession and to otherwise represent the Debtors' interests in the Chapter 11 Cases, the Bankruptcy Court entered Final Orders authorizing the Debtors to retain and employ the following professionals: (a) Kurtzman Carson Consultants LLC, as the Notice and Claims Agent and administrative advisor for the Debtors [Docket Nos. 36, 141]; (b) Kirkland & Ellis LLP, as counsel to the Debtors [Docket No. 142]; (c) Young Conaway Stargatt & Taylor, LLP, as co-counsel to the Debtors [Docket No. 143]; and (d) FTI Consulting, Inc., to provide a Chief Restructuring Officer, a Chief Financial Officer, and certain additional personnel [Docket No. 176]. On July 21, 2014, the Bankruptcy Court entered an order approving procedures for the interim compensation and reimbursement of expenses of retained professionals [Docket No. 159]. The Bankruptcy Court also granted the Debtors the authority to retain and compensate certain professionals utilized by the Debtors in the ordinary course of business [Docket No. 144].



### 3. *Appointment of Official Committee of Unsecured Creditors*

On July 10, 2014, the Office of the U.S. Trustee appointed the Committee [Docket No. 107]. The members of the Committee are: (a) Time Inc. Retail f/k/a Time Warner Retail Sales & Marketing, Inc.; (b) BGI Creditors' Liquidating Trust; (c) Kable Distributors Services, Inc.; (d) Heinrich Bauer USA, LLC; (e) Teamsters Health & Welfare & Pension Funds of Phila. & Vic.; (f) United Wire, Metal & Machine Pension Fund; and (g) Walgreen Co.

On August 18, 2014, the Bankruptcy Court entered orders approving the Committee's retention of Lowenstein Sandler LLP as counsel [Docket No. 221], Duane Morris LLP as counsel [Docket No. 220], and PricewaterhouseCoopers LLP as financial advisor [Docket No. 219].

#### B. *Claims Bar Date*

On August 22, 2014, the Debtors Filed the Schedules [Docket Nos. 234-241] pursuant to section 521 of the Bankruptcy Code and in accordance with the Bankruptcy Court's order [Docket No. 140]. On September 25, 2014, the Debtors filed amended Schedules for certain of the Debtors [Docket Nos. 329-332].

The Bankruptcy Code allows the Bankruptcy Court to fix the time within which Proofs of Claim must be Filed in the Chapter 11 Cases. Any creditor whose Claim is not scheduled in the Schedules or whose Claim is scheduled as disputed, contingent, or unliquidated must File a Proof of Claim.

On July 31, 2014, the Debtors Filed a motion requesting the Bankruptcy Court to enter an order approving, among other things: (a) October 3, 2014, at 5:00 p.m. prevailing Pacific Time (the "General Claims Bar Date") as the deadline for all non-Governmental Units to File Claims in the Chapter 11 Cases; (b) December 22, 2014, at 5:00 p.m. prevailing Pacific Time as the deadline for all Governmental Units to File Claims in the Chapter 11 Cases; (c) October 10, 2014, as the deadline to request allowance of certain Administrative Claims; (d) procedures for Filing Proofs of Claim; and (e) the form and manner of notice of the bar dates [Docket No. 188]. On August 19, 2014, the Bankruptcy Court granted such relief [Docket No. 218].

As of the General Claims Bar Date, approximately [•] Proofs of Claim were timely Filed in the Chapter 11 Cases asserting a total of approximately \$[•] million. The Debtors are currently reviewing these Proofs of Claim to determine whether the asserted Claims should be Allowed, and if so, in what amount and priority. [In that respect, on [•], 2014, the Debtors Filed an omnibus objection to certain Proofs of Claim [Docket No. [•]] (the "Omnibus Objection"), objecting to a total of approximately [•] claims that assert amounts totaling in the aggregate approximately \$[•] million. On [•], 2014, the Bankruptcy Court entered an order [Docket No. [•]] granting the relief requested in the Omnibus Objection, except with respect to the Debtors' objections to approximately [•] claims.]

#### C. *WARN Adversary Proceeding*

On June 23, 2014, certain former employees of the Debtors commenced an adversary proceeding (the "WARN Adversary Proceeding") styled as *Michaela Tomasch, et al. v. Source Interlink Distribution, LLC, et al.*, Case No. 14-50411 (Bankr. D. Del. 2014) asserting claims against the Debtors arising under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* (the "WARN Act") and related state law. The WARN plaintiffs filed an amended class action complaint on July 2, 2014 [Adv. Pro. Docket No. 3] seeking, in part, a determination that their claims be treated as Allowed Administrative Claims and General Unsecured Claims in an unspecified amount.

On August 7, 2014, the Debtors filed an answer to the amended complaint [Adv. Pro. Docket No. 5] denying many of the allegations set forth in the complaint. On August 29, 2014, the Debtors filed a motion [Docket No. 259] requesting that the Bankruptcy Court estimate the value of the Claims asserted by the class in the

WARN Adversary Proceeding. On September 16, 2014, the Bankruptcy Court entered an order [Adv. Pro. Docket No. 17] certifying a class of plaintiffs. [•].<sup>10</sup>

D. *The Sale Process*

Shortly after the Petition Date, the Debtors launched the sale process in furtherance of the Sale Transaction. The Debtors, with the assistance of their advisors and the Committee, contacted and provided “teaser” information to approximately 100 potentially interested parties consistent with the Bidding Procedures Order. Approximately twenty-one (21) parties subsequently executed confidentiality agreements, received confidential information memoranda including a detailed overview of the Retail Display Business, and were granted access to certain diligence materials. Of these 21 parties, none submitted bids on or about the bid deadline established by the Bankruptcy Court as September 12, 2014. Since no parties submitted Qualified Bids, the Purchaser’s bid as contemplated in the Purchaser Agreement was the successful bid. The Bankruptcy Court approved the Sale Transaction shortly thereafter [Docket No. 319] and the parties closed the Sale Transaction on [•], 2014. Pursuant to a stipulation among the Debtors and the Committee and approved by the Bankruptcy Court [Docket No. 303], the Committee has reserved certain rights in respect of the Debtors’ real estate located in Rockford, Illinois that is subject to the Sale Transaction, which reserved rights may affect recoveries for Holders of Allowed General Unsecured Claims.

E. *Settlements and De Minimis Sales*

During the pendency of the Chapter 11 Cases, the Debtors have entered in various settlements and disposed of certain of their *de minimis* assets. Material settlements and asset sales include, in part:

- a settlement by and among the Debtors, Source Interlink Companies, Source Media, and The Variable Annuity Life Insurance Company (“VALIC”), which approved the rejection of a lease and sublease on the Debtors’ leased office space located in Bonita Springs, Florida, entry into a new rent-free lease on the premises, payment by VALIC to the Debtors of \$350,000, and the transfer to VALIC of certain of the Debtors’ furniture, fixtures, and equipment located on the premises, which was approved by the Bankruptcy Court on September 18, 2014 [Docket No. 314];
- a sale of certain assets located at the Debtors’ leased facility in Ontario, California, by the Debtors to Prologix Distribution Services (West), LLC for approximately \$850,000 [Docket No. 273]; and
- an agreement between Holdings and Source Interlink Companies agreeing to the allocation of tax attributes related to certain net operating losses generated prior to the October 2013 Restructuring in exchange for a \$100,000 payment from Source Interlink Companies to Holdings, which was approved by the Bankruptcy Court on October 8, 2014 [Docket No. [•]].<sup>11</sup>

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<sup>10</sup> The Debtors and the WARN plaintiffs have reached an agreement in principle, subject to mutually agreeable documentation, that resolves the WARN Adversary Proceeding in its entirety. The Debtors will update this Disclosure Statement with additional information as soon as reasonably practicable hereafter but no later than the hearing on the adequacy of this Disclosure Statement

<sup>11</sup> On October 3, 2014, the Committee filed an objection [Docket No. 353] to this settlement, and such objection remains unresolved as of the filing of this Disclosure Statement.

## ARTICLE VII.

### SUMMARY OF THE PLAN

This section provides a summary of the structure and means for implementation of the Plan and the classification and treatment of Claims and Interests under the Plan, and is qualified in its entirety by reference to the Plan (as well as the exhibits thereto and definitions therein).

The statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in the documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statement of such terms and provisions of the Plan or documents referred to therein.

The Plan controls the actual treatment of Claims against, and Interests in, the Debtors under the Plan, and will, upon the occurrence of the Effective Date, be binding upon all Holders of Claims against and Interests in the Debtors and the Debtors' Estates, all parties receiving property under the Plan, and other parties in interest. In the event of any conflict between this Disclosure Statement and the Plan or any other operative document, the terms of the Plan and/or such other operative document shall control.

#### A. *Administrative and Priority Claims*

##### 1. *Administrative Claims*

Subject to the provisions of sections 327, 330(a), and 331 of the Bankruptcy Code, except to the extent that a Holder of an Allowed Administrative Claim and, as applicable, the Debtors or the Plan Administrator agree to less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, the Debtors or the Plan Administrator shall pay each Holder of an Allowed Administrative Claim the full unpaid amount of such Allowed Administrative Claim in Cash: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if an Administrative Claim is Allowed after the Effective Date, on the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due) with a Cash distribution from the Administrative and Priority Claims Reserve by the Plan Administrator; (3) at such time and upon such terms as may be agreed upon by such Holder and the Debtors or the Plan Administrator, as applicable; or (4) at such time and upon such terms as set forth in an order of the Bankruptcy Court; *provided, however*, that any Administrative Claim that has been assumed by the Purchaser pursuant to the Purchase Agreement shall not be an obligation of the Debtors.

##### (a) *Administrative Claims Bar Date*

Except as otherwise provided by a Final Order previously entered by the Bankruptcy Court (including the Bar Date Order) or as provided by Article II of the Plan, unless previously Filed, requests for payment of Administrative Claims, other than requests for payment of Professional Fee Claims, must be Filed and served on the Debtors no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, their Estates, the Plan Administrator, the Post-Effective Date Debtor Assets, the Liquidating Trustee, or the Liquidating Trust Assets, and such Administrative Claims shall be deemed compromised, settled, and released as of the Effective Date. Objections to such requests must be Filed and served on the requesting party by the Administrative Claims Objection Bar Date.

## (b) Administrative and Priority Claims Reserve

As soon as reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall fund the Administrative and Priority Claims Reserve in Cash as described in Article IV.G.2 of the Plan. Any amounts remaining in the Administrative and Priority Claims Reserve after payment of all Allowed Priority Claims shall be transferred to the Term Loan Agent and shall be distributed in accordance with the Plan or, if otherwise agreed in writing by the Term Loan Agent in its sole discretion, allocated among any other reserves contemplated in the Plan. Notwithstanding anything to the contrary herein or in the Plan, neither the Plan Administrator, the Post-Effective Date Debtor, the Term Loan Agent, the Term Loan Lenders, nor any other party in interest shall be obligated to fund the Administrative and Priority Claims Reserve in excess of the amount approved by the Bankruptcy Court under the Confirmation Order—i.e., the Administrative and Priority Claims Reserve Amount.

2. *Priority Tax Claims*

Except to the extent that a Holder of an Allowed Priority Tax Claim and, as applicable, the Debtors or the Plan Administrator agree to a less favorable treatment or has been paid by any applicable Debtors prior to the Effective Date, in full and final satisfaction, settlement, and release of and in exchange for release of each Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall be treated in accordance with section 1129(a)(9)(C) of the Bankruptcy Code and satisfied with a Cash distribution from the Administrative and Priority Claims Reserve; *provided, however*, that any Priority Tax Claim that has been assumed by the Purchaser pursuant to the Purchase Agreement shall not be an obligation of the Debtors. All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as such obligations become due. Any Claims asserted by a governmental unit on account of any penalties and assessments shall not be Priority Tax Claims. On the Effective Date, any Liens securing any Allowed Priority Tax Claims shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act, or action under applicable law, regulation, order or rule, or the vote, consent, authorization, or approval of any Person.

3. *Professional Fee Claims*

## (a) Professional Fee Escrow

If the Professional Fee Claims Estimate is greater than zero, as soon as reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow. The Professionals shall estimate their Professional Fee Claims before and as of the Effective Date, taking into account any prior payments, and shall deliver such estimate to the Debtors no later than five calendar days before the anticipated Effective Date, as shall be indicated by the Debtors to such Professionals in writing as soon as reasonably practicable following Confirmation of the Plan. For the avoidance of doubt, the Professional Fee Claims Estimate shall not be deemed to limit the amount of fees and expenses that are the subject of a Professional's final request for payment of Professional Fee Claims Filed with the Bankruptcy Court. The Debtors shall fund the Professional Fee Escrow with Cash equal to the Professional Fee Claims Estimate. If a Professional does not provide a Professional Fee Claims Estimate within the timeframe described herein, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. Except as provided in the Plan, the Professional Fee Escrow shall be funded on the Effective Date and maintained in trust by the Plan Administrator for the Professionals and shall not be considered property of the Debtors' Estates or a Liquidating Trust Asset. When all Allowed Professional Fee Claims have been paid in full, amounts remaining in the Professional Fee Escrow, if any, shall be transferred to the Term Loan Agent and shall be distributed in accordance with the Plan or, if otherwise agreed in writing by the Term Loan Agent in its sole discretion, allocated among any other reserves contemplated in the Plan.

To the extent that funds held in the Professional Fee Escrow are unable to satisfy the amount of Allowed Professional Fee Claims owing to the Professionals after application of funds held in the Professional Fee Escrow, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which Allowed Administrative Claim shall be satisfied in accordance with the Plan.

## (b) Final Fee Applications

All final requests for payment of Professional Fee Claims shall be Filed no later than the first Business Day that is 45 days after the Effective Date. After notice provided in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court. Subject to Article II.C.1 of the Plan, the amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals from funds held in the Professional Fee Escrow, or as otherwise provided in the Plan, when such Claims are Allowed by an order of the Bankruptcy Court, which order is not subject to a stay.

4. *U.S. Trustee Statutory Fees*

The Debtors or the Plan Administrator, as applicable, shall pay all U.S. Trustee Fees for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

B. *Classification, Treatment, and Voting of Claims and Interests*

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

1. *Summary of Classifications*

All Claims and Interests, other than Administrative Claims, Priority Tax Claims, and Professional Fee Claims, are classified in the Classes set forth in Article III of the Plan for all purposes, including voting, Confirmation, and distributions under the Plan and pursuant to sections 1122 and 1123(a)(1) 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 that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest is also classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date. The Debtors reserve the right to withdraw the Plan with respect to one or more Debtors while seeking Confirmation or approval of the Plan with respect to all other Debtors.

The Plan constitutes a separate Plan for each of the Debtors, and the classification of Claims and Interests set forth herein and in the Plan shall apply separately to each of the Debtors.

2. *Substantive Consolidation of the Estates*

Pursuant to Article IV.A of the Plan, the Plan provides for the substantive consolidation of the Estates into a single Estate for all purposes associated with Confirmation and Consummation. As a result of the substantive consolidation of the Estates, each Class of Claims and Interests will be treated as a single consolidated Estate without regard to the separate identification of the Debtors.

### 3. *Class Identification*

The classification of Claims against and Interests in each Debtor (as applicable) pursuant to the Plan is as set forth below. To the extent there are no Holders of Claims or Interests in a particular Class or Classes, such Claims or Interests shall be treated as set forth in Article III.E of the Plan.

<b>Class</b>	<b>Claims and Interests</b>	<b>Status</b>	<b>Voting Rights</b>
1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
3	Revolving Credit Facility Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
4	Term Loan Claims	Impaired	Entitled to Vote
5	General Unsecured Claims	Impaired	Entitled to Vote
6	Intercompany Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
8	Intercompany Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
9	Holdings Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

The treatment of the Classes of Claims and Interests under the Plan shall be as set forth in Article III.B of the Plan and Article II hereof.

### 4. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Plan Administrator, the Liquidating Trustee, the Debtors, or the Debtors' Estates in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

### 5. *Elimination of Vacant Classes*

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

6. *Voting Classes; Presumed Acceptance by Non-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 Debtors shall request the Bankruptcy Court to deem the Plan accepted by the Holders of such Claims or Interests in such Class.

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

The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article XI of the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

C. *Means for Implementation of the Plan*

1. *Substantive Consolidation*

The Plan shall serve as a motion by the Debtors seeking entry of an order pursuant to sections 105(a), 363(b), and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 substantively consolidating all of the Estates into a single consolidated Estate for all purposes associated with Confirmation and Consummation (the "Consolidation"). Among other things, the Consolidation encompasses a settlement with respect to Intercompany Claims, recoveries on account of certain Claims related to the Debtors' joint and several liabilities, and the allocation of the Liquidating Trust Assets among the Estates since, under a strict interpretation of the absolute priority rule, the Debtors submit that Holders of Allowed General Unsecured Claims would not receive any distribution under the Plan.

Pursuant to the Consolidation, on and after the Effective Date: (1) all of the assets and liabilities of the Debtors shall be merged so that all of the assets of the Debtors shall be available to pay all of the liabilities under the Plan as set forth herein and in the Plan; (2) all of the funds held in the Administrative and Priority Claims Reserve shall be available to pay all of the Allowed Priority Claims; (3) all of the Liquidating Trust Assets shall be available to pay all of the Allowed General Unsecured Claims; (4) all of the Intercompany Claims shall be disallowed and expunged and no distributions shall be made on account of such Intercompany Claims; (5) all guarantees by the Debtors of the obligations of any other Debtor shall be eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of the Debtors shall be one obligation of Holdings; and (6) each and every Claim Filed or to be Filed in the case of any of the Debtors other than Holdings shall be deemed Filed against Holdings.

The Consolidation (other than for purposes of effectuating the Plan) shall not affect: (1) the legal and corporate structures of the Debtors; (2) pre- and post-Effective Date guarantees, liens, and security interests that are required to be maintained (a) in connection with Executory Contracts and Unexpired Leases that have been or will be assumed, if any, or (b) pursuant to the Plan; (3) distributions from any insurance policies or proceeds of such policies; (4) vesting of the Post-Effective Date Debtors Assets in the Post-Effective Date Debtor; and (5) vesting of the Liquidating Trust Assets in the Liquidating Trust.

2. *Sources of Consideration for Plan Distributions*

The Debtors' Cash on hand, the Debtors' rights under the Purchase Agreement, the Term Loan Lender Assets other than Cash, all Causes of Action not previously settled, released, or exculpated under the Plan, and the remainder of the Revolving Cash Reserve, if any, shall be used to fund the distributions to Holders of Allowed Claims against the Debtors in accordance with the treatment of such Claims provided in the Plan.

### 3. *General Settlement of Claims*

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan.<sup>12</sup>

A court may approve a proposed compromise or settlement, so long as the compromise or settlement is in the “best interest of the estate.” *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986). In making this determination, a court typically examines four factors: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (citations omitted). Further, a court need only determine that the proposed settlement or compromise is above the “lowest point in the range of reasonableness.” *In re Pa. Truck Lines, Inc.*, 150 B.R. 595, 598 (E.D. Pa. 1992), *aff’d*, 8 F.3d 812 (3d Cir. 1993); *see also In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) (noting that “the court does not have to be convinced that the settlement is the best possible compromise,” rather the court need only “conclude that the settlement is ‘within the reasonable range of litigation possibilities’” (citations omitted)).

### 4. *Revolving Credit Facility Claims*

Effective as of the Effective Date, except with respect to the Continuing Obligations as set forth in Article IV.D of the Plan, the Debtors’ obligations under the Revolving Credit Documents shall be deemed terminated, canceled, and released. In full and final satisfaction, settlement, and release of and in exchange for each Holder’s Allowed Revolving Credit Facility Claim, on the Effective Date or as soon as reasonably practicable thereafter, the Debtors or the Plan Administrator on behalf of the Post-Effective Date Debtor, as the case may be, may take such actions, in their sole discretion, to effectuate the following:

1. pay any accrued but unpaid amounts owing to the Revolving Credit Facility Agent or the Revolving Lenders under the Final Cash Collateral Order or the Revolving Credit Documents, in either case to the extent and in the manner provided therein;
2. solely to the extent and in the manner provided by the Revolving Credit Documents (subparts (i)-(iv) of Article IV.D.2 of the Plan, collectively, the “Continuing Obligations”): (i) pay the Revolving Credit Facility Agent for all amounts paid by the Revolving Credit Facility Agent or any Revolving Lender in respect of amounts drawn under any Letter of Credit following the Effective Date, together with any applicable fees, charges, expenses (including bank charges and expenses), and indemnification obligations related thereto; (ii) satisfy all indemnification obligations and other similar obligations in favor of the Revolving Credit Facility Agent or any Revolving Lender, (including without limitation, any loss, cost, damage or claim which arises from any non-payment, claim, or refund of any checks or other similar items or any bookkeeping, accounting, or other errors in calculation), which expressly survive termination of the Revolving Credit Documents pursuant to the terms thereof; (iii) pay interest (if any and at the interest rate provided for in the Revolving Credit Documents prior to the Effective Date) upon all amounts owed to Revolving Credit Facility Agent and Revolving Lenders in respect of the outstanding Letters of Credit or otherwise in respect of the Continuing Obligations, as applicable; and (iv) pay any costs and expenses incurred by

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<sup>12</sup> Generally, the standards for approval of a settlement or compromise under section 1123 of the Bankruptcy Code are the same as those under Bankruptcy Rule 9019. *In re Coram Healthcare Corp.*, 315 B.R. 321, 334–35 (Bankr. D. Del. 2004).



Revolving Credit Facility Agent or any Revolving Lender, including attorneys' fees and legal expenses in connection with any of the Continuing Obligations;

3. as collateral security for the prompt payment in full and performance of the Continuing Obligations, subject to the Revolving Credit Facility Agent's obligations pursuant to Article IV.D of the Plan, grant, pledge, and assign the Post-Effective Date Debtors' interests in the Cash comprising the Revolving Cash Reserve (which is currently being held by Revolving Credit Facility Agent) to the Revolving Credit Facility Agent and the Revolving Lenders a security interest in and right of setoff against such Cash, which shall be held by Revolving Credit Facility Agent (without interest), less any amounts thereof previously applied to Continuing Obligations, for a period of not more than thirty (30) days following the expiration date of the last of the Letters of Credit to expire. Subject in all respects to the provisions of Article IV.D.2 of the Plan and solely to the extent and in the manner provided by the Revolving Credit Documents, the Revolving Credit Facility Agent may immediately apply Cash from the Revolving Cash Reserve, less any amounts previously applied from time to time against the Continuing Obligations when due. No later than thirty (30) days following the expiration date of the last of the Letters of Credit to expire, the Revolving Credit Facility Agent shall transfer any Cash remaining in the Revolving Cash Reserve following the application thereof to the Continuing Obligations to the Plan Administrator for distribution in accordance with the Plan; and
4. execute and deliver such other and further documents as may be reasonably requested by the Revolving Credit Facility Agent.

The Revolving Credit Facility Agent and Revolving Lenders acknowledge and agree that the foregoing treatment of their Allowed Class 3 Claims, together with the other provisions of this Plan, renders them Unimpaired.

#### 5. *The Liquidating Trust*

On or prior to the Effective Date, the Debtors will execute the Liquidating Trust Agreement and will take all other steps necessary to establish the Liquidating Trust pursuant to the Liquidating Trust Agreement as further described in Article VII of the Plan. On the Effective Date, and in accordance with and pursuant to the terms of the Plan, the Debtors will transfer to the Liquidating Trust all of their rights, title, and interests in all of the Liquidating Trust Assets.

#### 6. *Post-Effective Date Debtor*

From and after the Effective Date, the Post-Effective Date Debtor shall continue in existence for purposes of (1) winding down the Debtors' businesses and affairs as expeditiously and efficaciously as reasonably possible, (2) resolving Disputed Priority Claims, (3) paying Allowed Priority Claims and Professional Fee Claims, (4) enforcing and prosecuting claims, interests, rights, and privileges under the Post-Effective Date Debtor Causes of Action in an efficacious manner and only to the extent the benefits of such enforcement or prosecution are reasonably believed to outweigh the costs associated therewith, (5) holding the D&O Policies and the LLC Agreement, (6) filing appropriate tax returns, and (7) administering the Plan in an efficacious manner.

On the Effective Date, the Plan Administrator shall establish the Post-Effective Date Debtor Reserve with the proceeds from the Post-Effective Date Debtor Cash Distribution, and such proceeds, together with the Post-Effective Date Debtor Assets, shall vest in the Post-Effective Date Debtor for the purpose of liquidating the Estates and Consummating the Plan. The Post-Effective Date Debtor Assets shall be held free and clear of all liens, claims, and interests of Holders of Claims and Interests, except as otherwise provided in the Plan. Any distributions to be made under the Plan from the Post-Effective Date Debtor Assets shall be made by the Plan Administrator. Notwithstanding anything herein or in the Plan to the contrary, the Post-Effective Date Debtor and the Plan Administrator shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

7. *Plan Administrator*

The Plan Administrator shall act for the Post-Effective Date Debtor in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions of the Plan (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the authority, power, and incumbency of the persons acting as managers and officers of the Post-Effective Date Debtor shall be deemed to have resigned, and a representative of the Plan Administrator shall be appointed as the sole manager and sole officer of the Post-Effective Date Debtor and shall succeed to the powers of the Post-Effective Date Debtor's managers and officers. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Post-Effective Date Debtor.

The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to administer and distribute the Post-Effective Date Debtor Assets and wind down the businesses and affairs of the Debtors and the Post-Effective Date Debtor, including: (1) liquidating, receiving, holding, and investing, supervising, and protecting the Post-Effective Date Debtor Assets; (2) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan from the Post-Effective Date Debtor Assets; (3) making distributions from the Post-Effective Date Debtor Assets as contemplated under the Plan; (4) establishing and maintaining bank accounts in the name of the Post-Effective Date Debtor, including the Post-Effective Date Debtor Reserve; (5) employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (6) paying all reasonable fees, expenses, debts, charges, and liabilities of the Post-Effective Date Debtor; (7) administering and paying taxes of the Post-Effective Date Debtor, including filing tax returns; (8) representing the interests of the Post-Effective Date Debtor or the Estates before any taxing authority in all matters, including any action, suit, proceeding or audit; and (9) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

The Plan Administrator may resign at any time upon 30 days' written notice delivered to the Bankruptcy Court and the Term Loan Agent, provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator. The Plan Administrator may also be removed by the Term Loan Agent. In the event the Plan Administrator resigns or is removed, the Term Loan Agent shall select a successor Plan Administrator. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Plan Administrator relating to the Post-Effective Date Debtor shall be terminated.

(a) *Tax Returns*

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

(b) *Administrative and Priority Claims Reserve*

On the Effective Date or as soon as reasonably practicable thereafter, the Debtors shall fund, and the Plan Administrator shall establish and thereafter maintain, the Administrative and Priority Claims Reserve with the Administrative and Priority Claims Reserve Amount in an authorized depository in the District of Delaware, which funds shall vest in the Post-Effective Date Debtor free and clear of all liens, Claims, encumbrances, charges, and other interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Funds in the Administrative and Priority Claims Reserve shall be used by the Plan Administrator only for the payment of Priority Claims Allowed after the Effective Date to the extent that such Priority Claims have not been paid in full on or prior to the Effective Date. To the extent any funds remain in the Administrative and Priority Claims Reserve after all of such Priority Claims have been paid or otherwise satisfied in full, such remaining funds shall be distributed by the Plan Administrator to the Term Loan Agent for the benefit of the Term Loan Lenders in accordance with the Plan. Notwithstanding anything to the contrary herein or in the Plan, neither the Plan Administrator, the Post-Effective Date Debtor, the Term Loan Agent, the Term Loan Lenders, nor any other

party in interest shall be obligated to fund the Administrative and Priority Claims Reserve in an aggregate amount in excess of the Administrative and Priority Claims Reserve Amount.

(c) D&O Policies

Notwithstanding anything to the contrary contained herein, in the Plan, or in the Confirmation Order, Confirmation of the Plan shall not impair or otherwise modify any obligations arising under the D&O Policies. In addition, after the Effective Date, the Plan Administrator shall not terminate or otherwise reduce coverage under any D&O Policy, including, without limitation, any “tail policy,” in effect as of the Petition Date, and all directors, managers, and officers of the Debtors who served in such capacity as of the Petition Date at any time prior to the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such directors and officers remain in such positions after the Effective Date.

(d) Wind Down

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

As soon as reasonably practicable after the Effective Date, except with respect to the Post-Effective Date Debtor as set forth in the Plan, the Plan Administrator shall: (1) cause the Debtors to comply with, and abide by, the terms of the Purchase Agreement; (2) file for each of the Debtors a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable laws of their state of incorporation or formation (as applicable), including, but not limited to, any actions contemplated in sections 275–283 of the General Corporation Law of the State of Delaware (the “DGCL”); and (3) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. For purposes of clause (2) of the preceding sentence, the Plan shall constitute a plan of distribution as contemplated in the DGCL. The certificate of dissolution or equivalent document may be executed by the Plan Administrator without need for any action or approval by the equity holders or boards of directors or managers of any Debtor. From and after the Effective Date, except with respect to the Post-Effective Date Debtor as set forth in the Plan, the Debtors (4) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (5) shall be deemed to have cancelled pursuant to the Plan all Interests, and (6) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. For the avoidance of doubt, except with respect to the Post-Effective Date Debtor as set forth in the Plan, (7) notwithstanding the Debtors’ dissolution, the Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

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

(e) Exculpation; Indemnification; Insurance

The Plan Administrator, all professionals retained by the Plan Administrator, and representatives of each of the foregoing shall be deemed exculpated and indemnified in all respects in a manner identical to the exculpation and indemnification provisions provided to the Liquidation Trustee under the terms of the Liquidating Trust Agreement. The Plan Administrator may obtain, at the expense of the Post-Effective Date Debtor and with funds from the Post-Effective Date Debtor Reserve, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Plan Administrator. The Plan Administrator may rely upon written information previously generated by the Debtors or the Post-Effective Date Debtor.

## (f) Dissolution of the Post-Effective Date Debtor

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

8. *Cancellation of Securities and Agreements*

On the Effective Date, except as otherwise specifically provided for in the Plan: (1) the obligations of any Debtor under any certificate, share, note, bond, indenture, purchase right, or other instrument or document, including, without limitation, the Revolving Credit Documents and the Term Loan Documents, directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest, equity, or portfolio interest in the Debtors or any warrants, options, or other securities exercisable or exchangeable for, or convertible into, debt, equity, ownership, or profits interests in the Debtors giving rise to any Claim or Interest shall be cancelled as to the Debtors; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificates or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indenture, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be fully released, settled, and compromised; *provided that*, notwithstanding Confirmation or the occurrence of the Effective Date, any such agreement that governs the rights of the Holder of a Claim shall continue in effect solely for purposes of allowing such Holders to receive distributions under the Plan as provided therein; *provided further*, that the foregoing shall not affect those provisions under the Revolving Loan Documents that by their terms survive termination..

9. *Corporate Action*

Upon the Effective Date, by virtue of the solicitation of votes in favor of the Plan and entry of the Confirmation Order, all actions contemplated by the Plan (including any action to be undertaken by the Plan Administrator or the Liquidating Trustee) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, the Debtors, or any other Entity or Person. All matters provided for in the Plan involving the corporate structure of the Debtors, and any corporate action required by the Debtors in connection therewith, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtors or the Debtors' Estates.

Upon the Effective Date or as soon as reasonably practicable thereafter, after (1) making distributions provided for under the Plan, and (2) the vesting of (a) the Post-Effective Date Debtor Assets in the Post-Effective Date Debtor, and (b) the Liquidating Trust Assets in the Liquidating Trust, the Debtors other than the Post-Effective Date Debtor shall be deemed to have been dissolved and terminated.

Upon the Effective Date or as soon as reasonably practicable thereafter, the existing boards of directors and managers, as applicable, of the Debtors other than the Post-Effective Date Debtor shall be dissolved without any further action required on the part of the Debtors or the Debtors' officers, directors, shareholders, and members and any all remaining officers or directors of each Debtor other than the Post-Effective Date Debtor shall be dismissed without any further action required on the part of any such Debtor, the shareholders of such Debtor, or the officers and directors of such Debtor. The directors, managers, and officers of the Debtors and the Plan Administrator, as applicable, shall be authorized to execute, deliver, File, or record such contracts, instruments, and other agreements or documents and take such other actions as they may deem necessary or appropriate in their sole discretion to implement the provisions of Article IV.I of the Plan.

The authorizations and approvals contemplated by Article IV.I of the Plan shall be effective notwithstanding any requirements under applicable nonbankruptcy law.

10. *Effectuating Documents; Further Transactions*

Prior to the Effective Date, the Debtors are, and on and after the Effective Date, the Plan Administrator and the Liquidating Trustee are, authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

11. *Exemption from Certain Taxes and Fees*

To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any post-Confirmation transfer from any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors; or (2) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instruments of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, in each case to the extent permitted by applicable bankruptcy law, and the appropriate state or local government officials or agents shall forego collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

12. *Causes of Action*

Other than Causes of Action against an Entity that are waived, relinquished, exculpated, released, compromised, or settled under the Plan or any Final Order (including, for the avoidance of doubt, any claims or Causes of Action released pursuant to Article IX.D of the Plan), the Debtors reserve and, as of the Effective Date, assign to the Liquidating Trust and the Post-Effective Date Debtor the Liquidating Trust Causes of Action and the Post-Effective Date Debtor Causes of Action, respectively. On and after the Effective Date, the Liquidating Trustee and the Plan Administrator may pursue the Liquidating Trust Causes of Action and the Post-Effective Date Debtor Causes of Action, as applicable, on behalf of and for the benefit of their respective beneficiaries.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or this Disclosure Statement to any such Cause of Action against them as any indication that the Debtors, the Plan Administrator, or the Liquidating Trustee will not pursue any and all available Causes of Actions against them. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Debtors reserve such Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Plan Administrator and the Liquidating Trustee, shall retain and shall have, including through their authorized agents or representatives, the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

13. *Closing the Chapter 11 Cases*

Upon the occurrence of the Effective Date, the Plan Administrator shall be permitted to close all of the Chapter 11 Cases except for the Chapter 11 Case of Holdings, and all contested matters relating to each of the Debtors, including objections to Claims, shall be administered and heard in the Chapter 11 Case of Holdings.

When all Disputed Claims have become Allowed or disallowed, the Liquidating Trust has terminated in accordance with Article VII of the Plan, all remaining Cash has been distributed in accordance with the Plan, and the business and affairs of the Post-Effective Date Debtor have been otherwise wound down, the Plan Administrator shall seek authority from the Bankruptcy Court to close the Chapter 11 Case of Holdings in accordance with the Bankruptcy Code and the Bankruptcy Rules.

D. *Treatment of Executory Contracts and Unexpired Leases*

1. *Assumption and Assignment of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed or assumed and assigned to the Purchaser or another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; (5) is a D&O Policy or an insurance policy; (6) is the Purchase Agreement; or (7) is the LLC Agreement. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

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

Any Cure Obligations under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Obligation in Cash on the Effective Date or as soon as reasonably practicable thereafter, subject to the limitation described below, by the Debtors as an Administrative Claim or by Purchaser in accordance with the Purchase Agreement, as applicable, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of the Cure Obligation, (2) the ability of the Debtors' Estates or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, the Cure Obligations required by section 365(b)(1) of the Bankruptcy Code shall be satisfied following the entry of a Final Order or orders resolving the dispute and approving the assumption; *provided*, that prior to the Effective Date, the Debtors, and on and after the Effective Date, the Plan Administrator may settle any dispute regarding the amount of any Cure Obligation without any further notice to any party or any action, order, or approval of the Bankruptcy Court.

Unless otherwise provided by an order of the Bankruptcy Court, at least twenty-one (21) days before the Confirmation Hearing, the Debtors shall cause notice of proposed assumption and proposed Cure Obligations to be sent to applicable counterparties. Any objection by such counterparty must be Filed, served, and **actually received** by the Debtors not later than fourteen (14) days after service of notice of the Debtors' proposed assumption and associated Cure Obligations. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such assumption or Cure Obligation.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan, or otherwise, shall result in the full release and satisfaction of any Claims or defaults, subject to satisfaction of the Cure Obligations, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the effective date of assumption and/or assignment. **Anything in the Schedules and any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed and assigned shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.**

3. *Claims Based on Rejection of Executory Contracts and Unexpired Leases*

Unless otherwise provided by an order of the Bankruptcy Court, any Proofs of Claim based on the rejection of the Debtors' Executory Contracts or Unexpired Leases pursuant to the Plan or otherwise, must be Filed with Bankruptcy Court and served on the Debtors or, after the Effective Date, the Liquidating Trustee, as applicable, no later than thirty (30) days after the earlier of the Effective Date or the effective date of rejection of such Executory Contract or Unexpired Lease. In addition, any objection to the rejection of an Executory Contract or Unexpired Lease must be Filed with the Bankruptcy Court and served on the Debtors or, after the Effective Date, the Liquidating Trustee, as applicable, no later than fourteen (14) days after service of the Debtors' proposed rejection of such Executory Contract or Unexpired Lease.

**Any Holders of Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claims were not timely Filed as set forth in the paragraph above and in the Plan shall not (1) be treated as a creditor with respect to such Claim, (2) be permitted to vote to accept or reject the Plan on account of any Claim arising from such rejection, or (3) participate in any distribution in the Chapter 11 Cases on account of such Claim, and any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Liquidating Trust, the Post-Effective Date Debtor, the Debtors' Estates, or the property for any of the foregoing without the need for any objection by the Debtors or the Liquidating Trustee, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtors' prepetition Executory Contracts or prepetition Unexpired Leases shall be classified as General Unsecured Claims against the appropriate Debtor, except as otherwise provided by order of the Bankruptcy Court.**

4. *Purchase Agreement; Assumed Contracts*

The Debtors' assumption or rejection of any Executory Contract or Unexpired Lease pursuant to the Plan shall be subject in all respects to the Purchaser's rights and obligations, including any Cure Obligations assumed by the Purchaser in accordance with the Purchase Agreement, with respect to any such Executory Contracts or Unexpired Leases that constitute Assumed Contracts (as defined in the Purchase Agreement) as set forth in the Purchase Agreement, including section 2.6 thereof.

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

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

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

6. *Insurance Policies*

Each insurance policy, including the D&O Policies, shall be assumed by the Debtors on behalf of the applicable Debtor and assigned to the Post-Effective Date Debtor effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such insurance policy previously was rejected by the Debtors or the Debtors' Estates pursuant to a Bankruptcy Court order or is the subject of a motion to reject pending on the

Effective Date, and coverage for defense and indemnity under any such insurance policy, including the D&O Policies, shall remain available to all individuals within the definition of “Insured” in any such insurance policy, including the D&O Policies.

7. *Indemnification Obligations*

Subject to the occurrence of the Effective Date, the obligations of the Debtors as of the Effective Date to indemnify, defend, reimburse, or limit the liability of the current and former directors, officers, employees, attorneys, other professionals and agents of the Debtors, and such current and former directors’ and officers’ respective Affiliates, respectively, against any Claims or Causes of Action under the Indemnification Provisions or applicable law, shall survive Confirmation, shall be assumed by the Debtors on behalf of the applicable Debtor and assigned to the Post-Effective Date Debtor, and will remain in effect after the Effective Date if such indemnification, defense, reimbursement, or limitation is owed in connection with an event occurring before the Effective Date; *provided, however*, that notwithstanding anything herein or in the Plan to the contrary, the Post-Effective Date Debtor’s obligation to fund such Indemnification Provisions shall be limited to the extent of coverage available under any insurance policy assumed by the Debtors and assigned to the Post-Effective Date Debtor, including the D&O Policies.

8. *Reservation of Rights*

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtors’ Estates have any liability thereunder. In the event of a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, shall have 90 days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease as otherwise provided in the Plan.

E. *Provisions Governing Distributions*

1. *Calculation of Amounts to Be Distributed*

Each Holder of an Allowed Claim against the Debtors shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class from the Debtors, the Plan Administrator, or the Liquidating Trustee, on behalf of the Debtors, the Post-Effective Date Debtor, or the Liquidating Trust, as applicable. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, in which case such payment shall be deemed to have occurred when due. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VIII of the Plan. Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim shall, on account of such Allowed Claim, receive a distribution in excess of the Allowed amount of such Claim plus any interest accruing on such Claim that is actually payable in accordance with the Plan.

2. *Rights and Powers of the Debtors, the Plan Administrator, and the Liquidating Trustee*

(a) *Powers of the Debtors, the Plan Administrator, and the Liquidating Trustee*

All distributions under the Plan shall be made on the Effective Date or as soon as reasonably practicable thereafter by the Debtors or thereafter by the Plan Administrator, the Liquidating Trustee, or their respective designees.

After the Effective Date, the Liquidating Trustee and its designees or representatives as identified in the Plan Supplement shall have the right to object to, Allow, or otherwise resolve any General Unsecured Claim.



After the Effective Date, the Plan Administrator and its designees or representatives shall have the right to object to, Allow, or otherwise resolve any Priority Claim.

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

(b) Expenses Incurred On or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator and the Liquidating Trustee on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Plan Administrator or the Liquidating Trustee shall be paid in Cash from the Post-Effective Date Debtor Reserve or the Liquidating Trust Assets, as applicable, without any further notice to or action, order, or approval of the Bankruptcy Court.

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

(a) Record Date for Distribution

On the Distribution Record Date, the Claims Register shall be closed and the Debtors, the Plan Administrator, the Liquidating Trustee, or any other party responsible for making distributions shall instead be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date.

(b) Delivery of Distributions in General

(i) Payments and Distributions on Disputed Claims

Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall, in the reasonable discretion of the Plan Administrator or the Liquidating Trustee, as applicable, be deemed to have been made by the Plan Administrator or the Liquidating Trustee, as applicable, on the Effective Date, unless the Plan Administrator or the Liquidating Trustee, as applicable, and the Holder of such Claim agree otherwise.

(ii) Special Rules for Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as may be agreed to by, as applicable, the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, on the one hand, and the Holder of a Disputed Claim, on the other hand, no partial payments and no partial distributions shall be made with respect to any Disputed Claim, other than with respect to Professional Claims, until all Disputed Claims held by the Holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

(iii) Distributions

On and after the Effective Date, the Debtors, the Plan Administrator, and the Liquidating Trustee, as applicable, shall make the distributions required to be made on account of Allowed Claims under the Plan. Distributions on account of Allowed Class 4 Claims shall be deposited with the Term Loan Agent, at which time such distribution shall be deemed complete, and the Term Loan Agent shall deliver such distributions in accordance with the Plan and the terms of the Term Loan Documents. Any distribution that is not made on the Initial Distribution Date or on any other date specified in the Plan because the Claim that would have been entitled to receive that distribution is not an Allowed Claim on such date, shall be held by the Plan Administrator in the Administrative and Priority Claims Reserve or the Liquidating Trustee in the Disputed Claims Reserve, as

applicable, and distributed on the next Subsequent Distribution Date that occurs after such Claim is Allowed. In accordance with Article VIII.D of the Plan, no interest shall accrue or be paid on the unpaid amount of any distribution paid pursuant to the Plan.

(c) Minimum; De Minimis Distributions

No Cash payment of less than \$100.00, in the reasonable discretion of the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, shall be made to a Holder of an Allowed Claim on account of such Allowed Claim.

(d) Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, has determined the then current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six months from the date the initial distribution is made. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) to the Post-Effective Date Debtor or the Liquidating Trust, as applicable, automatically and without need for a further order by the Bankruptcy Court for distribution in accordance with the Plan and the Claim of any Holder to such property or interest in property shall be released, settled, compromised, and forever barred.

(e) Cy Pres

Notwithstanding anything to the contrary in the Plan, if the Liquidating Trustee determines that any Beneficiaries of the Liquidating Trust no longer exist or cannot otherwise be reasonably ascertained, or the Liquidating Trustee determines that the Liquidating Trust Assets are insufficient to make any further distribution economically justifiable, the Liquidating Trustee may, in its reasonable discretion, distribute the Liquidating Trust Assets that constitute Cash to a charitable organization upon the same terms and conditions provided for in the Plan.

(f) Manner of Payment Pursuant to the Plan

Any payment in Cash to be made pursuant to the Plan shall be made at the election of the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, by check or by wire transfer.

4. *Compliance with Tax Requirements/Allocations*

In connection with the Plan, to the extent applicable, the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions pursuant hereto shall be subject to such withholding and reporting requirements. The Plan Administrator or the Liquidating Trustee, as applicable, may request that any Holder of an Allowed Claim provide it with all forms and information required to comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit (the “Required Tax Documents”). In the event that a Holder fails to return Required Tax Documents within six (6) months after a written request by the Plan Administrator or the Liquidating Trustee, as applicable, such Holder, its Claim, and all distributions on account of such Holder’s Claim shall be treated as an undeliverable distributions and unclaimed property in accordance with Article VI.C.4 of the Plan.

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

5. *Claims Paid or Payable by Third Parties*

(a) *Claims Paid by Third Parties; Recourse to Collateral*

The Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, shall be authorized to reduce in full a Claim, and such Claim shall be disallowed without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor, the Post-Effective Date Debtor, or the Liquidating Trust, as applicable, including on account of recourse to collateral held by third parties that secure such Claim. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the applicable Debtor, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

(b) *Claims Payable by Insurance, Third Parties; Recourse to Collateral*

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies, surety agreements, other non-Debtor payment agreements, or collateral held by a third party, until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy, surety agreement, other non-Debtor payment agreement, or collateral, as applicable. To the extent that one or more of the Debtors' insurers, sureties, or non-Debtor payors pays or satisfies in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), or such collateral or proceeds from such collateral is used to satisfy such Claim, then immediately upon such payment, the applicable portion of such Claim shall be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

(c) *Applicability of Insurance Policies*

Notwithstanding anything to the contrary in the Plan or Confirmation Order, Confirmation and Consummation of the Plan shall not limit or affect the rights of any third-party beneficiary or other covered party of any of the Debtor's insurance policies with respect to such policies, including the D&O Policies.

F. *The Liquidating Trust and the Liquidating Trustee*

1. *Liquidating Trust Creation*

On the Effective Date, the Liquidating Trust will be established and become effective for the benefit of the Beneficiaries. The Liquidating Trust Agreement shall (1) be in form and substance consistent in all respects with the Plan and acceptable to the Debtors, and (2) contain customary provisions for trust agreements utilized in comparable circumstances, including any and all provisions necessary to ensure continued treatment of the Liquidating Trust as a grantor trust and the Beneficiaries as the grantors and owners thereof for federal income tax purposes. All relevant parties (including the Debtors, the Liquidating Trustee, and the Beneficiaries) will take all actions necessary to cause title to the Liquidating Trust Assets to be transferred to the Liquidating Trust. The powers, authority, responsibilities, and duties of the Liquidating Trust, the Liquidating Trustee, and the Liquidating Trust Oversight Committee, are set forth in and will be governed by the Liquidating Trust Agreement, the Plan, and the Confirmation Order.

2. *Purpose of the Liquidating Trust*

The Liquidating Trust will be established for the primary purpose of liquidating its assets and making distributions to Holders of Allowed General Unsecured Claims in accordance with the Plan, Confirmation Order,

and the Liquidating Trust Agreement, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust.

### 3. *Transfer of Assets to the Liquidating Trust*

The Debtors and the Liquidating Trustee will establish the Liquidating Trust on behalf of the Beneficiaries pursuant to the Liquidating Trust Agreement, with the Beneficiaries to be treated as the grantors and deemed owners of the Liquidating Trust Assets. The Debtors will irrevocably transfer, assign, and deliver to the Liquidating Trust, on behalf of the Beneficiaries, all of their rights, title, and interests in the Liquidating Trust Assets notwithstanding any prohibition on assignment under nonbankruptcy law. The Liquidating Trust will accept and hold the Liquidating Trust Assets in the Liquidating Trust for the benefit of the Beneficiaries, subject to the Plan and the Liquidating Trust Agreement.

On the Effective Date, all Liquidating Trust Assets will vest and be deemed to vest in the Liquidating Trust in accordance with section 1141 of the Bankruptcy Code; *provided, however*, that the Liquidating Trustee, with the consent of the Liquidating Trust Oversight Committee, may abandon or otherwise not accept any Liquidating Trust Assets that the Liquidating Trustee believes, in good faith, have no value to the Liquidating Trust. Any assets the Liquidating Trustee so abandons or otherwise does not accept shall not vest in the Liquidating Trust. As of the Effective Date, all Liquidating Trust Assets vested in the Liquidating Trust shall be free and clear of all Liens, Claims, and Interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Upon the transfer by the Debtors of the Liquidating Trust Assets to the Liquidating Trust or abandonment of Liquidating Trust Assets by the Liquidating Trustee, the Debtors will have no reversionary or further interest in or with respect to any Liquidating Trust Assets or the Liquidating Trust. Notwithstanding anything herein or in the Plan to the contrary, the Liquidating Trust and the Liquidating Trustee shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

For the avoidance of doubt, and notwithstanding anything herein or in the Plan to the contrary, the Debtors shall not transfer or be deemed to have transferred to the Liquidating Trust any claims or Causes of Action (1) released pursuant to Article IX.D of the Plan, or (2) exculpated pursuant to Article IX.F of the Plan.

### 4. *Tax Treatment of the Liquidating Trust*

For all federal income tax purposes, the Beneficiaries of the Liquidating Trust will be treated as grantors and owners thereof and it is intended that the Liquidating Trust be classified as a Liquidating Trust under 26 C.F.R. § 301.7701-4 and that the Liquidating Trust is owned by the Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Beneficiaries be treated as if they had received a distribution of undivided interests in the Liquidating Trust Assets and then contributed such interests to the Liquidating Trust. Accordingly, the Liquidating Trust will, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions to the Beneficiaries pursuant to the Plan, and not unduly prolong the Liquidating Trust's duration. The Liquidating Trust will not be deemed a successor in interest of the Debtors for any purpose other than as specifically set forth in the Plan or in the Liquidating Trust Agreement. The Liquidating Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Beneficiaries treated as grantors and owners of the trust.

The Liquidating Trust shall file returns for the Liquidating Trust, except with respect to the Disputed Claims Reserve, as a grantor trust pursuant to 26 C.F.R. § 1.671-4(a) and in accordance with Article VII.D of the Plan. The Liquidating Trust's taxable income, gain, loss, deduction or credit will be allocated to each Holder in accordance with their relative beneficial interests in the Liquidating Trust.

As soon as possible after the Effective Date, the Liquidating Trust shall make a good faith valuation of the Liquidating Trust Assets, and such valuation shall be used consistently by all parties for all federal income tax purposes. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit for taxing purposes.

The Liquidating Trust shall file all income tax returns with respect to any income attributable to the Disputed Claims Reserve and shall pay the federal, state and local income taxes attributable to the Disputed Claims Reserve, based on the items of income, deduction, credit or loss allocable thereto.

The Liquidating Trust may request an expedited determination of taxes of the Liquidating Trust, including the Disputed Claims Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust.

The Liquidating Trustee shall be responsible for filing all federal, state, local and foreign tax returns for the Liquidating Trust. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements.

#### 5. *The Liquidating Trust Oversight Committee*

On the Effective Date, the Liquidating Trust Oversight Committee shall be formed pursuant to the Liquidating Trust Agreement. The Liquidating Trust Oversight Committee shall be comprised of three members. The Committee shall select two such members and the Term Loan Agent shall have the right to select the other. The members comprising the Liquidating Trust Oversight Committee shall be identified at or prior to the Confirmation Hearing.

The Liquidating Trustee shall report all material matters (as described in the Liquidating Trust Agreement) to and seek approval for all material decisions (as described in the Liquidating Trust Agreement) from the Liquidating Trust Oversight Committee.

From and after the Effective Date, settlement by the Liquidating Trust of any General Unsecured Claims and any Liquidating Trust Causes of Action shall require: (1) approval only of the Liquidating Trustee, if the amount claimed by the Liquidating Trust against a defendant, or Claim asserted by a claimant, is less than \$2.5 million; (2) approval only of the Liquidating Trustee and the Liquidating Trust Oversight Committee, if the amount claimed by the Liquidating Trust against a defendant, or Claim asserted by a claimant, is more than \$2.5 million but less than \$5.0 million; and (3) approval of the Liquidating Trustee, the Liquidating Trust Oversight Committee, and the Bankruptcy Court, if the amount claimed by the Liquidating Trust against a defendant, or Claim asserted by a claimant, exceeds \$5.0 million.

#### 6. *Distribution; Withholding*

The Liquidating Trustee will make, or cause to be made, all distributions under the Plan and the Liquidating Trust Agreement to Holders of Allowed General Unsecured Claims.

The Liquidating Trust may withhold from amounts distributable to any Entity any and all amounts, determined in the Liquidating Trustee's sole discretion, required by the Plan, or applicable law, regulation, rule, ruling, directive, or other governmental requirement.

#### 7. *Insurance*

The Liquidating Trust may maintain customary insurance coverage for the protection of Entities serving as administrators and overseers of the Liquidating Trust on and after the Effective Date.

#### 8. *Disputed Claims Reserve*

The Liquidating Trustee shall maintain, in accordance with the Liquidating Trustee's powers and responsibilities under the Plan and the Liquidating Trust Agreement, a Disputed Claims Reserve. The Liquidating Trustee shall, in its reasonable discretion, distribute such amounts (net of any expenses, including any taxes relating thereto), as provided in the Plan and in the Liquidating Trust Agreement, as Disputed Claims are resolved pursuant

to Article VIII of the Plan, and such amounts may be distributed on account of such Disputed Claims as if such Disputed Claims were Allowed Claims as of the Effective Date.

The Liquidating Trust will pay taxes on the taxable net income or gain allocable to Holders of Disputed Claims on behalf of such Holders. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Liquidating Trust as a result of the resolutions of such Disputed Claims.

9. *Termination of the Liquidating Trust*

The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (1) all Disputed General Unsecured Claims have been resolved, (2) all of the Liquidating Trust Assets have been liquidated, (3) all duties and obligations of the Liquidating Trustee under the Plan have been fulfilled, and (4) all distributions required to be made by the Liquidating Trust under the Plan and the Liquidating Trust Agreement have been made, but in no event shall the Liquidating Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion by the Liquidating Trustee within the six-month period prior to the third anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the liquidation, recovery and distribution of the Liquidating Trust Assets.

10. *Transfer of Beneficial Interests*

Notwithstanding anything to the contrary in the Plan, beneficial interests in the Liquidating Trust shall not be transferrable except upon death of the interest holder or by operation of law.

11. *Termination of the Liquidating Trustee*

The duties, responsibilities, and powers of the Liquidating Trustee will terminate in accordance with the terms of the Liquidating Trust Agreement.

12. *Exculpation; Indemnification*

The Liquidating Trustee, the Liquidating Trust, professionals retained by the Liquidating Trust, and representatives of each of the foregoing will be exculpated and indemnified pursuant to the terms of the Liquidating Trust Agreement.

G. *Procedures for Resolving Contingent, Unliquidated, and Disputed Claims and Interests*

1. *Resolution of Disputed Claims*

(a) *Allowance of Claims and Interests*

Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Plan Administrator and the Liquidating Trustee, shall have and shall retain any and all rights and defenses that the Debtors had with respect to any Claim or Interest, except with respect to any Claim or Interest deemed Allowed as of the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Cases allowing such Claim.

## (b) Prosecution of Objections to Claims

Other than with respect to Professional Fee Claims, prior to the Effective Date, the Debtors, and on or after the Effective Date, the Plan Administrator with respect to Priority Claims and the Liquidating Trustee with respect to General Unsecured Claims shall have the authority to File objections to such Claims, and the exclusive authority to settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtors' Estates to any and all such Claims, regardless of whether such Claims are in a Class or otherwise.

From and after the Effective Date, the Plan Administrator and the Liquidating Trustee shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises and no further notice to or action, order, or approval of the Bankruptcy Court with respect to such settlements or compromises shall be required.

## (c) Claims Estimation

On and after the Effective Date, (a) the Plan Administrator, may, at any time, request that the Bankruptcy Court estimate (i) any Disputed Priority Claim pursuant to applicable law and (ii) any contingent or unliquidated Priority Claim pursuant to applicable law, and (b) the Liquidating Trustee, may, at any time, request that the Bankruptcy Court estimate (i) any Disputed General Unsecured Claim pursuant to applicable law and (ii) any contingent or unliquidated General Unsecured Claim pursuant to applicable law, in each case regardless of whether the Debtors, the Plan Administrator, or the Liquidating Trustee have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Bankruptcy Court to estimate any such Disputed Claim, contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection.

Notwithstanding any provision otherwise in the Plan to the contrary, a Claim that has been expunged from the Claims Register but that is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Disputed Claim, contingent Claim, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under the Plan, including for purposes of distributions, and the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, may elect to pursue additional objections to the ultimate distribution on such Claim. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on account of such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before 21 days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

## (d) Expungement or Adjustment to Claims Without Objection

Any Claim that has been paid, satisfied, or superseded may be expunged on the Claims Register by, as applicable, the Debtors, the Plan Administrator, or the Liquidating Trustee (or the Notice and Claims Agent at, as applicable, the Debtors', the Plan Administrator's, or the Liquidating Trustee's direction), and any Claim that has been amended may be adjusted thereon by, as applicable, the Debtors, the Plan Administrator, or the Liquidating Trustee without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

## (e) Deadline to File Objections to Claims or Interests

Any objections to Claims or Interests shall be Filed no later than the Claims Objection Bar Date.

2. *Disallowance of Claims*

To the maximum extent provided by section 502(d) of the Bankruptcy Code, all Claims of any Entity from which property is recoverable by the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, under section 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, alleges is a transferee of a transfer that is avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if (1) the Entity, on the one hand, and the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turnover any property or monies under any of the aforementioned sections of the Bankruptcy Code, and (2) such Entity or transferee has failed to turnover such property by the date set forth in such agreement or Final Order.

3. *Amendments to Claims*

After the Confirmation Date, a Claim or Interest may not be filed or amended without the authorization of the Bankruptcy Court and any such new or amended Claim or Interest Filed shall be deemed disallowed and expunged without any further notice to or action, order, or approval of the Bankruptcy Court; *provided that*, such Holder may amend the Claim or Interest Filed solely to decrease, but not to increase, the amount, number, or priority of such Claim or Interest, unless otherwise provided by the Bankruptcy Court.

4. *No Interest*

Unless otherwise specifically provided for in the Plan (including Article III of the Plan), by applicable law (including, without limitation, section 506(b) of the Bankruptcy Code), or agreed-to by, as applicable, the Debtors or the Liquidating Trustee, interest shall not accrue or be paid on any Claim, and no Holder of any Claim shall be entitled to interest accruing on and after the Petition Date on account of any Claim. Without limiting the foregoing, interest shall not accrue or be paid on any Claim after the Effective Date to the extent the final distribution paid on account of such Claim occurs after the Effective Date.

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

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

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete settlement, compromise, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default by the Debtors or their Affiliates with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the settlement, compromise, and release of all Claims and Interests, subject to the Effective Date occurring.



2. *Release of Liens*

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised and all rights, titles, and interests of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall revert to the Debtors.

3. *Subordinated Claims*

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

4. *Debtor Release*

ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, EACH DEBTOR ON BEHALF OF ITSELF, ITS ESTATE, AND THE LIQUIDATING TRUST (SUCH THAT THE LIQUIDATING TRUST WILL NOT HOLD ANY CLAIMS OR CAUSES OF ACTION RELEASED PURSUANT TO ARTICLE IX.D OF THE PLAN), FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, SHALL BE DEEMED TO PROVIDE A FULL RELEASE TO EACH OF THE RELEASED PARTIES (AND EACH SUCH RELEASED PARTY SHALL BE DEEMED RELEASED BY EACH DEBTOR AND ITS ESTATE) AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION AND ANY OTHER CLAIMS, DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, THE PLAN, THIS DISCLOSURE STATEMENT, THE SALE TRANSACTION, ANY RESTRUCTURING OF CLAIMS OR INTERESTS UNDERTAKEN PRIOR TO THE PETITION DATE, THE BIDDING AND SALE PROCESS FOR ANY ASSETS OF ANY DEBTOR, OR THESE CHAPTER 11 CASES, INCLUDING THOSE THAT THE DEBTORS OR THE LIQUIDATING TRUST WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTORS OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTORS OR THEIR ESTATES; *PROVIDED, HOWEVER, THAT THE FOREGOING “DEBTOR RELEASE” SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CLAIMS OR CAUSES OF ACTION OF ANY DEBTOR OR THEIR RESPECTIVE CHAPTER 11 ESTATES AGAINST A RELEASED PARTY ARISING UNDER (1) ANY CONTRACTUAL OBLIGATION OWED TO THE DEBTORS THAT IS ENTERED INTO OR ASSUMED PURSUANT TO THE PLAN, OR (2) THE PURCHASE AGREEMENT.*

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT’S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTOR RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, *AND, FURTHER*, SHALL CONSTITUTE THE BANKRUPTCY COURT’S FINDING THAT THE DEBTOR RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS’ ESTATES

AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE DEBTORS' ESTATES ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE DEBTOR RELEASE.

5. *Third Party Release*

ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, THE RELEASING PARTIES SHALL BE DEEMED TO PROVIDE A FULL RELEASE TO THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION AND ANY OTHER CLAIMS, DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, THE PLAN, THIS DISCLOSURE STATEMENT, THE SALE TRANSACTION, ANY RESTRUCTURING OF CLAIMS OR INTERESTS UNDERTAKEN PRIOR TO THE PETITION DATE, THE BIDDING AND SALE PROCESS FOR ANY ASSETS OF ANY DEBTOR, OR THESE CHAPTER 11 CASES, INCLUDING THOSE THAT THE DEBTORS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTORS OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTORS OR THEIR ESTATES, *PROVIDED, HOWEVER, THAT*, THE FOREGOING "THIRD PARTY RELEASE" SHALL NOT AFFECT ANY PROOFS OF CLAIM FILED AGAINST THE DEBTORS OR CLAIMS OR CAUSES OF ACTION PENDING AGAINST A RELEASED PARTY IN A COMPLAINT OR PLEADING FILED AS OF THE PETITION DATE IN A COURT OR ARBITRATION PANEL OF COMPETENT JURISDICTION; *PROVIDED, FURTHER, HOWEVER, THAT*, THE THIRD PARTY RELEASE SHALL PRECLUDE A RELEASING PARTY FROM AMENDING OR MODIFYING SUCH COMPLAINT OR PLEADING TO ASSERT CLAIMS OR CAUSES OF ACTION AGAINST A RELEASED PARTY THAT WAS NOT OTHERWISE A PARTY TO SUCH PROCEEDING AS OF THE PETITION DATE. NOTWITHSTANDING ANYTHING HEREIN OR IN THE PLAN TO THE CONTRARY, THE THIRD PARTY RELEASE SHALL NOT (1) OPERATE TO RELEASE ANY CLAIMS OR CAUSES OF ACTION HELD DIRECTLY (BUT NOT DERIVATIVELY) BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION AGAINST ANY NON-DEBTOR, (2) PRECLUDE THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION FROM ENFORCING ITS REGULATORY OR POLICE POWERS, OR (3) RELEASE ANY OBLIGATIONS UNDER THE PLAN ARISING ON OR AFTER THE EFFECTIVE DATE OF ANY PARTY.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, *AND, FURTHER*, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE THIRD PARTY RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE THIRD PARTY RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM RELEASED PURSUANT TO THE THIRD PARTY RELEASE.

Any Holder permitted to vote on the Plan may opt out of the Third Party Release provided in Article IX.E of the Plan by checking the appropriate box to do so on such Holder's Ballot. If such Holder checks the appropriate box, it will not be bound by the Third Party Release. The election to withhold consent to grant such release is at such Holder's option, and any such Holder that fails to vote will be deemed to have consented to the Third Party Release. Likewise, any such Holder that votes to accept or reject the Plan and submits a Ballot without checking the box to

opt out of the Third Party Release will be deemed to consent to the Third Party Release. Accordingly, the Debtors urge Holders permitted to vote on the Plan to thoroughly read their Ballots, including their right to opt out of the Third Party Release.

The Debtors believe the Third Party Release is entirely consensual under the established case law in the United States Bankruptcy Court for the District of Delaware. *See Indianapolis Downs, LLC*, 486 B.R. 286, 304–06 (Bankr. D. Del. 2013). The Debtors will be prepared to meet their burden to establish the basis for the releases, exculpations, and injunctions provided by the Plan as part of Confirmation of the Plan.

#### 6. *Exculpation*

The Exculpated Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with the Chapter 11 Cases, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, or implementing the Plan or consummating the Plan, this Disclosure Statement, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring or liquidation of the Debtors; *provided that* each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement. Without limiting the foregoing “Exculpation” provided under Article IX.F of the Plan, the rights of any Holder of a Claim or Interest to enforce rights arising under the Plan shall be preserved, including the right to compel payment of distributions in accordance with the Plan.

#### 7. *Injunction*

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS, INTERESTS, CAUSES OF ACTION, OR LIABILITIES THAT: (1) ARE SUBJECT TO COMPROMISE AND SETTLEMENT PURSUANT TO THE TERMS OF THE PLAN; (2) HAVE BEEN RELEASED PURSUANT TO ARTICLE IX.D OF THE PLAN; (3) HAVE BEEN RELEASED PURSUANT TO ARTICLE IX.E OF THE PLAN; (4) ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE IX.F OF THE PLAN; OR (5) ARE OTHERWISE STAYED OR TERMINATED PURSUANT TO THE TERMS OF THE PLAN, ARE PERMANENTLY ENJOINED AND PRECLUDED, FROM AND AFTER THE EFFECTIVE DATE, FROM: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, INCLUDING ON ACCOUNT OF ANY CLAIMS, INTERESTS, CAUSES OF ACTIONS, OR LIABILITIES THAT HAVE BEEN COMPROMISED OR SETTLED AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF ANY ENTITY, DIRECTLY OR INDIRECTLY, SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN, CLAIM, OR ENCUMBRANCE OF ANY KIND AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (D) ASSERTING ANY RIGHT OF SETOFF OR SUBROGATION OF ANY KIND AGAINST ANY OBLIGATION DUE FROM THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES UNLESS SUCH ENTITY HAS TIMELY ASSERTED

SUCH SETOFF OR SUBROGATION RIGHT PRIOR TO CONFIRMATION IN A DOCUMENT FILED WITH THE BANKRUPTCY COURT EXPLICITLY PRESERVING SUCH SETOFF OR SUBROGATION; AND (E) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES RELEASED, SETTLED, OR COMPROMISED PURSUANT TO THE PLAN; *PROVIDED THAT* NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE AN ENTITY FROM OBTAINING BENEFITS DIRECTLY AND EXPRESSLY PROVIDED TO SUCH ENTITY PURSUANT TO THE TERMS OF THE PLAN; *PROVIDED, FURTHER, THAT* NOTHING CONTAINED IN THE PLAN SHALL BE CONSTRUED TO PREVENT ANY ENTITY FROM DEFENDING AGAINST CLAIMS OBJECTIONS OR COLLECTION ACTIONS WHETHER BY ASSERTING A RIGHT OF SETOFF OR OTHERWISE TO THE EXTENT PERMITTED BY LAW.

8. *Waiver of Statutory Limitations on Releases*

EACH RELEASING PARTY IN EACH OF THE RELEASES CONTAINED IN THE PLAN (INCLUDING UNDER ARTICLE IX OF THE PLAN) EXPRESSLY ACKNOWLEDGES THAT ALTHOUGH ORDINARILY A GENERAL RELEASE MAY NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE PARTY RELEASED, THEY HAVE CAREFULLY CONSIDERED AND TAKEN INTO ACCOUNT IN DETERMINING TO ENTER INTO THE ABOVE RELEASES THE POSSIBLE EXISTENCE OF SUCH UNKNOWN LOSSES OR CLAIMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH RELEASING PARTY EXPRESSLY WAIVES ANY AND ALL RIGHTS CONFERRED UPON IT BY ANY STATUTE OR RULE OF LAW WHICH PROVIDES THAT A RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CLAIMANT DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE RELEASED PARTY, INCLUDING THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542. THE RELEASES CONTAINED IN ARTICLE IX OF THE PLAN ARE EFFECTIVE REGARDLESS OF WHETHER THOSE RELEASED MATTERS ARE PRESENTLY KNOWN, UNKNOWN, SUSPECTED OR UNSUSPECTED, FORESEEN OR UNFORESEEN.

9. *Setoffs*

Except as otherwise provided in the Plan, prior to the Effective Date, the Debtors, and on and after the Effective Date, the Plan Administrator or the Liquidating Trustee, as applicable, pursuant to the Bankruptcy Code (including sections 553 and 558 of the Bankruptcy Code), applicable nonbankruptcy law, or as may be agreed to by the Holder of a Claim or Interest, may set off against any Allowed Claim or Interest on account of any Proof of Claim or proof of Interest or other pleading Filed with respect thereto prior to the Confirmation Hearing and the distributions to be made pursuant to the Plan on account of such Allowed Claim or Interest (before any distribution is made on account of such Allowed Claim or Interest), any claims, rights, and Causes of Action of any nature that the Debtors' Estates may hold against the Holder of such Allowed Claim or Interest, to the extent such claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); *provided that* neither the failure to effect such a setoff nor the allowance of any Claim or Interest pursuant to the Plan shall constitute a waiver or release by the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, of any such claims, rights, and Causes of Action that the Debtors' Estates may possess against such Holder. In no event shall any Holder of Claims or Interests be entitled to set off any Claim or Interest against any claim, right, or Cause of Action of the Debtors' Estates unless such Holder has timely Filed a Proof of Claim with the Bankruptcy Court expressly preserving such setoff; *provided that* nothing in the Plan shall prejudice or be deemed to have prejudiced the Debtors', the Plan Administrator's, or the Liquidating Trustee's right to assert that any Holder's setoff rights were required to have been asserted by motion or pleading filed with the Bankruptcy Court prior to the Effective Date.

I. *Substantial Consummation of the Plan*

1. *Conditions Precedent to Consummation of the Plan*

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

- (a) the Bankruptcy Court shall have entered the Confirmation Order in form and substance materially consistent with the Plan in all respects;
- (b) the Plan Administrator shall have been appointed;
- (c) the Liquidating Trustee shall have been appointed and the Liquidating Trust Agreement shall have been executed and become effective;
- (d) the Sale Transaction shall have closed;
- (e) all documents and agreements necessary to implement the Plan and the consummation of the Sale Transaction shall have (a) been tendered for delivery and (b) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements;
- (f) the Administrative and Priority Claims Reserve shall have been established and funded;
- (g) the Professional Fee Escrow shall have been established and funded; and
- (h) the Post-Effective Date Debtor Distribution shall have occurred.

2. *Waiver of Conditions*

The conditions to Confirmation of the Plan and Consummation of the Plan set forth in Article X of the Plan may be waived by the Debtors.

3. *Effect of Non-Occurrence of Conditions to the Effective Date*

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or this Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against or Interests in the Debtors; (2) prejudice in any manner the rights of the Debtors, the Debtors' Estates, any Holders, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, the Debtors' Estates, any Holders, or any other Entity in any respect.

J. *Modification, Revocation, or Withdrawal of the Plan*

1. *Modification and Amendments*

Subject to the limitations contained in the Plan, the Debtors reserve the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their rights to alter, amend, or modify materially the Plan with respect to the Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, this Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes

and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XI of the Plan.

2. *Effect of Confirmation on Modifications*

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

3. *Revocation or Withdrawal of the Plan*

The Debtors reserve the right to revoke or withdraw the Plan, including the right to revoke or withdraw the Plan for any Debtor or all Debtors, prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan with respect to any Debtor, or if Confirmation or Consummation does not occur with respect to any Debtor, then: (1) the Plan with respect to such Debtor shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan with respect to such Debtor (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan with respect to such Debtor, and any document or agreement executed pursuant to the Plan with respect to such Debtor, shall be deemed null and void; and (3) nothing contained in the Plan with respect to such Debtor shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtors, the Debtors' Estates, or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors, the Debtors' Estates, or any other Entity.

K. *Retention of Jurisdiction*

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to:

- (a) allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;
- (b) decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
- (c) resolve any matters related to: (a) the assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Costs pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Debtors or Liquidating Trustee amending, modifying, or supplementing, after the Effective Date, pursuant to Article V of the Plan, any Executory Contracts or Unexpired Leases set forth on the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;
- (d) ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

- (e) adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;
- (f) adjudicate, decide, or resolve any and all matters related to Causes of Action;
- (g) enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or this Disclosure Statement;
- (h) enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;
- (i) resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
- (j) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;
- (k) resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article IX of the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;
- (l) resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI.E.1 of the Plan;
- (m) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
- (n) determine any other matters that may arise in connection with or relate to the Plan, this Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or this Disclosure Statement;
- (o) adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;
- (p) consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;
- (q) determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;
- (r) hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;
- (s) hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

- (t) hear and determine all disputes involving the existence, nature, or scope of the Debtors' release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;
- (u) enforce all orders previously entered by the Bankruptcy Court;
- (v) hear any other matter not inconsistent with the Bankruptcy Code;
- (w) enter an order concluding or closing the Chapter 11 Cases; and
- (x) enforce the injunction, release, and exculpation provisions set forth in Article IX of the Plan.

L. *Miscellaneous Provisions*

1. *Immediate Binding Effect*

Subject to the terms hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors, the Debtors' Estates, the Liquidating Trustee, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

2. *Additional Documents*

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

3. *Dissolution of Committee*

On the Effective Date, the Committee shall dissolve and members thereof shall be compromised, settled, and released from all rights and duties from or related to the Chapter 11 Cases, except the Committee will remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims. The Debtors and the Liquidating Trustee shall have no obligation to pay any fees or expenses incurred after the Effective Date by the Committee Members.

4. *Reservation of Rights*

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtors or any Debtor with respect to the Plan, this Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors or any Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.



5. *Successors and Assigns*

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

6. *Service of Documents*

Any pleading, notice, or other document required by the Plan to be served on or delivered to the following entities and shall be served via first class mail, overnight delivery, or messenger on:

If to the Debtors, to:

Source Home Entertainment, LLC  
c/o FTI Consulting  
27500 Riverview Center Boulevard  
Suite 400  
Bonita Springs, Florida 34134  
Attn: Stephen Dubé

with copies to:

Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Attn.: David L. Eaton, Michael W. Weitz, and Ben Winger

Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington Delaware 19801  
Attn: Robert S. Brady, Pauline K. Morgan, and Edmon L. Morton

If to the Plan Administrator, to:

[•]

with copies to:

[•]

If to the Liquidating Trustee, to:

[•]

with copies to:

[•]

7. *Term of Injunctions or Stays*

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect to the maximum extent permitted by law. All injunctions

or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

8. *Entire Agreement*

Except as otherwise indicated, the Plan, the Confirmation Order, and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

9. *Nonseverability of Plan Provisions*

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors; and (3) nonseverable and mutually dependent.

10. *Waiver or Estoppel*

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, this Disclosure Statement, or papers Filed with the Bankruptcy Court before the Confirmation Date.

## ARTICLE VIII.

### STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN

The following is a brief summary of the confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult their own advisors with respect to the summary provided in this Disclosure Statement.

A. *Confirmation Hearing*

Section 1128(a) of the Bankruptcy Code requires a bankruptcy court, after notice, to conduct a hearing to consider confirmation of a chapter 11 plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. **The Bankruptcy Court has scheduled the Confirmation Hearing for December 18, 2014, at 10:00 a.m., prevailing Eastern Time.** The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or the Filing of a notice of such adjournment served in accordance with the order approving this Disclosure Statement and Solicitation Procedures. Any objection to the Plan must: (1) be in writing; (2) conform to the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the District of Delaware; (3) state the name, address, phone number, and email address of the objecting party and the amount and nature of the Claim or Interest of such entity, if any; (4) state with particularity the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (5) be Filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is **actually received** by the following notice parties set forth below no later than the Plan Objection Deadline. **Unless an objection to the Plan is timely served and Filed, it may not be considered by the Bankruptcy Court.**

<i>Co-Counsel to the Debtors</i>	
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B. *Confirmation Standards*

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtors believe that the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code and that they have complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code. Specifically, the Debtors believe that the Plan satisfies or will satisfy the applicable confirmation requirements of section 1129 of the Bankruptcy Code, including those set forth below.

1. *Feasibility*

The Bankruptcy Code requires that to confirm a chapter 11 plan, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor(s) unless contemplated by the plan.

The Plan provides for the liquidation and distribution of the Debtors' assets. Accordingly, the Debtors believe that all Plan obligations will be satisfied without the need for further reorganization of the Debtors.

2. *Best Interests of Creditors*

Notwithstanding acceptance of the Plan by a voting Impaired Class, to confirm the Plan, the Bankruptcy Court must still independently determine that the Plan is in the best interests of each Holder of a Claim or Interest in any such Impaired Class that has not voted to accept the Plan, meaning that the Plan provides each such Holder with a recovery that has a value at least equal to the value of the recovery that each such Holder would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. Accordingly, if an Impaired Class does not unanimously vote to accept the Plan, the best interests test requires the Bankruptcy Court to find that the Plan provides to each member of such Impaired Class a recovery on account of the Class member's Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the recovery that each such Class member would receive if the Debtors were liquidated under chapter 7.

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

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

Substantially all of the assets of the Retail Display Business were liquidated through the Sale Transaction in accordance with the Purchase Agreement. Although the Plan effects a liquidation of the Debtors' remaining assets and a chapter 7 liquidation would achieve the same goal, the Debtors believe that the Plan provides a greater recovery to Holders of Allowed General Unsecured Claims than would a chapter 7 liquidation. Liquidating the Debtors' Estates under the Plan likely provides Holders of Allowed General Unsecured Claims with a larger, more timely recovery in part because of the expenses that would be incurred in a chapter 7 liquidation, including the potential added time (thereby reducing the present value of any recovery for Holders) and expense incurred by the chapter 7 trustee and any retained professionals in familiarizing themselves with the Chapter 11 Cases. Moreover, distributions under the Plan reflect various accommodations provided by the Term Loan Lenders to pay Priority Claims and allow for potential recoveries for Holders of General Unsecured Claims. The Debtors believe that such accommodations would not be available in a chapter 7 liquidation. Finally, the conversion to chapter 7 would require entry of a new bar date. *See* Fed. R. Bankr. P. 1019(2); 3002(c). Thus, the amount of Claims

ultimately Filed and Allowed against the Debtors could materially increase, thereby reducing creditor recoveries versus those available under the Plan.

Accordingly, the Debtors believe that the Plan is in the best interests of creditors.

C. *Alternative Plans*

The Debtors do not believe that there are any alternative plans for the reorganization or liquidation of the Debtors' Estates. The Debtors believe that the Plan, as described herein, enables Holders of Claims and Interests to realize the greatest possible value under the circumstances and that, compared to any alternative plan, the Plan has the greatest chance to be confirmed and consummated.

D. *Acceptance by Impaired Classes*

The Bankruptcy Code requires, as a condition to Confirmation, that, except as described in the following section, each class of claims or equity interests that is impaired under a plan accept the plan. A class that is not "impaired" under a plan is presumed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. Pursuant to section 1124 of the Bankruptcy Code, a class is "impaired" unless the plan: (1) leaves unaltered the legal, equitable, and contractual rights to which the claim or the equity interest entitles the holder of such claim or equity interest; (2) cures any default, reinstates the original terms of such obligation, and compensates the applicable party in question; or (3) provides that, on the consummation date, the holder of such claim or equity interest receives cash equal to the allowed amount of that claim or, with respect to any equity interest, any fixed liquidation preference to which the holder of such equity interest is entitled to any fixed price at which the debtor may redeem the security.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired creditors 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, a Class of creditor Claims will have voted to accept the Plan only if two-thirds (2/3) in amount and a majority in number actually voting cast their Ballots in favor of acceptance, subject to Article III of the Plan. Only Holders of Claims in the Voting Classes will be entitled to vote on the Plan.

Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of interests as acceptance by holders of at least two-thirds (2/3) in dollar amount of those interests who actually vote to accept or reject a plan. Votes that have been "designated" under section 1126(e) of the Bankruptcy Code are not included in the calculation of acceptance by a class of interests. Thus, a Class of Interests will have voted to accept the Plan only if two-thirds (2/3) in amount actually voting cast their Ballots in favor of acceptance, not counting designated votes, subject to Article III of the Plan. No Class including Holders of Interests is entitled to vote on the Plan.

Article III.E of the Plan provides in full: "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 Debtors shall request the Bankruptcy Court at the Confirmation Hearing to deem the Plan accepted by the Holders of such Claims or Interests in such Class." Such "deemed acceptance" by an impaired class in which no class members submit ballots satisfies section 1129(a)(10) of the Bankruptcy Code. *See In re Tribune Co.*, 464 B.R. 126, 183 (Bankr. D. Del. 2011) ("Would 'deemed acceptance' by a non-voting impaired class, in the absence of objection, constitute the necessary 'consent' to a proposed 'per plan' scheme? I conclude that it may." (footnote omitted)); *see In re Adelphia Commc'ns Corp.*, 368 B.R. 14, 259–63 (Bankr. S.D.N.Y. 2007).

E. *Confirmation Without Acceptance by All Impaired Classes*

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if Impaired Classes entitled to vote on the plan have not accepted it or if an Impaired Class is deemed to reject the Plan, *provided, that* the plan is accepted by at least one Impaired Class. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired class's rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent's request, in a procedure commonly known as "cram down," so long as the plan

does not “discriminate unfairly” and is “fair and equitable” with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan.

1. *No Unfair Discrimination*

This test applies to Classes of Claims or Interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be “fair.” In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of Classes of Claims of equal rank (*e.g.*, classes of the same legal character). The Debtors do not believe the Plan discriminates unfairly against any Impaired Class of Claims or Interests. The Debtors believe that the Plan and the treatment of all Classes of Claims and Interests satisfy the foregoing requirements for nonconsensual Confirmation.

2. *Fair and Equitable Test*

This test applies to classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to the non-accepting class, the test sets different standards depending on the type of claims or interests in such class. As set forth below, the Debtors believe that the Plan satisfies the “fair and equitable” requirement because there is no Class of equal priority receiving more favorable treatment and no Class that is junior to such dissenting Class that will receive or retain any property on account of the Claims or Interests in such Class.

(a) Secured Claims

The condition that a plan be “fair and equitable” to a non-accepting class of secured claims includes the requirements that: (i) the holders of such secured claims retain the liens securing such claims to the extent of the allowed amount of the claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan; and (ii) each holder of a secured claim in the class receives deferred cash payments totaling at least the allowed amount of such claim with a present value, as of the effective date of the plan, at least equivalent to the value of the secured claimant’s interest in the debtor’s property subject to the liens.

(b) Unsecured Claims

The condition that a plan be “fair and equitable” to a non-accepting class of unsecured claims includes the following requirement that either: (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (ii) the holder of any claim or any equity interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or junior equity interest any property.

(c) Equity Interests

The condition that a plan be “fair and equitable” to a non-accepting class of equity interests includes the requirements that either: (i) the plan provides that each holder of an equity interest in that class receives or retains under the plan on account of that equity interest property of a value, as of the effective date of the plan, equal to the greater of: (A) the allowed amount of any fixed liquidation preference to which such holder is entitled; (B) any fixed redemption price to which such holder is entitled; or (C) the value of such interest; or (ii) if the class does not receive the amount as required under (i) hereof, no class of equity interests junior to the non-accepting class may receive a distribution under the plan.

## ARTICLE IX.

### CERTAIN RISK FACTORS TO BE CONSIDERED BEFORE VOTING

Holders of Claims should read and carefully consider the risk factors set forth below, as well as the other information set forth in this Disclosure Statement and the documents delivered together with this Disclosure Statement, referred to or incorporated by reference in this Disclosure Statement, before voting to accept

or reject the Plan. These factors should not be regarded as constituting the only risks present in connection with the Debtors' businesses or the Plan and its implementation.

A. *Risk Factors that May Affect Recoveries Available to Holders of Allowed Claims Under the Plan*

1. *The Amount of Allowed Claims May Adversely Affect the Recovery of Some Holders of Allowed Claims*

The Debtors cannot determine with any certainty at this time the number or amount of Claims that will ultimately be Allowed, and thus the projected recoveries disclosed in this Disclosure Statement are highly speculative. A large amount of Allowed Claims may materially and adversely affect, among other things, the recoveries to Holders of Allowed Claims and Allowed Interests under the Plan. Some Holders are not entitled to any recovery pursuant to the terms of the Plan, and, depending on the accuracy of the Debtors' various assumptions, even those Holders entitled to a recovery under the terms of the Plan may ultimately receive no recovery.

2. *The Debtors Cannot State with Certainty What Recovery Will Be Available to Holders of Allowed Claims in the Voting Classes*

The Debtors cannot know with certainty, at this time, the number or amount of Claims in Voting Classes that will ultimately be Allowed. Accordingly, because certain Claims under the Plan will be paid on a Pro Rata basis, the Debtors cannot state with certainty what recoveries will be available to Holders of Allowed Claims in the Voting Classes. In addition, certain parties have disputed what property should be available to fund distributions to certain Holders of Allowed Claims, the ultimate resolution of which, whether by settlement or final judgment, could materially affect the amount of distributions to Holders of Allowed Claims in the Voting Classes.

3. *Any Valuation of Any Assets to be Distributed Under the Plan Is Speculative and Could Potentially be Zero*

Any valuation of any of the assets to be distributed under the Plan, including the Causes of Action not otherwise released, settled, or exculpated under the Plan, is necessarily speculative, and the value of such assets could potentially be zero. Accordingly, the ultimate value, if any, of these assets could materially affect, among other things, recoveries to the Debtors' creditors, including Holders of Claims in the Voting Classes.

4. *The Debtors Cannot Guaranty Recoveries or the Timing of Such Recoveries*

Although the Debtors have made commercially reasonable efforts to disclose projected recoveries in this Disclosure Statement, it is possible that the amount of Allowed Claims will be materially higher than any range of possible Allowed Claims the Debtors have considered to date, and thus creditor recoveries could be materially reduced or eliminated. In addition, the timing of actual distributions to Holders of Allowed Claims may be affected by many factors that cannot be predicted. Therefore, the Debtors cannot guaranty the timing of any recovery on an Allowed Claim.

5. *Certain Tax Implications of the Debtors' Bankruptcy*

Holders of Allowed Claims should carefully review Article X of this Disclosure Statement, "Certain United States Federal Income Tax Consequences," for a description of certain tax implications of the Plan and the Chapter 11 Cases.

B. *Certain Bankruptcy Law Considerations*

The occurrence or nonoccurrence of any or all of the following contingencies, and any others, may affect distributions available to Holders of Allowed Claims and Allowed Interests 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 or the Amount of Such Claims or 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 interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of the Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims and Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims and Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

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

2. *Failure to Satisfy Vote Requirements*

In the event that votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek, as promptly as practicable thereafter, Confirmation of the Plan. In the event that sufficient votes are not received, the Debtors may seek to pursue another strategy to wind down the Estates, such as an alternative chapter 11 plan, a dismissal of the Chapter 11 Cases and an out-of-court dissolution, an assignment for the benefit of creditors, a conversion to a chapter 7 case, or other strategies. There can be no assurance that the terms of any such alternative strategies would be similar or as favorable to the Holders of Allowed Claims and Allowed Interests as those proposed in the Plan.

3. *The Debtors May Not Be Able to Secure Confirmation of the Plan*

The Debtors will need to satisfy section 1129 of the Bankruptcy Code, which sets forth the requirements for confirmation of a chapter 11 plan and requires, among other things, a finding by a 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 interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtors were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim or an Allowed Interest might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that this Disclosure Statement, the Solicitation Procedures, and the voting results are appropriate, the Bankruptcy Court can still decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation have not been met, including the requirement that the terms of the Plan do not "unfairly discriminate" and are "fair and equitable" to non-accepting Classes. If the Plan is not confirmed, it is unclear what distributions, if any, Holders of Allowed Claims and Allowed Interests will receive with respect to their Allowed Claims and Allowed Interests. The Bankruptcy Court, as a court of equity, may exercise substantial discretion.

The Debtors, subject to the terms and conditions of the Plan, reserve the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications may result in a less favorable treatment of any Class than the treatment currently provided in the Plan. Such a less favorable treatment may include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan.



4. *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 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 classes. The Debtors believe that the Plan satisfies these requirements and the Debtors may request such nonconsensual Confirmation in accordance with section 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 and the expiration of any commitment to provide support for the Plan, financially or otherwise.

5. *Risk of Nonoccurrence of the Effective Date*

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

6. *Contingencies May Affect Votes of Impaired Classes to Accept or Reject the Plan*

The distributions available to Holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including, without limitation, whether the Bankruptcy Court orders certain Claims to be Allowed. The occurrence of any and all such contingencies, which may affect distributions available to Holders of Allowed Claims and Allowed Interests 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.

7. *Risk Affecting Potential Recoveries of Holders of Claims in the Voting Classes*

The Debtors cannot state with any degree of certainty what recovery will be available to Holders of Allowed Claims in the Voting Classes. In particular, the Debtors cannot know, at this time, the number or size of Claims in the Voting Classes which will ultimately be Allowed or how many assets will remain after paying all Allowed Claims which are senior to the Claims of Holders in the Voting Classes. The ultimate amount of Allowed Claims in the Voting Classes and the senior non-Voting Classes could materially reduce the recovery available to Holders of Allowed Claims in the Voting Classes.

C. *Disclosure Statement Disclaimer*

1. *The Financial Information Contained in this Disclosure Statement has not Been Audited*

In preparing this Disclosure Statement, the Debtors and their advisors relied on financial data derived from their books and records that was available at the time of such preparation. Although the Debtors have used their reasonable business judgment to ensure the accuracy of the financial information, and any conclusions or estimates drawn from such financial information, provided in this Disclosure Statement, and while the Debtors believe that such financial information fairly reflects the financial condition of the Debtors, the Debtors are unable to warrant that the financial information contained herein, or any such conclusions or estimates drawn therefrom, is without inaccuracies.

2. *Information Contained in this Disclosure Statement Is for Soliciting Votes*

The information contained in this Disclosure Statement is for the purposes of soliciting acceptances of the Plan and may not be relied upon for any other purpose.

3. *This Disclosure Statement Was Not Reviewed or Approved by the United States Securities and Exchange Commission*

This Disclosure Statement was not Filed with the United States Securities and Exchange Commission under the Securities Act or applicable state securities laws. Neither the United States Securities and Exchange Commission nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement, or the exhibit or the statements contained in this Disclosure Statement.

4. *This Disclosure Statement May Contain Forward Looking Statements*

This 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,” “will,” “might,” “expect,” “believe,” “anticipate,” “could,” “would,” “estimate,” “continue,” “pursue,” or the negative thereof or comparable terminology. 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 information contained herein is an estimate only, based upon information currently available to the Debtors.

5. *No Legal or Tax Advice Is Provided to You by this Disclosure Statement*

***This Disclosure Statement is not legal advice to you.*** The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each Holder of a Claim or an Interest should consult his or her own legal counsel, accountant, or other applicable advisor with regard to any legal, tax, and other matters concerning his or her Claim or Interest. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to Confirmation of the Plan.

6. *No Admissions Made*

The information and statements contained in this Disclosure Statement will neither (a) constitute an admission of any fact or liability by any entity (including, without limitation, the Debtors) nor (b) be deemed evidence of the tax or other legal effects of the Plan on the Debtors, Holders of Allowed Claims or Allowed Interests, or any other parties in interest.

7. *Failure to Identify Litigation Claims or Projected Objections*

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Interest is, or is not, identified in this Disclosure Statement. The Debtors, the Purchaser, the Plan Administrator, or the Liquidating Trustee may seek to investigate, File, and prosecute Claims and Interests and may object to Claims or Interests after the Confirmation or Effective Date of the Plan irrespective of whether this Disclosure Statement identifies such Claims or Interests or objections to such Claims or Interests.

8. *No Waiver of Right to Object or Right to Recover Transfers and Assets*

The vote by a Holder of a Claim or Interest for or against the Plan does not constitute a waiver or release of any claims, causes of action, or rights of the Debtors (or any entity, as the case may be) to object to that Holder's Claim or Interest, or recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any claims or causes of action of the Debtors or their respective Estates are specifically or generally identified in this Disclosure Statement.

9. *Information Was Provided by the Debtors and Was Relied Upon by the Debtors' Advisors*

The Debtors' advisors have relied upon information provided by the Debtors in connection with the preparation of this Disclosure Statement. Although the Debtors' advisors have performed certain limited due

diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained in this Disclosure Statement.

10. *Potential Exists for Inaccuracies, and the Debtors Have No Duty to Update*

The statements contained in this Disclosure Statement are made by the Debtors as of the date of this Disclosure Statement, unless otherwise specified in this Disclosure Statement, and the delivery of this Disclosure Statement after the date of this Disclosure Statement does not imply that there has not been a change in the information set forth in this Disclosure Statement since that date. While the Debtors have used their reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtors nonetheless cannot, and do not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, although the Debtors may subsequently update the information in this Disclosure Statement, the Debtors have no affirmative duty to do so unless ordered to do so by the Bankruptcy Court.

11. *No Representations Outside this Disclosure Statement Are Authorized*

No representations concerning or relating to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, should not be relied upon by you in arriving at your decision. You should promptly report unauthorized representations or inducements to the counsel to the Debtors and the U.S. Trustee.

D. *Liquidation Under Chapter 7*

If no plan can be confirmed, the Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution in accordance with the priorities established by the Bankruptcy Code.

## ARTICLE X.

### CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

The following is a summary of certain United States federal income tax consequences of the Plan to the Debtors and certain Holders of Allowed Claims. This summary is based on the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”), Treasury Regulations thereunder (“Treasury Regulations”), and administrative and judicial interpretations, all as in effect on the date of this Disclosure Statement and all of which are subject to change, with possible retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. No opinion of counsel has been obtained and the Debtors do not intend to seek a ruling from the Internal Revenue Service as to any of the tax consequences of the Plan discussed below. There can be no assurance that the Internal Revenue Service will not challenge one or more of the United States federal income tax consequences of the Plan described below.

This summary does not apply to Holders of Allowed Claims that are not United States persons, as such term is defined in the Internal Revenue Code (“Non-U.S. Holders”), or that are otherwise subject to special treatment under United States federal income tax law (including, without limitation, banks, governmental authorities or agencies, financial institutions, insurance companies, pass-through entities, tax-exempt organizations, brokers and dealers in securities, mutual funds, small business investment companies, employees, persons holding Allowed Claims that are a hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale, or conversion transaction, and regulated investment companies). Moreover, this summary does not purport to cover all aspects of United States federal income taxation that may apply to the Debtors and Holders of Allowed Claims based upon their particular circumstances. Additionally, this summary does not discuss any tax

consequences that may arise under any laws other than United States federal income tax law, including under state, local, or foreign tax law.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. ALL HOLDERS OF ALLOWED CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL, AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

A. *Certain United States Federal Income Tax Consequences to Holders of Allowed Claims*

1. *Consequences to Holders of Allowed Class 4 Claims*

Pursuant to the Plan, Allowed Class 4 Claims will be exchanged for the Term Loan Lender Assets (i.e., a combination of Cash and assets of the Debtors or the Estates). A Holder who receives its Pro Rata share of the Term Loan Lender Assets in exchange for its Claim pursuant to the Plan generally will recognize income, gain, or loss for United States federal income tax purposes in an amount equal to the difference between (a) the amount of Cash received in exchange for its Claim, plus the fair market value of other property received by such Holder, and (b) the Holder's adjusted tax basis in its Claim. The character of such gain or loss as capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, the nature of the Claim in such Holder's hands, whether the Claim constitutes a capital asset in the hands of the Holder, whether the Claim was purchased at a discount, and whether and to what extent the Holder has previously claimed a bad debt deduction with respect to its Claim. See the discussions of "accrued interest" and "market discount" below.

2. *Consequences to Holders of Allowed Class 5 Claims*

Pursuant to the Plan, the Debtors will liquidate and distribute certain assets to the Liquidating Trust. Each Holder of Allowed Class 5 Claims will exchange their Class 5 Claims for their Pro Rata share of the beneficial interests in the Liquidating Trust.

Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary, pursuant to 26 C.F.R. § 301.7701-4(d) and related regulations, the Debtors believe that the Liquidating Trust should be treated as a grantor trust set up for the benefit of the Holders of Class 5 Claims. Holders that receive Liquidating Trust interests will be treated for United States federal income tax purposes as receiving their Pro Rata share of the Liquidating Trust's assets from the Debtors in a taxable exchange and then depositing them in the Liquidating Trust in exchange for Liquidating Trust interests. Each such Holder should recognize gain or loss equal to the difference between (a) the fair market value of the Liquidating Trust interests received in exchange for such Claims and (b) such Holder's adjusted tax basis in the Claims surrendered by such Holder.

The character of such gain or loss as capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, the nature of the Claim in such Holder's hands, whether the Claim constitutes a capital asset in the hands of the Holder, whether the Claim was purchased at a discount, and whether and to what extent the Holder has previously claimed a bad debt deduction with respect to its Claim. See the discussions of "accrued interest" and "market discount" below. A Holder's tax basis in the Liquidating Trust interests should equal the fair market value of such interests as of the Effective Date. A Holder's holding period for the Liquidating Trust interests should begin on the day following the Effective Date.

Holders of Class 5 Claims that receive Liquidating Trust interests will be required to report in their United States federal income tax returns their share of the Liquidating Trust's items of income, gain, loss, deduction, and credit in the year recognized by the Liquidating Trust. This requirement may result in Holders being subject to tax on their allocable share of the Liquidating Trust's taxable income prior to receiving any cash distributions from the Liquidating Trust.

As noted above, this summary does not apply to Non-U.S. Holders. The tax consequences to Non-U.S. Holders are complex and will vary depending on the circumstances and activities of such Holder. Each Non-U.S. Holder of Class 5 Claims is urged to consult with its own tax advisor regarding the U.S. federal, state local and non-U.S. tax consequences of receipt of the Liquidation Trust interests.

It is plausible that a Holder receiving the Liquidating Trust interests could treat the transaction as an “open” transaction for United States federal income tax purposes, in which case the recognition of any gain or loss on the transaction might be deferred pending the determination of the amount of the proceeds ultimately received from the Liquidating Trust. The United States federal income tax consequences of an open transaction are uncertain and highly complex, and a holder should consult with its own tax advisor if it believes open transaction treatment might be appropriate.

**HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE RECOGNITION OF GAIN OR LOSS, FOR FEDERAL INCOME TAX PURPOSES, ON THE SATISFACTION OF THEIR CLAIMS.**

3. *Accrued Interest*

A portion of the consideration received by Holders of Allowed Claims may be attributable to accrued interest on such Claims. Such amount should be taxable to that Holder as interest income if such accrued interest has not been previously included in the Holder’s gross income for United States federal income tax purposes. Conversely, Holders of Claims may be able to recognize a deductible loss to the extent any accrued interest on the Claims was previously included in the Holder’s gross income but was not paid in full by the Debtors.

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

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

4. *Market Discount*

Under the “market discount” provisions of the Internal Revenue Code, some or all of any gain realized by a Holder of a Claim who exchanges the Claim for an amount may be treated as ordinary income (instead of capital gain), to the extent of the amount of “market discount” on the debt instruments constituting the exchanged Claim. In general, a debt instrument is considered to have been acquired with “market discount” if it is acquired other than on original issue and if its Holder’s adjusted tax basis in the debt instrument is less than (a) the sum of all remaining payments to be made on the debt instrument, excluding “qualified stated interest” or (b) in the case of a debt instrument issued with original issue discount, its adjusted issue price, in each case, by at least a *de minimis* amount (equal to 0.25% of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a Holder on the taxable disposition of Allowed Claims (determined as described above) that were acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while the Allowed Claims were considered to be held by the Holder (unless the Holder elected to include market discount in income as it accrued).

5. *Information Reporting and Backup Withholding*

In general, information reporting requirements may apply to distributions or payments under the Plan. Additionally, under the backup withholding rules, a Holder of a Claim may be subject to backup withholding (currently at a rate of 28%) with respect to distributions or payments made pursuant to the Plan unless that Holder: (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact; or (b) timely provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding. Backup withholding is not an additional tax but is, instead, an advance payment that may be refunded to the extent it results in an overpayment of tax; *provided that* the required information is timely provided to the Internal Revenue Service.

The Debtors, or the applicable withholding agent, will withhold all amounts required by law to be withheld from payments of interest. The Debtors will comply with all applicable reporting requirements of the Internal Revenue Service.

**THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF UNITED STATES FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A CLAIM IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTION CONTEMPLATED BY THE RESTRUCTURING, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, OR FOREIGN TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.**

B. *Certain United States Federal Income Tax Consequences to the Debtors*

The Debtors may recognize taxable gain or loss as a result of Consummation of the Plan upon the sale of its assets in an amount equal to the difference between the fair market value of the assets sold and the applicable Debtor's tax basis in such assets. Thus the amount of gain or loss recognized will depend on the value of the assets sold, which cannot be known with certainty until the Plan is consummated. It is possible the Debtors will recognize taxable income or gain in connection with Consummation of the Plan and may not have sufficient net operating losses or other tax attributes to fully offset the amount of gain recognized, in which case the Debtors will be required to pay cash income taxes with respect to the amount of net income and will reduce the amount of Cash proceeds available to be distributed to Holders of the Allowed Claims.

1. *Cancellation of Debt Income*

Under the Internal Revenue Code, a taxpayer generally recognizes cancellation of debt income ("CODI") to the extent that indebtedness of the taxpayer is cancelled for less than the amount owed by the taxpayer, subject to certain judicial or statutory exceptions. The most significant of these exceptions with respect to the Debtors is that taxpayers who are operating under the jurisdiction of a federal bankruptcy court are not required to recognize such income. In that case, however, the taxpayer must reduce its tax attributes, such as its net operating losses, general business credits, capital loss carryforwards, and tax basis in assets, by the amount of the CODI avoided. In this case, the Debtors expect that they may recognize significant CODI from the implementation of the Plan. As a result, the Debtors expect that their tax attributes may be reduced on account of such CODI. However, since the Debtors intend to liquidate, any remaining tax attributes will generally have no ongoing value to the Debtors or to the Holders of Claims or Holdings Interests.

**ARTICLE XI.**

**RECOMMENDATION OF THE DEBTORS**

The Debtors believe that the Plan is in the best interests of all Holders of Claims against and Interests in the Debtors, and urge all Holders of Claims against and Interests in the Debtors entitled to vote to accept the Plan and to evidence such acceptance by returning their Ballots so they will be received by the Notice and Claims Agent by the Voting Deadline.

Dated: October 6, 2014

Source Home Entertainment, LLC

By: \_\_\_\_\_  
Name: Stephen Dubé  
Title: Chief Restructuring Officer

Prepared by:

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**EXHIBIT A**

**Debtors' Joint Plan of Liquidation  
Pursuant to Chapter 11 of the Bankruptcy Code**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)
	) Chapter 11
	)
SOURCE HOME ENTERTAINMENT, LLC, <i>et al.</i> , <sup>1</sup>	) Case No. 14-11553 (KG)
	)
Debtors.	) (Jointly Administered)
	)

DEBTORS' JOINT PLAN OF LIQUIDATION  
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

**THIS DRAFT CHAPTER 11 PLAN IS NOT AN OFFER WITH RESPECT TO ANY SECURITIES OR SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL BE MADE ONLY IN COMPLIANCE WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE.**

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*Counsel for the Debtors  
and Debtors in Possession*

Dated: October 6, 2014

<sup>1</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Source Home Entertainment, LLC (8517); Directtuo, Inc. (4741); RDS Logistics, LLC (0305); Retail Vision, LLC (2023); Source Interlink Distribution, LLC (3387); Source Interlink International, Inc. (1428); Source Interlink Manufacturing, LLC (7123); and Source Interlink Retail Services, LLC (6967). The location of the Debtors' corporate headquarters and the service address for all Debtors is: 27500 Riverview Center Boulevard, Suite 400, Bonita Springs, Florida 34134.

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## **INTRODUCTION**

The Debtors propose the following *Debtors' Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*. Capitalized terms used in the Plan and not otherwise defined have the meanings ascribed to such terms in Article I of the Plan. On June 24, 2014, the Bankruptcy Court entered an order [Docket No. 35] authorizing the joint administration and procedural consolidation of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). Reference is made to the Disclosure Statement, filed in connection herewith, for a discussion of the Debtors' history, as well as a summary and analysis of the Plan and certain related matters. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

## **ARTICLE I.**

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

#### **A. *Defined Terms***

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

1. "Acquired Assets" has the meaning ascribed to it in the Purchase Agreement; provided, that, for the avoidance of doubt, the Excluded Assets shall not be Acquired Assets.

2. "Administrative Claims" means Claims for the costs and expenses of the administration of the Debtors' Estates pursuant to section 503(b) of the Bankruptcy Code to the extent not previously paid. For the avoidance of doubt, Claims asserting priority under section 503(b)(9) of the Bankruptcy Code are included in the definition of Administrative Claims, and, if Allowed, shall be paid in accordance with the Plan.

3. "Administrative Claims Objection Bar Date" means the first Business Day that is 120 days following the Effective Date, except as specifically set forth in the Plan or a Final Order, including, without limitation, the Bar Date Order.

4. "Administrative Claims Bar Date" means the first Business Day that is 30 days following the Effective Date, except as specifically set forth in the Plan or a Final Order, including, without limitation, the Bar Date Order.

5. "Administrative and Priority Claims Reserve" means the account to be established and maintained by the Plan Administrator and funded with the Administrative and Priority Claims Reserve Amount pursuant to Article IV.G.2 hereof.

6. "Administrative and Priority Claims Reserve Amount" means Cash in an amount to be determined by the Debtors and the Term Loan Agent on or before the Solicitation Date, which amount shall be funded by the Debtors and used by the Plan Administrator for the payment of Priority Claims Allowed after the Effective Date to the extent that such Priority Claims have not been paid in full on or before the Effective Date.

7. "Affiliate" shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

8. "Allowed" means with respect to Claims: (a) any Claim, proof of which is timely Filed by the applicable Claims Bar Date (or for which Claim under the Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court, a Proof of Claim is not or shall not be required to be Filed); (b) any Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; or (c) any Claim allowed pursuant to the Plan or a Final Order of the Bankruptcy Court; provided, that with respect to any Claim described in clause (a) above, such Claim shall be considered Allowed only if and to the extent that with respect to such Claim no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed by a Final Order; provided, further, that the Plan

Administrator or Liquidating Trustee, as applicable, may affirmatively determine to allow any Claim described in clause (a) notwithstanding the fact that the period within which an objection may be interposed has not yet expired. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. “Allow” and “Allowing” shall have correlative meanings.

9. “*Avoidance Actions*” means any and all actual or potential claims and causes of action to avoid a transfer of property or an obligation incurred by the Debtors pursuant to any applicable section of the Bankruptcy Code, including sections 502, 510, 542, 544, 545, 547–553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws, which was not conveyed to the Purchaser in connection with the Sale Transaction.

10. “*Ballot*” means a ballot authorized by the Bankruptcy Court pursuant to the Disclosure Statement Order to indicate acceptance or rejection of the Plan and to opt out of the release provided by Article IX.E of the Plan.

11. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as the same may be amended from time to time.

12. “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the Chapter 11 Cases, and, to the extent of the withdrawal of any reference under 28 U.S.C. § 157 and/or the General Order of the District Court pursuant to section 151 of title 28 of the United States Code, the United States District Court for the District of Delaware.

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

14. “*Bar Date Order*” means that certain *Order (A) Setting a Bar Date for Filing Proofs of Claim, Including Requests for Payment under Section 503(b)(9) of the Bankruptcy Code, (B) Setting a Bar Date for the Filing of Requests for Allowance of Administrative Expense Claims, (C) Establishing an Amended Schedules Bar Date and a Rejection Damages Bar Date, (D) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, (E) Approving Notice of Bar Dates, and (F) Granting Related Relief* [Docket No. 218].

15. “*Beneficiaries*” means Holders of Allowed General Unsecured Claims that are to be satisfied with post-Effective Date distributions from the Liquidating Trust Assets, each in their capacities as such.

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

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

18. “*Causes of Action*” means, subject to the releases, exculpations, and injunctions set forth in the Plan, any claim, cause of action, controversy, right of setoff, cross claim, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law, including Avoidance Actions, which was not conveyed to the Purchaser in connection with the Sale Transaction and which was property of the Debtors or in which the Debtors held rights as of the Effective Date.

19. “*Chapter 11 Cases*” means the jointly administered chapter 11 cases commenced by the Debtors on the Petition Date and styled In re Source Home Entertainment, LLC, Case No. 14-11553 (KG), which are currently pending before the Bankruptcy Court.

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

21. “*Claims Bar Date*” means the bar date by which a Proof of Claim must be or must have been Filed, as established by (a) a Final Order of the Bankruptcy Court, including, without limitation, the Bar Date Order, or (b) pursuant to the Plan.

22. “*Claims Objection Bar Date*” means the first Business Day that is 120 days after the Effective Date.

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

24. “*Class*” means a category of Holders of Claims or Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

25. “*Committee*” means the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102(a) of the Bankruptcy Code pursuant to that certain *Notice of Appointment of Committee of Unsecured Creditors* filed by the U.S. Trustee on July 10, 2014 [Docket No. 107].

26. “*Committee Members*” means all current and former members of the Committee, including each of the following, in each case solely in their capacity as such: (a) Time Inc. Retail f/k/a Time Warner Retail Sales & Marketing, Inc.; (b) BGI Creditors’ Liquidating Trust; (c) Kable Distributors Services, Inc.; (d) Heinrich Bauer USA, LLC; (e) Teamsters Health & Welfare & Pension Funds of Phila. & Vic.; (f) United Wire, Metal & Machine Pension Fund; and (g) Walgreen Co.

27. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

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

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

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

31. “*Consolidation*” has the meaning ascribed to it in Article IV.A hereof.

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

33. “*Continuing Obligations*” has the meaning ascribed to it in Article IV.D hereof.

34. “*Cure Obligations*” means: (a) all amounts (or such other amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) required to cure any monetary defaults; and (b) any other obligations required to cure any nonmonetary defaults under any Executory Contract or Unexpired Lease that is to be assumed by the Debtors pursuant to sections 365 or 1123 of the Bankruptcy Code.

35. “*D&O Policies*” means all insurance policies for directors, members, managers, trustees, and officers’ liability maintained by the Debtors’ Estates as of the Effective Date, including, without limitation: (a) that certain Policy No. 01-420-91-27, underwritten by American International Group, Inc.; (b) that certain Policy No.

8237-1061, underwritten by Chubb Specialty Insurance; and (c) that certain Policy No. SISIXFL21137813, underwritten by Starr Indemnity & Liability Company.

36. “*Debtor Release*” means the release given on behalf of the Debtors and their Estates to the Released Parties as set forth in Article IX.D hereof.

37. “*Debtors*” means, collectively, each of the following: (a) Source Home Entertainment, LLC; (b) Directtou, Inc.; (c) RDS Logistics, LLC; (d) Retail Vision, LLC; (e) Source Interlink Distribution, LLC; (f) Source Interlink International, Inc.; (g) Source Interlink Manufacturing, LLC; and (h) Source Interlink Retail Services, LLC.

38. “*DGCL*” shall have the meaning ascribed to it in Article IV.G.4 hereof.

39. “*Disclosure Statement*” means the *Disclosure Statement for the Debtors’ Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, dated October 6, 2014 [Docket No. [•]], as amended, supplemented, or otherwise modified from time to time, including all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

40. “*Disclosure Statement Order*” means the *Order (A) Approving the Disclosure Statement, (B) Approving the Solicitation Procedures, (C) Approving the Form of Ballots and Notices In Connection Therewith, (D) Establishing the Plan Confirmation Schedule, and (E) Granting Related Relief*, entered on [•], 2014 [Docket No. [•]].

41. “*Disputed*” means, with respect to any Claim, any Claim that is not yet Allowed.

42. “*Disputed Claims Reserve*” means a Cash reserve that may be funded on or after the Effective Date pursuant to Article VII.H hereof.

43. “*Distribution Record Date*” means the first Business Day that is two (2) Business Days after the Confirmation Date.

44. “*Effective Date*” means the date selected by the Debtors which is no later than two (2) Business Days after the date on which: (a) the Confirmation Date has occurred; (b) no stay of the Confirmation Order is in effect; and (c) all conditions precedent specified in Article X of the Plan have been satisfied or waived.

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

46. “*Estate*” means, as to each Debtor, the estate created for such Debtor on the Petition Date pursuant to sections 301 and 541 of the Bankruptcy Code.

47. “*Exculpated Parties*” means, collectively: (a) the Released Parties; and (b) the Committee and the Committee Members and each of the Committee’s agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in each case solely in their capacity as such.

48. “*Exculpation*” means the exculpation provision set forth in Article IX.F hereof.

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

50. “*Federal Judgment Rate*” means the federal judgment rate in effect as of the Effective Date.

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



52. “*Final Cash Collateral Order*” means the *Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to the Secured Parties, and (C) Granting Related Relief*, entered on July 22, 2014 [Docket No. 162].

53. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified, or amended from time to time, and as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be Filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules of the Bankruptcy Court, may be filed relating to such order shall not prevent such order from being a Final Order.

54. “*General Unsecured Claim*” means any unsecured Claim, including the Term Loan Deficiency Claim, other than an Administrative Claim, a Professional Fee Claim, a Priority Tax Claim, an Other Secured Claim, a Revolving Credit Facility Claim, a Term Loan Claim, and a Section 510(b) Claim.

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

56. “*Holder*” means any Entity holding a Claim or an Interest.

57. “*Holdings*” means Source Home Entertainment, LLC, a Debtor in the Chapter 11 Cases.

58. “*Holdings Interests*” means all Interests in Holdings.

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

60. “*Indemnification Provisions*” means each of the Debtors’ indemnification provisions currently in place whether in the bylaws, certificates of incorporation or formation, other formation documents, board resolutions, or employment contracts for the current and former directors, managers, officers, employees, attorneys, other professionals and agents of the Debtors, and such current and former directors’, managers’, and officers’ respective Affiliates.

61. “*Initial Distribution Date*” means the date on which the Debtors make initial distributions to Holders of Allowed Claims pursuant to the Plan.

62. “*Intercompany Claim*” means any Claim held by a Debtor against another Debtor.

63. “*Intercompany Interest*” means any Interest in a Debtor held by another Debtor other than Holdings Interests.

64. “*Intercreditor Agreements*” means any agreements by and among the Revolving Lenders, Term Loan Lenders, and any of the Debtors’ creditors and other related parties that set forth the various lien positions and the rights and liabilities of each such creditor, including but not limited to that certain Intercreditor Agreement, dated as of October 4, 2013, by and among the Debtors, the Revolving Credit Facility Agent, and the Term Loan Agent.

65. “*Interest*” means any interest, equity, or share in the Debtors, including all options, warrants, or other rights to obtain such an interest or share in such Debtor, whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or a similar security, including any Claim subject to subordination under section 510(b) of the Bankruptcy Code arising therefrom.

66. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

67. “*Letters of Credit*” means those certain outstanding letters of credit issued pursuant to the Revolving Credit Documents.

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

69. “*Liquidating Trust*” means the trust to be established on the Effective Date in accordance with Article VII hereof.

70. “*Liquidating Trust Agreement*” means the agreement governing, among other things, the retention and duties of the Liquidating Trustee as described in Article VII hereof, which shall be in form and substance materially consistent with the Plan and included as an exhibit to the Plan Supplement.

71. “*Liquidating Trust Assets*” means: (a) the Liquidating Trust Cash Distribution; and (b) the Liquidating Trust Causes of Action. For the avoidance of doubt and notwithstanding anything herein to the contrary, the Liquidating Trust Assets shall not include (w) the Acquired Assets, (x) the Post-Effective Date Debtor Assets, (y) the Term Loan Lender Assets, or (z) any claims or Causes of Action released pursuant to Article IX.D hereof or exculpated pursuant to Article IX.F hereof.

72. “*Liquidating Trust Cash Distribution*” means Cash transferred to the Liquidating Trust on the Effective Date in an amount equal to the Liquidating Trust Cash Payment.

73. “*Liquidating Trust Cash Payment*” means Cash in an amount equal \$200,000.00.

74. “*Liquidating Trust Causes of Action*” means the Avoidance Actions.

75. “*Liquidating Trust Oversight Committee*” shall have the meaning ascribed to it in the Liquidating Trust Agreement as described in Article VII hereof.

76. “*Liquidating Trustee*” means the Person designated by the Debtors before the Confirmation Hearing.

77. “*LLC Agreement*” means that certain limited liability company agreement of Holdings, dated as of October 4, 2013.

78. “*Local Bankruptcy Rules*” means the local rules of bankruptcy practice and procedure of the United States Bankruptcy Court for the District of Delaware.

79. “*Notice and Claims Agent*” means Kurtzman Carson Consultants LLC, in its capacity as notice and claims agent and administrative advisor for the Debtors’ Estates pursuant to 28 U.S.C. § 156(c).

80. “*Other Priority Claim*” means a Claim asserting a priority described in section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim; (b) a Professional Fee Claim; and (c) a Priority Tax Claim.

81. “*Other Secured Claim*” means a Secured Claim, including a Secured Tax Claim, other than a Revolving Credit Facility Claim or a Term Loan Claim.

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

83. “*Petition Date*” means June 23, 2014, the date on which the Debtors commenced the Chapter 11 Cases.

84. “*Plan*” means this *Debtors’ Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, as amended, supplemented, or otherwise modified from time to time, including the Plan Supplement, which is incorporated in the Plan by reference and made part of this Plan as if set forth in the Plan.

85. “*Plan Administrator*” means the Person designated by the Debtors, in consultation and with the consent of the Term Loan Agent, before the Confirmation Hearing.

86. “*Plan Supplement*” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, to be Filed at least 14 days prior to the Confirmation Hearing, as amended, supplemented, or otherwise modified from time to time in accordance with the terms hereof, the Bankruptcy Code, and the Bankruptcy Rules, including: (a) a list of Executory Contracts and Unexpired Leases to be assumed pursuant to the Plan, and as may be amended by the Debtors in accordance with the Plan prior to the Effective Date; (b) a schedule of retained Causes of Action; and (c) the Liquidating Trust Agreement.

87. “*Post-Effective Date Debtor*” means Holdings, on and after the Effective Date.

88. “*Post-Effective Date Debtor Assets*” means: (a) the Post-Effective Date Debtor Reserve; (b) the Administrative and Priority Claims Reserve; (c) the Professional Fee Escrow; (d) the D&O Policies; (e) the LLC Agreement; (f) the Post-Effective Date Debtor Causes of Action; and (g) the Debtors’ rights under the Purchase Agreement, including all rights of recovery under the Purchase Agreement and any ancillary agreements among the Debtors and the Purchaser.

89. “*Post-Effective Date Debtor Cash Distribution*” means the distribution of Cash to the Post-Effective Date Debtor in accordance with Articles IV.F and IV.G hereof in an amount to be determined by the Debtors and the Term Loan Agent on or before the Solicitation Date, which distribution shall occur on the Effective Date.

90. “*Post-Effective Date Debtor Causes of Action*” means the Causes of Action other than the Liquidating Trust Causes of Action that are not waived, relinquished, exculpated, released, compromised, or settled under the Plan.

91. “*Post-Effective Date Debtor Distribution*” means distribution of the Post-Effective Date Debtor Assets on the Effective Date in accordance with Articles IV.F and IV.G hereof.

92. “*Post-Effective Date Debtor Reserve*” means the account to be established and maintained by the Plan Administrator and funded with the Post-Effective Date Debtor Cash Distribution pursuant to Articles IV.F and IV.G hereof.

93. “*Priority Claims*” means, collectively: (a) Administrative Claims; (b) Priority Tax Claims; (c) Other Priority Claims; and (d) Other Secured Claims.

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

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

96. “*Professional*” means any entity retained in the Chapter 11 Cases in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 326, 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code.

97. “*Professional Fee Claims*” mean all Claims for accrued fees and expenses (including success fees) for services rendered and expenses incurred by a Professional from the Petition Date through and including the Effective Date to the extent such fees and expenses have not been paid or are not disallowed pursuant to an order of the Bankruptcy Court and regardless of whether a fee application has been filed for such fees and expenses.

98. “*Professional Fee Claims Estimate*” means the amount of Professional Fee Claims that are estimated by each applicable Professional in good faith to be accrued but unpaid as of the Effective Date.

99. “*Professional Fee Escrow*” means one or more interest-bearing escrow accounts to be funded by the Debtors with Cash on the Effective Date in an amount equal to the Professional Fee Claims Estimate.

100. “*Proof of Claim*” means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

101. “*Purchase Agreement*” means that certain Asset Purchase Agreement by and among the Debtors and the Purchaser, dated as of June 22, 2014 [Docket No. 319], as amended, supplemented, or modified from time to time.

102. “*Purchaser*” means Cortland Capital Market Services LLC, together with its successors and permitted assigns.

103. “*Released Parties*” means: (a) each Debtor; (b) the Debtors’ current and former officers, directors, and managers; (c) the Post-Effective Date Debtor; (d) each Entity that holds Holdings Interests, and each such Entity’s affiliated funds and any Entity that has a direct or indirect interest in any of the foregoing Entities; (e) the Term Loan Lenders and the Term Loan Agent; (f) the Revolving Lenders and the Revolving Credit Facility Agent; and (g) each of the foregoing Entities’ respective predecessors, successors and assigns, and current and former stockholders, members, limited partners, general partners, equity holders, Affiliates and its and their subsidiaries, principals, partners, members, employees, agents, officers, directors, managers, trustees, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants, in each case solely in their capacity as such; provided, that as a condition to receiving or enforcing any release granted pursuant to Article IX.D or Article IX.E hereof, each Released Party and its Affiliates shall release or be deemed to have released the Releasing Parties, the Estates, and the Debtors for any and all Claims or Causes of Action arising from or related to their relationship with the Debtors, but not, for the avoidance of doubt, Professional Fee Claims; provided, further, that each of the Term Loan Lenders, the Term Loan Agent, the Revolving Credit Facility Agent, and the Revolving Lenders shall be released or deemed to be released from any obligation to pay or otherwise fund Professional Fee Claims or other Carve-Out expenses (as defined in the Final Cash Collateral Order). For the avoidance of doubt, and notwithstanding anything herein to the contrary, in no event shall an Entity that checks the box on the Ballot and returns such Ballot in accordance with the Disclosure Statement Order to opt out of the third party release provided in Article IX.E hereof be a Released Party.

104. “*Releasing Parties*” means: (a) the Released Parties; (b) all Holders of Claims who are deemed to accept the Plan; (c) with respect to any other Entities, Holders of Claims entitled to vote to accept the Plan that do not affirmatively opt out of the third party release provided by Article IX.E hereof pursuant to a duly executed Ballot; and (d) with respect to each of the foregoing Entities, their respective current and former officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in each case in their capacity as such; provided, that, notwithstanding anything contained herein to the contrary, in no event shall an Entity that checks the box on the Ballot and returns such Ballot in accordance with the Disclosure Statement Order to opt out of the third party release provided in Article IX.E hereof be a Releasing Party.

105. “*Revolving Cash Reserve*” means the Cash that collateralizes the Debtors’ obligations under the Revolving Credit Documents. As of the Petition Date, the amount of the Revolving Cash Reserve was approximately \$18.5 million.

106. “*Revolving Credit Agreement*” means that certain Amended and Restated Revolving Credit Agreement, dated as of October 4, 2013, as amended by Amendment No. 1 to Amended and Restated Revolving Credit Agreement, dated as of January 31, 2014, by and between the Debtors, the Revolving Lenders, Wells Fargo Bank, National Association, as lead arranger and book runner, and the Revolving Credit Facility Agent.

107. “*Revolving Credit Documents*” means, collectively, the Revolving Credit Agreement, each other Credit Document (as defined in the Revolving Credit Agreement), and all other agreements, documents, and instruments delivered or entered into in connection therewith (including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents).

108. “*Revolving Credit Facility Agent*” means Wells Fargo Capital Finance, as administrative agent and collateral agent for the Revolving Lenders.

109. “*Revolving Credit Facility Claims*” means any Claim arising under, derived from, based upon, or related to the Revolving Credit Documents, including any Claim in respect of the Letters of Credit.

110. “*Revolving Lenders*” means each Lender (as defined in the Revolving Credit Agreement) that is a party to the Revolving Credit Agreement.

111. “*Sale Transaction*” means that certain transaction between the Debtors and the Purchaser as set forth in the Purchase Agreement and the *Order (A) Approving the Asset Purchase Agreement Between the Debtors and the Purchaser, (B) Authorizing the Sale of Certain of the Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (C) Authorizing the Assumption and Assignment of Contracts, and (D) Granting Related Relief*, entered on September 19, 2014 [Docket No. 319].

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

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

114. “*Secured Claim*” means a Claim: (a) secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) otherwise Allowed pursuant to the Plan or a Final Order as a Secured Claim.

115. “*Secured Tax Claim*” means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

116. “*Solicitation Date*” means the date upon which the Debtors commence the solicitation process in accordance with the Disclosure Statement Order.

117. “*Solicitation Procedures*” means that form of solicitation procedures approved by and attached as an exhibit to the Disclosure Statement Order.

118. “*Subsequent Distribution Date*” means the date following the Initial Distribution Date on which the Plan Administrator or the Liquidating Trustee, as applicable and in each such party’s reasonable discretion, elects to make distributions to Holders of Allowed Claims pursuant to the Plan.

119. “*Term Loan Agent*” means Cortland Capital Market Services LLC, as administrative agent and collateral agent for the Term Loan Lenders under the Term Loan Facility.

120. “*Term Loan Agreement*” means that certain Term Loan Agreement, dated as of October 4, 2013, by and between the Debtors, the Term Loan Agent, and the Term Loan Lenders, as amended, supplemented or otherwise modified from time to time.

121. “*Term Loan Cash Payment*” means all Cash owned by the Estates on and after the Effective Date after giving effect to: (a) Cash transferred to the Professional Fee Escrow in accordance with Article II.C.1 hereof; (b) Cash transferred to the Administrative and Priority Claims Reserve in accordance with Article IV.G.2 hereof; (c) Cash transferred to the Post-Effective Date Debtor Reserve in accordance with Article IV.F hereof; and (d) the Liquidating Trust Cash Distribution. For the avoidance of doubt, the Term Loan Cash Payment shall include the amounts, if any, remaining in (w) the Revolving Cash Reserve following the termination of the Continuing Obligations in accordance with Article IV.D hereof, (x) the Professional Fee Escrow following the payment of all Allowed Professional Fee Claims, (y) the Administrative and Priority Claims Reserve following the payment, satisfaction, settlement, treatment, or other resolution of all Allowed Priority Claims, and (z) the Post-Effective Date Debtor Reserve following the dissolution of the Post-Effective Date Debtor.

122. “*Term Loan Claim*” means any Claim arising under, derived from, based upon, or related to the Term Loan Documents, except to the extent constituting the Term Loan Deficiency Claim or an Administrative Claim.

123. “*Term Loan Deficiency Claim*” means, with respect to the Term Loan Facility, any portion of the obligations arising under, derived from, based upon, or related to the Term Loan Documents that neither constitutes an Administrative Claim nor is satisfied by the Term Loan Lender Distribution. For the avoidance of doubt, the Term Loan Deficiency Claim, if any, shall be treated as a General Unsecured Claim.

124. “*Term Loan Documents*” means, collectively, the Term Loan Agreement, each other Credit Document (as defined in the Term Loan Agreement), and all other agreements, documents, and instruments delivered or entered into in connection therewith (including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents).

125. “*Term Loan Facility*” means the loan facilities provided pursuant to the Term Loan Agreement.

126. “*Term Loan Lender Assets*” means the Term Loan Cash Payment and the assets of the Debtors or of the Estates (other than Cash existing on the Effective Date) in which the Term Loan Lenders or the Term Loan Agent hold a perfected security interest.

127. “*Term Loan Lender Distribution*” means distribution of the Term Loan Lender Assets to Holders of Allowed Term Loan Claims in accordance with Article III.B.4 hereof. For the avoidance of doubt, the amount of the Term Loan Lender Distribution shall not exceed the aggregate amount of the Allowed Term Loan Claims.

128. “*Term Loan Lenders*” means each Lender (as defined in the Term Loan Agreement) that is a party to the Term Loan Agreement.

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

130. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Claim or an Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

131. “*United States*” means the United States of America and its agencies.

132. “*U.S. Trustee*” means the United States Trustee for the District of Delaware.

133. “*U.S. Trustee Fees*” means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

134. “*Wind Down*” means the wind down and dissolution of the Debtors’ Estates following the Effective Date as set forth in Article IV.G.4 hereof.

*B. Rules of Interpretation*

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

*C. Computation of Time*

The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed in the Plan.

*D. Governing Law*

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to conflict of laws principles.

*E. Reference to Monetary Figures*

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

*F. Controlling Document*

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the Plan shall control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

**ARTICLE II.****ADMINISTRATIVE AND PRIORITY CLAIMS****A. *Administrative Claims***

Subject to the provisions of sections 327, 330(a), and 331 of the Bankruptcy Code, except to the extent that a Holder of an Allowed Administrative Claim and, as applicable, the Debtors or the Plan Administrator agree to less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, the Debtors or the Plan Administrator shall pay each Holder of an Allowed Administrative Claim the full unpaid amount of such Allowed Administrative Claim in Cash: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if an Administrative Claim is Allowed after the Effective Date, on the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due) with a Cash distribution from the Administrative and Priority Claims Reserve by the Plan Administrator; (3) at such time and upon such terms as may be agreed upon by such Holder and the Debtors or the Plan Administrator, as applicable; or (4) at such time and upon such terms as set forth in an order of the Bankruptcy Court; provided, however, that any Administrative Claim that has been assumed by the Purchaser pursuant to the Purchase Agreement shall not be an obligation of the Debtors.

**1. Administrative Claims Bar Date**

Except as otherwise provided by a Final Order previously entered by the Bankruptcy Court (including the Bar Date Order) or as provided by this Article II, unless previously Filed, requests for payment of Administrative Claims, other than requests for payment of Professional Fee Claims, must be Filed and served on the Debtors no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, their Estates, the Plan Administrator, the Post-Effective Date Debtor Assets, the Liquidating Trustee, or the Liquidating Trust Assets, and such Administrative Claims shall be deemed compromised, settled, and released as of the Effective Date. Objections to such requests must be Filed and served on the requesting party by the Administrative Claims Objection Bar Date.

**2. Administrative and Priority Claims Reserve**

As soon as reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall fund the Administrative and Priority Claims Reserve in Cash as described in Article IV.G.2 hereof. Any amounts remaining in the Administrative and Priority Claims Reserve after payment of all Allowed Priority Claims shall be transferred to the Term Loan Agent and shall be distributed in accordance with the Plan or, if otherwise agreed in writing by the Term Loan Agent in its sole discretion, allocated among any other reserves contemplated hereunder. Notwithstanding anything to the contrary herein, neither the Plan Administrator, the Post-Effective Date Debtor, the Term Loan Agent, the Term Loan Lenders, nor any other party in interest shall be obligated to fund the Administrative and Priority Claims Reserve in excess of the amount approved by the Bankruptcy Court under the Confirmation Order —i.e., the Administrative and Priority Claims Reserve Amount.

**B. *Priority Tax Claims***

Except to the extent that a Holder of an Allowed Priority Tax Claim and, as applicable, the Debtors or the Plan Administrator agree to a less favorable treatment or has been paid by any applicable Debtors prior to the Effective Date, in full and final satisfaction, settlement, and release of and in exchange for release of each Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall be treated in accordance with section 1129(a)(9)(C) of the Bankruptcy Code and satisfied with a Cash distribution from the Administrative and Priority Claims Reserve; provided, however, that any Priority Tax Claim that has been assumed by the Purchaser pursuant to



the Purchase Agreement shall not be an obligation of the Debtors. All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as such obligations become due. Any Claims asserted by a governmental unit on account of any penalties and assessments shall not be Priority Tax Claims. On the Effective Date, any Liens securing any Allowed Priority Tax Claims shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act, or action under applicable law, regulation, order or rule, or the vote, consent, authorization, or approval of any Person.

*C. Professional Fee Claims*

1. Professional Fee Escrow

If the Professional Fee Claims Estimate is greater than zero, as soon as reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow. The Professionals shall estimate their Professional Fee Claims before and as of the Effective Date, taking into account any prior payments, and shall deliver such estimate to the Debtors no later than five calendar days before the anticipated Effective Date, as shall be indicated by the Debtors to such Professionals in writing as soon as reasonably practicable following Confirmation of the Plan. For the avoidance of doubt, the Professional Fee Claims Estimate shall not be deemed to limit the amount of fees and expenses that are the subject of a Professional's final request for payment of Professional Fee Claims Filed with the Bankruptcy Court. The Debtors shall fund the Professional Fee Escrow with Cash equal to the Professional Fee Claims Estimate. If a Professional does not provide a Professional Fee Claims Estimate within the timeframe described herein, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. Except as provided in the Plan, the Professional Fee Escrow shall be funded on the Effective Date and maintained in trust by the Plan Administrator for the Professionals and shall not be considered property of the Debtors' Estates or a Liquidating Trust Asset. When all Allowed Professional Fee Claims have been paid in full, amounts remaining in the Professional Fee Escrow, if any, shall be transferred to the Term Loan Agent and shall be distributed in accordance with the Plan or, if otherwise agreed in writing by the Term Loan Agent in its sole discretion, allocated among any other reserves contemplated hereunder.

To the extent that funds held in the Professional Fee Escrow are unable to satisfy the amount of Allowed Professional Fee Claims owing to the Professionals after application of funds held in the Professional Fee Escrow, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which Allowed Administrative Claim shall be satisfied in accordance with the Plan.

2. Final Fee Applications

All final requests for payment of Professional Fee Claims shall be Filed no later than the first Business Day that is 45 days after the Effective Date. After notice provided in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court. Subject to Article II.C.1 hereof, the amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals from funds held in the Professional Fee Escrow, or as otherwise provided herein, when such Claims are Allowed by an order of the Bankruptcy Court, which order is not subject to a stay.

*D. U.S. Trustee Statutory Fees*

The Debtors or the Plan Administrator, as applicable, shall pay all U.S. Trustee Fees for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

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

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

*A. Summary of Classifications*

All Claims and Interests, other than Administrative Claims, Priority Tax Claims, and Professional Fee Claims, are classified in the Classes set forth in this Article III for all purposes, including voting, Confirmation, and distributions under the Plan and pursuant to sections 1122 and 1123(a)(1) 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 that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest is also classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date. The Debtors reserve the right to withdraw the Plan with respect to one or more Debtors while seeking Confirmation or approval of the Plan with respect to all other Debtors.

The Plan constitutes a separate Plan for each of the Debtors, and the classification of Claims and Interests set forth herein shall apply separately to each of the Debtors.

1. Substantive Consolidation of the Estates

Pursuant to Article IV.A hereof, the Plan provides for the substantive consolidation of the Estates into a single Estate for all purposes associated with Confirmation and Consummation. As a result of the substantive consolidation of the Estates, each Class of Claims and Interests will be treated as a single consolidated Estate without regard to the separate identification of the Debtors.

2. Class Identification

The classification of Claims against and Interests in each Debtor (as applicable) pursuant to the Plan is as set forth below. To the extent there are no Holders of Claims or Interests in a particular Class or Classes, such Claims or Interests shall be treated as set forth in Article III.D hereof.

<b>Class</b>	<b>Claims and Interests</b>	<b>Status</b>	<b>Voting Rights</b>
1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
3	Revolving Credit Facility Claims	Unimpaired	Not Entitled to Vote (Conclusively Presumed to Accept)
4	Term Loan Claims	Impaired	Entitled to Vote
5	General Unsecured Claims	Impaired	Entitled to Vote

Class	Claims and Interests	Status	Voting Rights
6	Intercompany Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
8	Intercompany Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
9	Holdings Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

*B. Treatment of Classes of Claims and Interests*

Except to the extent that the Debtors and a Holder of an Allowed Claim or Interest, as applicable, agree to a less favorable treatment, such Holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, and release of and in exchange for such Holder's Allowed Claim or Interest. Unless otherwise indicated, each Holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter.

1. Class 1—Other Priority Claims

- (a) *Classification:* Class 1 consists of any Other Priority Claims against any Debtor.
- (b) *Treatment:* Each Holder of an Allowed Class 1 Claim shall receive Cash in an amount equal to such Allowed Class 1 Claim.
- (c) *Voting:* Class 1 is Unimpaired. Holders of Allowed Class 1 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 1 Claims are not entitled to vote to accept or reject the Plan.

2. Class 2—Other Secured Claims

- (a) *Classification:* Class 2 consists of all Other Secured Claims, including all Secured Tax Claims, against any Debtor.
- (b) *Treatment:* Each Holder of an Allowed Class 2 Claim shall receive, as the Debtors determine:
  - (i) payment in full in Cash of such Holder's Allowed Other Secured Claim;
  - (ii) the Collateral securing such Holder's Allowed Other Secured Claim; or
  - (iii) such other treatment rendering such Holder's Allowed Other Secured Claim Unimpaired in accordance with section 1124(1) or (2) of the Bankruptcy Code.
- (c) *Voting:* Class 2 is Unimpaired. Holders of Allowed Class 2 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 2 Claims are not entitled to vote to accept or reject the Plan.

3. Class 3—Revolving Credit Facility Claims

- (a) *Classification:* Class 3 consists of any Revolving Credit Facility Claims.

- (b) *Treatment:* Each Holder of an Allowed Class 3 Claim shall receive the treatment set forth in Article IV.D hereof and have its Allowed Class 3 Claim rendered Unimpaired in accordance with section 1124(1) or (2) of the Bankruptcy Code.
- (c) *Voting:* Class 3 is Unimpaired. Holders of Allowed Class 3 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 3 Claims are not entitled to vote to accept or reject the Plan.

4. Class 4—Term Loan Claims

- (a) *Classification:* Class 4 consists of all Term Loan Claims.
- (b) *Allowance:* Term Loan Claims shall be Allowed in the aggregate principal amount of \$51,858,488.37 as of the Petition Date,<sup>2</sup> plus any accrued but unpaid interest thereon payable at the applicable interest rate(s) in accordance with the Term Loan Agreement.
- (c) *Treatment:* Each Holder of an Allowed Class 4 Claim shall receive its Pro Rata share of the Term Loan Lender Distribution.
- (d) *Voting:* Class 4 is Impaired. Holders of Allowed Class 4 Claims are entitled to vote to accept or reject the Plan.

5. Class 5—General Unsecured Claims

- (a) *Classification:* Class 5 consists of all General Unsecured Claims against any Debtor.
- (b) *Treatment:* Each Holder of an Allowed Class 5 Claim shall receive a beneficial interest in its Pro Rata share of the Liquidating Trust Assets.
- (c) *Voting:* Class 5 is Impaired. Holders of Claims in Class 5 are entitled to vote to accept or reject the Plan.

6. Class 6—Intercompany Claims

- (a) *Classification:* Class 6 consists of all Intercompany Claims.
- (b) *Treatment:* Class 6 Claims will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 6 Claims will not receive any distribution on account of such Class 6 Claims.
- (c) *Voting:* Class 6 is Impaired. Holders of Claims in Class 6 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

7. Class 7—Section 510(b) Claims

- (a) *Classification:* Class 7 consists of all Section 510(b) Claims.
- (b) *Treatment:* Class 7 Claims will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 7 Claims will not receive any distribution on account of such Class 7 Claims.

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<sup>2</sup> This amount is subject to adjustment on account of the Sale Transaction.

- (c) *Voting:* Class 7 is Impaired. Holders of Claims in Class 7 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

8. Class 8—Intercompany Interests

- (a) *Classification:* Class 8 consists of all Intercompany Interests.
- (b) *Treatment:* Class 8 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 8 Interests will not receive any distribution on account of such Class 8 Interests.
- (c) *Voting:* Class 8 is Impaired. Holders of Interests in Class 8 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

9. Class 9—Holdings Interests

- (a) *Classification:* Class 9 consists of all Holdings Interests.
- (b) *Treatment:* Class 9 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 9 Interests will not receive any distribution on account of such Class 9 Interests.
- (c) *Voting:* Class 9 is Impaired. Holders of Interests in Class 9 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

C. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Plan Administrator, the Liquidating Trustee, the Debtors, or the Debtors' Estates in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

D. *Elimination of Vacant Classes*

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

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

If a Class 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 Debtors shall request the Bankruptcy Court to deem the Plan accepted by the Holders of such Claims or Interests in such Class.

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

The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article XI hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render

such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

#### ARTICLE IV.

##### MEANS FOR IMPLEMENTATION OF THE PLAN

###### *A. Substantive Consolidation*

The Plan shall serve as a motion by the Debtors seeking entry of an order pursuant to sections 105(a), 363(b), and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 substantively consolidating all of the Estates into a single consolidated Estate for all purposes associated with Confirmation and Consummation (the “Consolidation”). Among other things, the Consolidation encompasses a settlement with respect to Intercompany Claims, recoveries on account of certain Claims related to the Debtors’ joint and several liabilities, and the allocation of the Liquidating Trust Assets among the Estates since, under a strict interpretation of the absolute priority rule, the Debtors submit that Holders of Allowed General Unsecured Claims would not receive any distribution under the Plan.

Pursuant to the Consolidation, on and after the Effective Date: (1) all of the assets and liabilities of the Debtors shall be merged so that all of the assets of the Debtors shall be available to pay all of the liabilities under the Plan as set forth herein; (2) all of the funds held in the Administrative and Priority Claims Reserve shall be available to pay all of the Allowed Priority Claims; (3) all of the Liquidating Trust Assets shall be available to pay all of the Allowed General Unsecured Claims; (4) all of the Intercompany Claims shall be disallowed and expunged and no distributions shall be made on account of such Intercompany Claims; (5) all guarantees by the Debtors of the obligations of any other Debtor shall be eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of the Debtors shall be one obligation of Holdings; and (6) each and every Claim Filed or to be Filed in the case of any of the Debtors other than Holdings shall be deemed Filed against Holdings.

The Consolidation (other than for purposes of effectuating the Plan) shall not affect: (1) the legal and corporate structures of the Debtors; (2) pre- and post-Effective Date guarantees, liens, and security interests that are required to be maintained (a) in connection with Executory Contracts and Unexpired Leases that have been or will be assumed, if any, or (b) pursuant to the Plan; (3) distributions from any insurance policies or proceeds of such policies; (4) vesting of the Post-Effective Date Debtor Assets in the Post-Effective Date Debtor; and (5) vesting of the Liquidating Trust Assets in the Liquidating Trust.

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

The Debtors’ Cash on hand, the Debtors’ rights under the Purchase Agreement, the Term Loan Lender Assets other than Cash, all Causes of Action not previously settled, released, or exculpated under the Plan, and the remainder of the Revolving Cash Reserve, if any, shall be used to fund the distributions to Holders of Allowed Claims against the Debtors in accordance with the treatment of such Claims provided herein.

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

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan.

###### *D. Revolving Credit Facility Claims*

Effective as of the Effective Date, except with respect to the Continuing Obligations as set forth in this Article IV.D, the Debtors’ obligations under the Revolving Credit Documents shall be deemed terminated, canceled, and released. In full and final satisfaction, settlement, and release of and in exchange for each Holder’s Allowed

Revolving Credit Facility Claim, on the Effective Date or as soon as reasonably practicable thereafter, the Debtors or the Plan Administrator on behalf of the Post-Effective Date Debtor, as the case may be, may take such actions, in their sole discretion, to effectuate the following:

1. pay any accrued but unpaid amounts owing to the Revolving Credit Facility Agent or the Revolving Lenders under the Final Cash Collateral Order or the Revolving Credit Documents, in either case to the extent and in the manner provided therein;
2. solely to the extent and in the manner provided by the Revolving Credit Documents (subparts (i)-(iv) of this Article IV.D.2, collectively, the “Continuing Obligations”): (i) pay the Revolving Credit Facility Agent for all amounts paid by the Revolving Credit Facility Agent or any Revolving Lender in respect of amounts drawn under any Letter of Credit following the Effective Date, together with any applicable fees, charges, expenses (including bank charges and expenses), and indemnification obligations related thereto; (ii) satisfy all indemnification obligations and other similar obligations in favor of the Revolving Credit Facility Agent or any Revolving Lender, (including without limitation, any loss, cost, damage or claim which arises from any non-payment, claim, or refund of any checks or other similar items or any bookkeeping, accounting, or other errors in calculation), which expressly survive termination of the Revolving Credit Documents pursuant to the terms thereof; (iii) pay interest (if any and at the interest rate provided for in the Revolving Credit Documents prior to the Effective Date) upon all amounts owed to Revolving Credit Facility Agent and Revolving Lenders in respect of the outstanding Letters of Credit or otherwise in respect of the Continuing Obligations, as applicable; and (iv) pay any costs and expenses incurred by Revolving Credit Facility Agent or any Revolving Lender, including attorneys’ fees and legal expenses in connection with any of the Continuing Obligations;
3. as collateral security for the prompt payment in full and performance of the Continuing Obligations, subject to the Revolving Credit Facility Agent’s obligations pursuant to this Article IV.D, grant, pledge, and assign the Post-Effective Date Debtors’ interests in the Cash comprising the Revolving Cash Reserve (which is currently being held by Revolving Credit Facility Agent) to the Revolving Credit Facility Agent and the Revolving Lenders a security interest in and right of setoff against such Cash, which shall be held by Revolving Credit Facility Agent (without interest), less any amounts thereof previously applied to Continuing Obligations, for a period of not more than thirty (30) days following the expiration date of the last of the Letters of Credit to expire. Subject in all respects to the provisions of Article IV.D.2 hereof and solely to the extent and in the manner provided by the Revolving Credit Documents, the Revolving Credit Facility Agent may immediately apply Cash from the Revolving Cash Reserve, less any amounts previously applied from time to time against the Continuing Obligations when due. No later than thirty (30) days following the expiration date of the last of the Letters of Credit to expire, the Revolving Credit Facility Agent shall transfer any Cash remaining in the Revolving Cash Reserve following the application thereof to the Continuing Obligations to the Plan Administrator for distribution in accordance with the Plan; and
4. execute and deliver such other and further documents as may be reasonably requested by the Revolving Credit Facility Agent.

The Revolving Credit Facility Agent and Revolving Lenders acknowledge and agree that the foregoing treatment of their Allowed Class 3 Claims, together with the other provisions of this Plan, renders them Unimpaired.

*E. The Liquidating Trust*

On or prior to the Effective Date, the Debtors will execute the Liquidating Trust Agreement and will take all other steps necessary to establish the Liquidating Trust pursuant to the Liquidating Trust Agreement as further described in Article VII hereof. On the Effective Date, and in accordance with and pursuant to the terms of the Plan, the Debtors will transfer to the Liquidating Trust all of their rights, title, and interests in all of the Liquidating Trust Assets.

*F. Post-Effective Date Debtor*

From and after the Effective Date, the Post-Effective Date Debtor shall continue in existence for purposes of (1) winding down the Debtors' businesses and affairs as expeditiously and efficaciously as reasonably possible, (2) resolving Disputed Priority Claims, (3) paying Allowed Priority Claims and Professional Fee Claims, (4) enforcing and prosecuting claims, interests, rights, and privileges under the Post-Effective Date Debtor Causes of Action in an efficacious manner and only to the extent the benefits of such enforcement or prosecution are reasonably believed to outweigh the costs associated therewith, (5) holding the D&O Policies and the LLC Agreement, (6) filing appropriate tax returns, and (7) administering the Plan in an efficacious manner.

On the Effective Date, the Plan Administrator shall establish the Post-Effective Date Debtor Reserve with the proceeds from the Post-Effective Date Debtor Cash Distribution, and such proceeds, together with the Post-Effective Date Debtor Assets, shall vest in the Post-Effective Date Debtor for the purpose of liquidating the Estates and Consummating the Plan. The Post-Effective Date Debtor Assets shall be held free and clear of all liens, claims, and interests of Holders of Claims and Interests, except as otherwise provided in the Plan. Any distributions to be made under the Plan from the Post-Effective Date Debtor Assets shall be made by the Plan Administrator. Notwithstanding anything herein to the contrary, the Post-Effective Date Debtor and the Plan Administrator shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

*G. Plan Administrator*

The Plan Administrator shall act for the Post-Effective Date Debtor in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the authority, power, and incumbency of the persons acting as managers and officers of the Post-Effective Date Debtor shall be deemed to have resigned, and a representative of the Plan Administrator shall be appointed as the sole manager and sole officer of the Post-Effective Date Debtor and shall succeed to the powers of the Post-Effective Date Debtor's managers and officers. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Post-Effective Date Debtor.

The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to administer and distribute the Post-Effective Date Debtor Assets and wind down the businesses and affairs of the Debtors and the Post-Effective Date Debtor, including: (1) liquidating, receiving, holding, and investing, supervising, and protecting the Post-Effective Date Debtor Assets; (2) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan from the Post-Effective Date Debtor Assets; (3) making distributions from the Post-Effective Date Debtor Assets as contemplated under the Plan; (4) establishing and maintaining bank accounts in the name of the Post-Effective Date Debtor, including the Post-Effective Date Debtor Reserve; (5) employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (6) paying all reasonable fees, expenses, debts, charges, and liabilities of the Post-Effective Date Debtor; (7) administering and paying taxes of the Post-Effective Date Debtor, including filing tax returns; (8) representing the interests of the Post-Effective Date Debtor or the Estates before any taxing authority in all matters, including any action, suit, proceeding or audit; and (9) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

The Plan Administrator may resign at any time upon 30 days' written notice delivered to the Bankruptcy Court and the Term Loan Agent, provided that such resignation shall only become effective upon the appointment of



a permanent or interim successor Plan Administrator. The Plan Administrator may also be removed by the Term Loan Agent. In the event the Plan Administrator resigns or is removed, the Term Loan Agent shall select a successor Plan Administrator. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Plan Administrator relating to the Post-Effective Date Debtor shall be terminated.

1. Tax Returns

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

2. Administrative and Priority Claims Reserve

On the Effective Date or as soon as reasonably practicable thereafter, the Debtors shall fund, and the Plan Administrator shall establish and thereafter maintain, the Administrative and Priority Claims Reserve with the Administrative and Priority Claims Reserve Amount in an authorized depository in the District of Delaware, which funds shall vest in the Post-Effective Date Debtor free and clear of all liens, Claims, encumbrances, charges, and other interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Funds in the Administrative and Priority Claims Reserve shall be used by the Plan Administrator only for the payment of Priority Claims Allowed after the Effective Date to the extent that such Priority Claims have not been paid in full on or prior to the Effective Date. To the extent any funds remain in the Administrative and Priority Claims Reserve after all of such Priority Claims have been paid or otherwise satisfied in full, such remaining funds shall be distributed by the Plan Administrator to the Term Loan Agent for the benefit of the Term Loan Lenders in accordance with the Plan. Notwithstanding anything to the contrary herein, neither the Plan Administrator, the Post-Effective Date Debtor, the Term Loan Agent, the Term Loan Lenders, nor any other party in interest shall be obligated to fund the Administrative and Priority Claims Reserve in an aggregate amount in excess of the Administrative and Priority Claims Reserve Amount.

3. D&O Policies

Notwithstanding anything to the contrary contained herein or in the Confirmation Order, Confirmation of the Plan shall not impair or otherwise modify any obligations arising under the D&O Policies. In addition, after the Effective Date, the Plan Administrator shall not terminate or otherwise reduce coverage under any D&O Policy, including, without limitation, any "tail policy," in effect as of the Petition Date, and all directors, managers, and officers of the Debtors who served in such capacity as of the Petition Date at any time prior to the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such directors and officers remain in such positions after the Effective Date.

4. Wind Down

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

As soon as reasonably practicable after the Effective Date, except with respect to the Post-Effective Date Debtor as set forth herein, the Plan Administrator shall: (1) cause the Debtors to comply with, and abide by, the terms of the Purchase Agreement; (2) file for each of the Debtors a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable laws of their state of incorporation or formation (as applicable), including, but not limited to, any actions contemplated in sections 275–283 of the General Corporation Law of the State of Delaware (the "DGCL"); and (3) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. For purposes of clause (2) of the preceding sentence, the Plan shall constitute a plan of distribution as contemplated in the DGCL. The certificate of dissolution or equivalent document may be executed

by the Plan Administrator without need for any action or approval by the equity holders or boards of directors or managers of any Debtor. From and after the Effective Date, except with respect to the Post-Effective Date Debtor as set forth herein, the Debtors (4) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (5) shall be deemed to have cancelled pursuant to the Plan all Interests, and (6) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. For the avoidance of doubt, except with respect to the Post-Effective Date Debtor as set forth herein, (7) notwithstanding the Debtors' dissolution, the Debtors shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

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

5. Exculpation; Indemnification; Insurance

The Plan Administrator, all professionals retained by the Plan Administrator, and representatives of each of the foregoing shall be deemed exculpated and indemnified in all respects in a manner identical to the exculpation and indemnification provisions provided to the Liquidation Trustee under the terms of the Liquidating Trust Agreement. The Plan Administrator may obtain, at the expense of the Post-Effective Date Debtor and with funds from the Post-Effective Date Debtor Reserve, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Plan Administrator. The Plan Administrator may rely upon written information previously generated by the Debtors or the Post-Effective Date Debtor.

6. Dissolution of the Post-Effective Date Debtor

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

*H. Cancellation of Securities and Agreements*

On the Effective Date, except as otherwise specifically provided for in the Plan: (1) the obligations of any Debtor under any certificate, share, note, bond, indenture, purchase right, or other instrument or document, including, without limitation, the Revolving Credit Documents and the Term Loan Documents, directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest, equity, or portfolio interest in the Debtors or any warrants, options, or other securities exercisable or exchangeable for, or convertible into, debt, equity, ownership, or profits interests in the Debtors giving rise to any Claim or Interest shall be cancelled as to the Debtors; and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificates or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indenture, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be fully released, settled, and compromised; provided, that, notwithstanding Confirmation or the occurrence of the Effective Date, any such agreement that governs the rights of the Holder of a Claim shall continue in effect solely for purposes of allowing such Holders to receive distributions under the Plan as provided herein; provided, further, that the foregoing shall not affect those provisions under the Revolving Loan Documents that by their terms survive termination.

*I. Corporate Action*

Upon the Effective Date, by virtue of the solicitation of votes in favor of the Plan and entry of the Confirmation Order, all actions contemplated by the Plan (including any action to be undertaken by the Plan

Administrator or the Liquidating Trustee) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, the Debtors, or any other Entity or Person. All matters provided for in the Plan involving the corporate structure of the Debtors, and any corporate action required by the Debtors in connection therewith, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtors or the Debtors' Estates.

Upon the Effective Date or as soon as reasonably practicable thereafter, after (1) making distributions provided for under the Plan, and (2) the vesting of (a) the Post-Effective Date Debtor Assets in the Post-Effective Date Debtor, and (b) the Liquidating Trust Assets in the Liquidating Trust, the Debtors other than the Post-Effective Date Debtor shall be deemed to have been dissolved and terminated.

Upon the Effective Date or as soon as reasonably practicable thereafter, the existing boards of directors and managers, as applicable, of the Debtors other than the Post-Effective Date Debtor shall be dissolved without any further action required on the part of the Debtors or the Debtors' officers, directors, shareholders, and members and any all remaining officers or directors of each Debtor other than the Post-Effective Date Debtor shall be dismissed without any further action required on the part of any such Debtor, the shareholders of such Debtor, or the officers and directors of such Debtor. The directors, managers, and officers of the Debtors and the Plan Administrator, as applicable, shall be authorized to execute, deliver, file, or record such contracts, instruments, and other agreements or documents and take such other actions as they may deem necessary or appropriate in their sole discretion to implement the provisions of this Article IV.I.

The authorizations and approvals contemplated by this Article IV.I shall be effective notwithstanding any requirements under applicable nonbankruptcy law.

*J. Effectuating Documents; Further Transactions*

Prior to the Effective Date, the Debtors are, and on and after the Effective Date, the Plan Administrator and the Liquidating Trustee are, authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

*K. Exemption from Certain Taxes and Fees*

To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any post-Confirmation transfer from any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors; or (2) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instruments of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, in each case to the extent permitted by applicable bankruptcy law, and the appropriate state or local government officials or agents shall forego collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

*L. Causes of Action*

Other than Causes of Action against an Entity that are waived, relinquished, exculpated, released, compromised, or settled under the Plan or any Final Order (including, for the avoidance of doubt, any claims or Causes of Action released pursuant to Article IX.D hereof), the Debtors reserve and, as of the Effective Date, assign to the Liquidating Trust and the Post-Effective Date Debtor the Liquidating Trust Causes of Action and the Post-Effective Date Debtor Causes of Action, respectively. On and after the Effective Date, the Liquidating Trustee and

the Plan Administrator may pursue the Liquidating Trust Causes of Action and the Post-Effective Date Debtor Causes of Action, as applicable, on behalf of and for the benefit of their respective beneficiaries.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any such Cause of Action against them as any indication that the Debtors, the Plan Administrator, or the Liquidating Trustee will not pursue any and all available Causes of Actions against them. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Debtors reserve such Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Plan Administrator and the Liquidating Trustee, shall retain and shall have, including through their authorized agents or representatives, the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

*M. Closing the Chapter 11 Cases*

Upon the occurrence of the Effective Date, the Plan Administrator shall be permitted to close all of the Chapter 11 Cases except for the Chapter 11 Case of Holdings, and all contested matters relating to each of the Debtors, including objections to Claims, shall be administered and heard in the Chapter 11 Case of Holdings.

When all Disputed Claims have become Allowed or disallowed, the Liquidating Trust has terminated in accordance with Article VII hereof, all remaining Cash has been distributed in accordance with the Plan, and the business and affairs of the Post-Effective Date Debtor have been otherwise wound down, the Plan Administrator shall seek authority from the Bankruptcy Court to close the Chapter 11 Case of Holdings in accordance with the Bankruptcy Code and the Bankruptcy Rules.

## **ARTICLE V.**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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

On the Effective Date, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed or assumed and assigned to the Purchaser or another third party, as applicable, in connection with the Sale Transaction; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; (5) is a D&O Policy or an insurance policy; (6) is the Purchase Agreement; or (7) is the LLC Agreement. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of the Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

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

Any Cure Obligations under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Obligation in Cash on the Effective Date or as soon as reasonably practicable thereafter, subject to the limitation described below, by the Debtors as an Administrative Claim or by Purchaser in accordance with the Purchase Agreement, as

applicable, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of the Cure Obligation, (2) the ability of the Debtors' Estates or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, the Cure Obligations required by section 365(b)(1) of the Bankruptcy Code shall be satisfied following the entry of a Final Order or orders resolving the dispute and approving the assumption; provided, that prior to the Effective Date, the Debtors, and on and after the Effective Date, the Plan Administrator may settle any dispute regarding the amount of any Cure Obligation without any further notice to any party or any action, order, or approval of the Bankruptcy Court.

Unless otherwise provided by an order of the Bankruptcy Court, at least twenty-one (21) days before the Confirmation Hearing, the Debtors shall cause notice of proposed assumption and proposed Cure Obligations to be sent to applicable counterparties. Any objection by such counterparty must be Filed, served, and actually received by the Debtors not later than fourteen (14) days after service of notice of the Debtors' proposed assumption and associated Cure Obligations. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such assumption or Cure Obligation.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan, or otherwise, shall result in the full release and satisfaction of any Claims or defaults, subject to satisfaction of the Cure Obligations, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the effective date of assumption and/or assignment. **Anything in the Schedules and any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed and assigned shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.**

*C. Claims Based on Rejection of Executory Contracts and Unexpired Leases*

Unless otherwise provided by an order of the Bankruptcy Court, any Proofs of Claim based on the rejection of the Debtors' Executory Contracts or Unexpired Leases pursuant to the Plan or otherwise, must be Filed with Bankruptcy Court and served on the Debtors or, after the Effective Date, the Liquidating Trustee, as applicable, no later than thirty (30) days after the earlier of the Effective Date or the effective date of rejection of such Executory Contract or Unexpired Lease. In addition, any objection to the rejection of an Executory Contract or Unexpired Lease must be Filed with the Bankruptcy Court and served on the Debtors or, after the Effective Date, the Liquidating Trustee, as applicable, no later than fourteen (14) days after service of the Debtors' proposed rejection of such Executory Contract or Unexpired Lease.

**Any Holders of Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claims were not timely Filed as set forth in the paragraph above shall not (1) be treated as a creditor with respect to such Claim, (2) be permitted to vote to accept or reject the Plan on account of any Claim arising from such rejection, or (3) participate in any distribution in the Chapter 11 Cases on account of such Claim, and any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Liquidating Trust, the Post-Effective Date Debtor, the Debtors' Estates, or the property for any of the foregoing without the need for any objection by the Debtors or the Liquidating Trustee, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary.** All Allowed Claims arising from the rejection of the Debtors' prepetition Executory Contracts or prepetition Unexpired Leases shall be classified as General Unsecured Claims against the appropriate Debtor, except as otherwise provided by order of the Bankruptcy Court.

*D. Purchase Agreement; Assumed Contracts*

The Debtors' assumption or rejection of any Executory Contract or Unexpired Lease pursuant to the Plan shall be subject in all respects to the Purchaser's rights and obligations, including any Cure Obligations assumed by the Purchaser in accordance with the Purchase Agreement, with respect to any such Executory Contracts or Unexpired Leases that constitute Assumed Contracts (as defined in the Purchase Agreement) as set forth in the Purchase Agreement, including section 2.6 thereof.

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

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

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

*F. Insurance Policies*

Each insurance policy, including the D&O Policies, shall be assumed by the Debtors on behalf of the applicable Debtor and assigned to the Post-Effective Date Debtor effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such insurance policy previously was rejected by the Debtors or the Debtors' Estates pursuant to a Bankruptcy Court order or is the subject of a motion to reject pending on the Effective Date, and coverage for defense and indemnity under any such insurance policy, including the D&O Policies, shall remain available to all individuals within the definition of "Insured" in any such insurance policy, including the D&O Policies.

*G. Indemnification Obligations*

Subject to the occurrence of the Effective Date, the obligations of the Debtors as of the Effective Date to indemnify, defend, reimburse, or limit the liability of the current and former directors, officers, employees, attorneys, other professionals and agents of the Debtors, and such current and former directors' and officers' respective Affiliates, respectively, against any Claims or Causes of Action under the Indemnification Provisions or applicable law, shall survive Confirmation, shall be assumed by the Debtors on behalf of the applicable Debtor and assigned to the Post-Effective Date Debtor, and will remain in effect after the Effective Date if such indemnification, defense, reimbursement, or limitation is owed in connection with an event occurring before the Effective Date; provided, however, that, notwithstanding anything herein to the contrary, the Post-Effective Date Debtor's obligation to fund such Indemnification Provisions shall be limited to the extent of coverage available under any insurance policy assumed by the Debtors and assigned to the Post-Effective Date Debtor, including the D&O Policies.

*H. Reservation of Rights*

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtors' Estates have any liability thereunder. In the event of a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, shall have 90 days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease as otherwise provided in the Plan.

## ARTICLE VI.

### PROVISIONS GOVERNING DISTRIBUTIONS

#### A. *Calculation of Amounts to Be Distributed*

Each Holder of an Allowed Claim against the Debtors shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class from the Debtors, the Plan Administrator, or the Liquidating Trustee, on behalf of the Debtors, the Post-Effective Date Debtor, or the Liquidating Trust, as applicable. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, in which case such payment shall be deemed to have occurred when due. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VIII hereof. Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim shall, on account of such Allowed Claim, receive a distribution in excess of the Allowed amount of such Claim plus any interest accruing on such Claim that is actually payable in accordance with the Plan.

#### B. *Rights and Powers of the Debtors, the Plan Administrator, and the Liquidating Trustee*

##### 1. Powers of the Debtors, the Plan Administrator, and the Liquidating Trustee

All distributions under the Plan shall be made on the Effective Date or as soon as reasonably practicable thereafter by the Debtors or thereafter by the Plan Administrator, the Liquidating Trustee, or their respective designees.

After the Effective Date, the Liquidating Trustee and its designees or representatives as identified in the Plan Supplement shall have the right to object to, Allow, or otherwise resolve any General Unsecured Claim.

After the Effective Date, the Plan Administrator and its designees or representatives shall have the right to object to, Allow, or otherwise resolve any Priority Claim.

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

##### 2. Expenses Incurred On or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Plan Administrator and the Liquidating Trustee on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Plan Administrator or the Liquidating Trustee shall be paid in Cash from the Post-Effective Date Debtor Reserve or the Liquidating Trust Assets, as applicable, without any further notice to or action, order, or approval of the Bankruptcy Court.

#### C. *Delivery of Distributions and Undeliverable or Unclaimed Distributions*

##### 1. Record Date for Distribution

On the Distribution Record Date, the Claims Register shall be closed and the Debtors, the Plan Administrator, the Liquidating Trustee, or any other party responsible for making distributions shall instead be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date.

2. Delivery of Distributions in General

(a) Payments and Distributions on Disputed Claims

Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall, in the reasonable discretion of the Plan Administrator or the Liquidating Trustee, as applicable, be deemed to have been made by the Plan Administrator or the Liquidating Trustee, as applicable, on the Effective Date, unless the Plan Administrator or the Liquidating Trustee, as applicable, and the Holder of such Claim agree otherwise.

(b) Special Rules for Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as may be agreed to by, as applicable, the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, on the one hand, and the Holder of a Disputed Claim, on the other hand, no partial payments and no partial distributions shall be made with respect to any Disputed Claim, other than with respect to Professional Claims, until all Disputed Claims held by the Holder of such Disputed Claim have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

(c) Distributions

On and after the Effective Date, the Debtors, the Plan Administrator, and the Liquidating Trustee, as applicable, shall make the distributions required to be made on account of Allowed Claims under the Plan. Distributions on account of Allowed Class 4 Claims shall be deposited with the Term Loan Agent, at which time such distribution shall be deemed complete, and the Term Loan Agent shall deliver such distributions in accordance with the Plan and the terms of the Term Loan Documents. Any distribution that is not made on the Initial Distribution Date or on any other date specified in the Plan because the Claim that would have been entitled to receive that distribution is not an Allowed Claim on such date, shall be held by the Plan Administrator in the Administrative and Priority Claims Reserve or the Liquidating Trustee in the Disputed Claims Reserve, as applicable, and distributed on the next Subsequent Distribution Date that occurs after such Claim is Allowed. In accordance with Article VIII.D hereof, no interest shall accrue or be paid on the unpaid amount of any distribution paid pursuant to the Plan.

3. Minimum; De Minimis Distributions

No Cash payment of less than \$100.00, in the reasonable discretion of the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, shall be made to a Holder of an Allowed Claim on account of such Allowed Claim.

4. Undeliverable Distributions and Unclaimed Property

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

5. Cy Pres

Notwithstanding anything to the contrary in the Plan, if the Liquidating Trustee determines that any Beneficiaries of the Liquidating Trust no longer exist or cannot otherwise be reasonably ascertained, or the



Liquidating Trustee determines that the Liquidating Trust Assets are insufficient to make any further distribution economically justifiable, the Liquidating Trustee may, in its reasonable discretion, distribute the Liquidating Trust Assets that constitute Cash to a charitable organization upon the same terms and conditions provided for in the Plan.

6. Manner of Payment Pursuant to the Plan

Any payment in Cash to be made pursuant to the Plan shall be made at the election of the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, by check or by wire transfer.

*D. Compliance with Tax Requirements/Allocations*

In connection with the Plan, to the extent applicable, the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions pursuant hereto shall be subject to such withholding and reporting requirements. The Plan Administrator or the Liquidating Trustee, as applicable, may request that any Holder of an Allowed Claim provide it with all forms and information required to comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit (the “Required Tax Documents”). In the event that a Holder fails to return Required Tax Documents within six (6) months after a written request by the Plan Administrator or the Liquidating Trustee, as applicable, such Holder, its Claim, and all distributions on account of such Holder’s Claim shall be treated as an undeliverable distributions and unclaimed property in accordance with Article VI.C.4 hereof.

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

*E. Claims Paid or Payable by Third Parties*

1. Claims Paid by Third Parties; Recourse to Collateral

The Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, shall be authorized to reduce in full a Claim, and such Claim shall be disallowed without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor, the Post-Effective Date Debtor, or the Liquidating Trust, as applicable, including on account of recourse to collateral held by third parties that secure such Claim. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the applicable Debtor, to the extent the Holder’s total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

2. Claims Payable by Insurance, Third Parties; Recourse to Collateral

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors’ insurance policies, surety agreements, other non-Debtor payment agreements, or collateral held by a third party, until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy, surety agreement, other non-Debtor payment agreement, or collateral, as applicable. To the extent that one or more of the Debtors’ insurers, sureties, or non-Debtor payors pays or satisfies in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), or such collateral or proceeds from such collateral is used to satisfy such Claim, then immediately upon such payment, the applicable portion of such Claim shall be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

### 3. Applicability of Insurance Policies

Notwithstanding anything to the contrary in the Plan or Confirmation Order, Confirmation and Consummation of the Plan shall not limit or affect the rights of any third-party beneficiary or other covered party of any of the Debtor's insurance policies with respect to such policies, including the D&O Policies.

## ARTICLE VII.

### THE LIQUIDATING TRUST AND THE LIQUIDATING TRUSTEE

#### A. *Liquidating Trust Creation*

On the Effective Date, the Liquidating Trust will be established and become effective for the benefit of the Beneficiaries. The Liquidating Trust Agreement shall (1) be in form and substance consistent in all respects with the Plan and acceptable to the Debtors, and (2) contain customary provisions for trust agreements utilized in comparable circumstances, including any and all provisions necessary to ensure continued treatment of the Liquidating Trust as a grantor trust and the Beneficiaries as the grantors and owners thereof for federal income tax purposes. All relevant parties (including the Debtors, the Liquidating Trustee, and the Beneficiaries) will take all actions necessary to cause title to the Liquidating Trust Assets to be transferred to the Liquidating Trust. The powers, authority, responsibilities, and duties of the Liquidating Trust, the Liquidating Trustee, and the Liquidating Trust Oversight Committee, are set forth in and will be governed by the Liquidating Trust Agreement, the Plan, and the Confirmation Order.

#### B. *Purpose of the Liquidating Trust*

The Liquidating Trust will be established for the primary purpose of liquidating its assets and making distributions to Holders of Allowed General Unsecured Claims in accordance with the Plan, Confirmation Order, and the Liquidating Trust Agreement, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust.

#### C. *Transfer of Assets to the Liquidating Trust*

The Debtors and the Liquidating Trustee will establish the Liquidating Trust on behalf of the Beneficiaries pursuant to the Liquidating Trust Agreement, with the Beneficiaries to be treated as the grantors and deemed owners of the Liquidating Trust Assets. The Debtors will irrevocably transfer, assign, and deliver to the Liquidating Trust, on behalf of the Beneficiaries, all of their rights, title, and interests in the Liquidating Trust Assets notwithstanding any prohibition on assignment under nonbankruptcy law. The Liquidating Trust will accept and hold the Liquidating Trust Assets in the Liquidating Trust for the benefit of the Beneficiaries, subject to the Plan and the Liquidating Trust Agreement.

On the Effective Date, all Liquidating Trust Assets will vest and be deemed to vest in the Liquidating Trust in accordance with section 1141 of the Bankruptcy Code; provided, however, that the Liquidating Trustee, with the consent of the Liquidating Trust Oversight Committee, may abandon or otherwise not accept any Liquidating Trust Assets that the Liquidating Trustee believes, in good faith, have no value to the Liquidating Trust. Any assets the Liquidating Trustee so abandons or otherwise does not accept shall not vest in the Liquidating Trust. As of the Effective Date, all Liquidating Trust Assets vested in the Liquidating Trust shall be free and clear of all Liens, Claims, and Interests, except as otherwise specifically provided in the Plan or in the Confirmation Order. Upon the transfer by the Debtors of the Liquidating Trust Assets to the Liquidating Trust or abandonment of Liquidating Trust Assets by the Liquidating Trustee, the Debtors will have no reversionary or further interest in or with respect to any Liquidating Trust Assets or the Liquidating Trust. Notwithstanding anything herein to the contrary, the Liquidating Trust and the Liquidating Trustee shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

For the avoidance of doubt, and notwithstanding anything herein to the contrary, the Debtors shall not transfer or be deemed to have transferred to the Liquidating Trust any claims or Causes of Action (1) released pursuant to Article IX.D hereof, or (2) exculpated pursuant to Article IX.F hereof.

*D. Tax Treatment of the Liquidating Trust*

For all federal income tax purposes, the Beneficiaries of the Liquidating Trust will be treated as grantors and owners thereof and it is intended that the Liquidating Trust be classified as a Liquidating Trust under 26 C.F.R. § 301.7701-4 and that the Liquidating Trust is owned by the Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Beneficiaries be treated as if they had received a distribution of undivided interests in the Liquidating Trust Assets and then contributed such interests to the Liquidating Trust. Accordingly, the Liquidating Trust will, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions to the Beneficiaries pursuant to the Plan, and not unduly prolong the Liquidating Trust's duration. The Liquidating Trust will not be deemed a successor in interest of the Debtors for any purpose other than as specifically set forth herein or in the Liquidating Trust Agreement. The Liquidating Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Beneficiaries treated as grantors and owners of the trust.

The Liquidating Trust shall file returns for the Liquidating Trust, except with respect to the Disputed Claims Reserve, as a grantor trust pursuant to 26 C.F.R. § 1.671-4(a) and in accordance with this section of the Plan. The Liquidating Trust's taxable income, gain, loss, deduction or credit will be allocated to each Holder in accordance with their relative beneficial interests in the Liquidating Trust.

As soon as possible after the Effective Date, the Liquidating Trust shall make a good faith valuation of the Liquidating Trust Assets, and such valuation shall be used consistently by all parties for all federal income tax purposes. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit for taxing purposes.

The Liquidating Trust shall file all income tax returns with respect to any income attributable to the Disputed Claims Reserve and shall pay the federal, state and local income taxes attributable to the Disputed Claims Reserve, based on the items of income, deduction, credit or loss allocable thereto.

The Liquidating Trust may request an expedited determination of taxes of the Liquidating Trust, including the Disputed Claims Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust.

The Liquidating Trustee shall be responsible for filing all federal, state, local and foreign tax returns for the Liquidating Trust. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements.

*E. The Liquidating Trust Oversight Committee*

On the Effective Date, the Liquidating Trust Oversight Committee shall be formed pursuant to the Liquidating Trust Agreement. The Liquidating Trust Oversight Committee shall be comprised of three members. The Committee shall select two such members and the Term Loan Agent shall have the right to select the other. The members comprising Liquidating Trust Oversight Committee shall be identified at or prior to the Confirmation Hearing.

The Liquidating Trustee shall report all material matters (as described in the Liquidating Trust Agreement) to and seek approval for all material decisions (as described in the Liquidating Trust Agreement) from the Liquidating Trust Oversight Committee.

From and after the Effective Date, settlement by the Liquidating Trust of any General Unsecured Claims and any Liquidating Trust Causes of Action shall require: (1) approval only of the Liquidating Trustee, if the

amount claimed by the Liquidating Trust against a defendant, or Claim asserted by a claimant, is less than \$2.5 million; (2) approval only of the Liquidating Trustee and the Liquidating Trust Oversight Committee, if the amount claimed by the Liquidating Trust against a defendant, or Claim asserted by a claimant, is more than \$2.5 million but less than \$5.0 million; and (3) approval of the Liquidating Trustee, the Liquidating Trust Oversight Committee, and the Bankruptcy Court, if the amount claimed by the Liquidating Trust against a defendant, or Claim asserted by a claimant, exceeds \$5.0 million.

*F. Distribution; Withholding*

The Liquidating Trustee will make, or cause to be made, all distributions under the Plan and the Liquidating Trust Agreement to Holders of Allowed General Unsecured Claims.

The Liquidating Trust may withhold from amounts distributable to any Entity any and all amounts, determined in the Liquidating Trustee's sole discretion, required by the Plan, or applicable law, regulation, rule, ruling, directive, or other governmental requirement.

*G. Insurance*

The Liquidating Trust may maintain customary insurance coverage for the protection of Entities serving as administrators and overseers of the Liquidating Trust on and after the Effective Date.

*H. Disputed Claims Reserve*

The Liquidating Trustee shall maintain, in accordance with the Liquidating Trustee's powers and responsibilities under the Plan and the Liquidating Trust Agreement, a Disputed Claims Reserve. The Liquidating Trustee shall, in its reasonable discretion, distribute such amounts (net of any expenses, including any taxes relating thereto), as provided herein and in the Liquidating Trust Agreement, as Disputed Claims are resolved pursuant to Article VIII hereof, and such amounts may be distributed on account of such Disputed Claims as if such Disputed Claims were Allowed Claims as of the Effective Date.

The Liquidating Trust will pay taxes on the taxable net income or gain allocable to Holders of Disputed Claims on behalf of such Holders. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Liquidating Trust as a result of the resolutions of such Disputed Claims.

*I. Termination of the Liquidating Trust*

The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (1) all Disputed General Unsecured Claims have been resolved, (2) all of the Liquidating Trust Assets have been liquidated, (3) all duties and obligations of the Liquidating Trustee hereunder have been fulfilled, and (4) all distributions required to be made by the Liquidating Trust under the Plan and the Liquidating Trust Agreement have been made, but in no event shall the Liquidating Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion by the Liquidating Trustee within the six-month period prior to the third anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the liquidation, recovery and distribution of the Liquidating Trust Assets.

*J. Transfer of Beneficial Interests*

Notwithstanding anything to the contrary in the Plan, beneficial interests in the Liquidating Trust shall not be transferrable except upon death of the interest holder or by operation of law.

*K. Termination of the Liquidating Trustee*

The duties, responsibilities, and powers of the Liquidating Trustee will terminate in accordance with the terms of the Liquidating Trust Agreement.

*L. Exculpation; Indemnification*

The Liquidating Trustee, the Liquidating Trust, professionals retained by the Liquidating Trust, and representatives of each of the foregoing will be exculpated and indemnified pursuant to the terms of the Liquidating Trust Agreement.

## ARTICLE VIII.

### PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS AND INTERESTS

*A. Resolution of Disputed Claims*

1. Allowance of Claims and Interests

Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Plan Administrator and the Liquidating Trustee, shall have and shall retain any and all rights and defenses that the Debtors had with respect to any Claim or Interest, except with respect to any Claim or Interest deemed Allowed as of the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Cases allowing such Claim.

2. Prosecution of Objections to Claims

Other than with respect to Professional Fee Claims, prior to the Effective Date, the Debtors, and on or after the Effective Date, the Plan Administrator with respect to Priority Claims and the Liquidating Trustee with respect to General Unsecured Claims shall have the authority to File objections to such Claims, and the exclusive authority to settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtors' Estates to any and all such Claims, regardless of whether such Claims are in a Class or otherwise. From and after the Effective Date, the Plan Administrator and the Liquidating Trustee shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises and no further notice to or action, order, or approval of the Bankruptcy Court with respect to such settlements or compromises shall be required.

3. Claims Estimation

On and after the Effective Date, (a) the Plan Administrator, may, at any time, request that the Bankruptcy Court estimate (i) any Disputed Priority Claim pursuant to applicable law and (ii) any contingent or unliquidated Priority Claim pursuant to applicable law, and (b) the Liquidating Trustee, may, at any time, request that the Bankruptcy Court estimate (i) any Disputed General Unsecured Claim pursuant to applicable law and (ii) any contingent or unliquidated General Unsecured Claim pursuant to applicable law, in each case regardless of whether the Debtors, the Plan Administrator, or the Liquidating Trustee have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Bankruptcy Court to estimate

any such Disputed Claim, contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection.

Notwithstanding any provision otherwise in the Plan to the contrary, a Claim that has been expunged from the Claims Register but that is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Disputed Claim, contingent Claim, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under the Plan, including for purposes of distributions, and the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, may elect to pursue additional objections to the ultimate distribution on such Claim. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on account of such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before 21 days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

#### 4. Expungement or Adjustment to Claims Without Objection

Any Claim that has been paid, satisfied, or superseded may be expunged on the Claims Register by, as applicable, the Debtors, the Plan Administrator, or the Liquidating Trustee (or the Notice and Claims Agent at, as applicable, the Debtors', the Plan Administrator's, or the Liquidating Trustee's direction), and any Claim that has been amended may be adjusted thereon by, as applicable, the Debtors, the Plan Administrator, or the Liquidating Trustee without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

#### 5. Deadline to File Objections to Claims or Interests

Any objections to Claims or Interests shall be Filed no later than the Claims Objection Bar Date.

#### *B. Disallowance of Claims*

To the maximum extent provided by section 502(d) of the Bankruptcy Code, all Claims of any Entity from which property is recoverable by the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, under section 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, alleges is a transferee of a transfer that is avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if (1) the Entity, on the one hand, and the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turnover any property or monies under any of the aforementioned sections of the Bankruptcy Code, and (2) such Entity or transferee has failed to turnover such property by the date set forth in such agreement or Final Order.

#### *C. Amendments to Claims*

After the Confirmation Date, a Claim or Interest may not be filed or amended without the authorization of the Bankruptcy Court and any such new or amended Claim or Interest Filed shall be deemed disallowed and expunged without any further notice to or action, order, or approval of the Bankruptcy Court; provided, that such Holder may amend the Claim or Interest Filed solely to decrease, but not to increase, the amount, number, or priority of such Claim or Interest, unless otherwise provided by the Bankruptcy Court.

*D. No Interest*

Unless otherwise specifically provided for in the Plan (including Article III hereof), by applicable law (including, without limitation, section 506(b) of the Bankruptcy Code), or agreed-to by, as applicable, the Debtors or the Liquidating Trustee, interest shall not accrue or be paid on any Claim, and no Holder of any Claim shall be entitled to interest accruing on and after the Petition Date on account of any Claim. Without limiting the foregoing, interest shall not accrue or be paid on any Claim after the Effective Date to the extent the final distribution paid on account of such Claim occurs after the Effective Date.

**ARTICLE IX.**

**SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

*A. Compromise and Settlement of Claims, Interests, and Controversies*

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete settlement, compromise, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default by the Debtors or their Affiliates with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the settlement, compromise, and release of all Claims and Interests, subject to the Effective Date occurring.

*B. Release of Liens*

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised and all rights, titles, and interests of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall revert to the Debtors.

*C. Subordinated Claims*

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

*D. Debtor Release*

ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, EACH DEBTOR ON BEHALF OF ITSELF, ITS ESTATE, AND THE LIQUIDATING TRUST (SUCH THAT THE LIQUIDATING TRUST WILL NOT HOLD ANY CLAIMS OR CAUSES OF ACTION RELEASED PURSUANT TO THIS ARTICLE IX.D), FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, SHALL BE DEEMED TO PROVIDE A FULL RELEASE TO EACH OF THE RELEASED PARTIES (AND EACH SUCH RELEASED PARTY SHALL BE DEEMED RELEASED BY EACH DEBTOR AND ITS ESTATE) AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION AND ANY OTHER CLAIMS, DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, THE PLAN, THE DISCLOSURE STATEMENT, THE SALE TRANSACTION, ANY RESTRUCTURING OF CLAIMS OR INTERESTS UNDERTAKEN PRIOR TO THE PETITION DATE, THE BIDDING AND SALE PROCESS FOR ANY ASSETS OF ANY DEBTOR, OR THESE CHAPTER 11 CASES, INCLUDING THOSE THAT THE DEBTORS OR THE LIQUIDATING TRUST WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTORS OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTORS OR THEIR ESTATES; PROVIDED, HOWEVER, THAT THE FOREGOING “DEBTOR RELEASE” SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CLAIMS OR CAUSES OF ACTION OF ANY DEBTOR OR THEIR RESPECTIVE CHAPTER 11 ESTATES AGAINST A RELEASED PARTY ARISING UNDER (1) ANY CONTRACTUAL OBLIGATION OWED TO THE DEBTORS THAT IS ENTERED INTO OR ASSUMED PURSUANT TO THE PLAN, OR (2) THE PURCHASE AGREEMENT.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT’S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTOR RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT’S FINDING THAT THE DEBTOR RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS’ ESTATES AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE DEBTORS’ ESTATES ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE DEBTOR RELEASE.

*E. Third Party Release*

ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, THE RELEASING PARTIES SHALL BE DEEMED TO PROVIDE A FULL RELEASE TO THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION AND ANY OTHER CLAIMS, DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, THE PLAN, THE DISCLOSURE STATEMENT, THE SALE TRANSACTION, ANY RESTRUCTURING OF CLAIMS OR INTERESTS UNDERTAKEN PRIOR TO THE PETITION DATE, THE BIDDING AND SALE PROCESS FOR



ANY ASSETS OF ANY DEBTOR, OR THESE CHAPTER 11 CASES, INCLUDING THOSE THAT THE DEBTORS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTORS OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTORS OR THEIR ESTATES, PROVIDED, HOWEVER, THAT THE FOREGOING “THIRD PARTY RELEASE” SHALL NOT AFFECT ANY PROOFS OF CLAIM FILED AGAINST THE DEBTORS OR CLAIMS OR CAUSES OF ACTION PENDING AGAINST A RELEASED PARTY IN A COMPLAINT OR PLEADING FILED AS OF THE PETITION DATE IN A COURT OR ARBITRATION PANEL OF COMPETENT JURISDICTION; PROVIDED, FURTHER, HOWEVER, THAT THE THIRD PARTY RELEASE SHALL PRECLUDE A RELEASING PARTY FROM AMENDING OR MODIFYING SUCH COMPLAINT OR PLEADING TO ASSERT CLAIMS OR CAUSES OF ACTION AGAINST A RELEASED PARTY THAT WAS NOT OTHERWISE A PARTY TO SUCH PROCEEDING AS OF THE PETITION DATE. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE THIRD PARTY RELEASE SHALL NOT (1) OPERATE TO RELEASE ANY CLAIMS OR CAUSES OF ACTION HELD DIRECTLY (BUT NOT DERIVATIVELY) BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION AGAINST ANY NON-DEBTOR, (2) PRECLUDE THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION FROM ENFORCING ITS REGULATORY OR POLICE POWERS, OR (3) RELEASE ANY OBLIGATIONS UNDER THE PLAN ARISING ON OR AFTER THE EFFECTIVE DATE OF ANY PARTY.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT’S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT’S FINDING THAT THE THIRD PARTY RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE THIRD PARTY RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM RELEASED PURSUANT TO THE THIRD PARTY RELEASE.

*F. Exculpation*

The Exculpated Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with the Chapter 11 Cases, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, or implementing the Plan or consummating the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring or liquidation of the Debtors; provided, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement. Without limiting the foregoing “Exculpation” provided under this Article IX.F, the rights of any Holder of a Claim or Interest to enforce rights arising under the Plan shall be preserved, including the right to compel payment of distributions in accordance with the Plan.

*G. Injunction*

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS, INTERESTS, CAUSES OF ACTION, OR LIABILITIES THAT: (1) ARE SUBJECT TO COMPROMISE AND SETTLEMENT PURSUANT TO THE TERMS OF THE PLAN; (2) HAVE BEEN RELEASED PURSUANT TO ARTICLE IX.D HEREOF; (3) HAVE BEEN RELEASED PURSUANT TO ARTICLE IX.E HEREOF; (4) ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE IX.F HEREOF; OR (5) ARE OTHERWISE STAYED OR TERMINATED PURSUANT TO THE TERMS OF THE PLAN, ARE PERMANENTLY ENJOINED AND PRECLUDED, FROM AND AFTER THE EFFECTIVE DATE, FROM: (A) COMMENCING OR CONTINUING IN ANY MANNER

ANY ACTION OR OTHER PROCEEDING OF ANY KIND, INCLUDING ON ACCOUNT OF ANY CLAIMS, INTERESTS, CAUSES OF ACTIONS, OR LIABILITIES THAT HAVE BEEN COMPROMISED OR SETTLED AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF ANY ENTITY, DIRECTLY OR INDIRECTLY, SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN, CLAIM, OR ENCUMBRANCE OF ANY KIND AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (D) ASSERTING ANY RIGHT OF SETOFF OR SUBROGATION OF ANY KIND AGAINST ANY OBLIGATION DUE FROM THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES UNLESS SUCH ENTITY HAS TIMELY ASSERTED SUCH SETOFF OR SUBROGATION RIGHT PRIOR TO CONFIRMATION IN A DOCUMENT FILED WITH THE BANKRUPTCY COURT EXPLICITLY PRESERVING SUCH SETOFF OR SUBROGATION; AND (E) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE DEBTORS, THE LIQUIDATING TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES RELEASED, SETTLED, OR COMPROMISED PURSUANT TO THE PLAN; PROVIDED, THAT NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE AN ENTITY FROM OBTAINING BENEFITS DIRECTLY AND EXPRESSLY PROVIDED TO SUCH ENTITY PURSUANT TO THE TERMS OF THE PLAN; PROVIDED, FURTHER, THAT NOTHING CONTAINED IN THE PLAN SHALL BE CONSTRUED TO PREVENT ANY ENTITY FROM DEFENDING AGAINST CLAIMS OBJECTIONS OR COLLECTION ACTIONS WHETHER BY ASSERTING A RIGHT OF SETOFF OR OTHERWISE TO THE EXTENT PERMITTED BY LAW.

*H. Waiver of Statutory Limitations on Releases*

EACH RELEASING PARTY IN EACH OF THE RELEASES CONTAINED IN THE PLAN (INCLUDING UNDER THIS ARTICLE IX OF THE PLAN) EXPRESSLY ACKNOWLEDGES THAT ALTHOUGH ORDINARILY A GENERAL RELEASE MAY NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE PARTY RELEASED, THEY HAVE CAREFULLY CONSIDERED AND TAKEN INTO ACCOUNT IN DETERMINING TO ENTER INTO THE ABOVE RELEASES THE POSSIBLE EXISTENCE OF SUCH UNKNOWN LOSSES OR CLAIMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH RELEASING PARTY EXPRESSLY WAIVES ANY AND ALL RIGHTS CONFERRED UPON IT BY ANY STATUTE OR RULE OF LAW WHICH PROVIDES THAT A RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CLAIMANT DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE RELEASED PARTY, INCLUDING THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542. THE RELEASES CONTAINED IN ARTICLE IX OF THE PLAN ARE EFFECTIVE REGARDLESS OF WHETHER THOSE RELEASED MATTERS ARE PRESENTLY KNOWN, UNKNOWN, SUSPECTED OR UNSUSPECTED, FORESEEN OR UNFORESEEN.

*I. Setoffs*

Except as otherwise provided in the Plan, prior to the Effective Date, the Debtors, and on and after the Effective Date, the Plan Administrator or the Liquidating Trustee, as applicable, pursuant to the Bankruptcy Code (including sections 553 and 558 of the Bankruptcy Code), applicable nonbankruptcy law, or as may be agreed to by the Holder of a Claim or Interest, may set off against any Allowed Claim or Interest on account of any Proof of Claim or proof of Interest or other pleading Filed with respect thereto prior to the Confirmation Hearing and the distributions to be made pursuant to the Plan on account of such Allowed Claim or Interest (before any distribution is made on account of such Allowed Claim or Interest), any claims, rights, and Causes of Action of any nature that the Debtors' Estates may hold against the Holder of such Allowed Claim or Interest, to the extent such claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided, that neither the failure to effect such a setoff nor the allowance of any Claim or Interest pursuant to the Plan shall constitute a waiver or release by the Debtors, the Plan Administrator, or the Liquidating Trustee, as applicable, of any such claims, rights, and Causes of Action that the Debtors' Estates may possess against such Holder. In no event shall any Holder of Claims or Interests be entitled to set off any Claim or Interest against any claim, right, or Cause of Action of the Debtors' Estates unless such Holder has timely Filed a Proof of Claim with the Bankruptcy Court expressly preserving such setoff; provided, that nothing in the Plan shall prejudice or be deemed to have prejudiced the Debtors', the Plan Administrator's, or the Liquidating Trustee's right to assert that any Holder's setoff rights were required to have been asserted by motion or pleading filed with the Bankruptcy Court prior to the Effective Date.

**ARTICLE X.**

**SUBSTANTIAL CONSUMMATION OF THE PLAN**

*A. Conditions Precedent to Consummation of the Plan*

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

1. the Bankruptcy Court shall have entered the Confirmation Order in form and substance materially consistent with the Plan in all respects;
2. the Plan Administrator shall have been appointed;
3. the Liquidating Trustee shall have been appointed and the Liquidating Trust Agreement shall have been executed and become effective;
4. the Sale Transaction shall have closed;
5. all documents and agreements necessary to implement the Plan and the consummation of the Sale Transaction shall have (a) been tendered for delivery and (b) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements;
6. the Administrative and Priority Claims Reserve shall have been established and funded;
7. the Professional Fee Escrow shall have been established and funded; and
8. the Post-Effective Date Debtor Distribution shall have occurred.

*B. Waiver of Conditions*

The conditions to Confirmation of the Plan and Consummation of the Plan set forth in this Article X may be waived by the Debtors.

*C. Effect of Non-Occurrence of Conditions to the Effective Date*

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against or Interests in the Debtors; (2) prejudice in any manner the rights of the Debtors, the Debtors' Estates, any Holders, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, the Debtors' Estates, any Holders, or any other Entity in any respect.

**ARTICLE XI.**

**MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

*A. Modification and Amendments*

Subject to the limitations contained in the Plan, the Debtors reserve the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their rights to alter, amend, or modify materially the Plan with respect to the Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XI hereof.

*B. Effect of Confirmation on Modifications*

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

*C. Revocation or Withdrawal of the Plan*

The Debtors reserve the right to revoke or withdraw the Plan, including the right to revoke or withdraw the Plan for any Debtor or all Debtors, prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan with respect to any Debtor, or if Confirmation or Consummation does not occur with respect to any Debtor, then: (1) the Plan with respect to such Debtor shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan with respect to such Debtor (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan with respect to such Debtor, and any document or agreement executed pursuant to the Plan with respect to such Debtor, shall be deemed null and void; and (3) nothing contained in the Plan with respect to such Debtor shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtors, the Debtors' Estates, or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors, the Debtors' Estates, or any other Entity.

**ARTICLE XII.**

**RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any

Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to: (a) the assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Costs pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Debtors or Liquidating Trustee amending, modifying, or supplementing, after the Effective Date, pursuant to Article V hereof, any Executory Contracts or Unexpired Leases set forth on the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. adjudicate, decide, or resolve any and all matters related to Causes of Action;

7. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

8. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

9. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

10. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

11. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article IX hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

12. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI.E.1 hereof;

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

14. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

15. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

16. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

17. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

18. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

19. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

20. hear and determine all disputes involving the existence, nature, or scope of the Debtors' release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

21. enforce all orders previously entered by the Bankruptcy Court;

22. hear any other matter not inconsistent with the Bankruptcy Code;

23. enter an order concluding or closing the Chapter 11 Cases; and

24. enforce the injunction, release, and exculpation provisions set forth in Article IX hereof.

### **ARTICLE XIII.**

#### **MISCELLANEOUS PROVISIONS**

##### ***A. Immediate Binding Effect***

Subject to the terms hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors, the Debtors' Estates, the Liquidating Trustee, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

##### ***B. Additional Documents***

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all

other parties in interest shall, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

*C. Dissolution of Committee*

On the Effective Date, the Committee shall dissolve and members thereof shall be compromised, settled, and released from all rights and duties from or related to the Chapter 11 Cases, except the Committee will remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims. The Debtors and the Liquidating Trustee shall have no obligation to pay any fees or expenses incurred after the Effective Date by the Committee Members.

*D. Reservation of Rights*

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtors or any Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors or any Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

*E. Successors and Assigns*

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

*F. Service of Documents*

Any pleading, notice, or other document required by the Plan to be served on or delivered to the following entities and shall be served via first class mail, overnight delivery, or messenger on.

If to the Debtors, to:

Source Home Entertainment, LLC  
c/o FTI Consulting  
27500 Riverview Center Boulevard  
Suite 400  
Bonita Springs, Florida 34134  
Attn: Stephen Dubé

with copies to:

Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Attn.: David L. Eaton, Michael W. Weitz, and Ben Winger

Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington Delaware 19801  
Attn: Robert S. Brady, Pauline K. Morgan, and Edmon L. Morton

If to the Plan Administrator, to:

[\_\_\_\_\_]

with copies to:

[\_\_\_\_\_]

If to the Liquidating Trustee, to:

[\_\_\_\_\_]

with copies to:

[\_\_\_\_\_]

*G. Term of Injunctions or Stays*

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

*H. Entire Agreement*

Except as otherwise indicated, the Plan, the Confirmation Order, and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

*I. Nonseverability of Plan Provisions*

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors; and (3) nonseverable and mutually dependent.

*J. Waiver or Estoppel*

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court before the Confirmation Date.

*[Signature Page Follows]*



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

SOURCE HOME ENTERTAINMENT, LLC  
on behalf of itself and all other Debtors

By:

Name: Stephen Dubé

Title: Chief Restructuring Officer