

# **Report of ABI Task Force on Plan Confirmation: Recommendations for Sale Cases**

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**Report of ABI Task Force on Plan Confirmation: Recommendations for Sale Cases**

**Introduction**

In February 2014, past ABI President Patricia Redmond formed a task force (the “**Task Force**”)<sup>1</sup> to determine whether the frequency of structured dismissals that commonly follow the sale of a debtor’s assets could be reduced.

A “structured dismissal” dismisses a debtor’s chapter 11 case but also approves ancillary relief. For example and as recognized in the *ABI Commission to Study the Reform of Chapter 11* (ABI, 2014) (the “**ABI Commission Report**”), cases that are structurally dismissed include some or all of the following features:

- Substantially all of the debtor’s assets have been sold pursuant to section 363 of the Bankruptcy Code.
- The debtor’s estate is essentially reduced to cash to be distributed.
- The secured creditors are undersecured and there are insufficient funds to pay the administrative claims associated with the case.
- A detailed settlement agreement that disposes of significant issues in the case has been approved by the court and may have been consummated.
- As a result of the settlement agreement, the proceeds of the sale of the debtor are transferred to the undersecured lender.
- There is an alternative claims-allowance process.
- There are third-party releases provisions.
- A portion of the sale proceeds have been carved out to create a “gift” trust to benefit lower priority creditors, proceeds to which they would likely not be entitled in a chapter 11 plan.

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<sup>1</sup> The members of the Task Force are: Hon. Kevin J. Carey (Bankr. D. Del.), William Harrington (Office of the U.S. Trustee, Region 2; New York), Hon. Barbara J. Houser (Bankr. N.D. Tex.), Jeffrey Kelley (Troutman Sanders LLP; Atlanta), John W. Lucas (Pachulski Stang Ziehl & Jones LLP; San Francisco) (Chairperson), ABI Vice President-Education Jeffrey N. Pomerantz (Pachulski Stang Ziehl & Jones LLP; Los Angeles), and Past ABI President, Patricia Redmond (Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.).

- The court retains jurisdiction over the case after dismissal and all prior court orders survive the dismissal.

ABI Commission Report at 270.

As with the ABI Commission, the focus of the Task Force was not to consider whether and to what extent the Bankruptcy Code should be amended to address the increase of structured dismissals and the relief that tests the limitations under sections 105, 363, and 1112. Instead, the Task Force considered whether structured dismissals could be reduced through effective case management and debtors and professionals having at their disposal streamlined, court-endorsed plan-confirmation pleadings.

By using these pleadings and efficiently managing the case from the outset, a debtor and its professionals could minimize the time and expense required to (a) draft and negotiate plan confirmation pleadings, (b) obtain approval of a disclosures statement, (c) solicit votes, (d) prosecute confirmation of the plan, and (e) make distributions of available assets to the holders of allowed claims in accordance with the provisions of the Bankruptcy Code.

To this end, the Task Force prepared form pleadings that include:

- Motion for interim approval of disclosure statement and solicitation procedures (the “*Solicitation Motion*”);
- Form ballot (“*Ballot*”);
- Form confirmation hearing notice (“*Confirmation Notice*”);
- Form combined plan and disclosure statement (“*Combined Plan and Disclosure Statement*”); and
- Form confirmation order (the “Confirmation Order” and together with the Solicitation Motion, Ballot, Confirmation Notice and Combined Plan and Disclosure Statement, the “*Form Pleadings*”).<sup>2</sup>

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<sup>2</sup> The Solicitation Motion, Ballot, Confirmation Notice are annexed to the electronic version of this memorandum as Exhibit A, Exhibit B, and Exhibit C, respectively. The Combined Plan and Disclosure Statement is annexed hereto as Exhibit D. The Confirmation Order is annexed hereto as Exhibit E.

The Form Pleadings were drafted to help ensure that a debtor and its professionals utilize pleadings that include the necessary components required to seek confirmation of a plan without having to reinvent the process, which can be time consuming and disputed among parties-in-interest resulting in unnecessary cost that could prevent a debtor from having a realistic chance of resolving its case through a confirmed plan.

In this Memorandum, the Task Force will discuss (a) bright-line impediments to plan confirmation (*i.e.*, insufficient funds to pay administrative expense and unsecured priority claims), (b) early case management, (c) electronic noticing, (d) conditional or interim approval of disclosure statement, (e) electronic solicitation, (f) the plan and confirmation [OTHERS]

The Task Force believes that if the Form Pleadings are used by debtors and professionals in thinly funding chapter 11 cases, following the proposed guidelines discussed herein (*i.e.*, the cases are efficiently and effectively managements from the outset), the prospects of confirming a plan (as opposed to dismissal or conversion) will be increased and as a result the disputes that arise when a debtor seeks to structurally dismiss its case seeking relief without affording creditors all of the protections under the Bankruptcy Code will be avoided.

### **Administrative Expense Claims**

Absent consent from each holder, pursuant section 1129(a)(9) of the Bankruptcy Code a chapter 11 plan cannot be confirmed without the payment of all allowed administrative expense claims and general unsecured priority claims. In each case, these claims must be either paid in full on the effective date of the plan or by making regular payment installments after the effective date, as applicable. The Task Force recognizes that even the most streamlined and uncontroversial confirmation pleadings in an efficiently administered case cannot overcome a debtor's lack of cash to pay these claims. As a result, the Task Force assumed that the Form

Pleadings and proposed guidelines discussed herein would only apply to cases having sufficient funds to satisfy such claims.

There is nothing preventing a debtor with an administratively insolvent estate from utilizing the Form Pleadings and proposed guidelines, but in such cases with a large creditor constituency the cost resulting from obtaining the consent of all effected claim holders would likely impose impractical burdens and increase the cost of case administration.

**Prepetition and Postpetition Management of the Estate, Claims, and Claims Bar Date**

As noted in the Introduction, it appears that fewer and fewer companies utilize the chapter 11 process to reorganize or liquidate pursuant to section 1129 of the Bankruptcy Code. Instead, it is more common for a debtor to effectuate its restructuring through a sale pursuant to section 363 of the Bankruptcy Code. However, at the outset a case, it is not difficult to identify when a chapter 11 case will be “sale case” versus a plan confirmation case. In the former context, on the first day of the case the debtor typically files sale procedures and sale motions and seeks approval of a financing package that is tailored to fund the case through a closing of the sale with very little left over to administer any remaining assets, resolve claims, or effectuate distributions. On or shortly after the petition date, the debtor will request approval of bidding procedures, interim approval to incur debt and/or use cash collateral, and approval of the operational and administrative motions that we are accustomed to see in most cases.

The Task Force believes that bankruptcy courts should encourage debtors to immediately take the actions designed to efficiently administer the case or even condition relief so that debtor’s sole focus is not a sale but also with an eye toward resolving the case through a plan. Once a debtor’s financing package is finalized and sale procedures are in place, the debtor often times has very little flexibility to administer the case in a manner that does not culminate in a

sale. As a result, the Task Force determined there are many things a debtor and its professionals can do to efficiently administer the case and avoid claims that tend to prevent confirmation.

### Prepetition Management of Operations

Even before a debtor's case is filed, the debtor and its professionals can begin managing the debtor's prepetition operations in a manner that will help it avoid some of the strains that prevent a debtor from resolving its case through plan confirmation. For example, the fabrication of a debtor's inventory often requires goods from third parties or may simply involve the resale of those goods. As we know, goods received by the debtor during the twenty (20) days prior to the petition date are afforded administrative priority status by section 503(b)(9) of the Bankruptcy Code even though transaction occurs during the prepetition period. Claims arising under section 503(b)(9) of the Bankruptcy Code can be staggering. As an example, in the chapter 11 cases of Circuit City, the debtors' 503(b)(9) claims were approximately \$350 million, and for a company with little cash and struggling to survive in the worst economy in decades, liquidation (as opposed to reorganization) was all but certain.<sup>3</sup>

The absence of claims arising under section 503(b)(9) of the Bankruptcy Code shifts the need to use working or borrowed capital from the payment of these claims to areas of the company's operation that will enhance its chances of reorganizing. Accordingly, companies that can legitimately manage their purchase of goods can reduce these claims avoid the consequences of administrative expense claims.

### Postpetition Management of Claims

Once a chapter 11 case is filed that is slated for a fast-paced sale, very little if any effort is typically placed on effective claims management. While it is customary for debtor's counsel to

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<sup>3</sup> See Testimony of Richard M. Pachulski before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee, 111<sup>th</sup> Congress, 1<sup>st</sup> Session, March 3, 2009, pp.8-13.

draft, file, and seek approval of a motion setting general claim bar dates, this is not relief that is generally sought on the “first day” of the case. When it comes to confirming a plan, managing claims can be as important as effectuating the core part of the debtor’s restructuring. This means that a debtor and its professionals should ask the bankruptcy court to set a bar date early (the “*Claims Bar Date*”).

Often expense is incurred by a debtor by having its professionals draft and file a motion that seeks the bankruptcy court’s approval of a bar date notice and order that is tailored to include and exclude different types of claims. Instead of incurring the expense of drafting a bar date motion, bankruptcy courts should adopt local rules or encourage debtors and their professionals to seek early entry of an order that establishes a Claims Bar Date, which would include claims arising under section 503(b)(9) of the Bankruptcy Code.

Bankruptcy courts could formally require the setting of a Claims Bar Date by amending the local rules so that relief sought by sale and bidding motion motions is conditioned on the contemporaneous entry of a Claims Bar Date. If the Claims Bar Date is set early and in connection with the debtor’s bidding and sale procedures, the notice of the Claims Bar Date can be included along with the sale notice that must be sent to the same creditor body of the debtor. As a result, the debtor will avoid the unnecessary expense of sending the notice of the Claims Bar Date under a separate mailing.

If the creditor body is large, printing and postage can be quite expensive and consume the limited assets available to the debtor’s estate (*i.e.*, funds that could be better used to prosecute and supply the consideration for a plan). It is more practical and efficient to combine the Claim Bar Date information along with the notice of commencement since this information is required to be served on the same body of creditors. In addition, these notices could be included along



with notice of sale hearing, which also has to be served on the same creditor body. In short, the debtor and its professionals should look to combine and serve as many documents as possible together in an effort to minimize the cost associated with mass mailings.

By having an early Claim Bar Date, a debtor will be able to assess at an earlier time whether it will have any issues that will impose obstacles to confirmation of a plan (*e.g.*, numerous 503(b)(9) claims that must be paid on the effective date) and also avoid unnecessary expenses by combining mailings to the same creditors.

### **Electronic Notice**

All bankruptcy court dockets are administered by the Case Management/Electronic Case Filing (“*ECF*”) system. Upon the filing of a document, pleading, or a notice of appearance by way of ECF, a party will receive automatic e-mail notification of all filings on the docket of a debtor’s case. As a result of such filings, the bankruptcy court’s local rules should deem such party to have consented to service for all subsequent filings by the debtor (or any other party for that matter) by way of ECF. By having the rule in place, the number of mailings a debtor is required to serve and the resulting administrative expenses will be reduced.

A debtor should be permitted to use e-mail or other reliable electronic communications to serve notices so long as the debtor believes that the electronic transmission is reasonably calculated to reach those who need to be informed at the issue at hand. If the debtor chooses to serve some or all parties by electronically, it must also take the risk that failure to adequately notify parties will not result in binding such parties to the Claims Bar Date.

Accordingly, electronic notice by way of ECF or other reliable electronic means will be emphasized herein as a way of reducing unnecessary costs of administering chapter 11 cases without adversely affecting the rights of parties in interest. To the extent a bankruptcy court does

not employ general case management procedures, the Task Force believes that a motion by a debtor seeking approval of case management procedures will help avoid unnecessary expenses by the (a) scheduling of omnibus hearings, (b) limiting notice to affected parties or those that request service, and (c) permitting service of documents by way ECF or other reliable electronic means as discussed above.

**Conditional Approval of Disclosure Statement**

By suggesting the use of a Combined Plan and Disclosure Statement, the Task Force was trying to avoid the cost associated with drafting and negotiating the form and terms of multiple documents. In addition, if the confirmation related documents are combined, it was also the intention of the Task Force to combine the disclosure statement and plan confirmation hearings in an effort to further reduce the time and expenses necessary to complete the confirmation process. As reflected in the Form Pleadings, they were drafted with various place-holders to help ensure they include the necessary information and components of a disclosure statement and plan.

The judicial members of the Task Force believe that even disclosure statements drafted by the most experienced chapter 11 counsel still in many instances require revisions and other clarifications before they contain adequate information as required by section 1125(b) of the Bankruptcy Code. In thinly funded cases or cases with only enough cash to solicit once, the Task Force concluded that it would be too risky to permit a debtor to solicit acceptances with only conditional approval and no formal hearing. As a result, the Task Force concluded that a hearing on approval of the disclosure statement (or at least a telephonic hearing for those cases where there is not substantial creditor involvement) is the better practice so that the bankruptcy court may address potential issues with the Combine Plan and Disclosure Statement.

Any such disclosure statement hearing should not be utilized by the debtor or other parties in interest as a forum to discuss confirmation related issues, unless, of course, the Combined Plan and Disclosure Statement is fatally flawed. Instead, the bankruptcy court will expect that the debtor and relevant constituencies to have agreed upon all or substantially of the terms of the Combined Plan and Disclosure Statement, which should not be complicated in the liquidation context. In the end, the hearing should be used to clean-up the Combined Plan and Disclosure Statement, which should be straight forward if the debtor and its professionals use the Form Pleadings.

If the debtor and its professionals adopt the Form Pleadings (and the relevant parties are in agreement prior to seeking approval), the Task Force believes that having an interim disclosure statement hearing will not be time consuming or add unnecessary costs that prevent plan confirmation. Instead, the hearing will ensure that the debtor does not waste its already limited resources by soliciting acceptances of the Combined Plan and Disclosure Statement containing fatal infirmities that prevent a bankruptcy court from approving confirmation.

To this end, as with the Combined Plan and Disclosure Statement, and debtor's confirmation related pleadings should be drafted as follows and contain the following informational provisions to help ensure that it contain adequate information.

- **Defined Terms.** Key terms should not be defined in the body of the document. Instead, all key/defined terms should be listed in a glossary section in either the front or back of the document. These documents often contain richly defined terms that convey the terms of distributions under the plan and any prerequisites that a debtor must achieve before making distributions. Creditors without counsel should not be required to hunt through the document trying to locate the definition. Instead, all defined terms should be easy to locate in a section of the document that is listed in the table of contents.
- **Treatment of Claims.** The disclosure portion of the document should include a chart the clearly describes each class of claims or interests, the total amount of

claims/interests, the treatment or consideration to be paid to the holders of allowed claims/interests, and the percentage recovery of allowed claims/interests.

- **Voting Procedures**. The table of contents should clearly identify the location of the voting procedures. In the body of the document, the disclosure statement should include **bold/underscored** text that states the creditor must read this section and follow the procedures to ensure that the ballot is cast properly and timely received. In addition, the voting instructions should be simple and straight forward so that a creditor can complete the ballot without advice of counsel.
- **Confirmation Notice**<sup>0</sup>. The notice of the confirmation hearing should be no more than one or two pages. It should contain nothing more than dates and time of the applicable deadlines, hearing date, time, and location, and describe where the recipient can obtain copies of the relevant confirmation documents.

#### **Electronic Notice / Solicitation and Submission of Ballots**

In cases where the debtor's creditor body is in the thousands, service of the Confirmation Notice, Ballots, and the Combined Plan and Disclosure Statement can be expensive. For example, the Task Force's suggested Combined Plan and Disclosure Statement is approximately fifty pages in length. If a debtor is required to serve the entire creditor body with a hardcopy, the duplication and postage costs alone could unnecessarily consume a debtor's available cash and prevent confirmation. Consequently, a debtor's solicitation motion should request authority to serve only the Confirmation Notice to all creditors. As noted above, the Confirmation Notice should not exceed two pages. The information on the Confirmation Notice should include the following:

- Identification of the Combined Plan and Disclosure Statement.
- Identification of the conditional/interim disclosure statement approval order.
- The date, time, and location of the confirmation hearing.
- The deadline and location to file responses to the Combined Plan and Disclosure Statement.

- The deadline and location to submit Ballots and a cross-reference to the relevant provision in the Combined Plan and Disclosure Statement that identifies the voting procedures.
- A simple and plain statement that failure to follow instructions could result in approval of the Combined Plan and Disclosure Statement, which could adversely affect the rights and claims.
- A simple and plain statement describing where the party can obtain copies of the confirmation related documents, which could include a website, e-mail address, or telephone number.

The Task Force believes that by minimizing the volume of paper sent to creditors and other parties in interest, a debtor will be able to avoid the unnecessary administrative expenses associated with duplication and postage. Instead, a debtor's precious and available cash can be utilized to prosecute the Combined Plan and Disclosure Statement and make distributions to the holders of allowed claims.

The Task Force believes that that in addition to the Confirmation Notice, a debtor and its professionals should mail a ballot to creditors that are entitled to vote. Ballots are generally customized for each voting creditor by having the creditor's name and amount of claim. If voting-creditors are required to complete a blank Ballot, it is unlikely they will return Ballots containing correct information. For example, creditors do not always know the amount of their claim. As a result, if a creditor submits a ballot with incorrect claim information, the tabulation process could be rendered invalid and prevent a debtor from showing whether the plan has been accepted or rejected for confirmation purposes. While sending individual Ballots to each voting

creditor will increase costs, the Task Force concluded that a debtor in this context has too much to risk by leaving it to creditors to populate the form Ballot.

To address these costs, electronic balloting should be used by a debtor to reduce unnecessary administrative expenses with postage and duplication. However, in a case where the voting-creditor body is large, a debtor and its balloting agent will likely require a sophisticated distribution, collection, and tabulation system that could be expensive to implement and maintain.

In the end, the use of electronic solicitation could be a luxury that is generally available to debtors that have large creditor bodies and the financial wherewithal to employ claims and noticing agents. As a result, the use of electronic distribution and submission of ballots should be utilized as the facts permit.

### **Contents of the Plan**

The Combined Plan and Disclosure Statement is intended to effectuate a simple and straight-forward liquidation of a debtor's assets and distribution of the proceeds resulting from the sale or other liquidation. Unless a debtor and its relevant creditor constituencies are in agreement, the Combined Plan and Disclosure Statement should not include any extraordinary provisions. For example, the release provision in the Combined Plan and Disclosure Statement relates only to the debtor. Third party releases are not included as part of the Combined Plan and Disclosure Statement because they generally require additional consideration that is not always present in cases that are thinly funded. The Task Force believes that the inclusion of third-party releases will only make the confirmation process more complicated, expensive, and more difficult for the debtor to achieve.

Further, with respect to the exculpation provision, a debtor and its professionals should only include the debtor, the creditors' committee, and the related estate professionals that actively contributed to and participated in the formulation and prosecution of the Combined Plan and Disclosure Statement. If a debtor attempts to include prepetition lenders or other major constituencies in the case that were not plan proponents or did not actively to the confirmation process, the overbroad relief will prove to be an impediment to approval.

### **Confirmation Hearing**

In cases that are thinly funded, a debtor might not have sufficient cash to absorb the travel related costs of a debtor's principal or senior managers to attend the confirmation hearing. If the approval of the Combined Plan and Disclosure is not contested, bankruptcy courts should consider fashioning a local rule or including a provision in the order approving the disclosure statement that permits a debtor to present its evidence in support of the Combined Plan and Disclosure Statement in the form of a sworn declaration or affidavit.

### **Confirmation Order**

The form of the Confirmation Order should not repeat all of the operative provisions of the Combine Plan and Disclosure Statement. The Confirmation Order should include the factual findings based upon the evidence presented at the hearing necessary for the bankruptcy court to approve the plan. The decretal portion of the Confirmation Order should include short, simple approvals of the necessary components of the confirmation process and the necessary authorizations for the debtor to effectuate or consummate the Combined Plan and Disclosure Statement. For example, the confirmation order should include simple approval provisions for the form of Confirmation Notice, adequacy of information, solicitation, and the form of Ballots.

There should be a short and succinct provision regarding the approval of the assumption/rejection of executory contracts or leases, with a schedule of the contracts and leases. While a debtor and its professionals should strive to have a short and simple confirmation order, certain relief should be fully explained within the confines of the order so that the relevant relief is apparent and unambiguous to contract counterparties or affected parties (*e.g.*, taxing authorities regarding exemption of transfer taxes).



**EXHIBIT A**

**(Solicitation Motion)**

**[INCLUDED IN ELECTRONIC VERSION]**

**EXHIBIT B**

**(Ballot)**

**[INCLUDED IN ELECTRONIC VERSION]**

**EXHIBIT C**

**(Confirmation Notice)**

**[INCLUDED IN ELECTRONIC VERSION]**

**EXHIBIT D**

**(Combined Plan and Disclosure Statement)**

**AMERICAN BANKRUPTCY INSTITUTE**

**UNITED STATES BANKRUPTCY COURT**  
**\_\_\_\_\_ DISTRICT OF \_\_\_\_\_**

In re:

[COMPANY XYZ, INC.]

Debtor.

Chapter 11

Case No. \_\_\_\_-\_\_\_\_ ( )

**DEBTOR'S COMBINED DISCLOSURE STATEMENT**  
**AND CHAPTER 11 PLAN OF LIQUIDATION**

Dated: [CITY], [STATE]

[DATE]

[DEBTOR'S COUNSEL INFO]

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**NOTICE**

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT EXCEPT AS EXPRESSLY INDICATED HEREIN. THIS COMBINED PLAN AND DISCLOSURE STATEMENT WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTOR'S KNOWLEDGE, INFORMATION AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

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

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF.

HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE COMBINED DISCLOSURE STATEMENT AND COMBINED PLAN AND DISCLOSURE STATEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.

I.

INTRODUCTION

[COMPANY NAME], debtor and debtor in possession,<sup>1</sup> hereby propose the Debtor's Combined Plan and Disclosure Statement pursuant to sections 1125 and 1129 of the Bankruptcy Code. The Debtor is the proponent of the Combined Plan and Disclosure Statement within the meaning of section 1129 of the Bankruptcy Code.

The Combined Plan and Disclosure Statement constitutes a liquidating chapter 11 plan for the Debtor. The Combined Plan and Disclosure Statement provides for the Debtor's assets already liquidated or to be liquidated over time and for the proceeds to be distributed to holders of Allowed Claims in accordance with the terms of the Combined Plan and Disclosure Statement and the priority of claims provisions of the Bankruptcy Code. Except as otherwise provided by order of the Bankruptcy Court, distributions will occur on the Effective Date or as soon thereafter as is practicable and at various intervals thereafter. The Debtor will be dissolved as soon as practicable on or after the Effective Date.

Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Article XII of the Combined Plan and Disclosure Statement, the Debtor expressly reserves the right to alter, amend or modify the Combined Plan and Disclosure Statement, one or more times, before its substantial consummation.

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<sup>1</sup> All capitalized terms not defined in this introduction shall have the same meanings set forth in Article I of the Plan.

II.

**DEFINITIONS AND CONSTRUCTION OF TERMS**

**A. Definitions.**

As used herein, the following terms have the respective meanings specified below, unless the context otherwise requires:

1. “**Administrative Expense Bar Date**” means the Business Day that is [#] days after the Effective Date.
2. “**Administrative Expense Claim**” means any right to payment constituting a cost or expense of administration of the Chapter 11 Case under sections 503(b) and 507(a)(2) of the Bankruptcy Code including, without limitation, (a) any actual and necessary costs and expenses of preserving the Estates, (b) all compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code, (c) any fees or charges assessed against the Estates under section 1930 of chapter 123 of Title 28 of the United States Code, and (d) all Claims arising under section 503(b)(9) of the Bankruptcy Code.
3. “**Allowed**” means, with reference to any Claim or Equity Interest, proof of which was timely and properly filed or, if no proof of Claim or Equity Interest was filed, which has been or hereafter is listed by the Debtor in the Schedules, as liquidated in amount and not disputed or contingent and, in each case, as to which: (A) no objection to allowance has been interposed within the applicable period fixed by the Combined Plan and Disclosure Statement, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or (B) an objection has been interposed and such Claim has been allowed, in whole or in part, by a Final Order.

4. “**Bankruptcy Code**” means title 11 of the United States Code, as amended from time to time.
5. “**Bankruptcy Court or Court**” means the United States Bankruptcy Court for the [REGION] District of [STATE], having jurisdiction over the Chapter 11 Case, or if such Court ceases to exercise jurisdiction over the Chapter 11 Case, such court or adjunct thereof that exercises jurisdiction over the Chapter 11 Case in lieu of the United States Bankruptcy Court for the [REGION] District of [STATE].
6. “**Bankruptcy Exceptions**” means the exception to the recognition of COD Income under section 108(a)(1)(A) of the Tax Code when a taxpayer discharging indebtedness is under the jurisdiction of a court in a case under title 11 of the Bankruptcy Code and when the discharge is granted, or is effected pursuant to a plan approved, by a U.S. Bankruptcy Court.
7. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, and any Local Rules of the Bankruptcy Court, as amended from time to time.
8. “**Bar Date**” means [DATE], the date fixed by the Bankruptcy Court pursuant to the Bar Date Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors and Deadlines for Creditors to file proof of an Unsecured Claim in the Chapter 11 Case.
9. “**Business Day**” means any day other than a Saturday, Sunday or any other day on which commercial banks in New York, New York are required or authorized to close by law or executive order.

10. **“Cash”** means legal tender of the United States of America and equivalents thereof.
11. **“Causes of Action”** means all Claims and causes of action now owned or hereafter acquired by the Debtor, whether arising under the Bankruptcy Code or other federal or state law, including, without limitation, any causes of action arising under Article 5 of the Bankruptcy Code.
12. **“Chapter 11 Case”** means the case under chapter 11 of the Bankruptcy Code commenced by the Debtor, styled as [NAME], under Case No. [#] (\_\_\_\_), currently pending in the Bankruptcy Court.
13. **“Claim”** shall have the meaning set forth in section 101(5) of the Bankruptcy Code.
14. **“Claims and Balloting Agent”** means [NAME].
15. **“Claims Objection Deadline”** means one hundred and eighty (180) days after the Effective Date or such later date as may be approved by the Bankruptcy Court.
16. **“Class”** means any group of substantially similar Claims or Equity Interests classified by the Combined Plan and Disclosure Statement pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.
17. **“Clerk”** means the clerk of the Bankruptcy Court.
18. **“Charity”** means any non-profit organization whose primary purpose is the pursuit of philanthropic endeavors that is jointly selected by the Debtor and Committee.
19. **“COD”** means cancellation of indebtedness.



20. **“Combined Plan and Disclosure Statement”** means this combined disclosure statement and Chapter 11 plan of liquidation including, without limitation, all exhibits, supplements, appendices and schedules hereto, either in their present form or as the same may be altered, amended or modified from time to time through the Confirmation Date.
21. **“Committee”** means the Official Committee of Unsecured Creditors appointed by the Office of the United States Trustee.
22. **“Confirmation Date”** means the date on which the Confirmation Order is entered on the Docket.
23. **“Confirmation Hearing”** means the hearing held by the Bankruptcy Court to consider (i) approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to section 1125 of the Bankruptcy Code and (ii) confirmation of the Combined Plan and Disclosure Statement pursuant to section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.
24. **“Confirmation Order”** means the order of the Bankruptcy Court confirming the Combined Plan and Disclosure Statement pursuant to section 1129 of the Bankruptcy Code.
25. **“Creditor”** means any Person that is the Holder of a Claim against the Debtor.
26. **“Debtor”** means [COMPANY NAME].
27. **“Debtor-in-Possession”** means the Debtor in its capacity as debtor-in-possession in the Chapter 11 Case pursuant to sections 1101, 1107(a) and 1108 of the Bankruptcy Code.
28. **“DIP Collateral”** shall mean the collateral securing the liens pursuant of the DIP Lender to the DIP Credit Agreement.

29. **“DIP Credit Agreement”** means that Financing Agreement dated as of [DATE] by and between DIP Lender and the Debtor, as the same may be further amended, modified, ratified, extended, renewed, restated or replaced.
30. **“DIP Credit Agreement Claim”** means any Claim arising under or related to the DIP Credit Agreement.
31. **“DIP Financing”** means the financing facility provided to the Debtor pursuant to the terms of the DIP Credit Agreement and the DIP Financing Order.
32. **“DIP Lender”** means [NAME].
33. **“DIP Financing Order”** means the Court’s *Final Order (1) Authorizing Debtor to Obtain Postpetition Secured Financing, (2) Authorizing the Use of Cash Collateral, (3) Granting Liens and Superpriority Claim, and (4) Modifying the Automatic Stay* [Docket No. \_\_\_\_] entered [DATE].
34. **“DIP Financing Proceeds”** means the proceeds loaned to the Debtor pursuant to the DIP Credit Agreement.
35. **“Disputed”** means any Claim that is listed on the Schedules as disputed, contingent or unliquidated, or which is objected to in whole or in part in accordance with Article VI of the Combined Plan and Disclosure Statement, or otherwise.
36. **“Distribution”** means any distribution to the Holders of Allowed Claims.
37. **“Docket”** means the docket in the Chapter 11 Case maintained by the Clerk.
38. **“Effective Date”** means the date on which the conditions specified in Article XI of the Combined Plan and Disclosure Statement have been satisfied or waived.

39. **“Entity”** means an entity as defined in section 101(15) of the Bankruptcy Code.
40. **“Equity Interests”** means all equity interests in the Debtor including, but not limited to, all issued, unissued, authorized or outstanding shares or membership interests together with any warrants, options or contract rights to purchase or acquire such interests at any time.
41. **“Estate”** means the estate of the Debtor created upon the commencement of the Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.
42. **“Executory Contract”** means any executory contract or unexpired lease as of the Commencement Date between the Debtor and any other Person or Persons, specifically excluding contracts and agreements entered into pursuant to this Combined Plan and Disclosure Statement.
43. **“File, Filed, or Filing”** means file, filed, or filing with the Bankruptcy Court in the Chapter 11 Case.
44. **“Filing Date”** means [PETITION DATE].
45. **“Final Order”** means an Order of the Bankruptcy Court or a Court of competent jurisdiction to hear appeals from the Bankruptcy Court, that has not been reversed, stayed, modified or amended and as to which the time to appeal, to petition for certiorari, or to move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending.
46. **“Governmental Unit”** shall have the meaning set forth in section 101(27) of the Bankruptcy Code.
47. **“Holder”** means the beneficial holder of any Claim or Equity Interest.

48. **“IRS”** means Internal Revenue Service.
49. **“Non-United States Person”** means a Holder of a Claim that is not subject to either federal or state income taxation unless such Holder is (i) engaged in a trade or business in the United States to which income, gain or loss from the exchange is “effectively connected” for United States federal income tax purposes, or (ii) is an individual, such Holder is present in the United States for 183 days or more during the taxable year of the exchange and certain other requirements are met.
50. **“Order”** means an order or judgment of the Bankruptcy Court as entered on the Docket.
51. **“Other Priority Claim”** means a Claim that is entitled to priority in payment under section 507 of the Bankruptcy Code other than a Priority Tax Claim.
52. **“Priority Tax Claim”** means a Claim that is entitled to priority under section 507(a)(8) of the Bankruptcy Code.
53. **“Person”** shall have the meaning set forth in section 101(41) of the Bankruptcy Code.
54. **“Plan Administrator”** means the person appointed pursuant to Article V of the Combined Plan and Disclosure Statement.
55. **“Professional”** means any professional person employed in the Chapter 11 Case pursuant to section 327 or 1103 of the Bankruptcy Code or otherwise pursuant to an Order of the Bankruptcy Court.

56. **“Pro Rata”** means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class.

57. **“Schedules”** means the schedules of assets and liabilities, the list of Holders of Equity Interests and the statement of financial affairs filed by the Debtor under section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments and modifications thereto through the Confirmation Date.

58. **“Sale”** means the sale of substantially all of the Debtor’s assets pursuant to the Sale Motion.

59. **“Sale Motion”** means Motion for an order (1) approving a “Stalking Horse” asset purchase agreement with [STALKING HORSE] for the sale of substantially all of the Debtor’s assets, (b) approving certain sale and bid procedures, (c) scheduling an auction sale and sale hearing, and (2) authorizing the Debtor to sell substantially all of their assets free and clear of liens, claims, encumbrances and interests and to assume and assign certain related executory contracts and unexpired leases.

60. **“Sale Order”** means \_\_\_\_\_.

61. **“Tax Code”** means the Internal Revenue Code of 1986, as amended

62. **“Unsecured Claim”** means any Claim against the Debtor that arose or is deemed by the Bankruptcy Code or Bankruptcy Court, as the case may be, to have arisen before the Commencement Date and that is not a secured Claim, Administrative Expense Claim, Priority Tax Claim or Other Priority Claim.

63. **“Unclaimed Distribution”** means a Distribution that is not claimed by a holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline.

64. **“Unclaimed Distribution Deadline”** means ninety (90) days from the date the Plan Administrator makes a Distribution of Cash or other property under the Combined Plan and Disclosure Statement to a holder of an Allowed Claim.

**B. Interpretation; Application of Definitions and Rules of Construction.**

Wherever from the context it appears appropriate, each term stated in either 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 neuter. Unless otherwise specified, all section, article, schedule or exhibit references in the Combined Plan and Disclosure Statement are to the respective section in, Article of, Schedule to, or Exhibit to the Combined Plan and Disclosure Statement. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to the Combined Plan and Disclosure Statement as a whole and not to any particular section, subsection or clause contained in the Combined Plan and Disclosure Statement. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Combined Plan and Disclosure Statement. A term used herein that is not defined herein, but that is used in the Bankruptcy Code, shall have the meaning ascribed to that term in the Bankruptcy Code. The headings in the Combined Plan and Disclosure Statement are for convenience of reference only and shall not limit or otherwise affect the provisions of the Combined Plan and Disclosure Statement.

III.

**BACKGROUND AND DISCLOSURES**

On the Filing Date, the Debtor filed voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code initiating this Chapter 11 Case. After the Filing Date, the Debtor have remained in possession of their assets and management of its businesses as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

**A. Debtor's Organizational Structure.**

[COMPANY NAME] is a [LLC/CORP/PARTNERSHIP] organized under the laws of the state of [NAME]. [INSERT OWNERSHIP STRUCTURE OF DEBTOR].

**B. Description of the Debtor's Business as of the Filing Date.**

[INSERT DESCRIPTION OF DEBTOR'S BUSINESS].

**C. The Debtor's Pre-Petition Indebtedness.**

1. [DESCRIPTION OF MAJOR CREDITORS AND CLAIMS]
2. [OTHER MAJOR CREDITORS AND CLAIMS]
3. [DESCRIPTION OF GENERAL UNSECURED CLAIMS]

**D. Events Precipitating the Chapter 11 Filing.**

[DISCUSSION OF EVENTS LEADING TO BANKRUPTCY]

**E. The Chapter 11 Case.**

The following is a brief description of certain major events that have occurred during this Chapter 11 Case.

1. First Day Motions and Orders.

On the Filing Date, in addition to the voluntary petition for relief filed by the Debtor under Chapter 11 of the Bankruptcy Code, the Debtor also filed a number of motions and applications (collectively, the “***First Day Motions***”) seeking certain “first day” relief.

[INCLUDE DISCUSSION OF ANY FIRST-DAY MOTION(S) AND/OR ORDER(S) AS APPLICABLE.]

2. Employment and Compensation of Professionals and Advisors.

On [DATE], the Bankruptcy Court entered an order authorizing the Debtor to retain [NAME] as general bankruptcy counsel. [DISCUSS OTHER PROFESSIONALS RETAINED AND INTERIM COMPENSATION ORDERS]

3. Appointment of Committee.

On [DATE], the Office of the United States Trustee for the [REGION] District of [STATE] (the “UST”) appointed the Committee. The members of the Committee are as follows:

(a) [\_\_\_\_\_] (Chairman); (b) [\_\_\_\_\_] (Chairman); (b) [\_\_\_\_\_] (Chairman); (c) [\_\_\_\_\_] (Chairman); (d) [\_\_\_\_\_] (Chairman); and (e) [\_\_\_\_\_] (Chairman).

To assist the Committee in carrying out its duties, the Committee sought to retain and employ [NAME] as counsel to the Committee and [NAME] as financial advisors.

4. Claims Process and Bar Date

a. Section 341(a) Meeting of Creditors

On [DATE], the UST presided over the Section 341(a) meeting of creditors in the Chapter 11 Case.

b. Schedules and Statements



The Debtor filed with the Bankruptcy Court its Schedules on [DATE]. [On [DATE], the Debtor filed certain amendments to the Schedules.]

c. Bar Date

The Bankruptcy Court fixed [DATE] as the date by which Creditors had to file Proofs of Claims in these Chapter 11 Case. The deadline for filing a Proof of Claim by a governmental unit (as defined by section 101(27) of the Bankruptcy Code) is [DATE].

5. The Sale of Substantially All of the Debtor's Assets

[DISCUSSION OF EVENTS LEADING TO DECISION TO SELL ASSETS – DISCUSS MARKETING OF ASSETS AND NEGOTIATIONS WITH STALKING HORSE. INCLUDE DISCUSSION OF COMMITTEE INVOLVEMENT]

a. Sale Motion and Bid Procedures

On [DATE], the Debtor filed with the Bankruptcy Court the Sale Motion. As set forth in the Sale Motion, the bid procedures provided a process designed to ensure that the Debtor, its estate and creditors received the highest and best value possible for their assets, in the context of these Chapter 11 Case. The Debtor believed that, subject to the receipt of higher and better proposals, the asset purchase agreement negotiated with [STALKING HORSE] represented the best alternative available to the Debtor. [DISCUSS ANY INVESTIGATIONS AND/OR OBJECTIONS BY COMMITTEE OR OTHER PARTIES AND RESOLUTION OF ANY OBJECTIONS]

On [DATE], the Bankruptcy Court entered an order granting the relief with respect to the bid procedures set forth in the Sale Motion.

On [DATE], the Debtor conducted an auction pursuant to the bid procedures at [LOCATION]. The winning bidder at the auction was [NAME] for a purchase price of \$[#].

The Bankruptcy Court approved the Sale to [NAME] at the sale hearing and entered the Sale Order on [DATE].

The Sale closed on [DATE] and distributions contemplated by the Sale Motion were made on or about the time of the closing of the Sale.

**F. Certain Federal Income Tax Consequences**

The following discussion is a summary of certain U.S. federal income tax consequences of the Combined Plan and Disclosure Statement to the Debtor and to Holders of Claims and Equity Interests. This discussion is based on the Tax Code, Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules and pronouncements of the IRS, all as in effect on the date hereof.

Due to the complexity of certain aspects of the Combined Plan and Disclosure Statement, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims, and each Holder's status and method of accounting and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are uncertain. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Combined Plan and Disclosure Statement and no rulings have been or will be requested from the IRS with respect to the any of the issues discussed below. Further, legislative, judicial or administrative changes may occur, perhaps with retroactive effect,

which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Debtor and the Holders of Claims and Equity Interests.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtor or the Holders of Claims or Equity Interests in light of their personal circumstances, nor does the discussion deal with tax issues with respect to taxpayers subject to special treatment under the U.S. federal income tax laws (including, for example, insurance companies, financial institutions, real estate investment trusts, tax-exempt organizations, small business investment companies, regulated investment companies, foreign taxpayers, persons whose functional currency is not the U.S. dollar, persons subject to the alternative minimum tax, and persons holding Claims or Interests as part of a “straddle,” “hedge,” “constructive sale” or “conversion transaction” with other investments). This discussion does not address the tax consequences to Holders of Claims who did not acquire such Claims at the issue price on original issue. No aspect of foreign, state, local or estate and gift taxation is addressed.

EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT WITH SUCH HOLDER’S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE COMBINED PLAN AND DISCLOSURE STATEMENT.

1. Tax Consequences to the Debtor

Pursuant to the Tax Code and subject to certain exceptions, a taxpayer generally must recognize income from COD Income to the extent that such taxpayer’s indebtedness is

discharged for an amount less than the indebtedness' adjusted issue price determined in the manner described below. Generally, the amount of COD Income, subject to certain statutory and judicial exceptions, is the excess of (i) the adjusted issue price of the discharged indebtedness less (ii) the sum of the fair market value (determined at the date of the exchange) of the consideration, if any, given in exchange for such discharged indebtedness.

The recognition of COD Income may be treated differently in the context of a confirmed chapter 11 plan. For example, under the Bankruptcy Exception, instead of recognizing COD Income, the taxpayer is required, pursuant to section 108(b) to reduce certain of that taxpayer's tax attributes to the extent of the amount of COD Income. The attributes of the taxpayer generally are reduced in the following order: net operating losses, general business and minimum tax credit carry forwards, capital loss carry forwards, the basis of the taxpayer's assets and, finally, foreign tax credit carry forwards (collectively, "Tax Attributes"). If the amount of COD Income exceeds the amount of Tax Attributes available to be reduced, the excess still is excluded from income. Pursuant to section 108(b)(4)(A), the reduction of Tax Attributes does not occur until the end of the taxable year after such Tax Attributes have been applied to determine the tax in the year of discharge or, in the case of asset basis reduction, the first day of the taxable year following the taxable year in which the COD Income is realized. Section 108(e)(2) provides a further exception to the recognition of COD Income upon the discharge of debt, providing that a taxpayer will not recognize COD Income to the extent that the taxpayer's satisfaction of the debt would have given rise to a deduction for United States federal income tax purposes.

2. Tax Consequences to Creditors

a. Holders of Claims

Generally, a Holder of a Claim should in most, but not all circumstances, recognize gain or loss equal to the difference between the “amount realized” by such Holder in exchange for its Claim and such Holder’s adjusted tax basis in the Claim. The “amount realized” is equal to the sum of the cash and the fair market value of any other consideration received under a plan of reorganization in respect of a Holder’s Claim. The tax basis of a Holder in a Claim will generally be equal to the Holder’s cost. To the extent applicable, the character of any recognized gain or loss (e.g., ordinary income, or short-term or long-term capital gain or loss) will depend upon the status of the Holder, the nature of the Claim in the Holder’s hands, the purpose and circumstances of its acquisition, the Holder’s holding period of the Claim, and the extent to which the Holder previously claimed a deduction for the worthlessness of all or a portion of the Claim. Generally, if the Claim is a capital asset in the Holder’s hands, any gain or loss realized generally will be characterized as capital gain or loss, and will constitute long-term capital gain or loss if the Holder has held such Claim for more than one year.

A Holder who received Cash (or potentially other consideration) in satisfaction of its Claims may recognize ordinary income or loss to the extent that any portion of such consideration is characterized as accrued interest. A Holder who did not previously include in income accrued but unpaid interest attributable to its Claim, and who receives a distribution on account of its Claim pursuant to the Combined Plan and Disclosure Statement, will be treated as having received interest income to the extent that any consideration received is characterized for

United States federal income tax purposes as interest, regardless of whether such Holder realizes an overall gain or loss as a result of surrendering its Claim. A Holder who previously included in its income accrued but unpaid interest attributable to its Claim should recognize an ordinary loss to the extent that such accrued but unpaid interest is not satisfied, regardless of whether such Holder realizes an overall gain or loss as a result of the distribution it may receive under the Combined Plan and Disclosure Statement on account of its Claim.

b. Non-United States Persons

A Non-United States Person generally will not be subject to United States federal income tax with respect to property (including money) received in exchange for such Claim pursuant to the Combined Plan and Disclosure Statement.

3. Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE COMBINED PLAN AND DISCLOSURE STATEMENT. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, CLAIM HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE COMBINED PLAN AND DISCLOSURE STATEMENT.

**G. Certain Risk Factors To Be Considered**

Prior to voting on the Combined Plan and Disclosure Statement, each holder of a Claim entitled to vote should consider carefully the risk factors described below, as well as all of the information contained in this Combined Plan and Disclosure Statement, including the Exhibits hereto. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Combined Plan and Disclosure Statement and its implementation.

1. Risk of Non-Confirmation of Combined Plan and Disclosure Statement

Although the Debtor believes the Combined Plan and Disclosure Statement will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications to the Combined Plan and Disclosure Statement will not be required for confirmation or that such modifications would not necessitate a re-solicitation of votes.

2. Delays of Confirmation and/or Effective Date

Any delay in confirmation and effectiveness of the Combined Plan and Disclosure Statement could result in, among other things, increased Administrative Expense Claims. These or any other negative effects of delays in confirmation or effectiveness of the Combined Plan and Disclosure Statement could endanger the ultimate approval of the Combined Plan and Disclosure Statement by the Bankruptcy Court.

3. Alternative Plan

If the Combined Plan and Disclosure Statement is not confirmed, the Debtor, the Committee, or any other party in interest could attempt to formulate a different plan. However, the additional costs, all of which would constitute Administrative Expense Claims may be so significant that one or more parties in interest could request that the Chapter 11 Case be converted to chapter 7. Accordingly, the Debtor believes that the Combined Plan and Disclosure Statement enables creditors to realize the best return under the circumstances.

IV.

**SUMMARY OF DEBTOR'S ASSETS; SUMMARY  
OF TREATMENT OF CLAIMS AND ESTIMATED RECOVERIES**

A. Summary of Assets.

The following chart provides a summary of the Debtor's assets, the estimated value of such assets, and the realized value such assets that are available to the Debtor's Estate.

Asset	Estimated Value	Realized Value

The following chart provides a summary of treatment of each Class of Claims (other than Administrative and Priority Tax Claims) and an estimate of the recoveries of each class. The treatment provided in this chart is for information purposes only and is qualified in its entirety by Article [VII] of the Combined Plan and Disclosure Statement.



<b>Class</b>	<b>Estimated Allowed Claims<sup>2</sup></b>	<b>Treatment</b>	<b>Estimated Recovery to Holders of Allowed Claims<sup>3</sup></b>
Class 1 – _____ Claims			
Class 2 – Other Secured Claims			
Class 3 – Other Priority Claims			
Class 4 – Unsecured Claims			
Class 5 – Equity Interests			

**V.**

**CONFIRMATION AND VOTING PROCEDURES**

**A. Confirmation Procedure**

**1. Confirmation Hearing**

A hearing before the Bankruptcy Judge, has been scheduled for [DATE/TIME], at the United States Bankruptcy Court, [COURT ADDRESS] to consider (i) approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to section 1125 of the Bankruptcy Code and (ii) confirmation of the Combined Plan and Disclosure Statement pursuant to section 1129 of the Bankruptcy Code. 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.

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<sup>2</sup> These amounts represent estimated Allowed Claims, and do not represent amounts actually asserted by creditors in proofs of claim or otherwise. The Debtor has not completed their analysis of Claims in the Chapter 11 Case and objections to such Claims have not been fully litigated. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be greater or lower than estimated.

<sup>3</sup> The estimated percentage recovery is based upon, among other things, an estimate of the Allowed Claims in the Chapter 11 Case. As set forth in footnote [#] above, the actual amount of the Allowed Claims may be greater or lower than estimated. Thus, the actual recoveries may be higher or lower than projected depending upon, among other things, the amounts and priorities of Claims that are actually Allowed by the Bankruptcy Court.

2. Procedure for Objections

Any objection to approval or confirmation of the Combined Plan and Disclosure Statement must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim held by the objector. Any such objection must be filed with the Bankruptcy Court and served on the Debtor's and Committee's counsel and all parties who have filed a notice of appearance by 5:00 p.m. prevailing [DATE/TIME]. Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court.

3. Requirements for Confirmation

The Bankruptcy Court will confirm the Combined Plan and Disclosure Statement only if it meets all the applicable requirements of section 1129 of the Bankruptcy Code. Among the requirements for confirmation in this Chapter 11 Case is that the Combined Plan and Disclosure Statement be: (i) accepted by all impaired classes of Claims and Equity Interests or, if rejected by an impaired class, that the Combined Plan and Disclosure Statement "does not discriminate unfairly" against and is "fair and equitable" with respect to such class; and (ii) feasible. The Bankruptcy Court must also find that:

- a. The Combined Plan and Disclosure Statement has classified claims and interests in a permissible manner;
- b. The Combined Plan and Disclosure Statement complies with the technical requirements of Chapter 11 of the Bankruptcy Code; and
- c. The Combined Plan and Disclosure Statement has been proposed in good faith.

4. Classification of Claims and Equity Interests

Section 1122 of the Bankruptcy Code requires the Combined Plan and Disclosure Statement to place a claim or equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Combined Plan and Disclosure Statement creates separate classes to deal respectively with secured claims, unsecured claims and equity interests. The Debtor believes that the Combined Plan and Disclosure Statement's classifications place substantially similar claims or equity interests in the same class and thus, meet the requirements of section 1122 of the Bankruptcy Code.

5. Impaired Claims or Equity Interests

Pursuant to section 1126 of the Bankruptcy Code, only the Holders of Claims in Classes "Impaired" by the Combined Plan and Disclosure Statement and receiving a payment or distribution under the Combined Plan and Disclosure Statement may vote on the Combined Plan and Disclosure Statement. Pursuant to section 1124 of the Bankruptcy Code, a Class of Claims may be "Impaired" if the Combined Plan and Disclosure Statement alters the legal, equitable or contractual rights of the Holders of such Claims or Interests treated in such Class. The Holders of Claims not Impaired by the Combined Plan and Disclosure Statement are deemed to accept the Combined Plan and Disclosure Statement and do not have the right to vote on the Combined Plan and Disclosure Statement. The Holders of Claims or Interests in any Class which will not receive any payment or distribution or retain any property pursuant to the Combined Plan and

Disclosure Statement are deemed to reject the Combined Plan and Disclosure Statement and do not have the right to vote.

6. Eligibility to Vote on the Combined Plan and Disclosure Statement

Unless otherwise ordered by the Bankruptcy Court, only Holders of Allowed Claims in Class(es) [\_\_\_\_\_] may vote on the Combined Plan and Disclosure Statement. In order to vote on the Combined Plan and Disclosure Statement, you must hold a Claim in Class(es) [\_\_\_\_\_] and have timely filed a proof of Claim or have a Claim that is identified on the Schedules that is not listed as disputed, unliquidated or contingent, or be the holder of a Claim that has been temporarily Allowed for voting purposes only under Bankruptcy Rule 3018(a).

7. Solicitation Notice

All parties in interest have received a notice containing (a) notice of the Confirmation Hearing; (b) the website address, [ADDRESS], where parties may download electronic copies of this Combined Plan and Disclosure Statement, a ballot to be used in voting to accept or reject the Combined Plan and Disclosure Statement, and other documents related to the Combined Plan and Disclosure Statement, and where parties entitled to vote on the Combined Plan and Disclosure Statement may cast a ballot in electronic form; (c) the email address, [EMAIL ADDRESS], at which parties in interest may request copies of the Combined Plan and Disclosure Statement, ballot, and related documents; and (d) a telephone number, [NUMBER], through which parties in interest can request to obtain paper copies of the Combined Plan and Disclosure Statement, ballot, and other Combined Plan and Disclosure

Statement documents. To ensure your vote is counted you must either (1) complete an electronic ballot at [WEBSITE ADDRESS], or (2) obtain a paper copy of a ballot and complete such ballot by (i) indicating your decision either to accept or reject the Combined Plan and Disclosure Statement in the boxes provided on the ballot, and (ii) signing and returning the ballot to the address set forth on the ballot (please note that envelopes and prepaid postage have not been included with the Ballot). BALLOTS SENT BY FACSIMILE TRANSMISSION ARE NOT ALLOWED AND WILL NOT BE COUNTED.

8. Procedure/Voting Deadlines

In order for your ballot to count, you must either (1) complete an electronic ballot at [WEBSITE] or (2) complete, date, sign and properly mail a paper ballot (please note that envelopes are not included with the ballot) to the Balloting Agent at the following address:

**[ADDRESS OF BALLOTING AGENT]**

Ballots must be submitted electronically, or the Balloting Agent must RECEIVE physically original ballots by mail or overnight delivery, on or before **[DATE], at 4:00 p.m.** (prevailing [\_\_\_\_\_] Time) (the “**Voting Deadline**”). (Except as otherwise ordered by the Bankruptcy Court, you may not change your vote once a ballot is submitted electronically or the balloting agent receives your original paper ballot.)

Any ballot that is timely submitted electronically or received physically, that contains sufficient information to permit the identification of the claimant and that is cast as an acceptance or rejection of the Combined Plan and Disclosure Statement will be counted and will

be deemed to be cast as an acceptance or rejection, as the case may be, of the Combined Plan and Disclosure Statement.

The following ballots will not be counted or considered for any purpose in determining whether the Combined Plan and Disclosure Statement has been accepted or rejected:

- (a) any ballot submitted electronically or received physically after the Voting Deadline, unless the Court grants an extension of the Voting Deadline with respect to such ballot;
- (b) any ballot that is illegible or contains insufficient information to permit the identification of the claimant;
- (c) any ballot cast by a person or entity that does not hold a Claim in a class that is entitled to vote to accept or reject the Combined Plan and Disclosure Statement;
- (d) any ballot cast for a Claim designated as unliquidated, contingent or disputed or as zero or unknown in amount and for which no Rule 3018(a) motion has been filed by the Rule 3018(a) motion deadline;
- (e) any ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of the Combined Plan and Disclosure Statement or that indicates both acceptance and rejection of the Combined Plan and Disclosure Statement;
- (f) any unsigned ballot; or
- (g) any ballot that is submitted by fax or email.

9. Acceptance of the Combined Plan and Disclosure Statement.

As a Creditor, your acceptance of the Combined Plan and Disclosure Statement is important. In order for the Combined Plan and Disclosure Statement to be accepted by an

impaired Class of Claims, a majority in number (*i.e.*, more than half) and two-thirds in dollar amount of the Claims voting (of each Impaired Class of Claims) must vote to accept the Combined Plan and Disclosure Statement. At least one impaired Class of Creditors, excluding the votes of insiders, must actually vote to accept the Combined Plan and Disclosure Statement. The Debtor urges that you vote to accept the Combined Plan and Disclosure Statement. [The Committee supports the Combined Plan and Disclosure Statement and urges Holders of Class [ ] Claims to accept the Combined Plan and Disclosure Statement.] **YOU ARE URGED TO COMPLETE, DATE, SIGN AND PROMPTLY MAIL THE BALLOT ATTACHED TO THE NOTICE. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND LEGIBLY IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE CREDITOR.**

VI.

**TREATMENT OF UNCLASSIFIED CLAIMS**

**A. Administrative Expense Bar Date.**

Requests for payment of Administrative Expense Claims must be filed no later than the Administrative Expense Bar Date. Holders of Administrative Expense Claims that do not file requests for the allowance and payment thereof on or before the Administrative Expense Bar Date shall forever be barred from asserting such Administrative Expense Claims against the Debtor or its Estate.

**B. Administrative Expense Claims.**

Except to the extent that any entity entitled to payment of an Allowed Administrative Expense Claim agrees to a different treatment, each Holder of an Allowed

Administrative Expense Claim shall receive Cash in an amount equal to such Allowed Administrative Expense Claim on the Effective Date or seven (7) Business Days after the entry of a Final Order Allowing such Administrative Expense Claim, or as soon thereafter as is practicable.

**C. Priority Tax Claims.**

Each Holder of an Allowed Priority Tax Claim, if any, shall receive in full satisfaction of such Allowed Priority Tax Claim (a) payment in Cash equal to the unpaid portion of such Allowed Priority Tax Claim seven (7) Business Days after such Allowed Priority Tax Claim becomes an Allowed Claim, or as soon thereafter as is practicable; or (b) Cash in an amount agreed to by the Debtor and such Holder; provided, however, that any Claim or demand for payment of a penalty (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) shall be disallowed pursuant to this Combined Plan and Disclosure Statement and the Holder of an Allowed Priority Tax Claim shall not assess or attempt to collect such penalty from the Debtor or its Estate.

**D. Payment of Statutory Fees.**

All fees payable pursuant to section 1930 of title 28 of the United States Code, to the extent unpaid through the Confirmation Date, shall be paid in Cash within seven (7) Business Days after the Confirmation Date. From and after the Confirmation Date through the closing of the Chapter 11 Case, all fees payable pursuant to section 1930 of title 28 of the United States Code, plus any interest under 37 U.S.C. § 3717, shall be paid by the Debtor or the Plan Administrator.



VII.

**CLASSIFICATION OF CLAIMS AND  
EQUITY INTERESTS; ESTIMATED RECOVERIES**

Claims, other than Administrative Expense Claims, are classified for all purposes, including voting, confirmation and distribution pursuant to the Combined Plan and Disclosure Statement, as follows:

Class	Status
Class 1 – _____ Claims	[Unimpaired/Impaired]
Class 2 – Other Secured Claims	[Unimpaired/Impaired]
Class 3 – Other Priority Claims	[Unimpaired/Impaired]
Class 4 – Unsecured Claims	[Unimpaired/Impaired]
Class 5 – Equity Interests	[Unimpaired/Impaired]

VIII.

**TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**A. Treatment of Claims.**

1. CLASS 1 – \_\_\_\_\_ CLAIMS

a. Classification. Class 1 consists of all Claims against the Debtor arising from the [DESCRIBE].

b. Impairment and Voting. Class 1 is [Unimpaired/Impaired] by the Combined Plan and Disclosure Statement. The Holders of Class 1 Claims are [conclusively presumed to have accepted the Combined Plan and Disclosure Statement and, therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement] / [entitled to

vote to accept or reject the Combined Plan and Disclosure Statement] / [deemed to have rejected the Combined Plan and Disclosure Statement and, therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement].

2. CLASS 2 – OTHER SECURED CLAIMS

a. Classification. Class 2 consists of all Claims against the Debtor arising from the [DESCRIBE].

b. Impairment and Voting. Class 2 is [Unimpaired/Impaired] by the Combined Plan and Disclosure Statement. Holders of Class 2 Claims are [conclusively presumed to have accepted the Combined Plan and Disclosure Statement and, therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement] / [entitled to vote to accept or reject the Combined Plan and Disclosure Statement] / [deemed to have rejected the Combined Plan and Disclosure Statement and, therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement].

c. Treatment. \_\_\_\_\_ shall retain all of its liens until all amounts due and payable under the \_\_\_\_\_ are paid in full.

3. CLASS 3 – OTHER PRIORITY CLAIMS

a. Classification. Class 3 consists of Other Priority Claims against the Debtor pursuant to section 507 of the Bankruptcy Code.

b. Impairment and Voting. Class 3 is [Unimpaired/Impaired] by the Combined Plan and Disclosure Statement. Holders of Class 3 Claims are [conclusively presumed to have accepted the Combined Plan and Disclosure Statement and, therefore, are not

entitled to vote to accept or reject the Combined Plan and Disclosure Statement] / [entitled to vote to accept or reject the Combined Plan and Disclosure Statement] / [deemed to have rejected the Combined Plan and Disclosure Statement and, therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement].

c. Treatment. Unless otherwise agreed to by Holders of Allowed Class 3 Claims and the Debtor, Holders of Allowed Class 3 Claims, if any, shall be paid within seven (7) Business Days from the Effective Date or as soon thereafter as is practicable, in full and final satisfaction of their Class 3 Claims, Cash equal to one hundred (100%) of their Allowed Claims from the \_\_\_\_\_.

4. CLASS 4 –UNSECURED CREDITORS

a. Classification. Class 4 consists of Unsecured Claims against the Debtor.

b. Impairment and Voting. Class 4 is [Unimpaired/Impaired] by the Combined Plan and Disclosure Statement. Holders of Class 4 Claims are [conclusively presumed to have accepted the Combined Plan and Disclosure Statement and, therefore, are not

entitled to vote to accept or reject the Combined Plan and Disclosure Statement] / [entitled to vote to accept or reject the Combined Plan and Disclosure Statement] / [deemed to have rejected the Combined Plan and Disclosure Statement and, therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement].

c. Treatment. Holders of Allowed Class 4 Claims shall be paid, in full and final satisfaction of their Class 4 Claims, Cash equal to their Pro Rata share of funds available to pay Class 4 Claims on the later of (i) seven (7) Business Days after such General Unsecured

Claim becomes an Allowed Claim and (ii) thirty (30) days after the expiration of the Claims Objection Deadline, or as soon thereafter as is practicable

5. CLASS 5 – EQUITY INTERESTS

a. Classification. Class 5 consists of the Equity Interests in the Debtor.

b. Impairment and Voting. Class 5 is [Unimpaired/Impaired] under the Combined Plan and Disclosure Statement. The Holders of the Class 5 Equity Interests are [conclusively presumed to have accepted the Combined Plan and Disclosure Statement and, therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement] / [entitled to vote to accept or reject the Combined Plan and Disclosure Statement] / [deemed to have rejected the Combined Plan and Disclosure Statement and, therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement].

c. Treatment. The Holders of the Class 5 Equity Interests \_\_\_\_\_.

**B. Modification of Treatment of Claims and Equity Interest.**

The Debtor reserves the right to modify the treatment of any Allowed Claim or Equity Interest in any manner adverse only to the Holder of such Claim or Equity Interest at any time after the Effective Date upon the consent of the Holder of the Claim or Equity Interest whose Allowed Claim or Equity Interest, as the case may be, is being adversely affected.

**IX.**

**PROVISIONS REGARDING THE PLAN ADMINISTRATOR**

**A. Appointment of the Plan Administrator.**

On the Effective Date, a Plan Administrator, whom shall be jointly selected by the [ENTER NAME] no later than five (5) business days prior to the Voting Deadline, shall be

appointed and thereafter serve in accordance with this Combined Plan and Disclosure Statement.

The Plan Administrator 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.

**B. Rights and Powers of the Plan Administrator.**

The Plan Administrator shall, in addition to any powers and authority specifically set forth in other provisions of the Combined Plan and Disclosure Statement, be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Combined Plan and Disclosure Statement, (ii) establish, as necessary, disbursement accounts for the deposit and distribution of all amounts distributed under the Combined Plan and Disclosure Statement; (iii) make Distributions in accordance with the Combined Plan and Disclosure Statement, (iv) object to Claims, as appropriate; (v) employ and compensate professionals to represent it with respect to its responsibilities, (vi) assert any of the Debtor's claims, Causes of Action, rights of setoff, or other legal or equitable defenses, and (vii) exercise such other powers as may be vested in the Plan Administrator by order of the Bankruptcy Court, pursuant to the Combined Plan and Disclosure Statement, or as deemed by the Plan Administrator to be necessary and proper to implement the provisions hereof. The Plan Administrator may take any and all actions which it deems reasonably necessary or appropriate to defend against any Claim, including, without limitation, the right to: (a) exercise any and all judgment and discretion with respect to the manner in which to defend against or settle any Claim, including, without limitation, the retention of professionals, experts and consultants; and

(b) enter into a settlement agreement or agreements, provided that such settlement is entered into by the Plan Administrator in good faith.

**C. Post Confirmation Date Expenses of the Plan Administrator.**

The Plan Administrator shall receive reasonable compensation for services rendered pursuant to the Combined Plan and Disclosure Statement without further Court order. In addition, except as otherwise ordered by the Bankruptcy Court, the amount of reasonable fees and expenses incurred by the Plan Administrator on or after the Effective Date (including, without limitation, reasonable attorney and professional fees and expenses) shall be paid without further Court order.

**X.**

**PROVISIONS GOVERNING DISTRIBUTIONS UNDER THE COMBINED PLAN AND  
DISCLOSURE STATEMENT**

**A. Method of Payment.**

Unless otherwise expressly agreed, in writing, all Cash payments to be made pursuant to the Combined Plan and Disclosure Statement shall be made by check drawn on a domestic bank or an electronic wire.

**B. Objections to and Resolution of Claims.**

The Plan Administrator shall have the right to file objections to Claims after the Effective Date. All objections shall be litigated to entry of a Final Order; provided, however, that only the Plan Administrator shall have the authority to compromise, settle, otherwise resolve or withdraw any objections, without approval of the Bankruptcy Court. The Plan Administrator shall not compromise, settle, otherwise resolve or withdraw any objections to Administrative

Expense Claims, Priority Tax Claims and Other Priority Claims without the written consent of \_\_\_\_\_, which consent shall not be unreasonably withheld.

**C. Claims Objection Deadline.**

The Plan Administrator, and any other party in interest to the extent permitted pursuant to section 502(a) of the Bankruptcy Code, shall file and serve any objection to any Claims no later than the Claims Objection Deadline; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court from time to time upon notice of motion by the Plan Administrator for cause.

**D. No Distribution Pending Allowance.**

Notwithstanding any other provision of the Combined Plan and Disclosure Statement, no payment or Distribution of Cash or other property shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by this Combined Plan and Disclosure Statement.

**E. Escrow of Cash Distributions.**

On any date that Distributions are to be made under the terms of the Combined Plan and Disclosure Statement, the Plan Administrator shall deposit in one or more segregated accounts, Cash or property equal to 100% of the Cash or property that would be distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto. The Plan Administrator shall also segregate any interest, dividends or proceeds of such Cash. Such Cash together with any interest,

dividends or proceeds thereof, shall be held in trust for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto.

**F. Distribution After Allowance.**

Within the later of (i) seven (7) Business Days after and such Claim becomes an Allowed Claim and (ii) thirty (30) days after the expiration of the Claims Objection Deadline, the Plan Administrator shall distribute all Cash or other property, including any interest, dividends or proceeds thereof, to which a Holder of an Allowed Claim is then entitled.

**G. Investment of Segregated Cash and Property.**

To the extent practicable, the Plan Administrator may invest any Cash or other property segregated on account of a Disputed Claim, undeliverable distribution, or any proceeds thereof (i) in a manner that will yield a reasonable net return taking into account the safety of the investment or (ii) in any manner permitted by section 345 of the Bankruptcy Code; provided, however, that the Plan Administrator shall be under no obligation to so invest such Cash or proceeds and shall have no liability to any party for any investment made or any omission to invest such Cash, other property or proceeds.

**H. Delivery of Distributions.**

Except as provided herein, Distributions to Holders of Allowed Claims shall be made: (1) at the addresses set forth on the respective Proofs of Claim Filed by such holders; (2) at the addresses set forth in any written notices of address changes delivered to the Plan Administrator after the date of any related Proof of Claim; or (3) at the address reflected in the



Schedules if no Proof of Claim is filed and the Plan Administrator has not received a written notice of a change of address.

1. Undeliverable Distributions. If the distribution to the Holder of any Claim is returned to the Plan Administrator as undeliverable, no further distribution shall be made to such holder unless and until the Plan Administrator is notified in writing of such Holder's then current address. Undeliverable distributions shall remain in the possession of the Plan Administrator until the earlier of (i) such time as a distribution becomes deliverable or (ii) such undeliverable distribution becomes an unclaimed distribution pursuant to Section 6.10 of the Combined Plan and Disclosure Statement.

2. Until such time as an undeliverable distribution becomes an unclaimed distribution pursuant to this Section 6.9 of the Combined Plan and Disclosure Statement, within 30 days after the end of each calendar quarter following the Effective Date, or upon such other interval as the Bankruptcy Court may order, but in no event less frequently than annually, the Plan Administrator shall make distributions of all Cash and property that has become deliverable during the preceding quarter. Each such Distribution shall include the net return yielded from the investment of any undeliverable Cash, from the date such distribution would have been due had it then been deliverable to the date that such distribution becomes deliverable.

3. The Plan Administrator shall make reasonable efforts to update or correct contact information for recipients of undeliverable Distributions, provided, however, nothing contained in the Combined Plan and Disclosure Statement shall require the Plan Administrator to locate any Holder or an Allowed Claim.

**I. Unclaimed Distributions.**

Any Cash or other property to be distributed under the Combined Plan and Disclosure Statement shall revert to the Plan Administrator if it is not claimed by the Entity on or before the Unclaimed Distribution Deadline. If such Cash or other property is not claimed on or

before the Unclaimed Distribution Deadline, the Distribution made to such Entity shall be deemed to be reduced to zero. Any Unclaimed Distributions to Unsecured Claims Holder shall be donated to Charity if the amount of the Unclaimed Distribution is insufficient to justify the time and expense of effectuating additional Distributions.

**J. Set-Off.**

The Debtor retains the right to reduce any Claim by way of setoff in accordance with their books and records.

**XI.**

**IMPLEMENTATION AND EFFECT OF CONFIRMATION OF COMBINED PLAN  
AND DISCLOSURE STATEMENT**

**A. Means for Implementation of the Combined Plan and Disclosure Statement.**In

addition to the provisions set forth elsewhere in the Combined Plan and Disclosure Statement, the following shall constitute the means for implementation of the Combined Plan and Disclosure Statement:

1. Funding of Liabilities and Distributions The Debtor and the Debtor's Estate shall pay from the proceeds of the Sale and from the DIP Financing (to the extent available), (i) the wind-down costs of the Estates associated with fixing claims and making Distributions to Creditors, (ii) all Allowed Administrative Expense Claims through confirmation of this Combined Plan and Disclosure Statement, including Allowed Claims pursuant to section 503(b)(9) of the Bankruptcy Code; (iii) all Allowed Priority Claims and Other Priority Claims and (iv) Distributions to Unsecured Claims Holders.

2. Corporate Action; Effectuating Documents; Further Transactions. On the Effective Date, all matters and actions provided for under the Combined Plan and Disclosure Statement that would otherwise require approval of the member or managers of the Debtor shall be deemed to have been authorized and effective in all respects as provided herein and shall be taken without any requirement for further action by the member and managers of the Debtor. The Debtor is authorized to execute, deliver, file or record such contracts, instruments, releases, and other agreements or documents and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Combined Plan and Disclosure Statement.

## XII.

### INJUNCTION, EXCULPATION AND RELEASES

#### A. Injunction.

All injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. EXCEPT AS OTHERWISE PROVIDED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT OR TO THE EXTENT NECESSARY TO ENFORCE THE TERMS AND CONDITIONS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE CONFIRMATION ORDER OR A SEPARATE ORDER OF THE BANKRUPTCY COURT, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR INTERESTS IN THE DEBTOR SHALL BE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE DEBTOR, ITS ESTATE, OR ANY OF THEIR PROPERTY ON ACCOUNT

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

**B. Exculpation.**

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE DEBTOR, AND ANY OF THEIR RESPECTIVE MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, ADVISORS, ATTORNEYS, REPRESENTATIVES, FINANCIAL ADVISORS, INVESTMENT BANKERS, AGENTS OR OTHER PROFESSIONALS AND ANY OF SUCH PARTIES' SUCCESSORS

AND ASSIGNS, SOLELY IN THEIR CAPACITIES AS SUCH, SHALL NOT HAVE OR INCUR ANY LIABILITY FOR ANY CLAIM, ACTION, PROCEEDING, CAUSE OF ACTION, AVOIDANCE ACTION, SUIT, ACCOUNT, CONTROVERSY, AGREEMENT, PROMISE, RIGHT TO LEGAL REMEDIES, RIGHT TO EQUITABLE REMEDIES, RIGHT TO PAYMENT, OR CLAIM (AS DEFINED IN BANKRUPTCY CODE SECTION 101(5)), WHETHER KNOWN, UNKNOWN, REDUCED TO JUDGMENT, NOT REDUCED TO JUDGMENT, LIQUIDATED, UNLIQUIDATED, FIXED, CONTINGENT, MATURED, UNMATURED, DISPUTED, UNDISPUTED, SECURED, OR UNSECURED AND WHETHER ASSERTED OR ASSERTABLE DIRECTLY OR DERIVATIVELY, IN LAW, EQUITY, OR OTHERWISE TO ONE ANOTHER OR TO ANY CLAIMHOLDER OR INTEREST HOLDER, OR ANY OTHER PARTY IN INTEREST, OR ANY OF THEIR RESPECTIVE AGENTS, EMPLOYEES, REPRESENTATIVES, ADVISORS, ATTORNEYS, OR AFFILIATES, OR ANY OF THEIR SUCCESSORS OR ASSIGNS, FOR ANY ACT OR OMISSION ORIGINATING OR OCCURRING ON OR AFTER THE PETITION DATE THROUGH AND INCLUDING THE EFFECTIVE DATE IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF THE DEBTOR, THE CHAPTER 11 CASE, THE NEGOTIATION AND FILING OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE DISCLOSURE STATEMENT, THE FILING OF THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE CONSUMMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE ADMINISTRATION OF THE COMBINED PLAN AND

DISCLOSURE STATEMENT, OR THE PROPERTY TO BE LIQUIDATED AND/OR DISTRIBUTED UNDER THE COMBINED PLAN AND DISCLOSURE STATEMENT, EXCEPT FOR THEIR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE AS DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION, AND IN ALL RESPECTS SHALL BE ENTITLED TO RELY REASONABLY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE COMBINED PLAN AND DISCLOSURE STATEMENT.

THE FOREGOING PARAGRAPH SHALL APPLY TO ATTORNEYS ONLY TO THE EXTENT PERMISSIBLE UNDER APPLICABLE BAR RULES AND APPLICABLE CASE LAW.

**C. Releases.**

1. Terms of Releases.

EXCEPT FOR THE OBLIGATIONS, CLAIMS, RIGHTS, AND CAUSES OF ACTION EXCLUDED IN SUBPARAGRAPHS 2(a) (b) AND (c) BELOW, AND AS MORE PARTICULARLY SET FORTH IN THE COMBINED PLAN AND DISCLOSURE STATEMENT AND ITS ATTACHMENTS, AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE DEBTOR (IN ITS INDIVIDUAL CAPACITY AND AS A DEBTOR AND DEBTOR IN POSSESSION) SHALL RELEASE FOREVER, WAIVE, AND DISCHARGE ALL CLAIMS OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION, AND LIABILITIES (OTHER THAN THE RIGHTS OF THE DEBTOR TO ENFORCE THIS COMBINED PLAN

AND DISCLOSURE STATEMENT, THE SALE AGREEMENT AND THE CONTRACTS, INSTRUMENTS, RELEASES, INDENTURES, AND OTHER AGREEMENT OR DOCUMENTS DELIVERED HEREUNDER, AND LIABILITIES ARISING AFTER THE EFFECTIVE DATE IN THE ORDINARY COURSE OF BUSINESS) WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE THAT ARE BASED IN WHOLE OR PART ON ANY ACT OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCES, EXCEPT WHERE RESULTING FROM WILLFUL MISCONDUCT OR GROSS NEGLIGENCE AS DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION, TAKING PLACE ON OR AFTER THE PETITION DATE THROUGH AND INCLUDING THE EFFECTIVE DATE IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF THE DEBTOR, THE CHAPTER 11 CASE, THE NEGOTIATION AND FILING OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT, THE DISCLOSURE STATEMENT OR ANY PRIOR PLANS OF REORGANIZATION, THE FILING OF THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT.<sup>4</sup>

2. Matters Excluded From Release.

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<sup>4</sup> Given that this is a liquidating plan and the Debtor is not entitled to a discharge, the inclusion of the release and exculpation provisions may garner an objection from the United States Trustee if the Debtor has not necessarily demonstrated an entitlement to the same or consideration for the same from the released parties. In addition, some courts may not authorize this relief.

a. Obligations Under the Sale Agreement. NOTHING IN THE PRECEDING PARAGRAPH OR IN THE COMBINED PLAN AND DISCLOSURE STATEMENT SHALL BE DEEMED A RELEASE OF ANY PARTY TO THE SALE AGREEMENT FROM THE OBLIGATIONS OR CLAIMS ARISING FROM THE SALE AGREEMENT.

b. Retention of Causes of Action. EXCEPT AS SPECIFICALLY PROVIDED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT OR IN THE CONFIRMATION ORDER, NOTHING CONTAINED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT OR THE CONFIRMATION ORDER SHALL BE DEEMED TO BE A WAIVER OR THE RELINQUISHMENT OF ANY RIGHTS, CLAIMS, OR CAUSES OF ACTION THAT THE DEBTOR OR THE PLAN ADMINISTRATOR, AS THE CASE MAY BE, MAY HAVE OR WHICH THE DEBTOR OR THE PLAN ADMINISTRATOR, AS THE CASE MAY BE, MAY CHOOSE TO ASSERT ON BEHALF OF THE ESTATE, THE DEBTOR OR THE PLAN ADMINISTRATOR IN ACCORDANCE WITH ANY PROVISION OF THE BANKRUPTCY CODE OR ANY APPLICABLE NONBANKRUPTCY LAW, INCLUDING, WITHOUT LIMITATION, (I) ANY AND ALL CLAIMS AGAINST ANY PERSON OR ENTITY, TO THE EXTENT SUCH PERSON OR ENTITY ASSERTS A CROSS-CLAIM, COUNTERCLAIM, AND/OR CLAIM FOR SETOFF WHICH SEEKS AFFIRMATIVE RELIEF AGAINST THE DEBTOR, THEIR OFFICERS, DIRECTORS, OR REPRESENTATIVES, OR THE PLAN ADMINISTRATOR (II) THE AVOIDANCE OF ANY TRANSFER BY OR OBLIGATION OF THE ESTATE OR THE DEBTOR UNDER



CHAPTER 5 OF THE BANKRUPTCY CODE OR THE RECOVERY OF THE VALUE OF SUCH TRANSFER, (III) THE TURNOVER OF ANY PROPERTY OF THE ESTATE, OR (IV) ANY OTHER CAUSE OF ACTION NOT SPECIFICALLY RELEASED PURSUANT TO THE COMBINED PLAN AND DISCLOSURE STATEMENT.

c. Reservation of Rights. EXCEPT AS SPECIFICALLY PROVIDED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT OR IN THE CONFIRMATION ORDER, NOTHING CONTAINED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT OR IN THE CONFIRMATION ORDER SHALL BE DEEMED TO BE A WAIVER OR RELINQUISHMENT OF ANY CLAIM, CAUSE OF ACTION, RIGHT OF SETOFF, OR OTHER LEGAL OR EQUITABLE DEFENSE THAT THE DEBTOR HAD IMMEDIATELY PRIOR TO THE PETITION DATE, AGAINST OR WITH RESPECT TO ANY CLAIM LEFT UNIMPAIRED BY THE COMBINED PLAN AND DISCLOSURE STATEMENT. THE DEBTOR OR THE PLAN ADMINISTRATOR, AS THE CASE MAY BE, SHALL HAVE, RETAIN, RESERVE, AND BE ENTITLED TO ASSERT ALL SUCH CLAIMS, CAUSES OF ACTION, RIGHTS OF SETOFF, OR OTHER LEGAL OR EQUITABLE DEFENSES WHICH THEY OR ANY OF THEM HAD IMMEDIATELY PRIOR TO THE PETITION DATE FULLY AS IF THE CHAPTER 11 CASES HAD NOT BEEN COMMENCED, AND ALL LEGAL AND EQUITABLE RIGHTS OF ANY DEBTOR RESPECTING ANY CLAIM LEFT UNIMPAIRED BY THE COMBINED PLAN AND DISCLOSURE STATEMENT MAY BE ASSERTED AFTER THE CONFIRMATION DATE TO THE SAME EXTENT AS IF THE CHAPTER 11 CASES HAD NOT BEEN

COMMENCED. THE PLAN ADMINISTRATOR'S RIGHT TO COMMENCE AND PROSECUTE CAUSES OF ACTION SHALL NOT BE ABRIDGED OR MATERIALLY ALTERED IN ANY MANNER BY REASON OF CONFIRMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT. NO DEFENDANT PARTY TO ANY CAUSES OF ACTION BROUGHT BY THE DEBTOR OR THE PLAN ADMINISTRATOR SHALL BE ENTITLED TO ASSERT ANY DEFENSE BASED, IN WHOLE OR IN PART, UPON CONFIRMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, AND CONFIRMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT SHALL NOT HAVE ANY RES JUDICATA OR COLLATERAL ESTOPPEL EFFECT UPON THE COMMENCEMENT AND PROSECUTION OF THE CAUSES OF ACTION.

**XIII.**

**CAUSES OF ACTION**

**A. Causes of Action.**

**[ANY RETAINED CAUSES OF ACTION SHOULD BE DESCRIBED WITH REASONABLE SPECIFICITY AND IF NECESSARY ANNEXED AS AN EXHIBIT TO THE COMBINED PLAN AND DISCLOSURE STATEMENT].**

**XIV.**

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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

On the Effective Date, all Executory Contracts and unexpired leases not assumed before the Confirmation Date will be deemed rejected. The Confirmation Order shall constitute an order approving such rejection as of the Effective Date.

**B. Deadline for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Combined Plan and Disclosure Statement.**

If the rejection by the Debtor, pursuant to the Combined Plan and Disclosure Statement or otherwise, of an Executory Contract or unexpired leases gives rise to a Claim, a Proof of Claim must be filed with the Claims Agent at [ADDRESS], by no later than thirty (30) days after the later of (i) notice of entry of the Confirmation Order, and (ii) other notice that the Executory Contract or unexpired lease has been rejected. Any Proofs of Claim not filed and served within such time periods will be forever barred from assertion against the Debtor and its Estate. Unless otherwise Ordered by the Bankruptcy Court, all Claims arising from the rejection of Executory Contracts and unexpired leases shall be treated as Unsecured Claims under the Combined Plan and Disclosure Statement.

**XV.**

**CONDITIONS TO THE EFFECTIVE DATE**

**A. Conditions Precedent to the Effective Date.**

The Combined Plan and Disclosure Statement shall not become effective unless and until the following conditions shall have been satisfied or waived:

1. The Confirmation Order shall have become a Final Order.
2. The Plan Administrator shall be duly appointed, qualified and acting in that capacity.

**B. Effect of Failure of Conditions.**

If each condition to the Effective Date has not been satisfied or duly waived within forty-five (45) days after the Confirmation Date, then upon motion by any party in interest, made before the time that each of the conditions has been satisfied or duly waived and

upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order may be vacated by the Bankruptcy Court; provided, however, that notwithstanding the filing of such motion, the Confirmation Order shall not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived by the Debtor before the any Order granting such relief becomes a Final Order. If the Confirmation Order is vacated pursuant to this Section, the Combined Plan and Disclosure Statement shall be deemed null and void in all respects and nothing contained herein shall (A) constitute a waiver or release of any Claims by or against the Debtor, or (B) prejudice in any manner the rights of the Debtor.

**C. Waiver of Conditions to Confirmation and Effective Date.**

Each of the conditions to the Effective Date may be waived, in whole or in part, by the Debtor, without notice or an Order of the Bankruptcy Court, provided, however, the Debtor shall provide written notice to the Committee of any such waiver and an opportunity to consent, which consent shall not be unreasonably withheld. The failure to satisfy or to waive any condition may be asserted by the Debtor regardless of the circumstances giving rise to failure of such condition to be satisfied (including any action or inaction by the Debtor). The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each such right will be deemed an ongoing right that may be asserted at any time.

**XVI.**

**RETENTION OF JURISDICTION**

The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Combined Plan and Disclosure Statement

pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

1. To hear and determine any objections to Claims and to address any issues relating to Disputed Claims;
2. To enter and implement such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;
3. To issue such Orders in aid of execution and consummation of the Combined Plan and Disclosure Statement, to the extent authorized by section 1142 of the Bankruptcy Code;
4. To consider any amendments to or modifications of the Combined Plan and Disclosure Statement, to cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
5. To hear and determine all requests for compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code;
6. To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Combined Plan and Disclosure Statement;
7. To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Sale Order;
8. To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
9. To hear any other matter not inconsistent with the Bankruptcy Code;
10. To enter a final decree closing the Chapter 11 Case;
11. To ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Combined Plan and Disclosure Statement;

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

13. To issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Combined Plan and Disclosure Statement, except as otherwise provided herein;

14. To determine any other matters that may arise in connection with or related to the Combined Plan and Disclosure Statement, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created or implemented in connection with the Combined Plan and Disclosure Statement or the Disclosure Statement;

15. To determine any other matters that may arise in connection with or related to the Sale Order or any contract, instrument, release, indenture or other agreement or document created or implemented in connection with the Sale Order;

16. To enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, exculpations, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case have been closed);

17. To resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof; and

18. To resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Case, the Bar Date, the hearing on the approval of the Disclosure Statement, the hearing on the confirmation of the Combined Plan and Disclosure Statement for the purpose of determining whether a Claim, or Equity Interest is discharged hereunder or for any other purpose.

XVII.

**MISCELLANEOUS PROVISIONS**

**A. Amendment or Modification of the Combined Plan and Disclosure Statement.**

Alterations, amendments or modifications of the Combined Plan and Disclosure Statement may be proposed in writing by the Debtor, at any time before the Confirmation Date, provided that the Combined Plan and Disclosure Statement, as altered, amended or modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code, and the Debtor shall have complied with section 1125 of the Bankruptcy Code.

**B. Severability.**

In the event the Bankruptcy Court determines, before the Confirmation Date, that any provision in the Combined Plan and Disclosure Statement is invalid, void or unenforceable, such provision shall be invalid, void or unenforceable with respect to the Holder or Holders of such Claims or Equity Interest as to which the provision is determined to be invalid, void or unenforceable. The invalidity, voidability or unenforceability of any such provision shall in no way limit or affect the enforceability and operative effect of any other provision of the Combined Plan and Disclosure Statement.

**C. Revocation or Withdrawal of the Combined Plan and Disclosure Statement.**

The Debtor reserves the right to revoke or withdraw the Combined Plan and Disclosure Statement before the Confirmation Date. If the Debtor revokes or withdraws the Combined Plan and Disclosure Statement before the Confirmation Date, then the Combined Plan and Disclosure Statement shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims by or against the Debtor or Plan

Administrator or to prejudice in any manner the rights of either of the Debtor or Plan

Administrator in any further proceedings involving the Debtor.

**D. Binding Effect.**

The Combined Plan and Disclosure Statement shall be binding upon and inure to the benefit of the Debtor, the Holders of Claims, and the Holders of Equity Interests, and their respective successors and assigns.

**E. Notices.**

All notices, requests and demands to or upon the Plan Administrator to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as shall be set forth in the Confirmation Order.

**F. Governing Law.**

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit to the Combined Plan and Disclosure Statement provides otherwise, the rights and obligations arising under the Combined Plan and Disclosure Statement shall be governed by, and construed and enforced in accordance with, the laws of the State of [STATE], without giving effect to the principles of conflicts of law of such jurisdiction.

**G. Withholding and Reporting Requirements.**

In connection with the consummation of the Combined Plan and Disclosure Statement, the Debtor and Plan Administrator shall comply with all withholding and reporting



requirements imposed by any federal, state, local or foreign taxing authority and all distributions hereunder shall be subject to any such withholding and reporting requirements.

**H. Allocation of Distributions Between Principal and Interest.**

To the extent that any Allowed Claim entitled to a Distribution under the Combined Plan and Disclosure Statement is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

**I. Headings.**

Headings are used in the Combined Plan and Disclosure Statement for convenience and reference only, and shall not constitute a part of the Combined Plan and Disclosure Statement for any other purpose.

**J. Exhibits/Schedules.**

All exhibits and schedules to the Combined Plan and Disclosure Statement are incorporated into and are a part of the Combined Plan and Disclosure Statement as if set forth in full herein.

**K. Filing of Additional Documents.**

On or before substantial consummation of the Combined Plan and Disclosure Statement, the Debtor shall 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 Combined Plan and Disclosure Statement.

**L. No Admissions.**

Notwithstanding anything herein to the contrary, nothing contained in the Combined Plan and Disclosure Statement shall be deemed as an admission by any Entity with respect to any matter set forth herein.

**M. Successors and Assigns.**

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

**N. Reservation of Rights.**

Except as expressly set forth herein, the Combined Plan and Disclosure Statement shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Combined Plan and Disclosure Statement, any statement or provision contained herein, or the taking of any action by the Debtor with respect to the Combined Plan and Disclosure Statement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor, Holders of Claims or Equity Interest before the Effective Date.

**O. Implementation.**

The Debtor shall take all steps, and execute all documents, including appropriate releases, necessary to effectuate the provisions contained in this Combined Plan and Disclosure Statement.

**P. Inconsistency.**

In the event of any inconsistency among the Combined Plan and Disclosure Statement, the Disclosure Statement, or any other instrument or document created or executed pursuant to the Combined Plan and Disclosure Statement, the provisions of the Combined Plan and Disclosure Statement shall govern.

**Q. Closing of Chapter 11 Case.**

Upon substantial consummation, the Debtor and/or Plan Administrator may move for a final decree to close the Chapter 11 Case and to request such other order as may be just.

**R. Dissolution of the Debtor.**

Upon the Effective Date, the Debtor shall be deemed dissolved under applicable law without the need for filing any documents.

**S. Dissolution of the Committee.**

Upon the occurrence of the Effective Date, the Committee shall dissolve automatically, whereupon its members, professionals and agents shall be released from any duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code (except with respect to (i) obligations arising under confidentiality agreements, which shall remain in full force and effect, (ii) applications for payment of fees and reimbursement of expenses of Professionals, and (iii) any pending motions or motions for other actions seeking enforcement of implementation of the provisions of the Combined Plan and Disclosure Statement).

**T. Compromise of Controversies.**

Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under the Combined Plan and Disclosure Statement, the provisions of this Combined Plan and Disclosure Statement shall constitute a good faith compromise and settlement of all Claims or controversies resolved pursuant to the Combined Plan and Disclosure Statement and in these Chapter 11 Case. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Combined Plan and Disclosure Statement and the Chapter 11 Case, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor, the Estate and all Holders of Claims and Equity Interests against the Debtor.

Dated: \_\_\_\_\_  
[City, State]

[COMPANY NAME]

By: \_\_\_\_\_  
[Name]  
[Title]

**EXHIBIT E**

**(Confirmation Order)**

**[INCLUDED IN ELECTRONIC VERSION]**