

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

In re

VRG Liquidating, LLC, et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No.: 16-10971 (LSS)

Jointly Administered

**DISCLOSURE STATEMENT FOR THE FIRST AMENDED JOINT PLAN OF  
LIQUIDATION OF VRG LIQUIDATING, LLC AND ITS CHAPTER 11 AFFILIATES  
AND THEIR OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

---

<sup>1</sup> The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: VRG Liquidating, LLC (f/k/a Vestis Retail Group, LLC) (1295); VRF Liquidating, LLC (f/k/a Vestis Retail Financing, LLC) (9362); EMSOC Liquidating, LLC (f/k/a EMS Operating Company, LLC) (2061); VIH Liquidating, LLC (f/k/a Vestis IP Holdings, LLC) (2459); BS Liquidating, LLC (f/k/a Bob's Stores, LLC) (4675); EMSA Liquidating, LLC (f/k/a EMS Acquisition LLC) (0322); SC Liquidating 2, LLC (f/k/a Sport Chalet, LLC) (0071); SCVS Liquidating, LLC (f/k/a Sport Chalet Value Services, LLC) (7320); and SCTS Liquidating, LLC (f/k/a Sport Chalet Team Sales, LLC) (8015). The Debtors' executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

Dated: Wilmington, Delaware  
October 9, 2018

Michael L. Tuchin, Esq.  
Sasha M. Gurvitz, Esq.  
KLEE, TUCHIN, BOGDANOFF & STERN LLP  
1999 Avenue of the Stars, 39<sup>th</sup> Floor  
Los Angeles, California 90067  
Tel: (310) 407-4022  
Fax: (310) 407-9090  
E-mail: mtuchin@ktbslaw.com  
sgurvitz@ktbslaw.com

*Counsel to the Debtors  
and Debtors in Possession*

Jay R. Indyke, Esq.  
Evan M. Lazerowitz, Esq.  
COOLEY LLP  
1114 Avenue of the Americas  
New York, New York 10036  
Tel: (212) 479-6000  
Fax: (212) 479-6275  
E-mail: jindyke@cooley.com  
elazerowitz@cooley.com

*Counsel to the Committee*

Robert S. Brady, Esq. (DE Bar No. 2847)  
Robert F. Poppiti, Jr., Esq. (DE Bar No. 5052)  
YOUNG CONAWAY STARGATT & TAYLOR, LLP  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Tel: (302) 571-6600  
Fax: (302) 571-1253  
E-mail: rbrady@ycst.com  
rpoppiti@ycst.com

*Counsel to the Debtors  
and Debtors in Possession*

Christopher A. Ward, Esq. (Del. Bar No. 3877)  
Shanti M. Katona, Esq. (Del. Bar No. 5352)  
POLSINELLI PC  
222 Delaware Avenue, Suite 1101  
Wilmington, Delaware 19801  
Tel: (302) 252-0920  
Fax: (302) 252-0921  
E-mail: cward@polsinelli.com  
skatona@polsinelli.com

*Counsel to the Committee*

## **DISCLAIMER**

**THIS DISCLOSURE STATEMENT PROVIDES INFORMATION REGARDING THE FIRST AMENDED JOINT PLAN OF LIQUIDATION OF VRG LIQUIDATING, LLC (F/K/A VESTIS RETAIL GROUP, LLC) AND ITS CHAPTER 11 AFFILIATES AND THEIR OFFICIAL COMMITTEE OF UNSECURED CREDITORS THAT THE PLAN PROPONENTS (DEFINED BELOW) ARE SEEKING TO HAVE CONFIRMED BY THE BANKRUPTCY COURT. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES TO, AND CONFIRMATION OF, THE PLAN AND MAY NOT BE RELIED ON FOR ANY OTHER PURPOSE. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR THE MERITS OF THE PLAN.**

**THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS, AND CERTAIN DOCUMENTS RELATING TO THE PLAN. ALTHOUGH THE PLAN PROPONENTS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE AND PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF, OR ARE INCONSISTENT WITH, THE PLAN, SUCH STATUTES, OR SUCH DOCUMENTS. TO THE EXTENT THERE IS ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN THE TERMS AND PROVISIONS IN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PLAN SHALL GOVERN FOR ALL PURPOSES. ALL HOLDERS OF CLAIMS SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN.**

**THE STATEMENTS CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND EQUITY INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN. ALTHOUGH THE PLAN PROPONENTS HAVE MADE AN EFFORT TO DISCLOSE WHERE CHANGES IN PRESENT CIRCUMSTANCES COULD REASONABLY BE EXPECTED TO AFFECT MATERIALLY THE RECOVERY UNDER THE PLAN, THE PLAN PROPONENTS DO NOT PURPORT TO PREDICT WITH ACCURACY CHANGES IN PRESENT CIRCUMSTANCES AND UNDERTAKE NO OBLIGATION TO AMEND THIS DISCLOSURE STATEMENT TO REFLECT SUCH CIRCUMSTANCES.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) OR ANY FEDERAL, STATE, LOCAL OR FOREIGN REGULATORY AGENCY, NOR HAS THE SEC OR ANY OTHER SUCH AGENCY PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT. PERSONS OR ENTITIES HOLDING OR TRADING IN, OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING, SECURITIES OR CLAIMS OF THE DEBTORS SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.**

**THE PLAN PROPONENTS MAKE STATEMENTS IN THIS DISCLOSURE STATEMENT THAT MAY BE CONSIDERED FORWARD-LOOKING STATEMENTS UNDER THE FEDERAL SECURITIES LAWS. STATEMENTS CONCERNING THESE AND OTHER MATTERS ARE NOT GUARANTEES AND REPRESENT THE PLAN PROPONENTS’ ESTIMATES AND ASSUMPTIONS ONLY AS OF THE DATE SUCH STATEMENTS WERE MADE AND INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES, AND OTHER UNKNOWN FACTORS THAT COULD IMPACT THE PLAN PROPONENTS’ PLAN OR DISTRIBUTIONS THEREUNDER. IN ADDITION TO STATEMENTS THAT EXPLICITLY DESCRIBE SUCH RISKS AND UNCERTAINTIES, READERS ARE URGED TO CONSIDER STATEMENTS LABELED WITH THE TERMS “BELIEVES,” “BELIEF,” “EXPECTS,” “INTENDS,” “ANTICIPATES,” “PLANS,” OR SIMILAR TERMS TO BE UNCERTAIN AND FORWARD-LOOKING. CREDITORS AND OTHER INTERESTED PARTIES SHOULD ALSO SEE THE SECTION OF THIS DISCLOSURE STATEMENT ENTITLED “RISK FACTORS” FOR A DISCUSSION OF CERTAIN FACTORS THAT MAY AFFECT THE PLAN AND DISTRIBUTIONS THEREUNDER.**

## TABLE OF CONTENTS

	<b>Page(s)</b>
I. INTRODUCTION .....	1
A. Overview of the Plan .....	1
B. Plan Voting Instructions and Procedures .....	4
II. GENERAL HISTORICAL INFORMATION ABOUT THE DEBTORS .....	8
A. Corporate Structure .....	8
B. Business Overview .....	9
C. Prepetition Capital Structure .....	10
D. Prepetition Litigation .....	12
E. Events Leading to the Filing of the Chapter 11 Cases .....	12
III. THE CHAPTER 11 CASES .....	13
A. First Day Orders .....	13
B. Debtor-in-Possession Financing .....	13
C. Store Closing Sales .....	14
D. Additional Orders .....	14
E. Sale Agreement and Sale to Buyer .....	16
F. The Buyer Settlement Agreement .....	22
G. United States Trustee .....	23
H. Appointment of Committee .....	23
I. Meeting of Creditors .....	23
J. Schedules, Statements of Financial Affairs, and Claims Bar Dates .....	23
K. Administrative, Section 503(b)(9), Priority, and Secured Claims Analysis .....	24
L. Sale of Claims in Visa/MC Litigation .....	25
M. Avoidance Action Litigation .....	25
IV. SUMMARY OF THE JOINT CHAPTER 11 PLAN .....	25
A. Purpose and Effect of the Plan .....	25
B. Substantive Consolidation .....	26
C. Liquidating Trust .....	27
D. Estimated Recoveries for Holders of General Unsecured Claims .....	28
E. Treatment of Unclassified Claims .....	29
F. Classification and Treatment of Claims and Equity Interests .....	30

G.	Acceptance or Rejection of the Plan .....	33
H.	Implementation of the Plan .....	34
I.	Executory Contracts and Unexpired Leases .....	35
J.	Provisions Governing Distributions.....	36
K.	Procedures for Resolving Disputed, Contingent, and Unliquidated Claims and Distributions with Respect Thereto.....	39
L.	Conditions Precedent to the Occurrence of the Effective Date .....	40
M.	Retention of Jurisdiction .....	41
N.	Miscellaneous Plan Provisions .....	43
V.	RISK FACTORS .....	47
A.	Parties May Object to the Plan’s Classification of Claims and Equity Interests .....	47
B.	The Debtors May Not Be Able to Obtain Confirmation of the Plan .....	47
C.	The Conditions Precedent to the Effective Date of the Plan May Not Occur.....	48
D.	General Unsecured Creditors May Recover Less Than Projected.....	48
E.	The Allowed Amount of Claims May Differ From Current Estimates .....	48
VI.	CONFIRMATION OF THE PLAN.....	48
A.	The Confirmation Hearing.....	48
B.	Requirements for Confirmation of the Plan.....	49
C.	Best Interests of Creditors.....	50
D.	Feasibility.....	50
E.	Acceptance by Impaired Classes .....	51
F.	Confirmation Without Acceptance by All Impaired Classes.....	51
G.	Alternatives to Confirmation and Consummation of the Plan.....	52
VII.	CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN .....	52
A.	Taxation of the Liquidating Trust and Beneficiaries .....	54
B.	Other Tax Consequences to Holders of Claims .....	57
C.	Certain Tax Consequences to the Debtors .....	58
VIII.	RECOMMENDATION .....	59

**EXHIBITS**

EXHIBIT A First Amended Joint Plan of Liquidation (including Liquidating Trust Agreement)

**THE PLAN PROPONENTS HEREBY ADOPT AND INCORPORATE THE EXHIBIT  
ATTACHED TO THIS DISCLOSURE STATEMENT BY REFERENCE AS THOUGH  
FULLY SET FORTH HEREIN**

## **I. INTRODUCTION**

VRG Liquidating, LLC (f/k/a Vestis Retail Group, LLC, “VRG”), together with its above-captioned chapter 11 affiliates (collectively, the “Debtors”), and the official committee of unsecured creditors (the “Committee” and, together with the Debtors, the “Plan Proponents”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) hereby submit this disclosure statement (the “Disclosure Statement”) pursuant to sections 1125 and 1126(b) of title 11 of the United States Code (the “Bankruptcy Code”), in connection with the solicitation of votes on the *First Amended Joint Plan of Liquidation of VRG Liquidating, LLC and Its Chapter 11 Affiliates and Their Official Committee of Unsecured Creditors*, dated October 9, 2018 (as amended, supplemented and modified from time to time pursuant to its terms, the “Plan”). A copy of the Plan is attached hereto as **Exhibit A**.<sup>2</sup>

The purpose of this Disclosure Statement is to enable Creditors whose Claims are Impaired under the Plan and who are entitled to vote to make an informed decision in exercising their right to accept or reject the Plan. This Disclosure Statement sets forth certain information regarding the Debtors’ prepetition operating and financial history, their reasons for seeking protection under chapter 11 of the Bankruptcy Code, the course of these Chapter 11 Cases, and the anticipated orderly liquidation of the Debtors’ remaining Assets. This Disclosure Statement also describes certain terms and provisions of the Plan, certain effects of Confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses the Confirmation process and the voting and election procedures that Holders of Claims entitled to vote under the Plan must follow for their votes to be counted.

### **THE COMMITTEE IS A PLAN PROPONENT, IT SUPPORTS THE PLAN AND IT URGES ALL HOLDERS OF GENERAL UNSECURED CLAIMS TO VOTE TO ACCEPT THE PLAN.**

#### **A. Overview of the Plan**

##### **1. General Structure of the Plan**

The Plan provides for the liquidation of the Debtors’ Assets. The Debtors’ Assets are largely limited to Cash, Retained Causes of Action, and certain other Excluded Assets (defined below). As described in more detail below, substantially all of the Debtors’ assets (collectively, the “Acquired Assets”) were sold to Vestis BSI Funding II, LLC (now known as Vestis Investments II, LLC, and together with its permitted designees, successors and permitted assigns in accordance with the Sale Agreement, the “Buyer”), an affiliate of Versa Capital Management, LLC (“Versa”), pursuant to the terms and conditions of that certain Amended and Restated Asset Purchase Agreement, dated as of May 31, 2016, by and among the Debtors and Buyer (together with (i) the First Amendment to the Amended and Restated Asset Purchase Agreement by and among the Debtors and Buyer, dated as of July 7, 2016, and (ii) the Second Amendment to the Amended and Restated Asset Purchase Agreement by and among the Debtors and Buyer, dated as of July 13, 2016, the “Sale Agreement”),

---

<sup>2</sup> Unless otherwise noted, all capitalized terms used but not defined herein shall have the meanings provided to them in the Plan. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between the summary herein and the Plan, the Plan shall govern.



which provided for, among other things, (i) \$3 million in Cash, (ii) the credit bid of a portion of the obligations under the Third Lien Loan Agreement (defined below) and the assumption by Buyer of all other obligations thereunder, (iii) the payoff in full of all obligations under the DIP Facility, the Pre-Petition Loan Agreement, and the Pre-Petition Term Loan Agreement (each as defined below), and (iv) the assumption by Buyer of certain specified Assumed Liabilities (defined below), as described more fully herein and in Schedule 2.3 of the Sale Agreement.

If the Plan is confirmed and the Effective Date occurs, for purposes of voting and distribution in connection with the Plan, the Debtors will be substantively consolidated, meaning that all of the Assets and liabilities of the Debtors will be deemed to be the Assets and liabilities of a single entity. As a result, the votes to accept or reject the Plan by Holders of Claims against a particular Debtor will be tabulated as votes to accept or reject the Plan for the substantively consolidated Debtors.

The Plan provides for the creation of a Liquidating Trust that will administer and liquidate all Liquidating Trust Assets in accordance with the Plan, including the remaining proceeds of the Sale. The Plan also provides for Distributions to Holders of Allowed Secured Claims, Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Claims, and Allowed Priority Tax Claims, and for the funding of the Liquidating Trust. Finally, the Plan provides for the cancellation of all Equity Interests in the Debtors, the dissolution and wind-up of the affairs of the Debtors, and the transfer of any remaining Assets of the Debtors' Estates to the Liquidating Trust.

**THE PLAN PROPONENTS BELIEVE THAT THE PLAN IS FAIR AND EQUITABLE, WILL MAXIMIZE RECOVERIES TO CREDITORS, AND IS IN THE BEST INTERESTS OF THE DEBTORS AND THEIR CONSTITUENTS. FOR THESE REASONS, THE PLAN PROPONENTS URGE HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS VOTING TO ACCEPT THE PLAN.**

## **2. Material Terms of the Plan**

The following is an overview of certain material terms of the Plan:

- All Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Secured Claims, and Allowed Priority Claims will be paid or otherwise satisfied in full as required by the Bankruptcy Code, unless otherwise agreed to by the Holders of such Claims and the Liquidating Trustee.
- Holders of Allowed General Unsecured Claims will receive their Pro Rata share of the Liquidating Trust Interests, unless otherwise agreed to by the Liquidating Trustee and the Holders of such Claims. Holders of Liquidating Trust Interests will receive Distributions of the proceeds of the Debtors' Assets after the payment of Claims and other fees, costs, and expenses required to be paid by the Liquidating Trust.
- Any Claim Filed or to be Filed against any Debtor, as to which two or more Debtors are co-liable as a legal or contractual matter, shall be deemed filed as a single Claim against, and a single obligation of, the Debtors.
- Holders of Subordinated Claims will not be entitled to any distribution or recovery on account of such Claims.

- As of the Effective Date, all Equity Interests of any kind will be deemed void, cancelled, and of no further force and effect and the Holders thereof will not receive or retain any property or interest in property under the Plan on account of such Equity Interests.

**3. Summary of Treatment of Claims and Equity Interests Under the Plan**

The table below summarizes the classification and treatment of the Claims and Equity Interests under the Plan.

**THE PROJECTED RECOVERIES FOR GENERAL UNSECURED CLAIMS SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND ACTUAL RECOVERIES MAY DIFFER. FOR A COMPLETE DESCRIPTION OF THE DEBTORS' CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS, REFERENCE SHOULD BE MADE TO THE PLAN.**

<b>Class</b>	<b>Claim or Equity Interest</b>	<b>Summary of Treatment</b>	<b>Projected Recovery Under Plan</b>
1	Secured Claims	Unimpaired Deemed to Accept Plan	100%
2	Priority Claims	Unimpaired Deemed to Accept Plan	100%
3	General Unsecured Claims	Impaired Entitled to Vote on Plan	0.60–0.90% <sup>3</sup>
4	Subordinated Claims	Impaired Deemed to Reject	0%
5	Equity Interests	Impaired Deemed to Reject	0%

**THE PLAN PROPONENTS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR HOLDERS OF CLAIMS AGAINST THE DEBTORS AND THUS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.**

---

<sup>3</sup> This projected recovery range is based on the assumption that Class 3 General Unsecured Claims total approximately \$220 million. See Section IV.D of this Disclosure Statement for a fuller discussion of the assumptions underlying this projected recovery percentage.

## **B. Plan Voting Instructions and Procedures**

### **1. Voting Rights**

Under the Bankruptcy Code, only classes of claims or interests that are “impaired” and that are not deemed as a matter of law to have rejected a plan under section 1126 of the Bankruptcy Code are entitled to vote to accept or reject such plan. Any class that is “unimpaired” is not entitled to vote to accept or reject a plan and is conclusively presumed to have accepted such plan. As set forth in section 1124 of the Bankruptcy Code, a class is “impaired” if the legal, equitable, or contractual rights attaching to the claims or equity interests of that class are modified or altered. Holders of claims or interests within an impaired class are entitled to vote to accept or reject a plan if such claims or interests are “allowed” under section 502 of the Bankruptcy Code.

Under the Bankruptcy Code, acceptance of a plan by a class of claims is determined by calculating the number and the amount of allowed claims voting to accept such plan. Acceptance by a class of claims requires more than one-half of the number of total allowed claims voting in the class to vote in favor of the plan and at least two-thirds in dollar amount of the total allowed claims voting in the class to vote in favor of the plan; only those holders that actually vote to accept or reject the plan are counted for purposes of determining whether these dollar and number thresholds are met.

Pursuant to the Plan, Claims in Class 3 are Impaired by, and entitled to receive a Distribution under, the Plan, and only the Holders of Claims in that Class are entitled to vote to accept or reject the Plan. Only Holders of Claims in Class 3 as of November 13, 2018 (the “Voting Record Date”) may vote to accept or reject the Plan.

Pursuant to the Plan, Claims in Classes 1 and 2 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

Pursuant to the Plan, Claims and Equity Interests in Classes 4 and 5 will not receive or retain any property under the Plan on account of such Claims or Equity Interests, as applicable, and are, therefore, deemed to reject the Plan and are not entitled to vote on the Plan.

### **2. Solicitation Materials**

The Debtors, with the approval of the Bankruptcy Court, have engaged Kurtzman Carson Consultants LLC (the “Voting Agent”) to serve as the voting agent to process and tabulate Ballots and to generally oversee the voting process. The following materials constitute the solicitation package (the “Solicitation Package”):

- This Disclosure Statement, including the Plan and any other Exhibits annexed thereto;
- The Bankruptcy Court order approving this Disclosure Statement [Docket No. 2074] (the “Disclosure Statement Order”) (excluding exhibits);

- The notice of, among other things, (i) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters and (ii) the deadline for filing objections to Confirmation of the Plan (the “Confirmation Hearing Notice”);
- A single Ballot, to be used in voting to accept or to reject the Plan, and applicable instructions with respect thereto (the “Voting Instructions”);
- A pre-addressed, postage pre-paid return envelope; and
- Such other materials as the Bankruptcy Court may direct or approve.

The Debtors, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Solicitation Package is also available at the Voting Agent’s website at <https://www.kcellc.net/vestisretailgroup>.

If you are the Holder of a Claim and believe that you are entitled to vote on the Plan, but you did not receive a Ballot or your Ballot is damaged or illegible, or if you have any questions concerning voting procedures, you should contact the Voting Agent electronically by submitting an inquiry via <https://www.kcellc.net/vestisretailgroup> or in writing to VRG Liquidating, LLC, *et al.*, c/o KCC, 2335 Alaska Avenue, El Segundo, CA 90245. If your Claim is subject to a pending claim objection and you wish to vote on the Plan, you must File a motion pursuant to Bankruptcy Rule 3018 with the Bankruptcy Court for the temporary allowance of your Claim for voting purposes and your Claim or portion thereof, as applicable, must be temporarily allowed by the Bankruptcy Court for voting purposes by the Voting Deadline or you will not be entitled to vote to accept or reject the Plan.

**THE DEBTORS AND THE LIQUIDATING TRUSTEE, AS APPLICABLE, RESERVE THE RIGHT, THROUGH THE CLAIM OBJECTION PROCESS, TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM FOR DISTRIBUTION PURPOSES.**

### **3. Voting Instructions and Procedures**

All votes to accept or reject the Plan must be cast by using the Ballots enclosed with the Solicitation Packages or otherwise provided by the Debtors or the Voting Agent. No votes other than ones using such Ballots will be counted, except to the extent the Bankruptcy Court orders otherwise. The Bankruptcy Court has fixed November 13, 2018 as the Voting Record Date for the determination of the Holders of Claims who are entitled to (a) receive a Solicitation Package and (b) vote to accept or reject the Plan.

After carefully reviewing the Plan, this Disclosure Statement, and the Voting Instructions accompanying your Ballot, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying Ballot.

**The deadline to vote on the Plan is December 14, 2018 at 4:00 p.m. (prevailing Eastern Time) (the “Voting Deadline”).** In order for your vote to be counted, your Ballot must be properly completed in accordance with the Voting Instructions on the Ballot, and received no later than the Voting Deadline at the following address:

**By Regular Mail, Overnight Courier, or Hand Delivery to:**

VRG Liquidating, LLC Ballot Processing Center  
c/o KCC  
2335 Alaska Avenue  
El Segundo, CA 90245

Only the Holders of Claims in Class 3 as of the Voting Record Date are entitled to vote to accept or reject the Plan, and they may do so by completing the appropriate Ballots and returning them in the envelope provided to the Voting Agent so as to be actually received by the Voting Agent by the Voting Deadline. Each Holder of a Claim must vote its entire Claim either to accept or reject the Plan and may not split such vote. The Ballots will clearly indicate the appropriate return address. It is important to follow the specific Voting Instructions provided on each Ballot.

Unless otherwise provided in the Voting Instructions accompanying the Ballots, the following Ballots will not be counted in determining whether the Plan has been accepted or rejected:

- Any Ballot that fails to clearly indicate an acceptance or rejection, or that indicates both an acceptance and a rejection, of the Plan;
- Any Ballot received after the Voting Deadline, except if the Debtors, in consultation with the Committee, have granted an extension of the Voting Deadline with respect to such Ballot, or by order of the Bankruptcy Court;
- Any Ballot containing a vote that the Bankruptcy Court determines was not solicited or procured in good faith or in accordance with the applicable provisions of the Bankruptcy Code;
- Any Ballot that is illegible or contains insufficient information to permit the identification of the Claim Holder;
- Any Ballot cast by an Entity that does not hold a Claim in the voting Class; and
- Any unsigned Ballot or Ballot without an original signature.

The Ballots also permit Holders of Class 3 Claims that do not vote either to accept or reject the Plan (either by failing to indicate an acceptance or rejection, indicating both an acceptance and rejection or otherwise submitting a Ballot that is not counted in determining whether the Plan has been accepted or rejected) to opt out of the releases set forth in Section 11.12 of the Plan by checking the appropriate box on their Ballots to elect the Release Opt-Out. If the Plan is confirmed and the Effective Date occurs, Holders of Claims in Class 3 that vote to accept the Plan shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released and discharged the Released Parties from any and all claims and causes of action to the extent provided in Section 11.12 of the Plan, regardless of whether they elect the Release Opt-Out on their Ballots. Holders of Claims in Class 3 that vote to reject the Plan are not bound by the releases set forth in Section 11.12 of the Plan, regardless of whether they elect the Release Opt-Out on their Ballots. If the Plan is confirmed and the Effective Date occurs, Holders of Claims in Class 3 that do not submit a Ballot at all shall be deemed to have conclusively, absolutely, unconditionally, irrevocably

and forever released and discharged the Released Parties from any and all claims and causes of action to the extent provided in Section 11.12 of the Plan.

Any party who has previously submitted to the Voting Agent prior to the Voting Deadline a properly completed Ballot may revoke such Ballot and change its vote by submitting to the Voting Agent prior to the Voting Deadline a subsequent properly completed Ballot for acceptance or rejection of the Plan. In the case where multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot. Any party who has delivered a properly completed Ballot for the acceptance or rejection of the Plan that wishes to withdraw such acceptance or rejection rather than changing its vote may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. To be valid, a notice of withdrawal must (i) contain the description of the Claims to which it relates and the aggregate principal amount represented by such Claims, (ii) be signed by the withdrawing party in the same manner as the Ballot being withdrawn, (iii) contain a certification that the withdrawing party owns the Claims and possesses the right to withdraw the vote sought to be withdrawn, and (iv) be actually received by the Voting Agent prior to the Voting Deadline.

**ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.**

If you have any questions about (a) the procedure for voting your Claim, (b) the Solicitation Package that you have received, or (c) the amount of your Claim, or if you wish to obtain, at your own expense (unless otherwise specifically required by Bankruptcy Rule 3017(d)), an additional copy of the Plan, this Disclosure Statement, or any appendices or Exhibits to such documents, please contact the Voting Agent at the address specified above. Copies of the Plan, Disclosure Statement and other documents Filed in these Chapter 11 Cases may be obtained free of charge at the Voting Agent's website at <https://www.kcellc.net/vestisretailgroup>. Documents Filed in these Chapter 11 Cases may also be examined between the hours of 8:00 a.m. and 4:00 p.m., prevailing Eastern Time, Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801.

The Voting Agent will process and tabulate Ballots for the Class entitled to vote to accept or reject the Plan and will File a voting report (the "Voting Report") as soon as reasonably practicable after the Voting Deadline. The Voting Report will, among other things, describe every Ballot that does not conform to the Voting Instructions or that contains any form of irregularity, including, but not limited to, those Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures, lacking necessary information, or damaged.

**THE PLAN PROPONENTS URGE HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS VOTING TO ACCEPT THE PLAN BY THE VOTING DEADLINE.**

#### **4. Confirmation Hearing and Deadline for Objections to Confirmation**

Objections to Confirmation of the Plan must be Filed and served on the Plan Proponents and certain other entities, all in accordance with the Confirmation Hearing Notice, so that they are actually received by no later than **December 17, 2018 at 4:00 p.m. (prevailing Eastern Time)**. Unless objections to Confirmation of the Plan are timely served and Filed in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court. For further information, refer to Section VI of this Disclosure Statement, “Confirmation of the Plan.”

## **II. GENERAL HISTORICAL INFORMATION ABOUT THE DEBTORS**

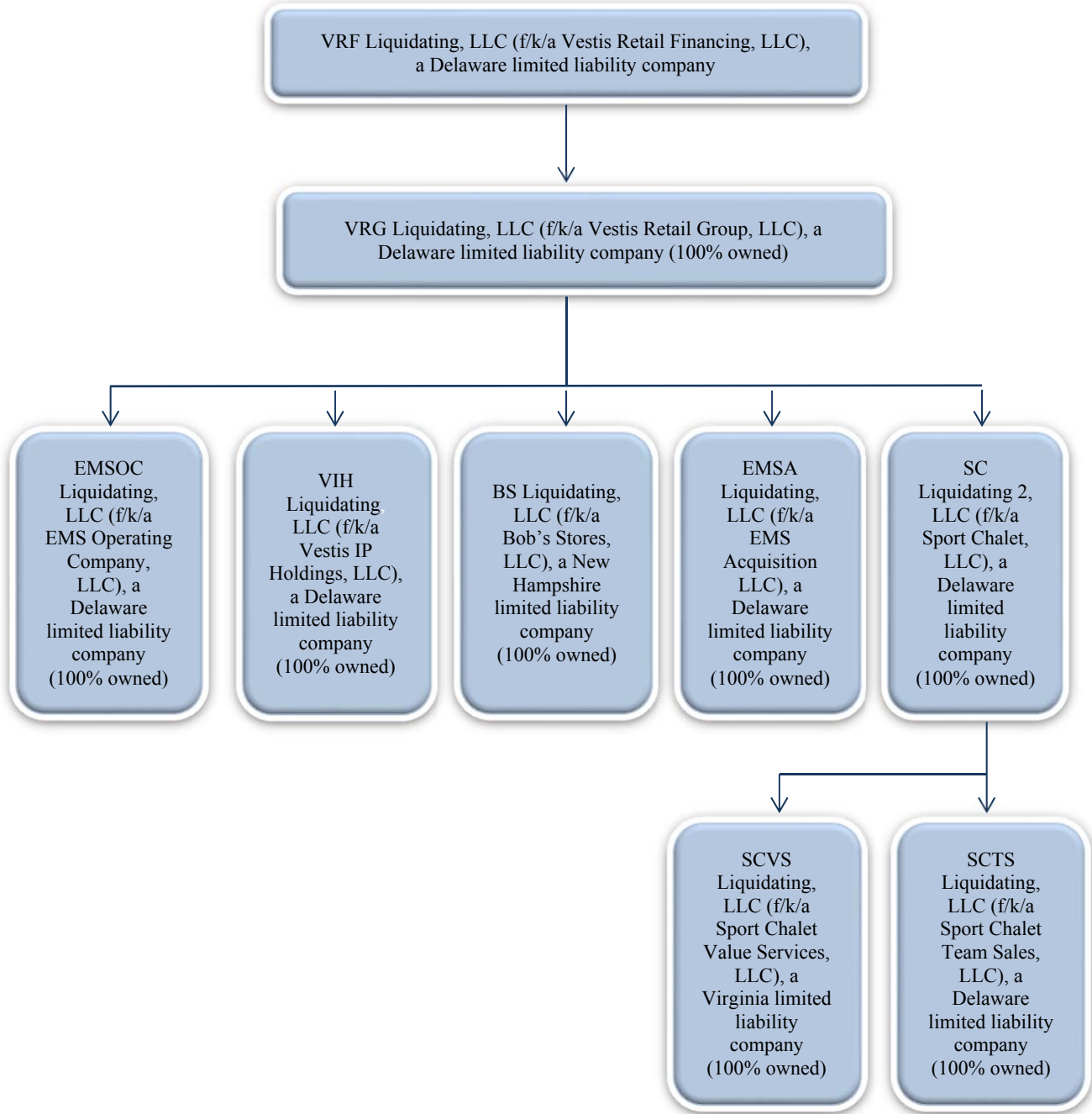
### **A. Corporate Structure**

VRG, a Delaware limited liability company, is the sole member and owner of (a) EMSOC Liquidating, LLC (f/k/a EMS Operating Company, LLC, “EMSOC”), a Delaware limited liability company, (b) VIH Liquidating, LLC (f/k/a Vestis IP Holdings, LLC, “VIH”), a Delaware limited liability company, (c) BS Liquidating, LLC (f/k/a Bob’s Stores, LLC, “BS”), a New Hampshire limited liability company, (d) EMSA Liquidating, LLC (f/k/a EMS Acquisition LLC, “EMSA”), a Delaware limited liability company,<sup>4</sup> and (e) SC Liquidating 2, LLC (f/k/a Sport Chalet, LLC, “SC”), a Delaware limited liability company. SC, in turn, is the sole member and owner of SCVS Liquidating, LLC (f/k/a Sport Chalet Value Services, LLC, “SCVS”), a Virginia limited liability company, and SCTS Liquidating, LLC (f/k/a Sport Chalet Team Sales, LLC, “SCTS”), a Delaware limited liability company. VRG’s direct parent is VRF Liquidating, LLC (f/k/a Vestis Retail Financing, LLC, “VRF”), a Delaware limited liability company, which holds 100% of the membership interests of VRG.

---

<sup>4</sup> In addition, EMSA is the sole member and owner of the non-Debtor entity SME Holding Company, LLC (f/k/a Eastern Mountain Sports LLC) (“SME”). In accordance with the Plan, all Equity Interests in SME shall be abandoned on the Effective Date of the Plan.

The following chart illustrates the current corporate structure of the Debtors:



The Debtors are managed by Chief Restructuring Officer Robert J. Duffy.

**B. Business Overview**

Prior to the Sale, the Debtors were comprised of three regional multi-channel retailers: (a) Bob’s Stores, (b) Eastern Mountain Sports, and (c) Sport Chalet.



Prior to the Sale, the Debtors' three retail brands operated in the apparel, footwear, and sporting goods lines of business. The Debtors' business was comprised of two primary units: (a) a retail store business comprised of 144 retail stores in 15 states across the three brands; and (b) an e-commerce business operated through a consolidated technology platform.

### **C. Prepetition Capital Structure**

#### **1. Secured Debt**

##### **(a) Credit Facility**

As of the Petition Date, the Debtors were indebted under that certain Fourth Amended and Restated Loan and Security Agreement, dated as of February 11, 2015 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Pre-Petition Loan Agreement"), by and among the Debtors and SME (collectively, the "Borrowers and Guarantors"), as borrowers and guarantors, Wells Fargo Capital Finance, LLC ("Wells Fargo"), as administrative agent and collateral agent, and the other lenders party thereto.<sup>5</sup> The Pre-Petition Loan Agreement provided for an asset-based revolving credit facility and swing line credit facility of up to a maximum of \$180 million in the aggregate. As of the Petition Date, the Debtors owed approximately \$103,946,056.65 (the "Pre-Petition Loans") outstanding under the Pre-Petition Loan Agreement (exclusive of a prepayment amount and other fees), inclusive of approximately \$7,296,158 in letters of credit issued and outstanding under the Pre-Petition Loan Agreement. The Pre-Petition Loans were scheduled to mature on August 19, 2019.

As of the Petition Date, the obligations of the Debtors under the Pre-Petition Loan Agreement were secured by first-priority security interests in and liens on certain of the Debtors' assets, including accounts receivable, intellectual property and other general intangibles, inventory and equipment, deposit accounts, letters of credit, chattel paper, commercial tort claims and the products and proceeds of the foregoing (collectively, the "Pre-Petition Loan Collateral"), but excluding certain "Excluded Property" (as defined in the Pre-Petition Loan Agreement).

As described in more detail in Section III.E of this Disclosure Statement, a portion of the Purchase Price (defined below) paid by Buyer under the Sale Agreement was comprised of the payoff in full of all remaining outstanding obligations under the Pre-Petition Loan Agreement. Consequently, there are no remaining obligations outstanding under the Pre-Petition Loan Agreement.

##### **(b) Term Loan**

As of the Petition Date, the Debtors were also indebted under that certain Term Loan and Security Agreement dated as of February 11, 2015 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the "Pre-Petition Term Loan Agreement") by and among the Borrowers and Guarantors, and Wells Fargo Bank, National Association, as agent and lender (the "Pre-Petition Term Agent"). The Pre-Petition Term Loan Agreement provided for a

---

<sup>5</sup> As described in more detail below, Wells Fargo and the lenders under the Pre-Petition Loan Agreement also served as the agent and lenders, respectively, under the Debtors' DIP Credit Agreement (defined below).

term loan in the original principal amount of \$10 million (the “Pre-Petition Term Loan”). As of the Petition Date, approximately \$9,435,000 was outstanding under the Pre-Petition Term Loan Agreement (exclusive of a prepayment amount and other fees). The Pre-Petition Term Loan was scheduled to mature on August 19, 2019.

As of the Petition Date, the obligations of the Debtors under the Pre-Petition Term Loan Agreement were secured by second-priority security interests in and liens on the same collateral that constituted the Pre-Petition Loan Collateral.

As described in more detail in Section III.E of this Disclosure Statement, a portion of the Purchase Price paid by Buyer under the Sale Agreement was comprised of the payoff in full of all remaining outstanding obligations under the Pre-Petition Term Loan Agreement. Consequently, there are no remaining obligations outstanding under the Pre-Petition Term Loan Agreement.

(c) Vestis BSI Term Loan

As of the Petition Date, the Debtors were also indebted under that certain Term Loan and Security Agreement dated as of January 7, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Third Lien Loan Agreement”) by and among the Borrowers and Guarantors, Vestis BSI Funding II, LLC (now known as Vestis Investments II, LLC), as administrative agent (the “Third Lien Agent”), and the other lenders party thereto. The Third Lien Loan Agreement provided for a term loan in the original principal amount of \$10 million, which was subsequently increased to \$40 million (the “Third Lien Loan”). The Third Lien Loan Agreement also contains an early termination fee (the “Third Lien Loan Termination Fee”) that became due and payable as a result of the commencement of the Chapter 11 Cases. As of the Petition Date, approximately \$65,291,653 was outstanding under the Third Lien Loan Agreement, inclusive of interest and the Third Lien Loan Termination Fee in the amount of \$24,788,483. The Third Lien Loan was scheduled to mature on February 19, 2020.

As of the Petition Date, the obligations of the Debtors under the Third Lien Loan Agreement were secured by third-priority security interests in and liens on the same collateral that constituted the Pre-Petition Loan Collateral.

As described in more detail in Section III.E of this Disclosure Statement, a portion of the Purchase Price paid by Buyer under the Sale Agreement was comprised of (i) the credit bid of a portion of the obligations under the Third Lien Loan Agreement and (ii) the assumption by Buyer of all other obligations under the Third Lien Loan Agreement. Consequently, there are no remaining obligations outstanding under the Third Lien Loan Agreement owed by the Debtors.

Other than the Pre-Petition Loans, the Pre-Petition Term Loan, and the Third Lien Loan, the Debtors did not have any material secured debt as of the Petition Date.

## 2. Unsecured Debt

Following the Bar Dates (as defined below), the Plan Proponents have estimated the General Unsecured Claims against the Debtors based on the Debtors’ Schedules of Assets and Liabilities and Statements of Financial Affairs (the “Schedules”) and Filed Claims. As part of this analysis, the Plan Proponents have (i) eliminated certain intercompany, duplicate, and superseded proofs of claim

and (ii) adjusted the amounts on account of certain Claims against the Debtors, as to which two or more Debtors are co-liable as a legal or contractual matter, so that such Claims are deemed filed as a single Claim against, and a single obligation of, the substantively-consolidated Debtors.

After accounting for the foregoing, the Plan Proponents estimate that the General Unsecured Claims total about \$220 million. These claims include, without limitation: (i) accrued and unpaid trade and other unsecured debt incurred in the ordinary course of the Debtors' business; (ii) claims by landlords and contract counterparties for unpaid rent, rejection damages, and other obligations under the Debtors' leases and contracts; and (iii) certain litigation claims.

The General Unsecured Claims estimate, however, does not account for, among other things, (i) Claims Filed after the filing of this Disclosure Statement, (ii) the disallowance of General Unsecured Claims relating to assumed executory contracts and unexpired leases; (iii) any additional reductions or eliminations of General Unsecured Claims after the filing of this Disclosure Statement as part of the claims resolution process; and (iv) any disallowance or allowance of certain litigation or unliquidated claims asserted against the Debtors. Thus, the total amount of Allowed General Unsecured Claims may be materially more or less than the estimate set forth herein.

### **3. Equity Interests**

VRF, which holds 100% of the membership interests of VRG, is privately owned by Vestis Retail Holdings 2, LLC, which, in turn, is owned indirectly by investment funds advised by Versa.

#### **D. Prepetition Litigation**

As of the Petition Date, the Debtors were party to certain litigation. Among other cases, as of the Petition Date, one or more of the Debtors were defendants in certain general liability, property, and contractual dispute litigation. The litigation in which the Debtors are defendants is stayed by Bankruptcy Code section 362(a), except to the extent the Bankruptcy Court has granted relief from the automatic stay. As of the Petition Date, the Debtors also held claims relating to the litigation captioned *In re Payment Card Interchange Fee and Merchant Discount Fee Antitrust Litigation*, Case No. 1:05-md-01720-MKB-JO (E.D.N.Y.) (the "Visa/MC Litigation"). As further described below, the Debtors sold their claims in the Visa/MC Litigation post-petition.

#### **E. Events Leading to the Filing of the Chapter 11 Cases**

Prior to the Petition Date, the Debtors faced a series of business challenges and operational issues, which led to liquidity constraints. In response, beginning in early 2016, the Debtors explored numerous restructuring alternatives. In connection with their exploration of alternatives, the Debtors retained FTI Consulting, Inc. ("FTI") in March 2016 to serve as the Debtors' financial advisors, and Lincoln Partners Advisors LLC ("Lincoln") in March 2016 to serve as the Debtors' investment banker. The Debtors concluded that the commencement of the Chapter 11 Cases offered the best path for the Debtors to maximize the value of their businesses and assets for their estates and creditors. As a result, the Debtors determined to focus their efforts on negotiating a chapter 11 transaction and obtaining debtor-in-possession financing.

In the weeks preceding the Petition Date, the Debtors negotiated with certain of their existing lenders regarding providing DIP financing to support the Debtors' efforts in these Chapter 11 Cases.

Wells Fargo, the agent under the Debtors' Pre-Petition Loan Agreement, agreed to provide DIP financing to the Debtors through the post-petition continuation of the Pre-Petition Loan Agreement, as ratified and amended (the "DIP Facility").

In addition, preceding the Petition Date, the Debtors and Buyer entered into the initial version of the Sale Agreement, pursuant to which the Buyer agreed to act as a stalking horse bidder to acquire substantially all of the Debtors' assets as a going concern.

Additional detailed factual background relating to the Debtors and the events leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Mark T. Walsh in Support of First Day Motions* [Dkt. No. 2].

### **III. THE CHAPTER 11 CASES**

On April 18, 2016, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The Chapter 11 Cases are being jointly administered under the caption *In re VRG Liquidating, LLC, et al.*, Case No. 16-10971 (LSS). An immediate effect of commencement of the Chapter 11 Cases was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all collection efforts by Creditors, the enforcement of liens against property of the Debtors, and the continuation of litigation against the Debtors during the pendency of the Chapter 11 Cases. The automatic stay will remain in effect, unless modified by the Bankruptcy Court, until the Effective Date, when injunctions under the Plan and Confirmation Order will come into effect.

#### **A. First Day Orders**

On or about the Petition Date, the Debtors Filed certain "first day" motions and applications with the Bankruptcy Court seeking certain immediate relief to aid in the efficient administration of these Chapter 11 Cases and to facilitate the Debtors' transition to debtor-in-possession status. The Bankruptcy Court held hearings on these first-day motions on April 19 and May 16, 2016, and entered a series of customary "First Day" and "Second Day" orders.

#### **B. Debtor-in-Possession Financing**

On or about the Petition Date, the Debtors Filed a motion seeking Bankruptcy Court approval of the DIP Facility on the terms set forth in that certain *Ratification and Amendment Agreement*, dated as of April 17, 2016 (the "DIP Credit Agreement"), by and among the Debtors, Wells Fargo, and the other lenders party thereto. The DIP Credit Agreement provided for a senior secured DIP Facility of up to \$125 million. The motion was granted on an interim and then final basis.

Thereafter, in accordance with the terms of the Sale Agreement, Buyer satisfied the Debtors' obligations under the DIP Facility as part of the Purchase Price under the Sale Agreement and, consequently, there are no obligations outstanding under the DIP Facility that are owed by the Debtors.

### **C. Store Closing Sales**

Prior to the Petition Date, the Debtors conducted an analysis of the performance, sales, and profitability of all of the retail stores across the Bob's Stores, Eastern Mountain Sports, and Sport Chalet brands. Ultimately, the Debtors determined that commencing going out of business sales (the "Store Closing Sales") at 56 stores (including all 47 Sport Chalet stores, 8 Eastern Mountain Sports stores, and 1 Bob's Store) offered the best way under the circumstances to maximize the value of the Debtors' assets for their estates and creditors.

The Debtors selected Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC (together, the "Agent") to conduct the Store Closing Sales, in accordance with the terms of that certain *Letter Agreement Governing Inventory Disposition*, dated as of April 15, 2016 (as amended or otherwise modified from time to time, the "Store Closing Agreement"), by and between the Agent, on the one hand, and EMSOC, BS, SC, and SCTS, on the other hand. The Debtors commenced the Store Closing Sales on April 16, 2016.

On or about the Petition Date, the Debtors Filed a motion seeking approval of the Store Closing Agreement and permission to continue the Store Closing Sales. The motion was granted on an interim and then final basis. The Store Closing Sales concluded on or around June 30, 2016.

### **D. Additional Orders**

On and after the Petition Date, the Debtors Filed a number of motions and applications to retain professionals and to streamline the administration of the Chapter 11 Cases. The Bankruptcy Court entered the following orders granting the foregoing motions and applications:

- Order Under Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure, and Local Rule 2014-1, Authorizing Employment and Retention of Klee, Tuchin, Bogdanoff & Stern LLP as Counsel for the Debtors and Debtors in Possession *Nunc Pro Tunc* to the Petition Date [Dkt. No. 254];
- Order Providing that Any Creditors' Committee Is Not Authorized or Required to Provide Access to Confidential or Privileged Information to Creditors [Dkt. No. 246];
- Order Authorizing the Retention and Employment of Young Conaway Stargatt & Taylor, LLP as Counsel to the Debtors, *Nunc Pro Tunc* to the Petition Date [Dkt. No. 247];
- Order Authorizing the Debtors to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business [Dkt. No. 248];
- Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Dkt. No. 249];
- Order Pursuant to 11 U.S.C. §§ 327(a), 328, and 330, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure, and Local Rules 2014-1 and 2016-2

Authorizing the Employment and Retention of Kurtzman Carson Consultants LLC, as Administrative Agent for the Debtors, *Nunc Pro Tunc* to the Petition Date [Dkt. No. 250];

- Order Authorizing Employment and Compensation of Lincoln Partners Advisors LLC as Investment Banker to the Debtors and Debtors in Possession *Nunc Pro Tunc* to Petition Date and Modifying Certain Requirements [Dkt. No. 253];
- Order Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016-2(h), (I) Authorizing Employment and Retention of A&G Realty Partners, LLC as the Debtors' Real Estate Advisor for Sport Chalet, *Nunc Pro Tunc* to the Petition Date, (II) Waving Certain Information Requirements of Local Rule 2016-2(d), and (III) Granting Related Relief [Dkt. No. 255];
- Order Pursuant to Sections 105 and 363 of the Bankruptcy Code Authorizing and Approving, *Nunc Pro Tunc* to the Petition Date, the Agreement with FTI Consulting, Inc. to Provide (I) Robert J. Duffy and Mark Weinsten to Serve as the Debtors Co-Chief Restructuring Officers, and (II) Services Related Thereto [Dkt. No. 256];
- Order Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016-2(h) (I) Authorizing Employment and Retention of RCS Real Estate Advisors as the Debtors' Real Estate Advisor for Bob's Stores and EMS, *Nunc Pro Tunc* to the Petition Date, (II) Waiving Certain Information Requirements of Local Rule 2016-2(d), and (III) Granting Related Relief [Dkt. No. 257];
- Order Establishing Deadlines for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof [Dkt. No. 258];
- Order (A) Establishing Notice Procedures for the Assumption and Assignment of Certain Nonresidential Real Property Leases; (B) Establishing Bidding Procedures in Connection with an Auction of Such Nonresidential Real Property Leases; (C) Authorizing and Scheduling an Auction with Respect Thereto; (D) Approving Cure Procedures; and (E) Scheduling a Sale Hearing with Respect to the Outcome of the Auction [Dkt. No. 283];
- Order Establishing Procedures for the Rejection of Executory Contracts and Unexpired Leases [Dkt. No. 285];
- Order Pursuant to Sections 105 and 363 of the Bankruptcy Code Authorizing and Approving, Effective as of May 23, 2016, the Agreement with Berkeley Research Group, LLC to Provide Robert J. Duffy to Serve as the Debtors' Co-Chief Restructuring Officer [Dkt. No. 689];
- Order, Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014-1, For Authority to Retain and

Employ KPMG LLP to Provide Tax Compliance and Consulting to the Debtors, *Nunc Pro Tunc* to January 18, 2017 [Dkt. No. 1248]; and

- Order Authorizing the Retention and Employment of Pachulski Stang Ziehl & Jones LLP as Special Counsel to the Debtors *Nunc Pro Tunc* to November 30, 2017 [Dkt. No. 1773].

In addition, the Committee Filed applications to retain professionals and the Bankruptcy Court entered the following orders granting such applications:

- Order Authorizing the Employment and Retention of Cooley LLP as Lead Counsel for the Official Committee of Unsecured Creditors [Dkt. No. 369];
- Order Authorizing Employment and Retention of Polsinelli PC *Nunc Pro Tunc* to April 26, 2016 as Delaware Counsel and Conflicts Counsel to the Official Committee of Unsecured Creditors [Dkt. No. 370]; and
- Order Authorizing the Official Committee of Unsecured Creditors of Vestis Retail Group, LLC to Employ and Retain Zolfo Cooper, LLC as Bankruptcy Consultant and Financial Advisor, *Nunc Pro Tunc* to April 26, 2016 [Dkt. No. 372].

#### **E. Sale Agreement and Sale to Buyer**

On April 17, 2016, the Debtors entered into the Sale Agreement with Buyer. Pursuant to and subject to the terms and conditions of the Sale Agreement, Buyer agreed to acquire, with certain exceptions, substantially all of the Debtors' assets related to Bob's Stores and Eastern Mountain Sports as a going concern.

On the Petition Date, the Debtors filed the *Debtors' Motion for Orders (A)(I) Authorizing and Approving Bidding Procedures and Expense Reimbursement; (II) Authorizing and Approving the Debtors' Entry Into the Stalking Horse APA; (III) Approving Notice Procedures; (IV) Scheduling a Sale Hearing; and (V) Approving Procedures for Assumption and Assignment and Determining Cure Amounts and (B)(I) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases* [Dkt. No. 18] (the "Sale Motion"). Among other things, the Sale Motion contemplated the approval of bidding procedures for the submission of competing proposals to purchase the Acquired Assets and an auction (the "Auction") in the event any competing qualified bids were submitted.

Following the filing of the Sale Motion, the Debtors, Committee, and Buyer engaged in extensive negotiations, as a result of which, among other things, the Purchase Price for the Acquired Assets was increased, the Buyer was declared the successful bidder for the Acquired Assets, the requests for approval of bidding procedures and the expense reimbursement in favor of the Buyer were withdrawn, and the Auction was cancelled.

The purchase price (the "Purchase Price") payable by Buyer under the Sale Agreement was comprised of (a) a Cash payment equal to \$3,000,000; (b) a credit bid pursuant to section 363(k) of

the Bankruptcy Code (a “Credit Bid”) of a portion of the obligations under the Third Lien Loan Agreement held by Buyer and its Affiliates equal to \$35,000,000; (c) the payoff in full by Buyer of all of (i) the outstanding obligations under the DIP Facility, (ii) the outstanding obligations under the Pre-Petition Loan Agreement, and (iii) the outstanding obligations under the Pre-Petition Term Loan Agreement; and (d) the assumption by Buyer of (i) any portion of the outstanding obligations under the Third Lien Loan Agreement not included in the Credit Bid and (ii) certain of the Debtors’ liabilities (as described in greater detail below, the “Assumed Liabilities”).

On June 20, 2016, the Bankruptcy Court entered the *Order (I) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Asset Purchase Agreement and (III) Authorizing the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases* [Dkt. No. 590] (the “Sale Order”),<sup>6</sup> pursuant to which the Bankruptcy Court authorized and approved, among other things, (i) the Debtors’ entry into and performance under the Sale Agreement; (ii) the sale of the Acquired Assets (the “Sale”) free and clear of any and all liens (other than certain Permitted Liens, as defined in the Sale Order); (iii) the assumption by Buyer of the Assumed Liabilities; and (iv) the assumption by the Debtors and assignment to Buyer of certain executory contracts (all executory contracts of the Debtors, the “Contracts”) and unexpired leases (all unexpired leases of the Debtors, the “Leases”) of the Debtors (collectively, the “Assumed Contracts”).

The closing of the transactions contemplated by the Sale Agreement, including the Sale, took place on July 18, 2016 (the “Closing Date”). Following the Closing Date and in accordance with the Sale Agreement and Sale Order, the Buyer designated certain Contracts and Leases for either (i) assumption by the Debtors and assignment to Buyer, which were assumed by the Debtors and assigned to the Buyer, or (ii) exclusion and rejection, which were rejected by the Debtors.

Under the terms of the Sale Agreement and as enumerated on Schedule 2.3 of the Sale Agreement, the Assumed Liabilities that were assumed by Buyer were:<sup>7</sup>

- 1) Liabilities under the Assumed Contracts and the Assumed Permits to the extent arising from and after the Closing Date (except for any Liabilities to the extent based on the actions of Debtors).
- 2) All allowed claims in the Chapter 11 Cases under section 503(b)(9) of the Bankruptcy Code (which claims will not, for the avoidance of doubt, be subject to any setoff in respect of any Avoidance Actions), to the extent not previously paid by the Debtors.
- 3) All current Liabilities, trade payables and accrued expenses of Debtors incurred in the Ordinary Course of Business, in each case, as of the Closing Date (and not paid

---

<sup>6</sup> The summary of the terms and conditions of the Sale Agreement and Sale Order set forth in this Disclosure Statement is intended solely for informational purposes and are qualified in their entirety by the Sale Agreement and the Sale Order.

<sup>7</sup> Capitalized terms used but not defined in this subsection of the Disclosure Statement shall have the meanings provided to them in the Sale Agreement.



by Debtors prior thereto), to the extent arising and related to the period following the Petition Date.

- 4) All accrued payroll, accrued and unused vacation and other paid time off entitlements (including sick time and floating holidays, as applicable), and accrued payroll Taxes, in each case, as of the applicable Transfer Date (and not paid by Debtors prior thereto) to the extent arising and related to the period following the Petition Date, provided that Debtors pay all liabilities and obligations described in item 4 of Schedule 2.3 of the Sale Agreement as and when due through the applicable Transfer Date consistent with Debtors' past practices.
- 5) Liabilities relating to (i) benefit claims that are incurred by Current Employees but not paid prior to the Petition Date under Debtors' group health plan and (ii) continuation health care coverage, to the extent required by COBRA, to Current Employees and Former Employees of the Debtors (and their qualified beneficiaries) who left employment or otherwise experienced a COBRA qualifying event on or prior to the Designation Deadline.
- 6) All employee related Liabilities that are Priority Claims or Administrative Claims (and not paid by Debtors prior to the Closing Date), to the extent such Liabilities are Administrative Claims as set forth in item 11 of Schedule 2.3 of the Sale Agreement or Priority Claims as set forth in item 18 of Schedule 2.3 of the Sale Agreement, including all Liabilities arising out of, relating to, or with respect to any notice pay or benefits, including claims under the WARN Act with respect to any Current Employees and/or Former Employees.
- 7) All Consumer Liabilities as of the Closing Date for so long as Buyer determines to continue the policies of the Business to which such Consumer Liabilities relate (it being understood that Buyer may terminate any policies relating thereto in the Ordinary Course of Business at its discretion following the Closing); provided that Consumer Liabilities with respect to Sport Chalet shall be assumed by Buyer only in accordance with item 9 of Schedule 2.3 of the Sale Agreement.
- 8) All Operational Expenses that are the obligation of Buyer pursuant to Section 2.10 of the Sale Agreement.
- 9) All ordinary course gift card and merchandise credit obligations of Debtors as of the Closing Date, provided that such obligations (i) arise from gift cards sold or merchandise returned in the Ordinary Course of Business and (ii) shall not include any escheatment claims asserted by any Governmental Entity or any similar claim; provided, further, that the amount of any such gift card obligation shall be no more than the face value of the gift card and shall be limited to use of such gift cards presented by individual holders for goods sold at their retail or online stores by the Debtors, subject to such lawful limitations as the Debtors may impose for gift cards issued by them; provided, further, that Buyer shall honor all Sport Chalet gift cards or merchandise credits if presented by individual holders for goods sold at any Sport Chalet stores through April 29, 2016 or if exchanged for Eastern Mountain Sport or

Bob's Stores gift cards or merchandise credits through July 29, 2016, but that following such date Buyer shall have no further liability or obligation with respect thereto.

- 10) Liabilities consisting of amounts Buyer has expressly agreed to pay under the Sale Agreement, including the DIP Financing Obligations, the First Lien Financing Obligations (to the extent outstanding), the Second Lien Financing Obligations, any portion of the outstanding Third Lien Financing Obligations not credit bid as set forth in Section 2.5(b) of the Sale Agreement and all Cure Amounts.
- 11) Administrative Claims incurred prior to the Closing Date to the extent allowed by order of the Bankruptcy Court (including, by way of clarification, all Taxes incurred for the period from and after the Petition Date through the Closing Date to the extent such Taxes are Administrative Claims as set forth in item 11 of Schedule 2.3 of the Sale Agreement or Priority Claims as set forth in item 18 of Schedule 2.3 of the Sale Agreement or otherwise agreed to (in writing) by Buyer).
- 12) Any fees and expenses for Professional Services incurred by professionals employed by Debtors and/or the Committee (in each case, that are allowed Administrative Claims as set forth in item 11 of Schedule 2.3 of the Sale Agreement), provided that such fees and expenses shall not (in the aggregate) exceed 110% of the amount of the professional fee budget included in the Cash Budget for the period through and including the Closing Date.
- 13) All reasonable fees and expenses for Professional Services rendered in connection with the Chapter 11 Cases and the entry into the Sale Agreement and the consummation of the transactions contemplated by the Sale Agreement, as and when the same may be allowed by the Bankruptcy Court, for the period following the Closing through the Designation Deadline in connection with matters undertaken at Buyer's request or incident thereto, including the assumption and assignment or rejection and exclusion of Contracts.
- 14) All United States Trustee fees and all costs associated with the preparation and filing of monthly operating reports during and prior to the Designation Deadline, in an amount not to exceed \$75,000.
- 15) All obligations under any Employee Benefit Plan to the extent such obligations are (i) Administrative Claims as set forth in item 11 of Schedule 2.3 of the Sale Agreement or Priority Claims as set forth in item 18 of Schedule 2.3 of the Sale Agreement or (ii) in excess of the obligations set forth in clause (i) but only to the extent that such obligations would subject any director, officer, employee, shareholder, member or other control person of Debtors or Buyer to any civil, criminal or other personal Liability.
- 16) Obligations for unsecured claims of Current Employees and Former Employees incurred or attributable to service prior to the Petition Date in connection with each such employee's employment with Debtors (including obligations with respect to

accrued, unpaid paid time off required to be paid under applicable Law to such employees whose employment is terminated prior to the Petition Date), but only to the extent that such obligations would subject any director, officer, employee, shareholder, member or other control person of Debtors or Buyer to any civil, criminal or other personal Liability.

- 17) Sponsorship of, and obligations under, the Assumed Benefit Plans, provided that Debtors were obligated to pay all liabilities and obligations described in this item as and when due through the Closing Date consistent with Debtors' past practices.
- 18) Priority Claims incurred prior to the Closing Date to the extent allowed by order of the Bankruptcy Court or agreed to (in writing) by Buyer; provided, however, that any Priority Claims with respect to Taxes may, at the written election of Buyer, remain as (and be deemed) an Excluded Liability, so long as Buyer covenants to fund the payment of such claims (it being understood, however, that any Taxes that are Assumed Liabilities hereunder shall be determined after giving effect, to the extent possible, to available deductions for net operating losses of Debtors).
- 19) Claims for stub-rent pursuant to section 503(b) of the Bankruptcy Code (it being understood that Buyer shall pay such amounts for (i) Continuing Stores, no later than ten (10) days following the assumption and assignment to Buyer of the Lease with respect to which any such claim for stub-rent is payable, (ii) Non-Continuing Stores, if the Lease with respect to such Non-Continuing Store was rejected and excluded prior to Closing, no later than the later of ten (10) days following Closing or the end of the calendar month in which Closing occurs and (iii) Non-Continuing Stores, if the Lease with respect to such Non-Continuing Store was rejected and excluded following Closing, no later than the later of ten (10) days following the Rejection Effective Date or the end of the calendar month in which the Rejection Effective Date occurs).
- 20) Liabilities under that certain letter agreement, dated as of March 30, 2016, by and among RCS Real Estate Advisors, VRG, BS, EMSA and EMSOC.
- 21) That portion of the Financing Transaction Fee (as defined that certain letter agreement, dated as of April 16, 2016, by and between the Debtors and Lincoln Partners Advisors LLC) which Debtors are not obligated to pay under the order of the Bankruptcy Court authorizing the employment of Lincoln Partners Advisors LLC, to the extent such fee is otherwise payable in accordance with the terms of the Lincoln Agreement.
- 22) All Liabilities for the fees of Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC under Section E of the Store Closing Agreement.

As of the filing of this Disclosure Statement, it is estimated that, in accordance with the Sale Agreement and in addition to Assumed Liabilities paid in the ordinary course of business, the Buyer has reimbursed or funded to the Debtors or paid directly to the respective claimants approximately \$10,632,002.14 in the aggregate on account of certain payables agreed to be Assumed Liabilities.

Under the terms of the Sale Order and the Sale Agreement, Buyer did not assume or agree to be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of the Debtors, whether existing on the Closing Date or arising thereafter, other than the Assumed Liabilities (all such Liabilities that Buyer is not assuming being referred to collectively as the “Excluded Liabilities”). For example, any Administrative Claims that are not an Assumed Liability are not payable by Buyer. Such Claims would instead be payable by the Debtors’ Estates, as provided for under the Plan.

Furthermore, the Sale Agreement provides that the following Assets of the Debtors (the “Excluded Assets”) will not be sold to Buyer and are instead retained by the Debtors:<sup>8</sup>

- 1) All of the Debtors’ and their respective Affiliates’ certificates of incorporation and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates and other documents relating to the organization, maintenance and existence of any Debtor or any of its Affiliates as a corporation, limited liability company or other entity.
- 2) All equity securities of any Debtor and all net operating losses of any Debtor (it being understood, however, that any such net operating losses shall, to the extent possible, be applied so as to reduce any Taxes that are Assumed Liabilities under the Sale Agreement).
- 3) All Excluded Contracts and all Leased Real Property related to Excluded Contracts that are Leases (it being understood that any Non-Real Property Contract or Lease that has neither been assumed and assigned nor excluded and rejected pursuant to Section 2.6 of the Sale Agreement shall not be deemed to be an Excluded Contract unless and until it becomes an Excluded Contract pursuant to Section 2.6 of the Sale Agreement).
- 4) All rights, including rights of set-off and rights of recoupment, refunds, claims, counterclaims, demands, causes of action and rights to collect damages of Debtors against third parties to the extent solely related to any Excluded Asset or Excluded Liability.
- 5) Any (1) confidential personnel and medical Records pertaining to any Current Employees or Former Employees to the extent the disclosure of such information is prohibited by applicable law, (2) other Records that the Debtors are required by law to retain and (3) any Records or other documents relating to the Chapter 11 Cases that are protected by the attorney-client privilege; provided that Buyer shall have the right to make copies of any portions of such retained Records to the extent that such portions relate to the Business or any Acquired Asset.

---

<sup>8</sup> Capitalized terms used but not defined in this subsection of the Disclosure Statement shall have the meanings provided to them in the Sale Agreement.

- 6) All Permits other than the Assumed Permits specified under the Sale Agreement.
- 7) All assets maintained pursuant to or in connection with any Employee Benefit Plan (other than the Assumed Benefit Plans).
- 8) The rights of the Debtors under the Sale Agreement and all cash and non-cash consideration payable or deliverable to the Debtors under the Sale Agreement.
- 9) All equity securities of SME.
- 10) All of the Liquidating Store Closing Assets and all of the Leases for the premises of any Liquidating Store.
- 11) The Store Closing Agreement and the A&G Agreement.
- 12) Each Leased Real Property listed on Schedule 1A of the Sale Agreement and each Lease relating to such Leased Real Property.
- 13) The Excluded Commercial Tort Claims consisting of (i) the Litigation captioned *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 1:05-md-01720 (E.D.N.Y.) and (ii) other class action commercial tort claims that the Debtors are or could have been a party to prior to the Closing and that will not impact the Business following the Closing.

#### **F. The Buyer Settlement Agreement**

The Debtors (with the support and approval of the Committee) and the Buyer have entered into the Buyer Settlement Agreement to resolve with finality all claims that have been or could have been asserted by the Debtors against the Buyer, including for Assumed Liabilities under the Sale Agreement. Pursuant to the Buyer Settlement Agreement and except as expressly set forth therein, in full and complete settlement and satisfaction of the obligations of the Buyer under the Sale Agreement, the Buyer agreed to pay the Debtors \$653,000.00.<sup>9</sup> In exchange for such payment, the Debtors and the Buyer exchanged mutual releases, effective pursuant to and as more specifically set forth in the Buyer Settlement Agreement, and the Debtors agreed to include the Buyer as a Released Party in the Plan. Certain limited obligations under the Sale Agreement remain in force, as more specifically set forth in the Buyer Settlement Agreement. For the avoidance of doubt, nothing contained in the Buyer Settlement Agreement is intended to or shall be construed to limit or impair the ability of the Debtors, or any subsequently appointed estate representative, to object to a proof of claim or request for payment of an administrative expense filed or otherwise asserted against the Debtors' estates in the Chapter 11 Cases on the basis that the underlying liability for such claim or administrative expense is not an obligation of or was not incurred by the Debtors.

The Debtors have filed a motion for entry of an order by the Bankruptcy Court approving the Buyer Settlement Agreement. *See* Docket No. 2014. The Debtors, in close consultation with the

---

<sup>9</sup> Although certain Buyer affiliates commenced their own chapter 11 cases, the Buyer, Vestis Investments II, LLC itself, did not.

Committee, believe that the terms of the Buyer Settlement Agreement are fair and reasonable, including, without limitation, because, among other things (i) the Buyer Settlement Agreement liquidates the Buyer's remaining obligations with respect to the Assumed Liabilities in an efficient, consensual manner that will avoid incremental costs to the Estates and (ii) the Buyer Settlement Agreement provides the Debtors' Estates with the opportunity for meaningful upside, as the Debtors believe that the remaining claims that would otherwise constitute Assumed Liabilities can be resolved for an amount equal to or less than the consideration to be provided by the Buyer under the Buyer Settlement Agreement for such claims.

Subject to the terms of the Buyer Settlement Agreement and conditioned upon the Bankruptcy Court's approval of the Buyer Settlement Agreement, the Debtors have included the Buyer as a Released Party under the Plan for purposes of the releases set forth in Section 11.12 of the Plan, which releases constitute an integral part of the Plan.

#### **G. United States Trustee**

The U.S. Trustee has appointed Jane Leamy and Timothy Fox as the attorneys for the U.S. Trustee in connection with these Chapter 11 Cases. The Debtors have worked cooperatively to address concerns and comments from the U.S. Trustee's office during these Chapter 11 Cases.

#### **H. Appointment of Committee**

On April 26, 2016, the U.S. Trustee appointed the Committee in these Chapter 11 Cases. The Committee currently consists of Nike USA, Inc.; Under Armour Inc.; Wolverine Worldwide, Inc.; Levi Strauss & Co. Inc.; VF Outdoor, LLC; and Regency Centers, L.P. In addition, Carhartt, Inc., Columbia Sportswear, Marmot Mountain International, Kuhl Clothing, and DDR Corp. are serving as non-voting members of the Committee. The counsel to the Committee is Cooley LLP and Polsinelli PC, and the financial advisor to the Committee is Zolfo Cooper, LLC.

#### **I. Meeting of Creditors**

The meeting of creditors under section 341(a) of the Bankruptcy Code was held on June 6, 2016 at the J. Caleb Boggs Federal Building, 844 North King St., Room 2112, Wilmington, Delaware 19801.

#### **J. Schedules, Statements of Financial Affairs, and Claims Bar Dates**

The Debtors Filed their Schedules on June 2, 2016. A creditor whose Claim is set forth in the Schedules of a Debtor in an amount not equal to \$0 and not identified as contingent, unliquidated, or disputed may, but need not, file a proof of claim against that Debtor to be entitled to participate in the Chapter 11 Cases or to receive a distribution under the Plan. With limited exceptions, all other claimants must file a proof of claim to receive a distribution under the Plan.

The Bankruptcy Court established (i) July 7, 2016 at 5:00 p.m. (prevailing Pacific Time) as the deadline for Creditors (other than governmental units) to File proofs of claim against the Debtors, including Section 503(b)(9) Claims (the "General Bar Date"); (ii) October 17, 2016 at 5:00 p.m. (prevailing Pacific Time) as the deadline for any governmental unit (as such term is defined in section 101(27) of the Bankruptcy Code) to File proofs of claim against the Debtors (the

“Government Bar Date”); and (iii) April 14, 2017 at 5:00 p.m. (prevailing Pacific Time) as the deadline for Entities to File requests for payment of Non-Ordinary Course Administrative Claims (other than Section 503(b)(9) Claims) that first arose during the period from the Petition Date through and including March 15, 2017 (the “First Administrative Claim Bar Date” and together with the General Bar Date, and the Governmental Bar Date, the “Bar Dates”).

#### **K. Administrative, Section 503(b)(9), Priority, and Secured Claims Analysis**

The Debtors Filed thirteen omnibus claim objections and one stand-alone claim objection seeking to disallow or reclassify as General Unsecured Claims numerous Administrative Claims, Section 503(b)(9) Claims, Priority Claims, and Secured Claims that were Filed against the Debtors’ Estates. *See* Dkt. Nos. 1341, 1382, 1397, 1423, 1424, 1454, 1455, 1456, 1500, 1530, 1583, 1584, 1586 & 1652.<sup>10</sup> In connection with the Debtors’ claim objections, the Bankruptcy Court entered orders approving the disallowance or reclassification as General Unsecured Claims of approximately \$3,368,428.16 in asserted Administrative Claims, \$254,813.56 in asserted Section 503(b)(9) Claims, \$12,007,268.08 in asserted Priority Claims, and \$1,110,342.48 in asserted Secured Claims in the aggregate. *See* Dkt. Nos. 1369, 1437, 1438, 1523, 1525, 1526, 1527, 1555, 1556, 1588, 1589, 1639, 1643, 1644, 1649, 1670, 1706 & 1723. In addition, the Debtors Filed eight notices of satisfaction, resulting in the expungement of another \$5,715,907.50 in asserted Administrative Claims, \$5,708,108.23 in asserted Section 503(b)(9) Claims, and \$237,305.16 in asserted Priority Claims. *See* Dkt. Nos. 1259, 1349, 1351, 1512, 1664, 1746, 1802 & 1923. Finally, the Debtors obtained voluntary withdrawals or modifications of Claims, resulting in the expungement or reclassification as General Unsecured Claims of approximately \$7,023,962.05 in asserted Administrative Claims, \$96,948.82 in asserted Section 503(b)(9) Claims, \$2,263,728.34 in asserted Priority Claims, and \$160,442.47 in asserted Secured Claims.

The Debtors estimate that, as of the filing of this Disclosure Statement, approximately \$232,298.18 in asserted Administrative Claims, \$0 in asserted Section 503(b)(9) Claims, \$259,578.34 in asserted Priority Claims, and \$24,327.46 in asserted Secured Claims (plus certain unliquidated Claims) remain pending against the Debtors’ Estates.<sup>11</sup> The Debtors will continue to seek the disallowance, modification, or withdrawal of these Claims, where appropriate. The Debtors believe that the remaining asserted Secured Claims are not secured by property of the Debtor’s Estates and that the remaining asserted Administrative Claims, Priority Claims, and Secured Claims can be resolved for an amount equal to or less than the consideration to be provided by the Buyer under the Buyer Settlement Agreement for such claims.

---

<sup>10</sup> Separately, the Buyer also filed several omnibus claim objections with respect to asserted Administrative Claims and Section 503(b)(9) Claims. *See* Docket Nos. 834, 835, 937, 1038 & 1039.

<sup>11</sup> The estimated remaining \$259,578.34 in asserted Priority Claims includes \$80,095.21 in asserted Priority Claims that the Debtors have validated and the Buyer has funded. However, the claims remain pending against the Debtors’ Estates because, absent Court order, the Debtors do not have authority to pay Priority Claims outside of a chapter 11 plan, and therefore the Debtors have not yet disbursed the funding to the applicable claimants. The estimated \$232,298.18 in asserted Administrative Claims includes \$205,863.96 on account of an asserted Administrative Claim filed by the California State Board of Equalization for which the Debtors have submitted a request for relief seeking total abatement of such claim.

#### **L. Sale of Claims in Visa/MC Litigation**

Post-petition, the Debtors marketed their claims in the Visa/MC Litigation for sale, negotiated an asset purchase agreement with a stalking horse bidder, and conducted an auction of the claims. Following the auction, the Bankruptcy Court approved the sale of the Debtors' claims in the Visa/MC Litigation to Jefferies Leveraged Credit Products LLC for an aggregate purchase price of \$731,000. *See* Dkt. No. 1860. Net Cash proceeds from the sale after paying the stalking horse bidder's termination fee were \$706,000. The sale closed on April 24, 2018. *See* Dkt. No. 1865.

#### **M. Avoidance Action Litigation**

On and after April 16, 2018, SC Filed 22 complaints seeking the avoidance and recovery, pursuant to Bankruptcy Code sections 547 and 550, of approximately \$4,014,360.20 in the aggregate in alleged preferential payments. *See* Dkt. Nos. 1838–1848, 1957, 1968–1977. In addition, the Debtors entered into tolling agreements with several potential targets of Avoidance Actions in order to extend the period within which Avoidance Actions may be filed against such potential targets. As of the filing of this Disclosure Statement, Debtor SC has negotiated settlement agreements in respect of approximately 13 of these Filed or tolled Avoidance Actions, 9 of which have been approved by order of the Bankruptcy Court. *See* Dkt. No. 2009.

### **IV. SUMMARY OF THE JOINT CHAPTER 11 PLAN**

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

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

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Equity Interests in the Debtors under the Plan and will, upon the occurrence of the Effective Date, be binding upon all Holders of Claims against and Equity Interests in the Debtors, the Debtors' Estates, all parties receiving property under the Plan, and other parties in interest. To the extent of any conflict, inconsistency, or discrepancy between this Disclosure Statement and the Plan, the Confirmation Order, the Plan Supplement, or any other operative document, the terms of the Plan, Confirmation Order, Plan Supplement, and/or such other operative document, as applicable, shall govern and control; provided that, in any event, the terms of (1) the Confirmation Order and then (2) the Plan, in that order, shall govern and control over all other related documents.

#### **A. Purpose and Effect of the Plan**

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of its constituents. Chapter 11 also allows a debtor to formulate and consummate a plan of liquidation. A plan of liquidation sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of liquidation by a bankruptcy court makes the plan binding upon the debtor and any



creditor of or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

The Plan provides for the distribution of the proceeds of the liquidation of all Assets of the Debtors to various Creditors as contemplated under the Plan and for the wind-up the Debtors' corporate affairs. More specifically, the Plan provides for the creation of a Liquidating Trust that will administer and liquidate all remaining property of the Debtors, including the Retained Causes of Action, and for the funding of such Liquidating Trust.

Under the Plan, Claims against, and Equity Interests in, the Debtors are divided into Classes according to their relative seniority and other criteria. If the Plan is confirmed by the Bankruptcy Court and consummated, the Claims and Equity Interests of the various Classes will be treated in accordance with the provisions in the Plan for each such Class and the Liquidating Trustee will make Distributions as provided in the Plan. A general description of the Classes of Claims and Equity Interests created under the Plan, the treatment of those Classes under the Plan, and the property to be distributed under the Plan are described below.

## **B. Substantive Consolidation**

Solely for purposes of voting and distribution in connection with the Plan, pursuant to Section 5.2 of the Plan, the Assets, Claims, and affairs of the Debtors and their Estates shall be "substantively consolidated." This means that solely for such purposes, the separateness of the Debtors and the Estates will be ignored and all of the Debtors and all of the Estates will be treated as if they were one Debtor and one Estate.

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

The Plan is predicated on the treatment of General Unsecured Claims without regard to the specific Debtor as to which the Holders of such Claims assert their Claims. The form of substantive consolidation proposed under the Plan ultimately should benefit all Creditors. Absent the substantive consolidation proposed under the Plan, the process of disentangling the Estates of the Debtors would be both time consuming and costly for at least several reasons.

First, allocating the relative value of each Debtor's assets that were sold in connection with the Sale would be challenging. There is no clear apportionment of the value of the sold assets of the Debtors' and the associated liabilities that were assumed. For instance, the Debtors' intellectual property, including trademarks, are all owned by VIH, the Debtors' headquarters Lease is in the name of BS, and the Debtors' headquarters employees, who provided services to all Debtors, were employed solely by BS. Apportioning value of the Debtors' assets and associated liabilities with respect to these and other assets would be an exceedingly difficult task and could lead to prolonged disputes or litigation among the individual Debtors and their Estates.

Second, and relatedly, all of the Debtors were either primarily or secondarily liable on (1) the DIP Facility, Pre-Petition Loan Agreement, and Pre-Petition Term Loan Agreement, which were all paid off through, among other things, the Store Closing Sales and the Sale and (2) the Third Lien Loan Agreement, which was partially credit bid and partially assumed in connection with the Sale. Absent substantive consolidation, there is no clear answer concerning how much value each Estate received as a result of the satisfaction of these loans. Without this answer, it is impossible to determine how the Debtors' Estates' Cash should be allocated among the Estates.

Third, as permitted by section 1123(a)(5)(C) of the Bankruptcy Code, one basis for substantive consolidation in these Chapter 11 Cases is the vote of the Class of Creditors entitled to vote in favor of such treatment. The Plan does not propose substantive consolidation to deprive a specific Creditor or group of Creditors of their rights while providing a windfall to other Creditors. Rather, given the limited amount available for distribution to General Unsecured Creditors, and the expense involved in allocating the remaining Cash held by the Debtors among the Estates, the recovery by Creditors will be maximized by consolidating the assets and liabilities of each of the Debtors.

Accordingly, the Plan Proponents believe that substantive consolidation of the Debtors, for purposes of voting and distribution in connection with the Plan, is in the best interest of the Debtors' Estates and parties in interest.

### **C. Liquidating Trust**

The initial Liquidating Trustee shall be META Advisors LLC. On the Effective Date, the Debtors and the Liquidating Trustee shall execute the Liquidating Trust Agreement and shall take all steps necessary to establish the Liquidating Trust in accordance with the Plan. The form of Liquidating Trust Agreement is included as an exhibit to the Plan.

On the Effective Date, the Debtors shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Liquidating Trust all of their right, title, and interest in and to all of the Liquidating Trust Assets, and, in accordance with section 1141 of the Bankruptcy Code, except as specifically provided in the Plan or the Confirmation Order, the Liquidating Trust Assets shall automatically vest in the Liquidating Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to (i) the Liquidating Trust Interests and the Liquidating Trust Expenses, as provided for in the Plan and the Liquidating Trust Agreement, and (ii) Claims required to be paid by the Liquidating Trust pursuant to the Plan with priority over General Unsecured Claims, including, without limitation, Allowed Administrative Claims and Allowed Professional Fee Claims; and such

transfer shall be exempt from any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax.

The Liquidating Trustee shall be the exclusive trustee of the Liquidating Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidating Trust shall be governed by the Liquidating Trust Agreement and administered by the Liquidating Trustee. The powers, rights, and responsibilities of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in the Plan, subject to any required reporting to the Liquidating Trust Advisory Committee as may be set forth in the Liquidating Trust Agreement.

The Liquidating Trust Agreement generally will provide for, among other things, (i) the payment of the Liquidating Trust Expenses; (ii) the payment of other reasonable expenses of the Liquidating Trust; (iii) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; (iv) the investment of Cash by the Liquidating Trustee within certain limitations, including those specified in the Plan; (v) the orderly liquidation of the Liquidating Trust Assets; (vi) litigation of any Retained Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Retained Causes of Action, subject to reporting and oversight by the Liquidating Trust Advisory Committee; (vii) the prosecution and resolution of objections to Claims, subject to reporting and oversight by the Liquidating Trust Advisory Committee; and (viii) the establishment of such Disputed Claim Reserves as the Liquidating Trustee deems appropriate.

On and after the Effective Date, the Liquidating Trustee shall establish Cash reserves from the Liquidating Trust Assets to be held in a Liquidating Trust wind-down fund (the “Liquidating Trust Expenses Reserve”). The Liquidating Trust Expenses Reserve shall be used to pay Liquidating Trust Expenses and shall be subject to adjustment in the Liquidating Trustee’s sole and absolute discretion. In the event that amounts held in the Liquidating Trust Expenses Reserve, together with any remaining Liquidating Trust Assets, are insufficient to pay all Liquidating Trust Expenses, the Liquidating Trustee shall, unless reserves sufficient for such purpose have otherwise been made available from any other sources, have no obligation to make such payments.

#### **D. Estimated Recoveries for Holders of General Unsecured Claims**

The Plan Proponents estimate that Holders of Allowed General Unsecured Claims in these Chapter 11 Cases should recover approximately 0.60–0.90% of the total amount of their Allowed General Unsecured Claims, assuming that (i) there are no significant future recoveries with respect to the Retained Causes of Action or Avoidance Actions that the Liquidating Trust may pursue; (ii) the Avoidance Action settlements pending at the time this Disclosure Statement was filed are documented and approved, and the cash consideration contemplated thereby is paid; (iii) the total amount of Allowed Claims is not significantly different from the current estimated amount of Claims based on the Schedules and the proofs of claims Filed against the Debtors; and (iv) the Bankruptcy Court approves the Buyer Settlement Agreement and the Buyer pays the consideration provided for thereunder. The Plan Proponents have calculated the estimate of projected recoveries for Holders of General Unsecured Claims taking into account two variables: (i) the total estimated amount of General Unsecured Claims and (ii) the total estimated amount of Cash available for Distributions to

Holders of Allowed General Unsecured Claims. For purposes of this Disclosure Statement, the Plan Proponents have not attributed value to non-Cash Assets of the Debtors.

As described in more detail in Section II.C.2 of this Disclosure Statement, after making certain adjustments, the Plan Proponents estimate that the General Unsecured Claims approximate \$220 million, subject to certain additional noted potential adjustments. After the Effective Date, the Liquidating Trustee may obtain additional Cash from (i) future recoveries with respect to the Retained Causes of Action and Avoidance Actions and (ii) any other potential recoveries with respect to Excluded Assets under the Sale Agreement. However, the Cash has been or will be reduced by, among other things, (i) the Liquidating Trust Expenses; (ii) Claims, including Professional Fee Claims, with priority over General Unsecured Claims; and (iii) any other wind-down fees, costs, and expenses of the Debtors. After considering all of these and other relevant variables, the Plan Proponents estimate Cash available for Distributions of approximately \$1,889,700, less the Liquidating Trust Expenses. Again, this estimate does not take into account any potential future recoveries with respect to the Retained Causes of Action and Avoidance Actions (other than those recoveries described in Section III.M of this Disclosure Statement).

#### **E. Treatment of Unclassified Claims**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Non-Ordinary Course Administrative Claims, Ordinary Course Administrative Claims, Professional Fee Claims, and Priority Tax Claims have not been classified and the respective treatment of such unclassified Claims is set forth in Article 3.1 of the Plan.

##### **1. Non-Ordinary Course Administrative Claims**

Except as otherwise provided for in the Plan, and subject to the requirements of the Plan, on, or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Non-Ordinary Course Administrative Claim becomes an Allowed Non-Ordinary Course Administrative Claim, the Holder of such Allowed Non-Ordinary Course Administrative Claim shall receive from the Liquidating Trust, in full satisfaction, settlement, and release of and in exchange for such Allowed Non-Ordinary Course Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Non-Ordinary Course Administrative Claim or (b) such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing.

##### **2. Ordinary Course Administrative Claims**

Ordinary Course Administrative Claims shall be paid by the Liquidating Trust in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto, or Holders of such Claims shall receive such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing.

##### **3. Professional Fee Claims**

**All final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Liquidating Trustee, counsel to the Debtors,**

**and counsel to the U.S. Trustee no later than thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on counsel to the Liquidating Trustee, counsel to the Debtors, counsel to the Committee, counsel to the U.S. Trustee and the requesting Professional on or before the date that is fourteen (14) days after the date on which the applicable application was served (or such longer period as may be allowed by Order of the Bankruptcy Court or by agreement with the requesting Professional).** All Professional Fee Claims shall be paid by the Liquidating Trust to the extent approved by Order of the Bankruptcy Court within five (5) Business Days from entry of such Order. On the Effective Date, the Liquidating Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Liquidating Trust and shall be maintained by the Liquidating Trustee in accordance with the Plan and the Liquidating Trust Agreement. The Liquidating Trust shall fund the Professional Fee Reserve on the Effective Date in an amount that is agreed upon by the Debtors and the Committee and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. If the Debtors and the Committee are unable to agree on an amount by which the Professional Fee Reserve is to be funded, the Debtors and the Committee shall submit the issue to the Bankruptcy Court, which, following notice and a hearing, shall fix the amount of the required Professional Fee Reserve. All Professional Fee Claims that have not previously been paid, otherwise satisfied, or withdrawn shall be paid from the Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be released to the Liquidating Trust to be used for other purposes consistent with the Plan and the Liquidating Trust Agreement.

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

In full satisfaction, settlement, and release of and in exchange for such Claims, Allowed Priority Tax Claims shall be paid by the Liquidating Trust, at the Liquidating Trustee's option, as follows: (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim on the later of the Effective Date or thirty (30) days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, (b) in regular installment payments in Cash over a period not exceeding five (5) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable non-bankruptcy law as of the calendar month in which the Confirmation Date occurs, and (c) such other treatment as to which the Holder of an Allowed Priority Tax Claim and the Liquidating Trustee shall have agreed upon in writing.

#### **F. Classification and Treatment of Claims and Equity Interests**

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Equity Interests. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Equity Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, withdrawn, or otherwise settled prior to the Effective Date.

##### **1. Class 1: Secured Claims**

On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Secured Claim becomes an Allowed Secured Claim, the

Holder of such Allowed Secured Claim shall receive from the Liquidating Trust, at the election of the Liquidating Trustee, in full satisfaction, settlement, and release of and in exchange for such Allowed Secured Claim, (i) Cash equal to the value of such Claim, (ii) the return of the Holder's Collateral securing such Claim, (iii) such Claim reinstated pursuant to sections 1124(1) or 1124(2) of the Bankruptcy Code, or (iv) such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing. Any Holder of an Allowed Secured Claim shall retain its Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold by the Liquidating Trust free and clear of such Lien) to the same extent and with the same priority as such Lien held as of the Effective Date until such time as (A) such Holder (i) has been paid Cash equal to the value of such Claim, (ii) has received a return of the Collateral securing such Claim, (iii) has such Claim reinstated pursuant to sections 1124(1) or 1124(2) of the Bankruptcy Code, or (iv) has been afforded such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing; or (B) such purported Lien has been determined by an Order of the Bankruptcy Court to be invalid or otherwise avoidable. Class 1 is Unimpaired and therefore Holders of Secured Claims are conclusively presumed to have accepted the Plan.

## **2. Class 2: Priority Claims**

On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Priority Claim becomes an Allowed Priority Claim, the Holder of such Allowed Priority Claim shall receive from the Liquidating Trust, in full satisfaction, settlement, and release of and in exchange for such Allowed Priority Claim, either (i) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Claim or (ii) such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing. Class 2 is Unimpaired and therefore Holders of Priority Claims are conclusively presumed to have accepted the Plan.

## **3. Class 3: General Unsecured Claims**

On or as soon as reasonably practicable after the Second Administrative Claim Bar Date, the Holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, and release of and in exchange for such Claim, (i) its Pro Rata share of the Liquidating Trust Interests, or (ii) such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing. Class 3 is Impaired and therefore Holders of General Unsecured Claims are entitled to vote on the Plan.

## **4. Class 4: Subordinated Claims**

On the Effective Date, Holders of Subordinated Claims shall not be entitled to, and shall not receive or retain any property or interest in property under the Plan on account of such Subordinated Claims.

Class 4 is deemed to have rejected the Plan and therefore Holders of Subordinated Claims are not entitled to vote on the Plan.

## **5. Class 5: Equity Interests**

As of the Effective Date, all Equity Interests of any kind shall be deemed void, cancelled, and of no further force and effect and the Holders thereof shall not receive or retain any property or interest in property under the Plan on account of such Equity Interests.

Class 5 is deemed to have rejected the Plan and therefore Holders of Equity Interests are not entitled to vote on the Plan.

## **6. Special Provisions Regarding Insured Claims**

Any Allowed General Unsecured Claim with respect to an Insured Claim shall be limited to the amount by which the Allowed Insured Claim exceeds the total coverage available with respect to such Insured Claim under the Debtors' applicable insurance policies.

If there is insurance, any party with rights against or under the applicable insurance policy, including, without limitation, Buyer, the Liquidating Trust, and Holders of Insured Claims, may pursue such rights.

Nothing in Section 3.5 of the Plan shall constitute a waiver of any causes of action the Debtors or the Liquidating Trust may hold against any Entity, including the Debtors' insurance carriers; and nothing in Section 3.5 of the Plan is intended to, shall, or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery from any insurer of the Debtors in addition to (but not in duplication of) any Distribution such Holder may receive under the Plan; provided, however, that the Debtors and the Liquidating Trustee do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled.

The Plan shall not modify the scope of, or alter in any other way, the rights and obligations of the Debtors' insurers under their policies, and the Debtors' insurers shall retain any and all rights, claims and defenses to liability and/or coverage that such insurers may have, including the right to contest and/or litigate with any party, including Buyer, the Debtors and the Liquidating Trustee, the existence, primacy and/or scope of liability and/or available coverage under any alleged applicable policy. The Plan shall not operate as a waiver of any other Claims the Debtors' insurers have asserted or may assert in any proof of claim, including, without limitation, any rights or defenses arising out of, or in the nature of, setoff or recoupment, or the Debtors' rights and defenses to such proofs of claim.

## **7. Provision Governing Allowance and Defenses to Claims**

On and after the Effective Date, the Liquidating Trust shall have all of the Debtors' and the Estates' rights under section 558 of the Bankruptcy Code. Nothing under the Plan shall affect the rights and defenses of the Debtors, the Estates, and the Liquidating Trust in respect of any Claim, including all rights in respect of legal and equitable objections, defenses, setoffs, or recoupment against such Claims; provided, however, that with respect to a Claim as to which two or more Debtors are co-liable as a legal or contractual matter, such rights, defenses, setoffs, or recoupments against such Claim shall not be affected by the substantive consolidation of the Estates of the Debtors and will apply to such Claim only to the extent that such rights, defenses, setoffs, or

recoupments would have applied against the Claims underlying such Claim had the substantive consolidation of the Estates of the Debtors not taken place. The Liquidating Trust may, but shall not be required to, setoff against any Claim (for purposes of determining the Allowed amount of such Claim on which Distribution shall be made) any claims of any nature whatsoever that the Estates or the Liquidating Trust may have against the Claim Holder, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trust of any such Claim it may have against such Claim Holder. The Liquidating Trustee may designate any Claim as Allowed at any time from and after the Effective Date.

## **G. Acceptance or Rejection of the Plan**

### **1. Impaired Class of Claims Entitled to Vote**

Only the votes of Holders of Claims in Class 3 shall be solicited with respect to the Plan.

### **2. Acceptance by an Impaired Class**

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

### **3. Presumed Acceptances by Unimpaired Classes**

Class 1 and Class 2 are Unimpaired under the Plan. Under section 1126(f) of the Bankruptcy Code, the Holders of Claims in such Unimpaired Classes are conclusively presumed to have accepted the Plan, and, therefore, the votes of the Holders of such Claims shall not be solicited.

### **4. Impaired Classes Deemed to Reject Plan**

Holders of Claims and Equity Interests in Class 4 and Class 5 are not entitled to receive or retain any property or interests in property under the Plan. Under section 1126(g) of the Bankruptcy Code, such Holders are deemed to have rejected the Plan, and, therefore, the votes of such Holders shall not be solicited.

### **5. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code**

Because at least one Impaired Class is deemed to have rejected the Plan, the Plan Proponents will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Plan Proponents reserve the right to alter, amend, modify, revoke, or withdraw the Plan, the Plan Supplement, or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

### **6. Elimination of Vacant Classes**

Any Class of Claims or Equity Interests that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of an Allowed Claim or Equity Interest, or a Holder of a Claim temporarily allowed under Bankruptcy Rule 3018, shall be deemed deleted from



the Plan for purposes of determining acceptance of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

## **H. Implementation of the Plan**

### **1. Implementation of the Plan**

The Plan will be implemented by, among other things, the establishment of the Liquidating Trust, the transfer to the Liquidating Trust of the Liquidating Trust Assets, including, without limitation, all Cash and the Retained Causes of Action, and the making of Distributions by the Liquidating Trust in accordance with the Plan and Liquidating Trust Agreement.

### **2. Substantive Consolidation**

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

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

The substantive consolidation of the Debtors under the Plan shall not (other than for purposes related to funding Distributions under the Plan) affect (i) the legal and organizational structure of the Debtors, (ii) executory contracts or unexpired leases that were entered into during the Chapter 11 Cases or that have been or will be assumed or rejected, (iii) any agreements entered into by the Liquidating Trust on or after the Effective Date, (iv) the Debtors' or the Liquidating Trust's ability to subordinate or otherwise challenge Claims on an entity-by-entity basis, (v) any Retained Causes of Action or Avoidance Actions or defenses thereto, which in each case shall survive entry of the Confirmation Order as if there had been no substantive consolidation of the Estates of the Debtors, and (vi) distributions to the Debtors or the Liquidating Trust from any insurance policies or the proceeds thereof. Notwithstanding the substantive consolidation called for in the Plan, each and every Debtor shall remain responsible for the payment of U.S. Trustee fees pursuant to 28 U.S.C. § 1930 until its particular case is closed (pursuant to Section 11.19 or otherwise), dismissed or converted.

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

### **3. The Debtors' Post-Effective Date Corporate Affairs**

#### **(a) Debtors' Directors and Officers**

On the Effective Date, each of the Debtors' directors, officers, members, and managers shall be terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and shall have no continuing obligations to the Debtors following the occurrence of the Effective Date.

#### **(b) Wind-Up and Dissolution of the Debtors.**

The Debtors shall be dissolved automatically effective on the Effective Date without the need for any corporate action or approval and without the need for any corporate filings and neither the Debtors nor the Liquidating Trustee shall be required to pay any taxes or fees in order to cause such dissolution. On the Effective Date or as soon thereafter as is reasonably practicable, the Liquidating Trustee shall wind-up the affairs of the Debtors, if any, and file final tax returns for the Debtors. The Liquidating Trust shall bear the cost and expense of the wind-up of the affairs of the Debtors, if any, and the cost and expense of the preparation and filing of the final tax returns for the Debtors.

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

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

Subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtors that have not been assumed and assigned, or rejected, prior to the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order, as of the Confirmation Date. Any Creditor asserting a Rejection Claim shall File a proof of claim within thirty (30) days of the Effective Date.

#### **2. Rejection Claims**

Any Rejection Claims that are not timely Filed pursuant to Section 6.1 of the Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed pursuant to Section 6.1 of the Plan, the Liquidating Trustee may File an objection to any Rejection Claim on or prior to the Claim Objection Deadline.

## **J. Provisions Governing Distributions**

### **1. Distributions for Allowed Claims**

Except as otherwise provided in the Plan or as ordered by the Bankruptcy Court, all Distributions to Holders of Allowed Claims as of the applicable distribution date shall be made on or as soon as practicable after the applicable distribution date. Distributions on account of Claims that first become Allowed Claims after the applicable distribution date shall be made pursuant to Section 8.4 of the Plan and on the day selected by the Liquidating Trustee.

The Liquidating Trustee may accelerate any distribution date with respect to Distributions on account of Allowed General Unsecured Claims other than the initial distribution date if the facts and circumstances so warrant and to the extent not inconsistent with the Plan.

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

### **2. Interest on Claims**

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

### **3. Distributions by Liquidating Trustee as Disbursing Agent**

The Liquidating Trustee or such other person or entity designated by the Liquidating Trustee shall serve as the disbursing agent under the Plan with respect to Distributions to Holders of Allowed Claims. The Liquidating Trustee or his/her/its designee shall make all Distributions required to be made to such Holders of Allowed Claims pursuant to the Plan and the Liquidating Trust Agreement. The Liquidating Trustee or his/her/its designee shall not be required to give any bond or surety or other security for the performance of the Liquidating Trustee's or his/her/its designee's duties as disbursing agent unless otherwise ordered by the Bankruptcy Court.

### **4. Means of Cash Payment**

Cash payments under the Plan shall be made, at the option, and in the sole discretion, of the Liquidating Trustee, by wire, check, or such other method as the Liquidating Trustee deems appropriate under the circumstances. Cash payments to foreign creditors may be made, at the option, and in the sole discretion, of the Liquidating Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Cash payments made pursuant to the Plan in the form of checks issued by the Liquidating Trustee shall be null and void if not cashed within one hundred and twenty (120) days of the date of the issuance thereof. Requests for reissuance of any check within one hundred and twenty (120) days of the date of the issuance thereof shall be made directly to the Liquidating Trustee.

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

## **5. Fractional Distributions**

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

## **6. De Minimis Distributions**

Notwithstanding anything to the contrary contained in the Plan, the Liquidating Trustee shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$50. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$50 shall be forever barred from asserting such Claim against Liquidating Trust Assets.

## **7. Delivery of Distributions**

All Distributions to Holders of Allowed Claims shall be made at the address of such Holder as set forth in the claims register maintained in the Chapter 11 Cases as of the Distribution Record Date (subject to any transfer effectuated pursuant to Bankruptcy Rule 3001(e)) or, in the absence of a filed-proof of claim, the Schedules. If a Distribution is returned as undeliverable, the Liquidating Trustee shall use reasonable efforts to determine such Holder's then-current address. If the Liquidating Trustee cannot determine, or is not notified of, a Holder's then-current address within six (6) months after the later of the Effective Date and the date such Claim is Allowed, the Distribution reserved for such Holder shall be deemed an unclaimed Distribution. The responsibility to provide the Liquidating Trustee a current address of a Holder of Claims shall always be the responsibility of such Holder. Except as set forth above, nothing contained in the Plan shall require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim. Amounts in respect of undeliverable Distributions made by the Liquidating Trustee shall be held in trust on behalf of the Holder of the Claim to which they are payable by the Liquidating Trust until the earlier of the date that such undeliverable Distributions are claimed by such Holder and one hundred twenty (120) days after the date the undeliverable Distributions were made.

## **8. Application of Distribution Record Date**

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

## **9. Withholding, Payment, and Reporting Requirements with Respect to Distributions**

All Distributions under the Plan shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions shall be subject to any such withholding, payment, and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. The Liquidating Trustee may require, in the Liquidating Trustee's sole and absolute discretion and as a condition to the receipt of any Distribution, that the Holder of an Allowed Claim complete and return to the Liquidating Trust the appropriate Form W-8 or Form W-9, as applicable to each Holder. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed upon the Liquidating Trust in connection with such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements reasonably satisfactory to the Liquidating Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Liquidating Trust in connection with such Distribution.

## **10. Setoffs**

The Liquidating Trust may, but shall not be required to, set off against any Claim or any Allowed Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors or the Liquidating Trust may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trust of any such claim that it may have against such Holder.

## **11. No Distribution in Excess of Allowed Amounts**

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

## **12. Allocation of Distributions**

All Distributions received under the Plan by Holders of Claims shall be deemed to be allocated first to the principal amount of such Claim as determined for United States federal income tax purposes and then to accrued interest, if any, with respect to such Claim.

## **13. Joint Distributions**

The Liquidating Trustee may, in the Liquidating Trustee's sole discretion, make Distributions jointly to any Holder of a Claim and any other Entity who has asserted, or whom the Liquidating Trustee has determined to have, an interest in such Claim.

## **14. Forfeiture of Distributions**

If the Holder of a Claim fails to cash a check payable to it within the time period set forth in Section 7.4(a) of the Plan, fails to claim an undeliverable Distribution within the time limit set forth in Section 7.7 of the Plan, or fails to complete and return to the Liquidating Trust the appropriate Form W-8 or Form W-9 within one hundred twenty (120) days of the request by the Liquidating Trust for the completion and return to it of the appropriate form pursuant to Section 7.9 of the Plan, then such Holder shall be deemed to have forfeited its right to any reserved and future Distributions from the Liquidating Trust, any Liquidating Trust Interests held by such Holder shall be deemed cancelled, and the Claims of such Holder shall be forever barred. The forfeited Distributions shall become unrestricted Liquidating Trust Assets and shall be redistributed to the Beneficiaries after reserving as necessary for payment of Liquidating Trust Expenses and otherwise in compliance with this Article and the Liquidating Trust Agreement. In the event the Liquidating Trustee determines, in the Liquidating Trustee's sole discretion, that any such amounts are too small in total to redistribute cost-effectively to the Beneficiaries, the Liquidating Trustee may instead donate them to a charitable organization(s) approved by the Liquidating Trust Advisory Committee free of any restrictions thereon, notwithstanding any federal or state escheat laws to the contrary.

## **K. Procedures for Resolving Disputed, Contingent, and Unliquidated Claims and Distributions with Respect Thereto**

### **1. Objections to and Resolution of Disputed Claims**

From and after the Effective Date, the Liquidating Trustee (acting in accordance with the terms of the Liquidating Trust Agreement) shall have the authority to compromise, resolve and Allow any Disputed Claim without the need to obtain approval from the Bankruptcy Court, and any agreement entered into by the Liquidating Trustee (acting in accordance with the terms of the Liquidating Trust Agreement) with respect to the Allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

### **2. Claim Objections**

All objections to Claims (other than Professional Fee Claims, which shall be governed by Section 11.2 of the Plan) shall be Filed by the Liquidating Trustee on or before the Claim Objection Deadline, which date may be extended by the Bankruptcy Court upon a motion filed by the Liquidating Trustee on or before the Claim Objection Deadline with notice only to those parties entitled to notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 as of the filing of such motion. The Claim Objection Deadline shall be automatically extended as provided by Local Rule 9006-2 upon the Filing of a proposed form of order by the Liquidating Trustee requesting an extension of the Claim Objection Deadline. If a timely objection has not been Filed to a proof of claim or the Schedules have not been amended with respect to a Claim that was scheduled by the Debtors but was not set forth in the Schedules by the Debtors as contingent, unliquidated, and/or disputed, then the Claim to which the proof of claim or the Claim set forth in the Schedules relates will be treated as an Allowed Claim.

### **3. Estimation of Contingent or Unliquidated Claims**

The Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtors have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court so estimates any contingent or unliquidated Claim, that estimated amount shall constitute the Allowed amount of such Claim. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and are not necessarily exclusive of one another.

### **4. Distributions on Account of Disputed Claims**

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

#### **L. Conditions Precedent to the Occurrence of the Effective Date**

##### **1. Conditions to the Occurrence of the Effective Date**

The occurrence of the Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions has been satisfied or duly waived, as applicable, pursuant to Section 9.2 of the Plan:

- (i) the Bankruptcy Court shall have entered the Confirmation Order;
- (ii) the Confirmation Order shall not be subject to any stay;
- (iii) the Liquidating Trust Agreement shall have been executed;
- (iv) the Liquidating Trust shall have been established and the Liquidating Trust Assets shall have been transferred to and vested in the Liquidating Trust free and clear of all Claims and Equity Interests, except as specifically provided in the Plan and the Liquidating Trust Agreement;
- (v) the Buyer Settlement Agreement shall have been executed and the Bankruptcy Court shall have entered an order approving the Buyer Settlement Agreement pursuant to Bankruptcy Rule 9019; and
- (vi) the Professional Fee Reserve shall be funded pursuant to Section 11.2 of the Plan in an amount agreed to by the Debtors and the Committee or, if there is a dispute concerning the amount of the funding required, in an amount fixed by the Bankruptcy Court.

## **2. Waiver of Conditions to the Occurrence of the Effective Date**

The conditions to the Effective Date set forth in Section 9.1(iii) through (v) of the Plan may be waived in writing by the Plan Proponents at any time without further Order.

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

If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 9.1 and 9.2 of the Plan, the Plan Proponents reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated. If the Confirmation Order is vacated pursuant to Section 9.3 of the Plan, (i) the Plan shall be null and void in all respects, and (ii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims by or against, or any Equity Interest in, the Debtors, the Estates, or any other Person, or (b) prejudice in any manner the rights of the Debtors, the Estates, or any other Person.

### **M. Retention of Jurisdiction**

#### **1. Scope of Retained Jurisdiction**

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, these Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to do the following:

(a) allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured, or unsecured status of any Claim not otherwise Allowed under the Plan, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims;

(b) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 327, 328, 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code;

(c) hear and determine all matters with respect to the assumption, assignment, or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan and any agreement or order of the Bankruptcy Court with respect to a sale of the Debtors' Assets, including, without limitation, the Sale Agreement, and enforce remedies upon any default under the Plan and any such sale agreement or order, including, but not limited to, the Sale Agreement;

(e) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Cases, including, without limitation, the Avoidance Actions and the Retained Causes of Action, and with respect to the Plan;



(f) enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created, executed, or contemplated in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

(h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

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

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

(k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, any agreement or order of the Bankruptcy Court with respect to a sale of the Debtors' Assets, including, without limitation, the Sale Agreement and the Sale Order, or any contract, instrument, release, or other agreement or document created, executed, or contemplated in connection with any of the foregoing documents and Orders;

(l) enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases;

(m) except as otherwise limited in the Plan, recover all Assets of the Debtors and property of the Estates, wherever located;

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

(o) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

(p) resolve any cases, controversies, suits, or disputes related to the Liquidating Trust, including the Liquidating Trust Assets, and related to any sale of the Debtors' Assets, including, without limitation, the Sale Agreement; and

(q) enter a final decree closing the Chapter 11 Cases.

## **2. Failure of the Bankruptcy Court to Exercise Jurisdiction**

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in Section 10.1 of the Plan, the provisions of Article X of the Plan shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

### **N. Miscellaneous Plan Provisions**

#### **1. Non-Ordinary Course Administrative Claims**

**All requests for payment of a Non-Ordinary Course Administrative Claim arising after March 15, 2017 must be Filed with the Bankruptcy Court and served on counsel to the Liquidating Trustee, counsel to the Debtors, and counsel to the U.S. Trustee no later than the Second Administrative Claim Bar Date.** In the event of an objection to allowance of a Non-Ordinary Course Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Non-Ordinary Course Administrative Claim.

#### **2. Payment of Statutory Fees; Filing of Quarterly Reports**

All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date. All such fees that arise after the Effective Date shall be paid by the Liquidating Trust. The Liquidating Trust shall have the obligation to pay quarterly fees to the Office of the United States Trustee pursuant to section 1930 of title 28 of the United States Code for each and every Debtor until its particular Chapter 11 Case is closed (pursuant to Section 11.19 of this Plan or otherwise). Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to section 1930 of title 28 of the United States Code.

#### **3. Special Provisions Concerning the Sale Agreement**

On and after the Effective Date the Liquidating Trustee shall be the assignee of the Debtors under the Buyer Settlement Agreement, the Sale Agreement (subject to the Buyer Settlement Agreement), and the Sale Order with all of the Debtors' rights thereunder. Nothing in the Plan shall expand the Assumed Liabilities (as defined under the Sale Agreement) or modify or amend the Buyer Settlement Agreement, the Sale Agreement, or the Sale Order, and the terms of the Plan shall be interpreted consistent with the Buyer Settlement Agreement, the Sale Agreement (subject to the Buyer Settlement Agreement), and the Sale Order.

#### **4. Dissolution of Committee**

On the Effective Date, the Committee shall dissolve and all members, ex officio members, employees, attorneys, financial advisors, other Professionals, or other agents thereof shall be released and discharged from all rights and duties arising from or related to the Chapter 11 Cases, provided, however, that the Committee shall continue in existence and its Professionals shall

continue to be retained with respect to applications Filed or to be Filed pursuant to sections 330 and 331 of the Bankruptcy Code.

## **5. Modifications and Amendments**

The Plan Proponents may alter, amend, or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. All alterations, amendments, or modifications to the Plan must comply with section 1127 of the Bankruptcy Code. The Plan Proponents shall provide parties in interest with notice of such amendments or modifications as may be required by the Bankruptcy Rules or Order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified, or clarified, if the proposed alteration, amendment, modification, or clarification does not materially and adversely change the treatment of the Claim of such Holder.

After the Confirmation Date and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of the Plan, the Debtors or the Liquidating Trustee, as applicable, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement approved with respect to the Plan, or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan without the consent of the Committee or Liquidating Trustee, as applicable. Such proceedings must comply with section 1127 of the Bankruptcy Code. To the extent required, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or an order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified, or clarified, if the proposed alteration, amendment, modification, or clarification does not materially and adversely change the treatment of the Claim of such Holder.

## **6. Compromises and Settlements**

From and after the Effective Date, the Liquidating Trustee may compromise and settle the Claims against the Debtors, as well as Retained Causes of Action and Avoidance Actions that the Liquidating Trust may have against other Entities without any further approval by the Bankruptcy Court. Until the Effective Date, the Debtors expressly reserve the right to compromise and settle (subject to the approval of the Bankruptcy Court) Claims against them, Avoidance Actions, Retained Causes of Action, or other claims that they may have against other Entities.

## **7. Non-Discharge of the Debtors; Injunction**

**In accordance with section 1141(d)(3) of the Bankruptcy Code, the Plan does not discharge the Debtors. Section 1141(c) of the Bankruptcy Code nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Equity Interests against the Debtors. As such, no Entity holding a Claim against the Debtors may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Entity under the Plan. As of the Effective Date, all parties are precluded from asserting against any property to be distributed under the Plan any Claims, rights, causes of action, liabilities, or Equity Interests based upon**

any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

## **8. Releases and Related Matters**

(a) On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, each of the Releasing Parties shall be deemed to have forever released, waived, and discharged each of the Released Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action (including, without limitation, Avoidance Actions), and liabilities whatsoever, whether known or unknown, whether foreseen or unforeseen, whether liquidated or unliquidated, whether fixed or contingent, whether matured or unmatured, existing or hereafter arising, at law, in equity, or otherwise, that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the conduct of the Debtors' business, the Chapter 11 Cases, the Plan, the Sale Agreement, or the Sale Order, except for acts or omissions that are determined in a Final Order to have constituted fraud, gross negligence or willful misconduct; provided, however, that nothing in Section 11.12 of the Plan shall affect any Person's rights, claims or causes of action against the Debtors, the Liquidating Trust or Buyer under the Plan, the Confirmation Order, the Sale Agreement (subject to the Buyer Settlement Agreement), the Sale Order, or the Buyer Settlement Agreement, or the liabilities or obligations of such parties thereunder; provided, further, that nothing in the Plan shall impact or release any guarantees held by Releasing Parties against non-Debtors pertaining to Claims against the Debtors.

(b) Entry of the Confirmation Order shall constitute (i) the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in Section 11.12 of the Plan, and (ii) the Bankruptcy Court's findings that such releases are (1) in the best interests of the Debtors, the Estates, and all Holders of Claims that are Releasing Parties, (2) fair, equitable, and reasonable, (3) given and made after due notice and opportunity for hearing, and (4) a bar to any of the Releasing Parties asserting any released claim against any of the Released Parties.

(c) Each Holder of a Claim in Class 3 shall be a Releasing Party and, as such, provides the releases set forth in Section 11.12 of the Plan, unless such Holder either (a) votes to reject the Plan or (b) does not otherwise vote to accept or reject the Plan but timely submits a Release Opt-Out indicating such Holder's decision to not participate in the releases set forth in Section 11.12 of the Plan. For the avoidance of doubt, each Holder of a Claim in Class 3 that votes to accept the Plan is a Releasing Party, and any Release Opt-Out that might be submitted by any such Holder that voted to accept the Plan shall be void and of no effect.

## **9. Exculpation and Limitation of Liability**

On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, none of the Exculpated Parties shall have or incur any liability to any Entity, including, without limitation, to any Holder of a Claim or an Equity Interest, for any post-petition act or omission in connection with, relating to, or arising out of the Chapter 11 Cases, the formulation, negotiation, preparation,

**dissemination, solicitation of acceptances, implementation, confirmation, or consummation of the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created, executed, or contemplated in connection with the Plan, or the administration of the Plan or the property to be distributed under the Plan; provided, however, that nothing in Section 11.13 of the Plan shall affect any Person’s rights, claims or causes of action against the Debtors under the Plan, the Confirmation Order, the Sale Agreement (subject to the Buyer Settlement Agreement), the Sale Order, or the Buyer Settlement Agreement, or the Debtors’ liabilities or obligations thereunder; and provided, further, that the exculpation provisions of Section 11.13 of the Plan (i) shall not apply to acts or omissions constituting fraud, willful misconduct, or gross negligence by such Exculpated Party as determined by a Final Order and (ii) shall not in any way limit, reduce, or otherwise bar an otherwise valid and enforceable right of setoff, subrogation, or recoupment against the Debtors to the extent that such right is based upon either (a) a Claim that is asserted in a timely-filed proof of claim on or before the Confirmation Date, or (b) an Administrative Claim that is timely filed under the Plan. The Exculpated Parties shall be entitled to rely upon the written advice of counsel with respect to their duties and responsibilities under, or in connection with, the Chapter 11 Cases, the Plan, and administration thereof. The Confirmation Order shall serve as a permanent injunction against any Person seeking to enforce any claim or cause of action against the Exculpated Parties that has been exculpated pursuant to Section 11.13 of the Plan.**

#### **10. Revocation, Withdrawal, or Non-Consummation**

The Plan Proponents reserve the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent plans of liquidation. If the Plan Proponents revoke or withdraw the Plan prior to the Confirmation Date, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims) and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims against, or any Equity Interests in, any Debtor, or any Avoidance Actions, Retained Causes of Action or other claims by or against any Debtor, the Committee, Buyer, or any Entity, (ii) prejudice in any manner the rights of any Debtor, the Committee, Buyer, or any Entity in any further proceedings involving a Debtor, or (iii) constitute an admission of any sort by any Debtor, the Committee, Buyer, or any other Entity. Notwithstanding the preceding sentence, any revocation or withdrawal of the Plan prior to the Confirmation Date, or non-occurrence of Confirmation or the Effective Date shall not affect the validity or enforceability of the Buyer Settlement Agreement.

#### **11. Closure of Certain Chapter 11 Cases on the Effective Date; Final Decree for Remaining Chapter 11 Case**

Upon the Effective Date, without the need to obtain further approval from the Bankruptcy Court, the chapter 11 cases (collectively, the “Closed Chapter 11 Cases”) of all of the Debtors (collectively, the “Closed Case Debtors”) except for VRG shall be deemed closed as of the Effective Date without prejudice to the rights of any party in interest to seek to reopen the Closed Chapter 11 Cases, and (i) all motions, contested matters, adversary proceedings, and other matters with respect

to the Closed Chapter 11 Cases and the Closed Case Debtors, whether filed before or after the Effective Date, shall be administered in the chapter 11 case (the “Remaining Chapter 11 Case”) of VRG and the Bankruptcy Court shall have jurisdiction with respect to such motions, contested matters, adversary proceedings, and other matters notwithstanding the closure of the Closed Chapter 11 Cases, without prejudice to the rights of any party in interest, (ii) the caption of the Remaining Chapter 11 Case shall be amended as necessary to reflect the closure of the Closed Chapter 11 Cases, and (iii) a docket entry shall be made by the Clerk of the Bankruptcy Court in each of the Closed Chapter 11 Cases that reflects the closure of those cases pursuant hereto. Upon the Liquidating Trustee’s determination that all Claims have been Allowed, disallowed, expunged or withdrawn, and that all Retained Causes of Action held by the Liquidating Trust have either been finally resolved or abandoned, the Liquidating Trustee shall move for the entry of a Final Decree for the Remaining Chapter 11 Case pursuant to section 350 of the Bankruptcy Code. On entry of the Final Decree, the members of the Liquidating Trust Advisory Committee, the Liquidating Trustee, and the Liquidating Trust’s professionals and agents shall be deemed discharged under the Liquidating Trust Agreement and have no further duties or obligations thereunder. Upon a motion by the Liquidating Trustee, the Bankruptcy Court may enter an order relieving the members of the Liquidating Trust Advisory Committee, the Liquidating Trustee, and the Liquidating Trust’s professionals and agents of any further duties, discharging and releasing those Persons from all liability related to the Liquidating Trust, and releasing the Liquidating Trustee’s bond, if any. The Liquidating Trustee may request the entry of the Final Decree notwithstanding the fact that not all Assets have been monetized and distributed to the Holders of Allowed Claims.

## **V. RISK FACTORS**

### **A. Parties May Object to the Plan’s Classification of Claims and Equity Interests**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Plan Proponents believe that the classification of the Claims and Equity Interests under the Plan complies with this requirement. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

### **B. The Debtors May Not Be Able to Obtain Confirmation of the Plan**

With regard to any proposed plan, the Debtors may not receive the requisite acceptances to confirm a plan. In the event that votes with respect to Claims in the Class entitled to vote are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Plan Proponents intend to seek Confirmation of the Plan by the Bankruptcy Court. If the requisite acceptances are not received, the Plan Proponents may not be able to obtain Confirmation of the Plan. Even if the requisite acceptances of a proposed plan are received, the Bankruptcy Court might not confirm the Plan as proposed if the Bankruptcy Court finds that any of the statutory requirements for confirmation under section 1129 of the Bankruptcy Code has not been met.

If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Plan Proponents will be able to successfully

develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtors' creditors.

**C. The Conditions Precedent to the Effective Date of the Plan May Not Occur**

As more fully set forth in the Plan, the Effective Date is subject to a number of conditions precedent. If such conditions precedent are not met or waived, the Effective Date will not occur.

**D. General Unsecured Creditors May Recover Less Than Projected**

The Cash available for Distributions to Holders of General Unsecured Claims may be reduced by, among other things, the prior payment of (i) Liquidating Trust Expenses, (ii) Claims that are senior to General Unsecured Claims; and (iii) other wind-down fees and expenses of the Debtors. The Cash available for Distributions to Holders of General Unsecured Claims will likewise be reduced if (i) Liquidating Trust Expenses, Professional Fee Claims, or senior claims are larger than expected, (ii) the Bankruptcy Court does not enter an order approving the Buyer Settlement Agreement or the Buyer fails to pay the consideration provided for under the Buyer Settlement Agreement, or (iii) the settlement consideration in respect of the Avoidance Actions described in Section III.M of this Disclosure Statement is not paid. The estimated recovery percentage set forth in Sections I.A.3 and IV.D hereof does not take into account any potential future recoveries with respect to the Retained Causes of Action and Avoidance Actions (other than those recoveries described in Section III.M of this Disclosure Statement), and it is difficult to predict the amount, if any, of potential future recoveries therefrom. Given the uncertainties of litigation, litigation recoveries could prove to be less than anticipated.

**E. The Allowed Amount of Claims May Differ From Current Estimates**

There can be no assurance that the estimated Claim amounts set forth in the Plan are correct, and the actual amount of Allowed Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated in the Disclosure Statement. Furthermore, a number of additional claims may be filed, including on account of rejection damages for rejected Contracts and Leases. Any such claims may result in a greater amount of General Unsecured Claims than estimated in the Disclosure Statement.

**VI. CONFIRMATION OF THE PLAN**

**A. The Confirmation Hearing**

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

The Bankruptcy Court has scheduled the Confirmation Hearing to commence January 8, 2019 at 10:00 a.m. (prevailing Eastern Time), before the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801. The

Confirmation Hearing Notice, which sets forth the time, date, and place of the Confirmation Hearing has been included along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or in a notice of agenda filed with the Bankruptcy Court.

Objections to Confirmation of the Plan must be Filed and served so that they are actually received by no later than December 17, 2018 at 4:00 p.m. (prevailing Eastern Time). **Unless objections to Confirmation of the Plan are timely served and Filed in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court.**

## **B. Requirements for Confirmation of the Plan**

Among the requirements for the Confirmation of the Plan is that the Plan (i) is accepted by all Impaired Classes of Claims, or, if rejected by an Impaired Class of Claims, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Impaired Class of Claims; (ii) is feasible; and (iii) is in the “best interests” of Holders of Claims.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Plan Proponents believe that: (i) the Plan satisfies or will satisfy all of the necessary statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Plan Proponents have complied or will have complied with all of the necessary requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith. Specifically, the Plan Proponents believe that the Plan satisfies or will satisfy the following applicable Confirmation requirements of section 1129 of the Bankruptcy Code:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Plan Proponents have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
- Either each Holder of a Claim in an Impaired Class of Claims has accepted the Plan, or will receive or retain under the Plan on account of such Claim property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on the Effective Date of the Plan under chapter 7 of the Bankruptcy Code.
- The Class of Claims that is entitled to vote on the Plan will have accepted the Plan.



- Except to the extent a different treatment is agreed to, the Plan provides that all Allowed Administrative Claims and Allowed Priority Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable.
- At least one Class of Impaired Claims will have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.
- All accrued and unpaid fees of the type described in 28 U.S.C. § 1930, including the fees of the U.S. Trustee, will be paid as of the Effective Date.

### **C. Best Interests of Creditors**

Often called the “best interests of creditors” test, section 1129(a)(7) of the Bankruptcy Code requires that a Bankruptcy Court find, as a condition to confirmation of a chapter 11 plan, that the plan provides, with respect to each impaired class, that each holder of a claim or an interest in such class either (i) has accepted the plan or (ii) will receive or retain under the plan property of a value that is not less than the amount that such holder would receive or retain if the debtor liquidated under chapter 7 on the Effective Date.

Here, the costs of liquidation under chapter 7 of the Bankruptcy Code would include the statutory fees payable to a chapter 7 trustee, and the fees that would be payable to additional attorneys and other professionals that such a trustee may engage, which amounts would have to be paid before anything is paid to Holders of Allowed General Unsecured Claims.

Conversion to chapter 7 of the Bankruptcy Code would also mean the establishment of a new claims bar date, which could result in new General Unsecured Claims being asserted against the Estates, thereby diluting the recoveries of other Holders of Allowed General Unsecured Claims.

Furthermore, any chapter 7 trustee would have to confront the allocation issues among the Debtors described in more detail in Section IV.B of this Disclosure Statement. A chapter 7 trustee would need to allocate value among the individual Estates. This process would be extremely time-consuming and costly, and reduce recoveries available for Holders of Allowed General Unsecured Claims.

Therefore, the Plan Proponents believe that confirmation of the Plan will provide each Holder of an Allowed General Unsecured Claim with a greater recovery than such Holder would receive pursuant to the liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

### **D. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtors, or any successor to the Debtors (unless such liquidation or reorganization is proposed in the plan). This requirement is satisfied as the Plan proposes a liquidation and the Plan Proponents believe the Debtors’ Cash and any additional proceeds from the Debtors’ Assets will be sufficient to allow the Liquidating Trustee to make all payments required to be made under the Plan. In particular, the Debtors believe that the remaining asserted Administrative Claims, Priority Claims,

and Secured Claims can be resolved for an amount equal to or less than the consideration to be provided by the Buyer under the Buyer Settlement Agreement for such claims.

#### **E. Acceptance by Impaired Classes**

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or interests that is impaired under a plan accept the plan. A class that is not “impaired” under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required.

A class is “impaired” unless a plan: (a) leaves unaltered the legal, equitable and contractual rights to which the claim or the interest entitles the holder of such claim or interest; or (b) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of allowed claims in that class, counting only those claims that actually voted to accept or reject the plan. Thus, a Class of Impaired Claims will have voted to accept the Plan only if two-thirds in dollar amount and a majority in number actually voting cast their Ballots in favor of acceptance.

#### **F. Confirmation Without Acceptance by All Impaired Classes**

Section 1129(b) of the Bankruptcy Code allows a Bankruptcy Court to confirm a plan even if all impaired classes have not accepted it, if the plan has been accepted by at least one impaired class of claims, determined without including the acceptance of the plan by any insider. Notwithstanding an impaired class’s rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent’s request, in a procedure commonly known as “cramdown,” so long as the plan does not “discriminate unfairly” and is “fair and equitable” with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

Because at least one Impaired Class is deemed to have rejected the Plan, the Plan Proponents will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Plan Proponents reserve the right to alter, amend, modify, revoke, or withdraw the Plan, the Plan Supplement, or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

##### **1. No Unfair Discrimination**

The “unfair discrimination” test applies to classes of claims or interests that reject or are deemed to have rejected a plan and that are of equal priority with another class of claims or interests that is receiving different treatment under such plan. The test does not require that the treatment of such classes of claims or interests be the same or equivalent, but that such treatment be “fair.” In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (*e.g.*, classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly, and, accordingly, a

plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class. The Plan Proponents submit that the Plan does not “discriminate unfairly” against any rejecting Class.

## **2. Fair and Equitable Test**

The “fair and equitable” test applies to classes that reject or are deemed to have rejected a plan and are of different priority and status vis-à-vis another class (*e.g.*, secured versus unsecured claims, or unsecured claims versus equity interests), and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class, including interest. As to the rejecting class, the test sets different standards depending upon the type of claims or interests in such rejecting class. The Plan Proponents submit that the Plan meets the “fair and equitable” test.

### **G. Alternatives to Confirmation and Consummation of the Plan**

The Plan Proponents believe that the Plan affords Holders of Allowed General Unsecured Claims the potential for a greater recovery on the Debtors’ assets than a chapter 7 liquidation, and, therefore, is in the best interests of such Holders. If, however, the requisite acceptances of the voting Class of Claims are not received, or no Plan is confirmed and consummated, the theoretical alternatives to the Plan include: (a) formulation of an alternative plan or plans of liquidation, or (b) liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

The Plan Proponents believe that the Plan enables Holders of Allowed General Unsecured Claims to realize the greatest possible recovery under the circumstances, and, as compared to any alternative plan of liquidation, has the greatest chance of being confirmed and consummated.

The Chapter 11 Cases may also be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to complete the liquidation of the Debtors’ assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. As described above, the Plan Proponents believe that the Plan will provide each Holder of an Allowed General Unsecured Claim with a greater recovery than it would receive under a liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

## **VII. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

**THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.**

This discussion is provided for information purposes only, and is based on provisions of the Internal Revenue Code of 1986, as amended (the “IRC”), Treasury Regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect on the date hereof. Legislative, judicial, or administrative changes or interpretations enacted or

promulgated after the date hereof could alter or modify the analyses set forth below with respect to the United States federal income tax consequences of the Plan. Any such changes or interpretations may be retroactive and could significantly, and adversely, affect the United States federal income tax consequences of the Plan.

The following summary does not address the U.S. federal income tax consequences to Holders of Claims not entitled to vote to accept or reject the Plan. In addition, to the extent that the following discussion relates to the consequences to Holders of Claims entitled to vote to accept or reject the Plan, it is limited to Holders that are United States persons within the meaning of the IRC. For purposes of the following discussion, a “United States person” is any of the following:

- An individual who is a citizen or resident of the United States;
- A corporation created or organized under the laws of the United States or any state or political subdivision thereof;
- An estate, the income of which is subject to federal income taxation regardless of its source; or
- A trust that (a) is subject to the primary supervision of a United States court and which has one or more United States fiduciaries who have the authority to control all substantial decisions of the trust, or (b) has a valid election in effect under applicable Treasury Regulations to be treated as a United States person.

This discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular Holder in light of its particular facts and circumstances, or to certain types of Holders subject to special treatment under the IRC. Examples of Holders subject to special treatment under the IRC are governmental entities and entities exercising governmental authority, foreign companies, persons who are not citizens or residents of the United States, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, small business investment companies, regulated investment companies, persons that have a functional currency other than the U.S. dollar, and persons holding Claims that are a hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale, or conversion transaction. This discussion does not address the state, local or foreign tax consequences of the Plan.

The tax treatment of Holders of Claims and the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the Distributions provided for by the Plan may vary, depending upon the following factors, among others: (i) whether the Claim or portion thereof constitutes a Claim for principal or interest; (ii) the type of consideration, if any, received by the Holder in exchange for the Claim, and whether the Holder receives Distributions under the Plan in more than one taxable year; (iii) whether the Holder is a citizen or resident of the United States for tax purposes, is otherwise subject to U.S. federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv) the manner in which the Holder acquired the Claim; (v) the length of time that the Claim has been held; (vi) whether the Claim was acquired at a discount; (vii) whether the Holder has taken a bad debt deduction or a worthless securities deduction with respect to the Claim or any portion thereof in the

current or prior taxable years; (viii) whether the Holder has previously included in gross income accrued but unpaid interest with respect to the Claim; (ix) the method of tax accounting of the Holder; (x) whether the Claim is an installment obligation for U.S. federal income tax purposes; and (xi) whether the “market discount” rules apply to the Holder. Therefore, each Holder should consult such Holder’s own tax advisor for tax advice with respect to that Holder’s particular situation and circumstances, and the particular tax consequences to such Holder of the transactions contemplated by the Plan.

A significant amount of time may elapse between the date of the Disclosure Statement and the receipt of a final Distribution under the Plan. Events occurring after the date of the Disclosure Statement, such as new or additional tax legislation, court decisions, or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder. No ruling has been or will be sought from the IRS with respect to any of the tax aspects of the Plan, and no opinion of counsel has been or will be obtained by the Debtors with respect thereto. No representations are being made regarding the particular tax consequences of the confirmation or implementation of the Plan as to any Holder of a Claim. This discussion is not binding upon the IRS or other taxing authorities. No assurance can be given that the IRS or another authority would not assert, or that a court would not sustain, a different position from any discussed herein.

**THE FOLLOWING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FOLLOWING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER’S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH HOLDER IS STRONGLY URGED TO CONSULT SUCH HOLDER’S TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME TAX CONSEQUENCES OF THE PLAN.**

**A. Taxation of the Liquidating Trust and Beneficiaries**

**1. General**

The Liquidating Trust will be organized for the primary purpose of liquidating the assets transferred to it with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. Thus, the Liquidating Trust is intended to be classified for federal income tax purposes as a “grantor trust” within the meaning of Treasury Regulation section 301.7701-4(d) and Revenue Procedure 94-45, 1994-2 C.B. 684. No request for a ruling from the IRS will be sought on the classification of the Liquidating Trust. Accordingly, there can be no assurance that the IRS would not take a contrary position with respect to the classification of the Liquidating Trust. If the IRS were to challenge successfully the classification of the Liquidating Trust as a grantor trust, the federal income tax consequences to the Liquidating Trust and to the Beneficiaries could vary from those discussed herein (including the potential for an entity-level tax).

For all U.S. federal income tax purposes, all parties with respect to the Liquidating Trust (including, without limitation, the Debtors, the Liquidating Trustee and the Beneficiaries) must treat the transfer of Liquidating Trust Assets (other than those Liquidating Trust Assets placed in a Disputed Claims Reserve taxed as a DOF (as defined below)) to the Liquidating Trust as (i) a transfer of such Liquidating Trust Assets by the Debtors to the Beneficiaries, which transfer will be subject to Claims required to be paid by the Liquidating Trust pursuant to the Plan with priority over General Unsecured Claims, including, without limitation, Allowed Administrative Claims and Allowed Professional Fee Claims (collectively, “Senior Claims”), followed by (ii) a transfer of such Liquidating Trust Assets, subject to the Senior Claims, by the Beneficiaries to the Liquidating Trust, with the Beneficiaries being treated as the grantors and owners of the Liquidating Trust.

Each Holder of a Claim that is a Beneficiary generally will recognize gain or loss in its taxable year that includes the Effective Date in an amount equal to the difference between the amount realized in respect of its Claim and its adjusted tax basis in the Claim. The amount realized by a Holder of a Claim on the Effective Date will equal the fair market value of the Liquidating Trust Assets deemed received in respect of such Claim, less (i) the Holder’s pro rata share of the Senior Claims, and (ii) the amount, if any, attributable to accrued but unpaid interest. A Holder that is deemed to receive Liquidating Trust Assets in respect of its Claim will then have a tax basis in such Liquidating Trust Assets in an amount equal to the fair market value of such Liquidating Trust Assets on the date of receipt, less the amount, if any, attributable to accrued but unpaid interest.

As further described below, because each Holder’s share of the Liquidating Trust Assets in the Liquidating Trust may change depending upon the resolution of Disputed Claims, a Holder may be prevented from recognizing for tax purposes all of its gain or loss from the consummation of the Plan until all Disputed Claims have been resolved.

In general, a Liquidating Trust is not a separate taxable entity but rather is treated as a grantor trust, pursuant to IRC Sections 671 *et. seq.*, owned by the persons who are treated as transferring assets to the trust. Accordingly, each Beneficiary must report on its federal income tax return its allocable share of income, gain, loss, deduction and credit recognized or incurred by the Liquidating Trust. None of the Debtors’ loss carryforwards, if any, will be available to reduce any income or gain of the Liquidating Trust. Moreover, upon the sale or other disposition (or deemed disposition) of any of the Liquidating Trust Assets not held in a DOF, each Beneficiary must report on its federal income tax return its share of any gain or loss measured by the difference between (1) its share of the amount of cash and/or the fair market value of any property received by the Liquidating Trust in exchange for the Liquidating Trust Asset so sold or otherwise disposed of and (2) its adjusted tax basis in its share of the Liquidating Trust Asset. The character of any such gain or loss to the Beneficiary will be determined as if such Beneficiary itself had directly sold or otherwise disposed of the Liquidating Trust Asset. The character of items of income, gain, loss, deduction and credit to any Beneficiary, and the ability of the Beneficiary to benefit from any deductions or losses, will depend on the particular circumstances or status of the Beneficiary.

Given the treatment of the Liquidating Trust as a grantor trust and subject to the discussion below regarding disputed claims reserves, each Beneficiary has an obligation to report its share of the Liquidating Trust’s tax items (including gain on the sale or other disposition of a Liquidating Trust Asset), which obligation is not dependent on the distribution of any cash or other Liquidating Trust Assets by the Liquidating Trust. Accordingly, a Beneficiary may incur a tax liability as a

result of owning a share of the Liquidating Trust Assets, regardless of whether the Liquidating Trust distributes cash or other assets. Due to the requirement that the Liquidating Trust maintain certain reserves, the Liquidating Trust's ability to make current cash distributions may be limited or precluded. In addition, due to possible differences in the timing of income on, and the receipt of cash from the Liquidating Trust Assets, a Beneficiary may be required to report and pay tax on a greater amount of income for a taxable year than the amount of cash received by the Beneficiary during the year.

The Liquidating Trust will file annual information tax returns with the IRS as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) that will include information concerning certain items relating to the holding or disposition (or deemed disposition) of the Liquidating Trust Assets (e.g., income, gain, loss, deduction and credit). Each Beneficiary will receive a copy of the information returns and must report on its federal income tax return its share of all such items. The information provided by the Liquidating Trust will pertain to Beneficiaries who received their interests in connection with the Plan.

## **2. Disputed Claims Reserves**

A portion of the Liquidating Trust Assets transferred to the Liquidating Trust will be attributable to Disputed Claims. The tax treatment of the transfers of Liquidating Trust Assets with respect to the Disputed Claims generally will be the same as the tax treatment of transfers of Liquidating Trust Assets with respect to Allowed Claims. The Liquidating Trustee, however, may create one or more reserve accounts for the Liquidating Trust Assets held on account of Disputed Claims. Under the IRC, amounts earned by an escrow account, settlement fund or similar fund must be subject to current tax. Depending on the facts and the relevant law, such funds may be treated as grantor trusts to debtors, grantor trusts to claimholders, or as trusts subject to an entity-level tax. Except as described below, the Debtors intend to treat the Liquidating Trust Assets held in any reserve established by the Liquidating Trust on account of Disputed Claims as having been transferred to the Liquidating Trust by the Holders of such Disputed Claims, and intend to treat the Holders of the Disputed Claims as grantors and owners of the Liquidating Trust.

Under the Plan, the Liquidating Trust may be allowed, for federal income tax purposes, to treat an account, trust, fund or reserve that holds assets to satisfy the Disputed Claims as a Disputed Ownership Fund (“DOF”) taxable under IRC Section 468B and Treasury Regulation section 1.468B-9. If the Liquidating Trustee were to file an election to treat a reserve as a DOF, then the DOF would be treated as a separate taxable entity for U.S. federal income tax purposes, and would be required to file tax returns and pay any tax due on income earned or gain recognized that was attributable to the Assets held in the reserve with respect to which the DOF election was made. Any tax liability of the DOF will reduce the distributions to certain Holders. For purposes of determining the DOF's federal income tax liability, a DOF would not be required to report as income transfers of assets to the DOF, but would be required to include in income all income received or accrued from assets transferred to the DOF. The DOF would not be allowed a tax deduction for a distribution of assets or of the net after-tax income earned by the DOF to a Holder. The initial tax basis of assets transferred to a DOF would be the fair market value of the assets determined on the date of transfer to the DOF, and the DOF's holding period would begin on the date of the transfer.

No assurance can be given that the IRS would accept a DOF election made by the Liquidating Trustee with respect to a reserve. If the IRS were to successfully reject a DOF election, the reserve with respect to which the DOF election was made would be subject to the rules described in the second preceding paragraph above.

## **B. Other Tax Consequences to Holders of Claims**

A Holder of an Allowed Claim will generally recognize gain or loss equal to the difference between the Holder's adjusted basis in its Allowed Claim and the amount realized by the Holder in respect of its Allowed Claim. Over time and on a cumulative basis, the amount realized generally will equal the amount realized by the Holder on the Effective Date as a result of the transfer of the Liquidating Trust Assets to the Liquidating Trust (see prior discussion regarding Taxation of the Liquidating Trust and Beneficiaries), plus or minus, as the case may be, the difference between the amount realized on the Effective Date and the aggregate amount of the Cash (and the fair market value of property, if any) distributed to the Holder by the Liquidating Trust, less the amount, if any, attributable to accrued but unpaid interest. A Holder of an Allowed Claim will generally recognize ordinary income to the extent that the amount of Cash or property received (or deemed received) under the Plan is attributable to interest that accrued on a Allowed Claim but was not previously paid by the Debtors or included in income by the Holder of the Allowed Claim.

The character of any gain or loss that is recognized as such will depend upon a number of factors, including the status of the Holder, the nature of the Allowed Claim in the Holder's hands, whether the Allowed Claim was purchased at a discount, whether and to what extent the Holder has previously claimed a bad debt deduction with respect to the Allowed Claim, and the Holder's holding period of the Allowed Claim. If the Allowed Claim in the Holder's hands is a capital asset, the gain or loss realized will generally be characterized as a capital gain or loss. Such gain or loss will constitute long-term capital gain or loss if the Holder held such Allowed Claim for longer than one year, or short-term capital gain or loss if the Holder held such Allowed Claim for one year or less. Any capital loss realized generally may be used by a corporate Holder only to offset capital gains, and by an individual Holder only to the extent of capital gains plus \$3,000 of ordinary income in any single taxable year.

A Holder of an Allowed Claim who receives, in respect of the Holder's Allowed Claim, an amount that is less than that Holder's tax basis in such Allowed Claim may be entitled to a bad debt deduction under IRC Section 166(a). The rules governing the character, timing, and amount of a bad debt deduction place considerable emphasis on the facts and circumstances of the holder, the obligor, and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to the ability to take a bad debt deduction. A Holder that has previously recognized a loss or deduction in respect of that Holder's Allowed Claim may be required to include in gross income (as ordinary income) any amounts received under the Plan to the extent such amounts exceed the Holder's adjusted basis in such Allowed Claim.

Holders of Allowed Claims who were not previously required to include any accrued but unpaid interest with respect to an Allowed Claim may be treated as receiving taxable interest income to the extent any consideration they receive under the Plan is allocable to such interest. A Holder previously required to include in gross income any accrued but unpaid interest with respect to an



Allowed Claim may be entitled to recognize a deductible loss to the extent such interest is not satisfied under the Plan.

A Holder of an Allowed Claim constituting an installment obligation for tax purposes may be required to currently recognize any gain remaining with respect to such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than at face value or distributed, transmitted, sold or otherwise disposed of within the meaning of IRC Section 453B.

Under backup withholding rules, a Holder of an Allowed Claim may be subject to backup withholding with respect to payments made pursuant to the Plan unless such Holder (i) is a corporation or is otherwise exempt from backup withholding and, when required, demonstrates this fact, or (ii) provides a correct taxpayer identification and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of failure to report all dividend and interest income. Any amount withheld under these rules will be credited against the Holder's federal income tax liability. Holders of Allowed Claims may be required to establish an exemption from backup withholding or to make arrangements with regard to payment of any backup withholding.

Holders of Disallowed Claims and Subordinated Claims will not receive any Distribution as part of the Plan. Accordingly, because such a Holder may receive an amount that is less than that Holder's tax basis in such Claim, such Holder may be entitled to a bad debt deduction under IRC Section 166(a). The rules governing the character, timing, and amount of a bad debt deduction place considerable emphasis on the facts and circumstances of the holder, the obligor, and the instrument with respect to which a bad debt deduction is claimed. Holders of Disallowed Claims and Subordinated Claims, therefore, are urged to consult their tax advisors with respect to the ability to take a bad debt deduction.

### **C. Certain Tax Consequences to the Debtors**

Under the IRC, a taxpayer generally must include in gross income the amount of any cancellation of indebtedness income ("COD Income") realized during the taxable year. Section 108 of the IRC provides an exception to this general rule, however, if the cancellation occurs in a case under the Bankruptcy Code, but only if the taxpayer is under the jurisdiction of the bankruptcy court and the cancellation is granted by the court or is pursuant to a plan approved by the court.

Section 108 of the IRC requires the amount of COD Income so excluded from gross income to be applied to reduce certain tax attributes of the taxpayer. The tax attributes that may be subject to reduction include the taxpayer's net operating losses and net operating loss carryovers (collectively, "NOLs"), certain tax credits and tax credit carryovers, capital losses and capital loss carryovers, tax bases in assets, and passive activity loss carryovers. Attribute reduction is calculated only after the tax for the year of the discharge has been determined. Section 108 of the IRC further provides that a taxpayer does not realize COD Income from cancellation of indebtedness to the extent that payment of such indebtedness would have given rise to a deduction.

Under the Plan, Holders of certain Allowed Claims are expected to receive less than full payment on their Claims and Holders of Disallowed Claims and Subordinated Claims are expected to receive no payment. The Debtors' liability to the Holders of such Claims in excess of the amount

satisfied by Distributions under the Plan will be canceled and therefore will result in COD Income to the Debtors. The Debtors should not realize any COD Income, however, to the extent that payment of such Claims would have given rise to a deduction to the Debtors had such amounts been paid. In addition, any COD Income that the Debtors realize should be excluded from the Debtors' gross income pursuant to the bankruptcy exception to section 108 of the IRC described above, because the cancellation will occur in a case under the Bankruptcy Code, while the taxpayer is under the jurisdiction of the bankruptcy court, and the cancellation is granted by the court or is pursuant to a plan approved by the court. The exclusion of the COD Income, however, will result in a reduction of certain tax attributes of the Debtors, such as the NOLS, as described above. Because attribute reduction is calculated only after the tax for the year of discharge has been determined, the COD Income realized by the Debtors under the Plan should not diminish the NOLs and other tax attributes that may be available to offset any income and gains recognized by the Debtors in the taxable year that includes the Effective Date.

### **VIII. RECOMMENDATION**

In the opinion of the Plan Proponents, the Plan is superior and preferable to any alternative. Accordingly, the Plan Proponents recommend that Holders of Claims entitled to vote on the Plan vote to accept the Plan and support Confirmation of the Plan.

Dated: October 9, 2018

Respectfully submitted,

VRG Liquidating, LLC  
and its chapter 11 affiliates

By: /s/ Robert J. Duffy  
Name: Robert J. Duffy  
Title: Chief Restructuring Officer

**EXHIBIT A**

**First Amended Joint Plan of Liquidation**

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

In re:

VRG Liquidating, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No.: 16-10971 (LSS)

(Jointly Administered)

**FIRST AMENDED JOINT PLAN OF LIQUIDATION OF  
VRG LIQUIDATING, LLC AND ITS CHAPTER 11 AFFILIATES AND  
THEIR OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated: Wilmington, Delaware  
October 9, 2018

Michael L. Tuchin, Esq.  
Sasha M. Gurvitz, Esq.  
KLEE, TUCHIN, BOGDANOFF & STERN  
LLP  
1999 Avenue of the Stars, 39<sup>th</sup> Floor  
Los Angeles, California 90067  
Tel: (310) 407-4022  
Fax: (310) 407-9090  
E-mail: mtuchin@ktbslaw.com  
sgurvitz@ktbslaw.com

*Counsel to the Debtors  
and Debtors in Possession*

Robert S. Brady, Esq. (DE Bar No. 2847)  
Robert F. Poppiti, Jr., Esq. (DE Bar No. 5052)  
YOUNG CONAWAY STARGATT & TAYLOR,  
LLP  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Tel: (302) 571-6600  
Fax: (302) 571-1253  
E-mail: rbrady@ycst.com  
rpoppiti@ycst.com

*Counsel to the Debtors  
and Debtors in Possession*

---

<sup>1</sup> The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: VRG Liquidating, LLC (f/k/a Vestis Retail Group, LLC) (1295); VRF Liquidating, LLC (f/k/a Vestis Retail Financing, LLC) (9362); EMSOC Liquidating, LLC (f/k/a EMS Operating Company, LLC) (2061); VIH Liquidating, LLC (f/k/a Vestis IP Holdings, LLC) (2459); BS Liquidating, LLC (f/k/a Bob's Stores, LLC) (4675); EMSA Liquidating, LLC (f/k/a EMS Acquisition LLC) (0322); SC Liquidating 2, LLC (f/k/a Sport Chalet, LLC) (0071); SCVS Liquidating, LLC (f/k/a Sport Chalet Value Services, LLC) (7320); and SCTS Liquidating, LLC (f/k/a Sport Chalet Team Sales, LLC) (8015). The Debtors' executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

Jay R. Indyke, Esq.  
Evan M. Lazerowitz, Esq.  
COOLEY LLP  
1114 Avenue of the Americas  
New York, New York 10036  
Tel: (212) 479-6000  
Fax: (212) 479-6275  
  
E-mail: jindyke@cooley.com  
elazerowitz@cooley.com

*Counsel to the Committee*

Christopher A. Ward, Esq. (Del. Bar No. 3877)  
Shanti M. Katona, Esq. (Del. Bar No. 5352)  
POLSINELLI PC  
222 Delaware Avenue, Suite 1101  
Wilmington, Delaware 19801  
Tel: (302) 252-0920  
Fax: (302) 252-0921  
E-mail: cward@polsinelli.com  
skatona@polsinelli.com

*Counsel to the Committee*

**FIRST AMENDED JOINT PLAN OF LIQUIDATION OF  
VRG LIQUIDATING, LLC AND ITS CHAPTER 11 AFFILIATES AND  
THEIR OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**INTRODUCTION**

The Debtors (as defined below) and the Committee (as defined below) hereby propose this Plan (as defined below), which provides for the resolution of the outstanding Claims (as defined below) and Equity Interests (as defined below) asserted against the Debtors. Reference is made to the Disclosure Statement (as defined below) for (i) a discussion of the Debtors' history, businesses, and properties, (ii) a summary and analysis of this Plan, and (iii) certain related matters, including risk factors relating to the consummation of this Plan and Distributions (as defined below) to be made under this Plan. The Debtors and the Committee are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code (as defined below).

These bankruptcy cases are being jointly administered pursuant to an order of the United States Bankruptcy Court for the District of Delaware. Under Section 5.2 of the Plan, for purposes of voting and distribution in connection with the Plan, the Debtors will be substantively consolidated, meaning that all of the assets and liabilities of the Debtors will be deemed to be the assets and liabilities of a single entity. As a result, the votes to accept or reject the Plan by Holders of Claims against a particular Debtor shall be tabulated as votes to accept or reject the Plan for the substantively consolidated Debtors. The Plan Proponents reserve the right to make appropriate modifications of the Plan if and to the extent necessary to effectuate confirmation of the Plan.

All Holders of Claims who are entitled to vote on the Plan are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Rule 3019 of the Bankruptcy Rules (as defined below), and Section 11.6 of the Plan, the Plan Proponents reserve the right to alter, amend, modify, revoke, or withdraw the Plan prior to its substantial consummation.

No solicitation materials, other than the Disclosure Statement and related materials transmitted therewith, have been approved for use in soliciting acceptances and rejections of this Plan. Nothing in the Plan should be construed as constituting a solicitation of acceptances of the Plan unless and until the Disclosure Statement has been approved and distributed to all Holders of Claims to the extent required by section 1125 of the Bankruptcy Code.

**ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ CAREFULLY THE DISCLOSURE STATEMENT AND THE PLAN, EACH IN ITS ENTIRETY, BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

## ARTICLE I

### DEFINED TERMS AND RULES OF INTERPRETATION

For purposes of the Plan, except as expressly provided or unless the context otherwise requires:

(a) all capitalized terms used in the Plan and not otherwise defined in the Plan shall have the meanings ascribed to them in this Article I of the Plan;

(b) any capitalized term used in the Plan that is not defined in the Plan, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable;

(c) whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine;

(d) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(e) any reference in the Plan to an existing document or exhibit means such document or exhibit as it may be amended, modified, or supplemented from time to time;

(f) unless otherwise specified, all references in the Plan to sections, articles, schedules, and exhibits are references to sections, articles, schedules, and exhibits of or to the Plan;

(g) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan;

(h) captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; and

(i) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

The following capitalized terms used in the Plan shall have following meanings:

**1.1 Administrative Claim:** A Claim (other than a Professional Fee Claim, but, for the avoidance of doubt, including Ordinary Course Professional Fee Claims) arising under sections 365, 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, to the extent not previously paid, otherwise satisfied, or withdrawn, including, but not limited to, (a) all fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code, (b) all Claims for Stub Rent under section 503(b) of the Bankruptcy Code and lease payments under section 365 of the Bankruptcy Code, and (c) all Section 503(b)(9) Claims.

**1.2 Administrative Claim Bar Date:** The First Administrative Claim Bar Date or the Second Administrative Claim Bar Date, as applicable.

**1.3 Allowed, Allowed Claim, or Allowed [ ] Claim:** Either (i)(a) any Claim, proof of which is/was Filed on or before the date designated by the Bankruptcy Court as the last date for Filing proofs of Claim with respect to such Claim, or which has been or hereafter is scheduled by the Debtors on the Schedules as liquidated in amount and not disputed or contingent, unless, in either case, an objection to the allowance thereof has been Filed by the Claim Objection Deadline, or (b) a Claim as to which any objection has been determined, in whole or in part, in favor of the Holder of the Claim by a Final Order of the Bankruptcy Court; (ii) any Administrative Claim, request for payment of which is/was Filed on or before the applicable Administrative Claim Bar Date, which has been determined, in whole or in part, in favor of the Holder of such Administrative Claim by a Final Order of the Bankruptcy Court; or (iii) a Claim (including an Administrative Claim) that is Allowed (a) in any contract, instrument, or other agreement entered into in connection with the Plan, (b) in a Final Order (including pursuant to a Final Order estimating a Claim pursuant to Section 502(c) of the Bankruptcy Code), (c) pursuant to the terms of the Plan, or (d) for purposes of Distribution by designation of the Liquidating Trustee. For the avoidance of doubt, no Claim shall be an Allowed Claim for purposes of Distribution under Section 1.3(i)(a) of the Plan prior to the Claim Objection Deadline.

**1.4 Assets:** Any and all right, title, and interest of the Debtors and their Estates in and to property of whatever type or nature, including their books and records.

**1.5 Avoidance Actions:** Any and all avoidance or equitable subordination or recovery actions under section 105(a), 502(d), 510, 542 through 551 and 553 of the Bankruptcy Code or any similar state law causes of action.

**1.6 Ballot:** The ballot form distributed to each Holder of a Claim entitled to vote to accept or reject this Plan.

**1.7 Bankruptcy Code:** Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as may be amended).

**1.8 Bankruptcy Court:** The United States Bankruptcy Court for the District of Delaware, or in the event such court ceases to exercise jurisdiction over any Chapter 11 Case, such court or adjunct thereof that exercises jurisdiction over such Chapter 11 Case in lieu of the United States Bankruptcy Court for the District of Delaware.

**1.9 Bankruptcy Rules:** The Federal Rules of Bankruptcy Procedure (as may be amended).

**1.10 Beneficiaries:** The Holders of Allowed General Unsecured Claims.

**1.11 Business Day:** Any day, excluding Saturdays, Sundays, or “legal holidays” (as defined in Bankruptcy Rule 9006(a)) on which commercial banks are open for business in Wilmington, Delaware.

**1.12 Buyer:** Vestis Investments II, LLC, a Delaware limited liability company (formerly known as Subortis Investments II, LLC, a Delaware limited liability company, formerly known as Vestis BSI Funding, II, LLC, a Delaware limited liability company), together with its permitted successors, designees and assigns, including, without limitation, non-Debtors Subortis



Retail Financing, LLC, Subortis IP Holdings, LLC, Eastern Outfitters, LLC, Bob's Stores, LLC (formerly known as Bob's Acquisition, LLC), Eastern Mountain Sports, LLC (formerly known as EMS Acquisition (2016), LLC), and Bob's/EMS Gift Card, LLC.

**1.13 Buyer Settlement Agreement:** That certain Settlement Agreement by and among the Debtors and Buyer, dated as of October 1, 2018, as amended, modified, or supplemented, which is the subject of the *Debtors' Motion for Entry of an Order, Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019, Approving Settlement with Vestis Investments II, LLC* [Docket No. 2014].

**1.14 Cash:** Cash and cash equivalents in certified or immediately available U.S. funds, including but not limited to bank deposits, checks and similar items.

**1.15 Chapter 11 Cases:** The voluntary chapter 11 bankruptcy cases commenced by the Debtors, which are being jointly administered under case caption *VRG Liquidating, LLC, et al.*, Case No. 16-10971 (LSS).

**1.16 Claim:** A claim, as defined in section 101(5) of the Bankruptcy Code, against the Debtors or the Estates whether or not asserted or Allowed.

**1.17 Claim Objection Deadline:** One hundred and twenty (120) days after the Effective Date, subject to extension as set forth in Section 8.2 of the Plan.

**1.18 Class:** A category of Claims or Equity Interests designated pursuant to the Plan.

**1.19 Collateral:** Any property or interest in property of a Debtor's Estate that is subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law.

**1.20 Confirmation:** Entry by the Bankruptcy Court of the Confirmation Order.

**1.21 Confirmation Date:** The date upon which the Confirmation Order is entered by the Bankruptcy Court.

**1.22 Confirmation Hearing:** Collectively, the hearing or hearings held by the Bankruptcy Court on confirmation of the Plan, as such hearing or hearings may be continued from time to time.

**1.23 Confirmation Order:** The Order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

**1.24 Creditor:** Any Holder of a Claim.

**1.25 Committee:** The Official Committee of Unsecured Creditors appointed by the U.S. Trustee in the Chapter 11 Cases, as it may be reconstituted from time to time.

**1.26 Debtor or Debtors:** Individually and collectively, VRG Liquidating, LLC, a Delaware limited liability company (f/k/a Vestis Retail Group, LLC, a Delaware limited liability company); VRF Liquidating, LLC, a Delaware limited liability company (f/k/a Vestis Retail Financing,

LLC, a Delaware limited liability company); EMSOC Liquidating, LLC, a Delaware limited liability company (f/k/a EMS Operating Company, LLC, a Delaware limited liability company); VIH Liquidating, LLC, a Delaware limited liability company (f/k/a Vestis IP Holdings, LLC, a Delaware limited liability company); BS Liquidating, LLC, a New Hampshire limited liability company (f/k/a Bob's Stores, LLC, a New Hampshire limited liability company); EMSA Liquidating, LLC, a Delaware limited liability company (f/k/a EMS Acquisition LLC, a Delaware limited liability company); SC Liquidating 2, LLC, a Delaware limited liability company (f/k/a Sport Chalet, LLC, a Delaware limited liability company); SCVS Liquidating, LLC, a Virginia limited liability company (f/k/a Sport Chalet Value Services, LLC, a Virginia limited liability company); and SCTS Liquidating, LLC, a Delaware limited liability company (f/k/a Sport Chalet Team Sales, LLC, a Delaware limited liability company).

**1.27 Disclosure Statement:** The *Disclosure Statement for the First Amended Joint Plan of Liquidation of VRG Liquidating, LLC and Its Chapter 11 Affiliates and Their Official Committee of Unsecured Creditors*, dated as of October 9, 2018, and all exhibits thereto, as the same may be amended, modified, or supplemented.

**1.28 Disputed Claim:** Any Claim, including any Administrative Claim, that is not an Allowed Claim and which has not been withdrawn, disallowed, or expunged.

**1.29 Disputed Claim Reserve:** Any reserve established and maintained by the Liquidating Trustee for the payment of Disputed Claims.

**1.30 Disputed Ownership Fund:** A “disputed ownership fund” within the meaning of Treasury Regulation section 1.468B-9.

**1.31 Distribution:** The transfer of Cash or other property by the Liquidating Trustee to the Holders of Allowed Claims.

**1.32 Distribution Record Date:** The record date for determining entitlement to receive Distributions under the Plan on account of Allowed General Unsecured Claims, which date shall be (i) with respect to General Unsecured Claims other than Rejection Claims, the date on which the Order approving the Disclosure Statement is entered, (ii) with respect to Rejection Claims, the third (3rd) Business Day after the date for Filing Rejection Claims set forth in Section 6.1 of the Plan at 5:00 p.m. prevailing Eastern time.

**1.33 Effective Date.** The date that is the first Business Day on which each condition set forth in Article IX of the Plan has been satisfied or waived as set forth therein.

**1.34 Entity:** Shall have the meaning set forth in section 101(15) of the Bankruptcy Code. Unless otherwise specified herein, any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors, assigns, and affiliates.

**1.35 Equity Interests:** All previously issued and outstanding common stock, preferred stock, limited liability company membership interests, or other equity interests in the Debtors outstanding immediately prior to the Effective Date, including, without limitation, treasury stock and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to convert, exchange, exercise for, or otherwise receive such common stock, preferred stock, limited liability company membership interests, or other equity interests.

**1.36 Estates:** The chapter 11 estates of the Debtors created pursuant to section 541 of the Bankruptcy Code.

**1.37 Exculpated Parties:** Each in their capacities as such, (a) the Debtors, (b) the present and former officers, directors, members and managers of the Debtors, (c) the Professionals retained by the Debtors pursuant to an Order of the Bankruptcy Court, (d) the Committee, (e) the present and former members of the Committee (including ex officio members), and (f) the Professionals retained by the Committee pursuant to an Order of the Bankruptcy Court.

**1.38 Face Amount:** When used in reference to an Allowed Claim, the amount of such Claim that is Allowed, and, when used in reference to a Disputed Claim, (i) the liquidated amount set forth in the proof of claim or request for payment relating to the Disputed Claim (if any); (ii) an amount agreed to by the Liquidating Trustee and the Holder of the Disputed Claim; or (iii) if a request for estimation is Filed with respect to such Disputed Claim, the amount at which such Disputed Claim is estimated by the Bankruptcy Court.

**1.39 File, Filed, or Filing:** File, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

**1.40 Final Decree:** The Order entered pursuant to section 350 of the Bankruptcy Code, Bankruptcy Rule 3022, and Local Rule 3022-1 closing a Chapter 11 Case.

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

**1.42 First Administrative Claim Bar Date:** April 14, 2017 at 5:00 p.m. (prevailing Pacific Time), which was the last date by which an Entity was required to File a request for payment of a Non-Ordinary Course Administrative Claim (other than a Section 503(b)(9) Claim) that first arose during the period from the Petition Date through and including March 15, 2017.

**1.43 General Unsecured Claim:** Any unsecured, non-priority Claim against the Debtors or the Estates that is not a Subordinated Claim.

**1.44 Holder:** The Person that is the owner of record of a Claim or Equity Interest, as applicable.

**1.45 Impaired:** Any Class of Claims or Equity Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

**1.46 Insured Claim:** Any Claim or portion of a Claim (other than a Claim held by an employee of the Debtors for workers' compensation coverage under the workers' compensation program applicable in the particular state in which the employee is employed by the Debtors) that is insured under the Debtors' insurance policies, but only to the extent of such coverage.

**1.47 Lien:** Any lien, security interest, pledge, title retention agreement, encumbrance, charge, mortgage, or hypothecation to secure payment of a debt or performance of an obligation, other

than, in the case of securities and any other equity ownership interests, any restrictions imposed by applicable United States or foreign securities laws.

**1.48 Liquidating Trust:** The grantor trust to be created upon the Effective Date for the benefit of the Beneficiaries.

**1.49 Liquidating Trust Advisory Committee:** The committee appointed pursuant to Article V of this Plan and acting in accordance with the Liquidating Trust Agreement.

**1.50 Liquidating Trust Agreement:** The agreement, substantially in the form attached hereto as **Exhibit A**, governing the operations of the Liquidating Trust, as it may be subsequently modified from time to time.

**1.51 Liquidating Trust Assets:** All Assets of the Estates, including, but not limited to, Cash, the Retained Causes of Action and any proceeds realized or received from such Assets, and all rights of setoff, recoupment, and other defenses against Claims, but excluding all documents, communications, and information protected by the attorney-client privilege, the work-product privilege, and any other applicable evidentiary privileges and excluding all Equity Interests in SME Holding Company, LLC, which are abandoned on the Effective Date. For the avoidance of doubt, any assets treated as owned by a Disputed Ownership Fund pursuant to Section 5.4.5(c)(iv) of the Plan shall not be treated as Liquidating Trust Assets for federal income tax purposes.

**1.52 Liquidating Trustee:** The individual or entity designated and retained as the trustee to the Liquidating Trust, as of the Effective Date or as soon as reasonably practicable thereafter, as the fiduciary responsible for administering the Liquidating Trust. The initial Liquidating Trustee shall be META Advisors LLC.

**1.53 Liquidating Trust Expenses:** All reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Liquidating Trustee on account of administration of the Liquidating Trust, including any reasonable administrative fees and expenses, reasonable attorneys' fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses.

**1.54 Liquidating Trust Expenses Reserve:** Liquidating Trust Expenses Reserve shall have the meaning ascribed to it in Section 5.4.3(b) of this Plan.

**1.55 Liquidating Trust Interests:** The non-transferable interests in the Liquidating Trust that are issued to the Beneficiaries pursuant to the Plan.

**1.56 Local Rules:** The Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, as amended from time to time.

**1.57 Non-Ordinary Course Administrative Claim:** Any Administrative Claim that is not an Ordinary Course Administrative Claim.

**1.58 Order:** An order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in any of the Chapter 11 Cases or the docket of any other court of competent jurisdiction.

**1.59 Ordinary Course Administrative Claim:** Any Administrative Claim with respect to liabilities incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases (including, without limitation, Ordinary Course Professional Fee Claims, and wages, salaries, and commissions for services rendered after the Petition Date and before the Effective Date); provided, that in no event shall obligations arising after the Petition Date from personal injury, property damage, products liability, consumer complaints, employment law, secondary payor liability, or any tort or equitable claims be Ordinary Course Administrative Claims. Further, Claims for Stub Rent under section 503(b) of the Bankruptcy Code, Claims in connection with the cure of defaults under unexpired leases and executory contracts under section 365(b) of the Bankruptcy Code, and Section 503(b)(9) Claims are not Ordinary Course Administrative Claims.

**1.60 Ordinary Course Professional:** Any OCP, as that term is defined in the *Order, Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code, Authorizing the Debtors to Retain and Compensate Certain Professionals Utilized in the Ordinary Course of Business, Nunc Pro Tunc to the Petition Date* [Dkt. No. 405].

**1.61 Ordinary Course Professional Fee Claim:** A Claim of an Ordinary Course Professional for compensation or reimbursement of costs and expenses relating to services incurred during the period from the Petition Date through the Effective Date.

**1.62 Person:** An individual or Entity, limited liability company, corporation, partnership, association, trust or unincorporated organization, joint venture or other person or a government or any agency or political subdivision thereof.

**1.63 Petition Date:** April 18, 2016, the date on which the Debtors Filed their voluntary chapter 11 petitions for relief in the Bankruptcy Court.

**1.64 Plan:** The *First Amended Joint Plan of Liquidation of VRG Liquidating, LLC and Its Chapter 11 Affiliates and Their Official Committee of Unsecured Creditors*, dated as of October 9, 2018, and all exhibits thereto, including, without limitation, the Plan Supplement, as the same may be amended, modified, or supplemented.

**1.65 Plan Proponents:** The Debtors and the Committee.

**1.66 Plan Supplement:** The ancillary documents, if any, necessary to the implementation and effectuation of the Plan. If necessary, the Plan Supplement, shall be Filed on or before the date that is seven (7) days prior to the Voting Deadline.

**1.67 Priority Claim:** A Claim that is entitled to priority under section 507(a) of the Bankruptcy Code, other than an Administrative Claim and a Priority Tax Claim.

**1.68 Priority Tax Claim:** A Claim that is entitled to priority under section 507(a)(8) of the Bankruptcy Code.

**1.69 Professional:** Any professional (other than an Ordinary Course Professional) employed in the Chapter 11 Cases pursuant to sections 327, 328, 1103, or 1104 of the Bankruptcy Code or any professional or other Person (in each case, other than an Ordinary Course Professional) seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(3) or 503(b)(4) of the Bankruptcy Code.

**1.70 Professional Fee Claim:** A Claim of a Professional for compensation or reimbursement of costs and expenses relating to services incurred during the period from the Petition Date through the Effective Date.

**1.71 Professional Fee Reserve:** The reserve established and funded by the Liquidating Trustee pursuant to Section 11.2 of the Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

**1.72 Pro Rata:** The proportion that the Allowed Claim in a particular Class bears to the aggregate amount of (a) Allowed Claims in such Class as of the date of determination, plus (b) Disputed Claims in such Class as of the date of determination, in their aggregate Face Amounts or such other amount: (i) as calculated by the Liquidating Trustee on or before the date of any such Distribution; (ii) as determined by an Order of the Bankruptcy Court estimating such Disputed Claim; or (iii) as directed by a Final Order of the Bankruptcy Court.

**1.73 Rejection Claim:** Any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

**1.74 Released Parties:** Each in their capacities as such, (a) the Debtors and their direct and indirect affiliates (including, without limitation, Versa Capital Management, LLC), (b) the Committee, (c) subject to Court approval of the Buyer Settlement Agreement, the Buyer, (d) each of the preceding entities' respective present or former members, ex officio members, officers, managers, directors, employees, consultants, professionals, advisors, agents, and other representatives, including, without limitation, attorneys, accountants, investment bankers, and financial advisors, and (e) the successors or assigns of each of the foregoing.

**1.75 Release Opt-Out:** The item set forth in the Ballots, due by the Voting Deadline, pursuant to which Holders of Claims in Class 3 that do not otherwise vote to accept or reject the Plan may opt out of the releases set forth in Section 11.12 of the Plan.

**1.76 Releasing Parties:** (a) The Debtors, (b) the Estates, (c) any Entity seeking to exercise the rights of the Estates, including, without limitation, any successor to the Debtors or any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, and (d) all Holders of Claims in Class 3 that (i) vote to accept the Plan or (ii) do not otherwise vote to accept or reject the Plan and do not timely submit a Release Opt-Out indicating such Holder's decision to not participate in the releases set forth in Section 11.12 of the Plan.

**1.77 Retained Causes of Action:** All (a) rights, including rights of set-off and rights of recoupment, refunds, claims, counterclaims, demands, causes of action and rights to collect damages of the Debtors against third parties (including Avoidance Actions that were not purchased by the Buyer) to the extent solely related to any Excluded Asset or Excluded Liability (each as defined in the Sale Agreement) and (b) class action commercial tort claims that the Debtors are or could have been a party to prior to July 18, 2016 and that will not impact the Business (as defined in the Sale Agreement) following July 18, 2016.

**1.78 Sale Agreement:** The Amended and Restated Asset Purchase Agreement by and among the Debtors and Buyer, dated as of May 31, 2016, as amended, modified, or supplemented.

**1.79 Sale Order:** The *Order (I) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of All Claims, Liens, Rights, Interests and Encumbrances; (II) Approving the Asset Purchase Agreement and (III) Authorizing the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases* [Dkt. No. 590], entered on June 20, 2016.

**1.80 Schedules:** The Schedules of Assets and Liabilities Filed by the Debtors, as such Schedules may be amended from time to time in accordance with Bankruptcy Rule 1009.

**1.81 Second Administrative Claim Bar Date:** The last date by which an Entity must File a request for payment of (i) a Non-Ordinary Course Administrative Claim that first arose after March 15, 2017 or (ii) any Ordinary Course Administrative Claim, which shall be the date that is forty-five (45) days after the Effective Date, or the first Business Day following such day if the forty-fifth (45th) day after the Effective Date is not a Business Day.

**1.82 Section 503(b)(9) Claim:** A Claim arising under section 503(b)(9) of the Bankruptcy Code for the value of any goods received by the Debtors within twenty (20) days before the Petition Date that were sold to the Debtors in the ordinary course of their business.

**1.83 Secured Claim:** A Claim that is (i) secured by a valid, perfected, and enforceable Lien on property in which the Debtors or the Estates have an interest that is not subject to avoidance, or (ii) subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Creditor's interest in such property or to the extent of the amount subject to setoff, as applicable, all as determined pursuant to sections 506(a) and 1111(b) of the Bankruptcy Code.

**1.84 Securities Law Claim:** Any Claim that is subject to subordination under section 510(b) of the Bankruptcy Code, whether or not the subject of an existing lawsuit, (a) arising from rescission of a purchase or sale of any equity securities of any Debtor or an affiliate of any Debtor, (b) for damages arising from the purchase or sale of any such equity security, (c) for violations of the securities laws, misrepresentations, or any similar Claims, including, to the extent related to the foregoing or otherwise subject to subordination under section 510(b) of the Bankruptcy Code, any attorneys' fees, other charges, or costs incurred on account of the foregoing Claims, or (d) except as otherwise provided for in the Plan, for reimbursement, contribution, or indemnification allowed under section 502 of the Bankruptcy Code on account of any such Claim, including, without limitation (i) any prepetition indemnification, reimbursement or contribution obligations of the Debtors, pursuant to the Debtors' corporate charters, by-laws, agreements entered into any time prior to the Petition Date, or otherwise, and relating to Claims otherwise included in the foregoing clauses (a) through (c), and (ii) Claims based upon allegations that the Debtors made false and misleading statements or engaged in other deceptive acts in connection with the sale of equity securities, or otherwise subject to section 510(b) of the Bankruptcy Code.

**1.85 Stub Rent:** Rent covering a period of a Debtor's postpetition tenancy for which payment became due prepetition.

**1.86 Subordinated Claim:** Any Securities Law Claim or other Claim that is subordinated to General Unsecured Claims pursuant to section 510 of the Bankruptcy Code or Final Order of the Bankruptcy Court.

**1.87 Unimpaired:** Any Class of Claims that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

**1.88 U.S. Trustee:** The Office of the United States Trustee for the District of Delaware.

**1.89 Voting Deadline:** The date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information, pursuant to section 1125(a) of the Bankruptcy Code, and authorizing the Debtors to solicit acceptances of the Plan.

## **ARTICLE II**

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

**2.1 Unclassified Claims.** Holders of the following Claims are not entitled to vote on the Plan:

1. *Non-Ordinary Course Administrative Claims*
2. *Ordinary Course Administrative Claims*
3. *Professional Fee Claims*
4. *Priority Tax Claims*

**2.2 Unimpaired Classes of Claims.** Holders of Claims in the following Unimpaired Classes of Claims are deemed to have accepted the Plan and are not entitled to vote on the Plan:

1. *Secured Claims (Class 1)*
2. *Priority Claims (Class 2)*

**2.3 Impaired/Voting Class of Claims.** Holders of Claims in the following Impaired Class of Claims are entitled to vote on the Plan:

1. *General Unsecured Claims (Class 3)*

**2.4 Impaired/Non-Voting Classes of Claims and Equity Interests.** Holders of Claims and Equity Interests in the following Impaired Classes of Claims and Equity Interests are deemed to have rejected the Plan and, therefore, are not entitled to vote on the Plan:

1. *Subordinated Claims (Class 4)*
2. *Equity Interests (Class 5)*



## ARTICLE III

### TREATMENT OF CLAIMS AND EQUITY INTERESTS

#### **3.1 Unclassified Claims.**

**3.1.1 Non-Ordinary Course Administrative Claims.** Except as otherwise provided for herein, and subject to the requirements of this Plan, on, or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Non-Ordinary Course Administrative Claim becomes an Allowed Non-Ordinary Course Administrative Claim, the Holder of such Allowed Non-Ordinary Course Administrative Claim shall receive from the Liquidating Trust, in full satisfaction, settlement, and release of and in exchange for such Allowed Non-Ordinary Course Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Non-Ordinary Course Administrative Claim or (b) such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing.

**3.1.2 Ordinary Course Administrative Claims.** Ordinary Course Administrative Claims shall be paid by the Liquidating Trust in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto, or Holders of such Claims shall receive such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing.

**3.1.3 Professional Fee Claims.** Professional Fee Claims shall be paid as set forth in Section 11.2 of the Plan.

**3.1.4 Priority Tax Claims.** In full satisfaction, settlement, and release of and in exchange for such Claims, Allowed Priority Tax Claims shall be paid by the Liquidating Trust, at the Liquidating Trustee's option, as follows: (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim on the later of the Effective Date or thirty (30) days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, (b) in regular installment payments in Cash over a period not exceeding five (5) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable non-bankruptcy law as of the calendar month in which the Confirmation Date occurs, and (c) such other treatment as to which the Holder of an Allowed Priority Tax Claim and the Liquidating Trustee shall have agreed upon in writing.

#### **3.2 Unimpaired Classes of Claims.**

**3.2.1 Class 1: Secured Claims.** On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive from the Liquidating Trust, at the election of the Liquidating Trustee, in full satisfaction, settlement, and release of and in exchange for such Allowed Secured Claim, (i) Cash equal to the value of such Claim, (ii) the return of the Holder's Collateral securing such Claim, (iii) such Claim reinstated pursuant to sections 1124(1) or 1124(2) of the Bankruptcy Code, or (iv) such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing. Any Holder of an Allowed Secured Claim shall retain its Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold by the

Liquidating Trust free and clear of such Lien) to the same extent and with the same priority as such Lien held as of the Effective Date until such time as (A) such Holder (i) has been paid Cash equal to the value of such Claim, (ii) has received a return of the Collateral securing such Claim, (iii) has such Claim reinstated pursuant to sections 1124(1) or 1124(2) of the Bankruptcy Code, or (iv) has been afforded such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing; or (B) such purported Lien has been determined by an Order of the Bankruptcy Court to be invalid or otherwise avoidable. Class 1 is Unimpaired and therefore Holders of Secured Claims are conclusively presumed to have accepted the Plan.

**3.2.2 Class 2: Priority Claims.** On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Priority Claim becomes an Allowed Priority Claim, the Holder of such Allowed Priority Claim shall receive from the Liquidating Trust, in full satisfaction, settlement, and release of and in exchange for such Allowed Priority Claim, either (i) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Claim or (ii) such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing. Class 2 is Unimpaired and therefore Holders of Priority Claims are conclusively presumed to have accepted the Plan.

### **3.3 Impaired/Voting Classes of Claims.**

**3.3.1 Class 3: General Unsecured Claims.** On, or as soon as reasonably practicable after the Second Administrative Claim Bar Date, the Holder of an Allowed General Unsecured Claim shall receive from the Liquidating Trust, in full satisfaction, settlement, and release of and in exchange for such Claim, (i) its Pro Rata share of the Liquidating Trust Interests, or (ii) such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing. Class 3 is Impaired and therefore Holders of General Unsecured Claims are entitled to vote on the Plan.

### **3.4 Impaired/Non-Voting Classes of Claims and Equity Interests.**

**3.4.1 Class 4: Subordinated Claims.** On the Effective Date, Holders of Subordinated Claims shall not be entitled to, and shall not receive or retain any property or interest in property under the Plan on account of such Subordinated Claims. Class 4 is deemed to have rejected the Plan and therefore Holders of Subordinated Claims are not entitled to vote on the Plan.

**3.4.2 Class 5: Equity Interests.** As of the Effective Date, all Equity Interests of any kind shall be deemed void, cancelled, and of no further force and effect and the Holders thereof shall not receive or retain any property or interest in property under the Plan on account of such Equity Interests. Class 5 is deemed to have rejected the Plan and therefore Holders of Equity Interests are not entitled to vote on the Plan.

### **3.5 Special Provisions Regarding Insured Claims.**

(a) Any Allowed General Unsecured Claim with respect to an Insured Claim shall be limited to the amount by which the Allowed Insured Claim exceeds the total coverage available with respect to such Insured Claim under the Debtors' applicable insurance policies.

(b) If there is insurance, any party with rights against or under the applicable insurance policy, including, without limitation, Buyer, the Liquidating Trust, and Holders of Insured Claims, may pursue such rights.

(c) Nothing in this Section 3.5 shall constitute a waiver of any causes of action the Debtors or the Liquidating Trust may hold against any Entity, including the Debtors' insurance carriers; and nothing in this Section 3.5 is intended to, shall, or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery from any insurer of the Debtors in addition to (but not in duplication of) any Distribution such Holder may receive under the Plan; provided, however, that the Debtors and the Liquidating Trustee do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled.

(d) The Plan shall not modify the scope of, or alter in any other way, the rights and obligations of the Debtors' insurers under their policies, and the Debtors' insurers shall retain any and all rights, claims and defenses to liability and/or coverage that such insurers may have, including the right to contest and/or litigate with any party, including Buyer, the Debtors and the Liquidating Trustee, the existence, primacy and/or scope of liability and/or available coverage under any alleged applicable policy. The Plan shall not operate as a waiver of any other Claims the Debtors' insurers have asserted or may assert in any proof of claim, including, without limitation, any rights or defenses arising out of, or in the nature of, setoff or recoupment, or the Debtors' rights and defenses to such proofs of claim.

**3.6 Provision Governing Allowance and Defenses to Claims.** On and after the Effective Date, the Liquidating Trust shall have all of the Debtors' and the Estates' rights under section 558 of the Bankruptcy Code. Nothing under the Plan shall affect the rights and defenses of the Debtors, the Estates, and the Liquidating Trust in respect of any Claim, including all rights in respect of legal and equitable objections, defenses, setoffs, or recoupment against such Claims; provided, however, that with respect to a Claim as to which two or more Debtors are co-liable as a legal or contractual matter, such rights, defenses, setoffs, or recoupments against such Claim shall not be affected by the substantive consolidation of the Estates of the Debtors and will apply to such Claim only to the extent that such rights, defenses, setoffs, or recoupments would have applied against the Claims underlying such Claim had the substantive consolidation of the Estates of the Debtors not taken place. The Liquidating Trust may, but shall not be required to, setoff against any Claim (for purposes of determining the Allowed amount of such Claim on which Distribution shall be made) any claims of any nature whatsoever that the Estates or the Liquidating Trust may have against the Claim Holder, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trust of any such Claim it may have against such Claim Holder. The Liquidating Trustee may designate any Claim as Allowed at any time from and after the Effective Date.

## **ARTICLE IV**

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

**4.1 Impaired Class of Claims Entitled to Vote.** Only the votes of Holders of Claims in Class 3 shall be solicited with respect to the Plan.

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

**4.3 Presumed Acceptances by Unimpaired Classes.** Class 1 and Class 2 are Unimpaired under the Plan. Under section 1126(f) of the Bankruptcy Code, the Holders of Claims in such Unimpaired Classes are conclusively presumed to have accepted the Plan, and, therefore, the votes of the Holders of such Claims shall not be solicited.

**4.4 Impaired Classes Deemed to Reject Plan.** Holders of Claims and Equity Interests in Class 4 and Class 5 are not entitled to receive or retain any property or interests in property under the Plan. Under section 1126(g) of the Bankruptcy Code, such Holders are deemed to have rejected the Plan, and, therefore, the votes of such Holders shall not be solicited.

**4.5 Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code.** Because at least one Impaired Class is deemed to have rejected the Plan, the Plan Proponents will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Plan Proponents reserve the right to alter, amend, modify, revoke, or withdraw the Plan, the Plan Supplement, or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

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

## **ARTICLE V**

### **IMPLEMENTATION OF THE PLAN AND THE LIQUIDATING TRUST**

**5.1 Implementation of the Plan.** The Plan will be implemented by, among other things, the establishment of the Liquidating Trust, the transfer to the Liquidating Trust of the Liquidating Trust Assets, including, without limitation, all Cash and the Retained Causes of Action, and the making of Distributions by the Liquidating Trust in accordance with the Plan and Liquidating Trust Agreement.

**5.2 Substantive Consolidation.**

The Plan contemplates and is predicated upon entry of an Order substantively consolidating the Debtors' Estates and the Chapter 11 Cases as set forth below.

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

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

(c) The substantive consolidation of the Debtors under the Plan shall not (other than for purposes related to funding Distributions under the Plan) affect (i) the legal and organizational structure of the Debtors, (ii) executory contracts or unexpired leases that were entered into during the Chapter 11 Cases or that have been or will be assumed or rejected, (iii) any agreements entered into by the Liquidating Trust on or after the Effective Date, (iv) the Debtors' or the Liquidating Trust's ability to subordinate or otherwise challenge Claims on an entity-by-entity basis, (v) any Retained Causes of Action or Avoidance Actions or defenses thereto, which in each case shall survive entry of the Confirmation Order as if there had been no substantive consolidation of the Estates of the Debtors, and (vi) distributions to the Debtors or the Liquidating Trust from any insurance policies or the proceeds thereof. Notwithstanding the substantive consolidation called for herein, each and every Debtor shall remain responsible for the payment of U.S. Trustee fees pursuant to 28 U.S.C. § 1930 until its particular case is closed (pursuant to Section 11.19 of this Plan or otherwise), dismissed or converted.

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

### **5.3 The Debtors' Post-Effective Date Corporate Affairs.**

**5.3.1 Debtors' Directors and Officers.** On the Effective Date, each of the Debtors' directors, officers, members, and managers shall be terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and shall have no continuing obligations to the Debtors following the occurrence of the Effective Date.

**5.3.2 Wind-Up and Dissolution of the Debtors.** The Debtors shall be dissolved automatically effective on the Effective Date without the need for any corporate action or approval and without

the need for any corporate filings and neither the Debtors nor the Liquidating Trustee shall be required to pay any taxes or fees in order to cause such dissolution. On the Effective Date or as soon thereafter as is reasonably practicable, the Liquidating Trustee shall wind-up the affairs of the Debtors, if any, and file final tax returns for the Debtors. The Liquidating Trust shall bear the cost and expense of the wind-up of the affairs of the Debtors, if any, and the cost and expense of the preparation and filing of the final tax returns for the Debtors.

#### **5.4 Liquidating Trust.**

**5.4.1 Creation and Governance of the Liquidating Trust.** On the Effective Date, the Debtors and the Liquidating Trustee shall execute the Liquidating Trust Agreement and shall take all steps necessary to establish the Liquidating Trust in accordance with the Plan and the beneficial interests therein, which shall be for the benefit of the Beneficiaries. Additionally, on the Effective Date the Debtors and their chapter 11 Estates shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Liquidating Trust all of their rights, title, and interest in and to all of the Liquidating Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, except as specifically provided in the Plan or the Confirmation Order, the Liquidating Trust Assets shall automatically vest in the Liquidating Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to (i) the Liquidating Trust Interests and the Liquidating Trust Expenses, as provided for in the Plan and the Liquidating Trust Agreement, and (ii) Claims required to be paid by the Liquidating Trust pursuant to the Plan with priority over General Unsecured Claims, including, without limitation, Administrative Claims and Professional Fee Claims; and such transfer shall be exempt from any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax. The Liquidating Trustee shall be the exclusive trustee of the Liquidating Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidating Trust shall be governed by the Liquidating Trust Agreement and administered by the Liquidating Trustee. The powers, rights, and responsibilities of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this Article V, subject to any required reporting to the Liquidating Trust Advisory Committee as may be set forth in the Liquidating Trust Agreement. The Liquidating Trust shall hold and distribute the Liquidating Trust Assets in accordance with the provisions of the Plan and the Liquidating Trust Agreement. Other rights and duties of the Liquidating Trustee and the Beneficiaries shall be as set forth in the Liquidating Trust Agreement. For the avoidance of doubt, after the Effective Date, the Debtors and the Estates shall have no interest in the Liquidating Trust Assets, the transfer of the Liquidating Trust Assets to the Liquidating Trust is absolute, and the Liquidating Trust Assets shall not be held or deemed to be held in trust by the Liquidating Trustee on behalf of any of the Debtors or the Estates. On the Effective Date, the Liquidating Trust Advisory Committee shall be formed. Each member of the Committee (including, for the avoidance of doubt, ex officio members) shall be entitled to be a member of the Liquidating Trust Advisory Committee.

**5.4.2 Purpose of the Liquidating Trust.** The purposes of the Liquidating Trust shall be to hold and effectuate an orderly disposition of the Liquidating Trust Assets and to distribute or pay over the Liquidating Trust Assets or proceeds thereof in accordance with the Liquidating Trust Agreement and this Plan, with no objective to continue or engage in any trade or business.

### **5.4.3 Liquidating Trustee and Liquidating Trust Agreement.**

(a) The Liquidating Trust Agreement generally will provide for, among other things:

(i) the payment of the Liquidating Trust Expenses;

(ii) the payment of other reasonable expenses of the Liquidating Trust;

(iii) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;

(iv) the investment of Cash by the Liquidating Trustee within certain limitations, including those specified in the Plan;

(v) the orderly liquidation of the Liquidating Trust Assets;

(vi) litigation of any Retained Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Retained Causes of Action, subject to reporting and oversight by the Liquidating Trust Advisory Committee;

(vii) the prosecution and resolution of objections to Claims, subject to reporting and oversight by the Liquidating Trust Advisory Committee; and

(viii) the establishment of such Disputed Claim Reserves as the Liquidating Trustee deems appropriate.

(b) On and after the Effective Date, the Liquidating Trustee shall establish Cash reserves from the Liquidating Trust Assets to be held in a Liquidating Trust wind-down fund (the “**Liquidating Trust Expenses Reserve**”). The Liquidating Trust Expenses Reserve shall be used to pay Liquidating Trust Expenses and shall be subject to adjustment in the Liquidating Trustee’s sole and absolute discretion. In the event that amounts held in the Liquidating Trust Expenses Reserve, together with any remaining Liquidating Trust Assets, are insufficient to pay all Liquidating Trust Expenses, the Liquidating Trustee shall, unless reserves sufficient for such purpose have otherwise been made available from any other sources, have no obligation to make such payments.

(c) The Liquidating Trust Agreement provides that the Liquidating Trust Advisory Committee, on behalf of the Liquidating Trust, is authorized to retain , without further order of the Bankruptcy Court, Cooley LLP and Polsinelli PC as counsel, Zolfo Cooper, LLC as financial advisor, and such other professional Persons it deems necessary and appropriate, including, without limitation, Persons who have previously been approved by the Bankruptcy Court to be retained by the Debtors and the Committee. The Liquidating Trustee shall compensate and reimburse the reasonable expenses of these professionals on a monthly basis, without further Order of the Bankruptcy Court, from the Liquidating Trust Assets in accordance with the Plan and the Liquidating Trust Agreement.

(d) The Liquidating Trust Agreement provides that members of the Liquidating Trust Advisory Committee shall have fiduciary duties to the Beneficiaries in the same manner that members of an official committee of creditors appointed pursuant to section 1102 of the

Bankruptcy Code have fiduciary duties to the constituents represented by such a committee and shall be entitled to indemnification from the Liquidating Trust Assets in the same manner as the Liquidating Trustee for service as members of the Liquidating Trust Advisory Committee from and after the Effective Date of the Plan under or in connection with the Liquidating Trust Agreement. The Liquidating Trust Agreement also provides that except in the case of a violation of their fiduciary duties, gross negligence, willful misconduct, fraud or, in the case of an attorney professional and as required under Rule 1.8(h)(1) of the Delaware Lawyers' Rules of Professional Conduct, malpractice, the Liquidating Trust Advisory Committee and its retained professional Persons shall not be liable for any loss or damage by reason of any action taken or omitted by them pursuant to the discretion, powers and authority conferred, or in good faith believed by the Liquidating Trust Advisory Committee to be conferred, on the Liquidating Trust Advisory Committee by the Liquidating Trust Agreement or this Plan. The Liquidating Trust Agreement further provides that the Liquidating Trustee shall be indemnified by and receive reimbursement from the Liquidating Trust Assets against and from any and all loss, liability, expense (including reasonable attorneys' fees), or damage which the Liquidating Trustee incurs or sustains, in good faith and without either willful misconduct, gross negligence, or fraud, acting as Liquidating Trustee under or in connection with the Liquidating Trust Agreement.

(e) On and after the Effective Date, the Liquidating Trustee, at the direction and with the consent of the Liquidating Trust Advisory Committee, as applicable in each instance, shall have the power and responsibility to do all acts contemplated by the Plan to be done by the Liquidating Trustee and all other acts that may be necessary or appropriate in connection with the disposition of the Liquidating Trust Assets and the distribution of the proceeds thereof, as contemplated by the Plan, including such acts as described in the Liquidating Trust Agreement. In all circumstances, the Liquidating Trustee shall act in the best interests of the Beneficiaries pursuant to the terms of the Plan and the Liquidating Trust Agreement.

**5.4.4 Compensation and Duties of Liquidating Trustee.** The duties of the Liquidating Trustee are set forth in the Liquidating Trust Agreement. The terms of the Liquidating Trustee's compensation, shall be negotiated with the Liquidating Trust Advisory Committee as set forth in the Liquidating Trust Agreement. The Liquidating Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases. The Liquidating Trustee shall also be reimbursed for all documented, actual, reasonable, and necessary out-of-pocket expenses incurred in the performance of his, her, or its duties under the Liquidating Trust Agreement.

**5.4.5 United States Federal Income Tax Treatment of the Liquidating Trust.**

(a) It is intended that the Liquidating Trust qualify as a grantor trust for federal income tax purposes, and that the Beneficiaries are treated as grantors. As described more fully in the Plan and the Disclosure Statement, the transfer of the Liquidating Trust Assets will be treated for federal income tax purposes as a transfer to the Beneficiaries, followed by a deemed transfer from such Beneficiaries to the Liquidating Trust, provided, however, that the Liquidating Trust Assets will be subject to any post-Effective Date obligations incurred by the Liquidating Trust relating to the pursuit of Liquidating Trust Assets. Accordingly, the Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes. Subject to Section



5.4.5(c)(iv) of the Plan, all items of income, gain, loss, deduction and credit will be included in the income of the Beneficiaries as if such items had been recognized directly by the Beneficiaries in the proportions in which they own beneficial interests in the Liquidating Trust.

(b) The Liquidating Trustee shall comply with all tax reporting requirements and, in connection therewith, the Liquidating Trustee may require Beneficiaries to provide certain tax information as a condition to receipt of Distributions, including, without limitation, filing returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation § 1.671-4(a).

(c)

(i) Under the guidelines set forth in Revenue Procedure 94-95, 1994-2 C.B. 684 and Treasury Regulation § 1.671-4(a), the Liquidating Trustee will file returns for the Liquidating Trust as a grantor trust.

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

(iii) In accordance with the provisions of section 6012(b)(3) of the Internal Revenue Code of 1986, as amended, the Liquidating Trustee shall cause to be prepared, at the cost and expense of the Liquidating Trust, the corporate income tax returns (federal, state and local) that the Debtors are required to file (to the extent such returns have not already been filed by the Effective Date). The Liquidating Trustee shall timely file each such tax return with the appropriate taxing authority and shall pay out of the Liquidating Trust Assets all taxes due with respect to the period covered by each such tax return.

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

(e) Current Basis. All income of the Liquidating Trust will be subject to tax on a current basis.

(f) Withholding. The Liquidating Trustee may withhold from the amount distributable from the Liquidating Trust at any time to any Beneficiary such sum or sums as may be sufficient to pay any tax or taxes or other charge or charges which have been or may be imposed on such Beneficiary or upon the Liquidating Trust with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any Distribution provided for by any law, regulation, rule, ruling, directive, or other governmental requirement. Any tax withheld shall be treated as distributed to the Beneficiary for purposes of this Agreement.

(g) Tax Identification Numbers. The Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service or certify to the Liquidating Trustee's satisfaction that Distributions to the Beneficiary are exempt from backup withholding. The Liquidating Trustee may condition any Distribution to any Beneficiary upon receipt of such identification number. If a Beneficiary does not provide the appropriate Form W-8 or Form W-9 within one hundred twenty (120) days of the request by the Liquidating Trustee, then the Liquidating Trustee shall deem such Beneficiary's Claim as disallowed and no Distribution shall be made on account of such Beneficiary's Claim as set forth in Section 7.14 of the Plan.

(h) Annual Statements. The Liquidating Trustee shall annually (for tax years in which Distributions from the Liquidating Trust are made) send to each Beneficiary a separate statement setting forth the Beneficiary's share of items of income, gain, loss, deduction or credit and all such holders shall report such items on their federal income tax returns.

(i) Notices. The Liquidating Trustee shall distribute such notices to the Beneficiaries as the Liquidating Trustee determines are necessary or desirable.

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

**5.4.6 Distributions by Liquidating Trustee.** Following the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Liquidating Trustee shall make continuing efforts to liquidate all Liquidating Trust Assets in accordance with this Plan and the Liquidating Trust Agreement, provided that the timing of all Distributions made by the Liquidating Trustee to Beneficiaries shall be at the discretion of the Liquidating Trustee, and, provided, further, that Distributions to Beneficiaries may only be made after the Second Administrative Claim Bar Date.

**5.4.7 Cash Investments.** Funds in the Liquidating Trust shall be invested in demand and time deposits in banks or other savings institutions, or in other temporary, liquid investments, such as Treasury bills, consistent with the liquidity needs of the Liquidating Trust as determined by the Liquidating Trustee and the Liquidating Trust Advisory Committee, in accordance with section 345 of the Bankruptcy Code, unless the Bankruptcy Court otherwise requires; provided, however, that such investments are investments permitted to be made by a "liquidating trust" within the

meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

**5.4.8 Dissolution of the Liquidating Trust.** The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (i) all Disputed Claims have been resolved; (ii) all of the Liquidating Trust Assets have been liquidated; (iii) all duties and obligations of the Liquidating Trustee under the Liquidating Trust Agreement have been fulfilled; (iv) all Distributions required under the Plan and the Liquidating Trust Agreement have been made; and (v) the Debtors' Chapter 11 Cases have been closed; provided, however, that in no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension not to exceed one (1) year is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets. Upon dissolution of the Liquidating Trust, any remaining Liquidating Trust Assets that exceed the amounts required to be paid under the Plan may be transferred by the Liquidating Trustee to a charitable organization(s) approved by the Liquidating Trust Advisory Committee.

**5.4.9 Control Provisions.** To the extent there is any inconsistency between the Plan as it relates to the Liquidating Trust and the Liquidating Trust Agreement, the Plan shall control.

## **ARTICLE VI**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**6.1 Executory Contracts and Unexpired Leases.** Subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtors that have not been assumed and assigned, or rejected, prior to the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order, as of the Confirmation Date. Any Creditor asserting a Rejection Claim shall File a proof of claim within thirty (30) days of the Effective Date.

**6.2 Rejection Claims.** Any Rejection Claims that are not timely Filed pursuant to Section 6.1 of the Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed pursuant to Section 6.1 of the Plan, the Liquidating Trustee may File an objection to any Rejection Claim on or prior to the Claim Objection Deadline.

## ARTICLE VII

### PROVISIONS GOVERNING DISTRIBUTIONS

#### **7.1 Distributions for Allowed Claims.**

(a) Except as otherwise provided herein or as ordered by the Bankruptcy Court, all Distributions to Holders of Allowed Claims as of the applicable distribution date shall be made on or as soon as practicable after the applicable distribution date. Distributions on account of Claims that first become Allowed Claims after the applicable distribution date shall be made pursuant to Section 8.4 of the Plan and on the day selected by the Liquidating Trustee.

(b) The Liquidating Trustee may accelerate any distribution date with respect to Distributions on account of Allowed General Unsecured Claims other than the initial distribution date if the facts and circumstances so warrant and to the extent not inconsistent with the Plan.

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

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

**7.3 Distributions by Liquidating Trustee as Disbursing Agent.** The Liquidating Trustee or such other person or entity designated by the Liquidating Trustee shall serve as the disbursing agent under the Plan with respect to Distributions to Holders of Allowed Claims. The Liquidating Trustee or his/her/its designee shall make all Distributions required to be made to such Holders of Allowed Claims pursuant to the Plan and the Liquidating Trust Agreement. The Liquidating Trustee or his/her/its designee shall not be required to give any bond or surety or other security for the performance of the Liquidating Trustee's or his/her/its designee's duties as disbursing agent unless otherwise ordered by the Bankruptcy Court.

#### **7.4 Means of Cash Payment.**

(a) Cash payments under this Plan shall be made, at the option, and in the sole discretion, of the Liquidating Trustee, by wire, check, or such other method as the Liquidating Trustee deems appropriate under the circumstances. Cash payments to foreign creditors may be made, at the option, and in the sole discretion, of the Liquidating Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Cash payments made pursuant to this Plan in the form of checks issued by the Liquidating Trustee shall be null and void if not cashed within one hundred and twenty (120) days of the date of the issuance thereof. Requests for reissuance of any check within one hundred and twenty (120) days of the date of the issuance thereof shall be made directly to the Liquidating Trustee.

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

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

**7.6 De Minimis Distributions.** Notwithstanding anything to the contrary contained in the Plan, the Liquidating Trustee shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$50. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$50 shall be forever barred from asserting such Claim against Liquidating Trust Assets.

**7.7 Delivery of Distributions.** All Distributions to Holders of Allowed Claims shall be made at the address of such Holder as set forth in the claims register maintained in the Chapter 11 Cases as of the Distribution Record Date (subject to any transfer effectuated pursuant to Bankruptcy Rule 3001(e)) or, in the absence of a filed-proof of claim, the Schedules. If a Distribution is returned as undeliverable, the Liquidating Trustee shall use reasonable efforts to determine such Holder's then-current address. If the Liquidating Trustee cannot determine, or is not notified of, a Holder's then-current address within six (6) months after the later of the Effective Date and the date such Claim is Allowed, the Distribution reserved for such Holder shall be deemed an unclaimed Distribution. The responsibility to provide the Liquidating Trustee a current address of a Holder of Claims shall always be the responsibility of such Holder. Except as set forth above, nothing contained in the Plan shall require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim. Amounts in respect of undeliverable Distributions made by the Liquidating Trustee shall be held in trust on behalf of the Holder of the Claim to which they are payable by the Liquidating Trust until the earlier of the date that such undeliverable Distributions are claimed by such Holder and one hundred twenty (120) days after the date the undeliverable Distributions were made.

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

**7.9 Withholding, Payment, and Reporting Requirements with Respect to Distributions.** All Distributions under the Plan shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions shall be subject to any such withholding, payment, and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting

requirements. The Liquidating Trustee may require, in the Liquidating Trustee's sole and absolute discretion and as a condition to the receipt of any Distribution, that the Holder of an Allowed Claim complete and return to the Liquidating Trust the appropriate Form W-8 or Form W-9, as applicable to each Holder. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed upon the Liquidating Trust in connection with such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements reasonably satisfactory to the Liquidating Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Liquidating Trust in connection with such Distribution.

**7.10 Setoffs.** The Liquidating Trust may, but shall not be required to, set off against any Claim or any Allowed Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors or the Liquidating Trust may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trust of any such claim that it may have against such Holder.

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

**7.12 Allocation of Distributions.** All Distributions received under the Plan by Holders of Claims shall be deemed to be allocated first to the principal amount of such Claim as determined for United States federal income tax purposes and then to accrued interest, if any, with respect to such Claim.

**7.13 Joint Distributions.** The Liquidating Trustee may, in the Liquidating Trustee's sole discretion, make Distributions jointly to any Holder of a Claim and any other Entity who has asserted, or whom the Liquidating Trustee has determined to have, an interest in such Claim.

**7.14 Forfeiture of Distributions.** If the Holder of a Claim fails to cash a check payable to it within the time period set forth in Section 7.4(a), fails to claim an undeliverable Distribution within the time limit set forth in Section 7.7, or fails to complete and return to the Liquidating Trust the appropriate Form W-8 or Form W-9 within one hundred twenty (120) days of the request by the Liquidating Trust for the completion and return to it of the appropriate form pursuant to Section 7.9, then such Holder shall be deemed to have forfeited its right to any reserved and future Distributions from the Liquidating Trust, any Liquidating Trust Interests held by such Holder shall be deemed cancelled, and the Claims of such Holder shall be forever barred. The forfeited Distributions shall become unrestricted Liquidating Trust Assets and shall be redistributed to the Beneficiaries after reserving as necessary for payment of Liquidating Trust Expenses and otherwise in compliance with this Article and the Liquidating Trust Agreement. In the event the Liquidating Trustee determines, in the Liquidating Trustee's sole discretion, that any such amounts are too small in total to redistribute cost-effectively to the Beneficiaries, the

Liquidating Trustee may instead donate them to a charitable organization(s) approved by the Liquidating Trust Advisory Committee free of any restrictions thereon, notwithstanding any federal or state escheat laws to the contrary.

## **ARTICLE VIII**

### **PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS AND DISTRIBUTIONS WITH RESPECT THERETO**

**8.1 Objections to and Resolution of Disputed Claims.** From and after the Effective Date, the Liquidating Trustee (acting in accordance with the terms of the Liquidating Trust Agreement) shall have the authority to compromise, resolve and Allow any Disputed Claim without the need to obtain approval from the Bankruptcy Court, and any agreement entered into by the Liquidating Trustee (acting in accordance with the terms of the Liquidating Trust Agreement) with respect to the Allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

**8.2 Claim Objections.** All objections to Claims (other than Professional Fee Claims, which shall be governed by Section 11.2 of this Plan) shall be Filed by the Liquidating Trustee on or before the Claim Objection Deadline, which date may be extended by the Bankruptcy Court upon a motion filed by the Liquidating Trustee on or before the Claim Objection Deadline with notice only to those parties entitled to notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 as of the filing of such motion. The Claim Objection Deadline shall be automatically extended as provided by Local Rule 9006-2 upon the Filing of a proposed form of order by the Liquidating Trustee requesting an extension of the Claim Objection Deadline. If a timely objection has not been Filed to a proof of claim or the Schedules have not been amended with respect to a Claim that was scheduled by the Debtors but was not set forth in the Schedules by the Debtors as contingent, unliquidated, and/or disputed, then the Claim to which the proof of claim or the Claim set forth in the Schedules relates will be treated as an Allowed Claim.

**8.3 Estimation of Contingent or Unliquidated Claims.** The Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtors have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court so estimates any contingent or unliquidated Claim, that estimated amount shall constitute the Allowed amount of such Claim. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and are not necessarily exclusive of one another.

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

## **ARTICLE IX**

### **CONDITIONS PRECEDENT TO THE OCCURRENCE OF THE EFFECTIVE DATE**

**9.1 Conditions to the Occurrence of the Effective Date.** The occurrence of the Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions has been satisfied or duly waived, as applicable, pursuant to Section 9.2 of the Plan:

(i) the Bankruptcy Court shall have entered the Confirmation Order;

(ii) the Confirmation Order shall not be subject to any stay;

(iii) the Liquidating Trust Agreement shall have been executed;

(iv) the Liquidating Trust shall have been established and the Liquidating Trust Assets shall have been transferred to and vested in the Liquidating Trust free and clear of all Claims and Equity Interests, except as specifically provided in the Plan and the Liquidating Trust Agreement;

(v) the Buyer Settlement Agreement shall have been executed and the Bankruptcy Court shall have entered an order approving the Buyer Settlement Agreement pursuant to Bankruptcy Rule 9019; and

(vi) the Professional Fee Reserve shall be funded pursuant to Section 11.2 of the Plan in an amount agreed to by the Debtors and the Committee or, if there is a dispute concerning the amount of the funding required, in an amount fixed by the Bankruptcy Court.

**9.2 Waiver of Conditions to the Occurrence of the Effective Date.** The conditions to the Effective Date set forth in Section 9.1(iii) through (v) of the Plan may be waived in writing by the Plan Proponents at any time without further Order.

**9.3 Effect of Non-Occurrence of Conditions to the Effective Date.** If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 9.1 and 9.2 of the Plan, the Plan Proponents reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated. If the Confirmation Order is vacated pursuant to this Section 9.3 of the Plan, (i) the Plan shall be null and void in all respects, and (ii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims by or against, or any Equity Interest in, the Debtors, the Estates, or any other Person, or (b) prejudice in any manner the rights of the Debtors, the Estates, or any other Person.

## **ARTICLE X**

### **RETENTION OF JURISDICTION**

**10.1 Scope of Retained Jurisdiction.** Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, these Chapter 11 Cases and the



Plan to the fullest extent permitted by law, including, among other things, jurisdiction to do the following:

(a) allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured, or unsecured status of any Claim not otherwise Allowed under the Plan, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims;

(b) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 327, 328, 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code;

(c) hear and determine all matters with respect to the assumption, assignment, or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan and any agreement or order of the Bankruptcy Court with respect to a sale of the Debtors' Assets, including, without limitation, the Sale Agreement, and enforce remedies upon any default under the Plan and any such sale agreement or order, including, but not limited to, the Sale Agreement;

(e) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Cases, including, without limitation, the Avoidance Actions and the Retained Causes of Action, and with respect to the Plan;

(f) enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created, executed, or contemplated in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

(h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

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

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

(k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, any agreement or order of

the Bankruptcy Court with respect to a sale of the Debtors' Assets, including, without limitation, the Sale Agreement and the Sale Order, or any contract, instrument, release, or other agreement or document created, executed, or contemplated in connection with any of the foregoing documents and Orders;

(l) enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases;

(m) except as otherwise limited herein, recover all Assets of the Debtors and property of the Estates, wherever located;

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

(o) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

(p) resolve any cases, controversies, suits, or disputes related to the Liquidating Trust, including the Liquidating Trust Assets, and related to any sale of the Debtors' Assets, including, without limitation, the Sale Agreement; and

(q) enter a final decree closing the Chapter 11 Cases.

**10.2 Failure of the Bankruptcy Court to Exercise Jurisdiction.** If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in Section 10.1 of the Plan, the provisions of this Article X shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## **ARTICLE XI**

### **MISCELLANEOUS PROVISIONS**

**11.1 Non-Ordinary Course Administrative Claims.** All requests for payment of a Non-Ordinary Course Administrative Claim arising after March 15, 2017 must be Filed with the Bankruptcy Court and served on counsel to the Liquidating Trustee, counsel to the Debtors, and counsel to the U.S. Trustee no later than the Second Administrative Claim Bar Date. In the event of an objection to allowance of a Non-Ordinary Course Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Non-Ordinary Course Administrative Claim.

**11.2 Professional Fee Claims.** All final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Liquidating Trustee, counsel to the Debtors, and counsel to the U.S. Trustee no later than thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on counsel to the Liquidating

**Trustee, counsel to the Debtors, counsel to the Committee, counsel to the U.S. Trustee and the requesting Professional on or before the date that is fourteen (14) days after the date on which the applicable application was served (or such longer period as may be allowed by Order of the Bankruptcy Court or by agreement with the requesting Professional).** All Professional Fee Claims shall be paid by the Liquidating Trust to the extent approved by Order of the Bankruptcy Court within five (5) Business Days from entry of such Order. On the Effective Date, the Liquidating Trustee shall establish the Professional Fee Reserve, which shall only be used to pay Professional Fee Claims unless and until all Professional Fee Claims have been paid in full, otherwise satisfied, or withdrawn. The Professional Fee Reserve shall vest in the Liquidating Trust and shall be maintained by the Liquidating Trustee in accordance with the Plan and the Liquidating Trust Agreement. The Liquidating Trust shall fund the Professional Fee Reserve on the Effective Date in an amount that is agreed upon by the Debtors and the Committee and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. If the Debtors and the Committee are unable to agree on an amount by which the Professional Fee Reserve is to be funded, the Debtors and the Committee shall submit the issue to the Bankruptcy Court, which, following notice and a hearing, shall fix the amount of the required Professional Fee Reserve. All Professional Fee Claims that have not previously been paid, otherwise satisfied, or withdrawn shall be paid from the Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be released to the Liquidating Trust to be used for other purposes consistent with the Plan and the Liquidating Trust Agreement.

**11.3 Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date. All such fees that arise after the Effective Date shall be paid by the Liquidating Trust. The Liquidating Trust shall have the obligation to pay quarterly fees to the Office of the United States Trustee pursuant to section 1930 of title 28 of the United States Code for each and every Debtor until its particular Chapter 11 Case is closed (pursuant to Section 11.19 of this Plan or otherwise). Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to section 1930 of title 28 of the United States Code.

**11.4 Special Provisions Concerning the Sale Agreement.** On and after the Effective Date the Liquidating Trustee shall be the assignee of the Debtors under the Buyer Settlement Agreement, the Sale Agreement (subject to the Buyer Settlement Agreement), and the Sale Order with all of the Debtors' rights thereunder. Nothing in the Plan shall expand the Assumed Liabilities (as defined under the Sale Agreement) or modify or amend the Buyer Settlement Agreement, the Sale Agreement, or the Sale Order, and the terms of the Plan shall be interpreted consistent with the Buyer Settlement Agreement, the Sale Agreement (subject to the Buyer Settlement Agreement), and the Sale Order.

**11.5 Dissolution of Committee.** On the Effective Date, the Committee shall dissolve and all members, ex officio members, employees, attorneys, financial advisors, other Professionals, or other agents thereof shall be released and discharged from all rights and duties arising from or related to the Chapter 11 Cases, provided, however, that the Committee shall continue in existence and its Professionals shall continue to be retained with respect to applications Filed or to be Filed pursuant to sections 330 and 331 of the Bankruptcy Code.

## **11.6 Modifications and Amendments.**

(a) The Plan Proponents may alter, amend, or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. All alterations, amendments, or modifications to the Plan must comply with section 1127 of the Bankruptcy Code. The Plan Proponents shall provide parties in interest with notice of such amendments or modifications as may be required by the Bankruptcy Rules or Order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified, or clarified, if the proposed alteration, amendment, modification, or clarification does not materially and adversely change the treatment of the Claim of such Holder.

(b) After the Confirmation Date and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of the Plan, the Debtors or the Liquidating Trustee, as applicable, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement approved with respect to the Plan, or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan without the consent of the Committee or Liquidating Trustee, as applicable. Such proceedings must comply with section 1127 of the Bankruptcy Code. To the extent required, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or an order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified, or clarified, if the proposed alteration, amendment, modification, or clarification does not materially and adversely change the treatment of the Claim of such Holder.

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

**11.8 Successors and Assigns.** The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, personal representative, successor, or assign of such Entity; provided, however, that beneficial interests in the Liquidating Trust shall be non-transferable except upon death of the interest holder or by operation of law.

**11.9 Compromises and Settlements.** From and after the Effective Date, the Liquidating Trustee may compromise and settle the Claims against the Debtors, as well as Retained Causes of Action and Avoidance Actions that the Liquidating Trust may have against other Entities without any further approval by the Bankruptcy Court. Until the Effective Date, the Debtors

expressly reserve the right to compromise and settle (subject to the approval of the Bankruptcy Court) Claims against them, Avoidance Actions, Retained Causes of Action, or other claims that they may have against other Entities.

**11.10 Binding Effect of Plan.** Upon the Effective Date, section 1141 of the Bankruptcy Code shall become applicable with respect to the Plan and the Plan shall be binding on all parties to the fullest extent permitted by section 1141(a) of the Bankruptcy Code.

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

**11.12 Releases and Related Matters.**

(a) On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, each of the Releasing Parties shall be deemed to have forever released, waived, and discharged each of the Released Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action (including, without limitation, Avoidance Actions), and liabilities whatsoever, whether known or unknown, whether foreseen or unforeseen, whether liquidated or unliquidated, whether fixed or contingent, whether matured or unmatured, existing or hereafter arising, at law, in equity, or otherwise, that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the conduct of the Debtors' business, the Chapter 11 Cases, the Plan, the Sale Agreement, or the Sale Order, except for acts or omissions that are determined in a Final Order to have constituted fraud, gross negligence or willful misconduct; provided, however, that nothing in this Section 11.12 shall affect any Person's rights, claims or causes of action against the Debtors, the Liquidating Trust or Buyer under the Plan, the Confirmation Order, the Sale Agreement (subject to the Buyer Settlement Agreement), the Sale Order, or the Buyer Settlement Agreement, or the liabilities or obligations of such parties thereunder; provided, further, that nothing in this Plan shall impact or release any guarantees held by Releasing Parties against non-Debtors pertaining to Claims against the Debtors.

(b) Entry of the Confirmation Order shall constitute (i) the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in this Section 11.12, and (ii) the Bankruptcy Court's findings that such releases are (1) in the best interests of the Debtors, the Estates, and all Holders of Claims that are Releasing Parties, (2) fair, equitable, and reasonable, (3) given and made after due notice and opportunity for

hearing, and (4) a bar to any of the Releasing Parties asserting any released claim against any of the Released Parties.

(c) Each Holder of a Claim in Class 3 shall be a Releasing Party and, as such, provides the releases set forth in this Section 11.12, unless such Holder either (a) votes to reject the Plan or (b) does not otherwise vote to accept or reject the Plan but timely submits a Release Opt-Out indicating such Holder's decision to not participate in the releases set forth in this Section 11.12. For the avoidance of doubt, each Holder of a Claim in Class 3 that votes to accept the Plan is a Releasing Party, and any Release Opt-Out that might be submitted by any such Holder that voted to accept the Plan shall be void and of no effect.

**11.13 Exculpation and Limitation of Liability.** On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, none of the Exculpated Parties shall have or incur any liability to any Entity, including, without limitation, to any Holder of a Claim or an Equity Interest, for any post-petition act or omission in connection with, relating to, or arising out of the Chapter 11 Cases, the formulation, negotiation, preparation, dissemination, solicitation of acceptances, implementation, confirmation, or consummation of the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created, executed, or contemplated in connection with the Plan, or the administration of the Plan or the property to be distributed under the Plan; provided, however, that nothing in this Section 11.13 shall affect any Person's rights, claims or causes of action against the Debtors under the Plan, the Confirmation Order, the Sale Agreement (subject to the Buyer Settlement Agreement), the Sale Order, or the Buyer Settlement Agreement, or the Debtors' liabilities or obligations thereunder; and provided, further, that the exculpation provisions of this Section 11.13 (i) shall not apply to acts or omissions constituting fraud, willful misconduct, or gross negligence by such Exculpated Party as determined by a Final Order and (ii) shall not in any way limit, reduce, or otherwise bar an otherwise valid and enforceable right of setoff, subrogation, or recoupment against the Debtors to the extent that such right is based upon either (a) a Claim that is asserted in a timely-filed proof of claim on or before the Confirmation Date, or (b) an Administrative Claim that is timely filed under the Plan. The Exculpated Parties shall be entitled to rely upon the written advice of counsel with respect to their duties and responsibilities under, or in connection with, the Chapter 11 Cases, the Plan, and administration thereof. The Confirmation Order shall serve as a permanent injunction against any Person seeking to enforce any claim or cause of action against the Exculpated Parties that has been exculpated pursuant to this Section 11.13 of the Plan.

**11.14 Term of Injunctions or Stays.** Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (excluding any injunctions or stays contained in or arising from the Plan or the Confirmation Order), shall remain in full force and effect through and including the Effective Date. All injunctions or stays contained in or arising from the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

**11.15 Revocation, Withdrawal, or Non-Consummation.** The Plan Proponents reserve the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file

subsequent plans of liquidation. If the Plan Proponents revoke or withdraw the Plan prior to the Confirmation Date, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims) and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims against, or any Equity Interests in, any Debtor, or any Avoidance Actions, Retained Causes of Action or other claims by or against any Debtor, the Committee, Buyer, or any Entity, (ii) prejudice in any manner the rights of any Debtor, the Committee, Buyer, or any Entity in any further proceedings involving a Debtor, or (iii) constitute an admission of any sort by any Debtor, the Committee, Buyer, or any other Entity. Notwithstanding the preceding sentence, any revocation or withdrawal of the Plan prior to the Confirmation Date, or non-occurrence of Confirmation or the Effective Date shall not affect the validity or enforceability of the Buyer Settlement Agreement.

**11.16 Computation of Time.** In computing any period of time prescribed or allowed by the Plan, the provisions of Rule 9006(a) of the Bankruptcy Rules shall apply.

**11.17 Headings.** The headings of articles, paragraphs, and subparagraphs of the Plan are inserted for convenience only and shall not affect the interpretation of any provision of the Plan.

**11.18 Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of (a) the State of Delaware shall govern the construction and implementation of the Plan and (except as may be provided otherwise in any such agreements, documents, or instruments) any agreements, documents, and instruments executed in connection with the Plan and (b) the laws of the state of incorporation of each Debtor shall govern corporate governance matters with respect to such Debtor; in each case without giving effect to the principles of conflicts of law thereof.

**11.19 Closure of Certain Chapter 11 Cases on the Effective Date; Final Decree for Remaining Chapter 11 Case.** Upon the Effective Date, without the need to obtain further approval from the Bankruptcy Court, the chapter 11 cases (collectively, the “Closed Chapter 11 Cases”) of all of the Debtors (collectively, the “Closed Case Debtors”) except for Debtor VRG Liquidating, LLC (f/k/a Vestis Retail Group, LLC) (“VRG Liquidating”) shall be deemed closed as of the Effective Date without prejudice to the rights of any party in interest to seek to reopen the Closed Chapter 11 Cases, and (i) all motions, contested matters, adversary proceedings, and other matters with respect to the Closed Chapter 11 Cases and the Closed Case Debtors, whether filed before or after the Effective Date, shall be administered in the chapter 11 case (the “Remaining Chapter 11 Case”) of VRG Liquidating and the Bankruptcy Court shall have jurisdiction with respect to such motions, contested matters, adversary proceedings, and other matters notwithstanding the closure of the Closed Chapter 11 Cases, without prejudice to the rights of any party in interest, (ii) the caption of the Remaining Chapter 11 Case shall be amended as necessary to reflect the closure of the Closed Chapter 11 Cases, and (iii) a docket entry shall be made by the Clerk of the Bankruptcy Court in each of the Closed Chapter 11 Cases that reflects the closure of those cases pursuant hereto. Upon the Liquidating Trustee’s determination that all Claims have been Allowed, disallowed, expunged or withdrawn, and that all Retained Causes of Action held by the Liquidating Trust have either been finally resolved or abandoned, the Liquidating Trustee shall move for the entry of a Final Decree for the Remaining

Chapter 11 Case pursuant to section 350 of the Bankruptcy Code. On entry of the Final Decree, the members of the Liquidating Trust Advisory Committee, the Liquidating Trustee, and the Liquidating Trust's professionals and agents shall be deemed discharged under the Liquidating Trust Agreement and have no further duties or obligations thereunder. Upon a motion by the Liquidating Trustee, the Bankruptcy Court may enter an order relieving the members of the Liquidating Trust Advisory Committee, the Liquidating Trustee, and the Liquidating Trust's professionals and agents of any further duties, discharging and releasing those Persons from all liability related to the Liquidating Trust, and releasing the Liquidating Trustee's bond, if any. The Liquidating Trustee may request the entry of the Final Decree notwithstanding the fact that not all Assets have been monetized and distributed to the Holders of Allowed Claims.

**11.20 Conflicts with the Plan.** In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement and any other Order in the Chapter 11 Cases, or any other agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence; provided, however, that the Confirmation Order shall control and take precedence in the event of any inconsistency between the Confirmation Order, any provision of the Plan, and any of the foregoing documents.

**11.21 No Stay of Confirmation Order.** The Plan Proponents will request that the Bankruptcy Court waive any otherwise applicable stay of enforcement of the Confirmation Order, including, without limitation, pursuant to Bankruptcy Rules 3020(e), 6004(h) and 7062.

*Remainder of page intentionally left blank*



**ARTICLE XII**

**REQUEST FOR CONFIRMATION**

**12.1 Request for Confirmation.** The Plan Proponents request Confirmation of the Plan in accordance with section 1129(b) of the Bankruptcy Code.

IN WITNESS WHEREOF, the Plan Proponents have executed the Plan this 9th day of October 2018.

Debtors

By: /s/ Robert J. Duffy  
Name: Robert J. Duffy  
Title: Chief Restructuring Officer

Committee

By: /s/ Kim Stewart  
Name: Kim Stewart, solely in her capacity  
as Co-Chairperson of the Committee

Committee Members:

Nike USA, Inc.  
Under Armour Inc.  
Wolverine Worldwide, Inc.  
Levi Strauss & Co. Inc.  
VF Outdoor, LLC  
Regency Centers, L.P.

**EXHIBIT A**

**Liquidating Trust Agreement**

## **LIQUIDATING TRUST AGREEMENT**

This LIQUIDATING TRUST AGREEMENT (the “Agreement” or “Liquidating Trust Agreement”) is made and entered into, as of [\_\_\_\_\_] [\_\_\_], 2018, by and among VRG Liquidating, LLC (f/k/a Vestis Retail Group, LLC), VRF Liquidating, LLC (f/k/a Vestis Retail Financing, LLC), EMSOC Liquidating, LLC (f/k/a EMS Operating Company, LLC), VIH Liquidating, LLC (f/k/a Vestis IP Holdings, LLC), BS Liquidating, LLC (f/k/a Bob’s Stores, LLC), EMSA Liquidating, LLC (f/k/a EMS Acquisition LLC), SC Liquidating 2, LLC (f/k/a Sport Chalet, LLC), SCVS Liquidating, LLC (f/k/a Sport Chalet Value Services, LLC), and SCTS Liquidating, LLC (f/k/a Sport Chalet Team Sales, LLC) (together, the “Debtors”), the official committee of unsecured creditors appointed in the Debtors’ Chapter 11 Cases (the “Committee”), and META Advisors LLC (the “Liquidating Trustee”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Plan (as hereinafter defined).

### **RECITALS**

WHEREAS, on April 18, 2016, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”); and

WHEREAS, on [\_\_\_\_\_] [\_\_\_], 2018, the Debtors filed the *First Amended Joint Plan of Liquidation of VRG Liquidating, LLC and Its Chapter 11 Affiliates and Their Official Committee of Unsecured Creditors*, dated as of [\_\_\_\_\_] [\_\_\_], 2018 (as amended or modified from time to time, the “Plan”); and

WHEREAS, by order dated [\_\_\_\_\_] [\_\_\_], 2018, the Bankruptcy Court confirmed the Plan; and

WHEREAS, under the terms of the Plan, certain assets and other property of the Debtors as of the Effective Date of the Plan will be transferred to and held by the Liquidating Trust created by this Liquidating Trust Agreement so that, among other things: (i) the Liquidating Trust Assets (defined below) can be pursued and/or disposed of in an orderly and expeditious manner; (ii) objections to Disputed Claims can be pursued and/or resolved by the Liquidating Trust; and (iii) Distributions can be made to the beneficiaries of the Liquidating Trust in accordance with the Plan; and

WHEREAS, this Liquidating Trust is established under and pursuant to the Plan which provides for the appointment of the Liquidating Trustee to administer the Liquidating Trust for the benefit of the Beneficiaries (defined below), and to provide administrative services relating to the implementation of the Plan; and

WHEREAS, the Liquidating Trustee has agreed to serve as such upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in accordance with the Plan and in consideration of the promises and of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

## **DECLARATION OF TRUST**

The Debtors hereby absolutely assign to the Liquidating Trust, and to its successors in trust and its successors and assigns, all right, title and interest of the Debtors in and to the Liquidating Trust Assets;

TO HAVE AND TO HOLD unto the Liquidating Trust and its successors in trust and its successors and assigns forever;

IN TRUST NEVERTHELESS upon the terms and subject to the conditions set forth herein and for the benefit of the Beneficiaries (defined below), as and to the extent provided in the Plan, and for the performance of and compliance with the terms hereof and of the Plan;

PROVIDED, HOWEVER, that upon termination of the Liquidating Trust in accordance with Article V hereof, this Agreement shall cease, terminate and be of no further force and effect; and

IT IS HEREBY FURTHER COVENANTED AND DECLARED that the Liquidating Trust Assets are to be held and applied by the Liquidating Trustee upon the further covenants and terms and subject to the conditions herein set forth.

### **I NAME; PURPOSE; LIQUIDATING TRUST ASSETS**

1.1 Name of Trust. The trust created by this Agreement shall be known as the “VRG Liquidating Trust” or sometimes herein as the “Liquidating Trust.”

1.2 Transfer of Liquidating Trust Assets. In accordance with the provisions of the Plan, on the Effective Date, the Debtors and their chapter 11 Estates shall be deemed to transfer, assign and convey to the beneficiaries of the Liquidating Trust all Assets of the Estates, including, but not limited to, Cash, the Retained Causes of Action and any proceeds realized or received from such Assets, and all rights of setoff, recoupment, and other defenses against Claims, but excluding all documents, communications, and information protected by the attorney-client privilege, the work-product privilege, and any other applicable evidentiary privileges and excluding all Equity Interests in SME Holding Company, LLC (collectively, the “Liquidating Trust Assets”), followed by a deemed transfer by such beneficiaries to the Liquidating Trust, to be held by the Liquidating Trustee in trust for the Holders, from time to time, of Allowed General Unsecured Claims as and to the extent provided in the Plan (such holders collectively, the “Beneficiaries”), on the terms and subject to the conditions set forth herein and in the Plan.

1.3 Purposes. The purposes of the Liquidating Trust are to hold and effectuate an orderly disposition of the Liquidating Trust Assets and to distribute or pay over the Liquidating Trust Assets or proceeds thereof in accordance with this Agreement and the Plan, with no objective or authority to engage in any trade or business.

1.4 Acceptance by the Liquidating Trustee. The Liquidating Trustee is willing and hereby accepts the appointment to serve as Liquidating Trustee pursuant to this Agreement and

the Plan and agrees to observe and perform all duties and obligations imposed upon the Liquidating Trustee by this Agreement and the Plan, including, without limitation, to accept, hold and administer the Liquidating Trust Assets and otherwise to carry out the purpose of the Liquidating Trust in accordance with the terms and subject to the conditions set forth herein.

1.5 Omitted.

1.6 The Liquidating Trust Advisory Committee.

(a) As provided in section 5.4.1 of the Plan, the members of the Committee shall serve as the Liquidating Trust Advisory Committee. The Liquidating Trust Advisory Committee shall at all times consist of at least one (1) member. In the event that all members of the Liquidating Trust Advisory Committee resign, the Liquidating Trustee shall appoint a new member. Ex officio members of the Committee may serve as members of the Liquidating Trust Advisory Committee.

(b) The Liquidating Trust Advisory Committee shall consult with the Liquidating Trustee from time to time on matters including, without limitation, objections to Disputed Claims, Retained Causes of Action, Distributions and other matters affecting the administration of the Liquidating Trust. The Liquidating Trust Advisory Committee shall oversee and provide direction to the Liquidating Trustee, and if necessary or desirable in its sole discretion, replace the Liquidating Trustee in accordance with the terms of this Agreement.

(c) Any member of the Liquidating Trust Advisory Committee may resign upon reasonable notice to the Liquidating Trustee, counsel for the Liquidating Trustee and other members of the Liquidating Trust Advisory Committee. Fourteen (14) days prior written notice shall constitute reasonable notice under this Section. Any member of the Liquidating Trust Advisory Committee may be removed by the Bankruptcy Court for cause. The Liquidating Trust Advisory Committee may authorize its own dissolution by filing with the Bankruptcy Court an appropriate notice that its responsibilities under the Plan have concluded. Unless earlier dissolved, the Liquidating Trust Advisory Committee shall be dissolved as of the date the Debtors' Chapter 11 Cases are closed.

(d) The Liquidating Trust Advisory Committee is authorized to retain Cooley LLP and Polsinelli PC as counsel, Zolfo Cooper, LLC as financial advisor and such other professional Persons it deems necessary and appropriate, including, without limitation, Persons who have previously been approved by the Bankruptcy Court to be retained by the Debtors and the Committee. Professionals shall be compensated from the Liquidating Trust Assets on a monthly basis. Members of the Liquidating Trust Advisory Committee shall have fiduciary duties to the Beneficiaries in the same manner that members of an official committee of creditors appointed pursuant to section 1102 of the Bankruptcy Code have fiduciary duties to the constituents represented by such a committee and shall be entitled to indemnification from the Liquidating Trust Assets in the same manner as the Liquidating Trustee for service as members of the Liquidating Trust Advisory Committee from and after the Effective Date of the Plan under or in connection with this Agreement. Except in the case of a violation of their fiduciary duties, gross negligence, willful misconduct, fraud or, in the case of an attorney professional and as required under Rule 1.8(h)(1) of the Delaware Lawyers' Rules of Professional Conduct,

malpractice, the Liquidating Trust Advisory Committee and its retained professional Persons shall not be liable for any loss or damage by reason of any action taken or omitted by them pursuant to the discretion, powers and authority conferred, or in good faith believed by the Liquidating Trust Advisory Committee to be conferred, on the Liquidating Trust Advisory Committee by this Agreement or the Plan.

(e) The Liquidating Trustee shall report to the Liquidating Trust Advisory Committee on at least a quarterly basis, or such other period as subsequently agreed to between the Liquidating Trust Advisory Committee and the Liquidating Trustee, as to the status of all material litigation, Claims objections, and all other material matters affecting the Liquidating Trust.

(f) Subject to Section 1.6(g) below, the Liquidating Trustee shall obtain the approval of the Liquidating Trust Advisory Committee by at least a majority vote prior to taking any action regarding any of the following matters:

(i) The commencement, prosecution, settlement, compromise, withdrawal or other resolution of any Retained Cause of Action by the Liquidating Trust where the amount sought to be recovered in the complaint or other document initiating such Retained Cause of Action exceeds \$100,000;

(ii) The sale, transfer, assignment, or other disposition of any non-Cash Liquidating Trust Assets having a valuation in excess of \$100,000;

(iii) The abandonment of any non-Cash Liquidating Trust Assets having a valuation of at least \$100,000;

(iv) The settlement, compromise, or other resolution of any Disputed Claim, wherein the allowed amount of the asserted Claim exceeds \$500,000;

(v) The borrowing of any funds by the Liquidating Trust or pledge of any portion of the Liquidating Trust Assets;

(vi) Any matter which could reasonably be expected to have a material adverse effect on the amount of distributions to be made by the Liquidating Trust;

(vii) The exercise of any right or action set forth in this Liquidating Trust Agreement that expressly requires approval of the Liquidating Trust Advisory Committee;

(viii) All investments authorized to be made by the Liquidating Trustee under this Liquidating Trust Agreement.

(g) The Liquidating Trustee's failure to receive objections from members of the Liquidating Trust Advisory Committee within seven (7) days after written (including facsimile or electronic) notice is provided to the Liquidating Trust Advisory Committee of a proposed action shall be deemed approval of the Liquidating Trust Advisory Committee for purposes of this Section. In the event that the Liquidating Trustee and counsel for the

Liquidating Trust Advisory Committee agree that urgent circumstances require a more expedited decision, such decision may be made upon less than seven days' notice, and with the mutual agreement of the Liquidating Trustee and counsel to the Liquidating Trust Advisory Committee, without notice, provided that the Liquidating Trustee and the counsel to the Liquidating Trust Advisory Committee are in agreement on the course of action to be pursued.

1.7 Valuation of Liquidating Trust Assets. As soon as possible after the Effective Date, the Liquidating Trustee shall make or cause to be made a good faith valuation of the Liquidating Trust Assets. Such valuation shall be made available from time to time, to the extent relevant, and used consistently by all parties (including the Liquidating Trustee and the Beneficiaries) including, for the avoidance of doubt, for all federal income tax purposes.

## **II RIGHTS, POWERS AND DUTIES OF LIQUIDATING TRUSTEE**

2.1 General. As of the Effective Date, the Liquidating Trustee shall take possession and charge of the Liquidating Trust Assets and, subject to the provisions hereof and in the Plan, shall have full right, power and discretion to manage the affairs of the Liquidating Trust, subject to Section 1.6 above. Except as otherwise provided herein and in the Plan, the Liquidating Trustee shall have the right and power to enter into any covenants or agreements binding the Liquidating Trust and in furtherance of the purpose hereof and of the Plan and to execute, acknowledge and deliver any and all instruments that are necessary or deemed by the Liquidating Trustee to be consistent with and advisable in connection with the performance of his, her, or its duties hereunder. On and after the Effective Date, the Liquidating Trustee, at the direction and with the consent of the Liquidating Trust Advisory Committee in each instance, shall have the power and responsibility to do all acts contemplated by the Plan to be done by the Liquidating Trustee and all other acts that may be necessary or appropriate in connection with the disposition of the Liquidating Trust Assets and the distribution of the proceeds thereof, as contemplated by the Plan, including:

(a) To exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any of the Debtors with respect to the Liquidating Trust Assets with like effect as if authorized, exercised and taken by the Debtors;

(b) To open and maintain bank and other deposit accounts, escrows and other accounts, calculate and implement Distributions to Holders of Allowed Claims as provided for or contemplated by the Plan and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves;

(c) To make a good faith valuation of the assets of the Liquidating Trust, as soon as possible after the Effective Date;

(d) Subject to the applicable provisions of the Plan, to collect and liquidate all assets of the Debtors' estates pursuant to the Plan;

(e) To object to any Claims (Disputed or otherwise), and to defend, compromise and/or settle any such Claims prior to or following objection without the necessity of approval of the Bankruptcy Court, and/or to seek Bankruptcy Court approval for any Claims settlement, to the extent thought appropriate by the Liquidating Trustee or to the extent such approval is required by prior order of the Bankruptcy Court;

(f) To make decisions in consultation with the Liquidating Trust Advisory Committee, without further Bankruptcy Court approval, regarding the retention or engagement of professionals, employees and consultants by the Liquidating Trust and to pay, from the Liquidating Trust Assets, the charges incurred by the Liquidating Trust on or after the Effective Date for services of professionals, disbursements, expenses or related support services relating to the winding down of the Debtors and implementation of the Plan, without application to the Bankruptcy Court;

(g) To cause, on behalf of the Liquidating Trust, the Debtors, and their Estates all necessary tax returns and all other appropriate or necessary documents related to municipal, state, federal or other tax law to be prepared or filed timely;

(h) To invest Cash in accordance with section 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Bankruptcy Court and as deemed appropriate by the Liquidating Trustee in accordance with the investment and deposit guidelines set forth in section 2.4 of this Agreement;

(i) To collect any accounts receivable or other claims and assets of the Debtors or their estates not otherwise disposed of pursuant to the Plan;

(j) To enter into any agreement or execute any document required by or consistent with the Plan and perform all of the obligations of the Debtors or the Liquidating Trustee thereunder;

(k) To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization(s) approved by the Liquidating Trust Advisory Committee, any assets that the Liquidating Trustee concludes are of no benefit to creditors of the Debtors or are too impractical to distribute;

(l) To investigate (including pursuant to Bankruptcy Rule 2004), prosecute and/or settle any Retained Causes of Action (in consultation with the Liquidating Trust Advisory Committee), participate in or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction, participate as a party or otherwise in any administrative, arbitral or other non-judicial proceeding, litigate or settle such Retained Causes of Action on behalf of the Liquidating Trust and pursue to settlement or judgment such actions;

(m) To approve, without Bankruptcy Court approval, the settlement of any Retained Cause of Action for which the amount claimed by the Liquidating Trust against a defendant is less than one million dollars (\$1,000,000) and to seek Bankruptcy Court approval, upon notice and a hearing, of the settlement of any Retained Cause of Action for which the



amount claimed by the Liquidating Trust is unliquidated or equals or exceeds one million dollars (\$1,000,000);

(n) To use Liquidating Trust Assets to purchase or create and carry all appropriate insurance policies, bonds or other means of assurance and protection of the Liquidating Trust Assets and pay all insurance premiums and other costs he or she deems necessary or advisable to insure the acts and omissions of the Liquidating Trustee, and if appropriate, the Liquidating Trust Advisory Committee;

(o) To implement and/or enforce all provisions of the Plan;

(p) To maintain appropriate books and records (including financial books and records) to govern the liquidation and distribution of the Liquidating Trust Assets;

(q) To pay fees incurred pursuant to 28 U.S.C. § 1930(a)(6) and to file with the Bankruptcy Court and serve on the U.S. Trustee quarterly post-confirmation financial reports for each of the Debtors until such time as such reports are no longer required, or the Bankruptcy Court orders otherwise, a final decree is entered closing these Chapter 11 Cases or the Chapter 11 Cases are converted or dismissed;

(r) To make all Distributions to Holders of Allowed Claims as provided for or contemplated by the Plan;

(s) To seek a final decree closing the Chapter 11 Cases; and

(t) To do all other acts or things consistent with the provisions of the Plan that the Liquidating Trustee deems reasonably necessary or desirable with respect to implementing the Plan.

Other than the obligations of the Liquidating Trustee enumerated or referred to under this Agreement or the Plan, the Liquidating Trustee shall have no duties or obligations of any kind or nature respecting the implementation and administration of the Plan or this Agreement.

2.2 Costs. On and after the Effective Date, the Liquidating Trustee shall establish Cash reserves from the Liquidating Trust Assets to be held in a Liquidating Trust wind-down fund (the "Liquidating Trust Expenses Reserve"). The Liquidating Trust Expenses Reserve shall be used to pay Liquidating Trust Expenses and shall be subject to adjustment in the Liquidating Trustee's sole and absolute discretion. In the event that amounts held in the Liquidating Trust Expenses Reserve, together with any remaining Liquidating Trust Assets, are insufficient to pay all Liquidating Trust Expenses, the Liquidating Trustee shall, unless reserves sufficient for such purpose have otherwise been made available from any other sources, have no obligation under this Agreement to make such payments.

### 2.3 Distributions.

(a) Generally. Pursuant to the Plan, the Liquidating Trustee shall record and account for all proceeds received upon any disposition of Liquidating Trust Assets (after

deduction therefrom of appropriate reserves as provided herein and in the Plan) for distribution in accordance with the provisions of the Plan.

(b) Manner of Payment or Distribution. Following the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Liquidating Trustee shall make continuing efforts to liquidate all Liquidating Trust Assets in accordance with the Plan and this Agreement, provided that the timing of all Distributions made by the Liquidating Trustee to Beneficiaries shall be at the discretion of the Liquidating Trustee, and provided further that Distributions to Beneficiaries may only be made after the Second Administrative Claim Bar Date. If the Distribution shall be in Cash, the Liquidating Trustee shall distribute such Cash by wire, check, or such other method as the Liquidating Trustee deems appropriate under the circumstances.

(c) Delivery of Distributions. All Distributions under this Agreement to any Beneficiary shall be made at the address of such Beneficiary as set forth in the claims register maintained in the Chapter 11 Cases (subject to any transfer effectuated pursuant to Bankruptcy Rule 3001(e)) or, in the absence of a filed-proof of claim, the Schedules. If a Distribution is returned as undeliverable, the Liquidating Trustee shall use reasonable efforts to determine such Beneficiary's then-current address. If the Liquidating Trustee cannot determine, or is not notified of, a Beneficiary's then-current address within six (6) months after the later of the Effective Date and the date such Claim is Allowed, the Distribution reserved for such Beneficiary shall be deemed an unclaimed Distribution.

(d) Disputed Claim Reserve. On or after the Effective Date, the Liquidating Trustee, with the consent of the Liquidating Trust Advisory Committee, shall reserve Cash reserves for the treatment of Disputed General Unsecured Claims (the "Disputed Claim Reserve"). On each Distribution date after the Effective Date in which the Liquidating Trustee makes Distributions to Holders of Allowed General Unsecured Claims, the Liquidating Trustee shall retain on account of Disputed General Unsecured Claims an amount the Liquidating Trustee estimates is necessary to fund the Pro Rata Share of such Distributions to Holders of Disputed General Unsecured Claims if such Claims were Allowed, with any Disputed General Unsecured Claims that are unliquidated or contingent being reserved in an amount reasonably determined by the Liquidating Trustee. Cash retained on account of such Disputed General Unsecured Claims shall be retained in the Disputed Claims Reserve for the benefit of the Holders of Disputed General Unsecured Claims pending a determination of their entitlement thereto under the terms of the Plan. The Liquidating Trustee may treat the Disputed Claims Reserve as a Disputed Ownership Fund within the meaning of Treasury Reg. § 1.468B-9.

(e) Professional Fee Reserve. On the Effective Date, the Liquidating Trustee shall establish the Professional Fee Reserve, which shall only be used to pay Professional Fee Claims unless and until all Professional Fee Claims have been paid in full, otherwise satisfied, or withdrawn. The Professional Fee Reserve shall vest in the Liquidating Trust and shall be maintained by the Liquidating Trustee in accordance with the Plan and this Agreement. The Liquidating Trust shall fund the Professional Fee Reserve on the Effective Date in an amount that is agreed upon by the Debtors and the Committee and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. If the Debtors and the Committee are unable to agree on an amount by which the Professional Fee Reserve is to be funded, the Debtors and the Committee shall submit the issue to the Bankruptcy Court, which,

following notice and a hearing, shall fix the amount of the required funding. All Professional Fee Claims that have not previously been paid, otherwise satisfied, or withdrawn shall be paid from the Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be released to the Liquidating Trust to be used for other purposes consistent with the Plan and this Agreement.

(f) No Distributions of Less Than \$50 on account of Allowed General Unsecured Claims. Notwithstanding anything to the contrary in the Plan, if a Distribution to be received by the Holder of an Allowed General Unsecured Claim would be less than \$50, no such payment will be made to such Holder. Notwithstanding anything herein or in the Plan to the contrary, this Section 2.3(f) shall not apply to Liquidating Trust Expenses or unpaid Allowed Professional Fee Claims.

(g) Inapplicability of Unclaimed Property or Escheat Laws. Unclaimed property held by the Liquidating Trust shall not be subject to the unclaimed property or escheat laws of the United States, any state, or any local governmental unit.

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

2.5 Limits on Retained Cash. The Liquidating Trust may not receive or retain Cash or Cash equivalents in excess of an amount reasonably necessary to meet expenses, pay contingent liabilities (including Disputed General Unsecured Claims), maintain the Professional Fee Reserve, and maintain the value of the Liquidating Trust Assets. Without limiting the foregoing, and subject to the terms of the Plan, the Liquidating Trustee shall distribute to the Beneficiaries on account of their interests in the Liquidating Trust, at least annually, its net income plus all net proceeds from the sale of assets, except that the Liquidating Trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of the Liquidating Trust or to meet claims and contingent liabilities, which amount shall be used to fund the Liquidating Trust Expenses Reserve and the Disputed Claim Reserve.

## 2.6 Liability of Liquidating Trustee.

(a) Standard of Care. Except in the case of bad faith, willful misconduct, reckless disregard of duty, criminal conduct, gross negligence, fraud or self-dealing, or in the case of an attorney professional and as required under Rule 1.8(h)(1) of the Delaware Lawyers’ Rules of Professional Conduct, malpractice, the Liquidating Trustee shall not be liable for any loss or damage by reason of any action taken or omitted by him or her pursuant to the discretion, powers and authority conferred, or in good faith believed by the Liquidating Trustee to be conferred, on the Liquidating Trustee by this Agreement or the Plan.

(b) No Liability for Acts of Predecessors. No successor Liquidating Trustee shall be in any way responsible for the acts or omissions of any Liquidating Trustee in office prior to the date on which such successor becomes the Liquidating Trustee, unless a successor Liquidating Trustee expressly assumes such responsibility.

(c) No Implied Obligations. The Liquidating Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into this Agreement against the Liquidating Trustee.

(d) No Liability for Good Faith Error of Judgment. The Liquidating Trustee shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Liquidating Trustee was grossly negligent in ascertaining the pertinent facts.

(e) Reliance by Liquidating Trustee on Documents or Advice of Counsel or Other Persons. Except as otherwise provided herein, the Liquidating Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document believed by the Liquidating Trustee to be genuine and to have been signed or presented by the proper party or parties. The Liquidating Trustee also may engage and consult with legal counsel, accountants and other professionals for the Liquidating Trust and other agents and advisors and shall not be liable for any action taken or suffered by the Liquidating Trustee in reliance upon the advice of such counsel, agents or advisors. The Liquidating Trustee or the Liquidating Trust Advisory Committee shall have the right at any time to seek instructions from the Bankruptcy Court concerning the administration or disposition of the Liquidating Trust Assets.

(f) No Personal Obligation for Trust Liabilities. Persons dealing with the Liquidating Trustee, or seeking to assert Claims against the Debtors, shall look only to the Liquidating Trust Assets to satisfy any liability incurred by the Liquidating Trustee to any such Person in carrying out the terms of this Agreement, and the neither the Liquidating Trustee nor his, her, or its company or organization shall have a personal or individual obligation to satisfy any such liability.

2.7 Selection of Agents. Following consultation with and approval by the Liquidating Trust Advisory Committee, the Liquidating Trustee may engage any employee of the Debtors or other persons, and also may engage or retain brokers, banks, custodians, investment and financial advisors, attorneys (including existing counsel to the Liquidating Trust Advisory Committee or the Debtors), accountants (including existing accountants for the Liquidating Trust Advisory Committee or the Debtors) and other advisors and agents, in each case without Bankruptcy Court approval. The Liquidating Trustee may pay the salaries, fees and expenses of such Persons from amounts in the Liquidating Trust Expenses Reserve, or, if such amounts are insufficient therefor, out of the Liquidating Trust Assets or proceeds thereof. In addition, the parties acknowledge that Liquidating Trust Assets may be advanced to satisfy such salaries, fees and expenses. The Liquidating Trustee shall not be liable for any loss to the Liquidating Trust or any person interested therein by reason of any mistake or default of any such Person referred to in this Section 2.7 selected by the Liquidating Trustee in good faith and without either willful misconduct, gross negligence, or fraud.

## 2.8 Liquidating Trustee's Compensation, Indemnification and Reimbursement.

(a) The Liquidating Trustee's compensation for services in the administration of this Liquidating Trust shall be negotiated with the Liquidating Trust Advisory Committee. The Liquidating Trustee shall also be reimbursed for all documented, actual, reasonable, and necessary out-of-pocket expenses incurred in the performance of his, her, or its duties hereunder.

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

(c) The Liquidating Trustee is authorized to use Liquidating Trust Assets to obtain all reasonable insurance coverage for himself/herself/itself, his/her/its agents, representatives, employees or independent contractors, including, without limitation, coverage with respect to the liabilities, duties and obligations of the Liquidating Trustee and his/her agents, representatives, employees or independent contractors under the Plan and this Agreement.

## 2.9 Tax Provisions.

(a) It is intended that the Liquidating Trust qualify as a grantor trust for federal income tax purposes, and that the Beneficiaries are treated as grantors. As described more fully in the Plan and the Disclosure Statement, the transfer of the Liquidating Trust Assets will be treated for federal income tax purposes as a transfer to the Beneficiaries, followed by a deemed transfer from such Beneficiaries to the Liquidating Trust, *provided, however*, that the Liquidating Trust Assets will be subject to any post-Effective Date obligations incurred by the Liquidating Trust relating to the pursuit of Liquidating Trust Assets. Accordingly, the Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes. Subject to Section 2.9(c)(iv), all items of income, gain, loss, deduction and credit will be included in the income of the Beneficiaries as if such items had been recognized directly by the Beneficiaries in the proportions in which they own beneficial interests in the Liquidating Trust.

(b) The Liquidating Trustee shall comply with all tax reporting requirements and, in connection therewith, the Liquidating Trustee may require Beneficiaries to provide certain tax information as a condition to receipt of Distributions, including, without limitation, filing returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation § 1.671-4(a)

(c)

(i) Under the guidelines set forth in Revenue Procedure 94-95, 1994-2 C.B. 684 and Treasury Regulation § 1.671-4(a), the Liquidating Trustee will file returns for the Liquidating Trust as a grantor trust.

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

(iii) In accordance with the provisions of section 6012(b)(3) of the Internal Revenue Code of 1986, as amended, the Liquidating Trustee shall cause to be prepared, at the cost and expense of the Liquidating Trust, the corporate income tax returns (federal, state and local) that the Debtors are required to file (to the extent such returns have not already been filed by the Effective Date). The Liquidating Trustee shall timely file each such tax return with the appropriate taxing authority and shall pay out of the Liquidating Trust Assets all taxes due with respect to the period covered by each such tax return.

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

(e) Current Basis. All income of the Liquidating Trust will be subject to tax on a current basis.

(f) Withholding. The Liquidating Trustee may withhold from the amount distributable from the Liquidating Trust at any time to any Beneficiary such sum or sums as may be sufficient to pay any tax or taxes or other charge or charges which have been or may be imposed on such Beneficiary or upon the Liquidating Trust with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any Distribution provided for by any law, regulation, rule, ruling, directive, or other governmental requirement. Any tax withheld shall be treated as distributed to the Beneficiary for purposes of this Agreement.

(g) **Tax Identification Numbers.** The Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service or certify to the Liquidating Trustee's satisfaction that Distributions to the Beneficiary are exempt from backup withholding. The Liquidating Trustee may condition any Distribution to any Beneficiary upon receipt of such identification number. If a Holder of a General Unsecured Claim does not provide the appropriate Form W-8 or Form W-9 within one hundred twenty (120) days of the request by the Liquidating Trustee, then such Holder shall be deemed to have forfeited its right to any reserved and future Distributions from the Liquidating Trust, any Liquidating Trust Interests held by such Holder shall be deemed cancelled, and the Claims of such Holder shall be forever barred.

(h) **Annual Statements.** The Liquidating Trustee shall annually (for tax years in which Distributions from the Liquidating Trust are made) send to each Beneficiary a separate statement setting forth the Beneficiary's share of items of income, gain, loss, deduction or credit and all such holders shall report such items on their federal income tax returns.

(i) **Notices.** The Liquidating Trustee shall distribute such notices to the Beneficiaries as the Liquidating Trustee determines are necessary or desirable.

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

2.10 **Conflicting Claims.** If the Liquidating Trustee becomes aware of any disagreement or conflicting Claims with respect to the Liquidating Trust Assets, or is in good faith doubt as to any action that should be taken under this Agreement, the Liquidating Trustee may take any or all of the following actions as reasonably appropriate:

(i) to the extent of such disagreement or conflict, or to the extent deemed by the Liquidating Trustee necessary or appropriate in light of such disagreement or conflict, withhold or stop all further performance under this Agreement with respect to the matter of such dispute (except, in all cases, the safekeeping of the Liquidating Trust Assets) until the Liquidating Trustee is reasonably satisfied that such disagreement or conflicting Claims have been fully resolved; or

(ii) file a suit in interpleader or in the nature of interpleader in the Bankruptcy Court (or any other court of competent jurisdiction) and obtain an order requiring all Persons involved to litigate in the Bankruptcy Court or such other court their respective Claims arising out of or in connection with this Agreement; or

(iii) file any other appropriate motion for relief in the Bankruptcy Court (or any other court of competent jurisdiction).

2.11 **Records of Liquidating Trustee.** The Liquidating Trustee shall maintain accurate records of receipts and disbursements and other activity of the Liquidating Trust, and duly authorized representatives of the Liquidating Trust Advisory Committee shall have reasonable

access to the records of the Liquidating Trust. On or after 90 days from the Effective Date, the books and records maintained by the Liquidating Trustee, as well as any and all other books and records of the Debtors, may be disposed of by the Liquidating Trustee, without notice or a filing with the Bankruptcy Court, at such time as the Liquidating Trustee determines that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Liquidating Trust or its beneficiaries, or upon the termination of the Liquidating Trust, provided, however, that the Liquidating Trustee shall not dispose or abandon any books and records that are reasonably likely to pertain to pending litigation in which the Debtors or their current or former officers or directors are a party, Retained Causes of Action or Claims without further order of the Bankruptcy Court.

### **III RIGHTS, POWERS AND DUTIES OF BENEFICIARIES.**

3.1 Interests of Beneficiaries. The Beneficiaries shall have beneficial interests in the Liquidating Trust Assets as provided in the Plan. The Beneficiaries' proportionate interests in the Liquidating Trust Assets as thus determined shall be not be transferable, assignable, pledged or hypothecated, in whole or in part, except upon the death of the Beneficiary or the operation of law.

3.2 Interests Beneficial Only. The ownership of a beneficial interest hereunder shall not entitle any Beneficiary to any title in or to the Liquidating Trust Assets as such (which title shall be vested in the Liquidating Trustee) or to any right to call for a partition or division of Liquidating Trust Assets or to require an accounting.

### **IV AMENDMENT OF TRUST OR CHANGE IN TRUSTEE.**

4.1 Resignation of the Liquidating Trustee. The Liquidating Trustee may resign by an instrument in writing signed by the Liquidating Trustee and filed with the Bankruptcy Court with notice to the Liquidating Trust Advisory Committee, provided that the Liquidating Trustee shall continue to serve as such after his, her, or its resignation for thirty (30) days or, if longer, until the time when appointment of his, her, or its successor shall become effective in accordance with Section 4.3 hereof, or as otherwise agreed with the Liquidating Trust Advisory Committee.

4.2 Removal of the Liquidating Trustee. The Liquidating Trust Advisory Committee may remove the Liquidating Trustee with or without cause at any time. Such removal shall be effective (10) days after the Liquidating Trust Advisory Committee provides written notice to the Liquidating Trustee and the U.S. Trustee. Upon removal of the Liquidating Trustee by the Liquidating Trust Advisory Committee in accordance with this Section 4.2 other than for cause, the Liquidating Trustee shall be entitled to all compensation that has accrued through the effective date of termination but remains unpaid as of such date, which payment shall be made promptly from the Liquidating Trust Expenses Reserve. For the purposes of this Agreement, "cause" shall mean (a) the willful and continued refusal by the Liquidating Trustee to perform his, her, or its duties as set forth herein; (b) gross negligence, gross misconduct, fraud, embezzlement or theft; or (c) such other cause as the Liquidating Trust Advisory Committee shall in good faith determine.



4.3 Appointment of Successor Liquidating Trustee. In the event of the death, resignation, termination, incompetence or removal of the Liquidating Trustee, the Liquidating Trust Advisory Committee may appoint a successor Liquidating Trustee without the approval of the Bankruptcy Court, which the parties acknowledge shall nevertheless retain jurisdiction to resolve any disputes in connection with the service of the Liquidating Trustee or his/her/its successor. If the Liquidating Trust Advisory Committee fails to appoint a successor Liquidating Trustee within 30 days of the occurrence of a vacancy, any Beneficiary, any Debtor still existing, or the outgoing Liquidating Trustee may petition the Bankruptcy Court for such appointment. Every successor Liquidating Trustee appointed hereunder shall execute, acknowledge and deliver to the Bankruptcy Court and to the predecessor Liquidating Trustee (if practicable) an instrument accepting such appointment and the terms and provisions of this Agreement, and thereupon such successor Liquidating Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers and duties of the retiring Liquidating Trustee.

4.4 Continuity. Unless otherwise ordered by the Bankruptcy Court, the death, resignation, incompetence or removal of the Liquidating Trustee shall not operate to terminate or to remove any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the Liquidating Trustee. In the event of the resignation or removal of the Liquidating Trustee, the Liquidating Trustee shall promptly execute and deliver such documents, instruments, final reports, and other writings as may be reasonably requested from time to time by the Bankruptcy Court, the Liquidating Trust Advisory Committee or the successor Liquidating Trustee.

4.5 Amendment of Agreement. This Agreement may be amended, modified, terminated, revoked or altered only upon (i) order of the Bankruptcy Court; or (ii) agreement of the Liquidating Trustee and the Liquidating Trust Advisory Committee, provided, however, that any such amendment, modification, termination, revocation or alteration is consistent with the terms of the Plan and the Confirmation Order.

## **V TERMINATION OF TRUST**

The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (i) all Disputed Claims have been resolved; (ii) all of the Liquidating Trust Assets have been liquidated; (iii) all duties and obligations of the Liquidating Trustee under this Agreement have been fulfilled; (iv) all Distributions required under the Plan and this Agreement have been made; and (v) the Debtors' Chapter 11 Cases have been closed; provided, however, that in no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension not to exceed one (1) year is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets. Upon dissolution of the Liquidating Trust, any remaining Liquidating Trust Assets that exceed the amounts required to be paid under the Plan may be transferred by the Liquidating Trustee to a charitable organization(s) approved by the Liquidating Trust Advisory Committee.

## **VI RETENTION OF JURISDICTION**

Subject to the following sentence, the Bankruptcy Court shall have exclusive jurisdiction over the Liquidating Trust, the Liquidating Trustee and the Liquidating Trust Assets as provided in the Plan, including the determination of all controversies and disputes arising under or in connection with the Liquidating Trust or this Agreement. However, if the Bankruptcy Court abstains or declines to exercise such jurisdiction or is without jurisdiction under applicable law, any other court of competent jurisdiction may adjudicate any such matter. All Beneficiaries consent to the jurisdiction of the U.S. District Court for the District of Delaware and the state courts sitting in Wilmington, Delaware over all disputes related to this Agreement.

## **VII MISCELLANEOUS**

7.1 Applicable Law. The Liquidating Trust created by this Agreement shall be construed in accordance with and governed by the laws of the State of Delaware without giving effect to principles of conflict of laws, but subject to any applicable federal law.

7.2 Waiver. No failure or delay of any party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver thereof.

7.3 Relationship Created. Nothing contained herein shall be construed to constitute any relationship created by this Agreement as an association, partnership or joint venture of any kind.

7.4 Interpretation. Section and paragraph headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision hereof.

7.5 Savings Clause. If any clause or provision of this Agreement shall for any reason be held invalid or unenforceable by the Bankruptcy Court, such invalidity or unenforceability shall not affect any other clause or provision hereof, but this Agreement shall be construed, insofar as reasonable to effectuate the purpose hereof, as if such invalid or unenforceable provision had never been contained herein.

7.6 Entire Agreement. This Agreement and the Plan constitute the entire agreement by and among the parties and there are no representations, warranties, covenants or obligations with respect to the subject matter hereof except as set forth herein or therein. This Agreement together with the Plan supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, relating to such subject matter. Except as otherwise authorized by the Bankruptcy Court or specifically provided in this Agreement or in the Plan, nothing in this Agreement is intended or shall be construed to confer upon or to give any Person other than the parties hereto, the Liquidating Trust Advisory Committee, and the Beneficiaries any rights or remedies under or by reason of this Agreement.

7.7 Counterparts. This Agreement may be executed by facsimile or electronic transmission and in counterparts, each of which when so executed and delivered shall be an

original document, but all of which counterparts shall together constitute one and the same instrument.

7.8 Notices.

(a) All notices, requests or other communications required or permitted to be made in accordance with this Agreement shall be in writing and shall be deemed given five Business Days after first-class mailing, one Business Day after sending by overnight courier, or on the first Business Day after facsimile or electronic transmission.

(i) if to the Liquidating Trustee:

META Advisors LLC  
101 Park Avenue, 30th Floor  
New York, NY 10178  
Attn: James S. Carr  
Tel: (212) 808-5105  
Fax: (646) 219-5196

(ii) if to the Liquidating Trust Advisory Committee:

Cooley LLP  
1114 Avenue of the Americas  
New York, NY 10036-7798  
Attn: Jay R. Indyke, Esq.  
Evan M. Lazerowitz, Esq.  
Tel: (212) 479-6000  
Fax: (212) 479-6275

(iii) if to any Beneficiary, to such address as such Beneficiary shall have furnished to the Debtors in writing prior to the Effective Date.

(b) Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice to the Liquidating Trustee in the same manner as above.

7.9 Effective Date. This Agreement shall become effective as of the Effective Date.

7.10 Successors and Assigns. This Agreement shall be binding upon each of the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties, Committee, the Beneficiaries and, subject to the provisions hereof, their respective successors and assigns.

7.11 Conflict with the Plan. In the event of any conflict between the terms of this Agreement and the Plan, the terms of the Plan shall govern.

*[Signature page follows.]*

IN WITNESS WHEREOF the undersigned have caused this Agreement to be executed as of the day and year first above written.

VRG LIQUIDATING, LLC (F/K/A VESTIS RETAIL GROUP, LLC), VRF LIQUIDATING, LLC (F/K/A VESTIS RETAIL FINANCING, LLC), EMSOC LIQUIDATING, LLC (F/K/A EMS OPERATING COMPANY, LLC), VIH LIQUIDATING, LLC (F/K/A VESTIS IP HOLDINGS, LLC), BS LIQUIDATING, LLC (F/K/A BOB'S STORES, LLC), EMSA LIQUIDATING, LLC (F/K/A EMS ACQUISITION LLC), SC LIQUIDATING 2, LLC (F/K/A SPORT CHALET, LLC), SCVS LIQUIDATING, LLC (F/K/A SPORT CHALET VALUE SERVICES, LLC), AND SCTS LIQUIDATING, LLC (F/K/A SPORT CHALET TEAM SALES, LLC)

By: \_\_\_\_\_  
Name:  
Title:

META Advisors LLC

By: \_\_\_\_\_  
Name:  
Title: Liquidating Trustee of VRG Liquidating Trust

OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VRG LIQUIDATING, LLC, ET AL.

By: \_\_\_\_\_  
Name: Kim Stewart  
Title: Co-Chairperson

By: \_\_\_\_\_  
Name: Ernst A. Bell  
Title: Co-Chairperson