

**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)

**Dkt. Nos. 2027, 2028, 2074 & 2137**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING  
FIRST AMENDED JOINT PLAN OF LIQUIDATION OF  
VRG LIQUIDATING, LLC AND ITS CHAPTER 11 AFFILIATES AND  
THEIR OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Upon consideration of the *First Amended Joint Plan of Liquidation of VRG Liquidating, LLC and Its Chapter 11 Affiliates and Their Official Committee of Unsecured Creditors* (annexed hereto as **Exhibit A**, and as amended, supplemented or modified from time to time pursuant to the terms thereof, the “Plan”) jointly proposed by VRG Liquidating, LLC (f/k/a Vestis Retail Group, LLC) and its jointly-administered chapter 11 affiliates, the debtors and debtors in possession (the “Debtors”), and the Official Committee of Unsecured Creditors (the “Committee” and, together with the Debtors, the “Plan Proponents”) in the above-captioned jointly-administered chapter 11 cases (the “Cases”); and the Plan Proponents having filed 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*, attached as Exhibit 5 to the Disclosure Statement Order (the “Disclosure Statement”); and this Bankruptcy Court having approved the Disclosure Statement as containing adequate information by order

<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 November 13, 2018 [Dkt. No. 2074] (the “Disclosure Statement Order”); and upon the affidavits of service and publication filed reflecting compliance with the notice and solicitation requirements of the Disclosure Statement Order [Dkt. Nos. 2079, 2085 & 1095] (the “Notice Affidavits”); and upon the *Notice of (I) Approval of Disclosure Statement, (II) Establishment of Voting Record Date, (III) Hearing on Confirmation of Plan and Procedures and Deadline for Objecting to Confirmation of Plan, and (IV) Procedures and Deadline for Voting on Plan* [Dkt. No. 2075] (the “Confirmation Hearing Notice”); and upon the *Declaration of P. Joseph Morrow IV of Kurtzman Carson Consultants LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the First Amended Joint Plan of Liquidation of VRG Liquidating, LLC and Its Chapter 11 Affiliates and Their Official Committee of Unsecured Creditors* [Dkt. No. 2112] (the “Voting Declaration”); and upon the *Declaration of Anna O’Reilly in Support of Confirmation of the First Amended Joint Plan of Liquidation of VRG Liquidating, LLC and Its Chapter 11 Affiliates and Their Official Committee of Unsecured Creditors* [Dkt. No. 2121] (the “O’Reilly Declaration”); and upon the *Memorandum of Law in Support of Confirmation of First Amended Joint Plan of Liquidation of VRG Liquidating, LLC and Its Chapter 11 Affiliates and Their Official Committee of Unsecured Creditors* [Dkt. No. 2122] (the “Confirmation Memorandum”); and no objections to the Plan having been filed or asserted; and a hearing having been held on January 8, 2019 to consider confirmation of the Plan and entry of this Confirmation Order (the “Confirmation Hearing”); and upon the evidence adduced and proffered and the arguments made at the Confirmation Hearing; and the Bankruptcy Court having reviewed all documents in connection with confirmation and having heard all parties desiring to be heard; and upon the record of these Cases; and after due deliberation and consideration of all of the foregoing; and sufficient cause appearing therefor; the Bankruptcy Court hereby makes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

**A. Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record of the Confirmation Hearing, constitute this Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to these proceedings pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

**B. Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

**C. Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtors' Cases pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these proceedings and the Cases is proper in this district and in this Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**D. Chapter 11 Petitions.** On April 18, 2016 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors continue to manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, no trustee or examiner has been appointed in these Cases. The U.S. Trustee appointed the Committee on April 26, 2016.

**E. [INTENTIONALLY OMITTED].**

**F. Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Declaration and the Notice Affidavits, the transmittal and service of the Plan, the Disclosure Statement, Ballots, Confirmation Hearing Notice, and the Notice of Non-Voting Status (as defined in the Disclosure Statement Order) were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice as set forth in the Notice Affidavits complied with the Disclosure Statement Order.

**G. Voting.** The procedures by which the Ballots for acceptance or rejection of the Plan were distributed and tabulated were fair, properly conducted, and complied with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, applicable non-bankruptcy law, and the Disclosure Statement Order.

**H. Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtors and the Committee as the Plan Proponents.

**I. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

**J. Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** The classification of Claims and Equity Interests under the Plan is proper under the Bankruptcy Code. In addition to Non-Ordinary Course Administrative Claims, Ordinary Course Administrative Claims,

Professional Fee Claims, and Priority Tax Claims, which need not be classified, the Plan designates five (5) Classes of Claims and Equity Interests. The Claims or Equity Interests placed in each Class are substantially similar to other Claims or Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests. Thus, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

**K. Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that Class 1 (Secured Claims) and Class 2 (Priority Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

**L. Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates Class 3 (General Unsecured Claims), Class 4 (Subordinated Claims), and Class 5 (Equity Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

**M. No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan Proponents for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

**N. Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** The Plan and the Liquidating Trust Agreement provide adequate and proper means for the Plan's implementation. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

**O. Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Plan does not provide for the issuance of any securities, including non-voting securities, and the Debtors are being dissolved on the Effective Date under the terms of the Plan. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

**P. Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Section 5.4 of the Plan provides for the Liquidating Trust to be governed and administered by the Liquidating Trustee. The Liquidating Trustee was selected by the Committee, and its successor, if any, shall be selected pursuant to the procedures set forth in the Liquidating Trust Agreement. Therefore, section 1123(a)(7) of the Bankruptcy Code is satisfied.

**Q. Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtors and their Estates and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

**R. Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Plan Proponents have exercised reasonable business judgment in determining to reject each of the Debtors' remaining executory contracts and unexpired leases under the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in these Cases.

**S. Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019. In particular, the substantive consolidation of the Debtors as provided in Section 5.2 of the Plan is justified and appropriate in these Cases for the reasons set forth in the Disclosure Statement and Confirmation Memorandum.

**T. Releases, Exculpations, Limitation of Liability, and Injunctions (11 U.S.C. § 1123(b)).** The releases, exculpations, limitations of liability, and injunctions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are an appropriate exercise of the Debtors' business judgment; (iii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iv) are in exchange for good and valuable consideration provided by the Released Parties; (v) are in the best interests of, the Debtors, their Estates, and their creditors; (vi) are fair, equitable, and reasonable; (vii) are given and made after due notice and an opportunity to object and be heard with respect thereto, as the Disclosure Statement, the Confirmation Hearing Notice, the Ballots, and the Notice of Non-Voting Status each unambiguously states that the Plan contains certain release, exculpation, limitation of liability, and injunction provisions, and with respect to the releases by Holders of Claims in Class 3, such releases are also consensual; and (viii) are consistent with sections 105, 524, 1123, 1129, 1141, and other applicable provisions of the Bankruptcy Code and other applicable law.

**U. Plan Proponents' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).** Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Plan Proponents have complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan.

**V. Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Plan Proponents have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has

examined the totality of the circumstances surrounding the filing of the Cases, the Plan itself, and the process leading to its formulation. The Plan is the result of extensive arm's-length negotiations among the Debtors and key stakeholders, including the Committee, and is overwhelmingly supported by the creditors and other parties in interest in the Cases. It is clear that the Plan promotes the objectives and purposes of the Bankruptcy Code.

**W. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).** The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with the Cases, or in connection with the Plan and incident to the Cases, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

**X. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Section 5.3 of the Plan provides that, on the Effective Date, the Debtors' directors and officers shall be terminated automatically. The Liquidating Trustee and initial members of the Liquidating Trust Advisory Committee were selected by the Committee and their identities are disclosed in the Plan. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

**Y. No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

**Z. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The "best interests" test is satisfied as to all Holders of Claims and Equity Interests in Impaired Classes under the Plan, as each such Holder will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.



**AA. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1 and 2 are Unimpaired under the Plan and Class 3 (General Unsecured Claims) has voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. Class 4 (Subordinated Claims) and Class 5 (Equity Interests) are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not and cannot be satisfied. As set forth below, the Plan is still confirmable as it satisfies the nonconsensual confirmation provisions of section 1129(b).

**BB. Treatment of Administrative, Priority, and Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, Priority Tax Claims, and Professional Fee Claims pursuant to Article III of the Plan satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

**CC. Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 3 (General Unsecured Claims) is an Impaired Class of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

**DD. Feasibility (11 U.S.C. § 1129(a)(11)).** The Plan provides for the dissolution of the Debtors on the Effective Date and the liquidation of the Debtors' property. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

**EE. Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Section 11.3 of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code.

**FF. Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(13)-(16)).** Sections 1129(a)(13)–(16) of the Bankruptcy Code are inapplicable as the Debtors (i) do not provide

“retiree benefits” as defined in section 1114 of the Bankruptcy Code (§ 1129(a)(13)), (ii) have no domestic support obligations (§ 1129(a)(14)), (iii) are not individuals (§ 1129(a)(15)), and (iv) are not nonprofit corporations (§ 1129(a)(16)).

**GG. No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 4 and 5, which are deemed to have rejected the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code. There is no Class of Claims or Equity Interests junior to the Holders of Claims or Equity Interests in Class 4 or Class 5 that will receive or retain property under the Plan on account of their Claims or Equity Interests. Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that is deemed to have rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Class 4 and Class 5.

**HH. Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan currently proposed in the Cases, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

**II. Principal Purpose (11 U.S.C. § 1129(d)).** The principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no party has objected to the Confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

**JJ. Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

**KK. Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Plan Proponents and their officers, directors, employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Disclosure Statement Order in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the injunction, exculpation, and limitation of liability provisions set forth in Article XI of the Plan and this Confirmation Order.

**LL. Retention of Jurisdiction.** The Bankruptcy Court retains jurisdiction over the matters set forth in Article X of the Plan and section 1142 of the Bankruptcy Code.

**MM. Plan Modifications.** Since the entry of the Disclosure Statement Order, the Plan Proponents have made certain modifications to the Plan, which modifications are incorporated in the Plan as attached hereto as **Exhibit A**, including to resolve comments from the U.S. Trustee, as follows:

- The definition of “Exculpated Parties” in Section 1.37 of the Plan has been modified to clarify that present and former officers, directors, members, and managers of the Debtors are Exculpated Parties only to the extent they served in such capacity at any point from and after the Petition Date.
- Sections 3.1.1, 3.1.4, 3.2.1, 3.2.2, and 3.3.1 of the Plan have been modified to strike the words “settlement, and release of and in exchange for.”
- Section 7.6 of the Plan has been modified to strike the second sentence thereof.
- Section 11.12 of the Plan has been modified to strike former subsection (b) thereof.
- Section 11.19 of the Plan has been modified to strike the first sentence thereof, such that there shall be no automatic or deemed closure of any of the Debtors’ Cases.

All the foregoing modifications are incorporated by reference herein and approved. The disclosure of these modifications to the Plan on the record at the Confirmation Hearing constitutes due and sufficient notice of such modifications, complies in all respects with Section 11.6 of the Plan and Bankruptcy Code section 1127, and the Bankruptcy Court hereby finds that such modifications, as well as those modifications set forth in Paragraph 41 of this Confirmation Order, are non-material, not adverse to any party in interest under the Plan, and, pursuant to Bankruptcy Rule 3019, these modifications do not require additional disclosure under Bankruptcy Code section 1126. Except to the extent modified by Paragraph 41 of this Confirmation Order, the Plan as modified in the form attached hereto as **Exhibit A** shall constitute the Plan submitted for Confirmation and confirmed by this Bankruptcy Court pursuant to this Confirmation Order.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**Confirmation of the Plan**

1. The Plan, as and to the extent modified by this Confirmation Order, is approved and confirmed pursuant to section 1129 of the Bankruptcy Code. Any objections to the Plan not otherwise withdrawn, resolved, or otherwise disposed of, are overruled and denied.

2. *[intentionally omitted].*

**Compromises and Settlements Under the Plan**

3. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, upon the Effective Date, all settlements and compromises set forth in the Plan are approved in all respects, and constitute good faith compromises and settlements.

**Classification and Treatment**

4. The Plan's classification scheme is approved.

5. The classifications set forth on the Ballots: (a) were set forth solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for Distribution purposes; (c) may not be relied upon by any Holder of a Claim as representing the actual classification of such Claim under the Plan for Distribution purposes; and (d) shall not be binding on the Plan Proponents and Liquidating Trustee except for Plan voting purposes.

**Authorization to Implement the Plan**

6. The Debtors and the Liquidating Trustee, as applicable, are authorized to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and to execute, enter into or otherwise make effective all documents arising in connection therewith, including the Liquidating Trust Agreement.

7. On the Effective Date, notwithstanding the terms of Section 5.3.1 of the Plan, the officers of the Debtors are authorized to do all things and to execute and deliver all agreements, documents, instruments, notices, and certificates as are contemplated by the Plan and to take all necessary actions required in connection therewith, in the name of and on behalf of the Debtors.

8. The approvals and authorizations specifically set forth in this Confirmation Order are not intended to limit the authority of the Liquidating Trustee, the Debtors, or any officer thereof to take any and all actions necessary or appropriate to implement, effectuate, and consummate any and all documents or transactions contemplated by the Plan or this Confirmation Order.

**Enforceability of Plan**

9. Pursuant to sections 1123(a), 1141(a) and 1142 of the Bankruptcy Code, upon the Effective Date, the Plan and all Plan-related documents (including, but not limited to, the Liquidating Trust Agreement) shall be valid, binding, and enforceable.

**Vesting of Assets in the Liquidating Trust**

10. 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. 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.

**Termination of Directors and Officers**

11. 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.

**Dissolution of the Debtors**

12. 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, to the extent not already filed. 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, to the extent not already filed.

### **Cancellation of Equity Interests**

13. Upon the occurrence 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.

### **Substantive Consolidation**

14. Pursuant to sections 105(a), 541, 1123 and 1129 of the Bankruptcy Code, the substantive consolidation of the Debtors provided for in the Plan and this Confirmation Order is hereby approved, effective as of the Effective Date. As a result of such substantive consolidation, 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.

15. The substantive consolidation of the Debtors under the Plan and this Confirmation Order 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 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 this 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 of the Debtors, 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, dismissed, or converted.

#### **Plan Distributions**

16. The Liquidating Trustee shall make all Distributions under the Plan and such Distributions shall be in accordance with the Plan and the Liquidating Trust Agreement, as applicable. The Liquidating Trust shall hold and distribute the Liquidating Trust Assets in accordance with the provisions of the Plan and the Liquidating Trust Agreement.



17. 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 required to be paid by the Liquidating Trust pursuant to the Plan. The Liquidating Trustee or 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 its designee shall not be required to give any bond or surety or other security for the performance of the Liquidating Trustee's or its designee's duties as disbursing agent unless otherwise ordered by the Bankruptcy Court.

18. Except to the extent provided in section 506(b) of the Bankruptcy Code, the Plan, or this 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.

#### **Administration of the Liquidating Trust**

19. The Liquidating Trust Agreement, substantially in the form filed with the Plan, is hereby approved.

20. The appointment of META Advisors, LLC as the Liquidating Trustee is hereby approved. The Liquidating Trustee shall be compensated in the manner set forth in and consistent with the Liquidating Trust Agreement. The Liquidating Trustee shall have all powers, rights, duties, and protections afforded the Liquidating Trustee under the Plan, this Confirmation Order, and the Liquidating Trust Agreement.

**Executory Contracts and Unexpired Leases**

21. On the Effective Date, all executory contracts and unexpired leases of the Debtors that have not been assumed, assumed and assigned, or rejected prior to the Confirmation Date shall be deemed rejected, pursuant to this Confirmation Order, as of the Confirmation Date.

22. **Any creditor asserting a Rejection Claim shall file a proof of claim within thirty (30) days of the Effective Date. Any Rejection Claims that are not timely filed shall be forever disallowed and barred. If one or more Rejection Claims are timely filed, the Liquidating Trustee may file an objection to any Rejection Claim on or prior to the Claim Objection Deadline.**

**Disputed Claims**

23. 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.

24. **All objections to Claims (other than Professional Fee Claims) shall be filed by the Liquidating Trustee on or before the Claim Objection Deadline (*i.e.*, one hundred and twenty (120) days after the Effective Date), 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 these 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 Scheduled 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.**

25. 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.

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

26. **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 (*i.e.*, forty-five (45) days after the Effective Date, or the first Business Day thereafter). 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.**

#### **Professional Fee Claims**

27. **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.**

28. **All objections to the allowance of such Professional Fee Claims 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).**

29. 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, this Confirmation Order, and the Liquidating Trust Agreement.

**Releases, Injunction, Exculpation, and Limitation of Liability**

30. The following release, injunction, exculpation, and limitation of liability provisions set forth in Article XI of the Plan are hereby approved and authorized in their entirety:

**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.**

**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.**

**Payment of Statutory Fees; Filing of Quarterly Reports**

31. All fees payable pursuant to 28 U.S.C. § 1930 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 28 U.S.C. § 1930 for each and every Debtor until its particular chapter 11 case is closed. 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 28 U.S.C. § 1930.

**Special Provisions Concerning the Sale Agreement**

32. 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.

**Termination of the Debtors' Professionals**

33. Effective immediately upon the filing of the Effective Date Notice, the Debtors' retention of Klee, Tuchin, Bogdanoff & Stern LLP ("KTBS") and Young Conaway Stargatt & Taylor, LLP ("YCST") as bankruptcy counsel shall be terminated without the need for further action on the party of this Bankruptcy Court, the Debtors, KTBS, YCST, or any other party; *provided, however*, that KTBS and YCST shall continue to be retained with respect to applications Filed or to be Filed pursuant to sections 330 and 331 of the Bankruptcy Code.

**Dissolution of the Committee**

34. 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 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.

**Notice of Entry of Confirmation Order and Effective Date**

35. Pursuant to Bankruptcy Rules 2002 and 3020(c), the Debtors are hereby authorized to serve a notice of entry of this Confirmation Order and the occurrence of the Effective Date, substantially in the form attached hereto as **Exhibit B** (the "Effective Date Notice"), no later than five (5) Business Days after the Effective Date, on all Holders of Claims against or Equity Interests in the Debtors and all other Persons on whom the Confirmation Hearing Notice and Notice of Non-Voting Status was served. The form of the Effective Date Notice is hereby approved in all respects. The Effective Date Notice shall constitute good and sufficient notice of the entry of this Confirmation Order and of the relief granted herein, including, without limitation, any bar dates and deadlines established under the Plan and this

Confirmation Order, and no other or further notice of entry of this Confirmation Order, the occurrence of the Effective Date, or any such bar dates and deadlines need be given.

**Retention of Jurisdiction**

36. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding the entry of this Confirmation Order and the 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 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to take the actions specified in Article X of the Plan.

**References to Plan Provisions**

37. The failure specifically to include or to refer to any particular provision of the Plan or any related document in the Confirmation Order shall not diminish or impair the effectiveness of such provision or document, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety and Plan-related documents be approved.

**Rules Governing Conflicts Between Documents**

38. This Confirmation Order shall control and take precedence in the event of any inconsistency between this Confirmation Order and any provision of the Plan or any of the other documents referred to in this paragraph. In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, any Order previously entered in the Cases (other than, for the avoidance of doubt, the Confirmation Order), or any other agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence.



**Extension of Injunctions and Stays**

39. All injunctions or stays provided for in the Cases under sections 105 or 362 of the Bankruptcy Code or otherwise, to the extent 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 this Confirmation Order shall remain in full force and effect in accordance with their terms.

**No Stay of Confirmation Order**

40. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), and 7062, to the extent applicable, there is no reason for delay in the implementation of this Confirmation Order and, thus, this Confirmation Order shall be effective and enforceable immediately upon entry.

41. Notwithstanding anything to the contrary in the Disclosure Statement, the Disclosure Statement Order, the Ballots, the Plan, this Confirmation Order or any other document approved by the Bankruptcy Court in connection with confirmation of the Plan: (i) Section 3.5(a) of the Plan is stricken from the Plan and of no force and effect; and (ii) those Holders of Claims in Class 3 reflected on Exhibit C to the Voting Declaration as voting to accept the Plan and submitting a Release Opt-Out shall not participate in the releases set forth in Section 11.12 of the Plan



**LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE**

**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

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<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.

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**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 that served in such capacity at any point from and after the Petition Date, (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 of 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 of 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 of 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 of 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 of 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 (½) 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.

**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) 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 Final Decree.** 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 Chapter 11 Cases 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.

**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

**Exhibit B**

**Effective Date Notice**

**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)

Ref. Dkt. No. \_\_\_\_

**NOTICE OF (I) CONFIRMATION AND EFFECTIVE DATE OF THE FIRST  
AMENDED JOINT PLAN OF LIQUIDATION OF VRG LIQUIDATING, LLC  
AND ITS CHAPTER 11 AFFILIATES AND THEIR OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS AND (II) DEADLINE UNDER THE PLAN  
AND THE CONFIRMATION ORDER TO FILE PROFESSIONAL FEE  
CLAIMS, ADMINISTRATIVE CLAIMS, AND REJECTION CLAIMS**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. **Entry of the Confirmation Order.** On January \_\_, 2019, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order [Dkt. No. \_\_\_\_] (the “Confirmation Order”) confirming the *First Amended Joint Plan of Liquidation of VRG Liquidating, LLC and Its Chapter 11 Affiliates and Their Official Committee of Unsecured Creditors* attached as Exhibit A to the Confirmation Order (together with all exhibits thereto, and as may be amended, modified, or supplemented, the “Plan”)<sup>2</sup> in the chapter 11 cases of the above captioned debtors and debtors in possession (collectively, the “Debtors”).

2. **Effective Date of the Plan.** The Effective Date of the Plan is January \_\_, 2019.

3. **Deadline to File Professional Fee Claims.** As provided in Section 11.2 of the Plan and in the Confirmation Order, **all final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code, for services rendered during the period from the Petition Date through the Effective Date, 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 [\_\_\_\_], 2019 (i.e., thirty (30) days after the Effective Date), unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be filed and served on**

<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.

<sup>2</sup> Capitalized terms used but not otherwise defined in this Notice have the meanings ascribed to them in the Plan.

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).

4. **Administrative Claim Bar Date.** As provided in Section 11.1 of the Plan and in the Confirmation Order, **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 [ \_\_\_\_\_ ], 2019 (i.e., forty-five (45) days after the Effective Date).**

5. **Deadline to File Rejection Claims.** As provided for in Article VI of the Plan and in the Confirmation Order, as of the Effective Date, **(i) all executory contracts and unexpired leases of the Debtors that have not been assumed, assumed and assigned, or rejected, prior to the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order, as of the Confirmation Date; (ii) any Creditor asserting a Rejection Claim shall file a proof of claim no later than [ \_\_\_\_\_ ], 2019 (i.e., thirty (30) days after the Effective Date); and (iii) any Rejection Claims that are not timely filed shall be forever disallowed and barred.**

6. **Copies of Confirmation Order.** The Confirmation Order may be examined free of charge at <http://www.kccllc.net/vestisretailgroup>. The Confirmation Order is also on file with the Bankruptcy Court and may be viewed by accessing the Bankruptcy Court's website at [www.ecf.deb.uscourts.gov](http://www.ecf.deb.uscourts.gov). To access documents on the Bankruptcy Court's website, you will need a PACER password and login, which can be obtained at [www.pacer.gov](http://www.pacer.gov).

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

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*Counsel to the Debtors and Debtors in Possession*