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

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**DISCLOSURE STATEMENT FOR CHAPTER 11 PLAN OF
LIQUIDATION OF ZOSANO PHARMA CORPORATION**

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Dated: August 25, 2022

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IMPORTANT INFORMATION ABOUT THIS DISCLOSURE STATEMENT²

THE DEBTOR IS PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT TO HOLDERS OF CLAIMS OR INTERESTS FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE DEBTOR'S CHAPTER 11 PLAN OF LIQUIDATION FOR ZOSANO PHARMA CORPORATION, WHICH PLAN IS BEING PROPOSED BY THE DEBTOR. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE RELIED UPON OR USED BY ANY PERSON OR ENTITY FOR ANY OTHER PURPOSE.

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THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A GUARANTEE BY THE BANKRUPTCY COURT OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN, AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE MERITS OF THE PLAN, OR THE BANKRUPTCY COURT'S APPROVAL OF THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, AND CERTAIN ANTICIPATED EVENTS IN THE CHAPTER 11 CASE. SUMMARIES OF THE PLAN AND THE OTHER STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN. THE SUMMARIES OF THE FINANCIAL INFORMATION AND THE DOCUMENTS ANNEXED TO THIS DISCLOSURE STATEMENT OR OTHERWISE INCORPORATED HEREIN BY REFERENCE ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THOSE DOCUMENTS. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE OF THIS DISCLOSURE STATEMENT, AND THERE IS NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER SUCH DATE. WITH RESPECT TO A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN OR

² Capitalized terms used but not defined in this Disclaimer shall have the meaning ascribed to them elsewhere in this Disclosure Statement.

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

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

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS OR INTERESTS (INCLUDING THOSE HOLDERS OF CLAIMS AND INTERESTS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN OR WHO VOTE TO REJECT THE PLAN, OR THOSE HOLDERS OF CLAIMS OR INTERESTS WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND IS NOT NECESSARILY PREPARED IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS. THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) OR ANY OTHER FEDERAL, STATE, LOCAL, OR FOREIGN REGULATORY AGENCY, NOR HAS THE SEC OR ANY OTHER AGENCY PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THIS DISCLOSURE STATEMENT CONTAINS “FORWARD LOOKING STATEMENTS” WITHIN THE MEANING OF UNITED STATES SECURITIES LAWS. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A STATEMENT OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD LOOKING TERMINOLOGY SUCH AS “MAY,” “WILL,” “SHOULD,” “EXPECT,” “ANTICIPATE,” “ESTIMATE,” “BELIEVE,” “DESIGNED,” “INTEND,” “PLAN,” “GOAL,” OR “CONTINUE,” OR THE NEGATIVE THEREOF, OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. YOU ARE CAUTIONED THAT ALL FORWARD LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE REFERRED TO IN SUCH FORWARD LOOKING STATEMENTS, INCLUDING THE DEBTOR’S ABILITY TO CONFIRM AND CONSUMMATE THE PLAN; THE POTENTIAL THAT THE DEBTOR MAY NEED TO PURSUE AN ALTERNATIVE TRANSACTION IF THE PLAN IS NOT CONFIRMED; THE DEBTOR’S INABILITY TO DISCHARGE OR SETTLE CLAIMS DURING THE CHAPTER 11 CASE; EXPOSURE TO LITIGATION; ADVERSE TAX CHANGES; LIMITED ACCESS TO CAPITAL RESOURCES; CHANGES IN DOMESTIC LAWS AND REGULATIONS; TRADE BALANCE; NATURAL DISASTERS; GEOPOLITICAL INSTABILITY; THE EFFECTS OF GOVERNMENTAL REGULATION ON THE DEBTOR’S BUSINESS; AND THOSE ADDITIONAL RISKS SET FORTH IN ARTICLE VIII OF THIS DISCLOSURE STATEMENT ENTITLED “RISK FACTORS”.

THE PLAN PROVIDES FOR INJUNCTIVE RELIEF, EXCULPATIONS, AND RELEASES AS TO THE DEBTOR AND CERTAIN OTHER PARTIES. THE PERMANENT INJUNCTIONS, EXCULPATIONS, AND RELEASES SET FORTH IN THE PLAN WILL APPLY TO HOLDERS OF ANY CLAIM, INTEREST, LIEN, ENCUMBRANCE OR DEBT, WHETHER SECURED OR UNSECURED, GRANTED PRIORITY STATUS, INCLUDING PRIORITY TAX (FEDERAL OR STATE), NON-PRIORITY UNSECURED STATUS OR ANY INTERESTS IN THE DEBTOR. CREDITORS AND HOLDERS OF AN INTEREST WILL BE BOUND BY THE INJUNCTIVE RELIEF, EXCULPATIONS, AND RELEASES AS PROVIDED FOR UNDER THE PLAN AND DESCRIBED HEREIN IN ARTICLES VII AND IX.

THE CONFIRMATION AND EFFECTIVENESS OF THE PLAN ARE SUBJECT TO CERTAIN CONDITIONS PRECEDENT DESCRIBED HEREIN AND SET FORTH IN ARTICLE VIII OF THE PLAN. THERE IS NO ASSURANCE THAT THE PLAN WILL BE CONFIRMED, OR IF CONFIRMED, THAT THE CONDITIONS REQUIRED TO BE SATISFIED FOR THE PLAN TO GO EFFECTIVE WILL BE SATISFIED (OR WAIVED). YOU ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, INCLUDING BUT NOT LIMITED TO THE PLAN AND ARTICLE VIII OF THIS DISCLOSURE STATEMENT ENTITLED “RISK FACTORS,” BEFORE SUBMITTING YOUR BALLOT TO VOTE TO ACCEPT OR REJECT THE PLAN.

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EXHIBITS¹

EXHIBIT A Plan

EXHIBIT B Liquidation Analysis

¹ Each Exhibit is incorporated herein by reference.

I. INTRODUCTION

Zosano Pharma Corporation (the “**Debtor**”) submits this disclosure statement (this “**Disclosure Statement**”), pursuant to section 1125 of the Bankruptcy Code, to Holders of Claims against and Interests in the Debtor in connection with the solicitation of votes for acceptance of the *Chapter 11 Plan of Liquidation of Zosano Pharma Corporation* (as may be amended, the “**Plan**”), dated August 25, 2022, which has been filed contemporaneously with this Disclosure Statement with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).¹ A copy of the Plan is attached hereto as **Exhibit A** and is incorporated herein by reference.

II. OVERVIEW OF PLAN

The Plan is a plan of liquidation. In general, a chapter 11 plan of liquidation (i) divides claims and equity interests into separate classes, (ii) specifies the property that each class is to receive under the plan, if any, and (iii) contains other provisions necessary to implement the plan. Generally, the plan establishes a mechanism by which assets of the estate will be distributed to holders of claims and interests, in the order set forth in the plan. To that end, the Plan contemplates the transfer of the Debtor’s remaining assets into a Liquidating Trust followed by the eventual dissolution of the Debtor’s corporate existence. The Liquidating Trust is to be governed by a Liquidating Trust Agreement with its terms carried out by a Liquidating Trustee.

The Plan provides for a waterfall payment structure in compliance with section 1129 of the Bankruptcy Code, whereby (i) Holders of Allowed Administrative Claims, Priority Tax Claims and Other Priority Claims² are entitled to distribution ahead of Holders of Allowed General Unsecured Claims, (ii) Holders of Allowed General Unsecured Claims are entitled to distribution ahead of Holders of Allowed Subordinated Claims, and (iii) Holders of Allowed Subordinated Claims are entitled to distribution ahead of Holders of Allowed Interests. Holders of Allowed Secured Claims (if any) are entitled to their collateral or the proceeds of their collateral ahead of unsecured creditors. More specifically, pursuant to the terms of the Plan:

- Holders of Allowed Administrative Claims shall be paid in full in Cash.
- Holders of Allowed Priority Tax Claims shall be treated in accordance with section 1129(a)(9)(C) of the Bankruptcy Code.

¹ Capitalized terms used but not otherwise defined in this Disclosure Statement shall have the meaning ascribed to such terms in the Plan. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between this Disclosure Statement and the Plan, the Plan will govern.

² Pursuant to section 1129(a)(9)(B) of the Bankruptcy Code, only Claims entitled to priority pursuant to section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code need to receive Cash equal to the Allowed amount of such Claims. The Debtor are not aware of any Other Priority Claims entitled to priority pursuant to section 507(a)(3), 507(a)(9), or 507(a)(10) of the Bankruptcy Code and as such did not separately classify such claims.

- Holders of Allowed Secured Claims and Allowed Other Priority Claims shall be paid in full in cash or receive such other treatment that renders such Claims Unimpaired.
- Holders of Allowed Class 3 General Unsecured Claims shall receive a *pro rata* share (calculated based on the proportion that such Holder's Allowed General Unsecured Claim bears to the aggregate amount of Allowed General Unsecured Claims) of the Liquidating Trust Primary Recovery Units.
- Holders of Allowed Class 4 Subordinated Claims shall receive a *pro rata* share (calculated based on the proportion that such Holder's Allowed Subordinated Claim bears to the aggregate amount of Allowed Subordinated Claims) of the Liquidating Trust Secondary Recovery Units.
- Holders of Allowed Interests shall be cancelled and receive no distributions.

The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The Debtor is seeking to confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any Class that is deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code and reserves the right to request Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any voting Class that votes to reject the Plan.

YOU ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

III. EXECUTIVE SUMMARY

A. Chapter 11 Overview and this Disclosure Statement

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Chapter 11 promotes equality of treatment for creditors and similarly situated equity interest holders, subject to the priority of distributions prescribed by the Bankruptcy Code.

The commencement of a chapter 11 case creates an estate that comprises all the legal and equitable interests of the debtor as of the date the chapter 11 case is commenced. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

Consummating a chapter 11 plan is the principal objective of a chapter 11 case. A bankruptcy court's confirmation of a plan binds the debtor, any person acquiring property under the plan, any creditor or equity interest holder of the debtor, and any other entity as may be ordered by the bankruptcy court. Subject to certain limited exceptions, the order issued by a bankruptcy court confirming a plan provides for the treatment of the debtor's liabilities in accordance with the terms of the confirmed plan.

The Debtor is seeking to obtain Bankruptcy Court approval of the Plan. Before soliciting acceptances of the Plan, section 1125 of the Bankruptcy Code requires the Debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of the Plan and to share such disclosure statement with all Holders of Claims or Interests whose votes on the Plan are being solicited. This Disclosure Statement is being submitted in accordance with these requirements.

B. Voting on the Plan

This Disclosure Statement is being distributed to Holders of Claims entitled to vote to accept or reject the Plan. The procedures and instructions for voting and related deadlines are set forth in the exhibits annexed to the *Order (I) Approving Adequacy of Disclosure Statement, (II) Approving Solicitation and Notice Procedures for Confirmation of the Chapter 11 Plan of Liquidation, (III) Approving Ballot and Notice Forms in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief* [Docket No. [●]] (the “**Disclosure Statement Order**”).

The Disclosure Statement Order is incorporated herein by reference and should be read in conjunction with this Disclosure Statement in formulating a decision to vote to accept or reject the Plan.

THE DISCUSSION OF THE SOLICITATION AND VOTING PROCESS SET FORTH IN THIS DISCLOSURE STATEMENT IS ONLY A SUMMARY. PLEASE REFER TO THE DISCLOSURE STATEMENT ORDER FOR A MORE COMPREHENSIVE DESCRIPTION OF THE SOLICITATION AND VOTING PROCESS.

1. Holders of Claims and Interests Entitled to Vote on the Plan

Your ability to vote on, and your distribution under, the Plan, if any, depends on what type of Claim or Interests you hold. Each category of Holders of Claims and Interests, as set forth in Article III of the Plan pursuant to section 1122(a) of the Bankruptcy Code, is referred to as a “**Class.**” Under the provisions of the Bankruptcy Code, not all holders of claims against or interests in a debtor are entitled to vote on a chapter 11 plan. The table in Section C of this Article III provides a summary of the status and voting rights of each Class (and, therefore, of each Holder within such Class absent an objection to the Holder’s Claim or Interest) under the Plan.

As shown in the table, the Debtor is soliciting votes to accept or reject the Plan only from Holders of Claims in Classes 3 and 4. Holders of Class of Claims in Classes 1 and 2 are deemed to accept the Plan and, accordingly, will not receive a ballot to vote on the Plan. Holders of Class 5 Interests are conclusively presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

2. “Opt-Out” Provision

Holders of Claims may opt out of the releases set forth in Article IX.C of the Plan. In the event that you are a Holder of Claim and receive a ballot, an Unimpaired Non-Voting Status Notice or a Disputed Claim Notice, each of which will include an “opt-out” form, you may wish to review

the Plan and seek legal advice concerning the effects of the releases on your Claims. Any Holder of a Claim that does not return a properly completed opt-out form by the Voting Deadline indicating that the Person or Entity opts out of the releases under Article IX.C of the Plan will be a Releasing Party under the Plan.

3. Voting Record Date

The Voting Record Date is September 1, 2022. The Voting Record Date is the date on which it will be determined which Holders of Class 3 Claims and Holders of Class 4 Claims are entitled to vote to accept or reject the Plan and whether Claims have been properly assigned or transferred under Bankruptcy Rule 3001(e) such that an assignee or transferee, as applicable, can vote to accept or reject the Plan as the Holder of a Class 3 Claim or Class 4 Claim.

4. Ballots Not Counted

No ballot will be counted toward Confirmation unless the Debtor agrees otherwise if, among other things: (1) it was not timely submitted on or prior to the Voting Deadline (as the same may be extended by the Debtor in its sole discretion); (2) it is illegible or contains insufficient information to permit the identification of the Holder of the Claim; (3) it was transmitted by means other than as specifically set forth in the Disclosure Statement Order and/or ballot; (4) it was cast by a Person or Entity that is not entitled to vote on the Plan; (5) it was cast for a Claim listed in the Debtor's Schedules as contingent, unliquidated, or disputed for which the applicable Bar Date has passed and no Proof of Claim was timely Filed; (6) it was cast for a Claim that is subject to an objection that was Filed with the Court on or prior to seven (7) days before the Voting Deadline (unless a Resolution Event (as such term is defined in the Disclosure Statement Order) occurs); (7) it was sent to the Debtor, the Debtor's agents/representatives (other than the Notice and Claims Agent (as defined herein)) or the Debtor's financial or legal advisors instead of the Notice and Claims Agent (unless otherwise agreed to by the Debtor in its sole discretion); (8) it is unsigned; or (9) it is not clearly marked to either accept or reject the Plan or it is marked both to accept and reject the Plan. Please refer to the Disclosure Statement Order for additional requirements with respect to voting to accept or reject the Plan.

5. Claims Voting/Opt-Out Deadline

**THE CLAIMS VOTING/OPT-OUT DEADLINE IS [●], 2022 AT 4:00 P.M.
(PREVAILING EASTERN TIME).**

ANY BALLOT RECEIVED AFTER THE VOTING DEADLINE OR THAT IS OTHERWISE NOT IN COMPLIANCE WITH THE DISCLOSURE STATEMENT ORDER WILL NOT BE COUNTED.

6. Voting Instructions

Detailed instructions regarding how to vote on the Plan are contained on the ballots distributed to Holders of Claims that are entitled to vote on the Plan. For your vote to be counted, your ballot must be properly completed, executed, and delivered as directed, so that your ballot

including your vote is **actually received** by the Debtor's notice and claims agent, Kurtzman Carson Consultants, LLC (the "**Notice and Claims Agent**") by the Voting Deadline.

To vote, complete, sign, and date your ballot and return it **promptly** to one of the below addresses:

By First Class Mail, Overnight Delivery or Personal Delivery	Electronically:
Zosano Pharma Claims Processing Center c/o Kurtzman Carson Consultants, LLC 222 N. Pacific Coast Highway, Suite 300 El Segundo, CA 90245 T: (310) 751-2648	https://eballot.kccllc.net/ZosanoPharma

SELECT ONLY ONE OPTION TO VOTE.

EITHER RETURN A PROPERLY EXECUTED PAPER BALLOT WITH YOUR VOTE TO THE ADDRESS SET FORTH ABOVE OR COMPLETE AND SUBMIT THE BALLOT ELECTRONICALLY VIA THE NOTICE AND CLAIMS AGENT'S E-BALLOTING PORTAL AT <https://eballot.kccllc.net/ZosanoPharma>.

IF YOU HAVE ANY QUESTIONS ABOUT THE SOLICITATION OR VOTING PROCESS, PLEASE CONTACT THE NOTICE AND CLAIMS AGENT AT (888) 830-4665 (TOLL FREE FROM THE U.S. OR CANADA) OR AT (310) 751-2648 (FROM OUTSIDE THE U.S. OR CANADA) OR OTHERWISE BY SUBMITTING AN E-MAIL INQUIRY TO ZosanoPharmainfo@kccllc.com.

C. Summary of Treatment of Claims and Interests and Description of Recoveries under the Plan

The following table provides a summary of the estimated recovery to Holders of Claims or Interests under the Plan.³ Any estimates of Claims or Interests in this Disclosure Statement may vary from the final amounts allowed. Your ability to receive distributions under the Plan depends upon the Debtor's distributable assets and their ability to obtain Confirmation and meet the conditions necessary to consummate the Plan.

After the Effective Date, the Liquidating Trustee shall have the sole authority to: (1) File, withdraw, or litigate to judgment, objections to Claims or Interests (with any objections to be Filed on or before the Claims Objection Bar Date (as such date may be extended upon presentment of an order to the Bankruptcy Court by the Liquidating Trustee)); (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. Except as

³ The recoveries set forth below may change based upon, among other things, changes in the dollar amount of Claims that are Allowed.

otherwise provided in the Plan, all distributions under the Plan shall be made by the Disbursing Agent on or after the Effective Date.

THE PROJECTED RECOVERIES SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND THEREFORE ARE SUBJECT TO CHANGE. FOR A COMPLETE DESCRIPTION OF THE DEBTOR'S CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS, REFERENCE SHOULD BE MADE TO THE ENTIRE PLAN.

Class	Claims / Interests	Plan Treatment	Voting Rights	Projected Amount of Allowed Claims	Projected Plan Recovery
1	Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)	\$0 ⁴	100%
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)	\$25,000	100%
3	General Unsecured Claims	Impaired	Entitled to Vote	\$12,300,000	28%
4	Subordinated Claims	Impaired	Entitled to Vote	\$0	0%
5	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)	N/A	0%

D. Confirmation Hearing

The Bankruptcy Court has scheduled the Confirmation Hearing for [●], 2022 at [●]:[●] [●].m. (prevailing Eastern Time). The Confirmation Hearing may be adjourned from time to time without further notice.

Objections to Confirmation must be Filed and served on the Debtor, and certain other parties, by no later than [●], 2022 at 4:00 p.m. (prevailing Eastern Time) in accordance with the notice of the Confirmation Hearing that accompanies this Disclosure Statement and the Disclosure Statement Order.

The Confirmation of the Plan by the Bankruptcy Court will bind the Debtor, any Person or Entity acquiring property under the Plan, any Holder of a Claim against or Interest in any of the Debtor, and any other Person or Entity as may be ordered by the Bankruptcy Court in accordance

⁴ The Debtor does not believe that there are any Secured Claims against any Debtor. To the extent that a Claim Holder objects to Confirmation and asserts a Secured Claim, and the Debtor agrees or the Bankruptcy Court adjudicates such Secured Claim remains outstanding at the Confirmation Hearing, such Secured Claim shall be treated as set forth in Article III.B of the Plan.

with the applicable provisions of the Bankruptcy Code.

Copies of the Plan, this Disclosure Statement, and any other publicly Filed documents in the Chapter 11 Case are available upon written request to the Notice and Claims Agent at the addresses above or by downloading (free of charge) the exhibits and documents from the website of the Notice and Claims Agent at <http://www.kccellc.net/ZosanoPharma>.

IV. THE DEBTOR'S CORPORATE HISTORY, STRUCTURE, AND BUSINESS OVERVIEW

A. The Debtor's Corporate Structure and History

The Debtor is a corporation organized under the laws of the State of Delaware with principal executive offices located at 34790 Ardentech Court, Fremont, California 94555. The Debtor has no subsidiaries, and its common stock is publicly traded over-the-counter under the symbol "ZSANQ." The Debtor's common stock was previously listed on the Nasdaq Capital Market under the symbol "ZSAN."

The Debtor's business was spun out of ALZA Corporation ("ALZA"), a subsidiary of Johnson & Johnson, in October 2006. The Debtor was originally incorporated under the name The Macroflux Corporation and changed its name to Zosano Pharma, Inc. in 2007 following the spin-off from Johnson & Johnson. The Debtor was incorporated as ZP Holdings, Inc. in January 2012 and in April 2012, in a transaction to recapitalize the business, a wholly-owned subsidiary of ZP Holdings was merged with and into Zosano Pharma, Inc., whereby Zosano Pharma, Inc. was the surviving entity and became a wholly-owned subsidiary of ZP Holdings. In June 2014, Zosano Pharma, Inc. changed its name to ZP Opco, Inc and ZP Holdings, Inc changed its name to Zosano Pharma Corporation. On November 1, 2017, ZP Opco, Inc. merged with and into the Debtor, with the Debtor as the surviving corporation of the merger.

B. The Debtor's Business.

The Debtor is a clinical-stage biopharmaceutical company focused on providing rapid systemic administration of therapeutics and other bioactive molecules to patients using its System. The System is designed to facilitate rapid drug absorption into the bloodstream and to provide an improved PK profile compared to original dosage forms. The System consists of a 3cm² to 6cm² array of titanium microneedles approximately 200-350 microns in length, coated with a hydrophilic formulation of drug and mounted on an adhesive patch. The patch is designed to be applied with a reusable hand-held applicator that presses the microneedles into the skin to a uniform depth in each application, close to the capillary bed, allowing for dissolution and absorption of the drug, but not deep enough to contact the nerve endings in the skin. The microneedles are designed to penetrate the stratum corneum in an effort to allow the drug to be absorbed into the microcapillary system of the skin.

M207. The Debtor has devoted the majority of its recent research, development, clinical efforts and financial resources toward the development of its product candidate, M207, its proprietary formulation of zolmitriptan delivered utilizing the System. Zolmitriptan is one of a class of serotonin receptor agonists known as triptans and is used as an acute treatment for

migraine. M207 is the only triptan-based migraine treatment currently formulated to be delivered transdermally. If FDA approval were ultimately received for M207, the Debtor had intended to manufacture a limited supply of commercial product at its manufacturing facility in Fremont, California and to have certain contract manufacturing organizations produce various related components. At present, however, the Debtor has suspended development of M207.

Feasibility Studies. The Debtor's primary source of revenue is generated through feasibility studies in which the Debtor provides research and development services to customers to determine the feasibility of using its System in connection with the customers' pharmaceutical agents. For 2020 and 2021, the Debtor generated approximately \$224,000 and \$785,000, respectively, in revenue for feasibility studies. As of the Petition Date, the Debtor has only one active feasibility study with a pharmaceutical partner.

Intellectual Property. The Debtor's intellectual property strategy relies on a combination of patent, trade secret and trademark laws in the United States and other jurisdictions and on license and confidentiality agreements to protect its proprietary technology and brand. As of January 31, 2022, the Debtor held exclusive licenses to or owned eighteen U.S. patent families (including 26 granted patents) and had six pending U.S. patent applications, covering key features of the System, such as formulation, methods of treatment, coating, array design, patch anchoring, patch application, delivery, manufacturing and packaging.

The Debtor licenses most of its patents and patent applications from ALZA on an exclusive basis for all countries. Under the terms of the license agreement with ALZA, the Debtor is responsible for, among other things, all development and development costs related to the System and for commercializing the System, including preparing and paying for all related regulatory filings.

C. The Debtor's Management Team

The Debtor's executive officers as of the Petition Date were Steven Lo, the Debtor's President and Chief Executive Officer; and Christine Matthews, the Debtor's Chief Financial Officer.

On the Effective Date, the directors and officers of each of the Debtor shall be deemed to have resigned. From and after the Effective Date, the Liquidating Trustee shall be authorized to act on behalf of the Debtor in the same manner as the Debtor's directors and officers were authorized prior to the Effective Date, in accordance with the Plan.

D. The Debtor's Prepetition Corporate and Capital Structure

1. Organizational Structure and Equity

As of the Petition Date, there were seven holders of record of the Debtor's common stock and close to 5 million shares outstanding. Because the Debtor's common stock is held almost entirely through brokerage firms, the number of beneficial stockholders is far greater than the number of holders of record.

2. Liabilities

As of the Petition Date, the Debtor had no secured debt and general unsecured claims against the Debtor are estimated to be in excess of \$12.3 million, consisting primarily of accounts payable to various trade creditors, contract manufacturing organizations, utility providers and a landlord.

V. EVENTS LEADING TO THE CHAPTER 11 FILING

Developing and commercializing biopharmaceutical products, including launching new products into the marketplace and conducting preclinical studies and clinical trials, is a capital intensive and uncertain process that takes years to complete. The Debtor experienced net losses of approximately \$30 million and \$33 million in 2021 and 2020, respectively, and lacks the liquidity necessary to continue to fund operations and advance the M207 program. As detailed below, the Debtor attributes the filing of this chapter 11 case due to, among other events, the FDA refusing to approve M207 and the Debtor's limited ability to raise additional funding.

The FDA Denies Approval of M207. The Debtor's liquidity constraints and lack of revenue stem primarily from the FDA's refusal to approve M207. The FDA review process began in December 2019 when the Debtor submitted a new drug application (the "**Application**") to the FDA for approval of M207. On October 20, 2020, the FDA denied the Application and advised the Debtor to conduct a repeat clinical study of M207, identifying certain deficiencies with the clinical studies provided by the Debtor for approval. The FDA also stated that because of the COVID-19 pandemic, and due to agency-wide restrictions on travel, the required inspections of the Debtor's commercial manufacturing facilities (the "**Pre-Approval Inspections**") were not able to be conducted before the FDA's proposed date for completing review of the Application, but that such inspections would be required and would have to be conducted before any approval of the Application.

After conducting an additional clinical study of M207, the Debtor resubmitted the Application on January 18, 2022 (the "**Resubmitted Application**"). At that time, the Debtor believed that the Resubmitted Application would be adequate for the FDA's review. On February 17, 2022, the FDA denied the Debtor's Resubmitted Application on the basis that the new clinical data failed to address certain alleged deficiencies previously identified by the FDA. The FDA noted further that it would not conduct a substantive review of the Resubmitted Application until those alleged deficiencies were resolved. Addressing the FDA's concerns would require further clinical trials, at great expense, and could take at least 8 months to complete.

The FDA granted the Debtor a twelve-month extension to April 20, 2023 to resubmit another application. In order to preserve its capital and limited cash resources, however, the Debtor has suspended its M207 program.

Limited Ability to Raise Additional Funding. In February 2022, with mounting expenses and in need of additional capital to continue operations, but before the FDA denied the Debtor's Resubmitted Application, the Debtor made a public offering of approximately 50,000,000 shares of its common stock (the "**February 2022 Offering**"). The February 2022 Offering generated net cash of only \$14.1 million, falling short of its desired objectives and the funding needed to continue

the M207 program. In addition, the funding was not sufficient to address the concerns raised thereafter by the FDA in the denial of the Debtor's Resubmitted Application. In connection with regulatory challenges created by the FDA and limitations under the Debtor's governance documents, the Debtor's access to the capital markets following the February 2022 Offering was materially diminished.

Prepetition Sale Process. Following the February 2022 Offering, and with limited ability to raise additional capital, the Debtor and SCP began to consider strategic alternatives, including a possible sale of the Debtor's assets. In April 2022, the Debtor retained Greenberg Traurig, LLP to help develop and execute on one or more strategic alternatives.

Using its extensive network in the biopharmaceutical space, along with the Debtor's contacts, in March 2022, SCP distributed targeted teaser materials to over 150 potential transaction parties likely to have an interest in pursuing a strategic transaction with the Debtor. These parties included prospective strategic and financial transaction partners. Various parties entered into non-disclosure agreements with the Debtor. Several potential transaction parties conducted preliminary due diligence with representatives of the Debtor and SCP, and multiple parties submitted expressions of interest for some or all of the Debtor's assets.

Despite the considerable efforts of SCP and the Debtor to market the Debtor for sale as a going concern, the expressions of interest received from prospective purchasers did not contemplate a going concern sale. Instead, the Debtor received proposals to acquire only discrete assets or on terms that would net—after accounting for associated fees and costs—no recovery to the Debtor's estate.

Negotiations with interested transaction parties seeking to acquire certain assets of the Debtor—but not for a going concern sale—remain ongoing. In addition, as a result of the market's response to the sale process and to ensure that value is maximized through the sale of the Debtor's assets, the Debtor retained the Sales Agent to facilitate an orderly liquidation of those assets not sold through the sale process. Even so, the Debtor's retained the flexibility to pursue a going concern or all asset sale, should one materialize through the sale process. The Debtor's liquidation efforts, through both the regular sale process and the liquidation sale process conducted by the Sales Agent, are designed to maximize recoveries for the Debtor's stakeholders.

An auction was conducted on July 20, 2022. Emergex USA Corporation was the successful bidder at the auction with LTS Lohmann as the backup bidder.

On August 8, 2022, the Court approved the sale of substantially all of the Debtor's assets to Emergex USA Corporation.

The Debtor's Goals in Chapter 11. The Debtor filed this Chapter 11 Case to avail itself of the protections and flexibility afforded by the bankruptcy process, preserve available assets, wind down its business operations in an orderly manner and liquidate its assets for the benefit of creditors and other stakeholders.

Through the Plan, the Debtor seeks to facilitate an orderly wind down and liquidation of the Debtor for the benefit of all stakeholders. To that end, the Debtor has continued limited operations with a reduced staff and, after sufficiently advancing its orderly wind down objectives,

will cease operations and, on the Effective Date, transfer the remaining assets to the Liquidating Trust to be administered by the Liquidating Trustee for the benefit of all stakeholders.

VI. MATERIAL DEVELOPMENTS AND ANTICIPATED EVENTS OF THE CHAPTER 11 CASE

The Debtor is seeking to confirm the Plan and for the Plan to go effective in the fourth quarter of 2022. No assurances can be made, however, that the Bankruptcy Court will enter various orders on the timetable contemplated by the Debtor.

A. First Day Relief

On June 1, 2022 (the “**Petition Date**”), the Debtor Filed its voluntary petition under chapter 11 of the Bankruptcy Code. The next day, the Debtor Filed several motions (the “**First Day Motions**”) designed to facilitate the administration of the Chapter 11 Case and minimize disruption to the Debtor’s operations, by, among other things, easing the strain on the Debtor’s relationships with employees, vendors, and customers following the commencement of the Chapter 11 Case.

A list of the First Day Motions and support thereof is set forth in the *Declaration of Steven Lo in Support of the Debtor’s Chapter 11 Petition and Requests for First Day Relief* [Docket No. 15] (the “**First Day Declaration**”), which is incorporated herein by reference. The relief granted as part of the First Day Motions included:

- Retention of Kurtzman Carson Consultants LLC as the Notice and Claims Agent [Docket No. 23]
- Authorization to pay certain prepetition employee wages and reimbursable expenses and to honor and continue certain benefits [Docket No. 30];
- Authorization to maintain and continue paying for insurance [Docket No. 32];
- Authorization to pay certain taxes and regulatory fees [Docket No. 24];
- Authorization of certain procedures prohibiting the refusal of service by utility providers and for the provision of adequate assurance to such providers [Docket No. 33]; and
- Authorization to continue using existing bank accounts, the Debtor’s cash management system and business forms [Docket No. 31].

On June 6 and 7, 2022, the Bankruptcy Court entered orders granting certain of the First Day Motions on an interim basis. The Bankruptcy Court subsequently entered orders on June 30, 2022 granting the First Day Motions on a final basis.

The First Day Motions, the First Day Declaration, and all other Bankruptcy Court Filings and orders for relief granted in the Chapter 11 Case, can be viewed free of charge at: <https://www.kccllc.net/zosanopharma>.

B. Professional Retentions for Debtor and Other “Second Day” Relief

The Debtor also Filed several other motions after the Petition Date to further facilitate the smooth and efficient administration of the Chapter 11 Case and reduce the administrative burdens associated therewith, including:

Retention Applications. The Debtor Filed a number of applications seeking to retain certain professionals postpetition pursuant to sections 327 and 328 of the Bankruptcy Code, including Greenberg Traurig, LLP, as legal counsel [Docket No 42]; SierraConstellation Partners, LLC (“SCP”) as financial advisor [Docket No. 40], Kurtzman Carson Consultants LLC, as administrative advisor [Docket No. 39], and Onyx Asset Advisors, LLC (“Onyx”) and Rabin Worldwide, Inc. (“Rabin”) as sale agent (collectively, the “Sale Agent”) [Docket No. 41] (collectively, the “Retention Applications”).

The Bankruptcy Court approved each of the Retention Applications [Docket Nos. 118, 120, and 122].

The fees and expenses of the professionals retained by the Debtor is subject to approval by the Bankruptcy Court in accordance with the *Order Pursuant to 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 100].

Ordinary Course Professionals Motion. On June 8, 2022, the Debtor Filed the *Debtor’s Motion for Entry of an Order (I) Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business and (II) Granting Related Relief* [Docket No. 37] (the “OCP Motion”). The OCP Motion sought to establish procedures for the retention and compensation of certain professionals utilized by the Debtor in the ordinary course operation of its business. On June 30, 2022, the Bankruptcy Court entered an order granting the OCP Motion [Docket No. 101].

C. Schedules and Statements

The Debtor Filed their Schedules and Statements with the Bankruptcy Court on June 29, 2022 [Docket Nos. 81 & 82]. If you would like to view the Schedules and Statements, you may do so free of charge by visiting the website maintained by the Notice and Claims Agent: - <http://www.kccellc.net/ZosanoPharma>.

D. Claim Bar Dates

On July 22, 2022, the Bankruptcy Court entered an order fixing deadlines for filing proofs of claim [Docket No. 142] and set the following Bar Dates:

- *General Bar Date:* August 22, 2022. The General Bar Date is the last date for Persons or Entities, other than governmental units, to File Proofs of Claim against the Debtor on account of claims (as defined in section 101(5) of the Bankruptcy Code) arising, or deemed to have arisen, prior to the Petition Date, including, for the avoidance of doubt, claims arising under section 503(b)(9) of the Bankruptcy Code.

- *Government Bar Date*: November 28, 2022. The Governmental Bar Date is the last date for governmental units, as defined in section 101(27) of the Bankruptcy Code, to File Proofs of Claim against the Debtor on account of claims arising, or deemed to have arisen, prior to the Petition Date.

E. Section 341 Meeting of Creditors

On July 6, 2022, the U.S. Trustee conducted a telephonic meeting of creditors (the “341 Meeting”) at which the U.S. Trustee and creditors had the opportunity to question the Debtor under oath concerning the Debtor’s acts, conduct, property, and the administration of the Chapter 11 Case.

F. No Formation of a Creditors’ Committee

On June 16, 2022, the Office of the United States Trustee (the “U.S. Trustee”) filed a statement indicating an insufficient response to the U.S. Trustee’s communication regarding interest to serve on an official committee of unsecured creditors and, therefore, no such committee was appointed pursuant to section 1102(a)(1) of the Bankruptcy Code [Docket No. 57].

G. Bidding Procedures/Asset Sale Motion

The Debtor commenced the Chapter 11 Case in order to run a process to sell all or certain of its assets pursuant to section 363 of the Bankruptcy Code in order to maximize value of the Estate for the benefit of the Debtor’s stakeholders. Accordingly, on June 9, 2022, the Debtor Filed the *Motion of the Debtor for Entry of Orders (I) (A) Approving Bid Procedures for the Sale of Assets of the Debtor, (B) Establishing Procedures for the Debtor to Enter Into a Stalking Horse Agreement With Bid Protections, (C) Approving Alternate Liquidation Sales Conducted by a Sale Agent, (D) Establishing Assumption and Assignment Procedures, (E) Establishing Notice Procedures, and (F) Granting Related Relief; and (II) (A) Authorizing the Sale of Assets of the Debtor Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [Docket No. 44] (the “**Bidding Procedures/Sale Motion**”), seeking authority to sell all or certain of the Debtor’s assets outside the ordinary course of business.

On July 1, 2022, the Bankruptcy Court entered an order (the “**Bidding Procedures Order**”) [Docket No. 111] approving part of the Bidding Procedures/Sale Motion, establishing the procedures and deadlines for the Debtor to run a comprehensive sale process for all or certain of its assets. As contemplated under the Bidding Procedures Order, third parties interested in acquiring all or certain of the Debtor’s assets were to submit bids by July 18, 2022 (the “**Bid Deadline**”) and if multiple qualified bids were received by such date, the Debtor would conduct an auction for its assets on July 20, 2022.

VII. THE PLAN

THIS ARTICLE VII OF THE DISCLOSURE STATEMENT IS INTENDED ONLY TO PROVIDE A SUMMARY OF THE KEY TERMS, STRUCTURE, CLASSIFICATION, TREATMENT, AND IMPLEMENTATION OF THE PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE ENTIRE PLAN AND EXHIBITS TO THE PLAN.

ALTHOUGH THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN DOCUMENTS REFERRED TO THEREIN, THIS DISCLOSURE STATEMENT DOES NOT PURPORT TO BE A PRECISE OR COMPLETE STATEMENT OF ALL RELATED TERMS AND PROVISIONS AND SHOULD NOT BE RELIED ON FOR A COMPREHENSIVE DISCUSSION OF THE PLAN. INSTEAD, REFERENCE IS MADE TO THE PLAN AND ALL SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS. THE PLAN ITSELF (INCLUDING ANY ATTACHMENTS) AND THE PLAN SUPPLEMENT WILL CONTROL THE TREATMENT OF HOLDERS OF CLAIMS AND INTERESTS UNDER THE PLAN. TO THE EXTENT THERE ARE ANY INCONSISTENCIES BETWEEN THIS ARTICLE VII AND THE PLAN (INCLUDING ANY ATTACHMENTS TO THE PLAN) AND THE PLAN SUPPLEMENT, THE PLAN AND PLAN SUPPLEMENT, AS APPLICABLE, SHALL GOVERN.

A. Administrative Claims and Priority Tax Claims

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

1. Administrative Expense Claims

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtor or the Liquidating Trustee (as applicable), each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim in accordance with the following: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date (or, if not then due, when such Allowed Administrative Claim becomes due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than forty-five (45) days after the date on which an order allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; or (3) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

Except for Professional Fee Claims, and notwithstanding any prior Filing or Proof of Claim requests for allowance and payment of Administrative Claims must be Filed and served by motion on the Debtor or the Liquidating Trustee (as applicable) and their counsel, no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of the occurrence of the Effective Date. For the avoidance of doubt, Holders of Administrative Claims based on liabilities incurred by the Debtor in the ordinary course of their businesses after the Petition Date must File and serve a motion for allowance and payment of Administrative Claims by the Administrative Claims Bar Date.

After notice and a hearing, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, a Final Order.

Except as otherwise provided in Articles II.B or II.D of the Plan, Holders of Administrative Claims that do not File and serve a motion by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee, or their assets and properties, and any Administrative Claims shall be deemed disallowed as of the Effective Date without the need for any notices, objection, or other action from the Debtor or Liquidating Trustee (as applicable) or any action or approval by the Bankruptcy Court. For the avoidance of doubt, a Proof of Claim asserting an Administrative Claim does not constitute a request for allowance and payment of Administrative Claims, and a motion must be Filed as provided in the Plan.

2. Professional Fee Claims

i. Final Fee Applications

All requests for payment of Professional Fee Claims by Retained Professionals (other than OCPs) for services rendered and reimbursement of expenses incurred prior to the Effective Date must be Filed no later than forty-five (45) days after the Effective Date. Objections to Professional Fee Claims must be Filed and served no later than twenty-one (21) days after the Filing of the same. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims of Retained Professionals (other than OCPs) after notice and a hearing in accordance with the procedures established by the Bankruptcy Court. Unless otherwise agreed to by the Debtor and the Retained Professional prior to the Effective Date, the Liquidating Trustee shall pay Professional Fee Claims that are Allowed by Final Order in Cash, and first to a Retained Professional from the Professional Fee Escrow Account to the extent any funds remain escrowed therefor in such account.

ii. Administrative Claims of OCPs

All requests for payment of Professional Fee Claims of OCPs shall be made pursuant to the OCP Order. The amount of Professional Fee Claims owing to the OCPs shall be paid in Cash to such OCPs by the Debtor or the Liquidating Trustee (as applicable) from the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed pursuant to the OCP Order.

iii. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Liquidating Trustee shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to the Chapter 11 Case that are incurred after the Effective Date. Upon the Effective Date, any requirement that Retained Professionals comply with sections 327 through 331 of the Bankruptcy Code or the OCP Order in seeking retention or compensation for services rendered after such date shall terminate, and the Debtor or Liquidating Trustee may employ and pay any Retained Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

iv. **Professional Fee Reserve Amount**

Unless otherwise agreed to by the Debtor and the Retained Professional prior to the Effective Date, to receive payment for unbilled fees and expenses incurred through the Effective Date, the Retained Professionals shall estimate their Accrued Professional Compensation Claims prior to and as of the Confirmation Date, along with an estimate of fees and expenses to be incurred through the Effective Date, and shall deliver such estimate to the Debtor no later than three (3) calendar days prior to the scheduled Confirmation Hearing; provided that such estimate shall not be considered an admission with respect to the fees and expenses of such Retained Professional. If a Retained Professional does not provide an estimate, the Debtor may estimate the unbilled fees and expenses of such Retained Professional. The total amount so estimated as of the Confirmation Date shall comprise the Professional Fee Reserve Amount.

v. **Professional Fee Escrow Account**

Unless otherwise agreed to by the Debtor and the Retained Professional prior to the Effective Date, the Debtor shall fund the Professional Fee Escrow Account for the Professional Fee Claims of the Retained Professionals. On or before the Effective Date, the Debtor or the Liquidating Trustee (as applicable) shall, if and to the extent necessary, fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Reserve Amount. For the avoidance of doubt, the Liquidating Trustee is charged with administering the Professional Fee Escrow Account after the Effective Date and is permitted to open a new bank account to transfer funds from the Debtor's Professional Fee Escrow Account, at which point such account shall be deemed a Professional Fee Escrow Account and the funds therein shall be used pursuant to the terms of the Plan.

The Professional Fee Escrow Account and amounts funded therein for a Retained Professional are and shall continue to be maintained in trust solely for each Retained Professional separately on a per-Retained Professional basis. Such funds shall not be considered property of the Debtor, its Estate, or the Liquidating Trust; provided, however, the Liquidating Trust shall have a reversionary interest in any Cash remaining in the Professional Fee Escrow Account after payment in full of all Allowed Professional Fee Claims without any further notice, action or order of the Bankruptcy Court. Unless otherwise agreed to by the Debtor and the Retained Professional prior to the Effective Date, the amount of Professional Fee Claims owing to the Retained Professionals shall be paid in Cash to such Retained Professionals by the Liquidating Trustee from the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by order of the Bankruptcy Court.

3. Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees with the Debtor or the Liquidating Trustee (as applicable) to a different treatment, and only to the extent that any such Allowed Priority Tax Claim has not been paid in full prior to the Effective Date, in full and final satisfaction, settlement and release of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. The Debtor and the Liquidating Trustee reserve the right to prepay any Allowed Priority Tax Claim at any time under this option. For the

avoidance of doubt, Priority Tax Claims are entitled to payment in full prior to distributions to holders of the Liquidating Trust Primary Recovery Units and Liquidating Trust Secondary Recovery Units.

4. United States Trustee Statutory Fees

All fees payable pursuant to 28 U.S.C. § 1930 and any applicable interest thereon that are due and payable as of the Effective Date shall be paid in full in Cash by the Debtor or the Liquidating Trustee on the Effective Date. All such fees and any applicable interest thereon that become due and payable after the Effective Date shall be paid by the Liquidating Trustee from the Liquidating Trust Assets when such fees become due and payable. All such fees and any applicable interest thereon shall continue to become due and payable until the entry of a final decree closing the Chapter 11 Case or conversion or dismissal of the Chapter 11 Case, whichever is earlier. For the avoidance of doubt, no Governmental Unit is required to File a request for an Administrative Claim for Statutory Fees.

B. Classification and Treatment of Claims and Interests

1. Classification of Claims and Interests

Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim is an Allowed Claim in that Class and has not been otherwise paid, released, or satisfied at any time.

The classification of Claims against and Interests in the Debtor pursuant to the Plan is as follows:

Class	Claim or Interest	Status	Voting Rights
1	Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3	General Unsecured Claims	Impaired	Entitled to Vote
4	Subordinated Claims	Impaired	Entitled to Vote
5	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

2. Treatment of Claims and Interests

i. Class 1 – Secured Claims

There are no known Secured Claims against the Debtor. To the extent, however, that a party objects to Confirmation and asserts a Secured Claim, and the Debtor agrees or the Court adjudicates such Secured Claim remains outstanding at the Confirmation Hearing, such Secured Claim shall be treated as follows:

Classification: Class 1 consists of all Secured Claims against the Debtor.

Treatment: Except to the extent that a Holder of an Allowed Secured Claim agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed Secured Claim, each Holder of an Allowed Secured Claim shall receive the following, at the option of the Debtor or Liquidating Trustee (as applicable): (i) payment in full in Cash on or as soon as is reasonably practicable after the later of (A) the Effective Date and (B) the date on which such Secured Claim is Allowed by a Final Order of the Bankruptcy Court; (ii) the collateral securing such Holder's Allowed Secured Claim; or (iii) such other treatment rendering such Allowed Secured Claim Unimpaired.

Voting: Class 1 is Unimpaired, and Holders of Secured Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Secured Claims are not entitled to vote to accept or reject the Plan.

ii. Class 2 – Other Priority Claims

Classification: Class 2 consists of all Other Priority Claims against the Debtor.

Treatment: Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed Other Priority Claim, each Holder of such Allowed Other Priority Claim shall receive the following at the option of the Debtor or Liquidating Trustee (as applicable): (i) payment in full in Cash on or as soon as is reasonably practicable after the later of (A) the Effective Date and (B) the date on which such Other Priority Claim is Allowed by a Final Order of the Bankruptcy Court; or (ii) such other treatment rendering such Allowed Other Priority Claim Unimpaired.

Voting: Class 2 is Unimpaired, and Holders of Other Priority Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Other Priority Claims are not entitled to vote to accept or reject the Plan.

iii. Class 3 – General Unsecured Claims

Classification: Class 3 consists of all General Unsecured Claims against the Debtor.

Treatment: Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive its *pro rata* share (calculated based on the proportion that such Holder's

Allowed General Unsecured Claim bears to the aggregate amount of Allowed General Unsecured Claims) of the Liquidating Trust Primary Recovery Units.

Voting: Class 3 is Impaired, and Holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

iv. **Class 4 – Subordinated Claims**

Classification: Class 4 consists of all Subordinated Claims against the Debtor.

Treatment: Except to the extent that a Holder of an Allowed Subordinated Claim agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed Subordinated Claim, each Holder of an Allowed Subordinated Claim shall receive its *pro rata* share (calculated based on the proportion that such Holder's Allowed Subordinated Claim bears to the aggregate amount of Allowed Subordinated Claims) of the Liquidating Trust Secondary Recovery Units.

Voting: Class 4 is Impaired, and Holders of Subordinated Claims are entitled to vote to accept or reject the Plan.

v. **Class 5 – Interests in the Debtor**

Classification: Class 5 consists of all Interests in the Debtor.

Treatment: On the Effective Date, all Interests in the Debtor shall be cancelled and released without any distribution and the Debtor shall be dissolved.

Voting: Class 5 is Impaired. the Holders of Class 5 Interests are conclusively deemed to reject the Plan and are not entitled to vote to accept or reject the Plan.

3. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtor's or the Liquidating Trustee's rights with respect to any Claims, including all legal and equitable defenses to or setoffs or recoupments against any Claims.

4. Voting Classes; Presumed Acceptance by Non-Voting Classes

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

5. Controversy Concerning Impairment

If a controversy arises as to whether any Claim or any Class of Claims is Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

6. Subordination of Claims

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

7. Elimination of Vacant Classes

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

8. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code

The Debtor requests Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any voting Class that votes to reject the Plan and any non-voting Class that is deemed to reject the Plan.

C. Means for Implementation of the Plan

1. Sources of Consideration for Plan Distributions

Subject to the provisions of the Plan concerning the Professional Fee Escrow Account, the Debtor and the Liquidating Trustee shall fund distributions under the Plan with Cash on hand on the Effective Date and all other Liquidating Trust Assets.

2. Vesting of Assets

On the Effective Date, pursuant to sections 1141(b) and 1141(c) of the Bankruptcy Code, the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Claims, Liens, encumbrances, charges, and other interests except as otherwise expressly provided in the Plan.

3. Preservation of Causes of Action

Except as otherwise provided in the Plan or in any contract, instrument, release, or agreement entered into in connection with the Plan or the Sale Order, in accordance with section 1123(b) of the Bankruptcy Code, all claims and Causes of Action that the Debtor or Estate may have against any Person or Entity are preserved and transferred to the Liquidating Trust on the Effective Date, including, without limitation, any and all Causes of Action the Debtor, Estate, or other appropriate party in interest may assert under the Bankruptcy Code and nonbankruptcy law.

4. Corporate Action

i. Transfer of Assets and Assumption of Liabilities

On the Effective Date, (i) the Debtor shall, in accordance with the Plan, cause the Liquidating Trust Assets to be transferred to the Liquidating Trust and (ii) the Liquidating Trust shall assume all obligations of the Debtor under the Plan.

ii. Dissolution of the Debtor; Removal of Directors and Officers; Termination of Employees

On the Effective Date, and upon the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtor shall be dissolved for all purposes unless the Liquidating Trustee determines that dissolution can have any adverse impact on the Liquidating Trust Assets; provided, however, that neither the Debtor nor any party released pursuant to Article IX.B of the Plan shall be responsible for any liabilities that may arise as a result of non-dissolution of the Debtor; provided further, however, that nothing in the Plan shall be construed as relieving the Debtor or Liquidating Trustee (as applicable) of their duties to pay Statutory Fees to the United States Trustee as required by the Bankruptcy Code and applicable law until such time as a Final Decree is entered in the Debtor's case or the case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code. The Liquidating Trustee shall submit with the appropriate governmental agencies a copy of the Confirmation Order, which Confirmation Order shall suffice for purposes of obtaining a Certificate of Dissolution from the Delaware Secretary of State.

Without limiting the foregoing, on the Effective Date and upon the Debtor causing the Liquidating Trust Assets to be transferred to the Liquidating Trust, the Debtor shall have no further duties or responsibilities in connection with implementation of this Plan, and the directors and officers of the Debtor shall be deemed to have resigned and the employees of each Debtor terminated. From and after the Effective Date, the Liquidating Trustee shall be authorized to act on behalf of the Debtor in the same manner as the Debtor's directors and officers were authorized prior to the Effective Date, provided that the Liquidating Trustee shall have no duties other than as expressly set forth in this Plan.

5. Cancellation of Existing Securities and Agreements

On the Effective Date, all agreements and other documents evidencing (i) any Claim or rights of any Holder of a Claim against the Debtor, including any notes evidencing such Claims or (ii) any Interest in the Debtor, including any options or warrants to purchase Interests, shall be cancelled. The Holders of, or parties to, such cancelled agreements and documents shall have no rights arising from or relating to such agreements and documents or the cancellation thereof, except as to the allowance and distribution on pre-Confirmation Claims in respect thereof as provided pursuant to this Plan.

6. Plan Transactions

On the Effective Date or as soon thereafter as is reasonably practicable, the Debtor and the Liquidating Trustee may take any and all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan,

including, but not limited to, (i) the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law, (ii) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with the Plan, (iii) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law, and (iv) any and all other actions that the Debtor or Liquidating Trustee determine are necessary or appropriate to effect the Plan.

7. Effectuating Documents and Further Transactions

Upon entry of the Confirmation Order, the Debtor and the Liquidating Trustee shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements or documents, and take such acts and actions as may be reasonable, necessary, or appropriate to effectuate, implement, consummate, and/or further evidence the terms and conditions of the Plan and any transactions described in or contemplated by the Plan. The Debtor or Liquidating Trustee (as applicable), all Holders of Claims receiving distributions pursuant to the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

8. Section 1146 Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment. Such exemption specifically applies, without limitation, to the transfer of the Liquidating Trust Assets to the Liquidating Trust and issuance of the Liquidating Trust Primary Recovery Units and Liquidating Trust Secondary Recovery Units.

9. Sale Order

Notwithstanding anything to the contrary in the Plan, nothing in the Plan shall affect, impair or supersede the Sale Order or Sale Documents, each of which remains in full force and effect and governs in the event of inconsistency with the Plan.

10. Authority to Act

Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under the Plan that would otherwise require approval of the stockholders, security holders, officers, directors, partners, members, or other owners of the Debtor shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as applicable) pursuant to the Delaware law, without any further vote, consent, approval, authorization, or other action by such

stockholders, security holders, officers, directors, partners, members, or other owners of the Debtor or notice to, order of, or hearing before, the Bankruptcy Court.

11. Liquidating Trust

i. Establishment of Liquidating Trust

On the Effective Date, the Liquidating Trust will be established pursuant to the Liquidating Trust Agreement, which will be Filed with the Bankruptcy Court as part of the Plan Supplement. Upon establishment of the Liquidating Trust, all Liquidating Trust Assets shall be deemed transferred to the Liquidating Trust without any further action of the Debtor or any managers, employees, officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtor.

ii. Transfer of Liquidating Trust Assets

Pursuant to section 1141 of the Bankruptcy Code, all property transferred to the Liquidating Trust shall be made free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as may be otherwise provided in the Plan. Upon completion of the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtor will have no further interest in, or with respect to, the Liquidating Trust Assets, or the Liquidating Trust. For all federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) will treat the transfer of assets to the Liquidating Trust in accordance with the terms of the Plan as a transfer to the Liquidating Trust Beneficiaries, followed by a transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust, and the Liquidating Trust Beneficiaries will be treated as the grantors and owners thereof.

iii. Purpose of Liquidating Trust

The Liquidating Trust shall be established for the purpose of liquidating the Liquidating Trust Assets, maximizing recoveries for the benefit of the Liquidating Trust Beneficiaries, and making distributions in accordance with the Plan to the Liquidating Trust Beneficiaries, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). The Liquidating Trust is intended to qualify as a “grantor trust” for federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes, with the Liquidating Trust Beneficiaries treated as grantors and owners of the Liquidating Trust.

iv. Liquidating Trustee

a. Liquidating Trustee as Representative of the Estate. From and after the Effective Date, the Liquidating Trustee shall act as the representative of the Estate for all purposes, including specifically, pursuant to section 1123(b)(3) of the Bankruptcy Code, for the purpose of retaining and enforcing any claims or interests of the Estate, including rights under the Sale Documents, and any Causes of Action in accordance with the best interests of and for the benefit of the Liquidating Trust Beneficiaries. Any successor Liquidating Trustee appointed pursuant to the Liquidating Trust Agreement shall be bound by and comply with the terms of the Plan, the Confirmation Order and the Liquidating Trust Agreement.

b. Responsibilities and Authority of the Liquidating Trustee. The responsibilities and authority of the Liquidating Trustee shall be as set forth in the Liquidating Trust Agreement, and shall include the following: (a) preserving and liquidating the Liquidating Trust Assets and making distributions to the Liquidating Trust Beneficiaries in accordance with the provisions of the Plan; (b) administering and paying taxes, including, among other things, (i) filing tax returns (to the extent not the obligation of Buyer), and (ii) representing the interest and account of the Liquidating Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (c) retaining and paying professionals in connection with the Liquidating Trustee's performance of its duties under the Plan and the Liquidating Trust Agreement; (d) distributing information statements as required for federal income tax and other applicable tax purposes; (e) Filing an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Case; (f) making distributions to Retained Professionals for Allowed Professional Fee Claims, including from the Professional Fee Escrow Account; (g) making distributions to Holders of Allowed Claims in accordance with the Plan and Liquidating Trust Agreement; and (h) such other responsibilities as may be vested in the Liquidating Trustee pursuant to the Plan or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan. In addition, after the Effective Date, the Liquidating Trustee shall file with the Bankruptcy Court and submit to the United States Trustee regular post-confirmation quarterly disbursement reports, on or before the twentieth (20th) day of each of January, April, July, and October, as appropriate, until the Chapter 11 Case is closed, converted, or dismissed, whichever happens earlier.

c. Powers of the Liquidating Trustee. The powers of the Liquidating Trustee shall be as set forth in the Liquidating Trust Agreement, and shall include the following: (a) the power to invest funds of the Liquidating Trust, and withdraw, make distributions, and pay taxes and other obligations owed by the Liquidating Trust from such funds in accordance with the Plan and the Liquidating Trust Agreement; (b) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Liquidating Trustee with respect to its responsibilities; (c) the power to pursue, prosecute, resolve, compromise and settle any Causes of Action against any other Person or Entity without notice to or approval from the Bankruptcy Court, including any and all derivative actions pending or otherwise existing against the Debtor as of the Effective Date; (d) the power to object to Claims, including, without limitation, the power to seek subordination or recharacterization of Claims by objection, motion, or adversary proceeding, as applicable; (e) the power to enforce the Sale Documents; and (f) such other powers as may be vested in or assumed by the Liquidating Trustee pursuant to the Plan or by Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Plan.

d. Compensation of Liquidating Trustee. The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement. The Liquidating Trustee shall fully comply with the terms, conditions and rights set forth in the Plan, the Confirmation Order, and the Liquidating Trust Agreement. The Liquidating Trustee shall not be required to File a fee application to receive compensation.

e. Retention and Payment of Professionals. The Liquidating Trustee shall have the right to retain the services of attorneys, accountants, and other professionals and

agents, to assist and advise the Liquidating Trustee in the performance of his, her, or its duties, and to compensate and reimburse expenses of such professionals in accordance with the Liquidating Trust Agreement.

f. Limitation on Liability and Indemnification of the Liquidating Trustee. The Liquidating Trustee and his, her, or its consultants or professionals shall be entitled to indemnification and advancement from the Liquidating Trust against any losses, liabilities, expenses (including reasonable attorneys' fees and disbursements), damages, taxes, suits, or claims that the Liquidating Trustee or its consultants or professionals may incur or sustain by reason of being or having been a Liquidating Trustee or consultants or professionals of the Liquidating Trustee for performing any functions incidental to such service; provided, however, the foregoing shall not relieve the Liquidating Trustee or his, her, or its consultants or professionals from liability for gross negligence or willful misconduct.

12. Plan Expenses

All Plan Expenses shall be paid from the Liquidating Trust, and the Liquidating Trustee may, in the ordinary course of business and without the necessity for any application to, or approval of, the Bankruptcy Court, subject to the provisions of the Liquidating Trust Agreement, pay any accrued but unpaid Plan Expenses from the Liquidating Trust.

13. Termination of Liquidating Trust

The Liquidating Trust shall be dissolved upon the earlier of (i) the distribution of all of its assets to the Liquidating Trust Beneficiaries and (ii) the fifth anniversary of the creation of the Liquidating Trust; provided that, if warranted by the facts and circumstances involved in resolving or monetizing any Liquidating Trust Assets, upon application to, and if approved by, the Bankruptcy Court upon a finding that such extension is necessary or appropriate for purposes of resolving or monetizing such Liquidating Trust Assets and distributing the proceeds to Liquidating Trust Beneficiaries, the term of the Liquidating Trust may be extended by the Liquidating Trustee for a specified term. Notwithstanding the foregoing, unless otherwise ordered by the Bankruptcy Court, the Liquidating Trust shall be automatically terminated in the event that a final decree is entered closing the Chapter 11 Case or if the Chapter 11 Case is converted or dismissed.

14. Exculpation Relating to the Liquidating Trust

No Holder of a Claim or Interest or any other party in interest will have, or otherwise pursue, any claim or Cause of Action against the Liquidating Trustee, the Liquidating Trust, the consultants or professionals thereof (for each of the foregoing, solely in the performance of their duties) for making payments and distributions in accordance with the Plan and the Liquidating Trust Agreement or for fulfilling any functions incidental to implementing the provisions of the Plan or the Liquidating Trust, except for any acts or omissions to act that are the result of gross negligence or willful misconduct, as set forth more fully in the Liquidating Trust Agreement.

D. Treatment of Executory Contracts and Unexpired Leases; Employee Benefits; and Insurance Policies

1. General Treatment

On the Effective Date, except as otherwise provided in the Plan (which exclusion includes the Insurance Policies), all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be **deemed rejected**, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at any time prior to the effective date of assumption.

2. Rejection Damages Claims

If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order results in a Claim, **then, unless otherwise ordered by the Court, such Claim shall be forever barred and shall not be enforceable against the Debtor, the Estate, the Liquidating Trustee, Liquidating Trust, or any of their respective assets and properties** unless a Proof of Claim is Filed with the Notice and Claims Agent and served upon counsel to the Liquidating Trustee within thirty (30) days of the Effective Date. The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan; any other Claims held by a party to a rejected Executory Contract or Unexpired Lease shall have been evidenced by a Proof of Claim Filed by the applicable Bar Date or shall be barred and unenforceable. Claims arising from the rejection of Executory Contracts or Unexpired Leases under the Plan and Confirmation Order shall be classified as General Unsecured Claims and shall, if Allowed, be treated in accordance with Article III.B.3 of the Plan.

Any Claims arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Confirmation Order and Plan that are not timely Filed within thirty (30) days of the Effective Date will be automatically disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtor, the Estate, the Liquidating Trustee, Liquidating Trust, or any of their respective assets and properties, without the need for any objection by the Liquidating Trustee or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully released and waived, notwithstanding anything in the Schedules or a Proof of Claim to the contrary.

3. Reservation of Rights

The inclusion of any contract or lease in the Schedules or in any Plan Supplement shall not constitute an admission by the Debtor that such contract or lease is in fact an Executory Contract

or Unexpired Lease or that any Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Liquidating Trustee (as applicable) may elect within thirty (30) calendar days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease under the Plan by filing a notice of such election on the docket of the Chapter 11 Case.

4. Preexisting Obligations to the Debtor under Executory Contracts and Unexpired Leases

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtor or Liquidating Trustee (as applicable) under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Debtor and the Liquidating Trustee (as applicable) expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnity or continued maintenance obligations.

5. Insurance Preservation

Nothing in the Plan, the Confirmation Order, or the Liquidating Trust Agreement, alters the rights and obligations of the Debtor (and its Estate) and the Debtor's insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms and conditions thereof or diminishes or impairs the enforceability of the Insurance Policies. All of the Debtor's rights and its Estate's rights under any Insurance Policy to which the Debtor and/or the Debtor's Estate may be beneficiaries shall vest with the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries and all of the beneficiaries of such policies. For the avoidance of doubt, the Debtor shall be deemed to have assumed only the D&O Policies, and any Insurance Policy other than a D&O Policy shall be deemed terminated on the Effective Date.

6. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Modifications, amendments, supplements, and restatements to a prepetition Executory Contract and/or Unexpired Lease that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease.

E. Provisions Governing Distributions

1. Distribution Record Date

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtor, or its respective agents, shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Interests. The Debtor and the Liquidating Trustee (as applicable) shall have no obligation to recognize any ownership transfer of the Claims or Interests occurring on or after the Distribution Record Date. The Debtor, the Liquidating Trustee, and any party responsible for

making distributions shall be entitled to recognize and deal for all purposes hereunder only with those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable.

Except as otherwise provided in the Plan, the Disbursing Agent shall make distributions to Holders of Allowed Claims as of the Distribution Record Date at the address for each such Holder as indicated on the Debtor's records as of the date of any such distribution; provided, however, that the manner of such distributions shall be determined at the discretion of the Liquidating Trustee; provided further, however, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder.

2. Withholdings.

The Liquidation Trustee shall (i) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under tax laws with respect to any distribution pursuant to the Liquidation Trust Agreement and (ii) comply with any reporting requirements imposed by any federal, state, local, or foreign taxing authority. The Liquidation Trustee may withhold all or the appropriate portion of any distribution due to any Beneficiary until such time as such Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable Beneficiary for all purposes of the Liquidation Trust Agreement and the Plan. If a Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such Beneficiary's distribution may be treated as unclaimed property in accordance with Section 5.12 of the Liquidation Trust Agreement.

All Trust beneficiaries shall supply to the Trustee appropriate IRS form WE-8(BEN) or otherwise prior to be entitled to any distribution.

3. Date of Distributions

Distributions made after the Effective Date to Holders of Allowed Claims shall be deemed to have been made on the Effective Date and no interest shall accrue or be payable with respect to Claims or any distribution related thereto. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

4. Disbursing Agent

Except as otherwise provided in the Plan, all distributions under the Plan shall be made by the Disbursing Agent on or after the Effective Date. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties. Additionally, if the Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Liquidating Trust.

5. Powers of Disbursing Agent

The Disbursing Agent may (i) effect all actions and execute all agreements, instruments, and other documents necessary to carry out the provisions of the Plan, (ii) make all distributions contemplated hereby, and (iii) perform such other duties as may be required of the Disbursing Agent pursuant to the Plan.

6. Surrender of Instruments

As a condition precedent to receiving any distribution under the Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Disbursing Agent or its designee. Any holder of such instrument or note that fails to (i) surrender the instrument or note or (ii) execute and deliver an affidavit of loss or indemnity reasonably satisfactory to the Disbursing Agent and furnish a bond in form, substance, and amount reasonably satisfactory to the Disbursing Agent within six months of being entitled to such distribution shall be deemed to have forfeited all rights and claims and may not participate in any distribution hereunder.

7. IRS Forms

In connection with the Plan, to the extent applicable and not an obligation of Buyer under the Sale Documents, the Debtor and the Liquidating Trustee (as applicable) shall comply with all tax withholding and reporting requirements imposed on them/it by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtor and the Liquidating Trustee (as applicable) shall be authorized to take all actions necessary to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtor and the Liquidating Trustee (as applicable) reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

As a condition precedent to receiving any distribution under the Plan, each Holder of an Allowed Claim that is entitled to a distribution under the Plan must provide the Liquidating Trustee an executed IRS Form. An Allowed Claim of a Holder that fails to provide an executed IRS Form within sixty (60) days after service (by first class mail) of a formal request for the same by the Liquidating Trustee shall be deemed disallowed and expunged for purposes of distributions under the Plan.

8. Delivery of Distributions

Subject to applicable Bankruptcy Rules, all distributions to Holders of Allowed Claims shall be made to the Disbursing Agent, who shall transmit such distributions to the applicable Holders of Allowed Claims or their designees.

If any distribution to a Holder of an Allowed Claim (i) is returned as undeliverable for lack of a current address or otherwise, or (ii) is not cashed or otherwise presented for collection by the Holder of the Allowed Claim within ninety (90) calendar days after the mailing of such distribution, the Liquidating Trustee shall file with the Bankruptcy Court the name and last known address of the Holder of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then (i) the Holder of such Claim shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Liquidating Trust, and (ii) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan.

9. Manner of Payment

Any distributions to be made by or on behalf of the Debtor or the Liquidating Trustee (as applicable) pursuant to the Plan shall be made by checks drawn on accounts maintained by the Liquidating Trustee or by wire transfer if circumstances justify, at the option of the Liquidating Trustee.

10. Foreign Currency Exchange Rate

As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, on the Petition Date.

11. Setoffs and Recoupments

The Debtor and the Liquidating Trustee, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable bankruptcy and/or nonbankruptcy law, without the approval of the Bankruptcy Court and upon no less than fourteen (14) calendar days' notice to the applicable Holder of a Claim, or as may be agreed to by the Holder of a Claim, may, but shall not be required to, set off against or recoup against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is to be made on account of such Allowed Claim), any claims of any nature whatsoever that the Debtor or their Estate may have against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Liquidating Trustee of any such claim the Debtor or their Estate may have against the Holder of such Claim.

12. Minimum Distributions

No payment of Cash in an amount of less than one hundred U.S. dollars (\$100.00) shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan and the Liquidating Trust Agreement.

If the Cash available for the final distribution is less than the cost to distribute such funds, the Liquidating Trustee may donate such funds to the unaffiliated charity of its choice.

13. Allocation of Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a distribution under the Plan includes both principal and accrued but unpaid prepetition interest, such distribution shall be allocated to the principal amount (as determined for federal income tax purposes) of the Claim first, and then to accrued but unpaid prepetition interest.

14. Distributions Free and Clear

Except as otherwise provided in the Plan, any distribution or transfer made under the Plan, including distributions to any Holder of an Allowed Claim, shall be free and clear of any Liens, Claims, encumbrances, charges, and other interests, and no other entity shall have any interest, whether legal, beneficial, or otherwise, in property distributed or transferred pursuant to the Plan.

15. Claims Paid or Payable by Third Parties

i. Claims Paid by Third Parties

If a Holder of a Claim receives a payment or other satisfaction of its Claim other than through the Debtor and/or the Liquidating Trustee on account of such Claim, such Claim shall be reduced by the amount of such payment or satisfaction without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, and if the Claim was paid or satisfied in full other than through the Debtor and/or the Liquidating Trustee, then such Claim shall be disallowed and any recovery in excess of a single recovery in full shall be paid over to the Liquidating Trustee without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment or satisfaction from a party that is not the Debtor and/or the Liquidating Trustee on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the Debtor or Liquidating Trustee (as applicable), to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

ii. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtor's Insurance Policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such Insurance Policy. To the extent that one or more of the Debtor's insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

iii. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor or any Entity

may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained in the Plan constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

F. Procedures for Resolving Unliquidated and Disputed Claims or Interests

1. Allowance of Claims

After the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses that any Debtor had with respect to any Claim or Interest immediately prior to the Effective Date.

2. Claims Administration Responsibilities

Except as otherwise specifically provided in the Plan, after the Effective Date, the Liquidating Trustee shall have the sole authority to: (1) File, withdraw, or litigate to judgment, objections to Claims or Interests; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

3. Estimation of Claims

Before or after the Effective Date, the Debtor or the Liquidating Trustee (as applicable) may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has 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 such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection.

Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged or disallowed from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars (\$0.00) unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Debtor or the Liquidating Trustee (as applicable) may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

4. Adjustment to Claims Without Objection

Any Claim that has been paid, satisfied, or assumed by Buyer in the Sale, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor or the Liquidating Trustee (as applicable) without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

5. Time to File Objections to Claims

Except as otherwise provided in the Plan, any objections to Claims shall be Filed on or before the Claims Objection Bar Date (as such date may be extended upon presentment of an order to the Bankruptcy Court by the Liquidating Trustee).

6. Disallowance of Claims

Except as provided in the Plan or otherwise agreed to by the Debtor or the Liquidating Trustee (as applicable), any Holder of any and all Proofs of Claim Filed after the Bar Date shall not receive any distributions on account of such Claims, unless on or before the Confirmation Hearing such late Claim has been deemed timely Filed by a Final Order.

7. Amendments to Claims

Except as provided in the Plan, on or after the Effective Date, without the prior authorization of the Bankruptcy Court or the Liquidating Trustee, a Claim may not be Filed or amended and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order or approval of the Bankruptcy Court.

8. No Distributions Pending Allowance

If an objection to a Claim, Proof of Claim, or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim, Proof of Claim, or portion thereof unless and until the Disputed Claim becomes an Allowed Claim.

9. Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Claim. For the avoidance of doubt, no interest shall accrue or be paid on any Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim.

G. Conditions Precedent to the Effective Date

1. Conditions Precedent

The following are conditions precedent to the Effective Date that must be satisfied or waived in accordance with the terms of the Plan:

- i. The Bankruptcy Court shall have approved the Disclosure Statement as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code.
- ii. The Confirmation Order shall have been entered and shall be in full force and effect.
- iii. There shall have been no modification or stay of the Confirmation Order or entry of any other order prohibiting the transactions contemplated by the Plan from being consummated.
- iv. The Professional Fee Escrow Account shall have been fully funded pursuant to the terms of the Plan.
- v. All actions, documents and agreements necessary to implement the Plan shall have been effected, executed and/or tendered for delivery. All conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms thereof (or will be satisfied and waived substantially concurrently with the occurrence of the Effective Date).
- vi. The Debtor shall have obtained any authorization, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan and each of the other transactions contemplated thereunder.

2. Waiver of Conditions

Unless otherwise specifically provided in the Plan, the conditions set forth in Article VIII.A of the Plan may be waived in whole or in part by the Debtor, without notice to any other parties in interest or the Bankruptcy Court and without a hearing.

H. Release, Injunction, and Related Provisions

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

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the relative legal, equitable, and contractual rights of the Holders of Claims and Interests with respect to distributions from the Debtor's Estate. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of all compromises and settlements embodied in the Plan, as well as a finding by the Bankruptcy Court that such compromises and settlements are in the best interests of the Debtor, their Estate, and Holders of Claims and Interests, and are fair, equitable, and reasonable.

2. Releases by the Debtor

As of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party⁵ (other than

⁵ The term "Released Parties" or "Released Party" means, collectively, and in each case, in its capacity as such the Debtor, the Debtor's current and former directors, managers, officers, employees, agents, advisory board members, financial advisors, partners,

the Debtor) is deemed released and discharged by the Debtor and the Estate from any and all claims and Causes of Action, whether known or unknown, including any derivative claims, asserted on behalf of the Debtor, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, the Debtor or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership, or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor's in- or out-of-court restructuring efforts, any Avoidance Actions, intercompany transactions, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or Filing of the Disclosure Statement, the Sale, the Sale Documents, the Plan, the Plan Supplement, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Sale Documents, the Plan, the Plan Supplement, the Chapter 11 Case, the Filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of the Sale, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (a) any post-Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or (b) any obligations under or in respect of the Sale Documents.

Each Person and Entity deemed to grant the Debtor Releases shall be deemed to have granted such releases notwithstanding that such Person or Entity may hereafter discover facts in addition to, or different from, those which such Person or Entity now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such Person or Entity expressly waives any and all rights that such Person or Entity may have under any statute or common law principle, including, without limitation, section 1542 of the California Civil Code, to the extent such section is applicable, which would limit the effect of such releases to those claims or causes of action actually known or suspected to exist on the Effective Date. Section 1542 of the California Civil Code generally provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Plan shall be deemed a motion to approve the settlements contained herein pursuant to Bankruptcy Rule 9019 with respect to the Debtor Releases provided in Article IX.B of the Plan, and entry of the Confirmation Order shall constitute the Bankruptcy

attorneys, accountants, investment bankers, consultants, representatives, and other professionals, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns; provided, however, that any Entity or Person that opts out of the third-party release under Article IX.C of the Plan or otherwise objects to Confirmation of the Plan shall not be deemed a "Released Party" under this Plan.

Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Releases, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtor Releases are: (a) in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the restructuring and implementing the Plan; (b) a good faith settlement and compromise of the claims released by the Debtor Releases; (c) in the best interests of the Debtor and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to the Debtor, the Estate, and the Liquidating Trustee asserting any claim or Cause of Action released pursuant to the Debtor Releases.

3. Releases by Holders of Claims

As of the Effective Date, each Releasing Party⁶ is deemed to have released and discharged each Released Party from any and all claims, Claims and Causes of Action, whether known or unknown, including any derivative claims, asserted on behalf of the Debtor (or its Estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor's in- or out-of-court restructuring efforts, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or Filing of the Disclosure Statement, the Sale, the Sale Documents, the Plan, the Plan Supplement, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Sale Documents, the Plan, the Plan Supplement, the Chapter 11 Case, the Filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of the Sale, the pursuit of consummation, the administration and implementation of the Plan, including distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (a) any post Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or (c) any obligations under or in respect of the Sale Documents.

Each Person and Entity deemed to grant the releases described in this Article IX.C shall be deemed to have granted such releases notwithstanding that such Person or Entity may hereafter discover facts in addition to, or different from, those which such Person or Entity now knows or believes to be true, and without regard to the subsequent discovery or

⁶ The term "Releasing Parties" or "Releasing Party" means, individually and collectively, (a) each Holder of a Claim that (i) that does not opt out of the releases, or (ii) File an objection to such releases; and (b) as to each of the Entities in the foregoing clause (a), each such Entities' and their Affiliates' current and former officers, directors, principals, members, partners, managers, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and all other professionals and retained Professionals (in each case as to the foregoing Entities and their Affiliates in clause (a), solely in their capacity as such). The term "Releasing Party" shall not include the Holder of an Interest, solely in such capacity.

existence of such different or additional facts, and such Person or Entity expressly waives any and all rights that such Person or Entity may have under any statute or common law principle, including, without limitation, section 1542 of the California Civil Code, to the extent such section is applicable, which would limit the effect of such releases to those claims or causes of action actually known or suspected to exist on the Effective Date. Section 1542 of the California Civil Code generally provides as follows: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of the releases described in Article IX.C of the Plan, which includes by reference each of the related provisions and definitions contained in this Plan, and, further, shall constitute the Bankruptcy Court’s finding that each release described in Article IX.C of the Plan is: (a) consensual; (b) essential to the Confirmation of the Plan; (c) given in exchange for the good and valuable consideration provided by the Released Parties; (d) in the best interests of the Debtor and its Estate; (e) fair, equitable, and reasonable; (f) given and made after due notice and opportunity for hearing; and (g) a bar to any of the Releasing Parties asserting any claim, Claim or Cause of Action released pursuant to Article IX.C of the Plan..

4. Exculpation

Except as otherwise specifically provided in the Plan, no Exculpated Party⁷ shall have or incur liability for, and each Exculpated Party is released and exculpated from any Cause of Action for any claim or Claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or Filing of the Debtor’s in- or out-of-court restructuring efforts, the Sale, the Sale Documents, the Plan, the Plan Supplement, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Sale Documents, the Plan, the Plan Supplement, the Chapter 11 Case, the Filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of the Sale, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person, but in all respects such Entities shall be entitled to reasonably rely upon the written advice of counsel with respect to their duties and responsibilities pursuant to the Plan. For the avoidance of doubt, as set forth in Article IV.J of the Plan, notwithstanding anything to the contrary in the Plan, nothing in the Plan shall affect, impair or supersede the Sale Order or Sale

⁷ The term “Exculpated Parties” or “Exculpated Party” means, in each case in its capacity as such: (a) the Debtor, (b) the Debtor’s directors and officers during the Chapter 11 Case, and (c) the Retained Professionals.

Documents, each of which remains in full force and effect and governs in the event of inconsistency with the Plan.

The Exculpated Parties have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

5. Injunction

Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, Causes of Action, or liabilities that: (a) are subject to compromise and settlement pursuant to the terms of the Plan; (b) have been released pursuant to Article IX.B of this Plan; (c) have been released pursuant to Article IX.C of this Plan, (d) were purchased and released by Buyer in connection with the Sale, (e) are subject to exculpation pursuant to Article IX.D of this Plan, or (f) are otherwise discharged, satisfied, stayed, released, or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner, any action or other proceeding, including on account of any Claims, claims, Interests, Causes of Action, or liabilities that have been compromised or settled against the Debtor or any Entity so released or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of, or in connection with or with respect to, any discharged, released, settled, compromised, or exculpated Claims, claims, Interests, Causes of Action, or liabilities, including being permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtor, the Liquidating Trustee, or the Liquidating Trust Assets, the Released Parties, or Exculpated Parties (as applicable): (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims, Claims or Interests; (ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such claims, Claims or Interests; (iii) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property or the estate of such Entities on account of or in connection with or with respect to any such claims, Claims or Interests; (iv) asserting any right of setoff or subrogation of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such claims, Claims or Interests unless such Entity has timely asserted such setoff right in a document Filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims, Claims or Interests released or settled pursuant to the Plan.

Upon the Bankruptcy Court's entry of the Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of this Plan by the Debtor, the Liquidating Trustee, and their respective affiliates, employees, advisors, officers and directors, or agents.

6. No Discharge

Because the Debtor is liquidating, it is not entitled to a discharge of obligations pursuant to section 1141 of the Bankruptcy Code with regard to any Holders of Claims or Interest.

7. Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtor and their successors and assigns.

Any Holder of a Secured Claim or any agent for such Holder has filed or recorded publicly any Liens and/or security interests to secure such Holder's Secured Claim, as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Liquidating Trustee that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Liquidating Trustee shall be entitled to make any such filings or recordings on such Holder's behalf.

VIII. RISK FACTORS

Holders of Claims and Interests should read and consider carefully the risk factors set forth below before voting to accept or reject the Plan. Although there are many risk factors discussed below, these factors should not be regarded as constituting the only risks present in connection with the Plan and its implementation.

A. Bankruptcy Law Considerations

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

1. Parties in Interest May Object to the Plan's Classification of Claims and Interests

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

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

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

3. The Debtor May Fail to Satisfy Vote Requirements.

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtor intends to seek, as promptly as practicable thereafter, Confirmation of the Plan. In the event that sufficient votes are not received, the Debtor may seek to confirm an alternative chapter 11 plan or transaction. There can be no assurance that the terms of any such alternative chapter 11 plan or other transaction would be similar or as favorable to Holders of Allowed Claims and Interests as those proposed in the Plan and the Debtor do not believe that any such transaction exists or is likely to exist that would be more beneficial to the Estate than the Plan.

4. The Debtor May Not Be Able to Secure Confirmation of the Plan.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, and requires, among other things, a finding by the Bankruptcy Court that the value of distributions to non-accepting holders of claims or equity interests within a particular class under such plan will not be less than the value of distributions such holders would receive if a debtor was liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that this Disclosure Statement, the balloting procedures, and voting results are appropriate, the Bankruptcy Court could still decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation are not met.

The Debtor, subject to the terms and conditions of the Plan, reserve its right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications could

result in less favorable treatment of any non-accepting Class of Claims than the treatment currently provided in the Plan. Such a less favorable treatment could include a distribution of property with a lesser value than currently provided in the Plan or no distribution whatsoever under the Plan.

5. The Chapter 11 Case May Be Converted to Cases under Chapter 7 of the Bankruptcy Code.

The Bankruptcy Court may convert the Chapter 11 Case to cases under chapter 7 of the Bankruptcy Code if the Bankruptcy Court finds that conversion would be in the best interest of creditors and/or the Debtor. In such event, a chapter 7 trustee would be appointed or elected to liquidate the Debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code.

The Debtor believes that liquidation under chapter 7 would result in significantly smaller distributions being made to creditors than those provided for in the Plan because of (a) additional administrative expenses involved in the appointment of a chapter 7 trustee, including the chapter 7 trustee's commission, (b) additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation, (c) a smaller recovery on remaining estate assets in chapter 7, and (d) an enhanced ability to minimize the claims pool outside of chapter 7.

6. The Liquidating Trustee May Object to the Amount or Classification of a Claim.

Except as otherwise provided in the Plan, the Liquidating Trustee shall have the right to object to the amount or classification of any Claim under the Plan. The estimates set forth in this Disclosure Statement cannot be relied upon by any Holder of a Claim where such Claim is subject to an objection. Any Holder of a Claim that is subject to an objection thus may not receive its expected share of the estimated distributions described in this Disclosure Statement.

7. Contingencies Could Affect Votes of Impaired Class to Accept or Reject the Plan.

The distributions available to Holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including, without limitation, whether the Bankruptcy Court orders certain Allowed Claims to be subordinated to other Allowed Claims. The occurrence of any and all such contingencies, which could affect distributions available to Holders of Allowed Claims under the Plan, will not affect the validity of the vote taken by any Impaired Class entitled to vote to accept or reject the Plan or require any sort of revote by any such Impaired Class.

The estimated Claims and creditor recoveries set forth in this Disclosure Statement are based on various assumptions, and the actual Allowed amounts of Claims may significantly differ from the estimates. Should one or more of the underlying assumptions ultimately prove to be incorrect, the actual Allowed amounts of Claims may vary from the estimated Claims contained in this Disclosure Statement. Moreover, the Debtor cannot determine with any certainty at this time the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the percentage recoveries to Holders of Claims under the Plan.

8. Releases, Injunction, and Exculpation Provisions May Not Be Approved.

Article IX of the Plan provides for certain releases, injunction, and exculpation, including a release of Liens and a release of Claims against the Debtor's representatives, that may otherwise be asserted against the Debtor and/or Released Parties, as applicable. Discussions and summaries of these provisions can be found in Articles VII.H and IX.B of this Disclosure Statement. The releases, injunction, and exculpation provided in the Plan are subject to objection by parties in interest and may not be approved.

9. Debtor Could Withdraw Plan.

The Debtor may revoke or withdraw the Plan prior to the Confirmation Date.

B. Risks Related to Recoveries under the Plan

1. Certain U.S. Tax Implications of the Plan

The following discussion summarizes certain anticipated U.S. federal income tax consequences of the Plan to the Debtor and Holders of Claims and Interests in Classes 1, 2, 3, 4, and 5. This summary is provided for information purposes only and is based on the Internal Revenue Code of 1986, as amended (the "**Tax Code**"), Treasury regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect as of the date hereof, and all of which are subject to change, possibly with retroactive effect, that could adversely affect the U.S. federal income tax consequences described below.

This summary does not address all aspects of U.S. federal income taxation that may be relevant to a particular Holder of a Claim or Interest in the Debtor in light of its particular facts and circumstances or to certain types of Holders of Claims subject to special treatment under the Tax Code (for example, non-U.S. taxpayers, financial institutions, broker-dealers, life insurance companies, tax-exempt organizations, real estate investment trusts, regulated investment companies, grantor trusts, persons holding a Claim as part of a "hedging," "integrated," or "constructive" sale or straddle transaction, persons holding Claims through a partnership or other pass through entity, persons that have a "functional currency" other than the U.S. dollar, and persons who acquired or expect to acquire either an equity interest or other security in a Debtor or a Claim in connection with the performance of services). In addition, this summary does not discuss any aspects of state, local, estate and gift or non-U.S. taxation.

For purposes of this summary, a "**U.S. Holder**" means a Holder of a Claim or Interest that, in any case, is, for U.S. federal income tax purposes: (i) an individual that is a citizen or resident of the U.S.; (ii) a corporation, or other entity treated as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the U.S., any state thereof or the District of Columbia; (iii) an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or (iv) a trust, if (a) a court within the U.S. is able to exercise primary supervision over its administration and one or more U.S. persons have the authority to control all of the substantial decisions of such trust, or (b) it has a valid election in effect under applicable Treasury regulations to be treated as a U.S. person. A "**Non-U.S. Holder**" means a Holder of a Claim or Interest that is not a U.S. Holder and is, for U.S. federal income tax

purposes, an individual, corporation (or other entity treated as a corporation for U.S. federal income tax purposes), estate or trust.

If an entity taxable as a partnership for U.S. federal income tax purposes holds a Claim, the U.S. federal income tax treatment of a partner (or other owner) of the entity generally will depend on the status of the partner (or other owner) and the activities of the entity. Such partner (or other owner) should consult its tax advisor as to the tax consequences of the Plan.

A substantial amount of time may elapse between the date of this Disclosure Statement and the receipt of a final Distribution under the Plan. Events occurring after the date of this Disclosure Statement, such as additional tax legislation, court decisions, or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder. There can be no assurance that the Internal Revenue Service (the “IRS”) will not take a contrary view with respect to one or more of the issues discussed below. No ruling will be sought from the IRS with respect to any of the tax aspects of the Plan, and no opinion of counsel has been or will be obtained by the Debtor with respect thereto.

Accordingly, the following summary of certain U.S. federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the individual circumstances pertaining to a Holder of a Claim or Interest in the Debtor. All Holders of Claims or Interests in the Debtor are urged to consult their own tax advisors for the federal, state, local and other tax consequences applicable to them under the Plan.

EACH HOLDER IS HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A HOLDER UNDER THE TAX CODE; (B) SUCH DISCUSSION IS INCLUDED HEREBY BY THE DEBTOR IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN OR THE PLAN; AND (C) EACH HOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

i. U.S. Federal Income Tax Consequences to U.S. Holders of Claims and Interests

a. In General

Generally speaking, the U.S. federal income tax consequences to U.S. Holders of Allowed Claims and Interests in the Debtor arising from the Distributions (if any) to be made in satisfaction of their Claims pursuant to the Plan may vary, depending upon, among other things: (a) the type of consideration received by the Holder of a Claim in the Debtor in exchange for such Claim; (b) the nature of such Claim; (c) whether the Holder has previously claimed a bad debt or worthless security deduction in respect of such Claim or Interest; (d) whether such Claim constitutes a security; (e) whether the Holder of such Claim is a citizen or resident of the United States for tax purposes, or otherwise subject to U.S. federal income tax on a net income

basis; (f) whether the Holder of such Claim in the Debtor reports income on the accrual or cash basis; and (g) whether the Holder of such Claim receives Distributions under the Plan in more than one taxable year. For tax purposes, if a Claim is reinstated yet subject to a modification, the reinstatement may be treated as a taxable exchange of the Claim for a new Claim, even though no actual transfer takes place.

This summary does not address foreign, state, or local tax consequences of the Plan, nor does it purport to address all aspects of U.S. federal income taxation that may be relevant to a Holder in light of its individual circumstances or to a Holder that may be subject to special tax rules (such as Persons who are related to the Debtor within the meaning of the Tax Code, broker-dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, tax exempt organizations, pass-through entities, beneficial owners of pass-through entities, subchapter S corporations, persons who hold Claims or who will hold the New Warrants or the Reorganized AAC Equity Interests as part of a straddle, hedge, conversion transaction, or other integrated investment, persons using a mark-to-market method of accounting, and holders of Claims who are themselves in bankruptcy). Furthermore, this summary assumes that a Holder holds only Claims in a single Class or Sub-Class and holds a Claim only as a “capital asset” (within the meaning of Section 1221 of the Tax Code). This summary also assumes that the various debt and other arrangements to which the Debtor is a party will be respected for U.S. federal income tax purposes in accordance with their form, and that the Claims constitute interests in the Debtor “solely as a creditor” for purposes of Section 897 of the Tax Code. This summary does not discuss differences in tax consequences to a Holder that acts or receives consideration in a capacity other than as a Holder of a Claim of the same Class or Sub-Class, and the tax consequences for such Holders may differ materially from that described below.

For purposes of this discussion, a “U.S. Holder” is a holder of a Claim that is: (1) an individual citizen or resident of the United States for U.S. federal income tax purposes; (2) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia; (3) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (4) a trust (A) if a court within the United States is able to exercise primary jurisdiction over the trust’s administration and one or more United States persons have authority to control all substantial decisions of the trust or (B) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person. For purposes of this discussion, a “non-U.S. Holder” is any Holder of a Claim that is not a U.S. holder other than any partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes).

If a partnership (or other entity treated as a partnership or other pass-through entity for U.S. Once the Holder’s basis in the generally will depend upon the status of the partner (or other beneficial owner) and the activities of the entity. Partners (or other beneficial owners) of partnerships (or other pass-through entities) that are Holders should consult their respective tax advisors regarding the U.S. federal income tax consequences of the Plan.

In addition, where gain or loss is recognized by a Holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be

determined by a number of factors, including the tax status of the Holder, whether the Claim or Interest constitutes a capital asset in the hands of the Holder and how long it has been held or is treated as having been held, whether the Claim was acquired at a market discount, and whether and to what extent the Holder previously claimed a bad debt deduction with respect to the underlying Claim or Interest. In general, for purposes of the discussion below, subject to other matters discussed herein such as the market discount rules, if the asset giving rise to a Holder's Claim, or a Holder's Interest, was held as a capital asset, gain or loss recognized by a Holder upon exchange of that Claim or Interest generally would be long-term capital gain or loss if the U.S. Holder held such asset or Interest for more than one year at the time of the exchange. The deductibility of capital losses is subject to certain limitations. If property is received by a Holder upon an exchange, a Holder's tax basis in the property received should equal the fair market value of such property. A U.S. Holder's holding period for the property received on the Effective Date would begin on the day following the Effective Date.

b. Satisfaction of Claims

In general, subject to the other discussions below, the satisfaction of Claims by the Debtor is expected to result in the following U.S. federal income tax consequences for U.S. Holders.

Class 1 Claims. Under the Plan, Holders of Class 1 Claims (if any) will receive, as applicable: (i) payment in full in cash, including the payment of interest allowable under section 506(b) of the Bankruptcy Code, if any; (ii) reinstatement pursuant to section 1124 of the Bankruptcy Code; (iii) the collateral securing any such Allowed Other Secured Claim; or (iv) such other consideration so as to render such Allowed Other Secured Claim Unimpaired. In general, a U.S. Holder of a Class 1 Claim who receives cash should recognize taxable gain or loss equal to the difference between (a) the amount of cash received (other than amounts attributable to interest, discussed below) and (b) such Holder's adjusted tax basis in its Class 2 Claim surrendered. If the Claim is reinstated, the Holder of such Claim should not recognize gain or loss except if such Claim is modified (including, for example, a modification regarding the collateral securing such Claim, if any), and the modification constitutes a "significant modification" of Class 1 Claim within the meaning of the Treasury Regulations promulgated under Tax Code section 1001. A U.S. Holder who receives collateral or other property of the Debtor should recognize taxable gain or loss equal to the difference between (a) the fair market value of the collateral or other property received (other than amounts attributable to interest, discussed below) and (b) such Holder's adjusted tax basis in its Class 1 Claim surrendered.

Class 2 Claims. Under the Plan, Holders of Class 2 Claims will receive (a) payment of the Allowed Class 2 Claim in full in cash or (b) such other treatment permitted by section 1129(a)(9) of the Bankruptcy Code. A U.S. Holder of a Class 2 Claim who receives cash should recognize taxable gain or loss equal to the difference between (a) the amount of cash received (other than amounts attributable to interest, discussed below) and (b) such Holder's adjusted tax basis in its holdings of the Class 2 Claim surrendered.

Class 3 and 4 Claims. Under the Plan, each Holder of an Allowed Class 3 and Class 4 Claim, in exchange for full and final satisfaction, settlement, release and compromise of such Claim, shall receive, on the Effective Date, or as soon as reasonably practicable thereafter such

Holder's *pro rata* share (calculated based on the proportion that such Holder's Allowed Claim bears to the aggregate amount of Allowed Class 3 or Class 4 Claims, as applicable), Trust Primary Recovery Units and Secondary Recovery Units.

With respect to the treatment of U.S. Holders of Class 3 and 4 Claims, for U.S. federal income tax purposes, such Holders will be treated as if they received a Distribution of an undivided interest in the Trust Assets in satisfaction of its Claim. The value of such undivided interest is uncertain. However, assuming the value of each recipient's undivided interest in the Trust Assets can be ascertained, the Liquidation Trustee may take the position that U.S. Holders that receive Liquidation Trust Units pursuant to the Plan should recognize taxable gain or loss equal to the difference between (a) the fair market value of the undivided interest in the Liquidation Trust Assets received and (b) such Holder's adjusted tax basis in its Class 3 and 4 Claims surrendered. Once the Holder's basis is established and gain or loss is recognized as above, the Holder will recognize further gain or loss upon the final distribution from the Liquidating Trust measured as the difference of the Holder's basis and the amounts finally received. For example, if a Class # creditor has a \$100 claim, which he never wrote down and he contributes it to the Trust and receives an interest estimated to be worth \$85 he has a bad debt deduction of \$15 and an \$85 basis in his interest in the Liquidating Trust. Upon receiving the final distribution from the Trust if the total distributions are \$80 there is another loss of \$5 to be recognized, whereas if the total distributions are \$92 there is \$7 of income to be recognized.

Due to the legal and factual uncertainty regarding the treatment of the Liquidation Trust Primary and Secondary Recovery Units, you are urged to consult your tax advisors concerning the tax consequences to you resulting from the receipt of such.

Class 5 Interests. Under the Plan, Class 5 Interests in the Debtor will be extinguished, and if a Holder had any adjusted tax basis in such Interest, Holders should recognize a taxable capital loss (short term or long as applicable) equal to the amount of such adjusted tax basis.

c. Taxation of Liquidation Trust Units

The Liquidation Trust will be treated as a "liquidating trust" within the meaning of Treasury Regulations § 301.7701-4(d). Further, for U.S. federal income tax purposes (and for purposes of all state, local and other jurisdictions to the extent applicable), a liquidating trust is treated as a grantor trust pursuant to IRC sections 671-677, or any successor provisions thereof. The Holders of Allowed Claims receiving Liquidation Trust Units are treated as the grantors and the beneficiaries of their respective shares of the Liquidation Trust Assets. A liquidating trust is not subject to tax, instead the grantors of the trust recognize the income of the trust, whether or not such income is actually distributed.

For U.S. federal income tax purposes, the recipients of Liquidation Trust Units (i.e., the beneficiaries of the Liquidation Trust) will be treated as having received a distribution of an undivided interest in the Liquidation Trust Assets on the Effective Date and then immediately contributing such interests to the Liquidation Trust. The Liquidation Trust shall not be deemed a successor in interest of the Debtor for any purpose other than as specifically set forth in the Plan or in the Liquidation Trust Agreement.

The distribution of an undivided interest in the Liquidation Trust Assets will be a taxable exchange to the recipients of Liquidation Trust Units on the Effective Date, as described under “**Class 3 Claims**” and “**Class 4 Claims**” above. Given the treatment of the Liquidation Trust as a grantor trust, each Holder of Liquidation Trust Units has an obligation to report its share of the Liquidation Trust’s tax items (including gain on the sale or other disposition of a Liquidation Trust Asset) which is not dependent on the distribution of any cash or other Liquidation Trust Assets by the Liquidation Trust. Accordingly, a Holder of Liquidation Trust Units may incur a tax liability on account of holding Liquidation Trust Units, regardless of whether the Liquidation Trust distributes cash or other assets. A Holder of Liquidation Trust Units may be required to report and pay tax on a greater amount of income for a taxable year than the amount of cash received by the Holder during the year.

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

C. Other Risks

1. No Duty to Update

The statements contained in this Disclosure Statement are made by the Debtor as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date.

The Debtor has no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

2. No Representations Outside Disclosure Statement Are Authorized

No representations concerning or related to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than those contained in, or included with, this Disclosure Statement should not be relied upon in making the decision to accept or reject the Plan.

3. No Legal or Tax Advice Is Provided by Disclosure Statement

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

4. No Admission Made

Nothing contained herein or in the Plan will constitute an admission of, or will be deemed evidence of, the tax or other legal effects of the Plan on the Debtor or Holders of Claims or Interests.

IX. CONFIRMATION OF THE PLAN

A. Requirements for Confirmation of the Plan

Among the requirements for Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code are: (1) the Plan is accepted by an Impaired Class of Claims; (2) the Plan is feasible; and (3) the Plan is in the “best interests” of Holders of Claims or Interests.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies all of the requirements of section 1129 of the Bankruptcy Code. The Debtor believes that: (1) the Plan satisfies, or will satisfy, all of the necessary statutory requirements of chapter 11 for plan confirmation; (2) they have complied, or will have complied, with all of the necessary requirements of chapter 11 for plan confirmation; and (3) the Plan has been proposed in good faith.

B. The Debtor’s Release, Releases by Holders of Claims, Exculpation, and Injunction Provisions.

A chapter 11 plan may provide for a release of third-party claims against a non-Debtor, such as the Released Parties, where such releases are consensual. In addition, exculpation is appropriate where it applies to estate fiduciaries. Finally, an injunction is appropriate where it is necessary to the reorganization and fair pursuant to section 105(a) of the Bankruptcy Code. Approval of the releases, exculpation, and injunction for each of the Released Parties and each Exculpated Party as part of Confirmation of the Plan will be limited to the extent such releases, exculpation, and injunction are permitted by applicable law.

The Debtor believes that the releases, exculpation, and injunction set forth in the Plan are appropriate because, among other things, the releases are narrowly tailored to the Debtor’s restructuring proceedings, and each of the Released Parties has contributed value to the Debtor by aiding in the restructuring process.

The Debtor believes that each of the Released Parties has played an integral role in formulating the Plan and has expended significant time and resources analyzing and negotiating the issues presented by the Debtor’s prepetition capital structure and post-petition activities. The Debtor further believe that such releases, exculpation, and injunction are a necessary part of the Plan. In addition, the Debtor believes the releases granted will be done on an entirely consensual basis. The Debtor will be prepared to meet their burden to establish the basis for the releases, exculpation, and injunction for each of the Released Parties and each Exculpated Party as part of confirming the Plan.

C. Best Interests of Creditors/Liquidation Analysis

Often called the “best interests” test, section 1129(a)(7) of the Bankruptcy Code requires that a bankruptcy court find, as a condition to confirmation, that a chapter 11 plan provides, with respect to each impaired class, that each holder of a claim or an equity interest in such impaired class either (1) has accepted the plan or (2) will receive or retain under the plan property of a value that is not less than the amount that the non-accepting holder would receive or retain if a debtor liquidated under chapter 7.

To determine what the holders of claims or interests would receive if a debtor were to be liquidated under chapter 7 of the Bankruptcy Code, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the debtor’s assets in a chapter 7 liquidation case. The amount that would be available for satisfaction of allowed claims and interests of the debtor would consist of the proceeds resulting from the disposition of the assets of the debtor augmented by the cash held by the debtor at the time of the commencement of the chapter 7 case. Such amounts would be reduced by the costs and expenses of the liquidation and by such additional administrative expense claims and other priority claims that might result from the chapter 7 case.

Here, it is expected that the majority of the Debtor’s assets will be sold as of the Effective Date. The Debtor believes that a conversion of the Chapter 11 Case to chapter 7 would simply duplicate an orderly plan process and that creditors would be harmed by the delay, inability to maximize the value of remaining assets or minimize the claims pool, and expense that would result. Attached hereto as **Exhibit B** and incorporated herein by reference is a liquidation analysis (the “**Liquidation Analysis**”) prepared by the Debtor with the assistance of advisors. As reflected in the Liquidation Analysis, the Debtor believes that liquidation of their business under chapter 7 of the Bankruptcy Code would result in diminution in the value to be realized by Holders of Claims as compared to distributions contemplated under the Plan. Consequently, the Debtor believes that Confirmation of the Plan will provide a greater return to Holders of Allowed Claims than would a liquidation under chapter 7 of the Bankruptcy Code.

The Debtor believes that the primary advantage of the Plan over a chapter 7 liquidation is that Holders of Allowed Claims entitled to receive a distribution under the Plan will likely receive more under the Plan than they would in a chapter 7 case and receive their distributions earlier. Moreover, the Debtor believes that the Plan will result in lower total administrative costs and higher recovers than would the liquidation of the Debtor’s remaining assets under chapter 7. Accordingly, the Debtor believes that a chapter 7 liquidation would not result in distributions to creditors as favorable as those provided under the Plan. As such, the Debtor believes the Plan will satisfy the “best interest of creditors test,” and, indeed, that the Plan is in the best interests of the Debtor’s creditors.

D. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan is not likely to be followed by the liquidation or the need for financial reorganization of the debtor or any successor to the debtor (unless such liquidation or reorganization is proposed in such plan of reorganization).

Here, the Plan is a plan of liquidation. Accordingly, should the Plan be confirmed by the Bankruptcy Court and implemented by the Debtor and the Liquidating Trustee, the Debtor's corporate existence will be dissolved and extinguished and there will be no continued business of the Debtor that could require liquidation or financial reorganization. As such, the Debtor believes the Plan will meet the feasibility requirements of the Bankruptcy Code.

E. Acceptance by Any Impaired Class

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

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

Pursuant to Article III.D of the Plan, if a Class contains Claims eligible to vote and no Holders of Claims eligible to vote in such Class vote to accept or reject the Plan, the Holders of such Claims in such Class shall be deemed to have accepted the Plan.

F. Cramdown under Section 1129(b)

In the event that any Impaired Class of Claims or Interests does not accept or is deemed to reject the Plan, the Bankruptcy Court still may confirm the Plan over the rejection or deemed rejection of the Plan by a Class of Claims or Interests if the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such Class, pursuant to section 1129(b) of the Bankruptcy Code.

1. No Unfair Discrimination

The "no unfair discrimination" test applies to classes of claims or interests that are of equal priority and are receiving different treatment under a chapter 11 plan. A chapter 11 plan does not discriminate unfairly within the meaning of the Bankruptcy Code if the legal rights of a dissenting class are treated in a manner consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting class and if no class of claims or interests receives more than such class is legally entitled to receive for its claims or interests. This test does not require that the treatment be the same or equivalent, but that such treatment is "fair."

2. Fair and Equitable Test

The "fair and equitable" test applies to classes of different priority and status (*e.g.*, secured claims versus unsecured claims) and includes the general requirement that no class of claims receive more than 100% of the allowed amount of the claims in such class. The test sets forth different standards for what is fair and equitable depending on the type of claims or interests in

such class. In order to demonstrate that a plan is “fair and equitable,” the plan proponent must demonstrate the following:

a. Secured Creditors

With respect to a class of impaired secured claims, a proposed plan must provide the following: (i) that the holders of secured claims retain their liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims, and receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder’s interest in the estates’ interest in such property; (ii) for a sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this paragraph; or (iii) that the holders of secured claims receive the “indubitable equivalent” of their allowed secured claim.

b. Unsecured Creditors

With respect to a class of impaired unsecured claims, a proposed plan must provide the following: either (i) that each holder of an impaired unsecured claim receives or retains under the plan property of a value equal to the amount of its allowed claim; or (ii) that the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

c. Holders of Interests

With respect to a class of interests, a proposed plan must provide the following: (i) that each holder of an interest receives or retains on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or (ii) that the holder of any interest that is junior to the interests of the class of interests will not receive or retain any property under the plan on account of such junior interest.

3. Application to Plan

Pursuant to the Plan, Holders of Claims in Class 1 (Secured Claims) and Class 2 (Other Priority Claims) are deemed to accept the Plan. Holders of Claims in Class 3 (Unsecured Claims) and Class 4 (Subordinated Claims) will receive distributions in compliance with their elective priorities and interests will receive no distribution. The Debtor submits that it satisfies the “unfair discrimination” and fair and equitable tests.

If any Impaired Class of Claims entitled to vote does not accept the Plan by the requisite statutory majority provided for in section 1126(c) of the Bankruptcy Code, then the Debtor reserves the right to amend the Plan or undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code, or both. With respect to the deemed rejecting

Impaired Class of Interests, the Debtor will request that the Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code.

X. CERTAIN SECURITIES LAW MATTERS

The Debtor does not believe that the Plan's treatment of the units being distributed under the Liquidating Trust constitute an offering, distribution, issuance or sale of "securities" under the Securities Act or state securities laws and therefore no registration or exemption thereunder is necessary. If the Plan's treatment were deemed to be an offering, distribution, issuance or sale of "securities" under the Securities Act of 1933, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder ("Securities Act") or state securities laws, the Debtor believes that such offer, distribution, issuance or sale would be exempt from the registration requirements of the Securities Act and state securities laws and that, based on the particular Federal and state securities law exemption, and provisions of the Bankruptcy Code, any subsequent transfers of such securities may be subject to registration requirements.

XI. RECOMMENDATION

The Debtor believes that the Plan is preferable to all other available alternatives and provides for a larger distribution to the Debtor's creditors than would otherwise result in any other scenario. Accordingly, the Debtor recommend that Holders of Class 3 and 4 Claims vote to accept the Plan and support Confirmation of the Plan.

Respectfully submitted, as of the date first set forth above,

Zosano Pharma Corporation

By: /s/ Steven Lo
 Name: Steven Lo
 Title: Chief Executive Officer

Exhibit A

Chapter 11 Plan of Liquidation

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

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**CHAPTER 11 PLAN OF LIQUIDATION
OF ZOSANO PHARMA CORPORATION**

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Dated: August 25, 2022

Counsel for the Debtor and Debtor in Possession

***THIS PLAN HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT
FOR CIRCULATION TO ALL CREDITORS AND EQUITY INTEREST HOLDERS OR
FOR THE USE IN SOLICITATION OF VOTES***

¹ The business address and the last four (4) digits of the Debtor's federal tax identification number is Zosano Pharma Corporation, 34790 Ardentech Court, Fremont, California 94555 (8360).

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INTRODUCTION

Zosano Pharma Corporation (the “**Debtor**”) proposes this chapter 11 plan (this “**Plan**”) under section 1121 of the Bankruptcy Code. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined have the meanings ascribed to such terms in Article I of this Plan.

Reference is made to the Disclosure Statement Filed contemporaneously with the Plan for a discussion of the Debtor’s history, business, historical financial information, and liquidation analysis, as well as a summary and analysis of the Plan and certain related matters, including distributions to be made under this Plan.

ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

A. Definitions

The following terms, when used in this Plan, or any subsequent amendments or modifications thereof, have the respective meanings hereinafter set forth and shall be equally applicable to the singular and plural of terms defined.

1. “**Accrued Professional Compensation Claims**” means at any given moment, all Claims for accrued fees and expenses for services rendered by a Retained Professional from June 1, 2022 through and including the Effective Date, to the extent such fees and expenses have not been paid pursuant to the Interim Compensation Order, OCP Order, or any other order of the Bankruptcy Court and regardless of whether a fee application has been Filed for such fees and expenses. To the extent the Bankruptcy Court denies or reduces Accrued Professional Compensation Claims by a Final Order any amount of a Retained Professional’s fees or expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Accrued Professional Compensation Claims.

2. “**Administrative Claim**” means a Claim entitled to priority under section 503(b) (including sections 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code), 507(a)(2), or 507(b) of the Bankruptcy Code, including actual and necessary costs and expenses incurred on or after the Petition Date of preserving the Estate and operating the business of the Debtor.

3. “**Administrative Claims Bar Date**” means the deadline for Filing all requests for allowance and payment of Administrative Claims, which shall be thirty (30) days after the Effective Date.

4. “**Allowed**” means, with respect to any Claim, except as otherwise provided in the Plan: (a) a Claim that is evidenced by a Proof of Claim Filed by the Bar Date (or for which Claim under the Plan, the Bankruptcy Code, or pursuant to a Final Order a Proof of Claim is not or shall not be required to be Filed); (b) a Claim that is listed in the Schedules as not contingent, not

unliquidated, and not disputed, and for which no Proof of Claim, as applicable, has been timely Filed; or (c) a Claim Allowed pursuant to the Plan or a Final Order of the Bankruptcy Court; provided that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed by any party in interest within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim, as applicable, shall have been Allowed by a Final Order. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtor or the Liquidating Trustee (as applicable) and without further notice to any party or action, approval, or order of the Bankruptcy Court. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes the Debtor to the Debtor or the Liquidating Trust (as applicable). For the avoidance of doubt, unless agreed to in writing by the Debtor or the Liquidating Trustee (as applicable). “**Allow**” and “**Allowing**” shall have correlative meanings.

5. “**Avoidance Actions**” means any and all avoidance, recovery, subordination, or other claims, actions, or remedies that may be brought by or on behalf of the Debtor or the Estate or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under sections 502, 510, 542, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws.

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

7. “**Bankruptcy Court**” means the United States Bankruptcy Court for the District of Delaware.

8. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 11 Case, and the general, local, and chambers rules of the Bankruptcy Court.

9. “**Bar Date**” means, as applicable, the Administrative Claims Bar Date and any other date or dates established by an order of the Bankruptcy Court by which Proofs of Claim must be Filed, including the general bar date of August 22, 2022 and the bar date of November 28, 2022 for Governmental Units, as set forth in the Order (I) Fixing Deadline for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof [Docket No. 142]; provided, for the avoidance of doubt, that Professional Fee Claims shall be Filed in accordance with Article II.B of the Plan.

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

11. **“Cash”** means cash and cash equivalents in legal tender of the United States of America.

12. **“Causes of Action”** means any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise, with the exception, as to each, of those transferred to Purchaser pursuant to the Sale Documents. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code, with the exception, as to each, of those transferred to Purchaser pursuant to the Sale Documents.

13. **“Chapter 11 Case”** means the chapter 11 case Filed by the Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

14. **“Claim”** means any claim, as defined in section 101(5) of the Bankruptcy Code, against the Debtor or Estate.

15. **“Claims Objection Bar Date”** means the date that is three hundred sixty-five (365) days after the Effective Date, which date may be extended upon presentment of an order to the Bankruptcy Court by the Liquidating Trustee.

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

17. **“Class”** means a category of Claims or Interests as established by and set forth in Article III of this Plan pursuant to section 1122(a) of the Bankruptcy Code.

18. **“Confirmation”** means the entry of the Confirmation Order by the Bankruptcy Court on the docket of the Chapter 11 Case.

19. **“Confirmation Date”** means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case.

20. **“Confirmation Hearing”** means the hearing(s) conducted by the Bankruptcy Court pursuant to section 1128(a) of the Bankruptcy Code to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

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

22. **“Cure”** means all amounts, including an amount of \$0.00, required to cure any monetary defaults under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) that is to be assumed by the Debtor pursuant to sections 365 or 1123 of the Bankruptcy Code.

23. **“D&O Policies”** means, collectively, the Debtor’s directors & officers liability insurance policies, and any other applicable Directors & Officers liability insurance policies (including primary insurance, excess insurance, or tail insurance policies).

24. **“Debtor Releases”** means the releases set forth in Article IX.B of this Plan.

25. **“Disbursing Agent”** means the Liquidating Trustee or the Entity(ies) selected by the Liquidating Trustee to make or to facilitate distributions pursuant to the Plan.

26. **“Disclosure Statement”** means the Disclosure Statement for Chapter 11 Plan of Liquidation for Zosano Pharma Corporation, dated [____], 2022 (as may be amended, supplemented or modified from time to time), including all exhibits and schedules thereto and references therein that relate to the Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law.

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

28. **“Distribution Record Date”** means the date for determining which Holders of Claims are eligible to receive distributions under the Plan, which date shall be the Confirmation Date or such other date as designated in a Final Order of the Bankruptcy Court.

29. **“Effective Date”** means the date that is the first Business Day after the Confirmation Date on which (a) no stay of the Confirmation Order is in effect, (b) all conditions precedent to the occurrence of the Effective Date set forth in Article VIII.A of the Plan have been satisfied or waived in accordance with Article VIII.B of the Plan, and (c) the Debtor declares the Plan effective. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter. The Debtor or the Liquidating Trustee will File and serve a notice of the occurrence of the Effective Date.

30. **“Entity”** means any “entity,” as defined in section 101(15) of the Bankruptcy Code.

31. **“Estate”** means the bankruptcy estate of the Debtor created pursuant to section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

32. **“Exculpated Parties”** or **“Exculpated Party”** means, in each case in its capacity as such: (a) the Debtor, (b) the Debtor’s directors and officers during the Chapter 11 Case, and (c) the Retained Professionals.

33. **“Executory Contract”** means a contract to which the Debtor is a party and subject to assumption or rejection under section 365 of the Bankruptcy Code.

34. **“File”** or **“Filed”** means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case, or, in the case of a Proof of Claim or a Proof of Interest, the Notice and Claims Agent.

35. **“Final Order”** means an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek reconsideration under Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure, seek a new trial, reargument, or rehearing and, where applicable, petition for certiorari has expired and no appeal, motion for reconsideration under Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure, motion for a new trial, reargument or rehearing or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought, or as to which any motion for reconsideration that has been filed pursuant to Rule 59(b) or 59(e) of the Federal Rules of Civil Procedure or any motion for a new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; provided that the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024, or any analogous rule, may be filed relating to such order or judgment shall not cause such order or judgment not to be a Final Order.

36. **“General Unsecured Claim”** means any Claim other than a(n): (a) Administrative Claim, (b) Professional Fee Claim, (c) Priority Tax Claim, (d) Secured Claim, (e) Other Priority Claim, or (f) Subordinated Claim.

37. **“Governmental Unit”** means a “governmental unit,” as defined in section 101(27) of the Bankruptcy Code.

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

39. **“Impaired”** means “impaired” within the meaning of section 1124 of the Bankruptcy Code.

40. **“Insurance Policies”** means all insurance policies of the Debtor not sold to Purchaser in the Sale.

41. **“Interest”** means any issued, unissued, authorized, or outstanding shares of common equity, preferred stock, or other instrument evidencing an ownership or economic interest in the Debtor.

42. **“Interim Compensation Order”** means the Order Establishing Procedures for Monthly, Interim, and Final Compensation and Reimbursement of Professionals] [Docket No. 100].

43. **“IRS Form”** means IRS Form W-9, W-8BEN, any acceptable substitute, or any other tax information form that the Debtor or the Liquidating Trustee (as applicable) may require from a Holder of a Claim for a distribution under the Plan.

44. **“Lien”** means a “lien,” as defined in section 101(37) of the Bankruptcy Code.
45. **“Liquidating Trust”** means the liquidating trust established on the Effective Date pursuant to Article IV of the Plan and the Liquidating Trust Agreement.
46. **“Liquidating Trust Agreement”** means the agreement to be executed as of the Effective Date establishing the Liquidating Trust pursuant to this Plan and to be Filed as part of the Plan Supplement.
47. **“Liquidating Trust Assets”** means all assets of the Debtor and the Estate as of the Effective Date (and, for the avoidance of doubt, excluding assets transferred to Purchaser pursuant to the Sale Documents and the Professional Fee Escrow Account), including Cash on hand, and Causes of Action.
48. **“Liquidating Trust Beneficiaries”** means, collectively, all creditors who are entitled to receive a distribution under this Plan, other than Retained Professionals.
49. **“Liquidating Trust Primary Recovery Units”** means the liquidating trust units, which, in the aggregate, shall entitle the holders thereof to receive distributions from the Liquidating Trust, in accordance with the Plan and the terms of the Liquidating Trust Agreement. The Liquidating Trust Primary Recovery Units shall be distributed to Holders of Allowed Class 3 Claims. The total amount of Liquidating Trust Primary Recovery Units shall equal to the total amount of Allowed Class 3 Claims. For the avoidance of doubt, the Liquidating Trust Primary Recovery Units will only be entitled to a distribution from the Liquidating Trust Assets after payment in full of any Allowed Professional Fee Claims, Priority Tax Claims, and Other Priority Claims.
50. **“Liquidating Trust Secondary Recovery Units”** means the liquidating trust units, which, in the aggregate, shall entitle the holders thereof to receive distributions from the Liquidating Trust, in accordance with the Plan and the terms of the Liquidating Trust Agreement. For the avoidance of doubt, the Liquidating Trust Secondary Recovery Units shall be distributed to Holders of Allowed Class 4 Claims. The total amount of Liquidating Trust Secondary Recovery Units shall equal to the total amount of Allowed Class 4 Claims. For the avoidance of doubt, the Liquidating Trust Secondary Recovery Units will only be entitled to a distribution from the Liquidating Trust Assets after payment in full of any Allowed Professional Fee Claims, Priority Tax Claims, and Other Priority Claims, and after holders of Liquidating Trust Primary Recovery Units receive a distribution in full on account of Allowed General Unsecured Claims.
51. **“Liquidating Trust Units”** means the Liquidating Trust Primary Recovery Units and Liquidating Trust Secondary Recovery Units.
52. **“Liquidating Trustee”** means the trustee appointed by the Debtor and identified in the Plan Supplement, to act as trustee of and administer the Liquidating Trust, and any successor thereto.

53. **“Notice and Claims Agent”** means Kurtzman Carson Consultants, LLC in its capacity as noticing, claims, and solicitation agent for the Debtor, pursuant to orders of the Bankruptcy Court [Docket Nos. 23 & 102].

54. **“OCP”** has the meaning ascribed to such term in the Debtor’s Motion for Entry of an Order (I) Authorizing the Retention and Compensation of Certain Professional Utilized in the Ordinary Course of Business and (II) Granting Related Relief [Docket No. 37], which motion was approved pursuant to the OCP Order.

55. **“OCP Order”** means the Order (I) Authorizing the Retention and Compensation of Certain Professional Utilized in the Ordinary Course of Business and (II) Granting Related Relief [Docket No. 101].

56. **“Other Priority Claim”** means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

57. **“Person”** means a “person,” as defined in section 101(41) of the Bankruptcy Code.

58. **“Petition Date”** means June 1, 2022, the date on which the Debtor Filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the Chapter 11 Case.

59. **“Plan”** means this plan of reorganization under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, modified, or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, or the terms hereof, as the case may be, and the Plan Supplement, which is incorporated herein by reference, including all exhibits and schedules hereto and thereto.

60. **“Plan Expenses”** means all actual and necessary fees, costs, expenses, and obligations incurred by or owed to the Liquidating Trustee and its agents, employees, attorneys, advisors, and other professionals in administering this Plan and the Liquidating Trust, including (a) reasonable compensation for services rendered and reimbursement for actual and necessary expenses incurred by the Liquidating Trustee and its agents, employees, and professionals after the Effective Date through and including the date upon which the Bankruptcy Court enters a final decree closing the Chapter 11 Case, and (b) all Statutory Fees payable pursuant to the Plan.

61. **“Plan Supplement”** means a supplemental appendix to the Plan that shall be Filed by the Debtor no later than seven (7) days before the Voting Deadline to accept or reject the Plan or such later date as may be approved by the Bankruptcy Court on notice to parties in interest and that shall include, among other things, draft forms of documents (or term sheets thereof), schedules, and exhibits to the Plan, and as may be amended, modified, or supplemented from time to time on or prior to the Effective Date in accordance with the terms thereof and hereof, the Bankruptcy Code, and the Bankruptcy Rules, including the following documents: (a) the identity and compensation of the Liquidating Trustee; (b) the Liquidating Trust Agreement; (c) to the extent known, the identity of any insider that will be employed or retained by the Liquidating

Trustee, and the nature of any compensation for such insider; and (e) other documentation necessary to effectuate the Plan or that is contemplated by the Plan.

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

63. **“Professional Fee Claims”** means a Claim (1) by a Retained Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred after the Petition Date and on or before the Effective Date under sections 328, 330, 331 or 503(b)(2) of the Bankruptcy Code, as applicable, or (2) by an OCP for compensation for services rendered or reimbursement of expenses incurred after the Petition Date and on or before the Effective Date pursuant to the OCP Order.

64. **“Professional Fee Reserve Amount”** means the aggregate of unpaid Professional Fee Claims and other unpaid fees and expenses incurred in rendering services to the Debtor from [●], 2022 through the Effective Date, which estimates shall be submitted by Retained Professionals or otherwise established by the Debtor pursuant to Article II.B.4 of the Plan.

65. **“Proof of Claim”** means a proof of Claim Filed against the Debtor in the Chapter 11 Case.

66. **“Proof of Interest”** means a proof of Interest Filed against the Debtor in the Chapter 11 Case.

67. **“Purchase Agreement”** means the Final Purchase Agreement, as such term is defined in the Sale Order.

68. **“Purchaser”** has the meaning ascribed to it in the Sale Order.

69. **“Released Parties”** or **“Released Party”** means, collectively, and in each case, in its capacity as such the Debtor, the Debtor’s current and former directors, managers, officers, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns; provided, however, that any Entity or Person that opts out of the third-party release under Article IX.C of the Plan or otherwise objects to Confirmation of the Plan shall not be deemed a “Released Party” under this Plan.

70. **“Releasing Parties”** or **“Releasing Party”** means, individually and collectively, (a) each Holder of a Claim (i) that does not opt out of the releases, or (ii) File an objection to such releases; and (b) as to each of the Entities in the foregoing clause (a), each such Entities’ and their Affiliates’ current and former officers, directors, principals, members, partners, managers, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and all other professionals and Retained Professionals (in each case as to the foregoing Entities and their Affiliates in clause (a), solely in their capacity as such). The term “Releasing Party” shall not include the Holder of an Interest, solely in such capacity.

71. **“Retained Professional”** means an Entity employed in the Chapter 11 Case pursuant to a Final Order in accordance with sections 327, 328, and/or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

72. **“Sale”** means the transaction between and among the Debtor and Purchaser pursuant to which the Debtor sold substantially all of its assets to the Purchaser pursuant to sections 363 and 365 of the Bankruptcy Code, as set forth in the Sale Order and Purchase Agreement.

73. **“Sale Documents”** means, collectively, the Purchase Agreement and all agreements, documents and instruments related thereto, including the Sale Order.

74. **“Sale Order”** means the Order (I) Authorizing the Sale of Assets of the Debtor Free and Clear of All Liens, Claims, Encumbrances, and Interests; (II) Approving the Final Asset Purchase Agreement; (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief [Docket No. 164].

75. **“Schedules”** means, collectively, the schedules of assets and liabilities, schedule of Executory Contracts and Unexpired Leases and statement of financial affairs Filed by the Debtor pursuant to section 521 of the Bankruptcy Code, the Bankruptcy Rules and the official bankruptcy forms, as the same may be amended, modified or supplemented from time to time.

76. **“Secured Claim”** means a Claim: (a) secured by a Lien on collateral, which Lien is valid, perfected and enforceable, to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

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

78. **“Solicitation Procedures Order”** means an order entered by the Bankruptcy Court [Docket No. [●]] approving the Disclosure Statement and the solicitation of votes on the Plan.

79. **“Subordinated Claims”** means any Claim subordinated by Order of the Bankruptcy Code pursuant to § 510(c) of the Bankruptcy Code or otherwise, or any Claim or portion thereof for punitive or exemplary damages.

80. **“Statutory Fees”** means any fees and charges assessed against the Estate under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930.

81. **“Unexpired Lease”** means a lease to which the Debtor is a party and subject to assumption or rejection under section 365 of the Bankruptcy Code.

82. **“Unimpaired”** means, with respect to a Claim or Class of Claims, not “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

83. “**United States Trustee**” means the United States Trustee for the District of Delaware.

84. “**Voting Deadline**” means the “Voting Deadline,” as such term is defined in the Solicitation Procedures Order.

B. Rules of Interpretation

1. For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (b) unless otherwise specified, any reference herein to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) unless otherwise specified, any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified, or supplemented; (d) unless otherwise specified, all references herein to “Articles” are references to Articles of this Plan; (e) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) the words “include” and “including” and variations thereof shall not be deemed to be terms of limitation and shall be deemed to be followed by the words “without limitation”; (g) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (j) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (k) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (l) any effectuating provisions may be interpreted by the Debtor or the Liquidating Trustee (as applicable) in such a manner that is consistent with the overall purpose and intent of the Plan without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, and such interpretation shall control.

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

C. Computation of Time

Unless otherwise specifically stated in the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed in the Plan. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day. Any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter unless otherwise specified herein.

D. Controlling Document

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

Plan Supplement, the Plan shall control. In the event of an inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

ARTICLE II.
ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, AND UNITED STATES
TRUSTEE STATUTORY FEES

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

A. Administrative Expense Claims

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtor or the Liquidating Trustee (as applicable), each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim in accordance with the following: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date (or, if not then due, when such Allowed Administrative Claim becomes due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; or (3) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

Except for Professional Fee Claims, and notwithstanding any prior Filing or Proof of Claim, requests for allowance and payment of Administrative Claims must be Filed and served by motion on the Debtor or the Liquidating Trustee (as applicable) and their counsel, no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of the occurrence of the Effective Date. For the avoidance of doubt, Holders of Administrative Claims based on liabilities incurred by the Debtor in the ordinary course of its businesses after the Petition Date must File and serve a motion for allowance and payment of Administrative Claims by the Administrative Claims Bar Date.

Objections to such motions must be Filed and served on the requesting party by the later of (1) one hundred eighty (180) days after the Effective Date and (2) ninety (90) days after the Filing of the applicable motion for allowance and payment of the Administrative Claims. After notice and a hearing, the Allowed amounts, if any, of Administrative Claims shall be determined by, and satisfied in accordance with, a Final Order.

Except as otherwise provided in Articles II.B or II.D of the Plan, Holders of Administrative Claims that do not File and serve a motion by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee, or their assets and properties, and any Administrative Claims shall be deemed disallowed as of the Effective Date. For the avoidance of doubt, a Proof of Claim asserting an Administrative Claim does

not constitute a request for allowance and payment of Administrative Claims, and a motion must be Filed as provided herein.

B. Professional Fee Claims

1. Final Fee Applications

All requests for payment of Professional Fee Claims by Retained Professionals (other than OCPs) for services rendered and reimbursement of expenses incurred prior to the Effective Date must be Filed no later than forty-five (45) days after the Effective Date. Objections to Professional Fee Claims must be Filed and served no later than twenty-one (21) days after the Filing of the same. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims of Retained Professionals (other than OCPs) after notice and a hearing in accordance with the procedures established by the Bankruptcy Court. Unless otherwise agreed to by the Debtor and the Retained Professional prior to the Effective Date, the Liquidating Trustee shall pay Professional Fee Claims that are Allowed by Final Order in Cash, and first to a Retained Professional from the Professional Fee Escrow Account to the extent any funds remain escrowed therefor in such account.

2. Administrative Claims of OCPs

All requests for payment of Professional Fee Claims of OCPs shall be made pursuant to the OCP Order. The amount of Professional Fee Claims owing to the OCPs shall be paid in Cash to such OCPs by the Debtor or the Liquidating Trustee (as applicable) from the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed pursuant to the OCP Order.

3. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Liquidating Trustee shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to the Chapter 11 Case that are incurred after the Effective Date. Upon the Effective Date, any requirement that Retained Professionals comply with sections 327 through 331 of the Bankruptcy Code or the OCP Order in seeking retention or compensation for services rendered after such date shall terminate, and the Debtor or Liquidating Trustee may employ and pay any Retained Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Code.

4. Professional Fee Reserve Amount

Unless otherwise agreed to by the Debtor and the Retained Professional prior to the Effective Date, to receive payment for unbilled fees and expenses incurred through the Effective Date, the Retained Professionals shall estimate their Accrued Professional Compensation Claims prior to and as of the Confirmation Date, along with an estimate of fees and expenses to be incurred through the Effective Date, and shall deliver such estimate to the Debtor, their counsel no later than three (3) calendar days prior to the scheduled Confirmation Hearing; provided that such

estimate shall not be considered an admission with respect to the fees and expenses of such Retained Professional. If a Retained Professional does not provide an estimate, the Debtor may estimate the unbilled fees and expenses of such Retained Professional. The total amount so estimated as of the Confirmation Date shall comprise the Professional Fee Reserve Amount.

5. Professional Fee Escrow Account

Unless otherwise agreed to by the Debtor and the Retained Professional prior to the Effective Date, the Debtor shall continue to fund the Professional Fee Escrow Account for the Professional Fee Claims of the Retained Professionals. On or before the Effective Date, the Debtor or the Liquidating Trustee (as applicable) shall, if and to the extent necessary, fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Reserve Amount. For the avoidance of doubt, the Liquidating Trustee is charged with administering the Professional Fee Escrow Account after the Effective Date and is permitted to open a new bank account to transfer funds from the Debtor's Professional Fee Escrow Account, at which point such account shall be deemed a Professional Fee Escrow Account and the funds therein shall be used pursuant to the terms of this Plan.

The Professional Fee Escrow Account and amounts funded therein for a Retained Professional are and shall continue to be maintained in trust solely for each Retained Professional separately on a per-Retained Professional basis. Such funds shall not be considered property of the Debtor, its Estate, or the Liquidating Trust; provided, however, the Liquidating Trust shall have a reversionary interest in any Cash remaining in the Professional Fee Escrow Account after payment in full of all Allowed Professional Fee Claims without any further notice, action or order of the Bankruptcy Court. Unless otherwise agreed to by the Debtor and the Retained Professional prior to the Effective Date, the amount of Professional Fee Claims owing to the Retained Professionals shall be paid in Cash to such Retained Professionals by the Liquidating Trustee from the Professional Fee Escrow Account as soon as reasonably practicable after such Professional Fee Claims are Allowed by order of the Bankruptcy Court.

C. Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees with the Debtor or the Liquidating Trustee (as applicable) to a different treatment, and only to the extent that any such Allowed Priority Tax Claim has not been paid in full prior to the Effective Date, in full and final satisfaction, settlement and release of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. The Debtor and the Liquidating Trustee reserve the right to prepay any Allowed Priority Tax Claim at any time under this option. For the avoidance of doubt, Priority Tax Claims are entitled to payment in full prior to distributions to holders of the Liquidating Trust Primary Recovery Units and Liquidating Trust Secondary Recovery Units.

D. United States Trustee Statutory Fees

All fees payable pursuant to 28 U.S.C. § 1930 and any applicable interest thereon that are due and payable as of the Effective Date shall be paid in full in Cash by the Debtor or the

Liquidating Trustee on the Effective Date. All such fees and any applicable interest thereon that become due and payable after the Effective Date shall be paid by the Liquidating Trustee from the Liquidating Trust Assets when such fees become due and payable. All such fees and any applicable interest thereon shall continue to become due and payable until the entry of a final decree closing the Chapter 11 Case or conversion or dismissal of the Chapter 11 Case, whichever is earlier. For the avoidance of doubt, no Governmental Unit is required to File a request for an Administrative Claim for Statutory Fees.

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Classification of Claims and Interests

Except for the Claims addressed in Article II of the Plan, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim is an Allowed Claim in that Class and has not been otherwise paid, released, or satisfied at any time.

The classification of Claims against and Interests in the Debtor pursuant to the Plan is as follows:

Class	Claim or Interest	Status	Voting Rights
1	Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
3	General Unsecured Claims	Impaired	Entitled to Vote
4	Subordinated Claims	Impaired	Entitled to Vote
5	Interests in the Debtor	Impaired	Not Entitled to Vote (Deemed to Reject)

B. Treatment of Claims and Interests

1. Class 1 – Secured Claims

a. *Classification:* Class 1 consists of all Secured Claims against the Debtor.

b. *Treatment:* Except to the extent that a Holder of an Allowed Secured Claim agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed Secured Claim, each Holder of an Allowed Secured Claim shall receive the following, at the option of the Debtor or Liquidating Trustee (as applicable): (i) payment in full in Cash on or as soon as is reasonably practicable after the later of (A) the Effective Date and (B) the date on which such Secured Claim is Allowed by a Final Order of the Bankruptcy Court; (ii) the collateral securing such Holder's Allowed Secured Claim; or (iii) such other treatment rendering such Allowed Secured Claim Unimpaired.

c. *Voting:* Class 1 is Unimpaired, and Holders of Secured Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Secured Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 – Other Priority Claims

a. *Classification:* Class 2 consists of all Other Priority Claims against the Debtor.

b. *Treatment:* Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed Other Priority Claim, each Holder of such Allowed Other Priority Claim shall receive the following at the option of the Debtor or Liquidating Trustee (as applicable): (i) payment in full in Cash on or as soon as is reasonably practicable after the later of (A) the Effective Date and (B) the date on which such Other Priority Claim is Allowed by a Final Order of the Bankruptcy Court; or (ii) such other treatment rendering such Allowed Other Priority Claim Unimpaired.

c. *Voting:* Class 2 is Unimpaired, and Holders of Other Priority Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Other Priority Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 – General Unsecured Claims

a. *Classification:* Class 3 consists of all General Unsecured Claims against the Debtor.

b. *Treatment:* Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive its pro rata share (calculated based on the proportion that such Holder's Allowed General Unsecured Claim bears to the aggregate amount of Allowed General Unsecured Claims) of the Liquidating Trust Primary Recovery Units.

c. *Voting:* Class 3 is Impaired, and Holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

4. Class 4 – Subordinated Claims

a. *Classification:* Class 4 consists of all Subordinated Claims against the Debtor.

b. *Treatment:* Except to the extent that a Holder of an Allowed Subordinated Claim agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed Subordinated Claim, each Holder of an Allowed Subordinated Claim shall receive its pro rata share (calculated based on the proportion that such Holder's Allowed Subordinated Claim bears to the aggregate amount of Allowed Subordinated Claims) of the Liquidating Trust Secondary Recovery Units.

c. *Voting:* Class 4 is Impaired, and Holders of Subordinated Claims are entitled to vote to accept or reject the Plan.

5. Class 5 – Interests in the Debtor

a. *Classification:* Class 5 consists of all Interests in the Debtor.

b. *Treatment:* On the Effective Date, all Interests in the Debtor shall be cancelled and released without any distribution and the Debtor shall be dissolved.

c. *Voting:* Class 5 is Impaired. the Holders of Class 5 Interests are conclusively deemed to reject the Plan and are not entitled to vote to accept or reject the Plan.

C. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtor's or the Liquidating Trustee's rights with respect to any Claims, including all legal and equitable defenses to or setoffs or recoupments against any Claims.

D. Voting Classes; Presumed Acceptance by Non-Voting Classes

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

E. Controversy Concerning Impairment

If a controversy arises as to whether any Claim or any Class of Claims is Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

F. Subordination of Claims

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

G. Elimination of Vacant Classes

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

H. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code

The Debtor hereby requests confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class that is deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Debtor reserves the right to request Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any voting Class that votes to reject the Plan.

**ARTICLE IV.
MEANS FOR IMPLEMENTATION OF PLAN**

A. Sources of Consideration for Plan Distributions

Subject to the provisions of the Plan concerning the Professional Fee Escrow Account, the Debtor and the Liquidating Trustee shall fund distributions under the Plan with Cash on hand on the Effective Date and all other Liquidating Trust Assets.

B. Vesting of Assets

On the Effective Date, pursuant to sections 1141(b) and 1141(c) of the Bankruptcy Code, the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Claims, Liens, encumbrances, charges, and other interests except as otherwise expressly provided in this Plan.

C. Preservation of Causes of Action

Except as otherwise provided in this Plan or in any contract, instrument, release, or agreement entered into in connection with the Plan or the Sale, in accordance with section 1123(b) of the Bankruptcy Code, all claims and Causes of Action that the Debtor or Estate may have against

any Person or Entity are preserved and transferred to the Liquidating Trust on the Effective Date, including, without limitation, any and all Causes of Action the Debtor, Estate, or other appropriate party in interest may assert under the Bankruptcy Code and nonbankruptcy law.

D. Corporate Action

1. Transfer of Assets and Assumption of Liabilities

On the Effective Date, (i) the Debtor shall, in accordance with this Plan, cause the Liquidating Trust Assets to be transferred to the Liquidating Trust and (ii) the Liquidating Trust shall assume all obligations of the Debtor under this Plan.

2. Dissolution of the Debtor; Removal of Directors and Officers; Termination of Employees

On the Effective Date, and upon the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtor shall be dissolved for all purposes unless the Liquidating Trustee determines that dissolution can have any adverse impact on the Liquidating Trust Assets; provided, however, that neither the Debtor nor any party released pursuant to Article IX.B of the Plan shall be responsible for any liabilities that may arise as a result of non-dissolution of the Debtor; provided further, however, that nothing in the Plan shall be construed as relieving the Debtor or Liquidating Trustee (as applicable) of their duties to pay Statutory Fees to the United States Trustee as required by the Bankruptcy Code and applicable law until such time as a Final Decree is entered in the Debtor's case or the case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code. The Liquidating Trustee shall submit with the appropriate governmental agencies a copy of the Confirmation Order, which Confirmation Order shall suffice for purposes of obtaining a Certificate of Dissolution from the Delaware Secretary of State.

Without limiting the foregoing, on the Effective Date and upon the Debtor causing the Liquidating Trust Assets to be transferred to the Liquidating Trust, the Debtor shall have no further duties or responsibilities in connection with implementation of this Plan, and the directors and officers of the Debtor shall be deemed to have resigned and the employees of the Debtor terminated. From and after the Effective Date, the Liquidating Trustee shall be authorized to act on behalf of the Debtor in the same manner as the Debtor's directors and officers were authorized prior to the Effective Date, provided that the Liquidating Trustee shall have no duties other than as expressly set forth in this Plan.

E. Cancellation of Existing Securities and Agreements

On the Effective Date, all agreements and other documents evidencing (i) any Claim or rights of any Holder of a Claim against the Debtor, including any notes evidencing such Claims or (ii) any Interest in the Debtor, including any options or warrants to purchase Interests, shall be cancelled. The Holders of, or parties to, such cancelled agreements and documents shall have no rights arising from or relating to such agreements and documents or the cancellation thereof, except as to the allowance and distribution on pre-Confirmation Claims in respect thereof as provided pursuant to this Plan.

F. Plan Transactions

On the Effective Date or as soon thereafter as is reasonably practicable, the Debtor and the Liquidating Trustee may take any and all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan, including, but not limited to, (i) the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of this Plan and that satisfy the requirements of applicable law, (ii) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with this Plan, (iii) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law, and (iv) any and all other actions that the Debtor or Liquidating Trustee determine are necessary or appropriate to effect the Plan.

G. Effectuating Documents and Further Transactions

Upon entry of the Confirmation Order, the Debtor and the Liquidating Trustee shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements or documents, and take such acts and actions as may be reasonable, necessary, or appropriate to effectuate, implement, consummate, and/or further evidence the terms and conditions of this Plan and any transactions described in or contemplated by this Plan. The Debtor or Liquidating Trustee (as applicable), all Holders of Claims receiving distributions pursuant to this Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan.

H. Section 1146 Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment. Such exemption specifically applies, without limitation, to the transfer of the Liquidating Trust Assets to the Liquidating Trust and issuance of the Liquidating Trust Primary Recovery Units and Liquidating Trust Secondary Recovery Units.

I. Sale Order

Notwithstanding anything to the contrary herein, nothing in this Plan shall affect, impair or supersede the Sale Order(s) or Sale Documents, each of which remains in full force and effect and governs in the event of any inconsistency with the Plan.

J. Authority to Act

Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under this Plan that would otherwise require approval of the stockholders, security holders, officers, directors, partners, members, or other owners of one or more of the Debtor shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as applicable) pursuant to the applicable law of the state in which the Debtor is formed, without any further vote, consent, approval, authorization, or other action by such stockholders, security holders, officers, directors, partners, members, or other owners of the Debtor or notice to, order of, or hearing before, the Bankruptcy Court.

K. Liquidating Trust

1. Establishment of Liquidating Trust

On the Effective Date, the Liquidating Trust will be established pursuant to the Liquidating Trust Agreement, which will be Filed with the Bankruptcy Court as part of the Plan Supplement. Upon establishment of the Liquidating Trust, all Liquidating Trust Assets shall be deemed transferred to the Liquidating Trust without any further action of the Debtor or any managers, employees, officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtor.

2. Transfer of Liquidating Trust Assets

Pursuant to section 1141 of the Bankruptcy Code, all property transferred to the Liquidating Trust shall be made free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as may be otherwise provided in this Plan. Upon completion of the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtor will have no further interest in, or with respect to, the Liquidating Trust Assets, or the Liquidating Trust. For all federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) will treat the transfer of assets to the Liquidating Trust in accordance with the terms of this Plan as a transfer to the Liquidating Trust Beneficiaries, followed by a transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust, and the Liquidating Trust Beneficiaries will be treated as the grantors and owners thereof.

3. Purpose of Liquidating Trust

The Liquidating Trust shall be established for the purpose of liquidating the Liquidating Trust Assets, maximizing recoveries for the benefit of the Liquidating Trust Beneficiaries, and making distributions in accordance with this Plan to the Liquidating Trust Beneficiaries, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). The Liquidating Trust is intended to qualify as a “grantor trust” for federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes, with the Liquidating Trust Beneficiaries treated as grantors and owners of the Liquidating Trust.

4. Liquidating Trustee

(i) *Liquidating Trustee as Representative of the Estate*

From and after the Effective Date, the Liquidating Trustee shall act as the exclusive representative of the Estate for all purposes, including specifically, pursuant to section 1123(b)(3) of the Bankruptcy Code, for the purpose of retaining and enforcing any claims or interests of the Estate, including rights under the Sale Documents, and any Causes of Action in accordance with the best interests of and for the benefit of the Liquidating Trust Beneficiaries. Any successor Liquidating Trustee appointed pursuant to the Liquidating Trust Agreement shall be bound by and comply with the terms of this Plan, the Confirmation Order, and the Liquidating Trust Agreement.

(ii) *Responsibilities and Authority of the Liquidating Trustee*

The responsibilities and authority of the Liquidating Trustee shall be as set forth in the Liquidating Trust Agreement, and shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Liquidating Trustee: (a) preserving and liquidating the Liquidating Trust Assets and making distributions to the Liquidating Trust Beneficiaries in accordance with the provisions of this Plan; (b) administering and paying taxes, including, among other things, (i) filing tax returns (to the extent not the obligation of Purchaser), and (ii) representing the interest and account of the Liquidating Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (c) retaining and paying, without the need for retention or fee applications, professionals in connection with the Liquidating Trustee's performance of its duties under this Plan and the Liquidating Trust Agreement; (d) distributing information statements as required for federal income tax and other applicable tax purposes; (e) Filing an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Case; (f) making distributions to Retained Professionals for Allowed Professional Fee Claims, including from the Professional Fee Escrow Account; (g) making distributions to Holders of Allowed Claims in accordance with the Plan and Liquidating Trust Agreement; and (h) such other responsibilities as may be vested in the Liquidating Trustee pursuant to this Plan or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan.

(iii) *Powers of the Liquidating Trustee*

The powers of the Liquidating Trustee shall be as set forth in the Liquidating Trust Agreement, and shall include the following: (a) the power to invest funds of the Liquidating Trust, and withdraw, make distributions, and pay taxes and other obligations owed by the Liquidating Trust from such funds in accordance with this Plan and the Liquidating Trust Agreement; (b) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Liquidating Trustee with respect to its responsibilities; (c) the power to pursue, prosecute, resolve, compromise and settle any Causes of Action against any other Person or Entity without notice to or approval from the Bankruptcy Court; (d) the power to object to Claims, including, without limitation, the power to seek subordination or recharacterization of Claims by objection, motion, or adversary proceeding, as applicable; (e) the power to enforce the Sale Documents; and (f) such other powers as may be vested in or assumed by the Liquidating

Trustee pursuant to this Plan or by Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of this Plan.

(iv) *Compensation of Liquidating Trustee*

The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement. The Liquidating Trustee shall fully comply with the terms, conditions and rights set forth in this Plan, the Confirmation Order, and the Liquidating Trust Agreement. The Liquidating Trustee (and any Liquidating Trustee retained professionals) shall not be required to File a fee application to receive compensation.

(v) *Retention and Payment of Professionals*

The Liquidating Trustee, shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents, to assist and advise the Liquidating Trustee in the performance of his, her, or its duties, and to compensate and reimburse expenses of such professionals in accordance with the Liquidating Trust Agreement.

(vi) *Limitation on Liability and Indemnification of the Liquidating Trustee*

The Liquidating Trustee and his, her, or its consultants or professionals shall be entitled to indemnification and advancement from the Liquidating Trust against any losses, liabilities, expenses (including reasonable attorneys' fees and disbursements), damages, taxes, suits, or claims that the Liquidating Trustee or its consultants or professionals may incur or sustain by reason of being or having been a Liquidating Trustee or consultants or professionals of the Liquidating Trustee for performing any functions incidental to such service; provided, however, the foregoing shall not relieve the Liquidating Trustee or his, her, or its consultants or professionals from liability for gross negligence or willful misconduct.

5. Plan Expenses

All Plan Expenses shall be paid from the Liquidating Trust, and the Liquidating Trustee may, in the ordinary course of business and without the necessity for any application to, or approval of, the Bankruptcy Court, subject to the provisions of the Liquidating Trust Agreement, pay any accrued but unpaid Plan Expenses from the Liquidating Trust.

6. Termination of Liquidating Trust

The Liquidating Trust shall be dissolved upon the earlier of (i) the distribution of all of its assets to the Liquidating Trust Beneficiaries and (ii) the fifth anniversary of the creation of the Liquidating Trust; provided that, if warranted by the facts and circumstances involved in resolving or monetizing any Liquidating Trust Assets, upon application to, and if approved by, the Bankruptcy Court upon a finding that such extension is necessary or appropriate for purposes of resolving or monetizing such Liquidating Trust Assets and distributing the proceeds to Liquidating Trust Beneficiaries, the term of the Liquidating Trust may be extended by the Liquidating Trustee for a specified term. Notwithstanding the foregoing, unless otherwise ordered by the Bankruptcy

Court, the Liquidating Trust shall be automatically terminated in the event that a final decree is entered closing the Chapter 11 Case or the Chapter 11 Case is converted or dismissed.

7. Exculpation Relating to the Liquidating Trust

No Holder of a Claim or Interest or any other party in interest will have, or otherwise pursue, any claim or Cause of Action against the Liquidating Trustee, the Liquidating Trust, or the consultants or professionals thereof (for each of the foregoing, solely in the performance of their duties) for making payments and distributions in accordance with the Plan and the Liquidating Trust Agreement or for fulfilling any functions incidental to implementing the provisions of the Plan or the Liquidating Trust, except for any acts or omissions to act that are the result of gross negligence or willful misconduct, as set forth more fully in the Liquidating Trust Agreement.

ARTICLE V.

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES;
EMPLOYEE BENEFITS; AND INSURANCE POLICIES**

A. General Treatment

On the Effective Date, except as otherwise provided herein (which exclusion includes the Insurance Policies), all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be **deemed rejected**, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to this Plan or otherwise shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at any time prior to the effective date of assumption.

B. Rejection Damages Claims

If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order results in a Claim, **then, unless otherwise ordered by the Court, such Claim shall be forever barred and shall not be enforceable against the Debtor, the Estate, the Liquidating Trustee, Liquidating Trust, or any of their respective assets and properties** unless a Proof of Claim is Filed with the Notice and Claims Agent and served upon counsel to the Liquidating Trustee within thirty (30) days of the Effective Date. The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan; any other Claims held by a party to a rejected Executory Contract or Unexpired Lease shall have been evidenced by a Proof of Claim Filed by the applicable Bar Date or shall be barred and unenforceable. Claims arising from the rejection of Executory Contracts or Unexpired Leases under the Plan and Confirmation Order shall be classified as General Unsecured Claims and shall, if Allowed, be treated in accordance with Article III.B.3.

Any Claims arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Confirmation Order and Plan that are not timely Filed within thirty (30) days of the Effective Date will be automatically disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtor, the Estate, the Liquidating Trustee, Liquidating Trust, or any of their respective assets and properties.

C. Reservation of Rights

The inclusion of any contract or lease in the Schedules or in any Plan Supplement shall not constitute an admission by the Debtor that such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Liquidating Trustee (as applicable) may elect within thirty (30) calendar days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease under the Plan by filing a notice of such election on the docket of the Chapter 11 Case.

D. Preexisting Obligations to Debtor under Executory Contracts and Unexpired Leases

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtor or Liquidating Trustee (as applicable) under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Debtor and the Liquidating Trustee (as applicable) expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnity or continued maintenance obligations.

E. Insurance Preservation

Nothing in the Plan, the Confirmation Order, or the Liquidating Trust Agreement, alters the rights and obligations of the Debtor (and its Estate) and the Debtor's insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms and conditions thereof or diminishes or impairs the enforceability of the Insurance Policies. All of the Debtor's rights and its Estate's rights under any Insurance Policy to which the Debtor and/or the Debtor's Estate may be beneficiaries shall vest with the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries and all of the beneficiaries of such policies. For the avoidance of doubt, the Debtor shall be deemed to have assumed only the D&O Policies, and any Insurance Policy other than a D&O Policy shall be deemed terminated on the Effective Date.

F. Modifications, Amendments, Supplements, Restatements, Or Other Agreements

Modifications, amendments, supplements, and restatements to a prepetition Executory Contract and/or Unexpired Lease that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Distribution Record Date

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtor, or its respective agents, shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Interests. The Debtor and the Liquidating Trustee (as applicable) shall have no obligation to recognize any ownership transfer of the Claims or Interests occurring on or after the Distribution Record Date. The Debtor, the Liquidating Trustee, and any party responsible for making distributions shall be entitled to recognize and deal for all purposes hereunder only with those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable.

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims as of the Distribution Record Date at the address for each such Holder as indicated on the Debtor's records as of the date of any such distribution; provided, however, that the manner of such distributions shall be determined at the discretion of the Liquidating Trustee; provided further, however, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder.

B. Withholdings

The Liquidation Trustee shall (i) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under tax laws with respect to any distribution pursuant to this Liquidation Trust Agreement and (ii) comply with any reporting requirements imposed by any federal, state, local, or foreign taxing authority. The Liquidation Trustee may withhold all or the appropriate portion of any distribution due to any Beneficiary until such time as such Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable Beneficiary for all purposes of this Liquidation Trust Agreement and the Plan. If a Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such Beneficiary's distribution may be treated as unclaimed property in accordance with Section 5.12 of this Liquidation Trust Agreement.

All Trust beneficiaries shall supply to the Trustee appropriate IRS forms WE-8(BEN) or otherwise prior to be entitled to any distribution

C. Date of Distributions

Distributions made after the Effective Date to Holders of Allowed Claims and Allowed Interests shall be deemed to have been made on the Effective Date and no interest shall accrue or be payable with respect to Claims or any distribution related thereto. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon

as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

D. Disbursing Agent

Except as otherwise provided herein, all distributions under the Plan shall be made by the Disbursing Agent on or after the Effective Date. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties. Additionally, if the Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Liquidating Trust.

E. Powers of Disbursing Agent

The Disbursing Agent may (i) effect all actions and execute all agreements, instruments, and other documents necessary to carry out the provisions of this Plan, (ii) make all distributions contemplated hereby, and (iii) perform such other duties as may be required of the Disbursing Agent pursuant to this Plan.

F. Surrender of Instruments

As a condition precedent to receiving any distribution under this Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Disbursing Agent or its designee. Any holder of such instrument or note that fails to (i) surrender the instrument or note or (ii) execute and deliver an affidavit of loss or indemnity reasonably satisfactory to the Disbursing Agent and furnish a bond in form, substance, and amount reasonably satisfactory to the Disbursing Agent within six months of being entitled to such distribution shall be deemed to have forfeited all rights and claims and may not participate in any distribution hereunder.

G. IRS Forms

In connection with the Plan, to the extent applicable and not an obligation of Purchaser under the Sale Documents, the Debtor and the Liquidating Trustee (as applicable) shall comply with all tax withholding and reporting requirements imposed on them/it by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtor and the Liquidating Trustee (as applicable) shall be authorized to take all actions necessary to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtor and the Liquidating Trustee (as applicable) reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

As a condition precedent to receiving any distribution under this Plan, each Holder of an Allowed Claim that is entitled to a distribution under the Plan must provide the Liquidating Trustee

an executed IRS Form. An Allowed Claim of a Holder that fails to provide an executed IRS Form within sixty (60) days after service (by first class mail) of a formal request for the same by the Liquidating Trustee shall be deemed disallowed and expunged for purposes of distributions under the Plan.

H. Delivery of Distributions

Subject to applicable Bankruptcy Rules, all distributions to Holders of Allowed Claims or Allowed Interests shall be made to the Disbursing Agent, who shall transmit such distributions to the applicable Holders of Allowed Claims or their designees.

If any distribution to a Holder of an Allowed Claim or Allowed Interests (i) is returned as undeliverable for lack of a current address or otherwise, or (ii) is not cashed or otherwise presented for collection by the Holder of the Allowed Claim within ninety (90) calendar days after the mailing of such distribution, the Liquidating Trustee shall file with the Bankruptcy Court the name and last known address of the Holder of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then (i) the Holder of such Claim shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Liquidating Trust, and (ii) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan.

I. Manner of Payment

Any distributions to be made by or on behalf of the Debtor or the Liquidating Trustee (as applicable) pursuant to this Plan shall be made by checks drawn on accounts maintained by the Liquidating Trustee or by wire transfer if circumstances justify, at the option of the Liquidating Trustee.

J. Foreign Currency Exchange Rate

As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal*, on the Petition Date.

K. Setoffs and Recoupments

The Debtor and the Liquidating Trustee, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable bankruptcy and/or nonbankruptcy law, without the approval of the Bankruptcy Court and upon no less than fourteen (14) calendar days' notice to the applicable Holder of a Claim, or as may be agreed to by the Holder of a Claim, may, but shall not be required to, set off against or recoup against any Allowed Claim and the distributions to be made pursuant to this Plan on account of such Allowed Claim (before any distribution is to be made on account of such Allowed Claim), any claims of any nature whatsoever that the Debtor or its Estate may have against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall

constitute a waiver or release by the Debtor or the Liquidating Trustee of any such claim the Debtor or its Estate may have against the Holder of such Claim.

L. Minimum Distributions

No payment of Cash in an amount of less than one hundred U.S. dollars (\$100.00) shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan and the Liquidating Trust Agreement.

If the Cash available for the final distribution is less than the cost to distribute such funds, the Liquidating Trustee may donate such funds to the unaffiliated charity of its choice.

M. Allocation of Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a distribution under this Plan includes both principal and accrued but unpaid prepetition interest, such distribution shall be allocated to the principal amount (as determined for federal income tax purposes) of the Claim first, and then to accrued but unpaid prepetition interest.

N. Distributions Free and Clear

Except as otherwise provided in this Plan, any distribution or transfer made under this Plan, including distributions to any Holder of an Allowed Claim, shall be free and clear of any Liens, Claims, encumbrances, charges, and other interests, and no other entity shall have any interest, whether legal, beneficial, or otherwise, in property distributed or transferred pursuant to this Plan.

O. Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties

If a Holder of a Claim receives a payment or other satisfaction of its Claim other than through the Debtor and/or the Liquidating Trustee on account of such Claim, such Claim shall be reduced by the amount of such payment or satisfaction without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, and if the Claim was paid or satisfied in full other than through the Debtor and/or the Liquidating Trustee, then such Claim shall be disallowed and any recovery in excess of a single recovery in full shall be paid over to the Liquidating Trustee without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment or satisfaction from a party that is not the Debtor and/or the Liquidating Trustee on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the Debtor or Liquidating Trustee (as applicable), to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtor's Insurance Policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such Insurance Policy. To the extent that one or more of the Debtor's insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**ARTICLE VII.
PROCEDURES FOR RESOLVING UNLIQUIDATED AND DISPUTED
CLAIMS**

A. Allowance of Claims

After the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses that the Debtor had with respect to any Claim or Interest immediately prior to the Effective Date.

B. Claims Administration Responsibilities

Except as otherwise specifically provided in the Plan, after the Effective Date, the Liquidating Trustee shall have the sole authority to: (1) File, withdraw, or litigate to judgment, objections to Claims or Interests; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

C. Estimation of Claims

Before or after the Effective Date, the Debtor or the Liquidating Trustee (as applicable) may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has 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 such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection.

Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged or disallowed from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars (\$0.00) unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Debtor or the Liquidating Trustee (as applicable) may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

D. Adjustment to Claims Without Objection

Any Claim that has been paid, satisfied, or assumed by Purchaser in the Sale, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor or the Liquidating Trustee (as applicable) without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

E. Time to File Objections to Claims

Except as otherwise provided herein, any objections to Claims shall be Filed on or before the Claims Objection Bar Date (as such date may be extended upon presentment of an order to the Bankruptcy Court by the Liquidating Trustee).

F. Disallowance of Claims

Except as provided herein or otherwise agreed to by the Debtor or the Liquidating Trustee (as applicable), any Holder of any and all Proofs of Claim Filed after the Bar Date shall not receive any distributions on account of such Claims, unless on or before the Confirmation Hearing such late Claim has been deemed timely Filed by a Final Order.

G. Disallowed Claims

All Claims held by Persons or Entities against whom or which the Debtor has commenced a proceeding asserting a Cause of Action under sections 542, 543, 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 548, 549 or 724(a) of the Bankruptcy Code shall be deemed disallowed Claims pursuant to section 502(d) of the Bankruptcy Code and Holders of such Claims shall not be entitled to vote to accept or reject this Plan. A Claim deemed disallowed pursuant to this Article VII.G shall continue to be disallowed for all purposes until the relevant proceeding against the Holder of such Claim has been settled or resolved by a Final Order and any sums due to the Debtor or the Liquidating Trustee from such Holder have been paid.

H. Amendments to Claims

Except as provided herein, on or after the Effective Date, without the prior authorization of the Bankruptcy Court or the Liquidating Trustee, a Claim may not be Filed or amended and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order or approval of the Bankruptcy Court.

I. No Distributions Pending Allowance

If an objection to a Claim, Proof of Claim, or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim, Proof of Claim, or portion thereof unless and until the Disputed Claim becomes an Allowed Claim.

J. Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, without any interest, dividends, or accruals to be paid on account of such Claim. For the avoidance of doubt, no interest shall accrue or be paid on any Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim.

**ARTICLE VIII.
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

A. Conditions Precedent

The occurrence of the Effective Date of this Plan is subject to the following conditions precedent:

1. The Bankruptcy Court shall have approved the Disclosure Statement as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code.
2. The Confirmation Order shall have been entered and shall be in full force and effect.
3. There shall have been no modification or stay of the Confirmation Order or entry of any other order prohibiting the transactions contemplated by this Plan from being consummated.
4. The Professional Fee Escrow Account shall have been fully funded pursuant to the terms of this Plan.
5. All actions, documents and agreements necessary to implement the Plan shall have been effected, executed and/or tendered for delivery. All conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms thereof (or will be satisfied and waived substantially concurrently with the occurrence of the Effective Date).
6. The Debtor shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions, or documents necessary to implement this Plan and any Plan Transactions and that are required by law, regulation, or order.

B. Waiver of Conditions

Unless otherwise specifically provided in this Plan, the conditions set forth in Article VIII.A may be waived in whole or in part by the Debtor without notice to any other parties in interest or the Bankruptcy Court and without a hearing.

**ARTICLE IX.
RELEASE, INJUNCTION, AND RELATED PROVISIONS**

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

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided pursuant to this Plan, the provisions of this Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the relative legal, equitable, and contractual rights of the Holders of Claims and Interests with respect to distributions from the Debtor's Estate. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of all compromises and settlements embodied in the Plan, as well as a finding by the Bankruptcy Court that such compromises and settlements are in the best interests of the Debtor, its Estate, and Holders of Claims and Interests, and are fair, equitable, and reasonable.

B. Releases by the Debtor

As of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party (other than the Debtor) is deemed released and discharged by the Debtor and the Estate from any and all claims and Causes of Action, whether known or unknown, including any derivative claims, asserted on behalf of the Debtor, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, the Debtor or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership, or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor's in- or out-of-court restructuring efforts, any Avoidance Actions, intercompany transactions, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or Filing of the Disclosure Statement, the Sale, the Sale Documents, the Plan, the Plan Supplement, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Sale, the Sale Documents, the Plan, the Plan Supplement, the Chapter 11 Case, the Filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of the Sale, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (a) any post-Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement

(including those set forth in the Plan Supplement) executed to implement the Plan or (b) any obligations under or in respect of the Sale Documents.

Each Person and Entity deemed to grant the Debtor Releases shall be deemed to have granted such releases notwithstanding that such Person or Entity may hereafter discover facts in addition to, or different from, those which such Person or Entity now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such Person or Entity expressly waives any and all rights that such Person or Entity may have under any statute or common law principle, including, without limitation, section 1542 of the California Civil Code, to the extent such section is applicable, which would limit the effect of such releases to those claims or causes of action actually known or suspected to exist on the Effective Date. Section 1542 of the California Civil Code generally provides as follows: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

The Plan shall be deemed a motion to approve the settlements contained herein pursuant to Bankruptcy Rule 9019 with respect to the Debtor Releases provided in Article IX.B of the Plan, and entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval, pursuant to Bankruptcy Rule 9019, of the Debtor Releases, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court’s finding that the Debtor Releases are: (a) in exchange for the good and valuable consideration provided by the Released Parties, including, without limitation, the Released Parties’ contributions to facilitating the restructuring and implementing the Plan; (b) a good faith settlement and compromise of the claims released by the Debtor Releases; (c) in the best interests of the Debtor and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to the Debtor, the Estate, and the Liquidating Trustee asserting any claim or Cause of Action released pursuant to the Debtor Releases.

C. Releases by Holders of Claims

As of the Effective Date, each Releasing Party is deemed to have released and discharged each Released Party from any and all claims, Claims and Causes of Action, whether known or unknown, including any derivative claims, asserted on behalf of the Debtor (or its Estate), that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor (including the management, ownership or operation thereof, or otherwise), any securities issued by the Debtor and the ownership thereof, the Debtor’s in- or out-of-court restructuring efforts, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or Filing of the Disclosure Statement, the Sale, the Sale Documents, the Plan, the Plan Supplement, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection

with the Sale, the Sale Documents, the Plan, the Plan Supplement, the Chapter 11 Case, the Filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of the Sale, the pursuit of consummation, the administration and implementation of the Plan, including distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (a) any post Effective Date obligations of any party or entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or (c) any obligations under or in respect of the Sale Documents.

Each Person and Entity deemed to grant the releases described in this Article IX.C shall be deemed to have granted such releases notwithstanding that such Person or Entity may hereafter discover facts in addition to, or different from, those which such Person or Entity now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such Person or Entity expressly waives any and all rights that such Person or Entity may have under any statute or common law principle, including, without limitation, section 1542 of the California Civil Code, to the extent such section is applicable, which would limit the effect of such releases to those claims or causes of action actually known or suspected to exist on the Effective Date. Section 1542 of the California Civil Code generally provides as follows: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of the releases described in Article IX.C of the Plan, which includes by reference each of the related provisions and definitions contained in this Plan, and, further, shall constitute the Bankruptcy Court’s finding that each release described in Article IX.C of the Plan is: (a) consensual; (b) essential to the Confirmation of the Plan; (c) given in exchange for the good and valuable consideration provided by the Released Parties; (d) in the best interests of the Debtor and its Estate; (e) fair, equitable, and reasonable; (f) given and made after due notice and opportunity for hearing; and (g) a bar to any of the Releasing Parties asserting any claim, Claim or Cause of Action released pursuant to Article IX.C of the Plan.

D. Exculpation

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur liability for, and each Exculpated Party is released and exculpated from any Cause of Action for any claim or Claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or Filing of the Debtor’s in- or out-of-court restructuring efforts, the Sale, the Sale Documents, the Plan, the Plan Supplement, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection

with the Sale, the Sale Documents, the Plan, the Plan Supplement, the Chapter 11 Case, the Filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of the Sale, the pursuit of consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence or omission taking place on or before the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual intentional fraud, willful misconduct, or gross negligence of such Person, but in all respects such Entities shall be entitled to reasonably rely upon the written advice of counsel with respect to their duties and responsibilities pursuant to the Plan. For the avoidance of doubt, as set forth in Article IV.J of the Plan, notwithstanding anything to the contrary in the Plan, nothing in the Plan shall affect, impair or supersede the Sale Order or Sale Documents, each of which remains in full force and effect and governs in the event of inconsistency with the Plan.

The Exculpated Parties have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

E. Injunction

Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, Causes of Action, or liabilities that: (a) are subject to compromise and settlement pursuant to the terms of the Plan; (b) have been released pursuant to Article IX.B of this Plan; (c) have been released pursuant to Article IX.C of this Plan, (d) were purchased and released by Purchaser in connection with the Sale, (e) are subject to exculpation pursuant to Article IX.D of this Plan, or (f) are otherwise discharged, satisfied, stayed, released, or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner, any action or other proceeding, including on account of any Claims, claims, Interests, Causes of Action, or liabilities that have been compromised or settled against the Debtor or any Entity so released or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of, or in connection with or with respect to, any discharged, released, settled, compromised, or exculpated Claims, claims, Interests, Causes of Action, or liabilities, including being permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtor, the Liquidating Trustee, or the Liquidating Trust Assets, the Released Parties, or Exculpated Parties (as applicable): (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims, Claims or Interests; (ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such claims, Claims or Interests; (iii) creating, perfecting, or enforcing any Lien or encumbrance

of any kind against such Entities or the property or the estate of such Entities on account of or in connection with or with respect to any such claims, Claims or Interests; (iv) asserting any right of setoff or subrogation of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such claims, Claims or Interests unless such Entity has timely asserted such setoff right in a document Filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims, Claims or Interests released or settled pursuant to the Plan.

Upon the Bankruptcy Court's entry of the Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of this Plan by the Debtor, the Liquidating Trustee, and their respective affiliates, employees, advisors, officers and directors, or agents.

F. No Discharge

Because the Debtor is liquidating, it is not entitled to a discharge of obligations pursuant to section 1141 of the Bankruptcy Code with regard to any Holders of Claims or Interest.

G. Release of Liens

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtor and its successors and assigns.

Any Holder of a Secured Claim or any agent for such Holder has filed or recorded publicly any Liens and/or security interests to secure such Holder's Secured Claim, as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Liquidating Trustee that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Liquidating Trustee shall be entitled to make any such filings or recordings on such Holder's behalf.

**ARTICLE X.
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or

related to, the Chapter 11 Case, the Sale, the Sale Documents, the Confirmation Order, and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests.

2. Resolve any cases, controversies, suits, or disputes that may arise in connection with Claims, including Claim objections, allowance, disallowance, subordination, estimation and distribution.

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

4. Resolve any matters related to: (a) the assumption or assumption and assignment of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure arising therefrom, including the Cure amount pursuant to section 365 of the Bankruptcy Code; and/or (b) any dispute regarding whether a contract or lease is or was executory or expired.

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

6. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code.

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

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

9. 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 enforcement of the Plan.

10. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions.

11. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.
12. Determine any other matters that may arise in connection with or related to the Sale Documents, the Disclosure Statement, the Plan, and the Confirmation Order.
13. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan.
14. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by any Holder for amounts not timely repaid.
15. Adjudicate any and all disputes arising from or relating to distributions under the Plan.
16. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order.
17. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order.
18. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code.
19. To recover all assets of the Debtor and property of the Debtor's Estate, wherever located.
20. To consider requests for extensions of the term of the Liquidating Trust as provided herein.
21. To hear and determine any Causes of Action that may be brought by the Liquidating Trustee.
22. To hear and determine any other rights, claims, or Causes of Action held by or accruing to the Debtor or the Liquidating Trust pursuant to the Bankruptcy Code or any applicable state or federal statute or legal theory.
23. Enter an order or final decree concluding or closing the Chapter 11 Case.
24. Enforce all orders previously entered by the Bankruptcy Court.
25. Hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XI.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF PLAN

A. Modification of Plan

Subject to the limitations contained in the Plan, the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules (1) to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129 of the Bankruptcy Code, and (2) after the entry of the Confirmation Order, the Debtor or the Liquidating Trustee (as applicable) may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

B. Other Amendments

The Debtor may make appropriate non-material, technical adjustments and modifications to this Plan or the Plan Supplement prior to the Effective Date without further order or approval of the Bankruptcy Court.

C. Effect of Confirmation on Modifications

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

D. Revocation of Plan; Effect of Non-Occurrence of Conditions to the Effective Date

Subject to the conditions to the Effective Date, the Debtor, reserves the right to revoke or withdraw the Plan prior to the entry of the Confirmation Order and to File subsequent plans of reorganization or liquidation. If the Debtor revokes or withdraws the Plan, or if entry of the Confirmation Order or the Effective Date does not occur, then (1) the Plan shall be null and void in all respects, (2) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant hereto shall be deemed null and void, and (3) nothing contained in the Plan, the Confirmation Order, or the Disclosure Statement shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action, (b) prejudice in any manner the rights of the Debtor or any other Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Entity.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Debtor's Operation From Confirmation Date Through Effective Date

During the period from the Confirmation Date through and until the Effective Date, the Debtor shall continue to operate as a debtor in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect.

B. Immediate Binding Effect

Notwithstanding Bankruptcy Rules 3020(e), 6004(g), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the documents and instruments contained in the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtor, the Liquidating Trustee, all Holders of Claims against and Interests in the Debtor (regardless of whether any such Holder has voted or failed to vote to accept or reject this Plan and regardless of whether any such Holder is entitled to receive any distribution under this Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, any and all non-Debtor parties to Executory Contracts and Unexpired Leases, and all parties in interest.

C. Additional Documents

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

D. Substantial Consummation

On the Effective Date, this Plan shall be deemed to be substantially consummated (within the meaning set forth in section 1101 of the Bankruptcy Code) pursuant to section 1127(b) of the Bankruptcy Code.

E. Reservation of Rights

The Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by the Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

F. 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, successor or assign, beneficiaries or guardian, if any, of each Entity.

G. Determination of Tax Liabilities

As of the Effective Date, the Liquidating Trustee will be responsible for preparing and filing any tax forms or returns on behalf of the Debtor's Estate and Liquidating Trust (to the extent not the responsibility of Purchaser); provided, however, that the Liquidating Trustee shall not be responsible for preparing or filing any tax forms for Holders of Interests in the Debtor (which Interests shall be cancelled pursuant to this Plan), but shall provide such Holders with any information reasonably required to prepare such forms. The Debtor and the Liquidating Trustee shall have the right to request an expedited determination of any tax liability pursuant to section 505 of the Bankruptcy Code, including on any unpaid liability of the Debtor's Estate and the Liquidating Trust for any tax incurred during the administration of the Chapter 11 Case.

H. Notices

In order for all notices, requests, and demands to or upon the Debtor and the Liquidating Trustee, as the case may be, to be effective such notices, requests and demands shall be in writing (including by electronic mail) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by email, when received and telephonically confirmed, and served on or delivered to following parties:

Debtor	Counsel to the Debtor
Steven Lo 34790 Ardentech Court Fremont, CA 94555 slo@zosanopharma.com	John D. Elrod Greenberg Traurig, LLP 3333 Piedmont Road, NE Suite 2500 Atlanta, GA 30305 elrodj@gtlaw.com
Liquidating Trustee	Counsel to Liquidating Trustee
To be included in Plan Supplement	To be included in Plan Supplement and/or Filed with the Bankruptcy Court

After the Effective Date, Entities that wish to continue to receive documents pursuant to Bankruptcy Rule 2002 must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities that Filed such renewed requests.

I. Term of Injunctions or Stays

Except as otherwise provided in this Plan, to the maximum extent permitted by applicable law and subject to the Bankruptcy Court's post-confirmation jurisdiction to modify the injunctions and stays under this Plan, (a) all injunctions with respect to or stays against an action against property of the Debtor or the Debtor's Estate arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, and in existence on the Confirmation Date, shall remain in full force and effect until such property is no longer property of the Debtor or the Debtor's Estate, and (b) all other injunctions and stays arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the earliest of (i) the date that the Chapter 11 Case are closed pursuant to a Final Order of the Bankruptcy Court or (ii) the date that the Chapter 11 Case are dismissed pursuant to a Final Order of the Bankruptcy Court. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect indefinitely.

J. Entire Agreement

On the Effective Date, the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

K. Plan Supplement Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. Copies of such exhibits and documents shall be made available upon written request to Debtor's counsel or Liquidating Trustee's counsel (as applicable) at the address above or by downloading such exhibits and documents free of charge from the Claims Agent's website.

Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control. The documents in the Plan Supplement are considered an integral part of the Plan and shall be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

L. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters.

M. Nonseverability of Plan Provisions Upon Confirmation

If any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation.

The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is the following: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the consent of the Debtor or Liquidating Trustee (as applicable); and (c) nonseverable and mutually dependent.

N. Closing of Chapter 11 Case

After the full administration of the Chapter 11 Case, the Liquidating Trustee shall promptly File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

Respectfully submitted, as of the date first set forth above,

ZOSANO PHARMA CORPORATION

By: /s/ Steven Lo

Name: Steven Lo

Title: Chief Executive Officer

Exhibit B

Liquidation Analysis

Zosano Pharma Corporation
Liquidation Analysis
\$ in 000's

DRAFT

Assumed conversion date

9/15/2022

	Item #	Book Value	Chapter 11 Plan Confirmation Scenario				Chapter 7 Liquidation Scenario			
			Low Recovery Scenario		High Recovery Scenario		Low Recovery Scenario		High Recovery Scenario	
			Estimated Value	% of Book Value	Estimated Value	% of Book Value	Estimated Value	% of Book Value	Estimated Value	% of Book Value
A Asset Proceeds										
Cash	1	4,254	4,254	100%	4,254	100%	4,254	100%	4,254	100%
Restricted Cash	1	457	165	36%	165	36%	165	36%	165	36%
Prepaid Expenses and Other Current Assets	2	399	55	14%	316	79%	55	14%	316	79%
Operating Lease Right-of-Use Assets	3	1,954	-	0%	-	0%	-	0%	-	0%
Total Asset Proceeds		7,064	4,474	63%	4,735	67%	4,474	63%	4,735	67%
B Liquidation Fees and Costs										
Operating Costs	4		203		203		884		884	
Professional, Legal, and Liquidation Related Fees	5		409		409		524		532	
Total Liquidation Fees and Costs			612		612		1,408		1,416	
Net Estimate Proceeds Available for Administrative and Priority Claims			3,862		4,124		3,066		3,320	
	Item #	Estimated Allowed Claim	Estimate Payable to		Estimate Payable to		Estimate Payable to		Estimate Payable to	
			Creditors	Recovery Estimate %	Creditors	Recovery Estimate %	Creditors	Recovery Estimate %	Creditors	Recovery Estimate %
C Administrative and Priority Claims										
503(b)9 Claims	6	-	-	0%	-	0%	-	0%	-	0%
Accrued Payroll and PTO	7	-	-	0%	-	0%	-	0%	-	0%
Administrative Claims	8	482	482	100%	482	100%	482	100%	482	100%
Priority Unsecured Claims	9	25	25	100%	25	100%	25	100%	25	100%
Total Administrative and Priority Claims		507	507	100%	507	100%	507	100%	507	100%
Net Estimate Proceeds Available for Unsecured Claims			3,355		3,617		2,559		2,813	
D Unsecured Claims										
Non-Priority Unsecured Claims	10	10,720	3,355	31%	3,617	34%	2,559	24%	2,813	26%
Total Unsecured Claims		10,720	3,355	31%	3,617	34%	2,559	24%	2,813	26%
Net Estimate Proceeds Available for Equity			-		-		-		-	

Notes to the Liquidation Analysis

OVERVIEW

Under the “best interests” of creditors test set forth by section 1129(a)(7) of the Bankruptcy Code, the Bankruptcy Court may not confirm a plan of reorganization unless the plan provides each holder of a claim or interest who does not otherwise vote in favor of the plan with property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor was liquidated under chapter 7 of the Bankruptcy Code (“Conversion Date” or “Liquidation Date”). See 11 U.S.C. § 1129(a)(7). Accordingly, to demonstrate that the Plan satisfies the “best interests” of creditors test, the Debtor prepared a hypothetical liquidation analysis (this “Liquidation Analysis”) presenting recoveries available assuming a hypothetical liquidation occurring on the Effective Date which is assumed to be September 15, 2022.

The Liquidation Analysis presents information based on, among other things, the Debtor’s books and records and good faith estimates regarding asset recoveries and claims resulting from a hypothetical liquidation undertaken under chapter 7 of the Bankruptcy Code. The Liquidation Analysis has not been examined or reviewed by independent accountants in accordance with standards promulgated by the American Institute of Certified Public Accountants. Although the Debtor considers the estimates and assumptions set forth herein to be reasonable under the

circumstances, such estimates and assumptions are inherently subject to significant uncertainties and contingencies beyond the Debtor's control. Accordingly, there can be no assurance that the results set forth by the Liquidation Analysis would be realized if the Debtor actually liquidated, and actual results in such a case could vary materially from those presented herein, and distributions available to members of applicable Classes of Claims could differ materially from the balances set forth by this Liquidation Analysis in such instance.

THE LIQUIDATION ANALYSIS IS A HYPOTHETICAL EXERCISE THAT HAS BEEN PREPARED FOR THE SOLE PURPOSE OF PRESENTING A REASONABLE, GOOD FAITH ESTIMATE OF THE PROCEEDS THAT WOULD BE REALIZED IF THE DEBTOR LIQUIDATED IN ACCORDANCE WITH CHAPTER 7 OF THE BANKRUPTCY CODE AS OF THE EFFECTIVE DATE (9/15/22). THE LIQUIDATION ANALYSIS IS NOT INTENDED AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THE LIQUIDATION ANALYSIS DOES NOT PURPORT TO BE A VALUATION OF THE DEBTOR'S ASSETS AS A GOING CONCERN, AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE REALIZED OR CLAIMS GENERATED IN AN ACTUAL LIQUIDATION.

NOTHING CONTAINED IN THE LIQUIDATION ANALYSIS IS INTENDED TO BE, OR CONSTITUTES, A CONCESSION, ADMISSION, OR ALLOWANCE OF ANY CLAIM BY THE DEBTOR. THE ACTUAL AMOUNT OR PRIORITY OF ALLOWED CLAIMS IN THE CHAPTER 11 CASE COULD MATERIALLY DIFFER FROM THE ESTIMATED AMOUNTS SET FORTH AND USED IN THE LIQUIDATION ANALYSIS. THE DEBTOR RESERVES ALL RIGHTS TO SUPPLEMENT, MODIFY, OR AMEND THE ANALYSIS SET FORTH HEREIN.

BASIS OF PRESENTATION

The Debtor generally prepares financial statements for financial reporting purposes. The Liquidation Analysis was prepared as if the assets and liabilities of the Debtor's Estate were settled in a manner consistent with the settlement and compromise of issues as set forth in the Plan and as discussed in the Disclosure Statement.

The Liquidation Analysis was prepared prior to the deadline for filing Claims against the Debtor's Estate. Therefore, Claims have not been fully evaluated by the Debtor or adjudicated by the Bankruptcy Court and, accordingly, the amount of the final Allowed Claims against the Debtor's Estate may differ from the Claim amounts used in this Liquidation Analysis.

The Liquidation Analysis is based on estimated asset and liability values as of July 31, 2022 (except where indicated below) as adjusted to reflect that the sale of substantially all of the Debtor's assets has closed. However, and as noted above, the actual amount of assets available to the estate and claims arising in the event of an actual liquidation may differ from the assets assumed to be available pursuant to this Liquidation Analysis.

The Liquidation Analysis details two separate liquidation scenarios reflecting the Chapter 11 Plan Confirmation or a conversion to a Chapter 7 Liquidation. Each scenario also shows two possible scenarios for recovery of asset values. The lower recovery scenarios (the “Low Recovery Scenarios”) shows the possible recovery for various Classes of creditors where the assets of the Debtor are liquidated for proceeds at the lower end of the expected range of recoveries. The high recovery scenarios (the “High Recovery Scenarios”) details the expected liquidation value of assets at the higher end of the expected range of recoveries.

CURRENT VALUES

Unless otherwise noted, the Liquidation Analysis is based on asset balances as of July 31, 2022 adjusted to reflect that the sale of substantially all of the Debtor’s assets has closed. The Debtor believes that this adjusted July 31, 2022 balance sheet is a reasonable proxy for a *pro forma* balance sheet with respect to most asset line items as of the assumed Conversion Date of September 15, 2022. Adjustments made to the July 31, 2022 balance sheet to reasonably reflect forecasted asset balances as of the assumed Conversion Date are summarized herein.

LIQUIDATION PERIOD

The Liquidation Analysis assumes a liquidation scenario under both the Chapter 11 Plan Confirmation and the conversion to a Chapter 7 Liquidation scenarios. The liquidation is assumed to commence on September 15, 2022.

LIQUIDATION ACTIVITIES & WINDDOWN PERIOD

As the Debtor’s operations are limited and the majority of its assets have been acquired pursuant to section 363 of the Bankruptcy Code, the main objective of the Liquidating Trustee or appointed Chapter 7 trustee is to maximize the remaining Debtor’s assets for recovery of the creditors.

The Liquidation Analysis assumes that the winddown would occur over an estimated three month period during which, among other things, final tax returns would be filed, reports and schedules would be filed with the Bankruptcy Court, and remaining assets would be monetized or abandoned.

COMPONENTS OF LIQUIDATION MODEL

A. Asset Proceeds

1. Cash Balance on Conversion Date

The Debtor’s estimated cash balance as of the Conversion Date is \$4.3 million per the latest cash flow forecast. The estimated cash balance as of the Conversion Date is net of all professional fees related to the case, including any accrued US Trustee fees. In liquidation, the estimated recovery on the cash balance is estimated at 100%. The cash balance does not include \$457,447 of restricted cash, which is comprised of money market accounts that are collateral for the landlord related to the facility lease, a utility deposit, a corporate credit card program collateral deposit, and an adequate assurance deposit for utility providers. In liquidation, the estimated recovery on the

restricted cash balance is estimated at 36% in both the Low Recovery Scenarios and High Recovery Scenarios. On August 8, 2022, the Court approved the sale of substantially all of the Debtor's assets for \$1,250,000. \$250,000 of the purchase price is a reimbursement to Patheon for reasonable, and documented costs to dismantle and remove and relocate certain manufacturing equipment. Therefore, the liquidation analysis has adjusted the 7/31/2021 balance sheet to reflect a \$1,000,000 addition to cash, which is assumed to be recovered 100% in both High Recovery Scenarios and Low Recovery Scenarios. The \$250,000 reimbursement to Patheon is assumed to offset their general unsecured claim.

2. Recoupment of Prepaid Expenses and Other Current Assets

The Debtor's estimated book balance of prepaid expenses as of the Conversion Date is \$399K which is primarily comprised of a receivable for an employee retention credit (ERC) refund, prepaid insurance premiums and other miscellaneous prepayments. The Debtor pays the premiums for its commercial insurance package, in advance, on a quarterly basis. In a liquidation, little recovery from prepaid expenses is expected. It is likely that the liquidating or chapter 7 trustee will need to continue certain insurance policies for some time, thus exhausting any prepayment of insurance premiums that may have existed as of the conversion date. Thus, a recovery of 14% and 79% is assumed in the Low Recovery Scenarios and High Recovery Scenarios, respectively.

Operating Lease Right-of-Use Assets

The Debtor's estimated Operating Lease Right-of-Use asset as of the Conversion Date is \$2.0M. The right of use asset reflects the Debtor's right to use the office facility over the life of the lease. In a liquidation, the lease is expected to be terminated, and as the asset is not monetizable the expected recovery is assumed to be 0% in both the Low Recovery Scenarios and High Recovery Scenarios.

B. Liquidation Fees and Costs

3. Operating Costs

The Debtor's estimated ongoing costs beginning on the Conversion Date will be dependent on the appropriate liquidation scenario.

Under the Chapter 11 Plan Confirmation scenario, the total operating costs are estimated to be \$203,000. The building is assumed to be vacated, and estimated operating costs are comprised of insurance expense and essential services.

Under the Chapter 7 Liquidation scenario, operating costs are assumed to be \$884,000 for the duration of the liquidation. These estimated costs are comprised of insurance expense, and three months of facility rent, utility services, and essential services.

4. Professional, Legal and Liquidation Related Fees

Under the Chapter 11 Plan Confirmation scenario, professional, legal and liquidating trustee fees are estimated to total approximately \$409,000 which primarily includes fees for the liquidating trustee, legal, finance, accounting and tax related professionals as necessary.

Under the Chapter 7 Liquidation scenario, professional, legal and liquidation related fees are estimated to total \$532,000. Chapter 7 trustee fees of 3.0% are assumed on gross liquidation proceeds. Professional fees are estimated to be \$130,000 per month, comprised of \$75,000 for legal, \$30,000 for outsourced management, and \$25,000 for accounting.

C. Administrative and Priority Claims¹

5. 503(b)(9) Claims

The Bar Date to file Proofs of Claim seeking administrative expense priority pursuant to section 503(b)(9) of the Bankruptcy Code ("503(b)(9) Claims") is August 22, 2022. Based on a review of the Filed Proofs of Claim, no Creditor has asserted 503(b)(9) Claims. The Debtor does not anticipate any 503(b)(9) Claims being asserted against the estate.

6. Accrued Payroll and Paid Time Off

All employees are assumed to have been terminated prior to the Effective Date. As a result, the Debtor's estimated accrued payroll as of the Conversion Date is \$0. Further, any accrued vacation payout (limited to the statutory cap of \$15,150) is also assumed to have been paid out at termination. Therefore, the estimated accrued paid time off payable as of the Conversion Date is \$0. No amounts for potential claims for severance or other employee claims have been included.

7. Administrative Claims

The Debtor's estimated Administrative Claims as of the Conversion Date is \$482,000, which represents post-petition unpaid June and August rent of \$187,000 per month, record keeping services, and other essential services.

8. Priority Unsecured Claims

The Debtor's estimated priority unsecured claims as of the Conversion Date is \$25,000, which is comprised primarily by pre-petition tax claims.

D. Unsecured Claims

9. Non-Priority Unsecured Claims

For purposes of the Liquidation Analysis, Non-Priority Unsecured Claims includes any other unsecured Claims against the Debtors that are not entitled to priority of payment under section 507(a) of the Bankruptcy Code and not subject to subordination under section 726(a) of the

¹ There are no known Secured Claims against the Debtor.

Bankruptcy Code. General Unsecured Claims are estimated to be approximately \$10.7 million. This estimate is based on certain assumptions regarding claim objections and may change significantly due to further claim objections and offsets, all as subject to court approval.

CONCLUSION AND RECOMMENDATIONS

In the event of a chapter 7 liquidation, higher operating expenses and professional fees would be incurred by the Chapter 7 trustee as opposed to a liquidating trustee under Confirmation of the Plan.

The Debtor determined that Confirmation of the Plan will provide Holders of Claims against and Interests in the Debtor with a recovery that is not less than what they would otherwise receive in connection with a hypothetical liquidation of the Debtor under chapter 7 of the Bankruptcy Code.