

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

PACE INDUSTRIES, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 20-10927 (MFW)

(Jointly Administered)

NOTICE OF COMMENCEMENT OF CASES
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

-AND-

SUMMARY OF JOINT PREPACKAGED CHAPTER 11 PLAN AND NOTICE OF
HEARING TO CONSIDER (A) ADEQUACY OF DISCLOSURE STATEMENT
AND SOLICITATION PROCEDURES; (B) CONFIRMATION
OF PLAN OF REORGANIZATION; AND (C) RELATED MATERIALS

PLEASE TAKE NOTICE THAT:

1. On April 12, 2020 (the “Petition Date”), Pace Industries, LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”), each commenced a case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). On the Petition Date, the Debtors filed the *Joint Prepackaged Chapter 11 Plan for Pace Industries, LLC and Its Affiliated Debtors*, dated as of April 11, 2020 (as it may be amended, modified or supplemented from time to time, the “Prepackaged Plan”),² and a disclosure statement for the Prepackaged Plan, dated as of April 11, 2020 (as it may be amended, modified or supplemented from time to time, the “Disclosure Statement”), pursuant to sections 1125 and 1126(b) of the Bankruptcy Code.

Prepackaged Plan and Disclosure Statement

2. Copies of the Prepackaged Plan and the Disclosure Statement may be obtained free of charge by visiting the website maintained by the Debtors’ voting agent, Kurtzman Carson Consulting LLC (the “Voting Agent” or “KCC”), at <http://www.kccllc.net/pace>. Copies of the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: KPI Holdings, LLC (5032); KPI Capital Holdings, Inc. (6489); KPI Holdings, Inc. (6913); KPI Intermediate Holdings, Inc. (4492); Pace Industries, LLC (6490); Pace Industries, Inc. (6822); Pace FQE, LLC (3611); Port City Group, Inc. (6598); Muskegon Castings, LLC (6858); Alloy Resources, LLC (0283); and Pace Industries of Mexico, L.L.C. (5764). The Debtors’ headquarters are located at 481 South Shiloh Drive, Fayetteville, Arkansas 72704.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Prepackaged Plan.



Prepackaged Plan and the Disclosure Statement may also be obtained by calling the Voting Agent at (866) 967-0269 or sending an electronic mail message to PaceInfo@kccllc.com.

3. The Prepackaged Plan provides for a reorganization transaction pursuant to which:

- Priority and Secured Claims will be unimpaired.
- General Unsecured Claims will be unimpaired.
- Existing Securities Law Claims will not receive any distribution.
- Existing Interests will be discharged, cancelled, released and extinguished.
- Intercompany Claims and Intercompany Interests (other than Pace Industries) will either be reinstated or cancelled, as determined by the Debtors with the consent of the Required Holders.
- The Senior Notes Claims shall be allowed in an aggregate amount equal to approximately \$232.1 million (together with any accrued and unpaid interest, fees and expenses through the Effective Date).

4. Only holders of Claims in Class 3 (Senior Notes Claims) were entitled to vote to accept or reject the Prepackaged Plan. All other classes of Claims or Interests were either presumed to accept or deemed to reject the Prepackaged Plan. On April 11, 2020, the Debtors commenced solicitation of votes to accept the Prepackaged Plan from the holders of Claims in Class 3 of record as of April 11, 2020. **The deadline for the submission of votes to accept or reject the Prepackaged Plan was April 11, 2020 at 11:59 p.m. (prevailing Eastern Time). The Prepackaged Plan was unanimously accepted by Class 3.**

Combined Hearing

5. A combined hearing to consider (a) the adequacy of (i) the Disclosure Statement and (ii) the solicitation procedures utilized in connection with the solicitation of votes to accept or reject the Prepackaged Plan (the “Solicitation Procedures”) and (b) confirmation of the Prepackaged Plan, and any objections thereto, will be held before the Honorable Judge Mary F. Walrath, United States Bankruptcy Judge, in Courtroom 4 of the United States Bankruptcy Court, 824 Market Street, 5th Floor, Wilmington, Delaware 19801, **on May 21, 2020 at 2:30 p.m. (prevailing Eastern Time)** or as soon thereafter as counsel may be heard (the “Combined Hearing”). The Combined Hearing may be adjourned from time to time without further notice other than an announcement of the adjourned date or dates in open court or at the Combined Hearing, and notice of such adjourned date(s) will be available on the electronic case filing docket and the Voting Agent’s website at <http://kccllc.net/pace>.

6. Any objections to the Disclosure Statement, the Solicitation Procedures, and/or confirmation of the Prepackaged Plan must: (a) be in writing; (b) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (c) state the legal and factual basis for and nature of any objection; (d) conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware; and (e) be filed with the Bankruptcy Court, together with proof of service, and served on the following parties so as to be received by **no later than May 14, 2020, at 5:00 p.m. (prevailing Eastern Time) (the “Plan/Disclosure Statement Objection Deadline”)**:

- a. Pace Industries, LLC, 481 South Shiloh Drive, Fayetteville, Arkansas 72704 (Attn: Steffan B. Sarkin and Craig Potter);
- b. proposed counsel to the Debtors, (i) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Rachel C. Strickland and Debra M. Sinclair) (rstrickland@willkie.com, dsinclair@willkie.com); and (ii) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Rodney Square, Wilmington, DE 19801 (Attn: Robert S. Brady, Edmon L. Morton, and Joseph M. Mulvihill) (rbrady@ycst.com, emorton@ycst.com, and jmulvihill@ycst.com).
- c. the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: David Buchbinder (david.l.buchbinder@usdoj.gov);
- d. McGuireWoods LLP (Brian I. Swett, Esq., bswett@mcguirewoods.com) and Richards, Layton & Finger, P.A., (John Knight, Esq., knight@rlf.com) as primary and Delaware counsel to Bank of Montreal in its capacities as administrative agent under the Debtors’ prepetition secured revolving credit facility and the Debtors’ postpetition secured revolving credit facility;
- e. Schulte Roth & Zabel LLP (Adam C. Harris, Esq., adam.harris@srz.com and Kelly V. Knight, Esq., kelly.knight@srz.com) and Landis Rath & Cobb LLP (Adam Landis, Esq., landis@lrclaw.com), as primary and Delaware counsel to TCW Asset Management Company LLC in its capacities as administrative agent and collateral agent under the Debtors’ prepetition senior secured notes agreement and the Debtors’ postpetition secured term loan financing facility;
- f. Gibson Dunn & Crutcher LLP, as counsel to certain holders of the Debtors’ preferred equity (Jeffrey C. Krause, Esq., jkrause@gibsondunn.com);
- g. Dorsey & Whitney LLP, as counsel to certain holders of the Debtors’ preferred equity (Attn: Larry Makel, Esq., makel.larry@dorsey.com); and
- h. Hughes Hubbard & Reed LLP, as counsel to Kenner & Company, Inc. (Kathryn A. Coleman, Esq., katie.coleman@hugheshubbard.com) (collectively, the “Notice Parties”).

Section 341(a) Meeting

7. A meeting of creditors pursuant to section 341(a) of the Bankruptcy Code (the “Section 341(a) Meeting”) will be deferred until after **June 26, 2020**. **If the Prepackaged Plan is confirmed by June 26, 2020, the Debtors will not convene a Section 341(a) Meeting.** If the Section 341(a) Meeting will be convened, the Debtors will file, serve on the parties on whom it served this notice, and post on the Voting Agent’s website at <http://kccllc.net/pace>, not less than seven (7) days before the date scheduled for such meeting, a notice of the date, time, and place of such meeting. The meeting may be adjourned or continued from time to time by notice at the meeting, without further notice to creditors.

Summary of the Prepackaged Plan³

8. **Classification and Treatment.** A chart summarizing the treatment provided by the Prepackaged Plan to each class of Claims and Interests is included in **Annex A**.

9. **Releases.** Please be advised that under the Prepackaged Plan, the following holders are deemed to have granted the releases contained in Section 12.6 of the Prepackaged Plan (as reflected on Annex A):

- a. **(a) the Debtors, their respective Non-Debtor Subsidiaries, and the Reorganized Debtors, (b) the Prepetition Senior Notes Agent and each holder of Prepetition Senior Notes Claims, (c) the Prepetition ABL Agent and holders of Prepetition ABL Claims, (d) the Sponsor, and (e) each such party's current and former affiliates and subsidiaries, and their (and, in each case, their) current and former affiliates' and subsidiaries' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, and each of their respective current and former equity holders, officers, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, managed accounts or funds, management companies, fund advisors, investment bankers, consultants, representatives, and other professionals, each in their capacity as such. Notwithstanding the foregoing, if the Sponsor objects to or otherwise withdraws its support of confirmation of the Plan, Sponsor shall (a) not receive the benefit of (i) the releases set forth in Article XII of the Plan or (ii) the Indemnification Agreement contemplated in Article VII of the Plan and (b) remain a Releasing Party for the purposes of Article XII thereof.**
- b. **all holders of Claims or Interests that have not objected to the release provisions of the Plan; provided that the current or former directors, officers, managers and employees of the Debtors shall not grant releases against the Debtors or Reorganized Debtors with respect to the Indemnification Agreement; and provided further that Holders of Claims or Interests in Class 6 shall not grant releases unless they opt-in in accordance with the Class 6 Non-Voting Notice.**

10. The Prepackaged Plan also contains other release, discharge, and injunction provisions that may affect your rights.

³ The statements contained herein are summaries of the provisions contained in the Disclosure Statement and the Prepackaged Plan and do not purport to be precise or complete statements of all the terms and provisions of the Prepackaged Plan or documents referred to therein. For a more detailed description of the Prepackaged Plan, please refer to the Disclosure Statement. Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Prepackaged Plan. The Prepackaged Plan provisions that relate to paragraphs 8-11 of this notice are set forth in **Annex A**.

UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

YOU ARE ADVISED TO CAREFULLY REVIEW AND CONSIDER THE PREPACKAGED PLAN, INCLUDING THE DISCHARGE, INJUNCTION, RELEASE, AND EXCULPATION PROVISIONS, AS YOUR RIGHTS MAY BE AFFECTED.

Dated: April 15, 2020
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR,
LLP

/s/ Joseph M. Mulvihill

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Proposed Counsel to the Debtors and Debtors in Possession

Annex A

Selected Prepackaged Plan Provisions

Classification and Treatment Chart¹

Claim / Class	Treatment	Estimated Recovery
DIP ABL Claims	<p>The DIP ABL Claims shall be deemed to be Allowed Claims under the Plan. The DIP ABL Claims shall be refinanced and paid in full pursuant to the New ABL Facility in accordance with the terms and conditions of the DIP ABL Credit Agreement and the New ABL Credit Agreement. Upon satisfaction of the Allowed DIP ABL Claims as set forth in Section 3.1(a) of the Prepackaged Plan, all Liens and security interests granted to secure such obligations, whether in the Chapter 11 Cases or otherwise, shall be terminated and of no further force or effect.</p> <p><i>Voting:</i> unimpaired, unclassified, non-voting.</p>	100%
DIP Term Loan Claims	<p>The DIP Term Loan Claims shall be deemed to be Allowed Claims under the Plan. In full satisfaction, settlement, release and discharge of the Allowed DIP Term Loan Claims, on the Effective Date, each holder of Allowed DIP Term Loan Claims shall receive its pro rata share of: (a) the New Pace Industries Term Loan Facility Obligations; and (b) the New Warrants. Upon satisfaction of the Allowed DIP Term Loan Claims as set forth in Section 3.1(b) of the Prepackaged Plan, all Liens and security interests granted to secure such obligations, whether in the Chapter 11 Cases or otherwise, shall be terminated and of no further force or effect.</p> <p><i>Voting:</i> unimpaired, unclassified, non-voting.</p>	100%
Administrative Claims	<p>Each holder of an Allowed Administrative Expense Claim shall be paid 100% of the unpaid Allowed amount of such Claim in Cash on the date that is the later of (a) the Effective Date (or as soon thereafter as is reasonably practicable); (b) the date such Claim would ordinarily be due and payable in accordance with ordinary business terms; and (c) the date (or as soon thereafter as reasonably practicable) that is fifteen (15) days (or, if such date is not a Business Day, on the next Business Day) after such Claim becomes an Allowed Claim or otherwise becomes payable under the Plan. Notwithstanding the foregoing, the holder of an Allowed Administrative Expense Claim may receive such other, less favorable treatment as may be agreed upon by such holder, together with the Debtors and Required Holders.</p>	100%

¹ Capitalized terms used but not otherwise defined in this chart shall have the meanings given to them in the Prepackaged Plan.

	<i>Voting:</i> unimpaired, unclassified, non-voting.	
Priority Tax Claims	<p>Except to the extent that a holder of an allowed priority tax claim, together with the Debtors and the Required Holders, agrees to a less favorable treatment, each holder of an allowed priority tax claim shall receive, at the sole option of the Debtors (a) payment in full in Cash made on or as soon as reasonably practicable after the later of the Effective Date and the first Distribution Date occurring at least 20 calendar days after the date such Claim is Allowed, (b) regular installment payments over a period ending not later than five (5) years after the Petition Date in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (c) such other amounts and in such other manner as may be determined by the Bankruptcy Court to provide the holder of such Allowed Priority Tax Claim deferred Cash payments having a value, as of the Effective Date, equal to such Allowed Priority Tax Claim.</p> <p><i>Voting:</i> unimpaired, unclassified, non-voting.</p>	100%
Professional Fee Claims	<p>All final requests for payment of professional claims and requests for reimbursement of expenses of members of any statutory committee must be filed no later than forty-five (45) days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court, the allowed amounts of such professional claims and expenses shall be determined by the Bankruptcy Court and paid by the Reorganized Debtors.</p> <p><i>Voting:</i> unimpaired, unclassified, non-voting.</p>	100%
Class 1 – Priority Non-Tax Claims	<p>The legal, equitable and contractual rights of the holders of Priority Non-Tax Claims are unaltered by the Plan. Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to a different treatment, together with the Debtors and the Required Holders, on the applicable Distribution Date each holder of an Allowed Priority Non-Tax Claim shall receive (i) Cash from the applicable Reorganized Debtor in an amount equal to such Allowed Claim, or (ii) such other treatment that would render such Allowed Priority Non-Tax Claim Unimpaired.</p> <p><i>Voting:</i> The Priority Non-Tax Claims are Unimpaired Claims. In accordance with section 1126(f) of the Bankruptcy Code, the holders of the Priority Non-Tax Claims are conclusively presumed to accept the Prepackaged Plan and are not entitled to vote to accept or reject the Prepackaged Plan, and the votes of such holders will not be solicited with respect to such Allowed Priority Non-Tax Claims.</p>	100%

<p>Class 2 – Other Secured Claims</p>	<p>The legal, equitable and contractual rights of the holders of Other Secured Claims are unaltered by the Prepackaged Plan. Except to the extent that a holder of an Allowed Other Secured Claim agrees to a different treatment, together with the Debtors and the Required Holders, on the applicable Distribution Date, or as soon as reasonably practicable thereafter, each holder of an Allowed Other Secured Claim shall each receive, subject to the terms of the Plan, in full and final satisfaction, settlement, release and discharge of its Allowed Other Secured Claim, at the election of the Reorganized Debtors: (a) Cash in an amount equal to such Allowed Other Secured Claim; or (b) such other treatment that will render such Other Secured Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code; <u>provided, however</u>, that Other Secured Claims incurred by a Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto, in the discretion of the applicable Debtor or Reorganized Debtor without further notice to or order of the Bankruptcy Court.</p> <p><i>Voting.</i> Unimpaired. The Allowed Other Secured Claims are Unimpaired Claims. In accordance with section 1126(f) of the Bankruptcy Code, the holders of Allowed Other Secured Claims are conclusively presumed to accept the Plan and are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to such Allowed Other Secured Claims.</p>	<p>100%</p>
<p>Class 3 – Senior Notes Claims</p>	<p>The Senior Notes Claims shall be Allowed in an aggregate principal amount equal to approximately \$232.1 million (together with any accrued and unpaid interest, fees, costs, expenses and other charges through the Effective Date). On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a holder of an allowed Senior Notes Claim agrees to a less favorable treatment with the Debtors, each holder of an allowed Senior Notes Claim shall receive its pro rata share of (a) the Class 3 Equity Distribution, and (b) the New Pace Holdco Loan Obligations.</p> <p><i>Voting.</i> Impaired. The Senior Notes Claims are Impaired Claims. The holders of such Claims are entitled to vote to accept or reject the Plan, and the votes of such holders will be solicited with respect to such Senior Notes Claims.</p>	<p>60-70%</p>
<p>Class 4 – General Unsecured Claims</p>	<p>General Unsecured Claims are Unimpaired Claims. Except to the extent that a holder of a General Unsecured Claim agrees to different treatment, together with the Debtors and Required Holders, each holder of an Allowed General Unsecured Claim, at the option of the Debtors with the consent of the Required Holders, shall (a) be paid in full in Cash, (b) have its Allowed</p>	<p>100%</p>

	<p>General Unsecured Claim reinstated, and paid in full, on the later to occur of the Effective Date or when such Allowed General Unsecured Claim becomes due in the ordinary course of the Debtors' or the Reorganized Debtors' business operations, or (c) have its Allowed General Unsecured Claim otherwise rendered Unimpaired pursuant to section 1124 of the Bankruptcy Code.</p> <p><i>Voting.</i> Unimpaired. The Allowed General Unsecured Claims are Unimpaired Claims. In accordance with section 1126(f) of the Bankruptcy Code, the holders of Allowed General Unsecured Claims are conclusively presumed to accept the Plan and are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to such Allowed General Unsecured Claims.</p>	
Class 5 – Existing Securities Law Claims	<p>Holders of Existing Securities Law Claims shall not receive or retain any distribution under the Plan on account of such Existing Securities Law Claims.</p> <p><i>Voting.</i> Impaired. In accordance with section 1126(g) of the Bankruptcy Code, the holders of Existing Securities Law Claims are conclusively deemed to reject the Prepackaged Plan and are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to such Existing Securities Law Claims.</p>	0%
Class 6– Existing Interests	<p>Except with respect to Intercompany Interests as provided in Section 2.3(b) of the Prepackaged Plan, Existing Interests shall be discharged, cancelled, released and extinguished, and holders thereof shall not receive or retain any distribution under the Plan on account of such Existing Interests.</p> <p><i>Voting.</i> Impaired. In accordance with section 1126(g) of the Bankruptcy Code, the holders of Existing Interests are conclusively deemed to reject the Plan and are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to such Existing Interests.</p>	0%

Release Provisions

PLEASE BE ADVISED THAT THE PLAN CONTAINS CERTAIN RELEASE, EXCULPATION AND INJUNCTION PROVISIONS, INCLUDING:

Section 12.6 of the Plan contains the following releases by Holders of Claims or Interests:

Except as otherwise specifically provided in the Plan or the Confirmation Order, on and after the Effective Date, for good and valuable consideration, including the obligations of the Debtors under the Plan, the Plan Consideration and other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, each Releasing

Party shall be deemed to have consented to the Plan and the restructuring embodied herein for all purposes, and shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released and discharged the Released Parties from any and all Claims, Interests, obligations, debts, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, asserted or unasserted, existing or hereinafter arising, in law, equity or otherwise, whether for tort, fraud, contract, violations of federal or state laws or otherwise, including Avoidance Actions, those Causes of Action based on veil piercing or alter-ego theories of liability, contribution, indemnification, joint liability or otherwise that such Releasing Party would have been legally entitled to assert (whether individually or collectively), based on, relating to or in any manner arising from, in whole or in part, the commencement of the Chapter 11 Cases, the Debtors, the Estates, the liquidation, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Releasing Party excluding any assumed executory contract or lease, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, the DIP Credit Agreements, the Prepetition ABL Credit Agreement, the Prepetition Senior Note Agreement, or the Plan or the Disclosure Statement, or, in each case, related agreements, instruments or other documents, or upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that is determined in a Final Order to have constituted willful misconduct (including, without limitation, actual fraud) or gross negligence; provided that any holder of a Claim or Interest that objects to the releases contained in the Plan shall not receive the benefit of the releases set forth in the Plan (even if for any reason otherwise entitled); and provided further that any holder of a Claim or Interest in Class 6 that does not opt-in to the releases contained in the Plan shall not receive the benefit of the releases set forth in the Plan (even if for any reason otherwise entitled). Notwithstanding anything contained herein to the contrary, the foregoing release shall not release any obligation of any party under the Plan or any document, instrument or agreement executed to implement the Plan. For the avoidance of doubt, the Sponsor (on behalf of itself and its current and former affiliates and subsidiaries, and their current and former affiliates' and subsidiaries' current and former managers, officers, equity holders, predecessors, successors and assigns, subsidiaries and each of their respective current and former equity holders, officers, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, managed accounts or funds, management companies, fund advisors, investment bankers, consultants, representatives, and other professionals, each in their capacity as such) shall release all Claims against the Debtors (including, without limitation, for accrued and unpaid management, consulting, advisory or monitoring fees) other than claims under the Indemnification Agreement.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute its finding that each release described in the Plan is: (i) in exchange for the good and valuable consideration provided by the Released Parties, a good faith settlement and compromise of such Claims; (ii) in the best interests of the Debtors and all holders of Interests

and Claims; (iii) fair, equitable and reasonable; (iv) given and made after due notice and opportunity for hearing; and (v) a bar to the Debtors asserting any claim, Cause of Action or liability related thereto, of any kind whatsoever, against any of the Released Parties or their property.

Notwithstanding anything to the contrary contained therein, the releases set forth in Section 12.6 of the Plan shall not release any (i) claims against any Person to the extent such Person asserts a crossclaim, counterclaim and/or claim for setoff which seeks affirmative relief against the Debtors or any of their officers, managers, or representatives and (ii) claims against any Person arising from or relating to such Person's gross negligence or willful misconduct, each as determined by a Final Order of the Bankruptcy Court.

Under the Plan, the term "Released Parties" means:

(a) the Debtors, their respective Non-Debtor Subsidiaries, and the Reorganized Debtors, (b) the Prepetition Senior Notes Agent and each holder of Prepetition Senior Notes Claims, (c) the Prepetition ABL Agent and holders of Prepetition ABL Claims, (d) the Sponsor, and (e) each such party's current and former affiliates and subsidiaries, and their (and, in each case, their) current and former affiliates' and subsidiaries' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, and each of their respective current and former equity holders, officers, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, managed accounts or funds, management companies, fund advisors, investment bankers, consultants, representatives, and other professionals, each in their capacity as such. Notwithstanding the foregoing, if the Sponsor objects to or otherwise withdraws its support of confirmation of the Plan, Sponsor shall (a) not receive the benefit of (i) the releases set forth in Article XII of this Plan or (ii) the Indemnification Agreement contemplated in Article VII of the Plan and (b) remain a Releasing Party for the purposes of Article XII of the Plan.

Under the Plan, the term "Releasing Parties" means:

collectively and solely in their capacity as such, (a) each Released Party, (b) as to each of the foregoing Entities, each such Entity's predecessors, successors and assigns, subsidiaries, affiliates, managed accounts or funds and their current and former officers, managers, partners, principals, shareholders, members, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors and other professionals, and (c) all holders of Claims or Interests that have not objected to the release provisions of this Plan; provided that the current or former directors, officers, managers and employees of the Debtors shall not grant releases against the Debtors or Reorganized Debtors with respect to the Indemnification Agreement; and provided further that Holders of Claims or Interests in Class 6 shall not grant releases unless they opt-in in accordance with the Class 6 Non-Voting Notice.

Section 12.7 of the Plan contains the following exculpation provision:

On the Effective Date, except as otherwise provided in the Plan or the Confirmation Order, for good and valuable consideration, to the maximum extent permissible under applicable law, none of the Exculpated Parties shall have or incur any liability to any holder of any Claim or Interest or any other Person for any act or omission in connection with, or

arising out of the Debtors' restructuring, including the commencement of the Chapter 11 Cases, negotiation, implementation and execution of the Plan, the Plan Supplement, the Chapter 11 Cases, the solicitation of votes for and the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, including all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all activities leading to the promulgation and confirmation of the Plan except for gross negligence or willful misconduct, each as determined by a Final Order of the Bankruptcy Court. For purposes of the foregoing, it is expressly understood that any act or omission effected with the approval of the Bankruptcy Court conclusively will be deemed not to constitute gross negligence or willful misconduct unless the approval of the Bankruptcy Court was obtained by fraud or misrepresentation, and in all respects, the applicable Persons shall, to the maximum permitted under applicable law, be entitled to rely on the advice of counsel with respect to their duties and responsibilities under, or in connection with, the Chapter 11 Cases, the Plan, and administration thereof. The Exculpated Parties have, and upon confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the distributions of the securities 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.

Under the Plan, the term "Exculpated Parties" means:

collectively and solely in their capacity as such, the Debtors and their affiliates, and their respective current and former officers, managers, principals, members, partners, managers, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and all other retained Professional Persons (in each case solely to the extent serving in such capacity as of the Petition Date).

Section 12.5 of the Plan contains the following injunction:

(a) Except as otherwise specifically provided in the Plan or the Confirmation Order, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Persons or Entities who have held, hold or may hold Claims against and/or Interests in the Debtors or the Estates, and all other parties in interest, along with their present or former employees, agents, officers, directors, principals, representatives and affiliates are, with respect to any such Claims or Interests, permanently enjoined after the Confirmation Date from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors, their Estates or any of their property, wherever located, or any direct or indirect transferee of any property, wherever located, of, or direct or indirect successor in interest to, any of the foregoing Persons or any property, wherever located, of any such transferee or successor; (ii) enforcing, levying, attaching (including any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtors, or their Estates or any of their property, wherever located, or any direct or indirect transferee of any property, wherever located, of, or direct or indirect successor in interest to, any of the foregoing Persons, or any property, wherever located, of any such

transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors or their Estates or any of their property, wherever located, or any direct or indirect transferee of any property, of, or successor in interest to, any of the foregoing Persons; (iv) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan to the full extent permitted by applicable law (including, without limitation, commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan) to the fullest extent permitted by applicable law, or (v) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtors or their Estates, or against the property or interests in property of the Debtors or their Estates, with respect to any such Claim or Interest. Such injunction shall extend to any successors or assignees of the Debtors and their properties and interest in properties; provided, however, that nothing contained herein shall preclude such Persons from exercising their rights, or obtaining benefits, pursuant to and consistent with the terms of the Plan.

(b) By accepting Plan Distributions, each holder of an Allowed Claim or Interest will be deemed to have specifically consented to the injunctions set forth in Section 12.5 of the Plan.