

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

**HEALTH DIAGNOSTIC LABORATORY,
INC., *et al.*,**

Debtors.¹

Chapter 11

Case No. 15-32919 (KRH)

(Jointly Administered)

**AMENDED DISCLOSURE STATEMENT ACCOMPANYING
SECOND AMENDED PLAN OF LIQUIDATION PROPOSED BY THE DEBTORS**

THIS IS A SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND WITHIN THE MEANING OF BANKRUPTCY CODE SECTION 1126. THIS DISCLOSURE STATEMENT HAS BEEN SUBMITTED TO THE COURT FOR APPROVAL BUT HAS NOT YET BEEN APPROVED. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.

FEBRUARY 11, 2016

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Health Diagnostic Laboratory, Inc. (0119), Central Medical Laboratory, LLC (2728) and Integrated Health Leaders, LLC (2434).

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Jason W. Harbour (VSB No. 68220)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors-in-Possession*

IMPORTANT NOTICE

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL HOLDERS OF CLAIMS AND OTHER PARTIES IN INTEREST ENTITLED TO VOTE ON THE PLAN SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ANNEXED TO THE DISCLOSURE STATEMENT AND THE PLAN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN. THE TRANSMISSION OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION STATED SINCE THE DATE HEREOF. AFTER THE DATE HEREOF, THERE CAN BE NO ASSURANCE THAT (A) THE INFORMATION AND REPRESENTATIONS CONTAINED HEREIN WILL BE MATERIALLY ACCURATE, OR (B) THIS DISCLOSURE STATEMENT CONTAINS ALL MATERIAL INFORMATION.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NONBANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE FOREGOING REGULATORY ENTITY PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. THIS DISCLOSURE STATEMENT WAS PREPARED TO PROVIDE HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS WITH “ADEQUATE INFORMATION” (AS DEFINED IN THE BANKRUPTCY CODE) SO THAT THEY CAN MAKE AN INFORMED JUDGMENT ABOUT THE PLAN. PERSONS OR ENTITIES TRADING IN, OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING, SECURITIES OF THE DEBTORS SHOULD NOT RELY UPON THIS DISCLOSURE STATEMENT FOR SUCH PURPOSES AND SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, AS A STIPULATION OR AS A WAIVER, BUT, RATHER, AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THE DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX,

SECURITIES, OR OTHER LEGAL EFFECTS OF THE LIQUIDATION OR THE PLAN ON HOLDERS OF CLAIMS AGAINST OR INTERESTS IN THE DEBTORS.

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ARTICLE I

PURPOSE AND FUNCTION OF THE DISCLOSURE STATEMENT

This disclosure statement (this “Disclosure Statement”) provides information regarding the *Second Amended Plan of Liquidation Proposed by the Debtors* (as it may be further amended, supplemented, or otherwise modified from time to time, the “Plan”), which the Debtors are seeking to have confirmed by the Court. A copy of the Plan is attached hereto as **Exhibit A**. The rules of interpretation set forth in section 11.8 of the Plan shall govern the interpretation of this Disclosure Statement.

The Debtors provide this Disclosure Statement to enable any creditor whose Claim is impaired under the Plan and is entitled to vote on the Plan, to arrive at a reasonably informed decision in exercising the right to vote to accept or reject the Plan. This Disclosure Statement should be read in its entirety prior to voting on the Plan. The information contained herein is based on records maintained by the Debtors, and no representation or warranty is made as to their complete accuracy.

For a class of impaired Claims to be considered to have accepted the proposed treatment of the class under the Plan, creditors who hold at least two-thirds in amount and more than one-half in number of Claims within the class must vote in favor of the Plan. If a party does not vote, *i.e.*, does not return a fully completed Ballot within the specific time to the correct addressee, neither the party nor the amount of its Claim or Interest is counted to determine acceptance or rejection of the Plan. If you are entitled to vote and do not, the Ballots will be tallied as though your Claims did not exist. The Court can confirm the Plan even if the requisite acceptances are not obtained so long as the Plan complies with the Bankruptcy Code and accords fair and equitable treatment to any non-accepting Class.

Parties entitled to vote are furnished a Ballot on which to record their respective acceptances or rejections of the Plan. Those completed Ballots must be returned by the deadline set forth on the Ballot to American Legal Claim Services LLC (the “Solicitation Agent”), who will tally the votes and report the results to the Court prior to or at the Confirmation Hearing.

Each of the Debtors’ boards of directors or members, as applicable, has approved the Plan and believes the Plan is in the best interests of the Debtors’ Estates. As such, the Debtors recommend that all holders of impaired Claims that are entitled to vote accept the Plan by returning their ballots so as to be actually received by the Solicitation Agent no later than **March 22, 2016, at 5:00 p.m. (prevailing Eastern Time)**.

NO REPRESENTATIONS CONCERNING THE DEBTORS, THE DEBTORS’ OPERATIONS, THE VALUE OF THE DEBTORS’ PROPERTY OR THE PLAN ARE AUTHORIZED UNLESS THEY ARE IN THIS DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT IS THE ONLY STATEMENT WITH RESPECT TO THE PLAN. NO OTHER REPRESENTATION CONCERNING THE DEBTORS, THEIR OPERATIONS OR THE VALUE OF THEIR PROPERTY HAS BEEN AUTHORIZED. YOU SHOULD RELY ONLY ON THE REPRESENTATIONS OR INDUCEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT. YOU SHOULD REPORT ANY

ADDITIONAL REPRESENTATIONS AND INDUCEMENTS TO THE COURT, COUNSEL FOR THE DEBTORS OR THE OFFICE OF THE UNITED STATES TRUSTEE.

THE COURT’S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A RECOMMENDATION BY THE COURT AS TO THE MERITS OF THE PLAN BUT MERELY CONFIRMS THAT THE DISCLOSURE STATEMENT IS ADEQUATE TO PROVIDE THE INFORMATION NECESSARY FOR YOU TO MAKE AN INFORMED JUDGMENT REGARDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

THIS DISCLOSURE STATEMENT PROVIDES INFORMATION ABOUT THE PLAN. ALTHOUGH THE DEBTORS BELIEVE THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS ACCURATE, THE PROVISIONS OF THE PLAN CONTROL IF THERE IS ANY INCONSISTENCY BETWEEN THE PLAN AND THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.

If the Court does not confirm the Plan, the Debtors may amend the Plan or file a different Plan. If the Court does not confirm the Plan and the exclusive period within which the Debtors can obtain acceptance expires, a party in interest may file a plan of liquidation. Additionally, on motion of a party in interest and after notice and a hearing, the Court may convert the Bankruptcy Case to a Chapter 7 case.

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. Except as otherwise provided in the Plan or in accordance with applicable law, the Debtors are under no duty to update or supplement this Disclosure Statement.

Defined terms used, but not defined in this Disclosure Statement, shall have the meanings ascribed to such terms in the Plan. Accordingly, please refer to the Plan for definitions of certain important terms used in this Disclosure Statement.

ARTICLE II

2.1 Business History Overview

Incorporated in November 2008, Debtor Health Diagnostic Laboratory, Inc. (“HDL”) commenced operations as a start-up diagnostic laboratory in Richmond, Virginia. In 2009, HDL began processing its first samples, and in the intervening six years, HDL developed into a significant participant in the diagnostic laboratory field of healthcare. Prior to the closing of the sale of substantially all of its business assets to True Health Diagnostics, LLC (the “HDL Sale”) on September 29, 2015, HDL was an accredited, full-service clinical laboratory that offered comprehensive testing for biomarkers that can indicate risk for cardiovascular disease, diabetes, and other diseases. HDL’s services allowed physicians to offer patients a personalized overview

of risk factors and assistance from clinical health consultants to promote healthy, longer-lasting lifestyles. HDL's primary mission focused on preventing and reversing heart disease and diabetes one patient at a time through its laboratory testing and advisory services coordinated through the primary care physician of each patient.

HDL offered what it believed to be the most comprehensive test of biomarkers for cardiovascular, diabetes, and related diseases available in the industry. Since January 2010, HDL handled over 3 million patient samples. Prior to the HDL Sale and the sale of substantially all of the assets (the "CML Sale") of Debtor Central Medical Laboratory, LLC ("CML"), the Debtors conducted tests on about 2,000 samples daily through its two facilities, its headquarters in the Bio-Technology Park in Richmond, Virginia, and a smaller specialized facility located in De Soto, Kansas. From these two facilities, the Debtors served approximately 10,000 physicians located in forty-five (45) states plus the District of Columbia. The Debtors' menu of laboratory tests provided a basis for early detection, effective treatment, and reversal of a number of diseases. The advanced testing offered by the Debtors provided a far broader and deeper picture of patient health than traditional testing. The Debtors' laboratory testing, which was at the forefront of modern medical science, gave physicians the tools to detect major health issues in patients before such events occurred that are potentially life-threatening to the patient and financially burdensome to the healthcare system. However, certain of the Debtors' business practices became the subject of a special fraud alert issued by the Office of the Inspector General for the Department of Health and Human Services, an investigation by the United States Department of Justice ("DOJ") that culminated in a pre-petition settlement, and lawsuits by certain private insurers that remained pending as of the Petition Date.

2.2 Pre-Petition Capital Structure

(a) BB&T Loan Facilities

Prior to the Petition Date, HDL was the borrower under three loan facilities with Branch Banking and Trust Company ("BB&T"). Pursuant to the Amended and Restated Loan Agreement, dated June 28, 2012, as amended by the First Amendment to Amended and Restated Loan Agreement, dated February 24, 2014 (as amended, the "ABL Loan Agreement"), by and between BB&T and HDL, and the Promissory Note, dated January 13, 2012, in the maximum principal amount of \$20,000,000, made by HDL and payable to BB&T, as amended by the Note Modification Agreement, dated January 9, 2014, and the Note Modification Agreement, dated February 24, 2014, BB&T made a revolving asset-based line of credit available to HDL in the maximum principal amount of \$20,000,000 (the "ABL Loan Facility"). A BB&T Security Agreement, dated January 13, 2012, addressed securing the obligations of HDL under the ABL Loan Facility. Pursuant to a letter from BB&T, dated January 28, 2015, the maximum principal amount of the ABL Loan Facility was reduced to \$12,000,000. As of the Petition Date, the outstanding amount owed under the ABL Loan Facility was \$3,284,371.

Pursuant to the Loan Agreement, dated June 29, 2012, as amended by the First Amendment to Loan Agreement, dated March 27, 2014, by and between BB&T and HDL, and the Promissory Note, dated June 29, 2012, in the maximum principal amount of \$5,500,000, made by HDL and payable to BB&T, BB&T made a term loan to HDL in the maximum principal amount of \$5,500,000 (the "Equipment Term Loan Facility"). A BB&T Security

Agreement, dated June 29, 2012, addressed securing the obligations of HDL under the Equipment Term Loan Facility. As of the Petition Date, the outstanding amount owed under the Equipment Term Loan Facility was \$1,567,207.

Pursuant to the Loan Agreement, dated June 28, 2012, as amended by a First Amendment to Loan Agreement, dated March 27, 2014, by and between BB&T and HDL, and the Application and Agreement for Irrevocable Standby Letter of Credit, dated June 28, 2012, by and between BB&T and HDL, BB&T issued (i) Irrevocable Standby Letter of Credit No. 953-2476922/00003, dated June 28, 2012, in the amount of \$4,000,000, in favor of Biotech 8, LLC, which was subsequently canceled, and (ii) Irrevocable Standby Letter of Credit No. 953-2476922/00004, dated June 26, 2013, in the amount of \$4,000,000 (the "L/C"), in favor of Fulton Bank, N.A. (collectively, the "L/C Loan Facility"). A BB&T Security Agreement, dated June 28, 2012, addressed securing the obligations of HDL under the L/C Loan Facility. As of the Petition Date, there were no borrowed amounts outstanding under the L/C Loan Facility. On or about August 6, 2015, Fulton Bank, N.A. ("Fulton") made a demand to BB&T for a draw on the full amount of the L/C. On or about August 7, 2015, BB&T paid Fulton \$4,000,000 based on the L/C. As a result, the outstanding amount under the L/C Loan Facility was \$4,000,000.

(b) Guaranties

On or about February 24, 2014, (i) HDL Properties; (ii) IHL; (iii) HDL Holdings; and (iv) CML (collectively, the "Entity Guarantors"), each entered into a separate Guaranty Agreement in favor of BB&T pursuant to which the Entity Guarantors guaranteed HDL's obligations to BB&T.² On or about March 11, 2015, Joseph P. McConnell ("McConnell") and G. Russell Warnick ("Warnick"; together with McConnell, the "Individual Guarantors"), each entered into a separate Guaranty Agreement in favor of BB&T pursuant to which the Individual Guarantors guaranteed HDL's obligations to BB&T up to \$1,500,000.

(c) Forbearance Agreement

Pursuant to the Forbearance Agreement, dated March 11, 2015 (the "Forbearance Agreement"), by and among, HDL, the Entity Guarantors, the Individual Guarantors, and BB&T, among other things, BB&T agreed to forbear from taking certain actions concerning the ABL Loan Facility, the Equipment Term Loan Facility and the L/C Loan Facility (collectively, the "BB&T Loan Facilities").

(d) BB&T Equipment Finance Loan Facility

Prior to the Petition Date, HDL was the borrower under a loan facility with BB&T Equipment Finance Corporation ("BB&T Equipment Finance"). Pursuant to (i) the Loan and Security Agreement, dated March 22, 2013, by and between BB&T Equipment Finance and HDL; (ii) Promissory Note No. 01, dated March 22, 2013, in the original principal amount of \$4,779,808.61, by HDL in favor of BB&T Equipment Finance; (iii) Promissory Note No. 02, dated May 15, 2013, in the original principal amount of \$1,136,134.39, by HDL in favor of BB&T Equipment Finance; (iv) Promissory Note No. 03, dated May 31, 2013, in the original

² In addition, on or about February 24, 2014, non-debtor Henrico Family Physicians, LLC, which formally dissolved in the first quarter of 2015, entered into a similar Guaranty Agreement in favor of BB&T.

principal amount of \$1,687,955.56, by HDL in favor of BB&T Equipment Finance; and (v) Promissory Note No. 04, dated July 5, 2013, in the original principal amount of \$2,000,000, by HDL in favor of BB&T Equipment Finance, BB&T Equipment Finance made equipment loans to HDL (the “Equipment Finance Loan Facility”). The Equipment Finance Loan Agreement addresses securing the obligations of HDL under the Equipment Finance Loan Facility. As of the Petition Date, the outstanding amount owed under the Equipment Finance Loan Facility was \$5,827,318.

(e) PNC Loan Facility

Prior to the Petition Date, HDL was the borrower under a loan facility with PNC Equipment Finance, LLC (“PNC”). Pursuant to the Term Note, dated March 25, 2014, in the original principal amount of \$5,000,000, by HDL in favor of PNC, as amended by the Addendum to Term Note, dated March 25, 2014, and as further amended by the Amendment to Loan Documents, dated June 20, 2014, PNC made an equipment loan to HDL (the “PNC Loan Facility”). A Security Agreement, dated March 25, 2014, as amended by the Amendment to Loan Documents, dated June 20, 2014, addresses securing the obligations of HDL under the PNC Loan Facility. As of the Petition Date, the outstanding amount owed under the PNC Loan Facility was \$3,965,990.

(f) Bank of the West Loan Facility

Prior to the Petition Date, HDL was the obligor under a loan facility with Bank of the West. Pursuant to the Installment Payment Contract – Security Agreement, dated September 23, 2014 (the “Bank of the West Agreement”), Bank of the West made an equipment loan to HDL in the original principal amount of \$2,536,477.28 (the “Bank of the West Loan Facility”). The Bank of the West Agreement addresses securing the obligations of HDL under the Bank of the West Loan Facility. As of the Petition Date, the outstanding amount owed under the Bank of the West Loan Facility was \$2,069,231.

(g) KBA Loan Facility

Prior to the Petition Date, HDL was the borrower under a loan facility with the Kansas Bioscience Authority, a body politic and corporate and independent instrumentality of the State of Kansas (the “KBA”). In connection with the acquisition of substantially all of the assets of Oncimmune (USA) LLC (“Oncimmune”), pursuant to that certain Novation and Assumption Agreement, dated February 5, 2014 (the “Novation Agreement”), HDL became the borrower under (a) the Loan and Security Agreement, dated February 5, 2007, by and between Oncimmune and the KBA, as amended by the First Amendment to Loan and Security Agreement and Promissory Note, dated July 11, 2011, and the Acknowledgement and Waiver Letter Agreement, dated October 10, 2013 (as amended, the “KBA Loan Agreement”), and (b) the Promissory Note, dated February 5, 2007, by Oncimmune in favor of the KBA, as amended by the First Amendment to Loan and Security Agreement and Promissory Note, dated July 11, 2011, the Second Amendment to Promissory Note, dated August 7, 2013, and the Acknowledgement and Waiver Letter Agreement, dated October 10, 2013 (as amended, the “KBA Note”); together with the Novation Agreement and the KBA Loan Agreement, the “KBA

Loan Documents”). As of the Petition Date, the outstanding amount owed under the KBA Loan Documents was \$1,589,875.

2.3 Corporate Structure of the Debtors

HDL was incorporated in Virginia as a privately-held S-Corporation in November 2008. Effective January 1, 2015, HDL converted to a C-Corporation. HDL is the direct or indirect parent of each of the other Debtors.

HDL and its non-debtor subsidiaries own interests in several affiliated entities and joint ventures.

(a) HDL Properties

HDL owns all of the membership interests of non-debtor HDL Properties, LLC (“HDL Properties”), a Virginia limited liability company. HDL Properties owns approximately 58.9% of the membership interests in non-debtor Biotech 8, LLC (“Biotech 8”), a Virginia limited liability company. Biotech 8 is the sole member of non-debtor Biotech Building, LLC (“Biotech Building”), which owns the building in the Bio-Technology Park in Richmond, Virginia, in which HDL leased space for its headquarters.

(b) HDL Holdings

HDL also owns all of the membership interests of non-debtor subsidiary HDL USA Holdings, LLC (“HDL Holdings”), a Virginia limited liability company.

(1) CML

Prior to the Petition Date, HDL Holdings owned all of the membership interests of Debtor CML. In September 2015, CML sold substantially all of its assets in connection with the CML Sale.

(2) G3

Prior to the Petition Date, HDL Holdings owned a 49.5% interest in non-debtor Global Genomics Group, LLC (“G3”), a Delaware limited liability company. In December 2015, HDL Holdings sold its ownership interest in G3.

(3) IDL

HDL Holdings previously owned a 33% interest in non-debtor Innovative Diagnostic Laboratory, LLP (“IDL”). In May 2015, HDL Holdings sold its ownership interest in IDL.

(4) Grenova

Prior to the Petition Date, HDL Holdings owned all of the membership interests of non-debtor Grenova Holdings, LLC (“Grenova Holdings”). Grenova Holdings owns approximately

30% of the membership interests of non-debtor Grenova, LLC (“Grenova”). In November 2015, HDL Holdings sold its ownership interest in Grenova Holdings.

(c) IHL

Debtor subsidiary Integrated Health Leaders, LLC (“IHL”), a Virginia limited liability company, owned certain intellectual property acquired in 2011, which was sold in connection with the HDL Sale.

ARTICLE III

EVENTS LEADING TO THE COMMENCEMENT OF THE CHAPTER 11 CASE

3.1 DOJ Investigation and Settlement

On January 7, 2013, the Debtors received a subpoena from the DOJ soliciting information with respect to the Debtors’ business practices and activities, including the practice of paying fees to physicians for collecting, processing, and handling blood samples sent to HDL for testing. On June 25, 2014, the Office of Inspector General for the Department of Health and Human Services issued a special fraud alert (the “Special Fraud Alert”) concerning laboratory payments to referring physicians. Through the Special Fraud Alert, the government issued guidance stating that the payment of processing and handling fees to physicians for collecting, processing and packaging blood specimens presented a potential risk of liability under the Anti-Kickback statute.

On September 8, 2014, the *Wall Street Journal* published an article that described the Special Fraud Alert, presented a negative view of the practice of paying fees to physicians for collecting, processing, and shipping samples, and specifically focused on HDL’s payment practices. Shortly after the *Wall Street Journal* ran the article, HDL’s founder and then Chief Executive Officer, LaTonya S. Mallory, resigned her position as an officer of HDL. Ms. Mallory remained on HDL’s Board of Directors for a period of time after her resignation. The Debtors, the Estates, and/or the Creditors’ Committee have identified and/or asserted claims, rights or other Causes of Action against Ms. Mallory, other officers and directors of the Debtors, outside counsel and others, including but not limited to those set forth in Exhibit A to the Amended Plan. Ms. Mallory and other parties have denied liability for such claims, rights or other Causes of Action.

On April 9, 2015, HDL announced a settlement with the DOJ that resolved all outstanding civil allegations made against HDL in connection with the DOJ’s industry-wide investigation into historical practices involving the payment of physician processing and handling fees. The purported conduct covered by the settlement with the DOJ included HDL’s alleged:

- (1) offering and/or paying illegal remuneration to health care providers through “processing and handling” payments related to the collection of blood, speaker programs, advisory boards, consulting arrangements, goods

and services, and gifts, which remuneration was intended, in whole or in part, to induce referrals;

- (2) routinely offering to waive and/or waiving cost-sharing obligations, such as copayments and deductibles, for certain beneficiaries of a government healthcare program, with the intent, in whole or in part, to induce referrals to HDL for testing;
- (3) submitting or causing to be submitted claims for payment to government healthcare programs for tests that were not medically necessary or that were not appropriately coded; and
- (4) offering and/or paying illegal remuneration in the form of commission payments to BlueWave Healthcare Consultants, Inc. ("BlueWave"), pursuant to a Sales Agreement between HDL and BlueWave, to induce BlueWave to arrange or recommend the referral of beneficiaries of government healthcare programs to HDL for testing.

HDL denied liability for the claims asserted by the DOJ, and by settling the case, HDL did not thereby admit liability for such disputed claims. In addition, upon the issuance of the Special Fraud Alert, HDL stopped reimbursing physicians for process and handling fees for processing blood samples.

During the third quarter of 2014, following the issuance of the Special Fraud Alert and the cessation of the payment of processing and handling fees, average daily sample volume ordered by physicians fell by nearly 20%. Average daily sample volumes fell an additional 5.5% in the fourth quarter of 2014. Net revenue during this period fell by more than 47%.

In the first quarter of 2015, revenues continued to decline and the average daily sample volume declined to approximately 50% of the volumes in 2013. Between the end of the first quarter of 2015 and the Petition Date, average daily sample volumes stabilized; however, the significant drop in revenue, and certain other non-recurring costs described below, contributed to the liquidity crisis the Debtors faced as of the Petition Date.

3.2 The BB&T Loan Facilities

The Debtors fell out of compliance with certain financial covenants in the BB&T Loan Facilities at the end of the third quarter of 2014. This resulted in the occurrence of events of default under the BB&T Loan Facilities. On January 28, 2015, BB&T notified HDL that it was reducing the maximum principal amount of the ABL Loan Facility from \$20 million to \$12 million and indicated its unwillingness to extend the term of the ABL Loan Facility past the maturity date of March 15, 2015. Pursuant to the Forbearance Agreement, BB&T agreed to forbear from taking certain actions concerning the BB&T Loan Facilities and to extend the maturity of the loans to July 10, 2015.

On May 28, 2015, BB&T discontinued the ability of HDL to borrow under the ABL Loan Facility and issued a notice of default (the "Notice of Default"). BB&T also refused to

honor previously sent checks and refused to allow HDL access to the funds in any of HDL's accounts with BB&T, including without limitation, funds received into such accounts after the issuance of the Notice of Default. Discontinuing borrowing under the ABL Loan Facility and freezing HDL's accounts with BB&T significantly impaired HDL's ability to pay suppliers and continue its business for any significant period of time.

3.3 Related Litigation Matters

Following the commencement of the DOJ investigation and the issuance of the Special Fraud Alert, several lawsuits seeking large damages against the Debtors were filed. The defense of these lawsuits and the filing of certain counterclaims increased non-recurring costs for the Debtors and exacerbated the liquidity crisis brought on by the decline in revenue.

In October 2014, Cigna Health and Life Insurance Co. ("Cigna") filed a lawsuit against HDL in U.S. District Court in Connecticut in connection with HDL's billing practices seeking \$84 million in damages. The lawsuit alleged, among other things, that HDL engaged in a scheme to submit inflated fees, which caused Cigna to overpay for HDL's services. HDL filed a counterclaim against Cigna and its affiliate Connecticut General Life Insurance Co. asserting claims of at least \$66 million for tests that were provided for the benefit of patients.

Shortly following HDL's termination of its BlueWave contract in January 2015, BlueWave filed suit against HDL in the U.S. District Court for the Eastern District of Virginia seeking about \$204.8 million in payments that BlueWave claims it is owed. That lawsuit subsequently was dismissed. In May 2015, BlueWave filed another similar complaint against HDL in the U.S. District Court for the Northern District of Alabama.

Separately, the Company filed a lawsuit against the founders of BlueWave in January 2015, seeking injunctive relief preventing the founders from competing with HDL. That lawsuit was resolved through the entry of a consent judgment prohibiting, among other things, the founders of BlueWave from competing with HDL while the founders remained stockholders of HDL.

In April 2015, Aetna Inc. ("Aetna") filed a lawsuit against HDL and BlueWave in the U.S. District Court for the Eastern District of Pennsylvania, seeking damages in excess of \$150,000. The lawsuit alleged, among other things, that HDL and BlueWave offered unlawful inducements to physicians and patients. On August 31, 2015, Aetna filed an amended complaint, which among other things, added HDL's former Chief Executive Officer, LaTonya Mallory, as a defendant.

ARTICLE IV

THE CHAPTER 11 CASE

(a) Commencement of the Chapter 11 Case

On June 7, 2015 (the "Petition Date"), each of the Debtors filed its respective voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy

Court for the Eastern District of Virginia, Richmond Division (the “Court”), with such cases being jointly administered under case number 15-32919.

(b) Appointment of the Creditors’ Committee

On June 16, 2015, the United States Trustee for the Eastern District of Virginia appointed as members of an Official Committee of Unsecured Creditors (the “Creditors’ Committee”): Oncimmune; Aetna, Inc.; Pietragallo Gordon Alfano Bosick & Raspanti, LLP; Mercodia, Inc.; Numares GROUP Corporation; KBA; and Diadexus, Inc. On July 28, 2015, the Court approved the retention of Cooley LLP as counsel to the Creditors’ Committee and Protiviti Inc. as financial advisor to the Creditors’ Committee. On September 23, 2015, Oncimmune resigned its membership on the Committee, and on November 3, 2015, the United States Trustee for the Eastern District of Virginia appointed Cleveland Heart Lab, Inc., as an additional member of the Creditors’ Committee.

(c) “First Day” Relief

On the Petition Date, the Debtors filed a number of “first day” motions designed to ensure the Debtors’ ability to continue to operate with minimal disruption following the Petition Date. Specifically, the Debtors requested authority to pay certain prepetition obligations, including outstanding amounts owed to their employees and utility providers in the ordinary course of business. The Debtors also requested authority to pay certain taxes to the applicable taxing authorities and insurance premiums to the Debtors’ insurance carriers. On June 8, 2015, the Court conducted a hearing to consider the first day motions, and on June 10, 2015, the Court entered interim orders authorizing the Debtors, among other things, (i) to make certain payments to employees, (ii) to prohibit utility providers from altering, refusing, or discontinuing service, (iii) to pay certain taxes to the applicable taxing authorities, and (iv) to pay insurance premiums to the applicable insurance carrier. On July 1, 2015, the Court entered final orders authorizing the foregoing relief.

(d) BB&T Cash Collateral

On the Petition Date, the Debtors requested authority to use cash collateral to address their working capital needs. The Debtors proposed a budget pursuant to which they would use such cash collateral, and proposed to grant BB&T and BB&T Equipment Finance, their prepetition lenders, a valid, perfected, and enforceable security interest in and upon the Debtors’ cash collateral as adequate protection for any diminution in value of the cash collateral. On June 10, 2015, the Court entered an order approving the use of cash collateral on an interim basis. On July 8, 2015, the Court entered a second interim order approving the use of cash collateral. On July 22, 2015, and August 3, 2015, the Court entered third and fourth interim orders approving the use of cash collateral (the first, second, third, and fourth interim orders approving the use of cash collateral are collectively referred to herein as the “Cash Collateral Orders”).

(e) The CMS Stipulation

Shortly after the Petition Date, the Centers for Medicare & Medicaid Services, United States Department of Health and Human Services (“CMS”) informed the Debtors that it intended

to place an administrative freeze on the processing of Medicare payments owed to the Debtors for prepetition services rendered to beneficiaries of such programs in order to preserve the setoff and/or recoupment rights of the United States of America (the “United States”). In order to avoid the severe impact of losing access to approximately 40% of their total revenue, the Debtors negotiated a stipulation with CMS (the “CMS Stipulation”) addressing the continued processing of Medicare payments and providing the United States with certain replacement setoff rights and secured claims as adequate protection. On July 1, 2015, the Court approved the CMS Stipulation on a final basis. The claims of CMS subsequently were addressed in the DIP Order (defined below) and in the HDL Sale Order. As of November 30, 2015, in accordance with the HDL Sale Order, the Debtors had paid CMS \$4,500,000 in full satisfaction of the Allowed Secured Claim (as defined in the DIP Order) of CMS.

(f) DIP Financing

After seeking debtor-in-possession financing from numerous parties both before and after the Petition Date, on August 2, 2015, the Debtors filed a motion seeking authorization to use cash collateral and to approve superpriority debtor-in-possession financing (the “DIP Financing”) to be provided by Credit Value Partners, LP, as agent for certain funds and accounts under its management. Under the DIP Financing, the Debtors were borrowers and non-debtor affiliates HDL Properties and HDL Holdings were guarantors. The DIP Financing was comprised of a revolving loan facility in the aggregate principal amount of up to \$12 million to be available to the Debtors for general working capital purposes during the pendency of the Case. The DIP Financing also provided for an interim revolver in the amount of \$6 million. On August 7, 2015, the Court entered an interim order approving the DIP Financing and superseding and replacing the Cash Collateral Orders. On the same date, BB&T and BB&T Equipment Finance appealed the Court’s interim order to the United States District Court for the Eastern District of Virginia (the “District Court”). The District Court denied the appeal on August 21, 2015. On August 24, 2015, the Court entered a final order approving the DIP Financing and superseding and replacing the Cash Collateral Orders (the “DIP Order”).

(g) Appointment of Chief Restructuring Officer

To assist them with their restructuring efforts and to help maximize the value of their estates, the Debtors filed with the Court an application seeking entry of an order authorizing the Debtors to retain Alvarez & Marsal Healthcare Industry Group, LLC (“A&M”) to provide the Debtors with a Chief Restructuring Officer and certain additional personnel and to designate Martin McGahan as Chief Restructuring Officer for the Debtors, effective as of the Petition Date. On July 1, 2015, the Court entered an order approving the application on a final basis. On October 29, 2015, the Court entered a supplemental order modifying the retention of A&M to replace Martin McGahan as Chief Restructuring Officer for the Debtors with Richard Arrowsmith effective as of September 21, 2015.

(h) Retention of Professionals

(1) Hunton & Williams LLP

To assist them in carrying out their duties as debtors-in-possession and to represent their interests otherwise in the Case, the Debtors filed with the Court an application seeking entry of an order authorizing the Debtors to retain Hunton & Williams LLP as their counsel. On July 1, 2015, the Court entered an order approving the application on a final basis.

(2) Hirschler Fleischer, P.C.

To assist them in carrying out their duties as debtors-in-possession and to represent them as special conflicts counsel, the Debtors filed with the Court an application seeking entry of an order authorizing the Debtors to retain Hirschler Fleischer, P.C. as their special conflicts counsel. On July 8, 2015, the Court entered an order approving the application on a final basis. The matters for which Hirschler Fleischer provided services on behalf of the Debtors involved matters for which Hunton & Williams requested that the Debtors use conflicts counsel.

(3) The Ettin Group, LLC

To assist them in selling certain miscellaneous equipment free and clear of liens, claims, and encumbrances, the Debtors filed with the Court an application seeking entry of an order authorizing the Debtors to retain The Ettin Group, LLC as their auctioneer. On June 23, 2015, the Court entered an order approving the application. The Debtors subsequently filed with the Court an application seeking entry of an order authorizing the Debtors to retain The Ettin Group, LLC to conduct an appraisal of certain of the Debtors' machinery and equipment assets. On September 3, 2015, the Court entered an order approving the application.

(4) MTS Health Partners, L.P.

To assist them in carrying out their duties as debtors-in-possession and to serve as their investment banker, the Debtors filed with the Court an application seeking entry of an order authorizing the Debtors to retain MTS Health Partners, L.P. as their investment banker. On July 16, 2015, the Court entered an order approving the application.

(i) The Miscellaneous Equipment Sale

On June 11, 2015, the Debtors sought authority to sell certain of their equipment (the "Miscellaneous Equipment") free and clear of all liens via auction conducted by The Ettin Group, LLC. On June 23, 2015, the Court authorized the Debtors to sell the Miscellaneous Equipment via auction. The auction was conducted on June 26, 2015, and thereafter, the Debtors closed the sales of the Miscellaneous Equipment.

(j) The CML Sale

On July 16, 2015, the Debtors filed the *Motion of Debtors and Debtors In Possession for Entry of an Order (I) Approving Bidding Procedures for the Sale of All or Substantially All of the Assets of Central Medical Laboratories, LLC, (II) Scheduling Bid Deadlines and the Auction,*

(III) *Approving the Form and Manner of Notice Thereof* and (IV) *Granting Related Relief* [Doc. No. 273] setting forth proposed bidding procedures for the CML Sale. On August 3, 2015, the Court entered an order approving the bidding procedures for the CML Sale (the “CML Bidding Procedures”).

In accordance with the CML Bidding Procedures, the Debtors selected Oncimmune as the successful bidder for the CML Sale. On September 17, 2015, the Court entered the *Order (I) Approving Asset Purchase Agreement and Authorizing the Sale of the Central Medical Laboratories, LLC Assets Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests, (III) Authorizing the Assumption and Sale and Assignment of Certain Executory Contracts and Unexpired Leases and (IV) Granting Related Relief* [Doc. No. 511] (the “CML Sale Order”) in which the Court approved the terms of the CML Sale. The purchase price for the CML Sale consisted of a waiver of the administrative claim of Oncimmune Limited, an affiliate of Oncimmune, in the amount of at least \$746,875, plus \$22,625.13 in cash, and the assumption of certain assumed liabilities. The CML Sale closed effective as of September 22, 2015.

(k) The HDL Sale

On June 29, 2015, the Debtors filed the *Motion of Debtors and Debtors in Possession for Entry of an Order (I) Approving the Strategic Transaction Bidding Procedures, (II) Scheduling Bid Headlines and the Auction, (III) Approving the Form and Manner of Notice Thereof and (IV) Granting Related Relief* [Doc. No. 176] setting forth proposed bidding procedures for selling substantially all of the Debtors’ assets (the “Bidding Procedures”). On July 15, 2015, the Court entered an order approving the Bidding Procedures.

In accordance with the Bidding Procedures, on September 10, 2015, the Debtors conducted an auction for the HDL Sale and selected True Health Diagnostic, LLC (“True Health”) as the successful bidder for such assets. On September 17, 2015, the Court entered the *Order (I) Approving Asset Purchase Agreement and Authorizing the Sale of Assets of the Debtors Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests, (III) Authorizing the Assumption and Sale and Assignment of Certain Executory Contracts and Unexpired Leases and (IV) Granting Related Relief* [Doc. No. 512] (the “HDL Sale Order”) in which the Court approved the terms of the HDL Sale, including the terms of the Asset Purchase Agreement with True Health (the “HDL Purchase Agreement”).

The HDL Sale closed on September 29, 2015. The consideration for the HDL Sale consisted of, among other things, \$27,100,000 less the Good Faith Deposit and any Closing AR Adjustment (each, as defined in the HDL Purchase Agreement), the assumption of certain assumed liabilities, and the execution of a promissory note (the “True Health Note”), which obligated True Health in the initial principal amount of \$10,000,000 plus Contingent Principal. Under the True Health Note, Contingent Principal is 85% of all collections on accounts receivable sold by HDL to True Health in excess of the \$10,000,000 initial principal amount. The True Health Note is secured by certain accounts receivable (the “Accounts Receivable”) outstanding as of the closing of the HDL Sale. As of December 31, 2015, True Health had paid

the initial principal amount of \$10,000,000. True Health continues to pay the Contingent Principal amounts under the True Health Note.

(1) *HDL Properties and Biotech 8*

In connection with the HDL Sale, HDL's lease agreement with Biotech 8 was assumed and assigned, as amended, to True Health. The Debtors retain direct or indirect ownership interests in, as applicable, HDL Properties, Biotech 8, and Biotech Building.

(2) *The DIP Financing, the BB&T Loan Facility and the BB&T Equipment Finance Loan Facility*

Following the closing of the HDL Sale, as authorized by the HDL Sale Order, the Debtors repaid in full their obligations under the DIP Financing, their obligations to BB&T under the BB&T Loan Facilities, and their obligations to BB&T Equipment Finance under the BB&T Equipment Finance Loan Facility. The Debtors also repaid in full their obligations to Fulton for attorneys' fees related to the BB&T Loan Facilities.

(3) *Bank of the West*

On November 19, 2015, the Court entered the *Order Granting Relief from the Automatic Stay and Allowing Unsecured Claim of Bank of the West* [Doc. No. 655] (the "Bank of the West Stipulation"), which addresses the treatment of the Collateral of Bank of the West. Specifically, the Bank of the West Stipulation addresses adequate protection payments to Bank of the West for November and December 2015, and January 2016, as well as lifting the automatic stay as of February 1, 2016, with respect to the Collateral of Bank of the West.

(4) *PNC*

On December 11, 2015, the Court entered the *Order Granting Relief from the Automatic Stay and Providing Adequate Protection for PNC Equipment Finance LLC* [Doc. No. 719] (the "PNC Stipulation"), which addresses the treatment of the Collateral of PNC. Specifically, the PNC Stipulation addresses adequate protection payments to PNC for December 2015, and January 2016, as well as lifting the automatic stay as of February 1, 2016, with respect to the Collateral of PNC.

(I) Claims Process and Bar Dates

On November 5, 2015, subject to the terms of the Bar Date Order, the Court established the following bar dates (each, a "Bar Date") for the filing of proofs of claim against the Debtors in the Case:

- December 22, 2015, at 4:00 p.m. as the Bar Date for the filing of all proofs of claim for claims arising prior to the commencement of the Case (this Bar Date does not apply to claims or interests held by one Debtor against another Debtor nor to any other claims that are subject to one of the other specific Bar Dates set forth below);

- December 22, 2015, at 4:00 p.m. as the Bar Date for the filing of all proofs of claim by any “governmental unit” as that term is defined in Section 101(27) of the Bankruptcy Code;
- December 22, 2015, at 4:00 p.m. as the Bar Date for the filing of all proofs of claim for administrative claims under section 503(b) of the Bankruptcy Code arising on or before October 22, 2015, including without limitations claims under Bankruptcy Code section 503(b)(9) related to goods delivered during the 20 days prior to the Petition Date; and
- For claims arising from the Debtors’ rejection of any executory contract or unexpired lease, the Bar Date is the later of (a) December 22, 2015; or (b) thirty (30) days after the effective date of the rejection of such executory contract or unexpired lease.

On July 21, 2015, the Debtors filed their schedules of assets and liabilities (the “Schedules”) and statements of financial affairs in the Case. In the event that the Debtors amend their Schedules, the Bar Date for filing a proof of claim with respect to any claim affected by such amendment is the later of (a) December 22, 2015; or (b) thirty (30) days after the date that notice of the amendment is served on the affected claimant.

The Bar Date only recently passed, and the Claims filed to date are not identical to the Claims identified in the Schedules. Thus, the Debtors have not yet determined the total amount of Claims that the Debtors believe should be Allowed Claims. Nevertheless, the Schedules identify Unsecured Claims in the aggregate amount of over \$85 million and the face amount of the claims filed far exceed the scheduled amounts.³ The Debtors anticipate that they have valid objections to many Claims that have been filed and thus, the ultimate total Allowed amount of such Claims may be significantly less than the asserted amounts.

In addition, the Bar Date Order provides that to the extent any former or current officer or director of any of the Debtors does not file a Claim for indemnification, contribution, or reimbursement by the Bar Date, the Debtors shall have until January 22, 2016, at 4:00 p.m. to file a Claim for indemnification, contribution, or reimbursement for such former or current officer or director, and any such Claim filed by the Debtors shall be considered timely filed for all purposes; provided, however, (i) that the Debtors shall file such a Claim for any such former or current officer or director who does not file a Claim by the Bar Date and who was identified on the Distribution List to the October 26, 2015, letter from counsel to the Creditors’ Committee, and (ii) for the avoidance of doubt, that the Debtors, their successors, and other parties-in-interest shall retain the right to object to any such Claim filed by the Debtors on any basis other than timeliness.

³ In addition, the Debtors have entered into stipulations with (i) Aetna extending the Bar Date for Aetna to file proofs of claim until April 5, 2016; and (ii) Cigna and Connecticut General Life Insurance Company (collectively, the “Cigna Entities”) extending the Bar Date for the Cigna Entities to file proofs of claim until February 22, 2016.

(m) Investigation of Potential Claims Against United and Humana

On June 30, 2015, the Debtors filed a motion seeking authority to conduct a Fed. R. Bankr. P. 2004 (“Rule 2004”) examination of UnitedHealthcare Insurance Company (“United”) in order to determine whether the Debtors may have any claims against United for United’s failure to pay millions of dollars of claims submitted by the Debtors under that certain Facility Participation Agreement, dated June 1, 2014, by and between the Debtors and United. On July 16, 2015, the Court entered an order authorizing the Debtors to conduct a Rule 2004 examination of United. The Debtors subsequently filed a motion seeking authority to conduct a Rule 2004 examination of Humana, Inc. (“Humana”) in order to determine whether the Debtors may have any similar claims against Humana. On September 17, 2015, the Court entered an order authorizing the Debtors to conduct a Rule 2004 examination of Humana. The Debtors continue to investigate these potential claims.

(n) The Creditors’ Committee’s Investigation

On September 30, 2015, the Creditors’ Committee filed a motion seeking authority to conduct a Rule 2004 examination of numerous Persons, including the Debtors (the “Committee 2004 Motion”). On October 27, 2015, the Court entered an order authorizing the Creditors’ Committee to conduct a Rule 2004 examination of numerous Persons, including the Debtors (the “Committee 2004 Order”). The Creditors’ Committee’s allegations include, without limitation, that: (i) HDL paid its shareholders distributions totaling \$119 million between 2011 and 2013, which distributions included, among other distributions, contractually mandated quarterly distributions to shareholders, as is customary with S corporations and other pass-through entities, in amounts equal to such shareholders’ federal and state income tax liability attributable to their allocable shares of HDL’s income tax items for the then current taxable years, (ii) HDL paid sales commissions totaling \$220 million to BlueWave and affiliated entities, and (iii) HDL made various other payments to D&Os, including salary and bonus payments, that may give rise to potential Causes of Action.

The Committee 2004 Motion identifies potential Causes of Action against numerous Persons, including Causes of Action based upon, among other things, fraudulent conveyance, preference, unlawful distribution and breach of fiduciary duty under the Bankruptcy Code and Virginia law, as applicable. The Committee 2004 Motion identifies as targets of this investigation, among others, certain of the Debtors’ shareholders, D&Os, and BlueWave and certain of its shareholders, officers and directors, and related entities. In addition, on October 26, 2015, the Creditors’ Committee sent a letter to certain D&Os asserting numerous Causes of Action against such Persons. The Creditors’ Committee is also investigating Causes of Action against LeClairRyan during its representation of the Debtors. On or about October 26, 2015, the Creditors’ Committee sent a letter to LeClairRyan asserting Causes of Action against LeClairRyan for, among other things, legal malpractice.

As described in more detail below, the Plan provides that all Causes of Action that the Debtors may hold against any Entity will become assets of the Liquidating Trust, to be investigated, prosecuted, and/or settled for the benefit of holders of certain Classes of Allowed Claims, except to the extent Section 7.5 of the Plan releases or exculpates Causes of Action. The Liquidating Trustee of the Liquidating Trust will succeed to rights and powers vested in the

Creditors' Committee pursuant to the 2004 Order. Four targets of the Creditors' Committee's investigation continue to serve on HDL's board of directors as of the date of this Disclosure Statement. The members of HDL's board of directors and other individuals that are the subject of this investigation dispute any alleged wrongdoing on their part.

(o) Extension of Exclusivity Periods

On October 29, 2015, the Court entered an order extending (i) the period during which the Debtors have the exclusive right to file a plan or plans through and including January 4, 2016, and (ii) the period during which the Debtors have the exclusive right to solicit acceptances of any plan through and including March 3, 2016.

(p) Procedures for Access to Proceeds of Certain Insurance Policies

On December 11, 2015, the Court entered the *Order Granting Relief from the Automatic Stay and Establishing Procedures for Access to Proceeds of Certain Insurance Policies*. [Doc. No. 715] (the "Access Procedures Order"), which, among other things, established procedures for D&Os (as used in the Access Procedures Order) to obtain payments of proceeds of the Insurance Policies (as used in the Access Procedures Order).

ARTICLE V

SUMMARY OF THE PLAN OF LIQUIDATION

5.1 Purpose and Effect of the Plan

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. As is proposed in the Plan, Chapter 11 also allows for a debtor to seek confirmation of a plan of liquidation.

A plan of liquidation sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of liquidation by a bankruptcy court makes the plan binding upon the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under or has accepted the plan or (ii) received or retains any property under the plan.

Provided that the Court approves the Debtors' Plan, the Plan will provide the means and method for distributing the proceeds of the liquidation of all remaining assets of the Debtors to their creditors. The Plan contemplates the establishment of a Liquidating Trust, and the appointment of a Liquidating Trustee, who will be responsible for liquidating any assets that have not been liquidated prior to the Effective Date, pursuant to the Plan and a Liquidating Trust Agreement.

Under the Plan, Claims and Interests will be divided into Classes according to their relative priority and other criteria, and the Claims and Interests of the various Classes will be treated in accordance with the provisions in such Plan for each such Class. On a Distribution Date, the Liquidating Trustee will make Distributions to certain Classes of Claims as provided in the Plan and Liquidating Trust Agreement. A general description of the Classes of Claims

created under the Plan, the treatment of those Classes under the Plan, and the property to be distributed under the Plan is provided below.

5.2 Treatment of Unclassified Claims

(a) Unclassified Claims Summary

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Fee Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims set forth in Article III of the Plan. The Claim recoveries for such unclassified Claims are set forth below:

Claim	Plan Treatment	Projected Plan Recovery
Administrative Claims	Paid in Allowed amount in Cash	100%
Fee Claims	Paid in Allowed amount in Cash	100%
Priority Tax Claims	Paid in Allowed amount in Cash	100%

(b) Administrative Claims

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtors or the Liquidating Trustee, as applicable, each Holder of an Allowed Administrative Claim (other than holders of Fee Claims and Claims for United States Trustee Fees) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim either: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order; (c) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim; (d) at such time and upon such terms as may be agreed upon by such Holder and the Debtors or the Liquidating Trustee, as applicable; or (e) at such time and upon such terms as set forth in an order of the Court. Notwithstanding the immediately preceding sentence, United States Trustee Fees shall be paid in accordance with the applicable schedule for payment of such fees.

(c) Fee Claims

All requests for payment of Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be filed and served in accordance with the Interim Compensation Procedures Order by the date that is 45 days after the Effective Date. The Court shall determine the Allowed amounts of such Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. The Liquidating Trustee

shall pay Fee Claims in Cash in the amount the Court allows from the Fee Claims Reserve, which the Liquidating Trustee will establish on the Effective Date and fund with Cash equal to the aggregate Fee Claims Estimate. Professionals shall deliver in writing to the Debtors their good faith estimates of the amount of such Professional's accrued unpaid Fee Claims through the Effective Date for purposes of the Debtors computing the Fee Claims Estimate prior to the commencement of the Confirmation Hearing. For the avoidance of doubt, no such estimate shall be deemed to limit the amount of the fees and expenses that are the subject of a Professional's final request for payment of Fee Claims filed with the Court. If a Professional does not provide an estimate, the Debtors or the Creditors' Committee may estimate the unpaid and unbilled fees and expenses of their respective Professionals. Any funds remaining in the Fee Claims Reserve after all Allowed Fee Claims have been paid shall become Available Cash and shall be distributed in accordance with the terms of the Plan and the Liquidating Trust Agreement. Notwithstanding the foregoing, the Holder of an Allowed Fee Claim may receive such other, less favorable treatment as may be agreed upon by such Holder and the Debtors.

From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Liquidating Trustee, subject to applicable non-bankruptcy law, may employ and pay any Professional, in accordance with the Liquidating Trust Agreement, in the ordinary course of business without any further notice to or action, order, or approval of the Court.

(d) Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to different treatment, each Holder of any Allowed Priority Tax Claim shall receive, on account of such Allowed Priority Tax Claim, at the discretion of the Debtors or the Liquidating Trustee, as applicable, (a) on the Effective Date or as soon as reasonably practicable thereafter, Cash in an amount equal to the unpaid portion of such Allowed Priority Tax Claim, or (b) regular installment payments in cash of a total value, as of the Effective Date, equal to the allowed amount of such claim over a period ending not later than five (5) years after the Petition Date; provided, however, that all Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as they become due. Notwithstanding the foregoing, the Holder of an Allowed Priority Tax Claim shall not be entitled to receive any payment on account of any penalty arising with respect to or in connection with the Allowed Priority Tax Claim. Any Claim or demand for any such penalty (a) will be subject to treatment as an Unsecured Claim, if and to the extent it is an Allowed Claim, and (b) the Holder of an Allowed Priority Tax Claim shall not assess or attempt to collect such amounts from the Debtors, the Estates, the Liquidating Trustee, or the Liquidating Trust except as an Unsecured Claim, if and to the extent it is an Allowed Claim.

5.3 Summary of Classification and Treatment of Claims and Interests

The Plan establishes a comprehensive classification of Claims and Interests. The table below summarizes the classification, treatment, voting rights, and estimated recoveries, estimated as of the date hereof, of the Claims and Interests, by Class, under the Plan. Amounts assumed in the projected Plan recovery analysis are estimates only.

Class	Claim or Interest	Voting Rights	Treatment	Projected Plan Recovery
1	Priority Non-Tax Claims	No	Unimpaired	100%
2	Secured Claims	No	Unimpaired	100%
3	General Unsecured Claims	Yes	Impaired	TBD
4	Subordinated Claims	Yes	Impaired	0%
5	Equity Interests	No	Impaired	0%

(a) Class 1 Priority Non-Tax Claims

Each Holder of an Allowed Class 1 Priority Non-Tax Claim shall be paid 100% of the unpaid amount of such Allowed Claim in Cash on the Initial Distribution Date. Notwithstanding the foregoing, the Holder of an Allowed Class 1 Priority Non-Tax Claim may receive such other, less favorable treatment as may be agreed upon by such Holder and the Debtors or the Liquidating Trustee.

(b) Class 2 Secured Claims

Except to the extent that the Holder of an Allowed Claim in Class 2 agrees to less favorable treatment, each Holder of an Allowed Claim in Class 2 shall be satisfied by, at the option of the Debtors or the Liquidating Trustee, as applicable: (i) payment in Cash in full on the later of the Effective Date and the date such Claim becomes Allowed, or as soon thereafter as is practicable; (ii) surrender to the Holder of such Allowed Claim of the Collateral securing such Allowed Claim; or (iii) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the Holder of the Allowed Claim is entitled. In the event an Allowed Claim in Class 2 is treated under clause (i) above, the Liens securing such Claim shall be deemed released and extinguished without further order of the Court. In the event an Allowed Claim in Class 2 is treated under clause (ii) or (iii), and such Holder has a deficiency claim, such deficiency claim shall be subject to treatment as a Class 3 Unsecured Claim, if and to the extent such deficiency claim is an Allowed Claim.

(c) Class 3 General Unsecured Claims

Except to the extent that the Holder of an Allowed Claim in Class 3 agrees to less favorable treatment, each Holder of an Allowed Claim in Class 3 shall be satisfied by receipt of its Ratable Share of Series A Liquidating Trust Interests, which shall entitle such Holder to its Ratable Share of Liquidating Trust Distributions until the principal amount of such Holder's Allowed Class 3 Claim is satisfied in full, and, after the principal amount of Allowed Class 4 Claims are satisfied in full, postpetition interest at the Federal Judgment Rate.

(d) Class 4 Subordinated Claims

Except to the extent that the Holder of an Allowed Claim in Class 4 agrees to less favorable treatment, each Holder of an Allowed Claim in Class 4 shall be satisfied by receipt of such Holder's Ratable Share of Series B Liquidating Trust Interests, which shall entitle such Holder to its Ratable Share of Liquidating Trust Distributions, if any, after satisfaction in full of the principal amount of Allowed Class 3 Claims, and, after satisfaction in full of the principal amount of Allowed Class 4 Claims and postpetition interest at the Federal Judgment Rate for Allowed Class 3 Claims, postpetition interest at the Federal Judgment Rate.

(e) Class 5 Interests

On the Effective Date, all Interests shall be canceled and each Holder of an Allowed Class 5 Interest shall receive, in full and final satisfaction of such Holder's Allowed Class 5 Interest, such Holder's Ratable Share of Series C Liquidating Trust Interests, which shall entitle such Holder to its Ratable Share of Liquidating Trust Distributions, if any, after satisfaction in full of (i) Allowed Class 3 Claims, including without limitation postpetition interest at the Federal Judgment Rate, and (ii) Allowed Class 4 Claims, including without limitation postpetition interest at the Federal Judgment Rate; provided, however, that based on the substantive consolidation occurring in the Plan and the related elimination of all Intercompany Claims, all Interests of a Debtor held by another Debtor shall be canceled and eliminated and the Debtor holding such Interests shall not receive any property or distribution on account of such Interests.

5.4 Means for Implementation of the Plan

(a) Substantive Consolidation

Substantive consolidation of the estates of multiple debtors in bankruptcy effectuates a combination of the assets and liabilities of the involved debtors for certain purposes. The common effects of consolidation are (i) the pooling of the assets of, and claims against, the consolidated debtors; (ii) satisfying liabilities from a common fund; and (iii) combining the creditors of the debtors for purposes of voting on plans of reorganization or liquidation. The Plan contemplates and is predicated upon entry of an order substantively consolidating the Debtors' Estates and the Case.

Substantive consolidation of multiple debtors under a plan is expressly permitted by section 1123(a)(5)(C) of the Bankruptcy Code. *See, e.g., In re Stone & Webster, Inc.*, 286 B.R. 532, 546 (Bankr. D. Del. 2002) (“§ 1123(a)(5)(C) clearly authorizes a bankruptcy court to confirm a Chapter 11 plan containing a provision that substantively consolidates the estates of two or more debtors.”); *see also Schnell v. Crawford (In re James River Coal Co., Inc.)*, 360 B.R. 139, 148, n.1 (Bankr. E.D. Va. 2007) (Huennekens, J.) (noting that “it is not unusual for bankruptcy courts to confirm plans of reorganization to call for the ‘substantive consolidation’ of the different corporate entities comprising the corporate group”).

Accordingly, on the Effective Date: (i) all Intercompany Claims and Interests held by, between and among the Debtors shall be deemed eliminated, (ii) all assets and liabilities of the

Debtors shall be merged or treated as if they were merged with the assets and liabilities of Health Diagnostic Laboratory, Inc., (iii) any obligation of a Debtor and all guarantees thereof by one or more of the other Debtors shall be deemed to be one obligation of Health Diagnostic Laboratory, Inc., and (iv) each Claim filed or to be filed against any Debtor shall be deemed filed only against the consolidated Health Diagnostic Laboratory, Inc., and shall be deemed a single Claim against and a single obligation of the consolidated Health Diagnostic Laboratory, Inc. On the Effective Date, in accordance with the terms of the Plan, all Claims based upon co-obligations or guarantees of collection, payment, or performance made by the Debtors as to the obligations of another Debtor shall be merged into a single obligation of Health Diagnostic Laboratory, Inc., and otherwise shall be released and of no further force and effect.

Substantive consolidation shall not, and shall not be deemed to, prejudice any of (i) the Litigation Claims, which shall survive for the benefit of the Debtors and their Estates and, upon the Effective Date, for the benefit of the Liquidating Trust and the Liquidating Trust Beneficiaries; or (ii) the available defenses to the Litigation Claims.

(b) Corporate Action

(1) Transfer of Assets to the Liquidating Trust

Upon the occurrence of the Effective Date, (a) the members of the board of directors or managers, as the case may be, of each of the Debtors shall be deemed to have resigned; and (b) each of the Debtors shall cause all of its Assets and those of the Estates to be transferred to the Liquidating Trust in accordance with the Plan.

Upon transfer of the Assets, the Debtors shall have no further duties or responsibilities in connection with the implementation of the Plan.

(2) Dissolution of the Debtors

At any time after the Effective Date, the Liquidating Trustee shall be authorized to dissolve the Debtors upon filing a notice of such dissolution with the Court, notwithstanding any requirements of applicable state law, without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith.

As soon as practicable after the transfer of the Assets to the Liquidating Trust, the Liquidating Trustee shall provide for the retention and storage of the books, records and files that shall have been delivered to the Liquidating Trust until such time as all such books, records and files are no longer required to be retained under applicable law, and file a certificate informing the Court of the location at which such books, records and files are being stored.

The Professionals employed by the Debtors and the Creditors' Committee shall be entitled to reasonable compensation and reimbursement of actual, necessary expenses for post-Effective Date activities, including the preparation, filing and prosecution of Final Fee Applications, solely to the extent the expenses relating to the preparation, filing and prosecution of such Final Fee Application are allowable pursuant to the Bankruptcy Code, and any other services requested to be rendered by the Liquidating Trustee, upon the submission of invoices to

the Liquidating Trust. Any fees or expenses incurred in the preparation, filing, and prosecution of Final Fee Applications shall be disclosed by each Professional in its Final Fee Application and shall be subject to approval and allowance by the Court pursuant to Section 330 of the Bankruptcy Code.

After the Effective Date, the Liquidating Trustee shall have the authority to exercise the voting and other rights of the Debtors in any non-Debtor affiliates of the Debtors, including, without, limitation, the authority to cause such affiliates to operate their businesses, dispose of assets, make distributions of Cash or other property to the Liquidating Trustee as successor to the rights of the Debtors, and dissolve under applicable State law.

(3) *Legal Representation of the Debtors and the Creditors' Committee After the Effective Date*

Upon the Effective Date, the attorney-client relationship between the Debtors and their current counsel, Hunton & Williams LLP, and between the Creditors' Committee and its current counsel, Cooley LLP, shall be terminated; provided, however, that pursuant to section 6.6(e) of the Plan, the Liquidating Trustee shall succeed to the rights and claims of, and hold the attorney-client privilege of, the Debtors and the Creditors' Committee, including without limitation any common interest privilege.

(4) *Cancellation of Existing Securities and Agreements*

Except as otherwise provided in the Plan, and in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date, the Interests and any other promissory notes, share certificates, whether for preferred or common stock (including treasury stock), other instruments evidencing any Claims or Interests, and all options, warrants, calls, rights, puts, awards and commitments, including, without limitation, any agreements purporting to relate to deferred compensation that relate to Interests or options, shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order, or rule, and the obligations of the Debtors under the notes, share certificates, and other agreements and instruments governing such Claims and Interests shall be released; provided, however, that the cancellation, release and discharge of the foregoing shall not affect whether a timely Claim made on account of such obligation may become an Allowed Claim; provided, further, however, that certain instruments, documents, and credit agreements related to Claims shall continue in effect solely for the purpose of allowing the Liquidating Trustee to make Distributions in accordance with the Plan. The Holders of or parties to such canceled notes, share certificates and other agreements and instruments shall have no rights against the Debtors, the Estates, the Liquidating Trust, or the Liquidating Trustee arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan.

(c) **Funding of Reserves**

As set forth more fully in section 6.3 of the Plan, on the Effective Date, the Reserves shall be funded in the following order: (i) the Administrative Claims Reserve; (ii) the Fee Claims Reserve; (iii) the Priority Tax Claim Reserve; (iv) the Secured Claim Reserve; (v) the Priority

Non-Tax Claims Reserve; (vi) the Liquidating Trust Operating Reserve; and (vii) the Disputed Unsecured Claims Reserve. At any time following the Effective Date, the Liquidating Trustee, after consultation with the Liquidating Trust Oversight Committee, may fund or replenish any of the Reserves from Available Cash.

(d) Liquidating Trust

(1) Establishment of the Liquidating Trust

The Liquidating Trust shall be established and shall become effective on the Effective Date.

(2) Liquidating Trust Assets

All Distributions to the Holders of Allowed Claims shall be from the Liquidating Trust. The Liquidating Trust shall hold and administer the Liquidating Trust Assets.

(3) Trust Distributions

Following the funding of the Reserves, the Liquidating Trustee shall liquidate the Liquidating Trust Assets and distribute the Net Proceeds of such liquidation from the Liquidating Trust in accordance with the Plan and the Liquidating Trust Agreement on the Initial Distribution Date and each Subsequent Distribution Date; provided, however, that the Liquidating Trustee shall distribute at least annually, subject to Section 6.5(g) of the Plan, the Net Proceeds and any net income earned by the Liquidating Trust, except that the Liquidating Trustee, after consultation with the Liquidating Trust Oversight Committee, may retain an amount of Net Proceeds reasonably necessary to maintain the value of the Liquidating Trust or to meet existing or anticipated liabilities of the Liquidating Trust, which amount shall be used to fund the Liquidating Trust Operating Reserve.

(4) Duration of the Trust

The Liquidating Trust shall have an initial term of five (5) years; provided, however that, if warranted by the facts and circumstances, and subject to the approval of the Court, upon a finding that an extension of the term of the Liquidating Trust is necessary to accomplish the liquidating purpose of the Liquidating Trust, the Liquidating Trustee shall be authorized to extend the Liquidating Trust for six (6) months or longer provided that such extension is approved by the Court within (6) months of the beginning of the extended term. The Liquidating Trust may be terminated earlier than its scheduled termination if (a) the Court has entered a Final Order closing the Case pursuant to section 350(a) of the Bankruptcy Code or (b) the Liquidating Trustee has administered all of the Liquidating Trust Assets and performed all other duties required by the Plan and the Liquidating Trust Agreement. As soon as practicable after the final Distribution Date, the Liquidating Trustee shall seek entry of a Final Order closing the Case pursuant to section 350(a) of the Bankruptcy Code.

(5) *Liquidation of Litigation Claims*

Subject to the limitations set forth in the Liquidating Trust Agreement, on and after the Effective Date, the Liquidating Trustee shall have sole authority and responsibility for investigating, analyzing, commencing, prosecuting, litigating, compromising, collecting, and otherwise administering all Litigation Claims.

(e) **Liquidating Trustee**

(1) *Appointment*

The appointment of the Liquidating Trustee shall be effective as of the Effective Date. Successor Liquidating Trustee(s) shall be appointed as set forth in the Liquidating Trust Agreement.

(2) *Term*

The Liquidating Trustee's term, including without limitation the term of any Successor Liquidating Trustee(s), shall expire upon termination of the Liquidating Trust pursuant to the Plan and/or the Liquidating Trust Agreement.

(3) *Powers and Duties*

The Liquidating Trustee shall have the rights and powers set forth in the Liquidating Trust Agreement including, but not limited to, the powers of a debtor-in-possession under sections 1107 and 1108 of the Bankruptcy Code. The Liquidating Trustee shall be governed in all things by the terms of the Liquidating Trust Agreement and the Plan. The Liquidating Trustee shall administer the Liquidating Trust, and the Liquidating Trust Assets, and make Distributions from the proceeds of the Liquidating Trust in accordance with the Plan. In addition, the Liquidating Trustee shall, in accordance with the terms of the Plan, take all actions necessary to wind down the affairs of the Debtors consistent with the Plan and applicable non-bankruptcy law. Subject to the terms of the Liquidating Trust Agreement, which includes, among other things, limitations on the Liquidating Trustee's discretion to take certain action without consultation or approval of the Liquidating Trust Oversight Committee or, in some circumstances, the Court, the Liquidating Trustee shall be authorized, empowered and directed to take all actions necessary to comply with the Plan and exercise and fulfill the duties and obligations arising under the Plan, including, without limitation, to:

1. To exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any partner, member, officer, director or shareholder of the Debtors with like effect as if authorized, exercised and taken by unanimous action of such partners, members, officers, directors and shareholders; including, without limitation, amendment of the certificates of incorporation and by-laws of the Debtors, merger of any Debtor into another Debtor, the dissolution of any Debtor and the assertion or waiver of the Debtors' attorney/client privilege;

provided, however, that no such amendment of the certificates of incorporation or by-laws of the Debtors shall apply retroactively to the time period before the Effective Date;

2. To open and maintain bank and other deposit accounts, escrows and other accounts, calculate and implement Distributions to Holders of Allowed Unsecured Claims as provided for or contemplated by the Plan and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate Reserves, in the name of the Debtors or the Liquidating Trustee, even in the event of the dissolution of the Debtors;
3. To make a good faith valuation of the Liquidating Trust Assets, as soon as possible after the Effective Date;
4. Subject to the applicable provisions of the Plan, to collect and liquidate all assets of the Estates pursuant to the Plan and to administer the winding-up of the affairs of the Debtors;
5. To object to any Claims (Disputed or otherwise), and to defend, compromise and/or settle any Claims prior to or following objection without the necessity of approval of the Court for all Claims with a Face Amount of less than two hundred fifty thousand dollars (\$250,000), and/or to seek Court approval for any Claims settlement, to the extent thought appropriate by the Liquidating Trustee or to the extent such approval is required by prior order of the Court; provided, however, that Court approval, upon notice and a hearing, shall be required for any Claims settlements of Claims with a Face Amount of two hundred fifty thousand dollars (\$250,000) or more, unless, upon notice and a hearing, the Court enters a subsequent order that becomes a Final Order increasing such amount;
6. To make decisions after consultation with the Liquidating Trust Oversight Committee, without further Court approval, regarding the retention or engagement of professionals, employees and consultants by the Liquidating Trust and to pay, from the Liquidating Trust Operating Reserve, (i) the charges incurred by the Liquidating Trust on or after the Effective Date for services of professionals after approval of the Liquidating Trust Oversight Committee, without application to the Court, and (ii) disbursements, expenses or related support services relating to the winding down of the Debtors and implementation of the Plan, without application to the Court;

7. To cause, on behalf of the Liquidating Trust, the Debtors, and their estates all necessary tax returns and all other appropriate or necessary documents related to municipal, State, Federal or other tax law to be prepared or filed timely, and to the extent necessary, pay such taxes, in accordance with the Plan, from the Liquidating Trust Operating Reserve; provided, however, that such filings shall not amend or restate prior returns without Court approval, upon notice and a hearing, for such amendment or restatement;
8. To invest Cash in accordance with section 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Court and as deemed appropriate by the Liquidating Trustee in accordance with the investment and deposit guidelines set forth in the Liquidating Trust Agreement;
9. To collect any accounts receivable or other claims and assets of the Debtors or their estates not otherwise disposed of pursuant to the Plan;
10. To enter into any agreement or execute any document required by or consistent with the Plan and perform all of the obligations of the Debtors or the Liquidating Trustee under the Plan;
11. To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization approved by the Liquidating Trust Oversight Committee, any assets that the Liquidating Trustee determines, at the conclusion of the Case, are of no benefit to creditors of the Debtors or too impractical to distribute, provided, however, that Court approval, upon notice and a hearing, shall be required for any abandonment or donation of assets with a value of ten thousand dollars (\$10,000) or more;
12. To investigate (including pursuant to Bankruptcy Rule 2004), prosecute and/or settle, subject to (5) above and (13) below, any Litigation Claims not expressly released or waived under the Plan (after consultation with the Liquidating Trust Oversight Committee), participate in or initiate any proceeding before the Court or any other court of appropriate jurisdiction, participate as a party or otherwise in any administrative, arbitative or other non-judicial proceeding, litigate or settle such Litigation Claims on behalf of the Liquidating Trust and pursue to settlement or judgment such actions;
13. To approve, without Court approval, the settlement of one or more Litigation Claims for which the amount claimed by the Liquidating Trust against a defendant is less than two hundred fifty thousand dollars (\$250,000) and to seek Court approval, upon notice and a

hearing, of the settlement of any Litigation Claim for which the amount claimed by the Liquidating Trust is unliquidated or equals or exceeds two hundred fifty thousand dollars (\$250,000), unless, upon notice and a hearing, the Court enters a subsequent order that becomes a Final Order increasing such amount;

14. To use Liquidating Trust Assets to purchase or create and carry all appropriate insurance policies, bonds or other means of assurance and protection of the Liquidating Trust Assets and pay all insurance premiums and other costs he or she deems necessary or advisable to insure the acts and omissions of the Liquidating Trustee, and if appropriate, the Liquidating Trust Oversight Committee;
15. To implement and/or enforce all provisions of the Plan;
16. To maintain appropriate books and records (including financial books and records) to govern the liquidation and distribution of the Liquidating Trust Assets, provided, however, that any abandonment or destruction of books and records shall require Court approval, upon notice and a hearing;
17. To collect and liquidate all assets of the Estates pursuant to the terms of the Plan and administer the winding-up of the affairs of the Debtors including, but not limited to, closing the Case;
18. To pay fees incurred pursuant to 28 U.S.C. § 1930(a)(6) and to file with the Court and serve on the United States Trustee quarterly post-confirmation financial reports for each of the Debtors until such time as such reports are no longer required, or the Court orders otherwise, a final decree is entered closing this Case or the Case is converted or dismissed;
19. To dissolve the Liquidating Trust if the Liquidating Trustee determines, in reliance on such professionals as it may retain, that the expense of administering the Liquidating Trust so as to make a final distribution to Trust Beneficiaries is likely to exceed the value of the remaining Liquidating Trust Assets;
20. To seek a final decree closing the Bankruptcy Case;
21. Within thirty (30) days after the end of the first full month following the Effective Date, and within twenty (20) days after the end of each quarter thereafter, (a) file with the Court and provide to the Liquidating Trust Oversight Committee a report setting forth (i) the receipt and disposition by the Liquidating Trustee of property of the Estates during such period, including the amounts, recipients and dates of any Distribution and any payments to the

Liquidating Trustee and professionals, employees, and consultants of the Liquidating Trust, (ii) any Disputed Claims resolved by the Liquidating Trustee, (iii) all known material non-Cash assets of the Debtors remaining to be disposed of, and (iv) the status of all Litigation Claims; and (b) provide to the Liquidating Trust Oversight Committee a report setting forth (i) an itemization of all expenses the Liquidating Trustee anticipates will become due and payable within the subsequent quarter, and (ii) the Liquidating Trustee's forecast of cash receipts and expenses for the subsequent quarter;

22. To do all other acts or things consistent with the provisions of the Plan that the Liquidating Trustee deems reasonably necessary or desirable with respect to implementing the Plan; and
23. To be the successor of the Debtors and the Creditors' Committee for all purposes, and to be the successor of the Assigning Creditors with respect to the Creditor Causes of Action of such Assigning Creditor to the extent such Creditor Causes of Action are assignable.

(4) Fees and Expenses

Except as otherwise provided in the Plan, compensation of the Liquidating Trustee and the actual costs and expenses of the Liquidating Trustee and the Liquidating Trust (including, without limitation, the actual fees and expenses of the Liquidating Trustee Professionals) shall be paid from the Liquidating Trust Operating Reserve. The Liquidating Trustee shall pay the actual reasonable fees and expenses of the Liquidating Trustee Professionals, as necessary to discharge the Liquidating Trustee's duties under the Plan and the Liquidating Trust Agreement. Payments to the Liquidating Trustee shall not require notice to any party, or an order of the Court approving such payments; provided, however, that (i) the Liquidating Trustee shall be entitled to payment of the actual reasonable fees and expenses incurred prior to the Effective Date in an amount to be agreed to by the Debtors and the Creditors' Committee, and approved by the Court in the Confirmation Order; (ii) prior to making any payments to the Liquidating Trustee for fees and expenses incurred after the Effective Date, the Liquidating Trustee shall obtain approval from the Liquidating Trust Oversight Committee; and (iii) prior to making any payments to the Liquidating Trustee Professionals for fees and expenses incurred after the Effective Date, the Liquidating Trustee shall obtain approval from the Liquidating Trust Oversight Committee. Notwithstanding anything else in the Plan, nothing in the Plan, the Confirmation Order, or the Liquidating Trust Agreement (1) shall prevent the Holder of a Claim from seeking relief related to or in connection with the fees paid to the Liquidating Trustee Professionals and the quarterly report provided pursuant section 6.5(21) of the Plan; or (2) shall prevent the Liquidating Trustee from contesting whether any such Holder is the Holder of an Allowed Claim (unless such Claim has become an Allowed Claim under the terms of this Plan), provided, that the Liquidating Trustee's decisions concerning payments to the Liquidating Trustee Professionals shall be subject to the prudent investor rule.

(5) *Liquidating Trustee as Successor*

Pursuant to section 1123(a)(5)(B), section 1123(b)(3), and section 1123(b)(6) of the Bankruptcy Code, the Liquidating Trustee shall be the successor to the Debtors for all purposes. The Liquidating Trustee also shall be the successor to the Creditors' Committee for all purposes. In addition, the Liquidating Trustee shall be the assignee and successor to the Assigning Creditors with respect to the Creditor Causes of Action to the extent such Creditor Causes of Action are assignable.

(6) *Investment Powers*

The powers of the Liquidating Trustee to invest any Cash that is held by the Liquidating Trust in any of the Reserves created by the Plan, other than those powers reasonably necessary to maintain the value of the Liquidating Trust Assets and to further the Liquidating Trust's liquidating purposes, shall be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in federally insured banks, or other government-backed liquid investments, such as treasury bills. The Liquidating Trustee is prohibited from continuing or engaging in the conduct of a trade or business, except to the extent the Liquidating Trust Assets include existing membership interests and as reasonably necessary to and consistent with the liquidating purpose of the Liquidating Trust.

(7) *Distributions*

Except as otherwise provided in the Plan, on the Initial Distribution Date and Subsequent Distribution Dates, the Liquidating Trustee shall make Distributions of Available Cash to the Liquidating Trust Beneficiaries qualifying to receive Distributions from the Liquidating Trust under the Plan, which Distributions shall be made at least annually; provided, however, that the Liquidating Trustee may postpone any Distribution if the Liquidating Trustee determines, with the consent of the Liquidating Oversight Committee, that the amount of such Distribution would be too small to justify the administrative costs associated with such Distribution. The Liquidating Trustee shall make continuing efforts to dispose of the Liquidating Trust Assets, make timely Distributions, and not unduly prolong the duration of the Liquidating Trust.

(8) *Vesting of Certain Assets*

On the Effective Date, all Litigation Claims, all property of the Debtors or the Estates treated by the Plan, any minutes, and general corporate records of the Debtors, any minutes and books and records of the Creditors' Committee, and any books and records relating to the foregoing not otherwise treated by the Plan, shall vest in the Liquidating Trust free and clear of all Liens, Claims, encumbrances, and other interests and shall thereafter be administered, liquidated by sale, collection, recovery, or other disposition and distributed by the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement and the Plan.

(9) *Indemnification Provisions*

The Liquidating Trust Agreement may authorize the Liquidating Trustee to seek approval of the Court to obtain appropriate indemnification protections, including without limitation to obtain insurance after the term of Debtors' current insurance policy ends.

(f) Federal Income Taxation of Liquidating Trust

(1) Treatment of Liquidating Trust Interests

The Debtors and the Liquidating Trustee shall treat the Liquidating Trust Beneficiaries as grantors of the Liquidating Trust and the Liquidating Trustee will file tax returns for the Liquidating Trust as a “grantor trust” pursuant to section 1.671-4(a) of the U.S. Treasury Regulations. Items of income, gain, loss, expense, and other tax items will be allocated to those Liquidating Trust Beneficiaries that would be entitled to receive such items if they constituted cash distributions or reductions therefrom, and such Liquidating Trust Beneficiaries shall be responsible for the payment of taxes on a current basis that result from such allocations.

For all U.S. federal income tax purposes, all parties must treat the transfer of Assets to the Liquidating Trust as (i) a transfer of the Assets to the beneficiaries of the Liquidating Trust followed by (ii) a transfer of the Assets by such beneficiaries to the Liquidating Trust, with the beneficiaries being treated as the grantors and owners of the Liquidating Trust. Each Holder that is a beneficiary of the Liquidating Trust will generally recognize gain (or loss) in its taxable year that includes the Effective Date in an amount equal to the difference between the amount realized in respect of its Claim and its adjusted tax basis in such Claim. The amount realized for this purpose should generally equal the fair market value of the Assets deemed received for U.S. federal income tax purposes under the Plan in respect of such Holder’s Claim. A Holder that is deemed to receive for U.S. federal income tax purposes the Assets under the Plan in respect of its Claim should generally have a tax basis in such Assets in an amount equal to the fair market value of such Assets on the date of receipt.

(2) Reserves that may be Established by the Liquidating Trustee

The Liquidating Trustee may file a tax election to treat any of the Reserves established for Disputed Claims (such as the Disputed Unsecured Claim Reserve) as a Disputed Ownership Fund (“DOF”) within the meaning of section 1.468B-9 of the U.S. Treasury Regulations rather than tax such Reserve as a part of the grantor Liquidating Trust. If the election is made, the Liquidating Trust shall comply with all U.S. federal and state tax reporting and tax compliance requirements of the DOF, including but not limited to the filing of a separate U.S. federal income tax return for the DOF and the payment of U.S. federal and/or state income tax due.

(g) Nature of Liquidating Trust Interests

The Liquidating Trust Interests issued pursuant to the Plan shall be in the nature of equity interests, and not in the nature of notes, bonds, debentures or evidence of indebtedness. As such, all of the Liquidating Trust Interests shall be junior in right of payment to all liabilities and obligations of the Liquidating Trust and payments with respect to Liquidating Trust Interests shall be contingent upon recoveries of Net Proceeds from the liquidation of the Liquidating Trust Assets.

The Liquidating Trust Beneficiaries shall have beneficial interests in the Liquidating Trust Assets as provided in the Plan. The Liquidating Trust Beneficiaries’ proportionate interests in the Liquidating Trust Assets as thus determined shall not be transferable, except upon the death of the Liquidating Trust Beneficiary or by operation of law. The ownership of

Liquidating Trust Interest shall not entitle a holder of any Liquidating Trust Interest to any title in or to the assets of the Liquidating Trust as such (which title shall be vested in the Liquidating Trustee) or to any right to call for a partition or division of the assets of the Liquidating Trust or to require an accounting.

(h) No Revesting of Assets

All Litigation Claims and all property of the Estates shall not be vested in the Debtors on or following the Effective Date, but shall be vested in the Liquidating Trust, and continue to be subject to the jurisdiction of the Court following confirmation of the Plan until such property is distributed to Holders of Allowed Claims or abandoned in accordance with the provisions of the Plan, the Liquidating Trust Agreement and the Confirmation Order.

(i) Accounts and Reserves

The Liquidating Trustee shall establish one or more accounts into which shall be deposited all funds of the Liquidating Trust. The Liquidating Trustee may elect to establish separate accounts for the Reserves, but in all cases the Liquidating Trustee shall separately account for funds deposited into and withdrawn from the Reserves.

(j) Release of Liens

Except as otherwise provided in the Plan, the Confirmation Order, or in any document, instrument, or other agreement created in connection with the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, or other security interests against the property of the Estates shall be released.

(k) Exemption from Certain Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers from any of the Debtors to the Liquidating Trust or by the Debtors to any other Entity pursuant to the Plan shall not be subject to any stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any applicable instruments or documents without the payment of any such tax or governmental assessment.

(l) Preservation of Litigation Claims

Unless a Litigation Claim against any Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including the Confirmation Order and the Sale Orders), the Debtors and their Estates, and the Creditors' Committee, expressly reserve such Litigation Claims, a nonexclusive list of which is set forth on Exhibit A to the Plan, to be transferred by the Debtors, the Creditors' Committee, and/or an Assigning Creditor, as applicable, to the Liquidating Trust pursuant to the Plan, for possible prosecution by the Liquidating Trustee, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Litigation Claims upon or after the entry of the Confirmation Order or Effective Date based on the Plan or the Confirmation Order, except

where such Litigation Claims have been released in the Plan or any Final Order (including the Confirmation Order and the Sale Orders). In accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Trust may enforce all rights to commence and pursue, as appropriate, any and all such Litigation Claims, whether arising prior to or after the Petition Date, and the Liquidating Trust's rights to commence, prosecute, or settle any such Litigation Claims shall be preserved notwithstanding entry of the Confirmation Order or the occurrence of the Effective Date.

In considering the Plan, each party in interest should understand that any and all Causes of Action that may exist against such Entities may be pursued by the Liquidating Trustee, regardless of whether, or the manner in which, such Causes of Action are listed on Exhibit A to the Plan or described therein. The failure of the Debtors to list a claim, right, cause of action, suit or proceeding on Exhibit A to the Plan shall not constitute a waiver or release by the Debtors or their Estates of such claim, right of action, suit or proceeding. **No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Litigation Claim against them as any indication that the Liquidating Trustee will not pursue any and all available Litigation Claims against them.**

In accordance with section 1123(b)(3) of the Bankruptcy Code, any Litigation Claims that a Debtor may hold against any Entity shall vest in the Liquidating Trust and the Liquidating Trustee on behalf of the Liquidating Trust. In addition, the Liquidation Trust reserves the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits.

Notwithstanding the foregoing or anything else in the Plan or the Confirmation Order, nothing in the Plan or in the Confirmation Order shall affect the rights, claims, or defenses of any Person concerning whether any Creditor Causes of Action are assignable by an Assigning Creditor.

(m) D&O Claims

Nothing in the Plan shall prejudice the rights of the Liquidating Trust or the Liquidating Trustee to seek subordination of any D&O Claim on or prior to the Claims Objection Deadline, either in connection with, or following, the final adjudication or other final resolution of the Litigation Claim against such D&O, whether such Litigation Claim is against such D&O in his or her capacity as such or is against such D&O in his or her individual capacity.

Each D&O Claim shall be deemed a Disputed Claim until entry of a Court order allowing or disallowing such Claim after, or in connection with, the final adjudication or other final resolution of the Litigation Claim against the applicable D&O, whether such Litigation Claim is against such D&O in his or her capacity as such or is against such D&O in his or her individual capacity.

Subject to Section 6.14(b) of the Plan, nothing in the Plan shall prejudice the rights of (i) the Liquidating Trust or the Liquidating Trustee, or any other party in interest, to object to the allowance of any D&O Claim, or (ii) any D&O to oppose such objection.

Nothing in the Plan shall preclude (i) any D&O from asserting setoff, recoupment, or any other defenses in any litigation, including concerning the Litigation Claims, against such D&O, whether such Litigation Claim is against such D&O in his or her capacity as such or is against such D&O in his or her individual capacity, provided such D&O has filed a Claim prior to the date set forth in the Bar Date Order or a Claim was filed on behalf of such D&O as required by the Bar Date Order or (ii) the Liquidating Trust or the Liquidating Trustee, or any other party in interest, from objecting to the exercise or effect of such right to setoff, recoupment, or other affirmative defenses on any and all grounds, including but not limited to, subordination of the D&O Claims of such D&O.

5.5 Insurance Preservation

Nothing in the Plan shall diminish or impair the enforceability of any insurance policies and related agreements that may cover Claims and Causes of Action against the Debtors or any other Entity. Without limiting the foregoing, and notwithstanding anything else in the Plan, (i) nothing in the Plan shall limit any insured from obtaining coverage under any of the Debtors' insurance policies and related agreements, provided, however, that other orders of the Court, whether entered before or after the Effective Date, may limit insureds from obtaining the proceeds of such coverage for reasons other than the Plan and shall not be affected by the Plan; and (ii) nothing in the Plan (including, without limitation, any provision that purports to be preemptory or supervening or grants an injunction, discharge, or a release) shall in any way operate to impair, diminish, or waive, or have the effect of impairing, diminishing or waiving, the legal or contractual rights, claims, defenses, liabilities or obligations of any Entity, including, without limitation, the Debtors, the Creditors' Committee, the Liquidating Trust, the Liquidating Trustee, the D&Os and any insurers, pursuant to any insurance policies and related agreements, including, without limitation, the terms, conditions, limitations, exclusions, and endorsements thereof, that may cover Claims or Causes of Action against the Debtors, the Estates, the Liquidating Trust, the Liquidating Trustee, the D&Os, any insurers or any other Entity.

5.6 Assignment of Creditor Causes of Action

On the Effective Date, and without further order of the Bankruptcy Court, the Creditor Causes of Action owned by Assigning Creditors shall be assigned to or otherwise transferred to the Liquidating Trust for the purpose of commencing, prosecuting, settling, releasing, and/or liquidating the Creditor Causes of Action for the benefit of Liquidating Trust Beneficiaries. All such Creditor Causes of Action of Assigning Creditors shall be treated as Litigation Claims.

To the extent the Liquidating Trustee obtains any benefit, or collects any consideration, arising out of a Creditor Cause of Action assigned by an Assigning Creditor, the Liquidating Trustee, after consultation with the Liquidating Trust Oversight Committee, shall request Court approval, upon notice and a hearing, to increase the allowed amount of such Assigning Creditor's Allowed Class 3 Claim based on such obtained benefit and/or collected consideration by an appropriate amount of up to fifty percent (50%) of the Net Proceeds attributable to such Creditor Cause of Action.

Notwithstanding anything to the contrary in the Plan, it shall be a condition to any effective transfer of a Creditor Cause of Action by a Holder of an Unsecured Claim, and

therefore a condition to benefiting from Section 6.16 of the Plan, that such Holder (i) evidence its ownership of such Creditor Cause of Action to the Liquidating Trustee; and (ii) execute an assignment agreement, the form of which will be included in the Plan Supplement.

5.7 Provisions Governing Distributions

(a) Distributions for Claims Allowed as of the Effective Date

Except as otherwise provided in the Plan, and only after the funding of the Reserves, or as ordered by the Court, all Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on a Distribution Date. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of the Plan. Notwithstanding any other provision of the Plan to the contrary, no Distribution shall be made on account of any Claim or portion thereof that (i) has been satisfied after the Petition Date pursuant to an order of the Court; (ii) is listed in the Schedules as contingent, unliquidated, disputed or in a zero amount, and for which a Proof of Claim has not been timely filed; or (iii) is evidenced by a Proof of Claim that has been amended by a subsequently filed Proof of Claim that purports to amend the prior Proof of Claim.

(b) No Distributions on Disputed Claims

No Distribution shall be made by the Liquidating Trustee with respect to a Disputed Claim until the same, or some portion thereof, becomes an Allowed Claim; provided, however, that if the only dispute regarding a Disputed Claim is the amount of the Disputed Claim, the Holder of a Disputed Claim shall be entitled to a Distribution on account of that portion of the Disputed Claim which the Debtors or the Liquidating Trustee do not dispute at the time and in the manner that the Liquidating Trustee makes Distributions to Holders of Allowed Claims pursuant to the provisions of the Plan.

(c) Distributions on Claims Allowed After the Effective Date

Payments and Distributions from the Liquidating Trust to each respective Holder on account of a Disputed Claim, to the extent that such Disputed Claim ultimately becomes an Allowed Claim, shall be made in accordance with provisions of the Plan that govern Distributions to such Holders of Allowed Claims. Except as otherwise provided in the Plan, within ninety (90) days after such Disputed Claim becomes an Allowed Claim, the Liquidating Trustee shall distribute to such Holder any Cash from the applicable Reserve or the Liquidating Trust that would have been distributed on the dates Distributions were previously made to Holders of Allowed Claims if such Disputed Claim had been an Allowed Claim on such dates.

All Distributions made under Article IX of the Plan on account of an Allowed Claim will be made together with any dividends, payments, or other Distributions made on account of, as well as any obligations arising from, the distributed property as if such Disputed Claim had been an Allowed Claim on the dates Distributions were previously made to Holders of Allowed Claims included in the applicable Class.

(d) Delivery of Distributions and Undeliverable or Unclaimed Distributions

(1) Delivery of Distributions in General

Distributions to Holders of Allowed Claims shall be made (a) at the addresses set forth on the Proofs of Claim filed by such Holders, (b) at the addresses set forth in any written notices of address changes delivered to the Liquidating Trustee after the date of any related Proof of Claim, (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Liquidating Trustee has not received a written notice of a change of address, or (d) at the addresses set forth in the other records of the Debtors or the Liquidating Trustee at the time of the Distribution.

Distributions shall be made from the Liquidating Trust, as applicable, in accordance with the terms of the Plan and, if applicable, the Liquidating Trust Agreement.

In making Distributions under the Plan, the Liquidating Trustee may rely upon the accuracy of the claims register maintained by the Claims Agent in the Case, as modified by any Final Order of the Court disallowing Claims in whole or in part.

(2) Undeliverable and Unclaimed Distributions

If the Distribution to any Holder of an Allowed Claim is returned to the Liquidating Trustee as undeliverable or is otherwise an Unclaimed Distribution, no further Distributions shall be made to such Holder unless and until the Liquidating Trustee is notified in writing of such Holder's then-current address, at which time all missed Distributions shall be made to such Holder without interest. If a Distribution is returned as undeliverable, the Liquidating Trustee shall use reasonable efforts to determine such Creditor's then-current address. Unclaimed Distributions shall be returned to the Liquidating Trust until such Distributions are claimed. The Liquidating Trustee shall, with respect to Cash, maintain in the applicable Reserve, Cash on account of Unclaimed Distributions until such time as a Distribution becomes deliverable, is claimed or is forfeited.

(3) Undeliverable and Unclaimed Distributions

Any Holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an Unclaimed Distribution within three (3) months after the final Distribution Date shall be deemed to have forfeited its Claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such Claim for an Unclaimed Distribution against the Debtors and their Estates, the Liquidating Trustee, the Liquidating Trust, and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its and their property. In such cases, any Cash otherwise reserved for Unclaimed Distributions shall become the property of the Liquidating Trust free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary and shall be distributed in accordance with the terms of the Plan and the Liquidating Trust Agreement. Nothing contained in the Plan or the Liquidating Trust Agreement shall require the Debtors or the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim; provided, however, that in his sole

discretion, the Liquidating Trustee may periodically publish notice of Unclaimed Distributions.

(e) Interest on Claims

Except as specifically provided for in the Plan or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims, and no Holder shall be entitled to interest accruing on or after the Petition Date on any Claim. Except as specifically provided for in the Plan or the Confirmation Order, or required by applicable bankruptcy law, interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim. For the avoidance of doubt, pursuant to Sections 5.1 and 5.2, of the Plan, (i) Holders of Allowed Class 3 Claims shall be entitled to postpetition interest at the Federal Judgment Rate only after Holders of Allowed Class 4 Claims have received payment in the full principal amount of such Claims; and (ii) Holders of Allowed Class 4 Claims shall be entitled to postpetition interest at the Federal Judgment Rate only after Holders of Allowed Class 3 Claims have received payment in the full principal amount of such Claims plus postpetition interest at the Federal Judgment Rate.

(f) Withholding and Reporting Requirements

In connection with the Plan and all Distributions under the Plan, the Liquidating Trustee shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions under the Plan shall be subject to any such withholding, payment, and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. All amounts properly withheld from Distributions to a Holder as required by applicable law and paid over to the applicable taxing authority for the account of such Holder shall be treated as part of the Distributions to such Holder.

All Entities holding Claims shall be required to provide any information necessary to effect information reporting and withholding of such taxes. No Distribution shall be made to or on behalf of such Entity pursuant to the Plan unless and until such Entity has furnished such information. Any property to be distributed pursuant to the Plan shall be deemed: (i) pending the receipt of such information in the manner established by the Liquidating Trustee, an Undeliverable Distribution pursuant to section 9.5(b) of the Plan; or (ii) if such information is not received by the deadline established by the Liquidating Trustee and approved by the Court upon notice and a hearing, forfeited and treated in accordance with section 9.5(b) of the Plan.

Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed

upon the Liquidating Trustee in connection with such Distribution. Any property to be distributed pursuant to the Plan shall be deemed: (i) pending the implementation of such arrangements, an Undeliverable Distribution pursuant to section 9.5(b) of the Plan; or (ii) if such arrangements are not implemented by the deadline established by the Liquidating Trustee and approved by the Court upon notice and a hearing, forfeited and treated in accordance with section 9.5(c) of the Plan.

(g) Miscellaneous Distribution Provisions

(1) Method of Cash Distributions

Any Cash payment to be made by the Liquidating Trustee pursuant to the Plan will be in U.S. dollars and may be made, at the sole discretion of the Liquidating Trustee, by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law. In the case of foreign creditors, Cash payments may be made, at the option of the Liquidating Trustee, in such funds and by such means as are necessary or customary in a particular jurisdiction.

(2) Distributions on Non-Business Days

Any payment or Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

(3) No Distribution in Excess of Allowed Amount of Claim

Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution in excess of the allowed amount of such Claim plus postpetition interest, to the extent postpetition interest is authorized to be paid under the Plan.

(h) De Minimis Distribution Provisions

No Distribution shall be required to be made under the Plan to any Holder of a Claim unless such Holder is to receive in such Distribution at least \$50.00, or unless such Distribution is the final Distribution to such Holder pursuant to the Plan. Any such Distribution not made in accordance with the provisions of Article IX of the Plan shall be retained by the Liquidating Trustee and invested as provided in the Plan. Any Distribution not made in accordance with Article IX of the Plan to such Holder, shall be held in trust for the relevant Holder until the earlier of (x) the date the next Distribution is scheduled to be made to such Holder; provided, however, that such subsequent Distribution, taken together with amounts retained hereby, equals at least \$50.00, or (y) is the final Distribution to such Holder.

(i) Distribution Record Date

As of the close of business on the Distribution Record Date, the various lists of Holders of Claims and Interests in each of the Classes, as maintained by the Debtors, or their agents, shall be deemed closed and there shall be no further changes in the record Holders of any of the Claims or Interests. Neither the Liquidating Trustee nor the Debtors will have any obligation to

recognize the transfer of or sale of any participation in any Allowed Claim that occurs after the close of business on a Distribution Record Date, and will be entitled for all purposes to recognize, deal with and distribute only to those Holders of Allowed Claims who are record Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date, as stated on the official claims register.

ARTICLE VI

VOTING PROCEDURES AND REQUIREMENTS

6.1 Classes Entitled to Vote on the Plan

The following Classes are the only Classes entitled to vote to accept or reject the Plan (the “Voting Class”):

Class	Claim or Interest	Voting Rights	Status
3	General Unsecured Claims	Yes	Impaired
4	Subordinated Claims	Yes	Impaired

If your Claim or Interest is not included in the Voting Class, you are not entitled to vote and you will not receive a Solicitation Package (as defined herein), including a ballot setting forth detailed voting instructions. If your Claim or Interest is included in the Voting Class, you should read your ballot and carefully follow the instructions included in the ballot. Please use only the ballot that accompanies this Disclosure Statement or the ballot that the Debtors, or the Solicitation Agent on behalf of the Debtors, otherwise provided to you.

6.2 Votes Required for Acceptance by a Class

Under the Bankruptcy Code, acceptance by a class of claims requires an affirmative vote of more than one-half in number of total allowed claims that have voted and an affirmative vote of at least two-thirds in dollar amount of the total allowed claims that have voted.

6.3 Certain Factors to be Considered Prior to Voting

There are a variety of factors that all Holders of Claims entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors may impact recoveries under the Plan and include:

- unless otherwise specifically indicated, the financial information contained in the Disclosure Statement has not been audited and is based on an analysis of data available at the time of the preparation of the Plan and the Disclosure Statement;

- although the Debtors believe that the Plan complies with all applicable provisions of the Bankruptcy Code, the Debtors can neither assure such compliance nor that the Court will confirm the Plan.

While these factors could affect distributions available to Holders of Allowed Claims under the Plan, the occurrence or impact of such factors will not necessarily affect the validity of the vote of the Voting Class or necessarily require a re-solicitation of the votes of Holders of Claims in the Voting Class. For a further discussion of risk factors, please refer to Article VIII, entitled “Certain Factors To Be Considered” of this Disclosure Statement.

6.4 Voting Procedures

Each Class entitled to Vote on the Plan will receive a solicitation package, the form of which is attached as exhibits to the *Motion for Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (C) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballots, (E) Establishing Deadline for Receipt of Ballots, and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections to Confirmation of the Plan; and (IV) Granting Related Relief* [Doc. No. ____] (the “Solicitation Package”), with instructions explaining how to vote and identifying the deadline by which votes must be received by the Solicitation Agent.

IF A BALLOT IS RECEIVED AFTER THE VOTING DEADLINE, IT WILL NOT BE COUNTED UNLESS THE DEBTORS DETERMINE OTHERWISE.

ANY BALLOT THAT IS PROPERLY EXECUTED BY THE HOLDER OF A CLAIM BUT THAT DOES NOT CLEARLY INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN OR ANY BALLOT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

EACH HOLDER OF A CLAIM MUST VOTE ALL OF ITS CLAIMS WITHIN A PARTICULAR CLASS EITHER TO ACCEPT OR REJECT THE PLAN AND MAY NOT SPLIT SUCH VOTES. BY SIGNING AND RETURNING A BALLOT, EACH HOLDER OF A CLAIM WILL CERTIFY TO THE COURT AND THE DEBTORS THAT NO OTHER BALLOTS WITH RESPECT TO SUCH CLAIM HAVE BEEN CAST OR, IF ANY OTHER BALLOTS HAVE BEEN CAST WITH RESPECT TO SUCH CLASS OF CLAIMS, SUCH OTHER BALLOTS INDICATED THE SAME VOTE TO ACCEPT OR REJECT THE PLAN. IF A HOLDER CASTS MULTIPLE BALLOTS WITH RESPECT TO THE SAME CLASS OF CLAIMS AND THOSE BALLOTS ARE IN CONFLICT WITH EACH OTHER, SUCH BALLOTS WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

IT IS IMPORTANT THAT THE HOLDER OF A CLAIM IN THE VOTING CLASS FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED ON SUCH HOLDER'S BALLOT AND THE ACCOMPANYING INSTRUCTIONS.

ARTICLE VII

OTHER KEY ASPECTS OF THE PLAN

7.1 Distributions

One of the key concepts under the Bankruptcy Code is that only claims and interests that are "allowed" may receive distributions under a chapter 11 plan. This term is used throughout the Plan and the descriptions below. In general, an Allowed Claim or Interest means that the Debtors or the Liquidating Trustee, as applicable, agree, or if there is a dispute, the Court determines, that the Claim or Interest, and the amount thereof, is in fact a valid obligation of or Interest in the Debtors. Except as otherwise provided in the Plan, a Final Order, or as otherwise agreed to by the relevant parties, on the Initial Distribution Date and each Subsequent Distribution Date, the Liquidating Trustee shall make a Distribution under the Plan on account of Allowed Claims, subject to the Liquidating Trustee's right to object to Claims.

(a) **Disputed Claims Process**

Except as otherwise provided in the Plan, if a party files a Proof of Claim and (i) the Debtors, or the Liquidating Trustee, as applicable, file an objection to that Claim or otherwise formally challenge the Claim or (ii) the Claim otherwise is a Disputed Claim under the Plan, then such Claim shall be Disputed unless Allowed or disallowed by a Final Order or as otherwise set forth in the Plan. Except as otherwise provided in the Plan, all Proofs of Claim filed after the Effective Date shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against the Debtors, the Estates or the Liquidating Trust, without the need for any objection by the Liquidating Trustee or any further notice to or action, order, or approval of the Court.

(b) **Prosecution of Objections to Claims and Interests**

Any objections to Claims shall be served and filed on or before the 210th day after the Effective Date or by such later date as ordered by the Court. All Claims not objected to by the end of such 210-day period shall be deemed Allowed unless such period is extended upon approval of the Court. For the avoidance of doubt, except as otherwise provided in the Plan, from and after the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses that any Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Litigation Claims retained pursuant to Section 6.11 of the Plan.

7.2 Treatment of Executory Contracts and Unexpired Leases

(a) Rejection of Executory Contracts and Unexpired Leases

Except as otherwise provided in the Confirmation Order, the Plan, the Sale Orders, or any other Plan Document, the Confirmation Order shall constitute an order under section 365 of the Bankruptcy Code rejecting all pre-petition executory contracts and unexpired leases to which any Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) is expressly assumed under the Plan or previously shall have been assumed or assumed and assigned by the Debtors, or (b) is the subject of a pending motion to assume or reject on the Confirmation Date; provided, however, that the Debtors believe that the insurance agreements of the Debtors are not executory contracts and therefore are not subject to assumption or rejection. To the extent that an insurance policy or agreement is determined to be an executory contract subject to assumption by the Debtors, such executory insurance policy or agreement, as the case may be, is hereby assumed and assigned to, and shall vest with, the Liquidating Trust.

Notwithstanding anything to the contrary in the Plan, all insurance policies and agreements of the Debtors and the D&Os that were not assigned pursuant to or in connection with a Sale Order, and all obligations of any of the Debtors and the other counterparties thereto, shall be unaffected by the Plan and shall remain enforceable according to their terms and applicable law.

(b) Reservation of Rights

Except as otherwise provided in the Plan, the Confirmation Order, the Sale Orders or in agreements previously approved by Final Order of the Court, the Debtors or, on or after the Effective Date, the Liquidating Trustee, may, pursuant to applicable law (including section 553 of the Bankruptcy Code), offset against any Claim, including an Administrative Claim, before any Distribution is made on account of such Claim, any and all of the claims, rights and Causes of Action of any nature that the Debtors or the Liquidating Trustee may hold against the Holder of such Claim; provided, however, that neither the failure to effect such a setoff, the allowance of any Claim, any other action or omission of the Debtors or the Liquidating Trustee, nor any provision of the Plan shall constitute a waiver or release by the Debtors or the Liquidating Trustee of any such claims, rights and Causes of Action that the Debtors or the Liquidating Trustee may possess against such Holder.

7.3 Release, Injunction, and Related Provisions

(a) Binding Effect

The Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, the Liquidating Trust and the Liquidating Trustee.

(b) Compromise and Settlement

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and their respective Distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and the Interests in each Class with due regard to any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, sections 510(b) and (c) of the Bankruptcy Code or otherwise. As of the Effective Date, any and all such rights described in the preceding sentence are settled and compromised pursuant to the Plan. The Confirmation Order will constitute the Court's finding and determination that the settlements reflected in the Plan are (1) in the best interests of the Debtors, their Estates and all Holders of Claims, (2) fair, equitable and reasonable, (3) made in good faith and (4) approved by the Court pursuant to Bankruptcy Rule 9019. Notwithstanding anything contained in the Plan or the Confirmation Order, no Litigation Claim is being settled, compromised, released, or otherwise affected by the Plan except as set forth in Section 7.5 of the Plan.

Provided such compromise and settlement is effected in accordance with the provisions of the Plan, the Liquidating Trust Agreement and pursuant to Bankruptcy Rule 9019(b), as applicable, without any further notice to or action, order or approval of the Court, after the Effective Date the Liquidating Trustee may compromise and settle all Claims and Causes of Action against other Entities.

(c) No Discharge of the Debtors

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided, however, that no Holder of any Claim or Interest may, on account of such Claim or Interest, seek or receive any payment or other Distribution from, or seek recourse against, any of the Estates, the Liquidating Trust, the Liquidating Trustee and/or their respective successors, assigns and/or property, except as expressly provided in the Plan.

(d) Exculpation

Notwithstanding anything contained in the Plan to the contrary, the Exculpated Parties, and any property of any of the foregoing Persons, shall not have or incur any liability to any Entity for any prepetition act taken or omitted to be taken in connection with, related to or arising from authorizing, preparing for or filing the Case, or any postpetition act taken or omitted to be taken in connection with, related to or arising from the formulation, negotiation, preparation, dissemination, implementation, administration of the Plan, the Plan Exhibits, the Disclosure Statement, or any contract, instrument, or other agreement or document created or entered into in connection with the Plan, or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors, the Case, or the confirmation or consummation of the Plan, including but not limited to (i) the Sale Orders and the related sales; (ii) formulating, preparing, disseminating, implementing, confirming, consummating or administering the Plan (including soliciting acceptances or rejections thereof if necessary); (iii) the Disclosure Statement, or any contract, instrument, release or other agreement or document entered

into or any action taken or not taken in connection with the Plan; or (iv) any Distributions made pursuant to the Plan, except for acts constituting willful misconduct, and in all respects such parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Notwithstanding the foregoing, for the avoidance of doubt, Section 7.5 of the Plan shall not (i) exculpate or release the Exculpated Parties from anything other than as expressly identified in the preceding sentence, (ii) prevent or limit the ability of the Debtors or the Liquidating Trustee to object to a Claim of an Exculpated Party on any basis other than matters exculpated or released in Section 7.5 of the Plan, (iii) prevent or limit the ability of the Debtors or the Liquidating Trustee to object to, or defend against, on any basis, (a) any Administrative Claim of an Exculpated Party for substantial contribution, or (b) any Administrative Claim of an Exculpated Party arising solely from the Exculpated Party's capacity as a director, provided, however, that nothing in this (iii)(b) shall prevent any Exculpated Party from recovering on a claim under the Debtors' post-petition director and officer insurance policy, or (iv) exculpate or release the Liquidating Trustee, the Liquidating Trust Professionals, or the Liquidating Trust Oversight Committee and its members, with respect to any act taken or omitted to be taken after the Effective Date that would result in liability under the terms of the Liquidating Trust Agreement.

(e) Injunction

The Confirmation Order shall provide, among other things, that all Entities who have held, hold or may hold Claims against or Interests in the Debtors are, with respect to any such Claims or Interests, permanently enjoined from and after the Confirmation Date from taking any of the following actions (other than actions to enforce any rights or obligations under the Plan): (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, the Liquidating Trust, the Liquidating Trustee or any of their property; (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, the Liquidating Trust, the Liquidating Trustee or any of their property; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors, the Liquidating Trust, the Liquidating Trustee or any of their property; (iv) asserting any right of setoff, directly or indirectly, against any obligation due the Debtors, the Liquidating Trust, the Liquidating Trustee or any of their property, except as contemplated or allowed by the Plan; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan; and (vi) prosecuting or otherwise asserting any right, claim or cause of action released pursuant to the Plan, including, without limitation, any right, claim or cause of action against an Exculpated Party that has been exculpated pursuant to Section 7.5 of the Plan; provided, however, that the injunction provided in section 7.4 of the Plan shall neither bar any Entity from asserting any defense in an action commenced by or on behalf of any of the Debtors or the Liquidating Trust, nor prohibit any Entity from asserting any right expressly preserved or contemplated by the Plan. The injunction provided for in section 7.4 of the

Plan shall be limited in all respects to the breadth of the releases and exculpations granted in the Plan.

The Confirmation Order shall also provide, among other things, that all Entities who have held, hold or may hold Claims against or Interests in the Debtors, other than the Debtors, the Liquidating Trustee and the Liquidating Trust, are permanently enjoined from and after the Confirmation Date from (i) commencing, conducting or continuing in any manner, directly or indirectly, any Enjoined Action; (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 any D&O, solely in their capacity as such, or any property of any such transferee or successor, each solely in their capacity as such arising from an Enjoined Action; and (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against any D&O, or any director or indirect transferee of any property of, or successor in interest to, any of the foregoing Entities, arising from an Enjoined Action; provided, however, that nothing contained in the Plan shall preclude the IRS from pursuing an action against any Entity, or any governmental entity from pursuing a criminal action against any Entity, provided, further, that nothing in the Plan shall constitute a waiver of any rights or defenses of such Persons with respect to such actions.

By accepting distributions pursuant to the Plan, each holder of an Allowed Claim or Interest will be deemed to have specifically consented to the Injunctions set forth in Section 7.4 of the Plan.

(f) Extinguishment of Intercompany Claims

Following the Effective Date, any Claims that any of the Debtors may have against another Debtor shall be forever waived, released and extinguished for all purposes and no Debtor shall have a Claim or Administrative Claim Allowed against the Estate of any other Debtor.

(g) Indemnification Obligations

Except as otherwise provided in a previously entered Order of this Court, the Plan or any contract, instrument, release, or other agreement or document entered into in connection with the Plan, any and all indemnification obligations that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law, shall be rejected as of the Effective Date, to the extent executory; provided, however, that (i) all rights, if any, of the D&Os, the Debtors, the Estates, the Creditors' Committee, the Liquidating Trust, and the Liquidating Trustee in and to any of the Debtors' insurance policies hereby are expressly reserved and are not limited in any way by the Plan; and (ii) nothing in the Plan shall be deemed to modify any indemnification obligations of the Debtors pursuant to an Order of this Court concerning the retention or employment of a professional. Nothing in the Plan shall be deemed to release the Debtors' insurers from, or limit the obligations of any of the Debtors' insurers concerning any claims that might be asserted by insureds, additional insureds, or counter-parties to contracts or agreements providing for the indemnification by and of the Debtors, to the extent of available coverage. For the avoidance of doubt, Section 7.7 of the Plan shall not limit the Debtors' indemnification or other obligations

under their engagement letter agreement with A&M dated June 6, 2015 (“A&M Engagement Agreement”), which agreement was approved by the Court and, to the extent necessary to be enforceable on and after the Effective Date, shall be assumed by the Debtors.

(h) Terms of Injunctions or Stays

Unless otherwise provided in the Plan, all injunctions or stays provided for in the Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Case is closed.

ARTICLE VIII

CERTAIN FACTORS TO BE CONSIDERED

PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLAIMS THAT ARE IMPAIRED SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT.

ALTHOUGH THESE RISK FACTORS ARE MANY, THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTORS’ BUSINESSES OR THE PLAN AND ITS IMPLEMENTATION.

The following provides a summary of various important considerations and risk factors associated with the Plan; however, it is not exhaustive. In considering whether to vote to accept or reject the Plan, Holders of Claims that are entitled to vote should read and carefully consider the factors set forth below, as well as all other information set forth or otherwise referenced or incorporated by reference in this Disclosure Statement.

8.1 General Considerations

(a) Parties in Interest May Object to the Debtors’ 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 Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created five Classes of Claims and Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims and Interests in each such Class. Nevertheless, there can be no assurance that the Court will reach the same conclusion.

(b) The Debtors May Not Be Able to Satisfy the Voting Requirements for Confirmation of the Plan

If votes are received in number and amount sufficient to enable the Court to confirm the Plan, the Debtors may seek, as promptly as practicable thereafter, Confirmation. If the Plan does not receive the required support from at least one impaired Class, the Debtors may not be able to confirm the Plan.

(c) The Debtors 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: (a) such plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting classes; (b) such plan is feasible; and (c) the value of distributions to non-accepting holders of claims and interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtors were 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 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 Court determined that the Disclosure Statement, the balloting procedures and voting results were appropriate, the Court could still decline to confirm the Plan if it found that any of the statutory requirements for Confirmation had not been met, including the requirement that the terms of the Plan do not “unfairly discriminate” and are “fair and equitable” to non-accepting Classes. If the Plan is not confirmed, it is unclear what distributions, if any, Holders of Allowed Claims would receive with respect to their Allowed Claims.

The Debtors, subject to the terms and conditions of the Plan, reserve the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications could result in a less favorable treatment of any non-accepting Class, as well as of any Classes junior to such non-accepting Class, than the treatment currently provided in the Plan. Such less favorable treatment could include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan.

(d) Nonconsensual Confirmation

In the event that any impaired class of claims or interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm such a plan at the proponents’ request if at least one impaired class has accepted the plan (with such acceptance being determined without including the vote of any “insider” in such class), and, as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan “does not discriminate unfairly” and is “fair and equitable” with respect to the dissenting impaired classes. The Debtors believe that the Plan satisfies these requirements and the Debtors will request such nonconsensual

Confirmation in accordance with subsection 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Court will reach this conclusion or confirm the Plan on a nonconsensual basis.

(e) Risk of Non-Occurrence of Effective Date

Although the Debtors believe that the Effective Date would occur very shortly after the Confirmation Date, there can be no assurance as to such timing.

8.2 Certain Tax Implications of the Chapter 11 Case

Holders of Allowed Claims and Interests should carefully review Article X herein, “Certain U.S. Federal Income Tax Consequences,” to determine how the tax implications of the Plan and the Case may adversely affect the Debtors and holders of Claims and Interests.

8.3 Disclosure Statement Disclaimer

(a) Information Contained Herein Is for Soliciting Votes

The information contained in this Disclosure Statement is for the purpose of soliciting acceptances of the Plan and may not be relied upon for any other purpose.

(b) Disclosure Statement May Contain Forward-Looking Statements

Many of the statements included in this Disclosure Statement contain forward-looking statements and information relating to the Debtors. These forward-looking statements are generally identified by the use of terminology such as “may,” “will,” “could,” “should,” “potential,” “continue,” “expect,” “intend,” “plan,” “estimate,” “project,” “forecast,” “anticipate,” “believe,” or similar phrases or the negatives of such terms. These statements are based on the beliefs of the Debtors as well as assumptions made using information currently available to the Debtors. Such statements are subject to risks, uncertainties and assumptions, as well as other matters not yet known or not currently considered material by the Debtors. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those anticipated, estimated or projected. Given these risks and uncertainties, Holders of Claims or Interests are cautioned not to place undue reliance on such forward-looking statements. Forward-looking statements do not guarantee future performance. Holders of Claims or Interests should recognize these statements for what they are and not rely on them as facts. None of the Debtors undertakes any obligation to update or revise any of these forward-looking statements to reflect new events or circumstances after the date of this Disclosure Statement

(c) No Legal, Business, or Tax Advice Is Provided to You by This Disclosure Statement

THIS DISCLOSURE STATEMENT IS NOT LEGAL, BUSINESS, OR TAX ADVICE TO YOU. The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each holder of a Claim or Interest should consult his or her own legal counsel and accountant with regard to any legal, tax, and other matters concerning his or her

Claim or Interest. 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.

(d) No Admissions Made

The information and statements contained in this Disclosure Statement will neither (1) constitute an admission of any fact or liability by any entity (including the Debtors) nor (2) be deemed evidence of the tax or other legal effects of the Plan on the Debtors, holders of Allowed Claims or Interests, or any other parties-in-interest.

(e) Failure to Identify Litigation Claims or Projected Objections

No reliance should be placed on the fact that a particular Litigation Claim or projected objection to a particular Claim or Interest is, or is not, identified in this Disclosure Statement. Except as otherwise provided under the Plan, all Parties, including the Debtors, the Liquidating Trust, and the Liquidating Trustee, reserve the right to continue to investigate and object to Claims and to continue to investigate and pursue Litigation Claims.

(f) No Waiver of Right To Object or Right To Recover Transfers and Assets

The vote by a holder of an Allowed Claim for or against the Plan does not constitute a waiver or release of any claims or rights of the Debtors to object to that holder's Allowed Claim, or to bring Litigation Claims, including Litigation Claims to recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any Claims or Litigation Claims of the Debtors or their respective Estates are specifically or generally identified herein or in the Plan.

(g) Information Was Provided by the Debtors and Was Relied Upon by the Debtors' Advisors

Counsel to and other advisors retained by the Debtors have relied upon information provided by the Debtors in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtors have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained herein.

(h) The Potential Exists for Inaccuracies and the Debtors Have No Duty To Update

The Debtors make the statements contained in this Disclosure Statement 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 not been a change in the information set forth herein since such date. Although the Debtors have used their reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtors nonetheless cannot, and do not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, although the Debtors may subsequently update the information in this Disclosure Statement, the Debtors have no affirmative duty to do so unless ordered by the Court.

(i) No Representations Outside of the Disclosure Statement Are Authorized

No representations concerning or relating to the Debtors, the Case, or the Plan are authorized by the Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. In deciding whether to vote to accept or reject the Plan, you should not rely upon any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, unless otherwise indicated herein. You should promptly report unauthorized representations or inducements to the counsel to the Debtors and the Office of the United States Trustee.

ARTICLE IX

CONFIRMATION PROCEDURES

The following is a brief summary of the Confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult with their own advisors.

9.1 The Confirmation Hearing

Under section 1128(a) of the Bankruptcy Code, the Court, after notice, may hold a hearing to confirm a plan of liquidation. The Debtors will file a motion requesting that the Court set a date and time for the Confirmation Hearing. The Confirmation Hearing, once set, may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Court and served on those parties who have requested notice under Bankruptcy Rule 2002 and the Entities who have filed an objection to the Plan, if any, without further notice to parties in interest. The Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. Subject to section 1127 of the Bankruptcy Code, the Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

Additionally, section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation. The Debtors, in the same motion requesting a date for the Confirmation Hearing, will request that the Court set a date and time for parties in interest to file Plan objections. All objections to the Plan must be filed with the Court and served on the Debtors and certain other parties in interest in accordance with the applicable order of the Court so that they are received on or before the deadline to file such objections as set forth therein.

9.2 Confirmation Standards

Among the requirements for Confirmation are that the Plan is accepted by all impaired Classes of Claims and Interests or, if rejected by an impaired Class, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Class, is feasible, and is in the “best interests” of holders of Claims and Interests that are impaired under the Plan. The following requirements must be satisfied pursuant to section 1129(a) of the Bankruptcy Code before the Court may confirm a plan of reorganization. The Plan fully complies with the statutory requirements for Confirmation listed below.

- The proponents of the Plan have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made by the Debtors (or any other proponent of the Plan) or by a Person issuing Securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the Case, in connection with the Plan and incident to the Case is subject to the approval of the Court as reasonable.
- With respect to each holder within an impaired Class of Claims or Interests, each such holder (a) has accepted the Plan or (b) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.
- With respect to each Class of Claims or Interests, such Class (a) has accepted the Plan or (b) is unimpaired under the Plan (subject to the “cram-down” provisions discussed below).
- The Plan provides for treatment of Claims, as applicable, in accordance with the provisions of section 507(a) of the Bankruptcy Code.
- If a Class of Claims or Interests is impaired under the Plan, at least one Class of Claims or Interests that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any Insider.
- Confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors, or any successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan.
- All fees payable under 28 U.S.C. § 1930 have been paid or the Plan provides for the payment of all such fees on the Effective Date.

9.3 Best Interests Test / Liquidation Analysis

As described above, section 1129(a)(7) of the Bankruptcy Code requires that each holder of an impaired Claim or Interest either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Based on the analysis attached hereto as **Exhibit B** (the “Liquidation Analysis”), the Debtors believe that the value of any distributions if the Case were converted to cases under chapter 7 of the Bankruptcy

Code would be no greater than the value of distributions under the Plan. As a result, the Debtors believe holders of Claims and Interests in all impaired Classes will recover at least as much as a result of Confirmation of the Plan as they would recover through a hypothetical chapter 7 liquidation.

9.4 Funding and Feasibility of the Chapter 11 Plan

All amounts necessary for the Debtors (on the Effective Date) or the Liquidating Trustee (after the Effective Date) to make payments or distributions pursuant to the Plan shall be available to the Debtors or Liquidating Trustee, as applicable, through Cash on hand and from the Net Proceeds of the sale of Assets and the liquidation of Causes of Action.

The Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization, unless plan provides for a liquidation. The Plan provides for the liquidation of the remaining assets of the Debtors.

9.5 Confirmation Without Acceptance by All Impaired Classes

The Court may confirm a plan of reorganization over the rejection or deemed rejection of the plan of reorganization by a class of claims or interests if the plan of reorganization “does not discriminate unfairly” and is “fair and equitable” with respect to such class.

(a) No Unfair Discrimination

This test applies to Classes of Claims or Interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be “fair.” The Debtors do not believe the Plan discriminates unfairly against any impaired Class of Claims or Interests. The Debtors believe the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the foregoing requirements for nonconsensual confirmation.

(b) Fair and Equitable Test

This test applies to Classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no Class of Claims or Interests receive more than 100% of the amount of the Allowed Claims or Interests in such Class. As to the dissenting Class, the test sets different standards depending on the type of Claims or Interests of the Debtors in such Class. In order to demonstrate that a plan is fair and equitable, the plan proponent must demonstrate:

- Secured Creditors: Each holder of a secured claim: (1) retains its liens on the property, to the extent of the allowed amount of its secured claim, and receives deferred cash payments having a value, as of the effective date of the chapter 11 plan, of at least the allowed amount of such claim; (2) has the right to credit bid the amount of its claim if its property is sold and retains its liens on the proceeds of the sale (or if sold, on the proceeds

thereof); or (3) receives the “indubitable equivalent” of its allowed secured claim.

- Unsecured Creditors: Either (1) each holder of an impaired unsecured claim receives or retains under the chapter 11 plan property of a value equal to the amount of its allowed claim or (2) the holders of claims and interests that are junior to the claims of the non-accepting class will not receive any property under the chapter 11 plan.
- Equity Interests: Either (1) each holder of an impaired interest will receive or retain under the chapter 11 plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled, or the value of the interest or (2) the holders of interests that are junior to the non-accepting class will not receive or retain any property under the chapter 11 plan.

The Debtors believe the Plan satisfies the “fair and equitable” requirement notwithstanding that a class may vote, or be deemed, to reject the Plan because there is no Class of equal priority receiving more favorable treatment than a Class that is junior to such Class or that will receive or retain any property on account of the Claims in such Class.

9.6 Alternatives to Confirmation and Consummation of the Plan

If the Plan cannot be confirmed, the Debtors may seek to (1) prepare and present to the Court an alternative chapter 11 plan for confirmation, or (2) liquidate the Debtors under chapter 7 of the Bankruptcy Code. If the Debtors were to pursue a chapter 7 liquidation, the Case would be converted to cases under chapter 7 of the Bankruptcy Code and a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution in accordance with the priorities established by the Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on Creditors’ recoveries and the Debtors is described in the unaudited Liquidation Analysis.

ARTICLE X

CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES

10.1 Treatment of Transfers to and Distributions by the Liquidating Trust

(a) Treatment of Transfers to and Distributions by the Liquidating Trust

For all U.S. federal income tax purposes, all parties must treat the transfer of Assets to the Liquidating Trust as (i) a transfer of the Assets to the beneficiaries of the Liquidating Trust followed by (ii) a transfer of the Assets by such beneficiaries to the Liquidating Trust, with the beneficiaries being treated as the grantors and owners of the Liquidating Trust. Each Holder that is a beneficiary of the Liquidating Trust will generally recognize gain (or loss) in its taxable year that includes the Effective Date in an amount equal to the difference between the amount realized in respect of its Claim and its adjusted tax basis in such Claim. The amount realized for this purpose should generally equal the fair market value of the Assets deemed received for U.S.

federal income tax purposes under the Plan in respect of such Holder's Claim. A Holder that is deemed to receive for U.S. federal income tax purposes the Assets under the Plan in respect of its Claim should generally have a tax basis in such Assets in an amount equal to the fair market value of such Assets on the date of receipt.

As each Holder's share of the Assets may change depending upon the resolution of Disputed Claims, the Holders may be prevented from recognizing for U.S. federal income tax purposes all of their loss in connection with the consummation of the Plan until all Disputed Claims have been resolved.

The Liquidating Trustee and the beneficiaries of the Liquidating Trust are required to value the Assets consistently and to use such valuations for all U.S. federal income tax purposes. The Liquidating Trust Agreement will provide for (i) consistent valuation of the Assets by the Liquidating Trustee and the beneficiaries of the Liquidating Trust, (ii) the Liquidating Trust to determine the fair market value of the Assets, and (iii) the Liquidating Trust to send such determination to each beneficiary of the Liquidating Trust.

(b) Tax Treatment of the Liquidating Trust

As described in section 6.5(i) of the Plan, the Debtors believe that the Liquidating Trust is a grantor trust for U.S. federal income tax purposes. A grantor trust is treated as a pass-through entity for U.S. federal income tax purposes. Accordingly, in general, no tax should be imposed on the deemed transfer of Assets by a Holder to the Liquidating Trust. In addition, no tax should be imposed on the Liquidating Trust on the deemed receipt of such Assets or on income earned or gain recognized by the Liquidating Trust with respect to those Assets. Instead, the beneficiaries of the Liquidating Trust will be taxed on their respective allocable shares of such net income or gain in each taxable year of the Liquidating Trust and will be responsible for paying the taxes associated with such income or gain, whether or not they received any distributions from the Liquidating Trust in such taxable year.

There can be no assurance that the Internal Revenue Service ("IRS") will agree with the classification of the Liquidating Trust, or any reserves within the Liquidating Trust, as a grantor trust or part of a grantor trust. A different classification could result in a different income tax treatment of the Liquidating Trust or a reserve within the Liquidating Trust. Such treatment could include, but is not limited to, the imposition of an entity-level tax on either the Liquidating Trust or a reserve within the Liquidating Trust. Such a tax, if imposed, could result in a material reduction in the amount that would otherwise be available for distribution to Holders.

(c) Reserves that May Be Established by the Liquidating Trustee

A portion of the Assets transferred to the Liquidating Trust will be attributable to Disputed Claims. The tax treatment of such transfers of Assets generally will be the same as the tax treatment of transfers of Assets with respect to Allowed Claims. The Liquidating Trustee, however, may create one or more reserve accounts for the Assets held on account of Disputed Claims. Under the Internal Revenue Code of 1986, as amended (the "Tax Code"), amounts earned by an escrow account, settlement fund or similar fund must be subject to current tax. Although the U.S. Treasury Department has issued certain U.S. Treasury Regulations addressing

the tax treatment of such funds, the U.S. Treasury Department has not, except as described in the next paragraph, issued U.S. Treasury Regulations to address the tax treatment of such funds in a bankruptcy context. Accordingly, the proper tax treatment of such funds, and the extent to which a reserve established by the Liquidating Trustee would be treated as such a fund, is uncertain. Depending on the facts and the relevant law, such funds may be treated as grantor trusts to debtors, grantor trusts to claimholders, or as trusts subject to an entity-level tax. Except as described below, the Debtors intend to treat the Assets held in any reserve established by the Liquidating Trustee on account of Disputed Claims as having been transferred to the Liquidating Trust by the Holders of such Disputed Claims, and the Holders of the Disputed Claims as grantors and owners of the Liquidating Trust.

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

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

(d) Treatment of the Debtors

(1) Recognition of Gain or Loss

The Debtors will recognize gain or loss equal to the difference between the fair market value of the Assets and the adjusted tax basis of such Assets. The Debtors anticipate that any net gain resulting from the transfer of Assets will be offset by the tax attributes available to the Debtors, such as net operating losses, capital loss carry-forwards, bad debt deductions, asset basis, or other deductions from, or offsets to, income. The Debtors may, however, recognize some alternative minimum tax as a result of the transfer of the Assets. Any such tax will be paid by the Debtors or the Liquidating Trust to the IRS.

The foregoing conclusions are based on, among other things, the Debtors' assumptions concerning the fair market value of the Assets and the nature and magnitude of their respective tax attributes. Although the Debtors believe such assumptions are correct and appropriate, the

IRS may challenge one or more of those assumptions, and if the IRS were to prevail in any such challenge, the Debtors' Estates could be subject to a tax liability that might be allowed as an Administrative Claim. Such an Allowed Administrative Claim would reduce the funds available to administrative and other Creditors.

(2) *Cancellation of Debt Income*

Under the Tax Code, a U.S. taxpayer generally must include in gross income the amount of any cancellation of indebtedness ("COD") income recognized during the taxable year. COD income generally equals the excess of the adjusted issue price of the indebtedness discharged over the sum of (i) the amount of cash, (ii) the issue price of any new debt, and (iii) the fair market value of any other property transferred by the debtor in satisfaction of such discharged indebtedness (including stock). COD income also includes any interest that has been previously accrued and deducted but remains unpaid at the time the indebtedness is discharged. The Tax Code permits a debtor in bankruptcy to exclude its COD income from gross income if the discharge occurs in a title 11 case. Thus, although the Debtors will realize COD income as a result of the satisfaction of Claims, the Debtors will not be required to recognize any of that COD income.

(3) *Treatment of Holders of Interests*

In accordance with the Plan, Holders of Interests are not expected to receive any recovery under the Plan. A Holder of an Interest will generally recognize a loss in an amount equal to such Holder's adjusted tax basis in the Interest. Capital losses are subject to various limitations under the Tax Code.

(e) Allocation of Plan Distributions Between Principal and Interest

The Plan provides that, to the extent that any Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest on such indebtedness, such distribution will, to the extent permitted by applicable law, be allocated for U.S. federal income tax purposes first to the principal amount of the Claim and second, to the extent the distribution exceeds the principal amount of the Claim, to the portion of the Claim representing accrued but unpaid interest. A Holder generally recognizes a deductible loss to the extent that any accrued interest claimed or amortized original issue discount ("OID") was previously included in income and is not paid in full. Current U.S. federal income tax law is unclear on the allocation of payments between principal and accrued and unpaid interest, and no assurance can be given that the IRS will not challenge the Debtors' position. Holders of Claims are urged to consult their tax advisors regarding the particular U.S. federal income tax consequences to them of the treatment of accrued but unpaid interest, as well as the character of any loss claimed with respect to accrued but unpaid interest previously included in gross income.

If, contrary to the intended position, such a distribution were treated as allocated first to accrued but unpaid interest, a Holder would realize ordinary income with respect to such distribution in an amount equal to the accrued but unpaid interest not already taken into income under the Holder's method of accounting, regardless of whether the Holder would otherwise realize a loss as a result of the Plan. A Holder should also recognize ordinary income on the

exchange (but not in excess of the amount of gain recognized, as described above) to the extent a distribution is received in exchange for market discount not previously taken into account under the Holders' method of accounting.

(f) Withholding, Backup Withholding, and Information Reporting

In connection with the Plan and all Distributions under the Plan, the Liquidating Trustee shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions under the Plan shall be subject to any such withholding, payment, and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. All amounts properly withheld from Distributions to a Holder as required by applicable law and paid over to the applicable taxing authority for the account of such Holder shall be treated as part of the Distributions to such Holder. All persons holding Claims shall be required to provide any information necessary to effect information reporting and withholding of such taxes. For example, with respect to any employee-related withholding, if the Debtors are obligated by law to withhold amounts from Distributions to a present or former employee to satisfy such present or former employee's tax and other payroll obligations, the Liquidating Trustee may withhold a portion of the Distributions allocated to the Holder of an Allowed Claim that is a present or former employee, whether or not such Distributions are in the form of Cash, in such amount as is determined necessary to satisfy such Holder's tax and other payroll obligations with respect to the Distributions.

Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Liquidating Trustee in connection with such Distribution. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable Distribution pursuant to section 9.5(b) of the Plan.

Moreover, under certain circumstances, Holders may be subject to "backup withholding" with respect to payments made pursuant to the Plan, unless such Holder either (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact, or (ii) provides a correct U.S. taxpayer identification number and certifies under penalty of perjury that the Holder is a U.S. person, the taxpayer identification number is correct and the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a Holder's U.S. federal income tax liability, and a Holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS (generally, a U.S. federal income tax return).

In addition, U.S. Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated including, among other types of transactions, certain transactions that result in the taxpayer claiming a loss in excess of specified thresholds. Each Holder is strongly urged to consult its tax advisor regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the Holders' tax returns.

(g) Importance of Obtaining Professional Tax Assistance

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

ARTICLE XI

CONCLUSION AND RECOMMENDATION

For all the reasons set forth in this Disclosure Statement, the Debtors believe that confirmation of the Plan is preferable to all other alternatives. The Debtors urge all holders of Claims entitled to vote to accept the Plan and to evidence such acceptance by returning their ballots so they will be received by the Solicitation Agent no later than 5:00 p.m. prevailing Eastern Time on March 22, 2016.

DATED: February 11, 2016

/s/ Jason W. Harbour

Tyler P. Brown (VSB No. 28072)
Jason W. Harbour (VSB No. 68220)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
*Counsel to the Debtors
and Debtors in Possession*

Exhibit A

The Plan

[TO BE FILED SEPARATELY]

Exhibit B

Liquidation Analysis

[TO BE FILED SEPARATELY]