

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

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re Axion International, Inc. Debtors.

Chapter 11 Case No.: 15-12415 (CSS) (Jointly Administered)

FIRST AMENDED DISCLOSURE STATEMENT FOR JOINT PLAN OF LIQUIDATION

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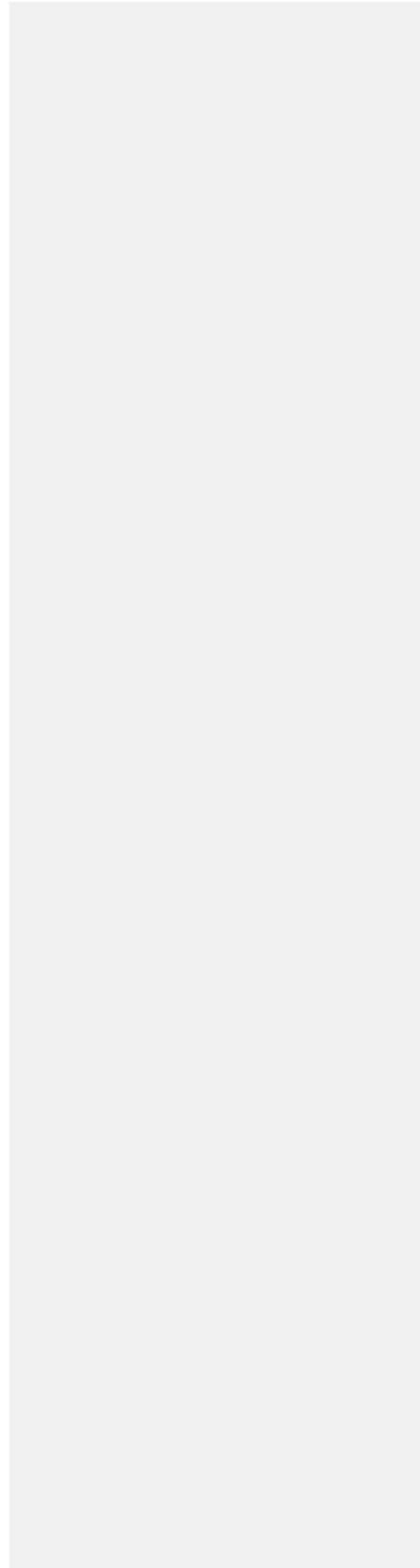
1 The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Axion International, Inc. [1880], Axion International Holdings, Inc. [6389], Axion Recycled Plastics Incorporated [5048]. The address of the Debtors' corporate headquarters is 4005 All American Way, Zanesville, OH 43701.

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Dated: ~~March 7~~April 4, 2016

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EXHIBITS

Exhibit 1 Plan

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- [Exhibit A Settlement Trust Agreement](#)
- [Exhibit B Sources and Use](#)
- [Exhibit C Bidding Procedures](#)
- [Exhibit D Organization Chart](#)
- [Exhibit E Liquidation Analysis](#)

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INTRODUCTION

~~THE COMMITTEE HAS INDEPENDENTLY CONCLUDED THAT THE DISCLOSURE STATEMENT AND PLAN IS IN THE BEST INTERESTS OF GENERAL UNSECURED CREDITORS AND URGES SUCH CREDITORS TO VOTE IN FAVOR OF THE PLAN. A LETTER FROM THE COMMITTEE EXPRESSING ITS SUPPORT FOR THE PLAN IS INCLUDED IN THE SOLICITATION PACKAGE.~~
~~DISCLOSURE STATEMENT AND PLAN. A LETTER FROM THE COMMITTEE EXPRESSING ITS SUPPORT FOR THE DISCLOSURE STATEMENT AND PLAN IS INCLUDED IN THE SOLICITATION PACKAGE.~~

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PLEASE REVIEW THIS DOCUMENT FOR IMPORTANT INFORMATION REGARDING:

- Description of the Debtors, their Estates, and Background of the Chapter 11 Cases
- Classification and Treatment of Claims and Equity Interests
- Distributions to Holders of Allowed Claims
- Implementation and Execution of the Plan
- Treatment of Contracts and Leases and Procedures to Assert Rejection Claims

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IMPORTANT DATES:

- Hearing on Solicitation Procedures and Disclosure Statement: April 4, 2016 at 10:00 A.M. (ET)
- Date to Determine Record Holders of Claims and Equity Interests: April 4, 2016
- Deadline to Assert Administrative Expense Claims (requested): April 22, 2016 at 4:00 p.m. (ET)
- Deadline to File Claims for all entities other than Governmental Units (requested): April 29, 2016 at 4:00 p.m. (ET)
- Deadline to Submit Ballots: May 2, 2016 at 4:00 p.m. (ET)
- Deadline to Object to Plan Confirmation: May 2, 2016 at 4:00 p.m. (ET)
- Hearing on Plan Confirmation: May 9, 2016 at 10:00 a.m. (ET)
- Deadline to File Claims for Government Entities only (requested): June 2, 2016 at 4:00 p.m. (ET)
- Deadline to Submit Rejection Claims arising from the entry of the Confirmation Order: Twenty-one (21) days after notice of the entry of the Confirmation Order

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~~Article I:~~ ARTICLE I

INTRODUCTION

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The Debtors,² the Committee, Kronstadt and the DIP Lender hereby propose this Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code. The Debtors, the Committee, Kronstadt and the DIP Lender are the proponents of the Plan within the meaning of Section 1129 of the Bankruptcy Code.

The Plan constitutes a liquidating chapter 11 plan for the Debtors. The Plan provides for the creation of a Settlement Trust that will administer ~~and liquidate all remaining property assets on behalf of the Debtors~~ General Unsecured Creditors, including the Settlement Trust Assets, ~~Causes of Action~~, and any Retained Assets, that are not otherwise sold, transferred, waived or released on or before the Effective Date of the Plan. The Plan also provides for Distributions to certain Holders of Administrative Claims and Priority Claims and to other Claim Holders and ~~Interest Holders and~~ the funding of the Settlement Trust. The Plan further provides for the termination of all Equity Interests in the ~~Debtor~~ Debtors, the dissolution and wind-up of the affairs of the Debtors, and the transfer of any remaining Estate Assets to the Settlement Trust. ~~The Two of the~~ Debtors will be dissolved under applicable law as soon as practicable upon the closing of the Chapter 11 Cases. The Liquidating Debtor will not dissolve until all of the Retained Assets have been distributed and all claims objections finally adjudicated.

Subject to the restrictions on modifications set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Article _____ of the Plan, the Debtors Plan Proponents expressly reserve the right to alter, amend or modify the Disclosure Statement ~~or~~ and the Plan.

A chart reflecting estimated distributions on Allowed Claims and Interests is on the following page.

² All capitalized terms not defined in this introduction shall have the same meanings set forth in Article I of the Disclosure Statement and Plan.

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Estimated Distributions on Allowed Claims and Interests

Summary of Classification and Treatment of Classified Claims and Equity Interests						
Class	a) Claim	Status	Voting Rights	Est. Amount of Allowed Claims	Est. % Recovery	
1	b) Secured Claims of DIP Lender	e) Unimpaired	h) Debentured to Accept	i) \$2,782,967	j) 100%	
2	h) Secured Claims of Kronstadt	i) Unimpaired	j) Debentured to Accept	k) \$5,209,295	l) 100%	
3	m) Secured Claims of Ohio State of Ohio	n) Unimpaired	o) Debentured to Accept	p) \$199,330	q) 100%	
4	Secured Claims of Community Bank	r) Unimpaired	s) Debentured to Accept	t) Unknow	u) 100%	
5	y) All Other Secured Claims	z) Unimpaired	aa) Debentured to Accept	bb) \$0.00	cc) 100%	dd) N/A
6	ee) Other Priority Claims	ff) Unimpaired	gg) Debentured to Accept	hh) \$189,648	ii) 100%	
7	kk) General Unsecured Claims	ll) Impaired	mm) Entitled to Vote	nn) \$2,427,300-\$7,144,300	oo) 3%-12%, + litigation proceeds +	

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³ A portion of Class 7 and 8's distribution is not a distribution from the Debtors, but rather a settlement payment from Kronstadt.

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					<u>no suits for preferences</u>
8	Convenience Class of General Unsecured Claims of \$500 or Less	Impaired	Entitled to Vote	\$5,948.16	10% - 100%
9	Equity Interests	Impaired	Deemed to Reject	N/A	0%

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THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(c) AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER RULES GOVERNING DISCLOSURE OUTSIDE THE CONTEXT OF CHAPTER 11. THIS DISCLOSURE STATEMENT HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), NOR HAS THE SEC PASSED UPON ITS ACCURACY.

NO REPRESENTATION CONCERNING THE DEBTORS OR THE VALUE OF THE DEBTORS' ASSETS HAS BEEN AUTHORIZED BY THE BANKRUPTCY COURT OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT OR ANY OTHER DISCLOSURE STATEMENT APPROVED BY THE BANKRUPTCY COURT. THE DEBTORS ARE NOT RESPONSIBLE FOR ANY INFORMATION, REPRESENTATION, OR INDUCEMENT MADE TO OBTAIN YOUR ACCEPTANCE, WHICH IS OTHER THAN, OR INCONSISTENT WITH, INFORMATION CONTAINED HEREIN AND IN THE PLAN.

YOU SHOULD NOT RELY UPON OR USE THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR ANY PURPOSE OTHER THAN DETERMINING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. NO LEGAL OR TAX ADVICE IS PROVIDED TO YOU BY THIS DISCLOSURE STATEMENT. YOU ARE STRONGLY URGED TO CONSULT WITH YOUR FINANCIAL, LEGAL, AND TAX ADVISORS TO UNDERSTAND FULLY THE PLAN AND DISCLOSURE STATEMENT. THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS GIVEN AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFIED. THE DELIVERY OF THIS DISCLOSURE STATEMENT DOES NOT, UNDER ANY CIRCUMSTANCE, IMPLY THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE SUCH DATE. THIS DISCLOSURE STATEMENT IS INTENDED, AMONG OTHER THINGS, TO SUMMARIZE THE PLAN AND MUST BE READ IN CONJUNCTION WITH

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AXION ~~COMBINED DISCLOSURE STATEMENT AND PLAN~~

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THE PLAN AND ITS EXHIBITS, IF ANY. IF ANY CONFLICTS EXIST BETWEEN THE PLAN AND DISCLOSURE STATEMENT, THE TERMS OF THE PLAN SHALL CONTROL.

IF A HOLDER OF A CLAIM WISHES TO CHALLENGE THE ALLOWANCE OR DISALLOWANCE OF A CLAIM FOR VOTING PURPOSES UNDER THE TABULATION RULES SET FORTH IN THE SOLICITATION ORDER, SUCH ENTITY MUST FILE A MOTION, PURSUANT TO BANKRUPTCY RULE 3018(a), FOR AN ORDER TEMPORARILY ALLOWING SUCH CLAIM IN A DIFFERENT AMOUNT OR CLASSIFICATION FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN AND SERVE SUCH MOTION ON THE UNDERSIGNED COUNSEL TO THE DEBTORS PLAN PROPONENTS SO THAT IT IS RECEIVED NO LATER THAN 4:00 P.M., PREVAILING EASTERN TIME, ON ~~APRIL 18,~~ MAY 2, 2016. TO THE EXTENT NOT CONSENSUALLY RESOLVED, SUCH MOTIONS SHALL BE HEARD AT SUCH TIME AS THE BANKRUPTCY COURT MAKES AVAILABLE PRIOR TO THE CONFIRMATION HEARING. UNLESS THE BANKRUPTCY COURT ORDERS OTHERWISE, SUCH CLAIM WILL NOT BE COUNTED FOR VOTING PURPOSES IN EXCESS OF THE AMOUNT DETERMINED IN ACCORDANCE WITH THE TABULATION RULES.

~~THE COMMITTEE HAS INDEPENDENTLY CONCLUDED THAT THE PLAN IS IN THE BEST INTERESTS OF GENERAL UNSECURED CREDITORS AND URGES SUCH CREDITORS TO VOTE IN FAVOR OF THE COMBINED DISCLOSURE STATEMENT AND PLAN.
A LETTER FROM THE COMMITTEE EXPRESSING ITS SUPPORT FOR THE PLAN IS INCLUDED IN THE SOLICITATION PACKAGE.~~

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~~Article II:~~ **ARTICLE II.**
BACKGROUND AND DISCLOSURES

On the Filing Date, the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code and, since that date, have operated as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

A. General Background⁴

Axion International Holdings, Inc. (“**Holdings**”) is a publicly-traded company (AXIH), organized under Colorado law, with executive offices in Zanesville, Ohio. As of the Petition Date, Holdings had 54,121,611 shares of common stock, par value \$0.016 per share, traded on the OTCC Bulletin Board. Axion International, Inc. (“**Axion International**”), a Delaware corporation, is a wholly-owned subsidiary of Holdings, and Axion Recycled Plastics Incorporated (“**Axion Recycling**”), an Ohio corporation, is a wholly-owned subsidiary of Axion International. The chart attached hereto as Exhibit AD reflects the organizational structure of the Debtors.

The Debtors manufacture, market and sell structural products and building materials, with an emphasis on railroad ties and construction mats. Using patented technology and proprietary ~~known~~ know-how, the Debtors transform post-consumer and post-industrial recycled plastics, such as high-density polyethylene and glass-filled polypropylene, into products that are ideal replacements for traditional materials made from wood, steel or concrete. Compared to traditional materials, Axion products ~~are cost competitive, and~~ feature longer life cycles and lower maintenance costs. The Debtors’ manufacturing facilities (both of which are leased) are located in Zanesville, Ohio and Waco, Texas.

The Debtors’ strategic focus has been to (i) expand manufacturing capacity to meet current demand for their railroad ties and construction and temporary road mats; (ii) further penetrate chosen end-use markets in the railroad, transportation, and oil and gas industries; (iii) identify new applications for the Debtors’ proprietary technologies based on market research and geographic segmentation; and (iv) spread exposure to risk and liability through product stratification.

Unfortunately, however, the Debtors have been plagued by a lack of liquidity requiring a reduction in production capacity. The Debtors’ ~~principal~~ principle costs and expenses include raw materials and expenses associated with production and manufacturing. To compensate for the liquidity challenges, the Debtors were forced to reprocess slow-moving and obsolete products into new products and to liquidate inventory at lower sales prices in order to induce customers to purchase and/or accept shorter payment terms.

⁴ Further information regarding the Debtors’ business, assets, capital structure, and the circumstances leading to the filing of these Chapter 11 Cases is set forth in detail in the First Day Declaration, ~~which is incorporated by reference herein.~~ Copies of the First Day Declaration and all other filings in the Chapter 11 Cases can be obtained (and viewed) free of charge at the following web address: [http://dm.epiq11.com/AXN/Docket]

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Due to the liquidity issues, recurring losses from operations, and negative operating cash flows, the Debtors ~~recently~~ disclosed in notes to its financial statements filed pre-petition since 2009 that ~~it~~they questioned ~~its~~their ability to continue as a going concern. The pre-petition actions taken by the Debtors to decrease production activity, liquidate available inventory and to seek additional capital investment from both public and private sources ~~have~~proved largely unsuccessful- in preventing the commencement of the chapter 11 cases. Through funds made available prior to the Petition Date and the ~~proposed~~DIP Facility (defined below), the Debtors are purchasing raw materials and rebuilding relationships with vendors who are necessary to the production side of the continuing Debtors' business as a going concern.

B. Prepetition Capital Structure

On November 15, 2013, Axion Recycled Plastics entered into an agreement (the "**2013 Purchase Agreement**") to acquire certain assets of a recycled plastics facility located in Zanesville, Ohio. As a component of the consideration paid for these assets, Axion assumed a 3% promissory note payable to the State of Ohio with a remaining principal balance of \$236,201 as of June 30, 2015 respectively, the "**Ohio State Note**" and the "**Ohio State Secured Debt**". The Ohio State Note is secured by first-priority liens encumbering certain equipment owned by Axion Recycling (the "**Ohio State Collateral**"), some of which are *pari passu* with The Community Bank as discussed below.

~~In 2013, the Debtors entered into two term loans with The Community Bank in the aggregate principal amounts of \$1,000,000 and \$3,500,000 (the "**Community Bank Debt**"). The Community Bank Debt bears interest at 4.25% per annum, is secured by first priority liens encumbering certain identifiable equipment owned by the Debtors (the "**Community Bank Collateral**"), and matures on November 15, 2018.~~

In 2013, Community Bank loaned to the Debtors pursuant to two term loans (the "**Notes**") in the aggregate principal amounts of \$1,000,000 and \$3,500,000 (the "**Community Bank Debt**"). Community Bank alleges that the Debtors induced Community Bank to extend the Community Bank Debt so the Debtors could purchase and acquire significant equipment, as evidenced by bills of sale, security agreements, and board resolutions executed by the Debtors at the time of the transaction. The Community Bank Debt is secured by first-priority liens encumbering certain assets and equipment owned by the Debtors (the "**Community Bank Collateral**"). As of January 29, 2016, the balance due on the Notes was \$4,471,136.77. In connection with the Notes, the Debtors granted security interests to Community Bank, evidenced by security agreements (the "**Security Agreements**") and by UCC Filings in Ohio, Texas and Delaware. Community Bank alleges that the security interests granted described specific property, and extended not only to the specific described property, but to "all additions and accessions to, substitutions for, and replacements, products and proceeds of all the foregoing equipment, including without limitation proceeds of all insurance policies insuring the equipment, cash and noncash proceeds from the sale, exchange, collection or disposition of any of the equipment..." The security interests further specified that "Proceeds" include cash proceeds, non-cash proceeds and anything acquired upon the sale, lease, license, exchange, or other disposition of the Community Bank Collateral; any claims and rights arising from the Community Bank Collateral; and any collections and distributions on account of the Community Bank Collateral. The Debtors dispute these allegations by Community Bank, but concede that

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Community Bank has a first priority perfected security interest in the Community Bank Collateral.

Community Bank obtained relief from the automatic stay and is in the process of inventorying and liquidating the Community Bank Collateral. Although it has not yet completed a sale of the Community Bank Collateral, Community Bank anticipates that it will have a significant deficiency claim. Further, Community Bank has incurred significant fees and expenses that it expects will increase the total amount of its claim.

Over the course of the last several years, Allen Kronstadt loaned substantial sums of money to the Debtors (for operational and other needs), sometimes on an unsecured basis and other times on a secured basis. Prior to the chapter 11 filing, Kronstadt forgave a great deal of this debt to help the Debtors' liquidity. As of the Petition Date, the total principal sum owed to Kronstadt pursuant to secured promissory notes was approximately \$5,209,205 (the notes are referred to as the "**Kronstadt Secured Notes**" and the debt owed pursuant thereto, is referred to as the "**Kronstadt Secured Indebtedness**"). The Ohio State Note, the Community Bank Debt and the Kronstadt Secured Notes are hereinafter referred to as the "**Prepetition Obligations.**" In addition, Allen Kronstadt together with the State of Ohio and The Community Bank, are hereinafter collectively referred to as the "**Prepetition Lien Holders.**" The Kronstadt Secured Notes are secured by (a) second-priority perfected security interests in the Ohio State Collateral and the Community Bank Collateral held at Holdings and Axion International, but not Recycling, and (b) a first-priority perfected security interest in all of the other assets of the Debtors Holdings and Axion International other than commercial torts (together with the Ohio State Collateral and the Community Bank Collateral, the "**Kronstadt Collateral**"), subject to the Stipulation file on February 11, 2016 [Docket No. 1]. Community Bank asserts that Kronstadt is not secured by a second lien on any of the Community Bank Collateral, as Community Bank's agreements with the Debtors expressly forbid the Debtors from granting a second lien in any of the Community Bank Collateral. The Ohio State Secured Debt, the Community Bank Debt and the Kronstadt Secured Indebtedness are hereinafter referred to as the "**Prepetition Secured Debt.**"

During 2014, the Debtors borrowed \$4,000,000 from EagleBank pursuant to the terms of a promissory note and loan agreement (the "**EagleBank Debt**"). Interest accrues on the outstanding principal of the EagleBank Debt at a fixed interest rate of 5% per annum and is payable monthly. All outstanding principal and accrued but unpaid interest is due on September 18, 2017. The EagleBank Debt is not secured by any of the Debtors' assets. The Eagle Bank Debt was guaranteed by Kronstadt and others, and, in January 2016, the guarantors satisfied, in full, the Eagle Bank Debt, which may give rise to unsecured claims by the guarantors.

In addition to the EagleBank unsecured debt, the Debtors have approximately \$2.5 million in unsecured trade debt. Various parties have alleged unsecured claims against the Debtors which could greatly increase these amounts. The Debtors believe such claims are without merit.

C. The Rutgers Agreement

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The Debtors and Rutgers University (“Rutgers”) are parties to a patent license agreement dated February 1, 2007, as amended, in which Rutgers licensed patents and know-how to the Debtors. The Debtors and Rutgers have each asserted against the other certain breaches of the license agreement, but have resolved the dispute including an agreement to assign the license agreement to the successful bidder of assets relating to the license.

C.D. Events Leadings to the Debtors’ Chapter 11 Cases

Prior to Bankruptcy, the Debtors faced a liquidity crisis requiring a curtailment of production, and were therefore unable to meet customer demand. In or about November 2013, Holdings determined the best way to increase profitability was to diversify. Accordingly, Recycling was created to close on the purchase of the assets of Y Recycling in Zanesville, Ohio, and the Debtors entered into the Community Bank Debt to finance this acquisition. The Debtors moved their corporate headquarters to Zanesville, Ohio. Finding the recycling business to be unprofitable, the Debtors’ closed the recycling business about a year later. This created a severe liquidity problem for the Debtors, as they now had the Community Bank Debt and the Ohio State Secured Debt to service with no business income from the recycling business to do so, as well as the rent and maintenance on the shuttered Zanesville plant. This liquidity crisis required a curtailment of production. Accordingly, the cost of manufacture per unit increased, and Debtors were unable to meet customer demand or sell their product at a profit. In addition to their cash flow crisis, as of September 30, 2015, the Debtors had a working capital deficit of \$10,100,000, a stockholders’ deficit of \$31,500,000 and accumulated losses of \$86,200,000. Further details of the Debtors’ financial performance can be found in the Debtors’ most recently filed Form 10Q (Quarterly Report pursuant to Section 14 or 15(d) of the Securities Exchange Act of 1934) for the quarterly period ended September 30, 2015, filed on or about November 16, 2015.

Given the Debtors’ inability to independently survive as a going concern, on or about December 2, 2015, the board of directors of the Debtors authorized the filing of these Chapter 11 Cases to pursue a sale of the Debtors’ assets. As the Debtors have never operated at a profit, the board concluded that reorganization was not feasible. Accordingly, the Debtors are in the final stages of an extensive marketing process, which began prior to the Petition Date, for the sale of their business. As described in further detail below, the Debtors have entered into a global settlement with Kronstadt, Plastic Ties, and the Committee, pursuant to which, *inter alia*, substantially all of the Debtors’ assets will be sold at an auction to be held prior to Confirmation. The Debtors intend to seek [have obtained] approval of certain sale and bidding procedures to complete the marketing process and ensure that the Debtors realize the highest and best value for their assets. The Bidding Procedures are attached hereto as Exhibit C.

In order ~~to fund the continued operations of filing,~~ the Debtors during the completion of the marketing process, recognized they would need Debtor-in-possession financing to operate in chapter 11 and preserve value. The Debtors negotiated with Plastic Ties Financing LLC (“Plastic Ties” or the “DIP Lender”) ~~has agreed~~ to provide the Debtors with postpetition financing of up to \$1,875,000 (the “DIP Facility”) pursuant to a DIP credit agreement (the “DIP Credit Agreement”) evidenced by an amended term sheet and orders entered by the Court on December 4, 2015 [Docket No. 24] and February 26, 2016 [Docket No. ~~227~~-229]. In order to operate through the Petition Date, Debtors required Plastic Ties to advance \$350,000 of the DIP Facility Pre-Petition, which amount was immediately repaid post-Petition from the first draw

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down under the DIP Facility. Plastic Ties is an entity owned 100% by Murray Koppelman (neither a creditor of nor equity holder in the Debtors). Kronstadt serves as the Manager for Plastic Ties. The DIP Facility is described in more detail below.

Prior to filing the Chapter 11 Cases, the Debtors negotiated with Allen Kronstadt to be a stalking horse bidder for the purchase of substantially all of the Debtors' assets. The Debtors proposed that Kronstadt would credit bid for substantially all of the Debtors' assets at an auction to be held approximately 38 days after the Petition Date. The Debtors' marketing up to the Petition Date had not produced any other qualified buyer, and they were running out of cash. The sale the Debtors had negotiated and proposed on the Petition Date would not have provided any recovery for unsecured creditors.

The Committee objected to the proposed sale and bidding procedures [Docket No. 70] on the grounds that the Debtors had not been robustly marketed; the extent, validity and priority of the Kronstadt Liens had not been adequately demonstrated; and alternatives to the proposed sale had not been adequately explored. The Bankruptcy Court sustained the Committee's objection, which, in turn, resulted in the Global Settlement embodied in the Plan which includes the robust sale process currently underway.

These Chapter 11 Cases were filed to allow the Debtors to maintain operations and save jobs while providing the necessary time to complete the current sales process for the benefit of stakeholders. Absent the protections of the Bankruptcy Code, the Debtors ~~will~~would have run out of cash, shut down operations, ~~layoff~~laid off employees and ~~liquidate~~been liquidated, all to the detriment of the Debtors' employees, customers, suppliers, and creditors.

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D.E. Allen Kronstadt's Relationship with the Debtors

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Commencing in August 2012, Kronstadt, along with two other individuals and/or their affiliates, began to ~~actively~~ invest in the Debtors through the purchase of 8% secured convertible notes for which they were also issued warrants. Upon his initial investment of approximately \$2.4 million, Kronstadt was elected to the Debtors' board of directors ~~on or about September 11, 2012.~~ Through December 31, 2014, Kronstadt purchased approximately \$5.2 million of the 8% notes. In addition ~~to the \$5.2 million of 8% notes,~~ Kronstadt thereafter purchased \$666,667 of a different series of 8% convertible notes~~;~~, \$333,333 of 12% convertible notes and approximately \$2.4 million of a series of 12% notes, which were secured by a pledge of Holdings equity interest in Axion Recycling and Axion International (collectively, "**Additional Kronstadt Indebtedness**"). Kronstadt never converted any of the Kronstadt Notes. Kronstadt personally, or through family members and Affiliates, also owned a portion of the Debtors' outstanding shares. On June 9, 2015, Kronstadt resigned from the Debtors' board of directors.

When the Debtors, ~~in anticipation of an up listing to a national exchange in April 2015,~~ initiated a tender offer to acquire their outstanding warrants in exchange for the issuance of shares in May 2014, Kronstadt tendered his warrants and obtained 10.9 million shares of the Debtors' common stock. Kronstadt was also issued approximately 1.6 million shares of common stock as interest on his convertible notes. Until the two other investors with whom Kronstadt invested forgave their debt and relinquished part of their shares in October, 2015, Kronstadt held

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a 17.8% interest in the Debtors' common stock. As a result of the relinquishment, Kronstadt became a 20.1% stockholder.

On November 24, 2015, Kronstadt tendered to the Debtors in exchange for \$2.00 the Additional Kronstadt Indebtedness. He also tendered back to the Debtors in exchange for \$2.00 all shares of common stock, stock options and warrants registered in his individual name. As of the date hereof, 224,803 shares of common stock (less than 1% of common shares outstanding) are held by a tax-exempt foundation established by Kronstadt and trusts established for the benefit of Kronstadt's direct descendants. Kronstadt no longer holds any shares of the Debtors in his individual namecapacity.

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Kronstadt is the manager of Plastic Ties, the DIP Lender in these cases.

E.F. The Chapter 11 Cases

The following is a brief description of certain material events that have occurred during these Chapter 11 Cases.

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2.1. First Day Motions and Orders (Other than the DIP Motion and DIP Financing Order)

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On the Filing Date, in addition to the voluntary petitions for relief filed by the Debtors under chapter 11 of the Bankruptcy Code, the Debtors also filed a number of routine motions and applications seeking certain "first day" relief, including the following:

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(i)(a) Debtors' Motion to Authorize Joint Administration of Cases Pursuant to Federal Rule of Bankruptcy Procedure 1015(b): The Debtors sought entry of an Order directing the joint administration of the Chapter 11 Cases and consolidation thereof for procedural purposes only. On December 4, 2015, the Bankruptcy Court entered an Order granting the relief requested in the motion [Docket No. 18].

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(ii)(b) Debtors' Application for Entry of an Order Appointing Epiq Bankruptcy Solutions, LLC as Claims and Noticing Agent Pursuant to 28 U.S.C. § 156(c), 11 U.S.C. § 105(a), Bankruptcy Rule 2002(f) and Local Rule 2002-1(f): *The Debtors sought entry of an Order Appointing Epiq Bankruptcy Solutions, LLC as Claims and Noticing Agent Pursuant to 28 U.S.C. § 156(c), 11 U.S.C. § 105(a), Bankruptcy Rule 2002(f) and Local Rule 2002-1(f). On December 4, 2015, the Bankruptcy Court entered an Order granting the relief requested in the motion [Docket No. 19].*

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(iii)(c) Motion of the Debtors for Interim and Final Orders Pursuant to Sections 105(a), 345(b), 363(c)(1), 503 and 507 of the Bankruptcy Code (I) Authorizing Continued Use of Existing Bank Accounts; (II) Authorizing Continued Use of Existing Checks and Business Forms; and (III) Waiving the Requirements of Section 345(b) of the Bankruptcy Code: *The Debtors sought entry of an Order Authorizing Continued Use of Existing Bank Accounts; (II) Authorizing Continued Use of Existing Checks and Business Forms; and (III) Waiving the Requirements of Section 345(b) of the Bankruptcy Code. On December 4 and 29, 2015, the Bankruptcy Court entered an Order granting the relief requested in the motion [Docket Nos. 21, 87].*

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~~(iv)~~(d) Motion of the Debtors Pursuant to Sections 105, 363, 507, 1107 and 1108 of the Bankruptcy Code for Entry of an Order (I) Authorizing Debtors to Pay Prepetition Wages, Salaries and Benefits; (II) Authorizing Debtors to Continue Employee Benefit and Insurance Programs in the Ordinary Course of Business; and (III) Directing All Banks to Honor Prepetition Checks for Payment of Prepetition Wage, Salary and Benefit Obligations: *The Debtors sought entry of an Order (I) Authorizing Debtors to Pay Prepetition Wages, Salaries and Benefits; (II) Authorizing Debtors to Continue Employee Benefit and Insurance Programs in the Ordinary Course of Business; and (III) Directing All Banks to Honor Prepetition Checks for Payment of Prepetition Wage, Salary and Benefit Obligations. On December 4, 2015, the Bankruptcy Court entered an Order granting the relief requested in the motion [Docket No. 22].*

~~(v)~~(e) Motion of the Debtors for Entry of an Order Authorizing the Debtors to Maintain Existing Insurance Policies, Pay All Policy Premiums and Fees Arising Thereunder, and Renew or Enter into New Policies: *The Debtors sought entry of an Order Authorizing the Debtors to Maintain Existing Insurance Policies, Pay All Policy Premiums and Fees Arising Thereunder, and Renew or Enter into New Policies. On December 4, 2015, the Bankruptcy Court entered an Order granting the relief requested in the motion [Docket No. 20].*

~~(vi)~~(f) Motion of the Debtors Pursuant to Sections 105 and 366 of the Bankruptcy Code for Entry of Interim and Final Orders (I) Prohibiting Utility Companies from Altering, Refusing or Discontinuing Services to, or Discriminating Against, the Debtors, (II) Determining that the Utility Companies are Adequately Assured of Postpetition Payment and (III) Establishing Procedures for Resolving Requests for Additional Adequate Assurance: *The Debtors sought entry of Interim and Final Orders (I) Prohibiting Utility Companies from Altering, Refusing or Discontinuing Services to, or Discriminating Against, the Debtors, (II) Determining that the Utility Companies are Adequately Assured of Postpetition Payment and (III) Establishing Procedures for Resolving Requests for Additional Adequate Assurance. On December 4 and 29, 2015, the Bankruptcy Court entered an Order granting the relief requested in the motion [Docket Nos. 23 and 88].*

(g) Debtors' Motion for Orders (I) (A) Authorizing and Approving the Bidding Procedures, (B) Approving Certain Notice Procedures, (C) Approving the Assumption and Assignment Procedures, and (D) Setting a Date for the Sale Hearing and (II) Authorizing and Approving (A) The Sale of the Debtors' Assets, and (B) The Assumption and Assignment of Certain Contracts and Leases (the "Sale Motion") [Docket No. 11]: the Debtors sought approval of bidding procedures for a sale of substantially all of the Debtors' at a sale with Kronstadt using a credit bid as the stalking horse. The Committee and several unsecured creditors objected to the relief requested. After a two day evidentiary hearing on January 4, 2016, the Court denied the relief requested. Subsequently, the Debtors withdrew the proposed bidding procedures. [Docket No. 154] in favor of new bidding procedures it filed with the Court on February 4, 2016. [Docket No. 153]. The current bidding procedures embodied in Exhibit C reflect a compromise among the Plan Proponents as part of the Global Settlement. All of the objecting creditors have approved the current bidding procedures except The Community Bank. A

hearing on the current bidding procedures took place on April 4, 2016. The bidding procedures were [approved]

3.2. Post-Petition Financing

On the Filing Date, the Debtors also filed *Motion of Debtors for (I) Authorization to (A) Obtain Secured DIP Facility Pursuant to 11 U.S.C. §§ 361, 362, and 364(c) and (d), (B) Grant Security Interests, Superpriority Claims and Adequate Protection and (C) and Use Cash Collateral; and (II) Schedule a Final Hearing Pursuant to Bankruptcy Rule 4001(c)* (the “**DIP Motion**”), asking the Court to, among other things, authorize the Debtors to obtain the DIP Facility from the DIP Lender, authorize the Debtors to use “cash collateral,” as such term is defined in the Section 363 of the Bankruptcy Code, grant the DIP Agent a senior, priming lien on ~~ertain prepetition collateral (described in the motion) securing the DIP Facility~~ all of the prepetition collateral other than the collateral of the State of Ohio and the Community Bank Collateral to secure the DIP Facility, grant the DIP Lender a first priority lien and super-priority claims to substantially all the assets of the Debtors other than chapter 5 Avoidance Actions, and modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Credit Agreement. The Court granted the relief requested in the motion on an interim basis by its ~~orders entered on December 4, 2015 [Docket No. 24] and on February 26, 2016~~ order entered on December 4, 2015 [Docket No. 24]; however, the Committee and other unsecured creditors objected to the DIP Facility being approved on a final basis, believing that (a) the DIP Facility was not robustly shopped and (b) the proposed DIP Facility was intertwined with the Sale Motion and its approval would guarantee a sale to Kronstadt for his credit bid, and hence no return to unsecured creditors. After a two day evidentiary hearing, on January 4, 2016, the Court declined to give final approval to the DIP Facility, thereby creating a default under the Interim DIP Facility. By this point, the Debtors had borrowed approximately \$850,000. While the DIP Lender did not advance any further funds, it did not protest the Debtors’ continued use of cash collateral. Due to opposition from the Committee, no final DIP order was entered; this, in part, led to the discussions that resulted in the Global Settlement. Subsequent to the parties reaching the Global Settlement, a second Interim DIP Order was entered with no objections on February 26, 2016. [Docket No. 229]. Pursuant to the Second Interim DIP Order, Plastic Ties will loan up to \$1,875,000 to the Debtors, inclusive of the \$850,000 already advanced, and carve out from Plastic Ties’ Liens of \$900,000 for professional fees in these Chapter 11 cases. ~~[Docket No. 227].~~

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4.3. Employment and Compensation of Debtors’ Professionals and Advisors

On December 29, 2015, the Bankruptcy Court entered an Order authorizing the Debtors to retain Bayard, P.A. as bankruptcy counsel [Docket No. 90]. On February 24, 2016, the Bankruptcy Court entered an Order authorizing the debtors to retain Greenberg Traurig as special counsel. [Docket No. 228].

On February 24, 2016, the Bankruptcy Court entered an Order authorizing the Debtors to retain Gordian Group LLC as investment bankers. [Docket No. 227].

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5.4. Appointment of Committee

On December 14, 2015, the United States Trustee appointed the Committee [Docket No. 92]. The members of the Committee are as follows: (a) Addax Trading LLC; (b) Coyote Logistics; and (c) Sicut Enterprises Ltd.

To assist the Committee in carrying out its duties, the Committee selected the Law Offices of Sandra Mayerson as its lead counsel and Morris James LLP as its co-counsel. Further, the Committee selected EisnerAmper as its financial advisor. The Court entered Orders retaining all three firms on February 22, 2016 [Docket Nos. 215, 216 and 219].

6. Claims Process and Bar Date

5. Other Significant Events During the Chapter 11 Cases

(a) The Lien Challenge

The Interim DIP Order stated that Kronstadt had valid, perfected, first priority prepetition liens against substantially all three Debtors' assets, subordinate only to the valid liens of Community Bank and the State of Ohio, and all parties would be forever barred from contesting this finding unless the Committee or another party-in-interest challenged Kronstadt's liens prior to February 1, 2016 (the "Lien Challenge Deadline"). On January 28, 2016, the Committee filed a Motion of the Official Committee of Unsecured Creditors for Entry of an Order Granting Leave, Standing and Authority to Commence, Prosecute, Settle and Recover Certain Causes of Action on the Behalf of Debtors' Estate in Order to Challenge, Recharacterize and Subordinate Alleged Liens and Payments and to Extend Time to Take Such Action Pursuant to Local Rule 9006-2 [Docket No. 145] (the "Standing Motion"). In the Standing Motion, the Committee took the position that the Committee should be granted standing to pursue causes of action on behalf of the estates to challenge the liens of Kronstadt and Plastic Ties. The Committee asserted that Kronstadt did not have a second lien on any of the Community Bank Collateral; that Kronstadt did not have a lien on any assets of Recycling; that Kronstadt did not have a perfected lien on any of the commercial torts belonging to any of the three Debtors; and that cause existed to recharacterize Kronstadt's purported loans as equity and to equitably subordinate the claims of Kronstadt. In addition, the Committee alleged that the borrowing under the DIP Facility to pay back the prepetition advance of the DIP Lender to the Debtors was an improper attempt to recharacterize a prepetition under secured loan into a postpetition fully secured loan. These various causes of action against Kronstadt and the DIP Lender which he manages are referred to collectively as "the Lien Challenge". Kronstadt and the DIP Lender opposed the Standing Motion and did not then, and does not now, concede that any of the claims, assertions or positions of the Committee in the Standing Motion have any merit.

Subsequent to the Committee's filing of the Standing Motion, the Debtors and Kronstadt jointly stipulated that Kronstadt did not have a perfected prepetition lien in the assets of Recycling, and further stipulated that Kronstadt did not have a valid prepetition lien on the commercial torts of any of the three Debtors. With those two exceptions, the Debtors, Kronstadt and Plastic Ties opposed the Standing Motion. On February 12, 2016, after a lengthy evidentiary

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hearing, the Court granted the Committee's Standing Motion and gave the Committee authority to pursue the Lien Challenge. [Docket No. 226]. The Court indicated in its oral opinion that the Committee had asserted colorable claims to recharacterize the Kronstadt debt as equity, and colorable, although less so, claims for equitable subordination. This ability for the Committee to proceed directly against Kronstadt was an important part of the Plan Proponents being able to reach a Global Settlement. As discussed in more detail below, the Committee has settled the Lien Challenge without filing a complaint. The Court, however, in order to preserve the Committee's rights in case the Global Settlement is not approved, has extended the Lien Challenge Deadline to May 11, 2016. Thus, the Committee is still entitled to file its complaint against Kronstadt and Plastic Ties up until May 11, 2016, if the Global Settlement is not approved.

Community Bank avers that allegations supporting colorable claims against Mr. Kronstadt included the following:

1. The Debtors – Axion and Holdings -- have been insolvent virtually since they began their operations. Year after year, the revenue generated from the sales of their recycled plastic products has been insufficient to make them solvent, requiring funding from outside investors.
2. The annual form 10K reports filed by Holdings with the S.E.C. have expressed "substantial doubt" about the Debtors' "ability to continue as a going concern."
3. Holdings' form 10K filings – including the form 10K reports covering the fiscal year ending September 30, 2009, the fiscal year ending September 30, 2010, the three-month transition period ending December 31, 2010, the fiscal year ending December 31, 2011, and the fiscal years ending December 31 of 2012, 2013 and 2014 – all include statements from their independent registered public accountants expressing "substantial doubt" about the Debtors' "ability to continue as a going concern." The Debtors filed for bankruptcy relief in December 2015, before a form 10K report for the fiscal year could be prepared.
4. Holdings' publicly-filed form 10K Report for the fiscal year ("FY") ending September 30, 2009 acknowledges that: their independent auditors expressed "substantial doubt about our ability to continue as a going concern on our financial statements for fiscal year 2009, based on the significant operating losses and a lack of external financing."
5. Holdings' form 10K Report for the fiscal year ("FY") ending September 30, 2010 again expressed substantial doubt about going concern status, but the cause of that doubt was more evident: the consolidated financial statement for Holdings and Axion now showed that the Debtors' liabilities exceeded their assets by over \$430,000, as of September 30, 2010. Note 3 in the Notes to the Consolidated Financial Statements, on 'going concern' status, stated: "[T]he Company has negative working capital and a stockholders' deficit and has losses to date of approximately \$16,407,829. These matters raise substantial doubt about the Company's ability to meet its financial requirements, raise additional capital, and the success of its future operations. The Company is seeking additional means of financing to fund its business plan."
6. In Holdings' form 10K report covering a three-month transition period

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from October 1, 2010 to December 31, 2010, Holdings reported that, as of December 31, 2010, the Debtors' liabilities exceeded their assets by over \$860,000.

7. In 2011 (as restated), the Debtors' net loss from operations (total operating expenses less net revenue) was over \$6.7 million. In 2012, the net loss from operations similarly was over \$5.7 million.

8. In the form 10K for FY ending December 31, 2012, the report of Holdings' independent auditors for the year ending December 31, 2011 stated that "the Company has incurred significant operating losses in current year and also in the past," raising "substantial doubt about the Company's ability to continue as a going concern." BDO USA, LLP, the independent auditors for the year ending December 31, 2012, stated: "the Company has suffered recurring losses from operations and has a net capital deficiency that raise substantial doubt about its ability to continue as a going concern."

9. In the form 10K for FY ending December 31, 2012, the Debtors warned: "We are dependent on our ability to raise capital from external funding sources. If we are unable to continue to obtain necessary capital from outside sources, we will be forced to reduce or curtail operations."

10. Kronstadt has acknowledged that his initial investments in the Debtors were equity investments as part of an "Early Funding Syndicate," which he participated in based on his belief that Axion had "a promising technology."

11. By the end of 2011, Kronstadt and entities he controlled collectively held over one million shares in Holdings, after having invested about \$1.3 million. The shares that he owned or controlled at that point made Kronstadt about a 4% stockholder in Holdings.

12. In 2012, Kronstadt began to increase his investment and his stake in the Debtors.

13. According to the two proofs of claim filed by Kronstadt in this Bankruptcy Case (the "Proofs of Claim"), one against Holdings and the other against Axion, Kronstadt asserts that he holds eight Notes (collectively, the "Kronstadt Notes") that he purportedly purchased or obtained from Holdings and that he contends are secured.

14. Kronstadt's Proofs of Claim do not include evidence of consideration actually paid by him in exchange for any of these Notes.

15. In early 2012, as the Debtors searched for investor funding, they were introduced to wealthy businessmen Melvin Lenkin ("Lenkin"), Samuel G. Rose ("Rose"), and other individuals or entities affiliated with Lenkin or Rose, including MLTM Lending, LLC ("MLTM Lending") and the ML Dynasty Trust, and Judy Lenkin Lerner Revocable Trust.

16. In March 2012, the Debtors presented a prospectus to Lenkin and Rose, for a \$10 million investment in the company. Key terms included that the investors would receive convertible preferred shares of stock; warrants; dividends of 6% payable in common stock; a liquidation preference; anti-dilution protection; piggyback registration rights; and the right to elect one director to the board.

17. When Kronstadt learned that Lenkin and Rose had been approached about investing in the Debtors, he asked to participate. In response to the prospectus,

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Lenkin, Rose and Kronstadt counter-proposed making a \$10 million investment on only modestly modified terms, including: the investors would receive convertible unsecured “debentures”; warrants; “interest” at 8% but still payable in common stock; a liquidation preference; anti-dilution protection; piggyback registration rights; and the right to elect three directors to the board.

18. In or about April 2012, Holdings entered into a “Memorandum of Understanding” (“MOU”) with Samuel G. Rose, Melvin Lenkin, and Kronstadt, in which the three of them were identified each as and “Investor,” and collectively as the “Investors,” in which it was expressed that the Investors intended to provide Holdings with \$10 million of unsecured, convertible debt financing – *i.e.*, convertible to common stock – with each of the three Investors to fund one-third of \$5 million, and to receive demand notes in return.

19. On or about August 24, 2012, Holdings entered into the Note Purchase Agreement anticipated by the MOU, together with a set of related documents, in connection with the issuance of additional 8% Convertible Notes, purportedly in the aggregate face amount of \$10 million. They included the form of Convertible Note, a Registration Rights Agreement (to enable the company’s issuance of common stock based on conversion of the notes or based on stock purchases pursuant to warrants), and a Security Agreement.

20. The Note Purchase Agreement, pursuant to which the Convertible Notes were issued, was entered into between Holdings and “the investors listed on the Schedule of Investors attached [t]hereto (individually, a “Investor” and collectively, the “Investors”).”

21. Kronstadt has emphasized: “Sam, Mel and I did not make equal advances to the Company pursuant to the First NPA or otherwise. While generally we would each take on a part of the borrowing needs of the Company, we would do so individually. Funding was done individually and each of us would receive individual notes documenting our respective loans.” Declaration of Allen Kronstadt In Opposition to the Committee’s Motion for Standing, filed Feb. 8, 2016 (D.I. 167) (the “Kronstadt Declaration re Standing”) at ¶ 35.

22. The Debtors’ auditors (in the 10K report for FY ending Dec. 31, 2012) described these 8% Convertible Notes as “a hybrid instrument” in that they combine features of debt and of equity.

23. All the Kronstadt Notes state that the purported secured indebtedness is “subordinated ... to the prior payment in full of all of [the] Company’s Senior Secured Indebtedness” – including any asset-based loans that Debtors might obtain in the future from banks or other financial institutions, or equipment financing loans. The Notes referred to this as “Senior Secured Indebtedness,” even though no such asset-based loans existed at the time of the August 2012 transaction.

24. In addition, among other things, the 8% Convertible Notes issued as a result of the August 2012 transaction (a) were all convertible to common stock; (b) were issued along with Warrants to purchase shares of the stock of Holdings at a fixed stock price; and (c) called for payment on “interest” during the first three years of the Note in the form of common stock in Holdings, rather than cash.

25. The Note Purchase Agreement provided, *inter alia*, that the Investors were

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entitled to immediately appoint two directors to the Holdings board of directors.

26. Kronstadt and Thomas Bowersox were appointed to the board of directors of Holdings as a result of the investments made through the Note Purchase Agreement, with their appointments effective September 11, 2012.

27. Kronstadt filed a Schedule 13D statement with the Securities and Exchange Commission (SEC) on September 28, 2012, declaring that he beneficially owned 30.5% of the stock of Holdings (including the convertible shares).

28. When Holdings issued to Kronstadt the two 8% “Secured Notes” – one dated October 21, 2013, in the original principal amount of \$201,002.40, and the other dated November 13, 2013 in the original principal amount of \$1,000,000 (together, the “Short-Term Secured Notes”) – these notes were issued as such rather than as “Convertible Notes” because Holdings had exhausted its issued and available stock that could support the notes, if converted into stock, and Holdings needed time to enlarge its authorized pool of stock. The two Short-Term Secured Notes had a maturity date of November 29, 2013, after which they were to be replaced by Convertible Notes.

29. Kronstadt did not “call” the Short-Term Secured Notes upon or after their maturity date, even though there is no evidence that they were ever replaced (as contemplated) by Convertible Notes.

30. On information and belief, Kronstadt made three additional investments in the Debtors in June, August and December 2014 (the “Additional Notes”). Kronstadt maintains that two of these investments were entirely unsecured and that one of them was “secured” only by Axion stock.

31. As of March 15, 2013, Kronstadt owned, directly or beneficially (by way of stock held in the name of certain family trusts but controlled by Kronstadt) over 16 million shares of the common stock of Holdings, representing 36.8% of the company’s outstanding stock. At that time, Kronstadt owned or controlled more stock in Holdings than any other single director or officer.

32. After the 8% Convertible Notes issued pursuant to the Note Purchase Agreement in or about September 2012 were purchased, while some of the Investors filed UCC financing statements, in some jurisdictions, such filings on Kronstadt’s part were notably incomplete.

33. To be effective for purposes of perfecting a security interest in assets of a company, a UCC financing statement must be filed in the state the company is incorporated.

34. In the case of these Debtors, financing statements would need to be filed in Colorado, for Holdings; in Delaware, for Axion; and in Ohio, for Recycled.

35. On information and belief, all the assets of the Debtors that are of value are held by the two operating companies, Axion and Recycled (which became a subsidiary of Axion in the latter part of 2013).

36. Kronstadt did not file a UCC financing statement in Ohio or Delaware.

37. Kronstadt admitted, roughly two months after the Petition Date, that he is not secured by any assets of Recycled. See, e.g., Kronstadt Declaration re Standing at ¶54.

38. Kronstadt did not fulfill the additional requirements for obtaining a

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perfected security interest in “commercial torts” or causes of action – including specific identification of such causes of action in valid UCC financing statements.

39. Kronstadt similarly came to admit that he is not secured by any of the “General Causes of Action of any of the Debtors.” Stipulation between Debtors and Kronstadt, (D.I. 159) at recital E and ¶4.

40. On or about March 19, 2014, Holdings, Axion and Recycled entered into a “Second Amendment to Security Agreement” with Kronstadt and the Rose-Lenkin Parties. Under that agreement, the parties’ earlier Security Agreement was amended in part to provide that “the term Collateral shall *exclude* any assets subject to the security interest of The Community Bank” (emphasis added).

41. In April 2015, Kronstadt tendered his warrants and obtained 10.9 million shares of Holdings’ common stock. Kronstadt was also issued approximately 1.6 million shares of common stock as interest on his convertible notes.

42. Kronstadt withdrew from his position as director of Holdings in June 2015.

43. As the Debtors’ finances worsened, the Rose-Lenkin Parties negotiated with the Debtors for a relinquishment of their purportedly secured Notes, to use the loss as a tax write-off.

44. In October 2015, the Rose-Lenkin Parties, together with certain other affiliated individuals and entities, entered an agreement with the Debtors whereby they forgave their Notes in full, received releases, and also relinquished part of their shares in the stock of Holdings.

45. The terms of the October 20, 2015 agreement whereby Kronstadt’s fellow investors relinquished their Notes for \$2.00 reflects their awareness that the Notes could be viewed as capital contributions. One of its terms was that the Debtors were made to agree “to not report [their purchase of the Notes] as capital contributions from the Rose Lenkin SM Parties.”

46. On August 14, 2015, UCC financing statements were filed in Delaware, against Axion, and in Colorado, against Holdings, on behalf of Washington Amigos, both allegedly in connection with a promissory note and security agreement dated as of August 5, 2015.

47. According to Kronstadt, the financing statements in favor of Washington Amigos supported its having made a short-term loan for the benefit of the Debtors, prepetition, in the form of a check issued to a potential purchaser of plastic rail ties from Axion as a cash bid bond, to support a project bid that Axion was submitting to the entity. After Axion won the bid, the check was returned to Kronstadt and the loan was cancelled.

48. On or about November 24, 2015, Kronstadt tendered back to the Debtors, in exchange for \$2.00, all the shares of common stock, stock options and warrants that were registered in his individual name, and he forgave all the Additional Notes that had been issued to him.

49. On or about November 24, 2015, Holdings, Axion and Recycled signed a Promissory Note, Loan and Security Agreement in favor of Plastic Ties (the “Plastic Ties Note”).

50. On November 24, 2015, UCC financing statements were filed on behalf of Plastic Ties in Colorado, Delaware and Ohio against, respectively, Holdings,

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Axion and Recycled, in connection with the Plastic Ties Note.

51. The collateral identified in the Plastic Ties Note and the UCC financing statements is described as all the assets of Holdings, Axion and Recycled, but excluding any and all equipment serving as collateral for the Debtors' indebtedness to The Community Bank and the State of Ohio. No commercial causes of action were specifically identified.

52. The Debtors have represented that Plastic Ties made two prepetition advances to the Debtors, one of \$200,000 and the other of \$150,000, totaling \$350,000 (the "Plastic Ties Prepetition Advance"). See Dec. 4, 2015 Hrg. Trans., pp. 21, 39.

53. The Debtors have represented that the \$350,000 prepetition advance was used to pay payroll. Dec. 4, 2015 Hrg. Trans., p. 21.

54. Recycled did not benefit from the Plastic Ties Prepetition Advance, but was nonetheless caused to sign the Plastic Ties Note, and arguably commit its assets as collateral.

Subsequent to the announcement that the Lien Challenge has been settled, subject to Court approval, as part of the Global Settlement, Community Bank sought authority from the Court to bring the Lien Challenge itself. [Docket No. 237]. Community Bank's request was denied at a hearing held on March 21, 2016. [Docket No. 295], although Community Bank still maintains direct claims. The Court upheld the Committee's exclusive right to deal with the Lien Challenge, thus enabling the Global Settlement to go forward.

(b) The Trustee Motion

On February 4, 2016, the Committee brought a motion to appoint a chapter 11 trustee in these Chapter 11 Cases to oversee the Debtors, alleging pre and postpetition mismanagement and incompetence, and that the Debtors were only serving Kronstadt's need and not those of other constituents ("Trustee Motion"). The Trustee Motion has not been heard by the Court. Shortly after it was filed, the Plan Proponents were able to reach the Global Settlement. The Trustee Motion has currently been adjourned *sine die*, and will be dismissed with prejudice if the Global Settlement is approved and implemented.

(c) The Community Bank Dispute

Certain of the equipment constituting the Community Bank collateral has been used by the Debtors during the chapter 11 cases, and the Debtors offered no adequate protection to the Community Bank. Accordingly, on February 3, 2016, Community Bank filed a lift stay motion seeking the right to lift the automatic stay to allow it to retrieve its collateral. [Docket No. 151]. The relief requested was stipulated to by the Debtors, and an Order granting the relief was entered on February 19, 2016. [Docket No. 204]. Thereafter, Community Bank sent an appraiser to inspect its collateral *in situ*. Community Bank alleges that it then discovered for the first time that some of the Community Bank Collateral is missing. The Debtors countered that while they had, prepetition, accidentally sold approximately \$100,000 of the Community Bank Collateral which was old, obsolete and in disrepair, the remainder was not missing, but rather had never been delivered or sold by Community Bank to the Debtors. The Debtors allege that approximately \$285,000 worth of equipment had been sold by Community Bank to a third party

prior to the sale to the Debtors, and Community Bank defrauded the Debtors by never delivering equipment to the Debtors which they had paid for. Community Bank counters these allegations are not true, and that the Debtors inspected all the equipment and certified it was in place as part of the transaction.

Community Bank also objected to the Bidding Procedures, both as originally filed and as amended. [Docket Nos. 201 and 312].

(i) On February 29, 2016, Community Bank filed the Emergency Motion of The Community Bank for Entry of an Order Granting Leave, Standing and Authority to Commence, Prosecute, Settle and Recover Certain Causes of Action on Behalf of Debtors' Estate in Order to Challenge, Recharacterize and Subordinate Alleged Liens and Payments and to Extend Time to Take Such Action Pursuant to Local Rule 9006-2 [D.I. 237] seeking, among other things, leave, standing and authority to commence, prosecute, settle and recover certain causes of action on behalf of the Debtors' estates in order to challenge, recharacterize and subordinate certain liens and payments. The Debtors, the Committee, Kronstadt and Plastic Ties filed objections to the relief sought in the motion, and the Court denied the motion by order dated March 21, 2016.

(ii) On March 4, 2016, Community Bank filed the Motion of the Community Bank for Entry of an Order Converting these Cases to Cases Under Chapter 7 of the Bankruptcy Code [D.I. 252] seeking the entry of an order converting these cases to cases under Chapter 7 of the Bankruptcy Code. The Debtors, the Committee and Kronstadt intend to file an objection to the motion and oppose the relief sought.

(iii) On March 11, 2016, Community Bank filed the Motion of The Community Bank Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for Examination of the Debtors [D.I. 264] seeking an examination of the Debtors pursuant to Rule 2004 of the Bankruptcy Rules. The Debtors and the Committee filed objections to the relief sought in the motion, and the Court denied the motion by order dated March 21, 2016.

(iv) On March 11, 2016, Community Bank filed the Motion of The Community Bank Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for Examination of Allen Kronstadt [D.I. 265] seeking an examination of Kronstadt pursuant to Rule 2004 of the Bankruptcy Rules. The Debtors, the Committee and Kronstadt filed objections and responses to the motion. On March 21, 2016, the Court deemed the motion withdrawn based on Community Bank's representations made during the hearing.

It is Community Bank's position that the Debtors purchased the "disputed" items from a third-party and granted Community Bank a security interest in such equipment as further security for obtaining the Community Bank Debt. Community Bank maintains that the Debtors prepared and produced, among other documents, board resolutions, loan documents, security agreements and other communications that represented and warranted that the Debtors possessed all the collateral securing the Community Bank Debt. Community Bank relied on these representations and warranties. If the Debtors' did not, in fact, own the collateral at the time that they entered

into the Community Bank Debt and security agreements with Community Bank, it is Community Bank's position that the Debtors' fraudulently induced Community Bank to extend the Community Bank Debt to the Debtors. Additionally, the Debtors have admitted selling Community Bank collateral without Community Bank's permission and without turning over the proceeds of those sales to Community Bank. Community Bank estimates that the collateral sold by the Debtors was fairly valued at \$235,000. The Debtors dispute these allegations by Community Bank.

Community Bank will ask this Court to (a) impose or enforce a constructive trust over any of Community Bank's collateral which is still in the possession, custody or control of the Debtors, as well as all proceeds generated by the sale or other disposition of Community Bank's collateral, (b) require the Debtors to provide an accounting of Community Bank's collateral (c) declare that the relative rights of Community Bank and the Debtors' insider to assets of the Debtors, and (d) declare the relative rights of Community Bank and the Debtors' insider to credit bid at any sale of the Debtors' assets

The potential exists for further litigation between Community Bank and the Debtors prior to the Confirmation Hearing. The Debtors have various claims against Community Bank including: (i) breach of contract, (ii) breach of warranty, (iii) avoidance and recovery of transfers based on actual fraud and constructive fraud under the Bankruptcy Code and state law, (iv) disallowance of claim under section 502(d) of the Bankruptcy Code, (v) equitable disallowance and equitable subordination, (vi) damages under Ohio Rev. Code, (vii) damages under Uniform Commercial Code, (viii) declaratory judgment that equipment purchased after the closing of the purchase of equipment from Community Bank in November 2013 does not constitute Community Bank Collateral, and (ix) attorneys' fees and costs under 28 U.S.C. section 1927 based on Community Bank's inequitable conduct in these cases.

Nonetheless, the parties are engaged in settlement negotiations.

6. Case Administration

(a) Section 341(a) Meeting of Creditors

On January 15, 2016, the United States Trustee presided over the Section 341(a) meeting of creditors in the Chapter 11 Cases.

(b) Schedules and Statements and Monthly Reports

The Debtors filed with the Bankruptcy Court their Schedules on January 4, 2016. the debtors have timely filed each of their Monthly Operating Reports.

(c) Bar Date Dates

On February 29, 2016, the Debtors filed the *Motion of the Debtors for Order (I) Fixing Bar Dates for Filing Proofs of Claim Pursuant to Fed. R. Bankr. P. 3003(c)(3) and Del. Bankr.*

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L.R. 2002-1(e); (II) Approving Form and Manner of Notice of Bar Dates, and (III) Related Relief [Docket No. 235] (the "General Bar Date Motion"), seeking entry of an Order establishing the General Bar Date (including claims under Section 503(b)(9) of the Bankruptcy Code, the Governmental Unit Bar Date, the Amended Schedules Bar Date, and the Rejection Damages Bar Date. Also on February 29, 2016, the Debtors filed the *Motion of the Debtors for Order (I) Fixing Bar Date for Filing Certain Post-Petition Administrative Expense Claims; (II) Approving Form and Manner of Bar Date Notice; and (III) Approving Administrative Claim Form* [Docket No. 236] (the "Admin Bar Date Motion", and together with the General Bar Date Motion, the "Bar Date Motions"). The Bar Date Motions have been approved by the Court. The General Bar Date Motion seeks set April 29, 2016 at 4:00 p.m. (ET) as the Bar Dates for all entities other than Governmental Units. The Admin Bar Date Motion seeks set April 22, 2016 at 4:00 p.m. (ET) as the Administrative Claims Bar Date. The Bar Date Motions are scheduled to be heard on March 24 date for governmental units is June 2, 2016 at 10:00 a.m. (ET).

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ARTICLE II

F. SUMMARY OF THE PLAN

1-A. The Global Settlement

The core of the Plan is the Global Settlement among the Plan Proponents and certain of their professionals. Settlement talks among the Plan Proponents began in earnest on January 4, 2016, when the Sale Motion and Final DIP Order were denied. The arm's length negotiations continued until the Global Settlement was announced in Court on February 26, 2016.

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The Plan embodies and seeks approval of the Global Settlement reached by the Settlement Parties after considerable arms-length negotiations. The Plan Proponents also reserve the right to seek approval of the Global Settlement by separate motion under Rule 9019 of the Bankruptcy Rules. Without the Global Settlement, the Plan would not be feasible.

The Global Settlement settles offers a clear path to the sale of substantially all of the Debtors' assets while settling the Lien Challenge and the Trustee Motion brought by the Committee in consideration of the Kronstadt Parties and the Debtors providing cash and non-cash consideration to the General Unsecured Creditors represented by the Committee. In return, Kronstadt and Plastic Ties shall be entitled to credit bid on the Sale Assets at an auction of substantially all of the Debtors' assets to be held prior to the Confirmation Hearing and approved at the Confirmation Hearing. If the Plan is Confirmed and the Effective Date occurs, the Lien Challenge and the Trustee Motion will be dismissed with prejudice, and the Settlement Trustee will be able to administer the assets of the Settlement Trust for the benefit of the General Unsecured Creditors.

The provisions of the Global Settlement are interwoven throughout the Plan; its salient features are:

(a) ~~(a)~~ In settlement of the Lien Challenge and the Trustee Motion, Kronstadt will deposit \$312,500 in cash in an escrow account with Committee's counsel by no later

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than the expiration of the Bid Deadline. On the Effective Date of the Plan, if the Kronstadt Parties are the Successful Bidder, the \$312,500 will be transferred to the Settlement Trust. If the Plan is Confirmed and the Kronstadt Parties are not the Successful Bidder, on the Effective Date, the \$312,500 in cash in ~~an~~the escrow account with Committee's counsel will be returned to Kronstadt. If any of the conditions to Confirmation of the Plan, as set forth in Article ~~IX~~X.A. hereof, do not occur and are not waived by sixty (60) days after the scheduled date of the Confirmation Hearing, the \$312,500 in cash in ~~an~~the escrow account with Committee's counsel will be returned to Kronstadt. In addition, on the Effective Date, as part of the ~~settlement~~Global Settlement, the Debtors will transfer all Avoidance Actions other than Avoidance Actions against Industrial Rigging to the Settlement Trust along with all proceeds therefrom. Such Avoidance Actions will be transferred free and clear of Liens, Claims and encumbrances, as ~~Kronstadt specifically releases~~has agreed as part of the Global Settlement to release his ~~liens~~Liens on the Avoidance Actions. In the event the Kronstadt Parties are not the Successful Bidder and the \$312,500 placed in escrow is returned to Kronstadt, Kronstadt and Plastic Ties have agreed, as part of and subject to approval of the Global Settlement, to a Carve-out of \$312,500 from their Liens from the proceeds of the Sale for the benefit of the General Unsecured Creditors, and ~~Debtors~~ will deposit such amount in the Settlement Trust on the Effective Date. As long as the Plan is Confirmed and a Sale of substantially all of the assets of the Debtors occurs, the Lien Challenge and the Trustee Motion will be dismissed with prejudice. If the Effective Date of the Confirmed Plan does not occur, the Committee will be able to pursue the Lien Challenge and the Trustee Motion.

~~(b)~~ (b) Plastic Ties is providing debtor-in-possession financing to the Debtors pursuant to the Financing Orders to allow the Debtors to operate through the Effective Date and to pay the Debtors' and the Committee's Professionals. Pursuant and subject to the Financing Orders, Plastic Ties has committed to making additional DIP Loan advances in the maximum aggregate amount of \$1,875,000, inclusive of the advances already made. Debtors' and Committee's Professionals have agreed to cap their fees if the Kronstadt Parties are the Successful Bidder. The Global Settlement further contemplates periodic payments to be made to an escrow account at Debtors' counsel for the payment of Professionals consistent with the amounts to which ~~professionals~~Professionals have agreed. Approximately 75% of the payments to Professionals will be indefeasibly funded prior to the date of the auction. The remainder will not be funded until the Effective Date.

~~(c)~~ (e) The Professionals have agreed to heavily discount their fees in these Bankruptcy Cases. The Debtors shall be entitled to use Cash Collateral and/or DIP Loan proceeds to pay the following Professional Fees: (a) Gordian: \$200,000; (b) Bayard: \$312,500; (c) all of the Committee's Professionals in the aggregate \$350,000; and (d) Greenberg Traurig: \$37,500. The Professionals reserve the right to seek the full amount of their fees if the Kronstadt Parties are not the Successful Bidder. The agreed cap on Professional fees does not include the expenses of the Professionals which the Debtor expects to pay 100% as an Administrative Expense.

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~~(d)~~ ~~(d)~~—The Committee has covenanted not to commence or otherwise prosecute any preference action which it receives from the Debtors. The Settlement Trust will pursue other Avoidance Actions.

~~(e)~~ ~~(e)~~—Debtors will use commercially reasonable efforts to keep the General Unsecured Claims in the aggregate to a maximum of \$2.5 million, not including General Unsecured Claims asserted by Sicut Enterprises Limited.

~~(f)~~ ~~(f)~~—The Debtors' obligations to Eagle Bank have been paid by the guarantors of the Eagle Bank debt, including Kronstadt. Subject to approval of the Global Settlement, Kronstadt has agreed to waive any distribution on account of his General Unsecured Claims, if any, arising from such payment, whether by subrogation or otherwise, but retains the right to vote such claim to accept or reject the Plan. The Debtors will use their commercially reasonable efforts to cause the additional guarantors to waive their respective General Unsecured Claims, if any, whether by subrogation or otherwise, arising from payment of the Eagle Bank obligations.

~~(g)~~ ~~(g)~~—~~The~~ A robust Sale of substantially all of the Debtors' assets will be conducted pursuant to bidding procedures that have been approved by all of the Settlement Parties. As part of those bidding procedures, if approved by the Court, Kronstadt shall be entitled to credit bid \$5,209,295 and Plastic Ties shall be entitled to credit bid the full amount of all DIP Loan Obligations outstanding as of the auction date; provided, the \$312,500 for General Unsecured Creditors is escrowed with counsel for the Committee prior to the expiration of the Bid Deadline, which amount is subject to return to the Kronstadt Parties in the event the Kronstadt Parties are not the Successful Bidder. The Debtors have engaged Gordian Group as investment bankers to run a fulsome sale process, and Gordian has both been actively soliciting expressions of interest and also providing the Debtors and the Committee with weekly updates concerning the sale process. The new bidding procedures proposed by the Debtors have been heavily negotiated with the Committee and the Kronstadt Parties, and the Committee believes they are fair and reasonable. The bidding will proceed by lots, and the procedures clearly enunciate which liens can bid against which lots. There is no stalking horse bidder; however, the Kronstadt Parties have indicated they will make a credit bid on all of the lots. If the bidding procedures are approved and a party other than the Kronstadt Parties submits a Qualified Bid by the Bid Deadline, the sale procedure will culminate in a live auction on April 13, 2016. The Plan Proponents will seek approval of the highest and best bid for each lot, or all of the lots together, at the Confirmation Hearing. The Plan Proponents also reserve the right to seek approval of sales of the Debtors' assets by motion under section 363 of the Bankruptcy Code.

~~(h)~~ ~~(h)~~—The Committee ~~will adjourn~~ has adjourned the Trustee Motion *sine die*, ~~and in~~. In the event that either the \$312,500 in escrow ~~is returned~~ remains for the benefit of General Unsecured Creditors because the Kronstadt Parties are ~~not~~ the Successful Bidder, or the \$312,500 from the Sale proceeds is Carved-out from the Kronstadt Liens and the Plastic Ties Liens ~~if the Kronstadt Parties are not the Successful Bidder, then the Trustee Motion~~ will be dismissed with prejudice two (2) business days after the Effective Date of the Plan. The Lien Challenge Deadline has been extended to

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May ~~11~~, 2016 and the Committee will take no action on its Lien Challenge, subject to Confirmation of the Plan. If the Plan is Confirmed, the Lien Challenge Period will expire two (2) business days after the Effective Date of the Plan.

(i) ~~(i) This Plan~~ The Global Settlement provides for mutual releases of and from all Causes ~~causes~~ of Action ~~action~~, and exculpation, of (i) the Debtors and their affiliates ~~Affiliates~~, officers, directors, employees, members, representatives, advisors, counseling agents and any Professionals of the Debtors; ~~and~~ (ii) the Committee, its members in their capacity as members of the Committee on or after the Petition Date, and any Professionals of the Committee. ~~This Plan also provides for releases of and from all Causes of Action including, without limitation;~~ (iii) the Lien Challenge, and exculpation, of Settlement Trust Committee and Settlement Trustee, the Kronstadt Parties and their affiliates ~~Affiliates~~, officers, directors, employees, members, representatives, advisors, counseling agents or any professionals of the Kronstadt Parties and their affiliates ~~Affiliates~~.

B. Justification for Global Settlement

Although reserving the right to seek approval by separate motion under Bankruptcy Rule 9019, at the Confirmation Hearing, the Plan Proponents will seek approval of the Global Settlement described above. In order for the Court to approve the Global Settlement, the Court must be satisfied that the Debtor has exercised sound business judgment in entering into the settlement. To meet this standard, the Debtors must demonstrate that its judgment in entering into the settlement does not fall below the lowest point of reasonableness.

Federal Rule of Bankruptcy Procedure 9019 governs settlements in bankruptcy proceedings. *Gendregske v. Black Diamond Commercial Finance LLC (In re Ashing Corp.)*, No. AP 13-50530-CSS, 2015 WL 5724368, at *2 (D. Del. Sept. 29, 2015). Under Rule 9019, a bankruptcy judge has “the authority to approve a compromise of a claim”. *Id.* (citing *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996)). In ruling on a motion for approval of a settlement under Rule 9019, a bankruptcy court should examine the proposed settlement under the framework established in *In re Martin*, that is, the court should consider each of the following factors: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. *Martin*, 91 F.3d at 393. Rule 9019(a) makes clear that it is the bankruptcy court’s responsibility to examine the settlement agreement from the perspective of all the creditors of an estate. *Id.* at 394. The Global Settlement should be approved because (a) sound business justification supports it, (b) it is reasonable, and (c) the four (4) *Martin* factors weigh in favor of approval.

In this case, both the Debtors and all the Plan Proponents assert that it is abundantly clear that the Global Settlement is more than reasonable. The Plan Proponents assert that the Global Settlement is reasonable because:

(a) This case has been plagued with litigation from day one, the sheer cost of which has threatened the ongoing viability of the estates. The Global Settlement puts an end to almost all litigation, thus preserving the Debtors’ assets.

(b) The Global Settlement avoids not just the expense of litigation but also the uncertainty of litigation.

(c) At the time of the First Day Motions, it appeared that no one other than the Prepetition Lien Holders would receive a recovery in the case. As a result of the Global Settlement, every single constituency other than equity will receive a distribution in these Chapter 11 Cases. That would not be possible absent the Global Settlement and the proceeds of the Global Settlement.

(d) While General Unsecured Creditors might have received a higher recovery through litigation, any such recovery was fraught with the uncertainties of litigation, and the Kronstadt Parties had indicated they would vigorously oppose the Lien Challenge. The Committee believes that General Unsecured Creditors are better off with a certain recovery now, rather than a possibly larger recovery that is uncertain and would not be for some time into the future. In addition, the Kronstadt Parties believe that no recovery would result from the Lien Challenge.

(e) The Global Settlement allows the Debtors to avoid bringing costly preference litigation, and in doing so, allows the Debtors and any buyers of Debtors to avoid alienating their important vendors through preference litigation, thus maximizing the value of the estates while providing an additional benefit to the General Unsecured Creditors.

(f) Absent the Global settlement, the Debtors were unable to obtain a further DIP Facility and were about to run out of money. As part of the Global Settlement, the Debtors have obtained sufficient DIP Financing to operate through the Effective Date. Without this, Debtors would have been forced to closed their doors, destroying value, and possibly have to liquidate.

(g) The DIP Financing provided as part of the Global Settlement allows the Debtors to avoid administrative insolvency.

(h) As part of the Global Settlement, the Debtors are conducting a robust and transparent sale process, and the proposed bidding procedures meet the Committee's previously voiced objections. Accordingly, the Global Settlement paves the way for a smooth sale process, run by professional investment bankers, that will maximize value.

(i) Most of the cost of the Global Settlement is being borne by third parties, the Kronstadt Parties, and not by the Debtors who nonetheless reap significant benefits.

(j) Absent the Global Settlement and the exit strategy it provides, it is likely that either the Trustee Motion or Community Bank's Motion to Convert would be litigated and possibly granted. The extra layer of expense of a trustee in either case would further dilute any potential recoveries to creditors.

For all of the above reasons, the Plan Proponents assert that the Debtors have amply demonstrated that the Global Settlement is not only reasonable but also essential to the

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administration of these Chapter 11 Cases. For that reason, the Global settlement should be approved.

2.C. Classification of Claims and Equity Interests under the Plan

Claims against the Debtors, other than Administrative Claims and Priority Tax Claims are classified for all purposes (unless otherwise specified), including voting and Distribution pursuant to the Plan, as follows:

Summary of Classification and Treatment of Classified Claims and Equity Interests				
Class	Claim	Status	Voting Rights	
1	Secured Claims of DIP Lender	Unimpaired	Deemed to Accept	
2	Secured Claims of Kronstadt	Unimpaired	Deemed to Accept	
3	Secured Claims of Ohio State	Unimpaired	Deemed to Accept	
4	Secured Claims of Community Bank	Unimpaired	Deemed to Accept	
5	All Other Secured Claims	Unimpaired	Deemed to Accept	
6	Other Priority Claims	Unimpaired	Deemed to Accept	
7	General Unsecured Claims	Impaired	Entitled to Vote	
8	Convenience Class of General Unsecured Claims of \$500 or Less	Impaired	Entitled to Vote	
9	Equity Interests	Impaired	Deemed to Reject	

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3.D. Limited Substantive Consolidation of Debtors for Purposes of Voting, Confirmation and Distribution

The Debtors' Estates will be substantively consolidated on a limited basis solely for the purposes of voting and Distributions under the Plan. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to sections 105(a) and 1123(a)(5)(C) of the Bankruptcy Code and Bankruptcy Rule 9019, effective as of the Effective Date, of the

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substantive consolidation of the Debtors' Estates for the purposes of confirming and consummating the Plan for voting, Confirmation and Distribution, and the Bankruptcy Court's findings that the substantive consolidation of the Estates of the Debtors to the extent set forth herein is (i) in exchange for good and valuable consideration provided by each of the Estates (including, without limitation, performance of the terms of the Plan), and a good-faith settlement and compromise of the released claims, (ii) in the best interests of the Debtors, the Estates and all Holders of Claims, (iii) fair, equitable, and reasonable, and (iv) effected after due notice and opportunity for hearing.

Specifically, on the Effective Date, (i) all assets and liabilities of the Debtors will, solely for voting and Distribution purposes, be treated as if they were merged, (ii) each Claim against the Debtors will be deemed a single Claim against and a single obligation of the combined Debtors, (iii) any Claims filed or to be filed in the Bankruptcy Cases will be deemed single Claims against all of the Debtors, (iv) all guarantees of any Debtor of the payment, performance, or collection of obligations of any other Debtor shall be eliminated and cancelled, (v) all transfers, disbursements and Distributions on account of Claims made by or on behalf of any of the Debtors' Estates hereunder will be deemed to be made by or on behalf of all of the Debtors' Estates, and (vi) any obligation of the Debtors as to Claims entitled to Distributions under this Plan shall be entitled to their share of assets available for Distribution to such Claim without regard to which Debtor was originally liable for such Claim. Except as set forth herein, such limited substantive consolidation shall not (other than for purposes related to this Plan) affect the legal and corporate structures of the Debtors. Accordingly, Claims are not classified by Debtors herein.

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

The Debtors propose this limited substantive consolidation to avoid the inefficiency of proposing and voting in respect of Entity-specific Claims for which there would be no impact on Distributions. Such limited substantive consolidation has been approved by the Bankruptcy Court under similar circumstances. See, e.g., *In re Accuride Corp.*, 2010 WL 5093173, at * 10 (Bankr. D. Del. Feb. 18, 2010); *In re Kaiser Aluminum Corp.*, 2006 WL 616243, at *22 (Bankr. D. Del. Feb. 6, 2006). Moreover, the Plan Proponents also submit that such limited substantive consolidation is appropriate under the circumstances because, due to the Debtors' organizational structure and the manner in which they did business prior to the Filing Date, the Debtors' assets

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and liabilities are so intertwined that separating them is prohibitive and would harm all creditors. See *In re Owens Corning*, 419 F.3d 195, 211 (3d Cir. 2007).

4.E. Certain Claims

(a)1. EPA. The U.S. Environmental Protection Agency has informally expressed concerns with respect to the Sale and has requested that the Confirmation Order provide that nothing in the Confirmation Order “releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the owner or operator of property after the date of entry of this Order. Nothing in this Order or the Asset Purchase Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements under police or regulatory law.” The Plan Proponents will seek to use this language in the Confirmation Order.

(a)2. McClennan County. McClennan County in Texas has asserted an *ad valorem* tax lien (“Ad Valorem Property Taxes”) lien for unpaid 2015 Ad Valorem Property Taxes on certain of the Debtors’ assets including the Community Bank Collateral in the amount of \$143,100.60 as of February 9, 2016—, which will be paid in full under the Plan. There may be statutory liens for current 2016 Ad Valorem Property Taxes not yet due and payable.

5.F. Treatment of Claims and Equity Interests

(b)1. General. Pursuant to Section 1122 of the Bankruptcy Code, a Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of the Class and is classified in a different class to the extent that the Claim or Equity Interest qualifies within the description of that different Class. A Claim or Equity Interest is placed in a particular Class for the purposes of receiving Distributions pursuant to the Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or an Allowed Equity Interest in that Class and such Claim or Equity Interest has not been paid, released, settled or otherwise satisfied prior to the Effective Date.

(c)2. Unclassified Claims.

(a) ADMINISTRATIVE CLAIMS

On, or as soon as reasonably practicable after (i) the Effective Date, if such Administrative Claim is an Allowed Administrative Claim as of the Effective Date, or (ii) the date on which such Administrative Claim becomes an Allowed Administrative Claim, as applicable, each Holder (other than a Professional) of an Allowed Administrative Claim shall receive, in full settlement, satisfaction and release of, and in exchange for, such Allowed Administrative Claim, (a) Cash in an amount equal to the unpaid amount of such Allowed Administrative Claim or (b) such other treatment as may be agreed upon in writing by such Holder and the Debtors or the Distribution Agent, as applicable.

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ii.b) PROFESSIONAL FEE CLAIMS

Notwithstanding any other provision of the Plan concerning Administrative Claims, any Professional seeking ~~an award and Professional Expenses allowance~~ by the Bankruptcy Court of an Allowed Administrative Claim on account of Professional Fees and Professional Expenses incurred from the Petition Date through and including the Effective Date (i) shall, no later than forty-five (45) days after the Effective Date, File a final application for allowance of compensation for services rendered and reimbursement of expenses incurred through and including the Effective Date, and (ii) shall receive, as soon as reasonably practicable after such claim is Allowed, in full settlement, satisfaction and release of, and in exchange for, such Allowed Administrative Claim, Cash in an amount equal to (A) if the Kronstadt Parties are the Successful Bidder, the unpaid amount of such Allowed Administrative Claim up to the following maximums for each Professional:

Gordian	\$200,000 plus Professional Expenses
Bayard	kkkk a) \$312,500 plus Professional Expenses
Greenberg Traurig	llll b) \$37,500 plus Professional Expenses
Law Offices of Sandra Mayerson, Morris James and EisnerAmper	mmmm c) Each firm's Pro Rata share of the aggregate amount of \$350,000 plus Allowed Professional Expenses

In accordance with the Order relating to or allowing any such Administrative Claim; or (B) if the Kronstadt Parties are not the Successful Bidder, the unpaid amount of such Allowed Administrative Claim in accordance with the Order relating to or allowing any such Administrative Claim. In either instance, the cash to pay the Professionals shall be paid first from the escrow account maintained by Debtors' counsel for the payment of Professional Claims, next from the carve-out from the Kronstadt Parties' Liens for Professional Fees up to the maximum of \$900,000 minus the amounts escrowed at Debtors' counsel; and finally, from the Debtors' available cash.

ii.c) PRIORITY TAX CLAIMS

On, or as soon as reasonably practicable after (i) the Effective Date, if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim against a Debtor shall receive: (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (2) such other treatment as may be agreed upon in writing by such Holder and the Debtors or the Distribution Agent, as applicable, without any further notice to or action, order, or approval of the Bankruptcy Court.

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iv.d) U.S. TRUSTEE FEE CLAIMS

The ~~Debtors or the Settlement Trustee, as applicable,~~ Liquidating Debtor shall pay all U.S. Trustee Fees for each quarter (including any fraction thereof) until it is dissolved, and thereafter the Settlement Trustee shall pay all U.S. Trustee fees until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first. The U.S. Trustee shall not be required to file any proof(s) of claim regarding quarterly fees.

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(d)3. Classified Claims

ia) Class 1 — Secured Claims of DIP Lender

(ai) Classification: Class 1 consists of all Allowed Secured Claims held by the DIP Lender, which the Debtors estimate will be in the neighborhood of \$2.8 million plus fees and interest at Confirmation, minus any amounts the DIP Lender may have credit bid at the Auction.

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(bij) Treatment: The Holder of the Class I Claim is entitled to credit bid its Allowed Claim as of the auction date for Lots 1 – 6 of the Sale Assets. To the extent that, together with the other Kronstadt Parties, the Holder is the Successful Bidder, then any of its Allowed Secured Claim remaining after its credit bid will be assumed by Washington Amigos or such other designee of the Kronstadt Parties. If the Holder is not the Successful Bidder, except to the extent that the Holder agrees to a different treatment, on the later of the Effective Date or within thirty (30) days of the Claim becoming Allowed, the Holder shall receive, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, in the sole discretion of the Debtors or the Distribution Agent, as the case may be:

(ix) Cash in an amount equal to the value of the collateral securing such Allowed Secured Claim; or

(iy) such other treatment required under section 1124(2) of the Bankruptcy Code for such Claim to be rendered Unimpaired.

Only to the extent that the Kronstadt Parties are not the Successful Bidder, the Holder of the Class 42 Claim has agreed to ~~carve~~Carve out from ~~this~~ Liens the amount of \$312,500 for the General Unsecured Creditors ~~and~~. The DIP Lender has also agreed to a Carve out of \$900,000 for the Professionals pursuant to the Financing Orders. The Carve-out for the General Unsecured Creditors is deemed effective upon Confirmation of this Plan. ~~Subject, but subject to return if the Effective Date does not occur, subject~~ to the provisions of Article IX.E hereof, ~~the~~. The Carve-out for Professionals is already effective pursuant to the Financing Orders. approving interim financing and use of cash collateral.

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Any Deficiency Claim asserted by the Holder of the Allowed Class 1 Claim shall be treated as a Class 7 General Unsecured Claim, to the extent Allowed.

Voting: Class 1 is Unimpaired ~~and as they have consented to their treatment and the~~ Holder is conclusively deemed to have accepted the Plan.

ii.b) Class 2 — Secured Claims of Kronstadt

(#i) Classification: Class 2 consists of all Allowed Secured Claims held by Kronstadt.

(bii) Treatment: The Holder of the Class 2 Claim is entitled to credit bid up to \$5,209,295 for Lots 1 – 5 and Lot 7 of the Sale Assets. To the extent that, together with the other Kronstadt Parties, the Holder is the Successful Bidder, then any of its Allowed Secured Claim remaining after its credit bid will be assumed by Washington Amigos or such other designee of the Kronstadt Parties. If the Holder is not the Successful Bidder, then except to the extent that the Holder agrees to a different treatment, on the later of the Effective Date or within thirty (30) days of the Claim becoming Allowed, the Holder shall receive, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, in the sole discretion of the Debtors or the Distribution Agent, as the case may be:

(ix) Cash in an amount equal to the value of the Kronstadt Collateral securing such Allowed Claim; or

(iy) such other treatment required under section 1124(2) of the Bankruptcy Code for such Claim to be rendered Unimpaired.

Only to the extent that the Kronstadt Parties are not the Successful Bidder, the Holder of the Class 42 Claim has agreed to ~~earve~~Carve out from its Liens \$312,500 for the General Unsecured Creditors ~~and~~. The Holder has also agreed to a Carve out of \$900,000 for the Professionals pursuant to the Financing Orders. The Carve-out for the General Unsecured Creditors is deemed effective upon Confirmation of this Plan. ~~Subject, subject~~ to the provisions of Article IX.E hereof, ~~the~~. The Carve-out for Professionals is already effective pursuant to the Financing Orders.

~~€~~The Holder has agreed to waive any General Unsecured Claim it may have as of the Effective Date. In addition, the Holder has agreed to waive any General Unsecured Claim arising as a result of his paying Eagle Bank, whether by subrogation or otherwise, and if he is not the Successful Bidder, to waive any General Unsecured Claim. Such waivers are deemed effective on the Confirmation Date without any further documentation. Prior to such waiver

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becoming effective, any Deficiency Claim or other Unsecured Claim of the Holder shall be treated as a Class 7 General Unsecured Claim, to the extent Allowed.

(iii) Voting: Class 2 is Unimpaired ~~and as they have consented to their treatment, and the~~ Holder is conclusively deemed to have accepted the Plan.

iii. c) Class 3 — Secured Claims of the State of Ohio

(ai) *Classification:* Class 3 consists of all Allowed Secured Claims held by the State of Ohio

(bij) *Treatment:* In full satisfaction, settlement, release, extinguishment and discharge of its Allowed Class 3 Claim, and to the extent that the Debtors retain custody of the collateral that Secures the Ohio Secured Claim, on the Effective Date, the Debtors shall abandon the Property that secures the Allowed Class 3 Claim to the Holder of such Claim ~~on the Effective Date. The Debtors shall abandon any proceeds from the sale of the Property that secures the Allowed Class 3 Claim to Community Bank of such Claim.~~ Any Ohio State Deficiency Claim asserted by the ~~holder~~Holder of the Allowed Class 3 Claim shall be treated as a Class ~~87~~ General Unsecured Claim, to the extent Allowed.

(eiii) Voting: Class 3 is Unimpaired and the Holder is conclusively deemed to have accepted the Plan.

iv. d) Class 4 – Secured Claims of The Community Bank

(ai) *Classification:* Class 4 consists of the ~~secured claims~~Allowed Secured Claims, if any, of The Community Bank.

(bij) *Treatment:* In full satisfaction, settlement, release, extinguishment and discharge of its Allowed Class 4 Claim, and to the extent that the Debtors retain custody of the Community Bank Collateral on the Effective Date, the Debtors shall abandon the Property that secures the Allowed Class 4 Claim to the Holder of such Claim on the Effective Date. ~~The Debtors shall abandon any proceeds from the sale of the Property that secures the Allowed Class 4 Claim to Community Bank of such Claim.~~ Any Community Bank Deficiency Claim asserted by the ~~holder~~Holder of the Allowed Class 4 Claim shall be treated as a Class ~~87~~ General Unsecured Claim, to the extent Allowed.

(eiii) Voting: Class 4 is Unimpaired and the Holder is conclusively deemed to have accepted the Plan.

v.e) Class 5 — All Other Secured Claims

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(~~ei~~) *Classification*: Class 5 consists of All Other Allowed Secured Claims.

(~~bi~~) *Treatment*: Each Holder of an Allowed Class 5 Other Secured Claim shall receive, in full satisfaction, settlement, release, extinguishment and discharge of its Allowed Class 5 Claim, at the option of the ~~Debtors or the Settlement Trustee~~ Liquidating Debtor, one of the four following forms of treatment:

(~~iu~~) an amount equal to the unpaid amount of such Allowed Other Secured Claim in Cash commencing on the later of (x) the Effective Date, (y) the date that is ten (10) Business Days after such Claim becomes an Allowed Class 5 Other Secured Claim by a Final Order; or

(~~iv~~) the Debtors shall abandon the Property that secures the Allowed Class 5 Claim to the Holder of such Claim on or as soon as practicable after the later of (i) the Effective Date and (ii) the date that is ten (10) Business Days after the date on which such Claim becomes an Allowed Class 5 Claim by a Final Order; or

(~~iw~~) such other treatment as the Holder of the Allowed Class 5 Other Secured Claim and the Liquidating Debtors or the Settlement Trustee shall have agreed upon in writing; or

(~~ix~~) such ~~holder~~ Holder shall retain its ~~lien~~ Lien securing its Allowed Class 5 Other Secured Claim to the extent of the Allowed ~~amount~~ Amount of its Other Secured Claim; and on or as soon as practicable after the later of (x) the Effective Date and (y) the date that is ten (10) Business Days after such Claim becomes an Allowed Other Secured Claim by a Final Order:

(A) the ~~Settlement Trustee~~ Liquidating Debtors will cure any default other than a default of the kind specified in section 365(b)(2) of the Bankruptcy Code;

(B) the maturity of such Allowed Other Secured Claim shall be reinstated as the maturity existed before any default;

(C) the Holder of such Allowed Other Secured Claim shall be compensated for any damages which occurred as the result of any reasonable reliance by such Claimholder on any provision that entitled such Claimholder to accelerate the maturing of such Claim; and

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(D) the other legal, equitable and contractual rights to which such Allowed Other Secured Claim entitles such Claimholder shall not otherwise be altered.

Any Deficiency Claim asserted by the holder of an Allowed Class 5 Claim shall be treated as a Class ~~8 Unsecured Claim~~ 7 General Unsecured Claim, to the extent Allowed. Any Claims purporting to be Secured but actually representing a true lease will be treated as Class 7 General Unsecured Claims, to the extent Allowed.

~~(e)~~ The Debtors are not aware of any Class 5 Claims.

(iii) Voting: Class 5 is Unimpaired and ~~Holder is any~~ Holders are conclusively deemed to have accepted the Plan.

vi.f) Class 6 – Other Allowed Priority Non-Tax Claims

(ei) Classification: Class 6 consists of all other Priority ~~Non-Tax~~ Claims.

(b) Treatment: On the later of ten (10) days after the Effective Date or within seven (7) days of the Claim becoming Allowed, each Holder of an Allowed Priority ~~Non-Tax~~ Claim shall receive, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, one of the following treatments, in the sole discretion of the Debtors or the Distribution Agent, as the case may be: (a) full payment in Cash of its Allowed Priority ~~Non-Tax~~ Claim or (b) treatment of its Allowed Priority ~~Non-Tax~~ Claim in a manner that leaves such Claim Unimpaired. The Debtors estimate that there will be \$189,000 of Allowed Class 6 Claims at Confirmation.

(c) Voting: Class 6 is Unimpaired and Holders of Other Priority ~~Non-Tax~~ Claims are conclusively deemed to have accepted the Plan.

vii.g) Class 7: - General Unsecured Claims

(a) Classification: Class 7 consists of Allowed General Unsecured Claims, except for claims of \$500 or less, or Claims voluntarily reduced to \$500 for purposes of Distribution.

~~(b)~~ (ii) Treatment:

~~4x.~~ Settlement Proceeds:

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A. In full and complete settlement of the Lien Challenge and the Trustee Motion, and not as payments to a Class of Creditors under a plan, the following consideration will be contributed to the Settlement Trust ~~upon the Effective Date~~:

(i) If the Kronstadt Parties are the Successful Bidder, and if the Sale is approved and ~~this~~ Plan is confirmed, then the \$312,500 cash previously escrowed by Kronstadt with ~~Committee's~~ Committee counsel as a settlement payment will be deposited in the Settlement Trust on the Confirmation Date.

(ii) If the Kronstadt Parties are not the Successful Bidder, then on the Confirmation Date, if the Sale is approved, a Carve-out from the DIP Lender's and Kronstadt's Liens in the amount of \$312,500 in favor of General Unsecured Creditors will become effective with no further documentation, and on the Effective Date, ~~Committee's~~ Committee counsel will return the \$312,500 held in escrow, with no interest thereon, to Kronstadt. In such case, the Debtors will deposit the first \$312,500 of proceeds from the Sale in the Settlement Trust on the Effective Date in reliance on the Carve-out.

(iii) On the Effective Date, the Debtors will transfer to the Settlement Trust, all Avoidance Actions, proceeds therefrom, and standing to pursue the Avoidance Actions to the Settlement Trust free and clear of all liens, claims and encumbrances; provided, however, that any Avoidance Action against Industrial Rigging and any proceeds therefrom, is not transferred to the Settlement Trust.

B. As further consideration for the Global Settlement, the Settlement ~~Parties~~ Parties agree as follows, effective upon ~~the Effective Date~~ Confirmation without further documentation:

(i) ~~The~~ As of the Effective Date, the Committee covenants not to bring any Avoidance Actions to recover preferences under section 547 of the Bankruptcy Code.

(ii) The Debtors agree to use commercially reasonable efforts to ensure that the pool of Allowed General Unsecured Claims does not exceed \$2.5 million, exclusive of the Claims of Sicut Enterprises, Ltd.

(iii) On the Effective Date, Kronstadt will waive his right to any distribution on any General Unsecured Claims he

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holds and will waive all General Unsecured Claims he holds upon and as of the Effective Date, including any claims arising by subrogation or otherwise as a result of his making payments to Eagle Bank as a guarantor of Debtors' obligations to Eagle Bank.

(iv) Debtors will use commercially reasonable and good faith efforts to cause the additional guarantors of the Eagle bank debt to waive their respective General Unsecured Claims, if any, whether arising by subrogation or otherwise.

(v) The Committee has adjourned the Trustee Motion *sine die*, and it will be dismissed with prejudice two (2) business days after the Effective Date without the need for further Court Order.

(vi) The Committee will take no action on the Lien Challenge, and the Lien Challenge Period has been or will be extended to two (2) business days after the Effective Date. If the Plan is Confirmed, the Lien Challenge Period will expire two (2) business days after the Effective Date without further Order of the Bankruptcy Court.

C. Holders of Allowed General Unsecured Claims will receive Pro Rata Distributions from the Settlement Trust from time to time as set forth in the Settlement Trust Agreement attached hereto as Exhibit A and hereby incorporated by reference. Depending upon the amount of Allowed Deficiency Claims and the costs of administering the Settlement Trust, the cash distribution is likely to be in the range of 3-12 cents on the dollar. The amount of Distribution from pursuing the Avoidance Actions is unpredictable at this time.

2y. Plan Proceeds

A. As Creditors of the Debtors, and not as Settling Parties, Holders of Allowed General Unsecured Claims will receive all of the cash remaining at the Debtors after the Sale, and after payment of all Allowed Administrative Claims, Allowed Professional Fees and Expenses, allowed Priority Tax Claims, and Allowed Claims in Classes 1 through 6. The Debtors do not anticipate that there will be any funds available for Distribution to Class 7 Creditors.

B. To the extent that there are funds for a Class 7 Distribution, such cash will be deposited in the Settlement Trust and

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administered by the Settlement Trustee pursuant to the Settlement Trust Agreement.

3z. Pro-Rata Distributions

Each Holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, its Pro Rata Share of the Settlement Trust Assets remaining after reasonable expenses of the Settlement Trust.

~~(e)(iii) Voting:~~ Class 7 is Impaired, and Holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

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viii.h) Class 8: General Unsecured Convenience Claims of \$500 or Less

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(ai) *Classification:* Class 8 consists of a Convenience Class subset of General Unsecured Claims consisting of General Unsecured Claims of \$500 or less. Holders of a General Unsecured Claim of greater than \$500 may elect to reduce their claim to \$500 for the purpose of Distributions under the Plan. and such Claim will be treated as a Class 8 Claim of \$500. Such an election will become null and void if the Plan is not Confirmed or does not become Effective. The Plan Proponents believe that anyone with any Holder of a Claim of \$3,000 or less should consider reducing their such Claim to \$500 for purposes of Distribution, based on the anticipated return to Holders of Class 7 Claims. The form of ballot soliciting acceptances of the Plan will allow General Unsecured Creditors to elect to reduce their Claim to \$500 for Distribution Purposes and be treated as a Class 8 claim for purposes of Distributions.

(bii) *Treatment:* Each Holder of an Allowed Class 8 Claim shall receive, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, a one-time payment equal to the lesser of (i) the full amount of their Allowed General Unsecured Claim, or (ii) One Hundred Dollars (\$100). Such payment will be made by the Settlement Trustee from the Settlement Trust with respect to each Allowed Class 8 Claim on the date which is the earlier of that date which is within (i) two weeks of the Effective Date; or (ii) two weeks of the date on which the Claim becomes an Allowed Class 8 Claim. Holders of Allowed Class 8 Claims will get no further distributions from the Settlement Trust other than this one-time payment.

~~(e)~~The Convenience Class is necessary to prevent the cash in the Settlement Trust from being eroded by unnecessary administrative costs. The Debtors have literally dozens of very small General Unsecured Claims against

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them, some as small as Five Dollars (\$5.00). As it is anticipated that the Settlement Trustee will need to make more than one distribution of Settlement Trust assets to distribute proceeds from the Avoidance Actions as they are realized, the cost of calculating, certifying and mailing Distributions on such a small Claim could well exceed the value of the Claim, thus unnecessarily diminishing the remaining assets in the Settlement Trust and becoming an administrative nightmare for the Settlement Trustee. It is believed that if each Holder of an Allowed General Unsecured Claim of \$3,000 or less elects to be treated as Class 8, along with the Claims that are automatically in Class 8, then seventy-one (71) of the approximately one hundred thirty-five (135) General Unsecured Claims against the Debtors will be Class 8 Claims, leaving a far more reasonable number of Claims in Class 7, thereby greatly reducing the costs of administration without making a significant change to the recoveries anticipated by either Class.

(iii) Voting: Class 8 is Impaired, and Holders of such Claims are entitled to vote to accept or reject the Plan.

~~ix.~~ **i) Class 9: Equity Interests**

(a) Classification: Class 9 consists of Equity Interests.

(b) Treatment: Holders of Equity Interests shall neither receive nor retain any property under the Plan. All Equity Interests shall be cancelled and of no further force or effect and all Claims filed on account of Equity Interests shall be deemed disallowed by operation of the Plan.

(c) Voting: Class 9 is Impaired and Holders of Equity Interests are conclusively deemed to reject the Plan, and are, therefore, not entitled to vote.

~~e.~~ **i) Reservation of Rights Regarding Claims**

Except as otherwise explicitly provided in the Plan, nothing herein shall affect the Debtors' or the Settlement Trustee's rights and defenses, both legal and equitable, with respect to any Claims or Equity Interests, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

6.G. Acceptance or Rejection of the Plan

(a) Impaired Classes of Claims and Equity Interests Entitled to Vote.

Only Holders of Allowed Claims in each Impaired Class of Claims receiving a Distribution under the Plan are entitled to vote as a Class to accept or reject the Plan. Accordingly, only the votes of Holders of Classes 7 and 8 shall be solicited with respect to the Plan.

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

~~(e)3.~~ **Presumed Rejection by Impaired Class.** Holders of Class 9 Claims are Impaired under the Plan. Under Section 1126(g) of the Bankruptcy Code, Holders of such Impaired Claims and Equity Interests are conclusively presumed to have rejected the Plan, and the votes of Holders of such Impaired Claims and Equity Interests shall not be solicited.

~~(d)4.~~ **Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code.** ~~In the event that any~~ The Plan Proponents will seek Confirmation in accordance with Sec. 1129(b) of the Bankruptcy Code with respect to Class 9 Equity Interests. ~~In the event that any other~~ Impaired Class of Claims or Equity Interests rejects the Plan or is deemed to have rejected the Plan, the Plan Proponents hereby request, without any delay in the occurrence of the Confirmation Hearing or Effective Date, that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code with respect to such non-accepting Class, in which case the Plan shall constitute a motion for such relief.

Confirming the Plan under such a circumstance is what is known as a “cramdown.” Among other things, a “cramdown” is appropriate where the Bankruptcy Court finds that ~~the Plan~~ does not unfairly discriminate against the non-accepting classes. A plan unfairly discriminates against a Class if another Class of equal or lower rank in absolute priority will receive greater value under the plan than the nonaccepting class without reasonable justification.

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1. Elimination of Vacant Classes.

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

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Article III.

MEANS FOR IMPLEMENTATION OF THE PLAN

A.a. Sale and Global Settlement

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The Global Settlement, described more fully in Sec. II.A. herein, is the core of the Plan. It is necessary for the Court to approve the Global Settlement at the Confirmation Hearing in order for the Plan to be feasible.

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Among other things, the Global Settlement requires that substantially all of the Debtors' assets, exclusive of ~~the~~ Avoidance Actions ~~and~~ (other than such actions against Industrial Rigging), some cash, and the Community Bank Collateral, be sold at auction prior to the Confirmation Hearing. At the Confirmation Hearing the Plan Proponents will ask the Court to approve the Sale. If the Bankruptcy Court does not approve the Sale, then the Bankruptcy Cases cannot proceed to Confirmation. If the Sale of the Sale Assets is approved, however, it will provide the means to implement the Plan. Conversely, the Plan Proponents reserve the right to seek approval of the Global Settlement even if the Court were to conclude that the Plan cannot be confirmed.

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The sale will be conducted according to ~~the~~ sale and bid procedures ~~ultimately~~ approved by the Bankruptcy Court. For the avoidance of doubt, details regarding the Debtors' Sale Assets and which assets are subject to sale are provided in the Bidding Procedures, attached hereto as Exhibit C.

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The sale of the Debtors' assets is being managed by Gordian Group LLP, an investment banker well known in the distressed field. Gordian began marketing the Debtors' assets prior to the Petition Date, pursuant to that certain engagement letter agreement dated April 24, 2015, as amended on May 26, 2015, between Gordian and Axion International Holdings, Inc. (the "Original Engagement"). After the execution of the letter and before commencement of the Debtors' bankruptcy cases, Gordian undertook substantial efforts to raise capital for the Debtors and sell the Debtors as a going concern, and provided extensive services to the Debtors in connection with their efforts to procure one or more Financial Transactions (as defined in the Original Engagement letter between the Debtors and Gordian), and generally including raising equity or debt capital, restructuring of the Debtors' then-existing indebtedness, recapitalization of the Debtors, merger or other business combination, sale of all or substantially all of the Debtors' assets or an acquisition of another entity. The services that Gordian undertook to assist the Debtors in their attempts to procure a Financial Transaction included: meeting with management and reviewing public and internal information, working with management to compile various lists of potential investors and candidates for an M&A process, and to prepare introductory and longer-form disclosure materials; populating a virtual data room in coordination with the Debtors' management; working with counsel for the Debtors to develop appropriate nondisclosure agreements; learning of various business and related legal issues that would come into play in a complex restructuring; contacting potential third party candidates about one or more Financial Transactions; reporting to management, and when asked, Axion's board of directors, on Gordian's efforts; conceptualizing alternative potential Financial Transactions and pursuit of potential interest by third parties in such transactions. Through Gordian's months of work on behalf of the Debtors prepetition, Gordian obtained knowledge and familiarity with the Debtors' business operations, models and financial condition that would take a new investment banker considerable time and effort to match. By letter dated November 20, 2015, the Debtors terminated the Original Engagement and Gordian's services thereunder.

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Gordian was rehired subsequent to the Petition Date in late January 2016. Since that time, they have been actively marketing the Debtors’ assets for sale. As of the date of the Disclosure Statement, Gordian had contacted more than 75 potential financial and strategic buyers. Under the bid procedures, once a potential buyer signs a confidentiality agreement and provides proof of their financial wherewithal, they become a “Qualified Buyer” and may have access to a virtual data room set up by the Debtors and Gordian which has significant information about the Debtors. In addition, Gordian has facilitated direct contact between Debtors’ management and potential buyers, and has arranged for site visits by potential buyers. In order to participate in the sale, a Qualified Buyer must submit a written bid to Gordian by no later than April 11. The written bid should indicate which lot or lots the Qualified Buyer wishes to bid for. The assets of the Debtors are being offered in seven distinct lots, which together comprise substantially all of the Debtors’ assets. The Kronstadt Parties have committed that they will make a credit bid on each of the seven lots. Kronstadt can bid a total of slightly more than \$5.2 million, while it is expected that the DIP Lender will be able to bid close to \$2.2 million. Each of them can only credit bid on lots on which they have liens, and the Bidding Procedures set out which lienholders can credit bid on which lots.

If a Qualified Bidder other than the Kronstadt Parties submits a bid by April 11, the auction will be held at the offices of the Debtors’ counsel on April 13. At the auction, the assets will be offered by lot, and there will be an opportunity at the conclusion of the bidding for a bidder to make one bid exceeding the value of the highest bid on all of the lots together. At the conclusion of the auction, the Debtors, in consultation with Gordian and the Committee, will select the highest and best bids and announce the successful bidder(s). At the Confirmation Hearing, the Debtors will seek approval of the sale to the highest and best bidder or bidders.

The above is a brief description of the sale, and one should read the Bid Procedures in Exhibit C for a more complete description of the sale process.

It is anticipated that the Sale will close within a few days of Confirmation, providing the means to implement the Plan.

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Nothing in the Sale Order or the any associated Asset Purchase Agreement will release, nullify, preclude, or enjoin the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the owner or operator of property after the date of entry of this Order. Nothing in this Order or the Asset Purchase Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements under police or regulatory law.

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A.b. Vesting of Assets and Dissolution

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1. On the Effective Date, the Settlement Trust Assets shall vest in the Settlement Trust free and clear of all Claims, Equity Interests, Liens, charges or other encumbrances, except as set forth in this Plan.

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~~2.~~—2. On the Effective Date, all Equity Interests in the Debtors will be deemed cancelled and Holdings and Recycled will be deemed disowned, all without any further paperwork or Court Order. Axion International will survive as the Liquidating Debtor for the sole purpose of carrying out the Debtors' obligations under the Plan. The Liquidating Debtor will appoint Donald Fallon ("Fallon") or a similar individual, as its Distribution Agent to carry out the Liquidating Debtor's obligations and will issue one membership share to Fallon. Fallon is currently the CFO of the Debtors. The Liquidating Debtor will retain and hold out from the sale the assets necessary to make the required Distributions under the Plan (the "Retained Assets"). On the Effective Date, the Retained Assets, if any, will vest in the Liquidating Debtor free and clear of all Claims, Equity Interests, Liens, charges or other encumbrances, except as set forth in the Plan, and the Distribution Agent will make the Distributions required under the Plan. For so long as any Retained Assets exist or any Claims Objections are pending, the Liquidating Debtor will continue to exist and the Distribution Agent on the Effective Date will be appointed the sole shareholder, member, director and officer of the Liquidating Debtor. The Distribution Agent is authorized, without the need for any further action or formality which might otherwise be required under applicable non-bankruptcy laws, to dissolve the Liquidating Debtor, so long as there are no objections to Claims or other litigation involving the Debtors still pending (exclusive of Causes of Action and Avoidance Actions that have been sold or transferred).

3. ~~As of~~On the Effective Date, ~~or as soon as practicable thereafter.~~All Avoidance Actions, ~~and all proceeds therefrom,~~ other than Avoidance Actions against Industrial Rigging, ~~and all~~proceeds therefrom, without the need for any further Order of the Bankruptcy Court, ~~Action~~action or formality, will vest in the Settlement Trust free and clear of all liens, claims and encumbrances, ~~and~~.

For the avoidance of doubt, as part of the Settlement Trust, the Settlement Trustee ~~has standing to will not~~ pursue the same Preference Actions against any unsecured creditor. With respect to Industrial Rigging, and as disclosed on the Debtors' Statement of Financial Affairs, Industrial Rigging received approximately \$90,000 in transfers in the ninety (90) days prior to the Petition Date. The Plan contemplates that the estates' claims against Industrial Rigging will be assigned to and pursued by successful bidder in Lot 6. Finally, as part of the Plan, it is anticipated that all Claims related to Rutgers will not be pursued.

~~4.~~—As of the

Per the disclosures made in the Debtors' Statement of Financial Affairs, the Debtors made approximately \$3 million in general unsecured ninety (90) day transfers, of which \$120,000 relates to bankruptcy preparation payments. No analysis has been done to determine to what extent these constitute preferences. Any actions with respect to the transfers are being conferred to the Settlement Trust as part of the Global Settlement, and will not be pursued. As such, there is a 0% prospect of recovery on those amounts.

Also, per the disclosures made in the Debtors' Statement of Financial Affairs, the Debtors made approximately \$2 million in insider transfers. These transfers are note payments, payroll, or share dividends, and as such, the Debtors do not feel they are recoverable. Thus, the Debtors assert there is a 0% prospect of recovery on these amounts.

Another Avoidance Action being transferred to the Settlement Trust includes claims against Community Bank for constructive and actual fraud under various state statutes. The

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range and prospects of recovery are indeterminate at this time, although the complaint, if filed, would seek damages in connection with the violations, as provided under state law. The Committee believes there are other significant fraudulent conveyance actions, but the analysis of these have not been completed at this time; so, no recovery can be estimated.

Beyond avoidance actions, the Debtors have claims against Brian Coll for violations of his Employment Agreement with Axion Recycled Plastics Incorporated dated November 15, 2013 and violations of his Separation and Release Agreement with Axion Recycled Plastics Incorporated and Axion International Holdings, Inc. dated August 15, 2014. The value of these claims and the prospect of recovery are indeterminate at this time.

4. On the Effective Date, cash of the Debtors necessary, if any, to bring the escrow for Professionals held at Bayard up to a total of \$900,000, if any, will be paid by the Liquidating Debtor to Bayard for the benefit of all Professionals.

5. As of the Effective Date, or as soon as practicable thereafter, and without the need for any further Order of the Bankruptcy Court, action or formality which might otherwise be required under applicable non-bankruptcy laws, the Debtors, other than the Liquidating Debtor, may be dissolved without the need for any filings with the Secretary of State or other governmental official in each Debtors' respective state of incorporation.

6. On the Effective Date ~~or as soon as practicable thereafter, the Debtors,~~ the Liquidating Debtor or the Distribution Agent, as applicable, shall consummate, pursuant to ~~Section~~section 1123(a)(5)(D) of the Bankruptcy Code, those transactions and ~~Sales~~sales of property, if any, set forth in the Plan Supplement in accordance with the documents in the Plan.

7. As soon as practicable after the Effective Confirmation Date, the Debtors or the Liquidating Debtor will commence Claim Objections to the extent they have not already done so, in a commercially reasonable attempt to keep the total of Allowed General Unsecured Claims in Classes 7 and 8 combined to an aggregate of \$2.5 million, not including Claims asserted by Sicut Enterprises Ltd. The Liquidating Debtor will not dissolve until all such objections are finally determined. Nothing in Plan **Section V.B.7.** will be construed to require the Liquidating Debtor to bring an objection that is not colorable.

8. Two (2) business days after the Effective Date, the Trustee Motion and the Lien Challenge will be deemed as settled, resolved, and, if applicable, dismissed with prejudice without further Order of the Bankruptcy Court. ~~Action, action~~ or formality which might otherwise be required.

9. Any Retained Assets remaining in the Liquidating Debtor after all Distributions to Classes 1-6 under the Plan have been made and all costs of administration of the Liquidating Debtor have been paid, will then vest in the Settlement Trust.

c. C. Reservation of Rights Regarding Causes of Action

1. The Debtors and, after the Effective Date, the Distribution Agent on behalf of the Liquidating Debtor and the Settlement Trustee on behalf of the Settlement Trust,

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reserve the rights to pursue any and all ~~causes of action~~ Avoidance Actions which have not been sold or released pursuant to this Plan ~~and Avoidance Actions~~, and the Debtors hereby reserve the rights of the Distribution Agent, the Liquidating Debtor, the Settlement Trust and the Settlement Trustee ~~on behalf of the Settlement Trust~~, to pursue, administer, settle, litigate, enforce and liquidate consistent with the terms and conditions of the Plan and the Settlement Trust Agreement such causes of action, including the Avoidance Actions. The Settlement Trustee shall, pursuant to section 1123 and all applicable law, have the requisite standing to prosecute, pursue, administer, settle, litigate, enforce and liquidate any and all Avoidance Actions, except for (i) preference actions pursuant to section 547 of the Bankruptcy Code, and (ii) Avoidance Actions against Industrial Rigging.

2. Unless causes of action against a Person ~~or Entity~~ are expressly waived, relinquished, released, compromised or settled in the Plan, or any Final Order, the Debtors (before the Effective Date) and the Distribution Agent, on behalf of the Liquidating Debtor (after the Effective Date), and the Settlement Trustee on behalf of the Settlement Trust (after the Effective Date) expressly reserve all causes of action, including the Avoidance Actions, for later adjudication consistent with the terms of the Plan and therefore, no preclusion doctrine or other rule of law, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such causes of action and Avoidance Actions upon, after, or as a result of the Confirmation or Effective Date of the Plan, or the Confirmation Order. In addition, the Debtors and the Distribution Agent on behalf of the Liquidating Debtor and the Settlement Trustee on behalf of the Settlement Trust, and any successors in interest thereto, expressly reserve the right to pursue or adopt any causes of action and Avoidance Actions not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs and co-defendants in such lawsuits, all to the extent consistent with the terms of the Plan.

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d. D. The Settlement Trust and Liquidating Debtor

1. Establishment and Administration of Settlement Trust

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(a) ~~(a)~~ — On ~~or before~~ the Effective Confirmation Date, the Settlement Trust shall be established pursuant to the Settlement Trust Agreement to implement the Global Settlement and the terms of the Plan. The purposes of the Settlement Trust are, among other things, (i) investigating and, if appropriate, pursuing Avoidance Actions (other than preferences) for the benefit of General Unsecured Creditors; (ii) holding the preference actions to ensure that no General Unsecured Creditors are sued for a preference; (iii) administering and pursuing the Settlement Trust Assets, ~~(iv) assisting the Liquidating Debtor, if necessary, in resolving all Disputed General Unsecured Claims,~~ and ~~(v)~~ making all Distributions from the Settlement Trust as provided for in the Plan and the Settlement Trust Agreement. The Settlement Trust Agreement, attached hereto as Exhibit A, is incorporated herein in full and is made a part of this Plan as if set forth herein.

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(b) ~~(b)~~ — Upon execution of the Settlement Trust Agreement, the Settlement Trustee shall be authorized to take all steps necessary to complete the formation of the Settlement Trust; provided, that, prior to the Effective Confirmation Date, the Debtors, the

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Committee or the Settlement Trustee, as applicable, may act as organizers of the Settlement Trust and take such steps in furtherance thereof as may be necessary, useful or appropriate under applicable law to ensure that the Settlement Trust shall be formed and in existence as of the Effective Date. The Settlement Trust shall be administered by the Settlement Trustee in accordance with the Settlement Trust Agreement.

~~(c)~~ ~~(e)~~—It is intended that the Settlement Trust be classified for federal income tax purposes as a “~~Settlement Trust~~liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d) and as a “grantor trust” within the meaning of Sections 671 through 679 of the Internal Revenue Code. In furtherance of this objective, the Settlement Trustee shall, in its business judgment, make continuing best efforts not to unduly prolong the duration of the Settlement Trust. The Settlement Trust will be responsible for filing information on behalf of the Settlement Trust as grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

2.1. Assets of the Settlement Trust

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On or before the Effective Confirmation Date, or as soon as reasonably practicable thereafter, the Debtors and Committee’s counsel, as the case may be, will transfer and assign to the Settlement Trust the Settlement Trust Assets, which shall be deemed vested in the Settlement Trust. On and after the Effective Date, the Settlement Trustee shall have discretion with respect to the timing of the transfers of Settlement Trust Assets. Any checks of the Debtors issued prior to the Effective Date that remain un-cashed three (3) months after the Confirmation Date shall revert to the Settlement Trust unless the Distribution Agent has not yet made all Distributions required under the Plan, in which case, it will revert to the Liquidating Debtor.

3.2. Rights and Powers of the Distribution Agent and the Settlement Trust and the Settlement Trustee

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~~(a)~~ ~~(a)~~—Each of the Distribution Agent and the Settlement Trustee shall be deemed the Estates’ representative in accordance with ~~such sections and~~ section 1123 of the Bankruptcy Code and shall have all the rights and powers set forth in ~~the~~such sections and Settlement Trust Agreement, including, without limitation, the powers of a trustee under Sections 704 and 1106 of the Bankruptcy Code and Rule 2004 of the Bankruptcy Rules, including without limitation, the right to (i) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and the Settlement Trust Agreement; (ii) prosecute, settle, abandon or compromise any Claims, Causes of Action, or Avoidance Actions; (iii) make Distributions contemplated by the Plan and the Settlement Trust Agreement, (iv) establish and administer any necessary reserves for Disputed Claims that may be required; (v) object to Disputed Claims and prosecute, settle, compromise, withdraw or resolve in any manner approved by the Bankruptcy Court such objections; (vi) employ and compensate professionals (including professionals previously retained by the Debtors and/or the Committee), provided, however, that any such compensation shall be made only out of the Retained Assets if retained by the Distribution Agent and the Settlement Trust Assets if retained by the Settlement Trustee; and (vii) file all federal, state and local tax returns if necessary.

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~~(b)~~ ~~(b)~~—The Liquidating Debtor shall assume any outstanding responsibility of the Debtors under the Plan, and the Distribution Agent, ~~and~~ shall have full authority to take any lawful, appropriate and good faith steps necessary to administer the Liquidating Debtor and the Retained Assets, including, without limitation, the duty and obligation to liquidate the Retained Assets, to make Distributions therefrom in accordance with the Plan, and to pursue any and all objections to Claims, including the Claims of General Unsecured Creditors.

~~(c)~~ ~~(e)~~—The Settlement Trustee shall have the full authority to take any lawful, appropriate and good-faith steps necessary to administer the Settlement Trust, including, without limitation, the duty and obligation to liquidate Settlement Trust Assets, to make Distributions therefrom in accordance with the provisions of this Plan and the Settlement Trust Agreement and to pursue, settle or abandon any objections to General Unsecured Claims and non-preference Avoidance Actions all in accordance with the Settlement Trust Agreement.

~~(d)~~ ~~(d)~~—On or before the Effective Date, the Debtors shall transfer to the Settlement Trustee the Debtors’ evidentiary privileges, including the attorney/client privilege, solely as they relate to Avoidance Actions. The Plan shall be considered a motion pursuant to Sections 105, 363 and 365 of the Bankruptcy Code for such relief. Upon such transfer, the Debtors and the Estates shall have no other further rights or obligations with respect thereto. Privileged communications may be shared among the Settlement Trustee and the Settlement Trust Committee without compromising the privileged nature of such communications, in accordance with the “joint interest” doctrine.

4.1. Appointment of a Settlement Trustee and the Settlement Trust Oversight Committee

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~~(a)~~ ~~(a)~~—The Debtors and Committee ~~have selected~~ are negotiating with Wayne Weitz of EisnerAmper to serve as the Settlement Trustee, and will provide the Court with a final determination of the Settlement Trustee and his/her proposed compensation prior to the Confirmation Hearing. The proposed Settlement Trustee, who is the Committee’s current financial advisor, shall file a final fee application in these Bankruptcy Cases as financial advisor within forty-five (45) days of Confirmation, and shall file a new retention application with the Bankruptcy Court for his services as Settlement Trustee prior to the Confirmation Hearing, upon terms and conditions reasonably satisfactory to the Committee. The appointment of the Settlement Trustee shall be approved by the Confirmation Order and such appointment shall be effective on the Effective Date. ~~EisnerAmper, in its capacity as~~ The Settlement Trustee, shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Settlement Trust Agreement. ~~None~~ If the Settlement Trustee is Wayne Weitz, none of EisnerAmper’s services as Settlement Trustee will be subject to the fee cap for Professionals set forth in Article IV hereof, and all of the Settlement Trustee’s fees and expenses will be paid solely from the Settlement Trust assets.

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~~(b)~~ ~~(b)~~—The existing three (3) members of the Committee shall be appointed at Confirmation to serve as a settlement trust committee (the “**Settlement Trust Committee**”) to the extent they are willing to serve. The Settlement Trust Committee will be entitled to vote on all matters in accordance with the Settlement Trust Agreement. Members of the Settlement Trust Committee can vote on any of the following matters in which they do not have a direct pecuniary interest. ~~The~~ the commencement or settlement of any litigation, including objections to claims and Avoidance Actions where the amount at issue is greater than \$25,000. Further, in the case of a tie among members of the Settlement Trust Committee eligible to vote on any issue, the Settlement Trustee shall cast the deciding vote.

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~~(c)~~ ~~(e)~~—The Settlement Trustee shall serve at the direction of the Settlement Trust Committee as set forth in the Settlement Trust Agreement; provided, however, the Settlement Trust Committee may not direct the Settlement Trustee or the individual members of the Settlement Trust Committee to act in a manner inconsistent with their duties under the Settlement Trust Agreement and the Plan. The Settlement Trust Committee may terminate the Settlement Trustee at any time in accordance with the provisions of the Settlement Trust Agreement or upon the determination of the Bankruptcy Court on a motion for cause shown.

~~(d)~~ ~~(d)~~—Nothing herein or in the Settlement Trust Agreement shall be deemed to prevent the Settlement Trustee from taking, or failing to take, any action that, based upon the advice of counsel, it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty which the Settlement Trustee owes to the beneficiaries or any other person, including actions contrary to, or in the absence of, instruction by the Settlement Trust Committee.

~~(e)~~ ~~(e)~~—The Settlement Trustee, the members of the Settlement Trust Committee and their professionals shall be exculpated and indemnified pursuant to and in accordance with the terms of the Plan and the Settlement Trust Agreement.

5.1. Settlement Trust Distributions

~~(a)~~ ~~(a)~~—Within two (2) weeks of the Effective ~~date~~ Date, the Settlement Trustee shall make a Distribution of \$100 to each Holder of an Allowed Class 8 Claim as full and final Distribution to the Holders of Allowed Class 8 Claims, and shall set up a Disputed Claims Reserve sufficient to pay all Holders of Disputed Class 8 Claims should they become Holders of Allowed Class 8 Claims. If a Disputed Class 8 Claim becomes an Allowed Class 8 Claim by settlement ~~for~~ or Final Order, the Settlement Trustee will pay such Allowed Claim within two (2) weeks. If a Disputed Class 8 Claim becomes finally Disallowed by settlement or Final Order, then, the Settlement Trustee can transfer the amount designated for that Claim from the Disputed Claims Reserve to the general funds of the Settlement Trust.

~~(b)~~ ~~(b)~~—As soon as practicable after the Effective Date, taking into account the amount of Claims objections pending and the available cash after putting aside reserves for administrative expenses and Disputed Claims, the Settlement Trustee will

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make an initial Pro Rata Distribution to Holders of Allowed Class 7 Claims and to the Disputed Claims Reserve for Class 7 Claims. The amount and timing of the initial Distribution will be in the sole discretion of the Settlement Trustee, in consultation with the Settlement Trust Committee.

~~(c)~~ ~~(e)~~—Interim Distributions. The Settlement Trustee may make interim Distributions of available cash (i) to Holders of the Allowed Class 7 Claims solely in accordance with this Plan and the Settlement Trust Agreement, and (ii) from the Disputed Claims Reserve in accordance with Article ~~VI~~ hereof. Other than the Final Distribution, at no time shall the Settlement Trustee be required to make a Distribution unless he has at least \$100,000 to distribute.

~~(d)~~ ~~(4)~~—Final Distributions. The Settlement Trust shall be dissolved and its affairs wound up and the Settlement Trustee shall make the Final Distributions, upon the earlier of (i) the date which is five (5) years after the Effective Date, and (ii) that date when, (A) in the reasonable judgment of the Settlement Trustee, substantially all of the assets of the Settlement Trust have been liquidated and there are no substantial potential sources of additional Cash for Distribution; and (B) there remain no substantial Disputed Claims. Notwithstanding the foregoing, on or prior to a date not less than six (6) months prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Settlement Trust for one or more finite terms based upon the particular facts and circumstances at that time, if an extension is necessary to the liquidating purpose of the Settlement Trust. The date on which the Settlement Trustee determines that all obligations under the Plan and the Settlement Trust Agreement have been satisfied is referred to as the “Trust Termination Date”. On the Trust Termination Date, the Settlement Trustee shall promptly request the Bankruptcy Court enter an order closing the Bankruptcy Cases (unless this has already been done).

After Final Distributions have been made in accordance with the terms of the Plan and the Settlement Trust Agreement, if the amount of remaining cash is less than \$10,000, the Settlement Trustee, after consultation with the Settlement Trust Committee, may donate such amount to a charity approved by the Settlement Trust Committee.

6.1. Reporting Requirement of Settlement Trust

The Settlement Trust Agreement will require that annual financial statements or similar reports of the Settlement Trust be sent to all Holders of Class 7 Claims on an annual basis. Such reports need not be audited.

E.a. Directors/Officers/Equity Interests/Professionals of the Debtors on the Effective Date

On the Effective Date, the authority, power and incumbency of the Persons then acting as directors and officers of the Debtors shall be terminated and such directors and officers shall be deemed to have resigned. On the Effective Date, all the Equity Interests in the Debtors (including all instruments evidencing such Equity Interests) shall be canceled and extinguished without further action under any applicable agreement, law, regulation or rule. On the Effective

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Date, the Liquidating Debtor shall issue one share of stock or member interest in the Liquidating Debtor to the ~~Settlement Trust which will hold such share of stock for the benefit of the Holders of Settlement Trust Interests, Distribution Agent~~ and such share of stock or member interest will remain outstanding until the Liquidating Debtor is dissolved in accordance with the Plan. On the Effective Date, the Professionals for the Debtors shall be deemed to have completed their services ~~unless they as to Holdings and Recycling but shall remain counsel to the Liquidating Debtors until all Claims Objections~~ are ~~retained by the Settlement Trustee, but resolved.~~ Nonetheless, they shall be able to file a final application for services rendered and reimbursement of expenses through the Effective Date as set forth herein.

F.b. Operations of the Debtors Between the Confirmation Date and the Effective Date

During the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to remain in possession of their assets, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect. The Debtors will commence Claims Objections no later than the Confirmation Date.

G.c. Corporate Action

The entry of the Confirmation Order shall constitute the approval of the authorization for the Debtors to take or cause to be taken all corporate actions necessary or appropriate to implement all provisions of, and to consummate, the Plan and any documents contemplated to be executed therewith, prior to, on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act or action under any applicable law, order rule or regulation.

On and after the Effective Date, the Debtors (i) shall be deemed to have withdrawn their business operations from any state in which they were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum or take any other action in order to effectuate such withdrawal, and (ii) shall not be liable in any manner to any taxing or other authority for franchise, business, license or similar taxes, and (iii) shall, without taking any further action or paying any sum, be de-listed from any stock exchange and shall no longer be required to file any S.E.C. or other regulatory agency reports, comply with any reporting or financial obligations, or take any other action required of a “public” company.

H.d. Cancellation of Existing Agreements and Existing Common Stock

On the Effective Date, except to the extent otherwise provided herein, all notes, stock, instruments, certificates, and other documents evidencing any Claims or Equity Interests shall be canceled, shall be of no further force, whether surrendered for cancellation or otherwise.

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e. Authorization of Plan-Related Documentation

All documents, agreements and instruments entered into and delivered on or as of the Effective Date contemplated by or in furtherance of the Plan, including, but not limited to, the Plan Supplement documents and any other agreement or document related to or entered into in connection with the Plan or Plan Supplement documents, shall become, and shall remain, effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person (other than as expressly required by such applicable agreement).

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A responsible officer or director of the Debtors shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

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After the Effective Date, the Settlement Trustee may, in the name of the Debtors and their estates, take such actions as may be necessary or appropriate to accomplish the purposes of the Settlement Trust, without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, except as provided in the Plan or the Confirmation Order or to the extent that such actions are reserved for the Settlement Trustee.

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f. Authorization of Plan-Related Documentation

1. All documents, agreements and instruments entered into and delivered on or as of the Effective Date contemplated by or in furtherance of the Plan, including, but not limited to, the Plan Supplement documents and any other agreement or document related to or entered into in connection with the Plan or Plan Supplement documents, shall become, and shall remain, effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person (other than as expressly required by such applicable agreement).

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2. A responsible officer or director of the Debtors shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

3. From and after the Effective Date, the Distribution Agent may, in the name of the Debtors and their estates, take such actions as may be necessary or appropriate to accomplish the purposes of the Plan, without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, except as provided in the Plan or the Confirmation Order.

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4. From and after the Effective Date, the Settlement Trustee may take such actions as may be necessary or appropriate to accomplish the purposes of the Settlement Trust without supervision or approval of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, except as provided otherwise in the Plan, the Confirmation Order or the Settlement Trust Agreement.

J.g. Dissolution of Committee

The Committee shall continue in existence through and including the Effective Date to exercise those powers and perform those duties specified in Section 1103 of the Bankruptcy Code and shall perform such other duties as it may have been assigned by the Bankruptcy Court or in this Plan or the Confirmation Order prior to the Effective Date. On the Effective Date, the Committee shall be deemed dissolved, and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Bankruptcy Cases or the Plan and its implementation, and the retention or employment of the Committee's Professionals shall terminate. The Committee members willing to serve will become members of the Settlement Trust Committee.

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K.h. Exemption from Certain Fees and Taxes

Pursuant to Section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to this Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

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L.i. Closing of the Bankruptcy Cases

The Bankruptcy Cases of Holdings and Recycling shall be closed on the Effective Date.

Upon the conclusion of the administration of the Settlement Trust, the Settlement Trustee shall file a motion, after notice and an opportunity for hearing, seeking entry of an Order closing the Bankruptcy Case of International pursuant to Local Bankruptcy Rule 3022-1. The Settlement Trustee shall file a final report no later than fourteen days prior to the hearing to consider the motion to close the Bankruptcy Case of International.

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ARTICLE IV:
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

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ARTICLE IV.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A.a. Rejection of Executory Contracts and Unexpired Leases

Any executory contract or unexpired lease (i) which has not expired by its own terms on or prior to the Effective Date, (ii) which has not been assumed, assumed and assigned, or rejected with the approval of the Bankruptcy Court, ~~or (iii)~~ which the Debtors have obtained the authority to reject but have not rejected as of the Effective Date, or (iv) which is not the subject of a motion to assume ~~the same~~ pending as of the Effective Date, shall be deemed rejected by the Debtors on the Confirmation Date, and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejection pursuant to Sections 365(e) and 1123(b)(2) of the Bankruptcy Code.

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B.b. Rejection Damages Claims

Proofs of all Claims arising out of the rejection of an executory contract or an unexpired lease pursuant to the Plan shall be filed pursuant to the procedure specified in the General Bar Date Motion which requires that a proof of claim be filed on or before the later of: (a) the applicable Bar Date; or (b) thirty (30) days after service of notice of entry of the Rejection Order on the claimants affected.

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PROVISIONS GOVERNING DISTRIBUTIONS

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A.A. Manner of Payment under the Plan

At the option of the Debtors, the Distribution Agent, or the Settlement Trustee, as applicable, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements. Cash payments made pursuant to this Plan in the form of checks issued by the Debtors or Settlement Trustee shall be null and void if not cashed within 180 days of the date of the issuance thereof. Requests for reissuance of any check shall be made directly to the Distribution Agent or Settlement Trustee, as the case may be. The Distribution Agent and/or Settlement Trustee is not required to make any Distributions to a party which fails to comply with the Distribution Agent's or Settlement Trustee's reasonable request for taxpayer identification information.

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B.B. Timing of Distributions

Except as otherwise provided herein or as may be ordered by the Bankruptcy Court, Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date and that are entitled to receive Distributions under the Plan shall be made as soon as practicable after the Effective Date. If any payment or act under the Plan is required to be made or

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performed on a date that is not a Business Day, the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Distributions on account of Claims that become Allowed after the Effective Date shall be made pursuant to Article VI of the Plan.

C.C. Expense of Distributions

1. The ~~Disbursing Agent shall serve as~~ Distribution Agent shall serve as disbursing agent on behalf of each of the Estates (on and after the Effective Date) under the Plan for Unclassified Claims and Claims in Classes 1 through 6 and shall make all Distributions required under the Plan to the Holders of Claims in those Classes.

2. The Settlement Trustee shall ~~serve as Distribution Agent~~ make the Distributions from the Settlement Trust on behalf of each of the Estates (on or after the Effective date) under the Plan for Claims in Classes 7 and 8, ~~and shall make all Distributions required under the Plan to the Holders of Claims in Classes 7 and 8.~~

3. Each of the ~~Disbursing~~ Distribution Agent and the Settlement Trustee shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan, (b) make all distributions contemplated ~~hereby~~ under the Plan, (c) employ professionals to represent it with respect to its responsibilities, and (d) exercise such other powers as may be vested in them by Order of the Bankruptcy Court, pursuant to the Plan, or as deemed by them to be necessary and proper to implement the provisions hereof.

4. Except as otherwise ordered by the Bankruptcy Court, any reasonable fees and expenses incurred by the Distribution Agent (including taxes, reasonable professional fees, and fees to the U.S. Trustee so long as the Liquidating Debtor is in existence) on or after the Effective Date shall be paid in cash from the Retained Assets; and any reasonable fees and expenses of the Settlement Trustee (including Settlement Trust taxes, reasonable professional fees and U.S. Trustee fees after the dissolution of the Liquidating Debtor) on or after the Effective Date shall be paid in Cash by the Settlement Trust.

5. Neither the Distribution Agent nor the Settlement Trustee will be required to be bonded to perform their duties hereunder; although, they may choose to do so.

D.D. Delivery of Distributions and Undeliverable or Unclaimed Distributions

Except as otherwise provided in the Plan, subject to Bankruptcy Rule 9010, all Distributions to any Holder of an Allowed Claim shall be made at the address of such Holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtors or their agents, as applicable, unless the Debtors have been notified in writing of a change of address, including, without limitation, by the filing of a Proof of Claim by such Holder that contains an address for such Holder different from the address reflected on the Schedules. In the event that any Distribution to any Holder is returned as undeliverable, the Distribution Agent or the Settlement Trustee, as the case may be, shall use commercially reasonable efforts to determine the current address of such Holder, but no Distribution to such Holder shall be made

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unless and until such party has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided, that such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code upon the expiration of the later of (i) three (3) months from the Effective Date, and (ii) the date such Distribution was returned undeliverable. After such date, all unclaimed property or interest in property shall revert to the Retained Assets or the Settlement Trust, as the case may be, for distribution on account of other Allowed Claims, and the Claim of the Holder originally entitled to such unclaimed property or interest in property shall be forever barred from seeking a distribution on account of such Claim from the Debtors, the Estates, or the Settlement Trust.

E.E. Allocation of Plan Distributions between Principal and Interest

To the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for federal income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the Distribution exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

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E.F. De Minimis Distributions

Neither the Distribution Agent nor the Settlement Trustee shall have any duty to make a Distribution on account of any Allowed Claim (i) if the Trustee determines, in the reasonable exercise of the Trustee's discretion, that the amount available for Distribution at such time is insufficient to justify the cost of effecting the Distribution, in which case such Distributions shall be deferred to the next Distribution date, or (ii) if the amount to be distributed to that Holder on the particular Distribution date is less than \$10.00, unless such Distribution constitutes the final Distribution to such Holder. The Settlement Trustee shall not be required to make any interim distribution at any time when there is less than \$100,000 to distribute.

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G.G. No Distribution in Excess of Allowed Amount of Claim

Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distributions, which individually or in the aggregate, exceed of the Allowed amount of such Claim.

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H.H. Setoffs

The Liquidating Debtor or the Settlement Trust may, but shall not be required to, set-off against, or recoup from, any Claim (for purposes of determining the Allowed amount of such Claim on which a Distribution shall be made), any claims of any nature whatsoever that the Debtors or the Settlement Trust may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors or the Settlement Trust of any such claim the Debtors or the Settlement Trust may have against the Holder of such Claim.

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I.I. Compliance with Tax Requirements

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In connection with the Plan and all Distributions hereunder, to the extent applicable, the Debtors and the Settlement Trustee are authorized to take any and all actions that may be necessary or appropriate to comply with all tax withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Distributions pursuant to the Plan shall be subject to any such withholding and reporting requirements. The Settlement Trustee shall be authorized to require each Holder to provide it with an executed Form W-9 or similar tax form as a condition precedent to being sent a Distribution. If a Holder of an Allowed General Unsecured Claim does not provide the Settlement Trustee with an executed Form W-9 or similar form within 180 days of written request, said Holder shall be deemed to have forever forfeited their Distribution.

J.J. Release of Liens

Except as otherwise provided by Article IV of the Plan or in any contract, instrument, release or other agreement or document created or assumed in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to this Article, all mortgages, deeds of trust, liens, pledges or other security interests against the property of the Debtors' Estates shall be fully released and barred, and all of the right, title and interest of any Holder in such mortgages, deeds of trust, liens, pledges or other security interests shall revert to the applicable Estate.

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K.K. Preservation of Subordination Rights

Except as otherwise provided herein, all subordination rights and claims relating to the subordination by the Debtors or the Settlement Trustee of any Allowed Claim shall remain valid, enforceable and unimpaired in accordance with Section 510 of the Bankruptcy Code ~~or~~, otherwise, except to the extent settled through the Plan.

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L.L. Books and Records; Privilege Matters

1. 1. Legal Representation of the Debtors and Committee After the Effective Date

Upon dissolution of the Liquidating Debtor, the attorney-client relationship between the Debtors and Bayard, PA shall be terminated. Upon the Effective Date, the attorney-client relationship between the Committee and Law Offices of Sandra Mayerson and Morris James, LLP shall be deemed terminated. Subject only to the applicable ethical rules governing attorneys, their receipt of confidential information and their relationship with former clients, current counsel for the Debtors shall not be precluded from representing any party in any action that might be brought by or against the Settlement Trust. Similarly, subject only to the applicable ethical rules governing attorneys, their receipt of confidential information and their relationship with former clients, current counsel and other professionals for the Committee shall not be precluded from representing the Settlement Trust or any other party in any action that might be brought by or against any former individual members of the Committee.

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2. 2. Transfer of Debtors' Books and Records

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On or before the date on which the Liquidating Debtor is dissolved, the Debtors shall transfer and deliver their Books and Records to the Settlement Trust.

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Upon the Effective Date, the Settlement Trust Committee shall succeed to the evidentiary privileges, including attorney-client privilege, formerly held by the Committee. Accordingly, to the extent that documents are requested from current counsel to the Committee by any Person, after the Effective Date, only the Settlement Trust Committee shall have the ability to waive such attorney-client or other privileges. In addition, current counsel to the Committee shall have no obligation to produce any documents currently in their possession as a result of or arising in any way out of their representation of the Committee unless (i) the Person requesting such documents serves its request on the Settlement Trust Committee; (ii) the Settlement Trust Committee consents in writing to such production and any waiver of the attorney-client privilege or other privilege such production might cause; and (iii) the Settlement Trust Committee, or the Person requesting such production, agrees to pay the reasonable costs and expenses incurred by current counsel for the Committee in connection with such production.

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Unless the Court Orders otherwise, upon the second (2nd) anniversary of the termination of the Settlement Trust Agreement, any and all documents in the possession of the Debtors' current counsel and the Committee's current counsel as a result of or arising in any way out of their representation of the Debtors and/or the Committee, respectively, shall be deemed destroyed and no Person shall be entitled to obtain such documents.

ARTICLE VI:
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS AND EQUITY INTERESTS

ARTICLE VI
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS AND EQUITY INTERESTS

A.A. Claims Objections

The Debtors will use commercially reasonable efforts to keep the aggregate amount of General Unsecured Claims at or below \$2.5 million, not including the General Unsecured Claims of Sicut Enterprises, Ltd., including by making appropriate Claims objections. The Liquidating Debtor and the Settlement Trustee may also object to General Unsecured Claims. Only the Debtors or the Liquidating Debtor may object to Claims in Classes 1 through 6 or to Unclassified Claims after the Effective Date.

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B.B. Estimation of Claims

The Liquidating Debtor and the Settlement Trustee in the case of Claims in Classes 7 and 8, may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Settlement Trustee previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any

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Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, such estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Liquidating Debtor or the Settlement Trustee may elect to pursue any supplemental proceedings to object to any ultimate allowance of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

C.C. Claims Paid or Payable to Third Parties

1. Claims Paid by Third Parties; Recourse to Collateral

The Debtors, the Liquidating Debtor or the Settlement Trustee, as applicable, shall be authorized to reduce in whole or in part a Claim, and such Claim shall be Disallowed without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or, as applicable, the Liquidating Debtor or the Settlement Trustee, including on account of recourse to collateral held by third parties or guarantees that secure such Claim. To the extent a Holder of a Claim receives a Distribution on account of such Claim and receives payment, in whole or in part, from a party that is not a Debtor on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the Distribution to the Debtors or the Settlement Trustee, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such Distribution under the Plan.

2. Claims Payable by Insurance, Third Parties; Recourse to Collateral

No Distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies, surety agreements, other non-Debtor payment agreements, or collateral held by a third party, until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy, surety agreement, other non-Debtor payment agreement, or collateral, as applicable. To the extent that one or more of the Debtors' insurers, sureties, or non-Debtor payors pays or satisfies in full or in part a Claim, or such collateral or proceeds from such collateral is used to satisfy such Claim, then immediately upon such payment, the applicable portion of such Claim shall be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Notwithstanding anything to the contrary in the Plan or Confirmation Order, Confirmation and consummation of the Plan shall not limit or affect the rights of any third-party beneficiary of any of the Debtors' insurance policies with respect to such policies, including the

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D&O Policy, and the rights of the Debtors under any such insurance policies shall vest in Liquidating Debtor as of the Effective Date.

D.D. Expungement or Adjustment to Claims Without Objection

Any Claim that has been paid, satisfied, or superseded may be expunged on the Claims Register by, as applicable, the Debtors, the Liquidating Debtor or the Settlement Trustee (or the Notice and Claims Agent at, as applicable, the Debtors', Liquidating Debtor's or the Settlement Trustee's direction), and any Claim that has been amended may be adjusted thereon by, as applicable, the Debtors, Liquidating Debtor or the Settlement Trustee without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court; provided, however, that notice of the action taken must be sent to the affected creditor within ten (10) days of such action.

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E.E. No Distributions Pending Allowance

Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no payment or ~~distribution~~Distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes Allowed. Distributions with respect to Disputed Claims shall be deposited into a disputed ~~distribution~~Distribution reserve account maintained by each of the Distribution Agent (for Classes 1 through 6 and Unclassified Claims) and the Settlement Trustee (for Classes 7 and 8). To the extent that all or a portion of a Disputed Claim is Disallowed, the Holder of such Claim shall not receive any Distribution on account of the portion of such Claim that is disallowed and any property withheld pending the resolution of such Claim shall be reallocated in accordance with the Plan.

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F.F. Distributions After Allowance

To the extent that a Disputed Claim becomes an Allowed Claim, Distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan and Settlement Trust Agreement. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Liquidating Debtor or Settlement Trustee shall provide to the Holder of such Claim the Distribution (if any) to which such Holder is entitled under the Plan.

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G. Payment of Allowed Claims

The Debtors have set forth the projected sources of funds for payment of Allowed Claims and demonstrated how those would be used in the Sources and Use table attached hereto as Exhibit B.

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G.H. Preservation of Rights to Settle

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In accordance with Section 1123(b) of the Bankruptcy Code, the Liquidating Debtor and Settlement Trust shall retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights, Causes of Action, suits, and proceedings, whether in law or in equity, whether known or unknown, that the Debtors or their Estates may hold against any person or entity without the approval of the Bankruptcy Court (subject to the provisions of the Settlement Trust Agreement, this Plan, the Confirmation Order, and any contract, instrument, release, indenture, or other agreement entered into in connection with the Plan). The Liquidating Debtor and the Settlement Trust and the Distribution Agent and the Settlement Trustee or their successor(s) may pursue such retained claims, rights, Causes of Action, suits, or proceedings, as appropriate, in accordance with the best interests of the Liquidating Debtor, the Distribution Agent, the Settlement Trust, the Settlement Trustee or their successor(s) who hold such rights.

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H.I. Disallowed Claims

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Any Claim held by a Person or Entity against whom any Debtor or the Settlement Trust has commenced a proceeding asserting a Cause of Action under Sections 542, 543, 544, 545, 547, 548, 549, and/or 550 of the Bankruptcy Code, shall be deemed a Disallowed Claim pursuant to Section 502(d) of the Bankruptcy Code and the Holder of such Claim shall not be entitled to vote to accept or reject the Plan. Claims that are deemed Disallowed Claims pursuant to this Article ~~IVVI~~, shall continue to be Disallowed Claims for all purposes until such ~~Cause~~Causes of Action has been settled or resolved by Final Order and any sums due to the Debtors or the Settlement Trust from such party have been paid; provided, however, that until a final adjudication of the Cause of Action, amounts for payment of the Disallowed Claim shall be set aside in the disputed Distributions reserve for the appropriate class.

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~~Article VII:~~

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CONDITIONS PRECEDENT TO CONFIRMATION

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AND

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EFFECTIVE DATE OF THE PLAN

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A.A. Condition Precedent to Confirmation

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The Plan shall not be confirmed, and the Confirmation Date shall not be deemed to occur, unless and until the Confirmation Order, in form and substance satisfactory to the Plan Proponents, has been entered on the docket maintained by the Clerk of the Bankruptcy Court. Such Order will only be satisfactory if (a) it approves the Global Settlement and (b) approves the sale of the Sale Assets.

B.B. Conditions Precedent to the Effective Date

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The Effective Date shall be the first full Business Day after, and the Plan shall become effective after, each and every one of the following conditions have been satisfied in full or waived by each and every one of the Plan Proponents:

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1. ~~the~~The Confirmation Order, in form and substance satisfactory to all of the Plan Proponents, shall be entered by the Bankruptcy Court, shall become a Final Order, shall be in full force and effect and shall not be subject to a stay or an injunction which would prohibit the transactions under the Plan;

2. ~~the~~The Confirmation Order shall, among other things, provide that all transfers of property by the Debtors to the Settlement Trust (i) are or shall be legal, valid, and effective transfers of property, (ii) vest or shall vest the Settlement Trust with good title to such property free and clear of all liens, charges, claims, encumbrances or interests, except as expressly provided in the Plan, (iii) do not and shall not constitute voidable transfers under the Bankruptcy Code or under applicable non-bankruptcy law, (iv) shall be exempt from any transfer, sales, stamp or other similar tax (which exemption shall also apply to transfers by the Debtors to the Successful Bidders and by the Settlement Trust) and (v) do not and shall not subject the Settlement Trustee or Holders of Claims to any liability by reason of such transfer under the Bankruptcy Code or under applicable non-bankruptcy law, including, without limitation, any laws affecting successor or transferee liability;

3. ~~the~~The closing of the Sale of the Sale Assets shall have occurred pursuant to the Confirmation Order, and the Debtors, and if applicable, the Settlement Trust, have received the consideration due upon closing of such sale;

4. ~~all~~All of the DIP Loan authorized by the Financing Orders ~~has~~shall have been funded and drawn down by the Debtors;

5. ~~the~~The Debtors have paid \$900,000 into the escrow for Professionals held by the Bayard firm;

6. ~~the~~The final version of the Plan, the Plan Supplement and all of the documents, schedules and exhibits contained therein shall have been Filed and in a form and substance satisfactory to each and every one of the Plan Proponents;

7. ~~all~~All actions and transfers and all agreements, instruments, or other documents necessary to implement the terms and provisions of the Plan, including all transfers to the Settlement Trust, shall have been effected or executed and delivered, as applicable, in form and substance satisfactory to the Committee and the Settlement Trustee; and

8. ~~all~~All authorizations, consents, and regulatory approvals, if any, required by the terms of or, in connection with the consummation of the Plan shall have been obtained and not revoked; and

9. ~~the~~The Settlement Trustee is duly appointed, qualified and acting in such capacity.

C.C. Waiver of Conditions

Any of the conditions to Confirmation of the Plan and/or to the Effective Date set forth in Articles ~~IXVII~~.A. and ~~IXVII~~.B. hereof, other than entry of the Confirmation Order in form and

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substance satisfactory to the Plan Proponents, may be waived with the express written consent each and every of the Plan Proponents without leave or order of the Bankruptcy Court.

D.D. Satisfaction of Conditions

Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Proponents determine that one of the conditions precedent set forth in Articles ~~IXVII~~.A. and ~~IXVII~~.B. of the Plan cannot be satisfied and the occurrence of such condition is not waived or cannot be waived, then the Proponents shall file a notice of the failure of the Effective Date with the Bankruptcy Court.

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E.E. Effect of Nonoccurrence of Conditions

If each of the conditions to occurrence of the Effective Date set forth in Article ~~VHIVII~~.B. has not been satisfied or duly waived on or before the first Business Day that is thirty (30) days after the Confirmation Date, or such later date as shall be determined by the agreement of all Plan Proponents, the Confirmation Order may be vacated by the Bankruptcy Court. If the Confirmation Order is so vacated, the Plan shall be null and void in all respects, and nothing contained in the Plan shall constitute a waiver or release of any Claims or Equity Interests against any of the Debtors or release of any ~~claims~~Claims or ~~interests~~Interests by the Debtors or the Estates.

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Article VIII:

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SETTLEMENT, EXCULPATION, RELEASE, INJUNCTION AND RELATED PROVISIONS

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

Pursuant to Section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the Global Settlement and the classification, distributions, releases, and other benefits provided pursuant to the Plan, on the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved pursuant to the Plan and the Global Settlement or relating to the contractual, legal, and subordination rights that a Holder of a Claim or Equity Interest may have with respect to any Claim or Equity Interest, or any distribution to be made on account of such Claim or Equity Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of both the Global Settlement and the compromise or settlement of all such Claims, Equity Interests, and controversies, as well as a finding by the Bankruptcy Court that such Global Settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Equity Interests and is fair, equitable, and reasonable.

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~~Federal Rule of Bankruptcy Procedure 9019 governs settlements in bankruptcy proceedings. *Gendregske v. Black Diamond Commercial Finance LLC (In re Ashing Corp.)*, No. AP 13-50530 CSS, 2015 WL 5724368, at *2 (D. Del. Sept. 29, 2015). Under Rule 9019, a bankruptcy judge has “the authority to approve a compromise of a claim”. *Id.* (citing *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996)). In ruling on a motion for approval of a settlement under Rule 9019, a bankruptcy court should examine the proposed settlement under the framework established in *In re Martin*, that is, the court should consider each of the following factors: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. *Martin*, 91 F.3d at 393. Rule 9019(a) makes clear that it is the bankruptcy court’s responsibility to examine the settlement agreement from the perspective of all the creditors of an estate. *Id.* at 394. The Stipulation should be approved because (a) sound business justification supports it, (b) it is reasonable, and (c) the four (4) *Martin* factors weigh in favor of approval.~~

B. B. Release and Exculpation under the Plan

As part of the Global Settlement, each of the parties thereto has agreed to release each of the other parties thereto and certain of their offices, directors, advisors, professionals, employees and affiliates. These are **voluntary** releases and are described below in Section VIII.D. If the Global Settlement is approved, such releases are deemed approved. In addition, the Global Settlement includes exculpation for the Plan Proponents and certain parties, such as the Distribution Agent and the Settlement Trustee, whose actions are critical to the implementation of the Plan, as well as certain of their offices, directors, advisors, professionals, employees, and affiliates. The Plan Proponents submit that such exculpation provisions are fairly standard in chapter 11 plans, and that the Global Settlement would not have been feasible absent such exculpations. Furthermore, it would have been difficult, if not impossible, to find a Distribution Agent and Settlement Trustee willing to serve absent such exculpation. The exculpation provisions are described in Section VIII.C. below.

Finally, the Plan Proponents have requested releases from all Holders of Claims and Equity Interests. Such releases are **entirely voluntarily**. Each of the Plan Proponents have contributed significant amounts to the Global Settlement to enable distributions to Holders of Claims and make this Plan feasible. Accordingly, each Plan Proponent is asking for a release. In order for the Holder of a claim or Interest to **voluntarily** give such a release, they must check the “Opt In” box on the ballot. You will only be giving a release if you **check the opt-in box**. If you are not receiving a ballot and wish to give a release, please contact the Claims Agent at either <http://dm.epiqll.com/AXN/> or by calling 646-282-2400. The releases from Holders of Claims and Interests are described below in Section VIII.E.

C. Exculpation

THE DEBTORS, THE COMMITTEE, THE MEMBERS OF THE COMMITTEE IN THEIR ROLE SOLELY AS COMMITTEE MEMBERS, THE KRONSTADT PARTIES, THE DISTRIBUTION AGENT, THE SETTLEMENT TRUST, THE SETTLEMENT TRUSTEE AND THE MEMBERS OF THE SETTLEMENT TRUST COMMITTEE SOLELY AS SETTLEMENT TRUST COMMITTEE

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MEMBERS, AND ANY OF SUCH PARTIES' RESPECTIVE CURRENT AND/OR POST-FILING DATE ~~AND PRE-EFFECTIVE DATE~~ AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, REPRESENTATIVES, ADVISORS, PROFESSIONALS, AND AGENTS SHALL NOT HAVE OR INCUR, AND ARE HEREBY RELEASED FROM, ANY CLAIM, ~~CAUSE~~CAUSES OF ACTION, OBLIGATION, SUIT, JUDGMENT, DAMAGES, DEBT, RIGHT, REMEDY OR LIABILITY TO ONE ANOTHER OR TO ANY HOLDER OF ANY CLAIM OR EQUITY INTEREST, OR ANY OTHER PARTY-IN-INTEREST, OR ANY OF THEIR RESPECTIVE RELATED PARTIES, FOR ANY ACT OR OMISSION IN CONNECTION WITH, RELATING TO OR ARISING OUT OF THE BANKRUPTCY CASES, THE NEGOTIATION AND FILING OF THIS PLAN, THE FILING OF THE BANKRUPTCY CASES, THE SETTLEMENT OF CLAIMS OR RENEGOTIATION OF EXECUTORY CONTRACTS AND LEASES, THE PURSUIT OF CONFIRMATION OF THIS PLAN, THE CONSUMMATION OF THIS PLAN, OR THE ADMINISTRATION OF THIS PLAN AND THE SETTLEMENT TRUST OR THE PROPERTY TO BE DISTRIBUTED UNDER THIS PLAN AND THE SETTLEMENT TRUST EXCEPT FOR THEIR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OR ANY OBLIGATIONS THAT THEY HAVE UNDER OR IN ~~CONENCTION~~CONNECTION WITH THIS PLAN OR THE TRANSACTIONS CONTEMPLATED IN THIS PLAN, AND IN ALL RESPECTS SHALL BE ENTITLED TO REASONABLY RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND ~~RESPONSIBILITIES~~RESPONSIBILITIES UNDER THIS PLAN AND THE SETTLEMENT TRUST, AND THIS EXCULPATION EXPRESSLY SURVIVES CONFIRMATION AND THE DISSOLUTION OF THE DEBTORS AND THE TERMINATION OF THE SETTLEMENT TRUST.

D. C. Releases by the ~~Debtors and Debtors' Estates~~ Releasing Parties

EFFECTIVE AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE RELEASING PARTIES ~~SHALL~~SHALL BE DEEMED TO, COMPLETELY, CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND FOREVER RELEASE, WAIVE, VOID, EXTINGUISH AND DISCHARGE THE RELEASED PARTIES FROM ANY ACTION, RIGHT, CLAIM, CAUSECAUSES OF ACTION, OBLIGATION, SUIT, JUDGMENT, DAMAGES, DEBT, RIGHT, REMEDY OR LIABILITY, FOR ANY ACT OR OMISSION IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF THE CHAPTER 11 CASES, THE NEGOTIATION AND FILING OF THIS PLAN AND ITS ACCOMPANYING DISCLOSURE STATEMENT, THE FILING OF THE BANKRUPTCY CASES, THE SETTLEMENT OF CLAIMS OR RENEGOTIATION OF EXECUTORY CONTRACTS AND LEASES, THE PURSUIT OF CONFIRMATION OF THIS PLAN, THE CONSUMMATION OF THIS PLAN, OR THE ADMINISTRATION OF THIS PLAN AND THE SETTLEMENT TRUST OR THE PROPERTY TO BE DISTRIBUTED UNDER THIS PLAN AND THE SETTLEMENT TRUST. NOTHING IN THIS RELEASE

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SHALL RELEASE ANY PERSON FROM THEIR OBLIGATIONS PURSUANT TO THIS PLAN.

E. D. Third Party Releases

EFFECTIVE AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE RELEASING PARTIES, EACH HOLDER OF A CLAIM OR EQUITY INTEREST THAT ~~votes in favor of the Plan or is deemed to vote in favor of the Plan, and each Holder of an Allowed General Unsecured Claim (other than those Holders of Allowed General Unsecured Claims who voted for or against the Plan and~~ CHECKED THE "OPT IN" BOX ON THE BALLOT, AND RETURNED IT IN ACCORDANCE WITH THE INSTRUCTIONS SET FORTH THEREON), SHALL BE, IN EACH CASE, DEEMED TO, COMPLETELY, CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND FOREVER RELEASE, WAIVE, VOID AND EXTINGUISH THE RELEASED PARTIES, ~~FROM ANY claim, CLAIM, Cause of ACTION, RIGHT, CAUSES OF ACTION, OBLIGATION, SUIT, JUDGMENT, DAMAGES, DEBT, RIGHT, REMEDY OR LIABILITY, FOR ANY ACT OR OMISSION (I) THAT TOOK PLACE PRIOR TO THE FILING DATE RELATING TO AND/OR IN CONNECTION WITH ANY OF THE DEBTORS, AND (II) IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF THE BANKRUPTCY CASES, THE NEGOTIATION AND FILING OF THIS PLAN, THE FILING OF THE BANKRUPTCY CASES, THE SETTLEMENT OF CLAIMS OR RENEGOTIATION OF EXECUTORY CONTRACTS AND LEASES, THE PURSUIT OF CONFIRMATION OF THIS PLAN, THE CONSUMMATION OF THIS PLAN, OR THE ADMINISTRATION OF THIS PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THIS PLAN.~~

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E. F. Injunctions Relating to Releases

EFFECTIVE AS OF THE EFFECTIVE DATE, ALL PERSONS THAT HOLD, HAVE HELD OR MAY HOLD A CLAIM, CLAIM, ~~Cause~~CAUSES OF ACTION, OBLIGATION, SUIT, JUDGMENT, DAMAGES, DEBT, RIGHT, REMEDY OR LIABILITY OF ANY NATURE WHATSOEVER, THAT IS RELEASED PURSUANT TO THIS PLAN, SHALL BE PERMANENTLY, FOREVER AND COMPLETELY STAYED, RESTRAINED, PROHIBITED, BARRED AND ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS, WHETHER DIRECTLY OR INDIRECTLY, DERIVATIVELY OR OTHERWISE, ON ACCOUNT OF OR BASED ON THE SUBJECT MATTER OF SUCH RELEASED CLAIMS, CLAIMS, CAUSES OF ACTION, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEBTS, RIGHTS, REMEDIES OR LIABILITIES, (I) COMMENCING, CONDUCTING OR CONTINUING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY SUIT, ACTION OR OTHER PROCEEDING (INCLUDING, WITHOUT LIMITATION, ANY JUDICIAL, ARBITRAL, ADMINISTRATIVE OR OTHER PROCEEDING) IN ANY FORUM, (II) ENFORCING, ATTACHING (INCLUDING, WITHOUT LIMITATION, ANY PREJUDGMENT ATTACHMENT), COLLECTING, OR IN ANY WAY SEEKING TO RECOVER ANY JUDGMENT, AWARD, DECREE, OR OTHER ORDER, (III) CREATING, PERFECTING OR IN ANY WAY ENFORCING IN ANY MATTER,

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DIRECTLY OR INDIRECTLY, ANY LIEN, (IV) SETTING OFF, SEEKING REIMBURSEMENT OR CONTRIBUTIONS FROM, OR SUBROGATION AGAINST, OR OTHERWISE RECOUPING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY AMOUNT AGAINST ANY LIABILITY OR OBLIGATION OWED TO ANY PERSON RELEASED UNDER THIS PLAN, AND (V) COMMENCING OR CONTINUING IN ANY MANNER, IN ANY PLACE OF ANY JUDICIAL, ARBITRATION OR ADMINISTRATIVE PROCEEDING IN ANY FORUM, THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN OR THE CONFIRMATION ORDER.

G. G. Injunctions to Protect Estate Assets

EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS PLAN, OR TO THE EXTENT NECESSARY TO ENFORCE THE TERMS AND CONDITIONS OF THIS PLAN, THE CONFIRMATION ORDER OR A SEPARATE ORDER OF THE BANKRUPTCY COURT, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR EQUITY INTERESTS IN THE DEBTORS SHALL BE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE DEBTORS, THE DEBTORS' ESTATES, AND/OR THE LIQUIDATING DEBTOR AND/OR THE DEBTORS' SUCCESSORS OR ANY OF THEIR PROPERTY ON ACCOUNT OF ANY SUCH CLAIMS OR EQUITY INTERESTS: (I) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION, CauseCAUSES OF ACTION OR OTHER PROCEEDING; (II) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER; (III) CREATING, PERFECTING, OR ENFORCING ANY LIEN; (IV) ASSERTING A SETOFF (EXCEPT TO THE EXTENT SUCH SETOFF WAS EXERCISED PRIOR TO THE PETITION DATE), RIGHT OF SUBROGATION, OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY, OR OBLIGATION DUE TO THE DEBTORS; AND (V) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION, CauseCAUSES OF ACTION OR OTHER PROCEEDING THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THIS PLAN.

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ARTICLE IX:

RETENTION OF JURISDICTION

RETENTION OF JURISDICTION

The Plan provides that notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under or related to the Bankruptcy Cases for, among other things, the following purposes:

(a) Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Equity Interests;

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

(c) Resolve any matters related to: (i) the assumption, assignment, or rejection of any executory contract or unexpired lease to which a Debtor is party or with respect to which a Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an executory contract or unexpired lease, cure obligations pursuant to Section 365 of the Bankruptcy Code, or any other matter related to such executory contract or unexpired lease; (ii) any potential contractual obligation under any executory contract or unexpired lease that is assumed and/or assigned and (iii) any dispute regarding whether a contract or lease is or was executory or expired;

(d) Ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

(e) Adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

(f) Adjudicate, decide, or resolve any and all matters related to Causes of Action;

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

(h) Enter and enforce any order for the sale of property pursuant to Sections 363, 1123, or 1146(a) of the Bankruptcy Code;

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(i) Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

(j) Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

(k) Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article X and enter such orders as may be necessary or appropriate to implement and enforce such releases, injunctions, and other provisions;

(l) Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of Distributions;

(m) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

(n) Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan, the Disclosure Statement or Settlement Trust Agreement;

(o) Adjudicate any and all disputes arising from or relating to Distributions under the Plan or any transactions contemplated therein;

(p) Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

(q) Determine requests for the payment of Claims and Interests entitled to priority pursuant to Section 507 of the Bankruptcy Code;

(r) Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

(s) Hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;

(t) Hear and determine all disputes involving the existence, nature, or scope of the Debtors' release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

(u) Enforce all orders previously entered by the Bankruptcy Court;

(v) Hear any other matter not inconsistent with the Bankruptcy Code; and

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(w) Enter an order concluding or closing the Bankruptcy Cases.

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ARTICLE X:

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MISCELLANEOUS PROVISIONS

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MISCELLANEOUS PROVISIONS

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A.A. Modification

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1. Immediate Binding Effect

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Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, Settlement Trust Agreement and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors and any and all Holders of Claims against or Equity Interests in the Debtors (regardless of whether such Claims or Interests have accepted or rejected or are deemed to have accepted or deemed to have rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to executory contracts and unexpired leases with the Debtors. All Claims and debts shall be fixed, adjusted or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

Confirmation of the Plan does not result in a discharge with respect to any debt as provided in §1141(d)(3) of the Code.

2. Modification of the Plan

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Subject to the limitations contained herein, the Plan Proponents reserve the right to modify the Plan as to material terms and seek Confirmation consistent with Section 1127(a) of the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Proponents expressly reserve their rights to alter, amend, or modify materially the Plan one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with this Article VIII.

Any modification to the Plan made post-confirmation shall comply with Section 1127(b) of the Bankruptcy Code.

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof and prior to the Confirmation Date are approved

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pursuant to Section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

3. Revocation or Withdrawal of the Plan

The Plan Proponents reserve the right to revoke or withdraw the Plan with respect to one or more of the Debtors prior to the Confirmation Date or the Effective Date and to file subsequent plans. If the Plan Proponents revoke or withdraw the Plan with respect to any Debtor, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan, assumption and assignment or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Equity Interests; (b) prejudice in any manner the rights of the Debtors or any other Entity; (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity or (d) effect a dismissal of litigation brought or to be brought by the Committee. For the avoidance of doubt, the Lien Challenge Period is extended to two (2) Business Days after the Effective Date of the Plan.

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B.B. Payment of Statutory Fees

All fees payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date. After the Effective Date, the Liquidating Debtor shall pay, prior to the dissolution of the Liquidating Debtor, all fees payable pursuant to 28 U.S.C. § 1930 which accrue after the Effective Date and before such dissolution, and thereafter, the Settlement Trustee will pay all fees payable pursuant to 28 U.S.C. § 1930 after the dissolution of the Liquidating Debtor through and including the closing of the Bankruptcy Cases.

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C.C. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent a schedule or exhibit hereto or instrument, agreement or other document executed under the Plan provides otherwise, this Plan, the rights, duties and obligations arising under this Plan, and any claim or controversy directly or indirectly based upon or arising out of this Plan or the transactions contemplated by this Plan (whether based on contract, tort, or any other theory), including all matters of construction, validity and performance, shall be governed by and interpreted, construed and determined in accordance with, the internal laws of the State of Delaware (without regard to any conflicts of law provision that would require the application of the law of any other jurisdiction).

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D.D. Corporate Action

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Prior to, on and after the Effective Date, all matters provided for under the Plan that otherwise would require approval of the shareholders or directors of any of the Debtors shall be deemed to have occurred and shall be in effect prior to, on and after the Effective Date pursuant to the applicable general corporation law of the jurisdiction in which the Debtors are organized without any requirement of further action by the shareholders or directors of the Debtors.

E.E. Severability of Plan Provisions

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

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F.F. Successors and Assigns

The Plan shall be binding on, and shall inure to the benefit of the Debtors, and their respective successors and assigns. The rights, benefits and obligations of any Person or Entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person or Entity.

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G.G. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order and the Effective Date shall have occurred. Neither the filing of this Plan, any nor statement or provision contained herein, nor the taking of any action by the Debtors with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of the Debtors or the Committee prior to the Effective Date. If the Plan is not confirmed by a Final Order, or if the Plan is Confirmed and the Effective Date does not occur, the rights of all parties in interest in the Bankruptcy Cases are and shall be reserved in full. Any concessions or settlements reflected herein, if any, are made for purposes of the Plan only, and if the Plan does not become effective, no party in interest in the Bankruptcy Cases shall be bound or deemed prejudiced by any such concession or settlement.

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H.H. Further Assurances

The Debtors are authorized to execute, deliver, file or record such contracts, agreements, instruments, releases and other documents and take or cause to be taken such action as may be necessary or appropriate to effectuate, implement and further evidence the terms, provisions and intent of this Plan and to consummate the transactions and transfers contemplated by the Plan.

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I.I. Notice and Service of Documents

Except as set forth herein, as of the Effective Date, all parties having Filed entries of appearance or requests for service in the Bankruptcy Cases, shall not be provided with further notice with the exception of the Debtor, the U. S. Trustee, and the Settlement Trustee. Any Person desiring to remain on the Debtors' Bankruptcy Rule 2002 service list shall be required to file a request for continued service and to serve such request upon the Distribution Agent and the Settlement Trustee within thirty (30) days subsequent to the Effective Date. Persons shall be notified of such continued notice requirements in the notice of entry of the Confirmation Order. Persons who do not file a request for continued service shall be removed from the Debtors' Bankruptcy Rule 2002 service list upon the Effective Date without further notice pursuant to Bankruptcy Rule 2002 and any applicable local Bankruptcy Rules. Notice of all post-Confirmation matters for which notice is required to be given shall be deemed sufficient if served upon counsel for the U.S. Trustee's Office, the Liquidating Debtor, the Settlement Trustee, counsel to the Settlement Trustee, if any, and all persons on the Debtors' post-Confirmation Bankruptcy Rule 2002 service list.

J.J. Conflicts

To the extent any provision of the Disclosure Statement or any instrument, document or agreement executed in connection with the Plan or any exhibits, schedules, appendices, supplements or amendments to the foregoing conflicts with or is in any way inconsistent with the terms of the Plan, the terms and provisions of the Plan shall govern and control. To the extent of any inconsistency between the Plan and the Confirmation Order, the terms of the Confirmation Order shall govern and control.

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K.K. Governing Law

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

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L.L. Books and Records

Upon dissolution of the Liquidating Debtor, any remaining of the Debtors' books and records shall be transferred to the Settlement Trustee. The Settlement Trustee shall be free, in its discretion to abandon, destroy, or otherwise dispose of the Books and Records in compliance with applicable non-bankruptcy law at any time on and after the Effective Date, without the need for any other or further Order.

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M.M. Termination of Injunctions or Stays

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Bankruptcy Cases under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect.

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N.N. Plan Supplement

Not later than ten (10) days prior to the Confirmation Hearing Date, the Plan Proponents shall File with the Bankruptcy Court the Plan Supplement which shall include such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, including, without limitation, all documents relating to the Sale of the Sale Assets.

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O.O. Determination of Tax Liability

The Debtors are authorized, but not required, to request an expedited determination under Section 505(b) of the Bankruptcy Code of the tax liability of the Debtors for all taxable periods ending after the Petition Date through and including the Effective Date.

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P.P. Post-Effective Date Fees and Expenses

From and after the Effective Date, the Liquidating Debtor and the Settlement Trustee, respectively, shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay each of their respective reasonable professional fees and expenses incurred by the Liquidating Debtor and the Settlement Trust, respectively, and any professionals retained by such Liquidating Debtor and Settlement Trust, related to the consummation and to the implementation of this Plan. Payment of the Settlement Trust's fees and expenses shall be after notice to the Settlement Trust Committee. Nothing contained herein shall be construed to allow the Liquidating Debtor to pay the expenses of the Settlement Trust or vice versa.

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Q.Q. Entire Agreement

This Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated in to this Plan.

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R.R. Closing of Bankruptcy Cases

At such time as it selects, the Settlement Trustee may seek a final decree pursuant to Section 350 of the Bankruptcy Code formally closing each Debtors' Bankruptcy Case.

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S.S. Change of Control Provisions

Any acceleration, vesting or similar change of control rights under any employment, benefit or other arrangements triggered by the consummation of this Plan shall be waived or otherwise cancelled under this Plan.

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T.T. Substantial Consummation

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On the Effective Date, the Plan shall be deemed to be substantially consummated under Sections 1101 and 1127(b) of the Bankruptcy Code.

U.U. Termination of the Claims Agent

Within sixty (60) days after the Effective Date, the services of the Claims Agent shall be terminated, and the Claims Agent shall remit to the Settlement Trustee and its counsel, if any, a copy of the claims register and copies of all Proofs of Claim that it has received in connection with the Cases. No later than ninety (90) days after the Effective Date, the Claims Agent shall provide the Liquidating Debtor with an invoice for all services rendered in the Bankruptcy Cases.

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V.V. No Admission Against Interest

Neither the filing of this Plan, the Disclosure Statement, nor any statement contained therein, is or shall be deemed an admission against interest. In the event that this Plan is not consummated, neither this Plan, the Disclosure Statement nor any statement contained therein may be used or relied upon in any manner in any suit, action, proceeding or controversy within or outside the Bankruptcy Court involving the Debtors or any of its former or present officers, directors or Interest holder.

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W.W. Exhibits

All exhibits are incorporated into and are a part of the Plan as if set forth in full herein, and, to the extent not annexed hereto, such exhibits shall be Filed with the Bankruptcy Court on or before that date which is ten (10) days before the Confirmation Hearing (the "Exhibit Filing Date") the Exhibit Filing Date. After the Exhibit Filing Date, copies of exhibits can be obtained upon written request to Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801, Attn: Scott D. Cousins, Esq., counsel to the Debtors or by downloading such exhibits from the Bankruptcy Court's website at <http://www.deb.uscourts.gov> (registration required) or the Claims Agent's website, <http://dm.epiq11.com/AXN/Project/> or by calling the Claims Agent at (646) 282-2400. To the extent any exhibit is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit portion of the Plan shall control.

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ARTICLE XI:

VOTING AND CONFIRMATION OF THE PLAN

VOTING ON AND CONFIRMATION OF THE PLAN

In order to confirm the Plan, the Bankruptcy Code requires that the Bankruptcy Court make a series of determinations concerning the Plan. Specifically, the Bankruptcy Court must conclude that: (a) the Plan has classified Claims and Equity Interests in a permissible manner; (b) the Plan complies with all of the technical requirements of Chapter 11 of the Bankruptcy Code; (c) the Debtors have proposed the Plan in good faith; and (d) the Debtors' disclosures, as required by Chapter 11 of the Bankruptcy Code, have been adequate and include information concerning all payments made or promised by the Debtors in connection with the Plan. The Debtors submit that all of these conditions will have been met by the Confirmation Date.

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The Bankruptcy Code also requires that the Plan be accepted by the requisite votes of those entitled to vote on the Plan (except to the extent that "cramdown" is available under § 1129(b) of the Bankruptcy Code), that the Plan be feasible (that is, the confirmation of the Plan is not likely to be followed by the liquidation, or the need for further reorganization, of the Debtors), and that the Plan is in the "best interests" of all of the holders of Claims and Equity Interests (e.g. that that holders will receive at least as much under the Plan as they would receive in liquidation under Chapter 7 of the Bankruptcy Code). To confirm the Plan, the Court must find that all of these conditions are satisfied. Even if those entitled to vote accept the Plan by the requisite votes, the Bankruptcy Court must make independent findings as to the feasibility of the Plan and as to whether or not the Plan satisfies the "best interests" standard. Each of these statutory conditions to confirmation is discussed below.

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The Bankruptcy Code contains provisions for confirmation of a plan even if the Plan is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted it. Section 1129(b) of the Bankruptcy Code provides the standard for such a "cramdown." The Plan Proponents believe that all of the applicable requirements of Section 1129(a) of the Bankruptcy Code, other than subparagraph (8) thereof are will be found to have been met with respect to the Plan, and the Debtors may then elect to will seek confirmation pursuant to Section 1129(b) of the Bankruptcy Code, which is considered the "cramdown" Section of the Bankruptcy Code. For the purposes of seeking confirmation under the cramdown provision of the Bankruptcy Code, should that alternative means of confirmation be necessary, the Debtors reserve the right to modify the treatment given under the Plan to holders of Allowed Claims in one or more of the rejecting Classes.

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A.A. Best Interest Test

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The Net Proceeds of the Debtors' Assets will be distributed under the Plan in accordance with the priority scheme set forth in the Bankruptcy Code. Any Estate Assets not liquidated prior to confirmation of the Plan will be liquidated by the Liquidating Debtors. In addition, the Global Settlement makes funds available for Creditors from third parties which would not be available in a liquidation. The Debtors, therefore, believe that the Plan will achieve a much better distribution for all Creditors than they would otherwise receive in a Chapter 7 ~~and at a minimum, at least the same result if the case was to be converted to Chapter 7.~~ Under the Plan, however, the result can be achieved more affordably as it would not entail the duplication of ~~administration~~administrative costs which would result from the appointment of a Chapter 7 trustee and the appointment of additional professional persons who must learn the extensive facts and legal issues attendant to these proceedings. In addition, the inordinate delay attendant to the administration of assets in most Chapter 7 cases coupled with the extensive learning curve of new professionals, when compared to the current knowledge of the Debtors, the corporate history, business relationships and financial condition all weigh in favor of liquidating under the Plan. It is the position of the Debtors, therefore, that Creditors would fare much better should the liquidation be achieved in ~~Chapter~~chapter 11 under the Plan, than in a ~~Chapter~~chapter 7 proceeding.

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Finally, the Liquidation Analysis attached to the Disclosure Statement as Exhibit ~~—E.~~ reflects the Liquidation Value of the Debtors' Assets under a ~~Chapter~~chapter 7 scenario. The Liquidation Analysis presumes that the amount available for each impaired Class of Creditors is derived from the aggregate dollar amount generated from the monetization of the Estate's Assets if the Chapter 11 ~~eases~~Cases were converted to Chapter 7 and the Estate Assets were subsequently liquidated by the Chapter 7 trustee (the "**Liquidation Value**"). The Liquidation Value would consist of net Cash proceeds from the disposition of the Estates' Assets plus Cash held by the Debtor. Thereafter, the Liquidation Value would be reduced by the amount of secured claims, the costs and expenses of the ~~Chapter~~chapter 7 liquidation and the other administrative expense claims and professional fee claims of the Debtors' Estates.

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Once the percentage recovery in liquidation is determined for Secured Claims, Administrative Claims, Priority Unsecured Claims and General Unsecured Claims, the distributions available from the Liquidation Value of the Estates' Assets are compared to the value of the Property offered to each Class under the Plan. This enables the Bankruptcy Court to determine whether the Plan satisfies the best interests test applicable to Creditors. Based upon the Liquidation Analysis attached hereto as Exhibit ~~—E.~~ the Debtors believe that the Creditors are much better off in ~~Chapter~~chapter 11 receiving distributions under the Plan than they would be in a ~~Chapter~~chapter 7.

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B.B. Financial Feasibility

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The Debtors believe the Plan is feasible with respect to payments required to be made on the Effective Date insofar as there are sufficient funds and agreements in place to make distributions to Creditors entitled to same on the Effective Date. Specifically, there is ample Cash available to satisfy all matured priority tax claims under 11 U.S.C. § 507(a)(8); and make distributions on Administrative Claims held by professionals. Hence, ~~to the extent required~~, the Plan is feasible.

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C.C. Classification of Claims and Equity Interests

The Bankruptcy Code requires that a plan place each creditor's claim and each equity interest in a class with other claims and equity interests that are "substantially similar." For the rationale for the classification of Claims and Equity Interests used in the Plan, see Article ~~II~~, III, captioned "Classification and Treatment of Classified Claims and Equity Interests." The Debtors believe that the Plan meets the classification requirements of the Bankruptcy Code articulated in 11 U.S.C. § 1122.

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D.D. Voting

1. Impaired Classes and Equity Security Interests

As a condition to ~~confirmation~~Confirmation, the Bankruptcy Code requires that each ~~impaired class~~Impaired Class of ~~claims~~Claims or ~~equity interests~~Equity Interests accepts the plan. A ~~class~~Class is "Impaired" if the legal, equitable or contractual rights attaching to the ~~claims~~Claims or ~~equity interests~~Equity Interests of that ~~class~~Class are modified, other than by curing defaults and reinstating the maturity dates thereof or by payment in full. The Bankruptcy Code defines acceptance of an ~~impaired class~~Impaired Class of ~~claims~~Claims as acceptance by ~~holders~~ Holders of two-thirds in dollar amount and a majority in number of ~~claims~~Claims voting in that ~~class~~Class. For that purpose, the Bankruptcy Code counts only ballots that are timely submitted from entities that are entitled to vote on a plan. Holders of Claims who fail to vote are not counted as either accepting or rejecting the plan.

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2. Classes That Are Not Impaired

Classes of claims that are not "~~impaired~~Impaired" under a plan are deemed to have accepted the plan. There are ~~only two unimpaired~~several Unimpaired Classes under the Plan. Classes 1-6, which include ~~all the Secured Claims of the DIP Lender and the Secured Claims of Kronstadt, respectively~~, are ~~unimpaired~~Unimpaired. ~~The Unimpaired Classes will not receive ballots to vote on the Plan.~~

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3. Classes That Are Impaired.

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Impaired Classes Entitled to Vote – Classes 7 and 8 are Classes of ~~claims~~ Claims or ~~interests~~ Interests under the Plan that are deemed ~~impaired~~ Impaired because the ~~holders~~ Holders of such Claims or Interests will not be paid in full on the Effective Date. To the extent the ~~holders~~ Holders of such Claims have Allowed Claims, ~~even though impaired,~~ they are entitled to vote to accept or reject the Plan and will receive ballots.

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Impaired Classes Not Entitled to Vote – Class 9 is impaired and deemed to reject ~~the~~ Plan. Accordingly, this Class will not receive ballots. Because Class 9 is deemed to reject the Plan, the Plan Proponents will need to seek Confirmation under the “cramdown” provisions of Sec. 1129 of the Bankruptcy Code.

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E.E. Confirmation With Acceptance by All Impaired Classes

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The Bankruptcy Court requires as a condition to ~~confirmation~~ Confirmation that each ~~class~~ Class of ~~claims~~ Claims that is ~~impaired~~ Impaired under the ~~plan~~ Plan accept the ~~plan~~ Plan, with the exception described in the following section. A ~~class~~ Class of ~~claims~~ Claims has accepted the ~~plan~~ Plan if the ~~plan~~ Plan has been accepted by ~~creditors~~ Creditors that hold at least two thirds in dollar amount and more than one half in number of the allowed claims ~~or of~~ such ~~class~~ Class who actually vote to accept or reject the plan. The determination ~~or of~~ acceptance is made without regard to the votes of insiders-, as defined in the Bankruptcy Code. (For purposes of the Bankruptcy Code definition, neither Kronstadt nor Plastic Ties is an insider.)

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A ~~class~~ Class that is not “~~impaired~~ Impaired” under the ~~plan~~ Plan is deemed to have accepted the plan and therefore solicitation of acceptances with respect to such ~~class~~ Class is not required. A ~~class~~ Class is “~~impaired~~ Impaired” unless the: (1) legal, equitable and contractual rights to which the claim entitles the holder of such claim are not modified; or (2) with respect to a secured claim, the effect of any default is cured and the original terms of the obligations are reinstated. Because the Equity Interests receive nothing under the Plan, they are deemed to reject the Plan without voting. Accordingly, the Debtors will not be able to seek Confirmation with the approval of all Impaired Classes and will need to follow the cramdown provisions.

F.F. Confirmation Without Acceptance by All Impaired Classes

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The Bankruptcy Code contains provisions for ~~confirmation~~ Confirmation of a plan even if it is not accepted by all ~~impaired~~ Impaired classes, as long as at least one ~~impaired class~~ Impaired Class has accepted it. The “cramdown” provisions of the Bankruptcy Code are set forth in Section 1129(b). The Plan provides for utilization of the cram-down provisions ~~under certain circumstances.~~ See Article _____ of the Plan captioned “Provision to Invoke Cramdown.” provided the pre-condition is met.

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A plan may be confirmed under Section 1129(b) if, in addition to satisfying the usual requirements of Section 1129(a) of the Bankruptcy Code, the plan: (i) “does not discriminate

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unfairly”; and (ii) is “fair and equitable” with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan. The terms “discriminate unfairly” and “fair and equitable” are terms of art under the Bankruptcy Code and the decisional law construing it.

The requirement that a plan not “discriminate unfairly” means that a dissenting class be treated equally with other classes of equal rank. The Debtors believe that the Plan does not “discriminate unfairly” and that no Classes are afforded treatment that is disproportionate to the treatment of other Classes of equal rank.

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The “fair and equitable” standard, otherwise known as the “absolute priority rule,” requires that a dissenting class receive full compensation in respect of its allowed claims, before any junior class receives a distribution. The Debtors believe that the Plan is fair and equitable as it does not violate the absolute priority rule. Under the Plan, no junior Classes of Claims or Equity Interests are retaining such Equity Claims and Equity Interests and receiving Distributions thereon unless all senior Classes are either paid in full or have consented to such Distributions. Holders of Equity Interests are having their Interests extinguished under the Plan and are receiving no distributions, except if all prior Classes of Claims and Interests have been paid in full.

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G.G. Alternatives to the Plan

The Debtors believe that the Plan provides Creditors with the greatest possible value that could be realized on their Claims. The primary alternative to confirmation of the Plan is liquidation of the Debtors under ~~Chapter~~chapter 7 of the Bankruptcy Code, in which event the Debtors believe that a ~~Chapter~~chapter 7 trustee may not achieve the same results for Creditors as those anticipated under the Plan. because the funds from the Global Settlement might not be available to a chapter 7 trustee. Moreover, a ~~Chapter~~chapter 7 trustee would add an additional layer of administrative expense that would diminish the ultimate distribution available to ~~holders~~ Holders of all Claims, particularly General Unsecured Claims. Although a chapter 7 trustee would have standing to pursue causes of action against various parties, as well as the Lien Challenge, which could produce a recovery over time, there is no guarantee that a chapter 7 trustee will pursue any litigation; as, there are no monies to fund litigation. Furthermore, the outcome of any litigation would be uncertain. With respect to the Lien Challenge in particular, the Kronstadt Parties have vowed to mount a vigorous defense, which may well make the litigation unattractive to an underfunded chapter 7 trustee. For the foregoing reasons, the Debtors believe that the Distributions to each ~~impaired~~ Impaired Class under the Plan will be much greater than any distributions they could anticipate under a ~~Chapter~~chapter 7 liquidation, and that currently Unimpaired Classes may not remain Unimpaired in a chapter 7.

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H.H. Confirmation Hearing

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The Bankruptcy Code requires that the Bankruptcy Court hold a hearing on the ~~confirmation~~Confirmation of the Plan after notice to Creditors. This enables the Bankruptcy Court to consider whether the foregoing requirements have been met. The Confirmation Hearing has been scheduled for **May 9, 2016 at 10:00 a.m. EST**. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for the announcement of an adjourned hearing date in Bankruptcy Court at the Confirmation Hearing.

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Any objection to confirmation must be made in writing, filed with the Bankruptcy Court and served upon the following so as to be actually received on or before 4:00 p.m. EST on **May 2, 2016** by the Clerk of the Bankruptcy Court and copies must be served on:

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- (1) Scott D. Cousins, Esq.
Bayard, PA
222 Delaware Avenue, Suite 900
P.O. Box 25130
Wilmington, DE 19899
(302) 655-5000
- (2) Sandra E. Mayerson
Law Offices of Sandra Mayerson
136 E. 64th St., Suite 11E
New York, NY 10065
(917) 446-6884
- (3) Eric Monzo
———Morris James LLP
———500 Delaware Avenue, Suite 1500
Wilmington, DE 19801-1494
—————(302) 888-5848
- (4) Natalie M. Cox, Esq.
Office of the United States Trustee
844 N. King Street, #2207
Wilmington, DE 19801
(302) 573-6550

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II. Voting Instructions

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A Ballot to be used for voting to accept or reject the Plan will be enclosed with all copies of this Disclosure Statement mailed to persons entitled to vote upon approval of the Disclosure Statement. Each Creditor in Classes 7 and 8 is entitled to vote, provided that: (a) its Claim has been scheduled by the Debtors and such Claim is not scheduled as disputed, contingent or unliquidated; (b) is not the subject of an objection; (c) has been temporarily allowed for voting

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purposes pursuant to Bankruptcy Rule 3018, or (d) is based on a timely filed proof of claim, unless its Claim is the subject of an objection or request for estimation made within twenty (20) days prior to the Voting Deadline or has been disallowed for voting purposes by the Bankruptcy Court.

Completed Ballots should be returned to:

If sent by first-class mail:

Axion International, Inc. Claims Processing Center,
c/o Epiq Bankruptcy Solutions, LLC
P.O. Box [44204422](tel:44204422),
Beaverton, OR 97076-[44204422](tel:44204422)

If sent by personal delivery or overnight courier:

Axion International, Inc. [Claims](#) [Ballot](#) Processing Center,
c/o Epiq Bankruptcy Solutions, LLC
10300 SW Allen Blvd.
Beaverton, OR 97005

[More information is available at http://dm.epiq11.com/AXN](http://dm.epiq11.com/AXN). Questions or requests regarding solicitation can be emailed to: tabulation@epiqsystems.com with a reference to "Axion" in the subject line or by phone at (646) 282-2400 and ask for the Solicitation Group.

BALLOTS MUST BE RECEIVED ON OR BEFORE **4:00 P.M. ON MAY 2, 2016**. ANY BALLOTS RECEIVED AFTER THAT TIME AND DATE WILL NOT BE COUNTED. ANY BALLOT WHICH IS EXECUTED BY THE HOLDER OF AN ALLOWED CLAIM BUT WHICH DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN SHALL BE DEEMED TO BE AN ACCEPTANCE. ANY BALLOT THAT DOES NOT SPECIFY AN AMOUNT OR CLASS SHALL BE DEEMED TO BE A VOTE IN THE AMOUNT AND CLASS WHICH THE DEBTORS DEEM APPROPRIATE.

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ARTICLE XII:

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RISK FACTORS

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There are many factors which can either prevent the Plan from being Confirmed, or, if Confirmed, may prevent it from becoming Effective. Even if the Plan becomes Effective, there are numerous factors which could affect whether Creditors get the treatment disclosed herein. Some of the significant risk factors to the Plan becoming Confirmed, Effective, and providing the returns disclosed herein are set forth below. The following list is illustrative and not meant to be exhaustive.

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1. There can be no guarantee that a buyer for all of the Sale Assets will come forward and that a sale will be approved. Absent a sale, the Debtors do not have the means to implement the Plan.

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2. There can be no guarantee that the Global Settlement will be approved at the Confirmation Hearing. Absent the Global Settlement, the Debtors have no means to implement the Plans.

3. The Sources and Use of Funds set forth in Exhibit B hereto are based, in part, on estimations of the Debtors' business performances between now and the Effective Date. There can be no assurances that such performance will be as predicted.

4. As of the date of this Disclosure Statement, none of the bar dates in the case have passed. There can be no guarantee that the Debtors' estimates of Claims in each Class are correct. Any significant change in the amount of Claims could affect feasibility of the Plan, the return to General Unsecured Creditors, or both.

5. The Debtors plan to seek Confirmation under the "cramdown" provisions of the Bankruptcy Code, which require the consent of at least one Impaired Class. There can be no assurance that at least one Impaired Class will vote to accept the Plan

ARTICLE XIII.

MISCELLANEOUS DISCLOSURE DISCLOSURES

A.a. Certain Federal Income Tax Consequences

The following discussion summarizes certain United States ("U.S.") federal income tax consequences of the ~~Combined Disclosure Statement and~~ Plan to certain Holders of Claims. The analysis contained herein is based upon the Internal Revenue Code of 1986, as amended (the "Tax Code"), the Treasury regulations promulgated thereunder (the "Regulations"), judicial decisions, and published administrative rulings and pronouncements of the Internal Revenue Service ("IRS") as in effect on the date hereof. Legislative, judicial, or administrative changes or interpretations hereafter enacted or promulgated could alter or modify the analysis and conclusions set forth below. Any such changes or interpretations may be retroactive and could affect significantly the federal income tax consequences discussed below. The federal income tax consequences of the ~~Combined Disclosure Statement and~~ Plan are complex and are subject to significant uncertainties. This summary does not generally address state, local, or non-U.S. tax consequences of the ~~Combined Disclosure Statement and~~ Plan, nor does it purport to address the federal income tax consequences of the ~~Combined Disclosure Statement and~~ Plan to special classes of taxpayers (such as foreign taxpayers, broker dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, tax-exempt organizations, and investors in pass-through entities). Accordingly, the following summary of certain federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the individual circumstances pertaining to a Holder of a Claim.

THE TAX CONSEQUENCES TO HOLDERS OF CLAIMS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE COMBINED DISCLOSURE STATEMENT AND PLAN MAY BE UNCERTAIN DUE TO THE LACK OF DIRECTLY

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APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE LAW. NO RULING HAS BEEN APPLIED FOR OR OBTAINED FROM THE IRS WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE COMBINED DISCLOSURE STATEMENT AND PLAN AND NO OPINION OF COUNSEL HAS BEEN REQUESTED OR OBTAINED WITH RESPECT THERETO. THIS DISCUSSION DOES NOT CONSTITUTE TAX ADVICE OR A TAX OPINION CONCERNING THE MATTERS DESCRIBED. THERE CAN BE NO ASSURANCE THAT THE IRS WILL NOT CHALLENGE ANY OR ALL OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, FOREIGN, OR OTHER TAX CONSEQUENCES OF THE COMBINED DISCLOSURE STATEMENT AND PLAN.

To ensure compliance with Internal Revenue Service CIRCULAR 230, YOU ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A TAXPAYER UNDER THE TAX CODE; (B) ANY SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE SOLICITATION OF VOTES IN FAVOR OF THE COMBINED DISCLOSURE STATEMENT AND PLAN; AND (C) TAXPAYERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

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1. FEDERAL INCOME TAX CONSEQUENCES TO THE DEBTORS

1. Federal Income Tax Consequences to the Debtors

(a) Sale of the Debtors' Assets

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The sales of substantially all of the Debtors' Assets (each, a "Sale" and collectively, the "Sales") in the Chapter 11 Cases are a taxable transaction. Thus, the Debtors must recognize any gain or loss realized on the Sales. To determine the amount of gain or loss realized on any Sale, the total consideration (net of selling expenses) received in such Sale must be allocated among the Assets sold in accordance with their relative fair market values. The gain or loss realized with respect to each asset is then determined separately by subtracting the selling Debtors' tax basis in such asset from the amount of consideration received for such asset. To the extent that the Debtors recognize a net gain from the Sale, such gain may be offset either by (i) net operating losses ("NOLs") that accrue during the taxable year of the Sale, (ii) the Debtors' existing NOLs from prior taxable years, or (iii) capital loss carryforwards from prior years. The Debtors' ability to use certain losses (including loss carryforwards) to offset taxable gains and income may be subject to certain limitations under the consolidated return rules and section 382 of the Tax Code. Accordingly, the amount of gain or loss arising from the Sales may be subject to adjustment in subsequent years in the event contingent payments are made in connection with any Sale.

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(b)(a) Cancellation of Indebtedness and Reduction of Tax Attributes

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As a result of the consummation of the ~~Combined Disclosure Statement and~~ Plan, certain indebtedness of the Debtors will be deemed to be discharged for U.S. federal income tax purposes. Generally, gross income includes the amount of any such cancellation of indebtedness (“COD”) income. The amount of the COD income generally equals the amount by which the indebtedness discharged (reduced by any unamortized discount) exceeds any consideration given in exchange therefor, subject to certain statutory or judicial exceptions that can apply to limit the amount of COD income (such as where the payment of the cancelled debt would have given rise to a tax deduction). Because the Debtors are in a chapter 11 bankruptcy proceeding, however, the Debtors will not be required to recognize COD income. Instead, the Debtors will be required to reduce certain tax attributes to the extent of unrecognized COD income. The order and manner prescribed for the reduction of the Debtors’ tax attributes is set forth in section 108(b)(2) of the Tax Code. The tax attributes of the Debtors subject to reduction include NOLs, NOL carryforwards, capital losses and loss carryovers, certain tax credits, and, subject to certain limitations, the income tax basis of Debtors’ property (including stock of subsidiaries). Since the Sales have already occurred, and the Debtors anticipate the distribution of the proceeds or any remaining Assets to the Liquidation Trust before the end of the Debtors’ current taxable year, there will be no tax attributes to reduce, because, pursuant to section 108(b)(4) of the Tax Code, attribute reduction is made after there is a determination of the tax imposed for the year of the discharge of indebtedness.

2. FEDERAL INCOME TAXATION OF THE LIQUIDATION TRUST

2. Federal Income Tax Consequences to the Liquidation Trust

(a) Classification of the Settlement Trust

Upon the occurrence of the Effective Date, the Debtors’ Assets will be transferred to the Settlement Trust to be established pursuant to the ~~Combined Disclosure Statement and~~ Plan. The Debtors intend that (i) the Settlement Trust qualify as a “liquidating trust,” as defined in Regulation section 301.7701-4(d), and (ii) the Settlement Trust be treated as a “grantor trust” with the Liquidation Trust Beneficiaries treated as the grantors of the Settlement Trust.

The following discussion assumes that the Settlement Trust will be characterized as a grantor trust for federal income tax purposes. The Debtors do not intend to request any advance ruling from the IRS regarding the tax characterization of the Settlement Trust as a liquidating trust. Additionally, no opinion of counsel has been requested concerning the tax status of the Settlement Trust as a grantor trust. As a result, there can be no assurance that the IRS will treat the Settlement Trust as a grantor trust. If the IRS were to successfully challenge such classification, the federal income tax consequences to the Settlement Trust, the Settlement Trust Beneficiaries, and the Debtors could be materially different than is discussed herein (including the potential for an entity level tax on any income of the Settlement Trust and adverse tax effects to the Holders of Claims).

(b) General Tax Reporting by the Settlement Trust and Settlement Trust Beneficiaries

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~~The Combined Disclosure Statement and~~The Plan requires all parties (including the Debtors, the Settlement Trustee, and the Settlement Trust Beneficiaries) to treat the transfer of Assets by the Debtors to the Settlement Trust, for U.S. federal income tax purposes, as a transfer of such Assets directly to the Settlement Trust Beneficiaries, followed by the transfer of such Assets by the Settlement Trust Beneficiaries to the Settlement Trust. ~~The Combined Disclosure Statement and~~The Plan also requires the Debtors, the Settlement Trustee, and the Settlement Trust Beneficiaries to treat the Settlement Trust as a grantor trust of which the Settlement Trust Beneficiaries are the owners and grantors. As a consequence, the Settlement Trust Beneficiaries (and any subsequent transferees of beneficial interests in the Settlement Trust) will be treated for U.S. federal income tax purposes as the direct owners of a specified undivided interest in the Assets of the Settlement Trust (which Assets will have a tax basis equal to their fair market value on the date transferred to the Settlement Trust).

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The U.S. federal income tax reporting obligation of a Settlement Trust Beneficiary is not dependent upon the Settlement Trust distributing any Cash or other proceeds. ~~The Combined Disclosure Statement and~~The Plan provides that the Settlement Trust will allocate items of income, gain, loss, expense, and other tax items to the Settlement Trust Beneficiaries in accordance with their relative beneficial interest in the Settlement Trust. Therefore, a Settlement Trust Beneficiary may incur an income tax liability with respect to its allocable share of the income of the Settlement Trust whether or not the Settlement Trust has made any concurrent Distribution of Cash or other Assets to the Settlement Trust Beneficiary.

~~The Combined Disclosure Statement and~~The Plan requires the Settlement Trustee of the Liquidation Trust to file tax returns for the Settlement Trust as a “grantor trust” pursuant to Regulation section 1.671-4(a). The Settlement Trust is expected to send each Settlement Trust Beneficiary a separate statement setting forth the Settlement Trust Beneficiary’s share of items of income, gain, loss, deduction, and credit, and such Settlement Trust Beneficiary will be responsible for any reporting requirements with respect to the allocated amounts and the payment of any taxes that result from such allocations.

SETTLEMENT TRUST BENEFICIARIES ARE URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE APPROPRIATE FEDERAL INCOME TAX REPORTING OF ALLOCATIONS FROM THE SETTLEMENT TRUSTS.

3. FEDERAL INCOME TAX CONSEQUENCES TO HOLDERS OF CLAIMS

3. Federal Income Tax Consequences to Holders of Claims

(a) **In General**

The federal income tax CONSEQUENCES of the ~~Combined Disclosure Statement and~~ Plan to a Holder of a Claim will depend upon several factors, including, but not limited to: (i) whether the Holder’s Claim (or a portion thereof) constitutes a Claim for principal or interest; (ii) the origin of the Holder’s Claim; (iii) the type of consideration received by the Holder in exchange for the Claim; (iv) whether the Holder is a resident of the U.S. for tax purposes (or falls into any of the special classes of taxpayers excluded from this discussion as noted above); (v) whether the Holder reports income on an accrual or cash basis method; (vi) whether the Holder has taken a bad debt deduction or worthless security deduction with respect to the Holder’s

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Claim; and (vii) whether the Holder received Distributions under the ~~Combined Disclosure Statement and~~ Plan in more than one taxable year.

Generally, a Holder of a Claim will recognize gain or loss equal to the difference between the “amount realized” by such Holder in exchange for the Holder’s Claim and such Holder’s adjusted tax basis in the Claim. The “amount realized” is equal to the sum of the cash and the fair market value of any other consideration received under the ~~Combined Disclosure Statement and~~ Plan in respect of a Holder’s Claim, including, in the case of the Settlement Trust Beneficiaries, the fair market value of each Settlement Trust Beneficiary’s proportionate share of the Assets transferred to the Liquidation Trust on the behalf of and for the benefit of such Holder (to the extent that such cash or other property is not allocable to any portion of the Claim representing accrued but unpaid interest (see discussion below)). The tax basis of a Holder in a Claim will generally be equal to the Holder’s cost therefore. The holding period of a Settlement Trust Beneficiary in its proportionate share of the Assets held by the Settlement Trust will begin on the day following the deemed Distribution of Assets to the Holder.

The character of any recognized gain or loss (i.e., as ordinary income or as short-term or long-term capital gain or loss) will depend upon the status of the Holder, the nature of the Claim in the Holder’s hands, the purpose and circumstances of the Claim’s acquisition, the Holder’s holding period of the Claim, and the extent to which the Holder of the Claim previously claimed a deduction for the worthlessness of all or a portion of the Claim. If the Claim is a capital asset in the Holder’s hands, any gain or loss realized will generally be characterized as capital gain or loss and will constitute long-term capital gain or loss if the Holder has held such Claim for more than one year. There are limitations on the deduction of capital losses by both corporate and non-corporate taxpayers.

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HOLDERS ARE STRONGLY ADVISED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE TAX TREATMENT UNDER THE COMBINED DISCLOSURE STATEMENT AND PLAN OF THEIR PARTICULAR CLAIMS AND RECOGNITION OF GAIN OR LOSS, FOR FEDERAL INCOME TAX PURPOSES, ON THE SATISFACTION OF THEIR CLAIMS.

(b) **Allocation of Consideration to Accrued Interest**

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A portion of the consideration received by a Holder of a Claim in satisfaction of that Claim pursuant to the ~~Combined Disclosure Statement and~~ Plan may be allocated to the portion of such Claim (if any) that represents accrued but unpaid interest. If any portion of the Distribution is required to be allocated to accrued interest, such portion would be taxable to the Holder as interest income, except to the extent the Holder has previously reported such interest as income. A Holder will generally recognize a loss to the extent that any accrued interest was previously included in the Holder’s gross income and is not paid in full.

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Pursuant to the ~~Combined Disclosure Statement and~~ Plan, all Distributions in respect of any Claim will be allocated first to the principal amount of such Claim, as determined for U.S. federal income tax purposes, and then, to the extent the consideration exceeds such amount, to any portion of such Claim representing accrued but unpaid interest. However, there is no assurance that the IRS will respect such allocation for U.S. federal income tax purposes.

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In the event that a portion of the consideration received by a Holder of a Claim represents accrued but unpaid interest, only the balance of the Distribution would be considered received by the Holder in respect of the principal amount of the Claim. Such an allocation would reduce the amount of the gain, or increase the amount of loss, realized by the Holder with respect to the Claim. If any such loss were a capital loss, it would not offset any amount of the Distribution that was treated as ordinary interest income (except, in the case of individuals, to the limited extent that capital losses may be deducted against ordinary income).

To the extent that any portion of the Distribution is treated as interest, Holders may be required to provide certain tax information in order to avoid the withholding of taxes.

(c) **Market Discount**

A Holder that acquires a debt instrument at a market discount generally is required to treat any gain realized on the disposition of the instrument as ordinary income to the extent of accrued market discount not previously included in gross income by the Holder.

(d) **Information Reporting and Backup Withholding**

The Debtors and the Settlement Trustee, as well as their respective paying agents, may be obligated to furnish information to the IRS regarding the consideration paid to Holders (other than corporations and other exempt Holders of Claims) pursuant to the [Combined Disclosure Statement and Plan](#).

A Holder of an Allowed Claim may be subject to backup withholding with respect to any “reportable” payments received pursuant to the [Combined Disclosure Statement and Plan](#) unless (i) such Holder falls within certain exempt categories and, when required, demonstrates its eligibility for such exemption or (ii) provides a correct taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with the applicable requirements of the backup withholding rules. A Holder who does not provide a correct taxpayer identification number may be subject to penalties imposed by the IRS. Amounts withheld under the backup withholding rules may be credited against a Holder’s tax liability, and a Holder may obtain a refund of any excess amounts withheld under the backup holding rules by timely filing the appropriate claim for refund with the IRS.

B. Special Risk Factors

~~Certain substantial risk factors are inherent in most plans of reorganization or liquidation in Chapter 11 cases if such plans are accepted, it is usually because they represent a greater return in dividends than in a Chapter 7 liquidation scenario.~~

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ARTICLE XIII-XIV.

CONCLUSION

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For all of the reasons set forth in this Disclosure Statement, the Plan Proponents believe that Confirmation and consummation of the Plan are preferable to all other alternative restructuring options. Consequently, the Plan Proponents urge all Holders of Claims in voting classes to vote to ACCEPT the Plan, and to complete and return their ballots so that they will be RECEIVED by the Voting Agent on or before **4:00 p.m. (prevailing Eastern Time) on the Voting Deadline.**

/s/ Scott D. Cousins

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