

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

In re:)
) Chapter 11
BAXANO SURGICAL, Inc.,)
) Case No. 14-12545-CSS
Debtor. _____)

**DISCLOSURE STATEMENT IN SUPPORT OF
CHAPTER 11 PLAN OF BAXANO SURGICAL, INC.**

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Dated: April 27, 2015

Pursuant to title 11 of the United States Code, 11 U.S.C. §§ 101 *et. seq.* (the “Bankruptcy Code”), Baxano Surgical, Inc., debtor and debtor-in-possession in the above Chapter 11 Case (the “Debtor”) submits the following disclosure statement (the “Disclosure Statement”) pursuant to Section 1125(b) of the Bankruptcy Code for use in the solicitation of votes on its Chapter 11 Plan (the “Plan”). A copy of the Plan accompanies this Disclosure Statement as **Exhibit A**. All capitalized terms used herein, unless otherwise provided, have the meanings set forth in Article I of the Plan.

I. INTRODUCTION

The purpose of this Disclosure Statement is to set forth information (a) regarding the Debtor and the Chapter 11 Case, (b) concerning the Plan and alternatives to the Plan, (c) advising the holders of Claims and Interests of their rights under the Plan and (d) assisting the holders of Claims in making an informed judgment regarding whether they should vote to accept or reject the Plan.

The Debtor filed a petition for relief under Chapter 11 of the United States Bankruptcy Code on November 12, 2014 (the “Commencement Date”). By order dated _____, 2015 (the “Disclosure Statement Approval Order”), the Bankruptcy Court approved this Disclosure Statement, in accordance with Section 1125 of the Bankruptcy Code, as containing “adequate information” to enable a hypothetical, reasonable creditor or investor typical of holders of Impaired Claims against the Debtor to make an informed judgment as to whether to accept or reject the Plan.

The Disclosure Statement Approval Order sets forth in detail the deadlines, procedures and instructions for filing objections to confirmation of the Plan, voting to accept or reject the Plan, the record date for voting purposes and the applicable standards for tabulating Ballots. In addition, detailed voting instructions accompany each Ballot. Please note that the hearing to confirm the Plan will be held on _____ at _____ (EDT) before the Honorable Christopher S. Sontchi, United States Bankruptcy Judge, U.S. Bankruptcy Court for the District of Delaware located at Courtroom #6, 824 North Market St., 5th Floor, Wilmington, DE 19801.

Each holder of a Claim or Interest should read this Disclosure Statement, the Plan, the Disclosure Statement Approval Order and the instructions accompanying the Ballot in their entirety before voting on the Plan. These documents contain important information concerning the classification of Claims and Interests for voting purposes and the tabulation of votes. **APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.** No solicitation of votes may be made except pursuant to this Disclosure Statement, the Disclosure Statement Approval Order and Section 1125 of the Bankruptcy Code. In voting on the Plan, holders of Claims and Equity Interests should not rely on any information relating to the Debtor and its business, other than that contained in this Disclosure Statement, the Plan and all their respective exhibits and appendices.

The Debtor will file a plan supplement (the “Plan Supplement”) as early as practicable but in no event fewer than 5 days prior to the Balloting Deadline, or on such other date as may be

established by the Bankruptcy Court. Parties may obtain a copy of the Plan and Plan Supplement (i) from counsel for the Debtor, (ii) at www.omnimgt.com/baxanosurgical; or (iii) for a fee via PACER at <http://www.deb.uscourts.gov>.

The Plan is a liquidating plan. It provides for the vesting, on the Effective Date of the Plan, of all remaining assets of the Debtor in a Liquidation Trust, governed by a Liquidation Trust Agreement.

All of the Debtor's operating assets have been sold and the proceeds of those sales have been used to repay secured debt and pay (or escrow for future payment) Administrative Claims. The only assets remaining in the Debtor's estate are cash (approximately \$40,000 as of the date hereof), accounts receivable (estimated to have a net collectable value, as of the date hereof, of approximately \$725,000), rights to return of deposits and refund of unearned insurance premiums (estimated to have a collectable value, as of the date hereof, of approximately \$215,000), escrows (approximately \$520,000 as of the date hereof), potential Causes of Action to recover preferential transfers (estimated to have a net collectable value, as of the date hereof, of approximately \$30,000)¹, and certain other Causes of Action the value of which the Debtor is unable to estimate, including possible Causes of Action against the Debtor's current and/or former officers and directors.

Following the Effective Date, the Liquidation Trustee will liquidate the remaining accounts receivable, rights to return of deposits, refunds of unearned insurance premiums and preference claims. In addition, assuming a law firm can be identified that is willing to undertake an investigation of the viability of any Causes of Action against current and/or former directors and officers, on terms acceptable to the Liquidation Trustee, such investigation will be undertaken. And, if that investigation results in a determination by the Liquidation Trustee that viable Causes of Action exist against current and/or former directors and officers that can be pursued on a cost-effective basis, such Causes of Action will be pursued. **THERE IS NO CERTAINTY THAT ANY VIABLE CLAIMS EXIST AGAINST ANY CURRENT OR FORMER DIRECTOR OR OFFICER AND, ABSENT THE PURSUIT OF SUCH CLAIMS AND THE REALIZATION OF RECOVERIES, IT IS HIGHLY UNLIKELY THAT THERE WILL BE ANY DISTRIBUTIONS TO HOLDERS OF GENERAL UNSECURED CLAIMS.** The Liquidation Trustee, upon the liquidation or abandonment of the remaining assets vested with the Liquidation Trust and payment of all expenses incurred by the Liquidation Trustee in the administration of the Liquidation Trust, will distribute the proceeds from such liquidation to the holders of Allowed Claims in order of the priorities set forth in the Plan.

The Plan further provides for the termination of all Interests in the Debtor and the deemed dissolution of the Debtor from and after the Effective Date of the Plan.

¹ The Debtor has not done an analysis of potential recoveries on avoidance actions. The estimate used in this analysis is intended to be conservative and not as an admission by the Debtor as to the validity or non-validity of any avoidance actions which may be pursued

Below is a chart which, for each Class of Claims and Interests and for each type of unclassified Claim (a) reflects the Debtor's most recent estimates of the amount of such Claims which will ultimately be Allowed, (b) describes the treatment of the Claims under the Plan, (c) states whether the Class is impaired and entitled to vote on the Plan, and (d) reflects the Debtor's most recent estimate of the projected percentage recovery by holders of such Claims.

CLAIM	ESTIMATED TOTAL AMOUNT OF CLAIMS AS OF EFFECTIVE DATE	ENTITLED TO VOTE ON PLAN	ESTIMATED PERCENTAGE RECOVERY
Unclassified Non-Deferred Professional Administrative Claims and Other Administrative Claims	\$722,000 ²	No – Unclassified Claims are not entitled to vote on plans	100%
Priority Tax Claims	\$74,000 ³	No – Unclassified Claims are not entitled to vote on plans	100% (absent voluntary exercise of Priority Tax Compromise Election, in which case – 50%)
Unclassified Deferred Administrative Claims	\$120,000	No – Unclassified Claims are not entitled to vote on plans	0% – 100%
Class 1 – Other Priority Claims ⁴	\$140,000	Yes – Impaired so entitled to vote on Plan	100% (absent voluntary exercise of Other Priority Claim Compromise Election – in which case – 50%)

² Total includes \$617,000 of Non-Deferred Professional Administrative Claims plus \$80,000 on account of Administrative Claims of Rust Omni and plus \$25,000 of other Administrative Claims (other than the \$75,000 Administrative Claim of Hercules) anticipated to be owed on the Effective Date. Total does not include ordinary operating expenses the Debtor anticipates incurring and paying prior to the Effective Date and approximately \$324,000 on account of Administrative Claims of Houlihan anticipated to have been paid prior to the Effective Date..

³ Amounts based on Debtor's schedules, as amended, including an anticipated amendment to Schedule E to update priority Claims.

⁴ Amounts based on Debtor's schedules, as amended, including an anticipated amendment to Schedule E to update priority Claims

CLAIM	ESTIMATED TOTAL AMOUNT OF CLAIMS AS OF EFFECTIVE DATE	ENTITLED TO VOTE ON PLAN	ESTIMATED PERCENTAGE RECOVERY
Class 2 –Hercules Allowed Secured Claim	\$113,000 minus any payments from 4/25/15 to the Effective Date on account of Non-Deferred Hercules Claim + \$75,000 on account of Deferred Hercules Claim	Yes – Impaired so entitled to vote on Plan	100%
Class 3 – General Unsecured Claims	\$19,000,000 ⁵	Yes – Impaired so entitled to vote on Plan	0% – 100%
Class 6 – Equity Interests	n/a	No – Deemed to reject the Plan so not entitled to vote on Plan	0%

The statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference should be made to the Plan and to such documents for the full and complete statements of such terms and provisions.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Interests in the Debtor under the Plan and will, upon the Effective Date of the Plan, be binding upon all holders of Claims against and Interests in the Debtor and against other parties in interest. In the event of any conflict between this Disclosure Statement and the Plan, or any other operative document, the terms of the Plan and such other operative document are controlling.

⁵ Amounts based on Debtor's schedules, as amended.

For your vote on the Plan to be counted, a Ballot containing your acceptance or rejection of the Plan must be received by the Debtor's Balloting Agent, Rust Consulting Omni Bankruptcy. ("Rust Omni"), at 5955 De Soto Avenue, Suite 100, Woodland Hills,, CA, 91367, no later than the Balloting Deadline (defined below) by first class U.S. mail or delivered by messenger or overnight courier. Ballots sent by facsimile, telecopy, or e-mail will not be accepted. **The deadline for voting on the Plan (the "Balloting Deadline") is _____ p.m. (Prevailing Pacific Time) (Prevailing Pacific Time) on _____, 2015.** Ballots received after the Balloting Deadline will not be counted or otherwise considered.

THIS PLAN IS THE PRODUCT OF NEGOTIATIONS BETWEEN, AMONG OTHERS, THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF THE DEBTOR (THE "COMMITTEE"). THE COMMITTEE IS A FIDUCIARY APPOINTED BY THE OFFICE OF THE UNITED STATES TRUSTEE. THE COMMITTEE REPRESENTS THE COMMON INTERESTS OF ALL UNSECURED CREDITORS OF THE DEBTOR.

THE DEBTOR AND THE COMMITTEE STRONGLY URGE ACCEPTANCE OF THE PLAN AS BEING IN THE BEST INTERESTS OF THE DEBTOR AND ITS CREDITORS. ACCORDINGLY, THE DEBTOR AND THE COMMITTEE URGE EACH CREDITOR THAT IS IMPAIRED UNDER AND ENTITLED TO VOTE WITH RESPECT TO THE PLAN TO VOTE TO ACCEPT THE PLAN.

NO PERSON IS AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION REGARDING THIS DISCLOSURE STATEMENT OR THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS OR SCHEDULES ATTACHED HERETO. THE ACCURACY OF THE ACCOUNTING, FINANCIAL, ECONOMIC AND OTHER INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS THE EXCLUSIVE RESPONSIBILITY OF THE DEBTOR.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT AT ANY TIME AFTER THE DATE HEREOF SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN ANY CHANGE IN THE INFORMATION STATED HEREIN.

FOR THE CONVENIENCE OF CREDITORS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ALL SUMMARIES. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE AND ARE SUBJECT TO, AND ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO,, THE FULL TEXT OF THE APPLICABLE AGREEMENTS.

II. OVERVIEW OF CHAPTER 11

Chapter 11 is the principal business reorganization Chapter of the Bankruptcy Code. However, it may also be used to effectuate an orderly liquidation of a debtor's business and assets. In addition to permitting a debtor rehabilitation or liquidation, Chapter 11 promotes equality of treatment for similarly situated creditors and similarly situated equity interest holders, subject to the priority of distributions prescribed by the Bankruptcy Code.

The commencement of a Chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the bankruptcy petition date. Consummating a plan is the principal objective of a Chapter 11 case. The confirmation of a plan binds the debtor, any person acquiring property under the plan, any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code. The order issued by a bankruptcy court confirming a plan provides for the treatment of the debtor's liabilities in accordance with the terms of the confirmed plan.

Prior to soliciting acceptances of a proposed Chapter 11 plan, Section 1125 of the Bankruptcy Code requires that the plan proponent prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable creditor or investor to make an informed judgment regarding acceptance of the Chapter 11 plan. This Disclosure Statement is being submitted in accordance with the requirements of Section 1125 of the Bankruptcy Code.

III. DESCRIPTION OF THE DEBTOR, ITS BUSINESS AND EVENTS LEADING CHAPTER 11

A. Description of the Debtor, Its Business and Its Capital Structure

The Debtor was founded as a Delaware corporation in 2000 under the name "XiaMed, Inc." and later changed its name to "TranS1 Inc." in February 2003. The Debtor changed its name from TranS1 Inc. to Baxano Surgical, Inc. following a merger between Baxano, Inc. and TranS1, Inc.

Prior to the sale of substantially all of its operating assets in the Chapter 11 Case (which happened at the end of January and beginning of February, 2015), the Debtor marketed a number of products for use by surgeons in performing minimally invasive spine surgery.

The Debtor funded operations, in part, with proceeds from the sale of publicly traded securities. The Debtor has approximately 58 million outstanding common shares which were traded on the NASDAQ exchange under the symbol BAXS until shortly after the Commencement Date.

On December 3, 2013, the Debtor obtained a secured credit facility (the "Prepetition Credit Facility") from Hercules Technology Growth Capital, Inc. ("Hercules") to retire an existing credit facility and for general working capital purposes. The Prepetition Credit Facility was secured by first priority liens on substantially all the Debtor's property pursuant to the terms of a loan agreement (the "Prepetition Loan Agreement").

Pursuant to the Prepetition Loan Agreement, the Prepetition Lender agreed to fund up to \$15,000,000 to the Debtor on an incremental basis. The Debtor received its first advance of \$7,500,000 at Closing. Additional advances of \$2,500,000 and \$5,000,000, respectively, were to be made available when the Debtor reached certain financial benchmarks. The Debtor never reached those benchmarks and, as a result, neither the second nor the third advance was made.

On March 11, 2014, the Debtor entered into an agreement (the “Securities Purchase Agreement”) pursuant to which certain institutional investors agreed to purchase \$9,993,680 in unsecured subordinated convertible debentures. Closing on the Securities Purchase Agreement occurred on April 24, 2014.

On September 24, 2014, the Debtor obtained an unsecured bridge loan from one of the two institutional investors that participated in the Securities Purchase Agreement. The Debtor received \$1.38 million in aggregate principal and issued similar subordinated convertible debentures.

B. Events Leading to Chapter 11

The Debtor has experienced significant losses since its inception. As of the end of August, 2014, the Debtor had an accumulated deficit of approximately \$189 million, current assets of approximately \$10.8 million, secured debt of \$7.5 million and other debt totaling approximately \$20 million. In 2013, the Debtor suffered a loss of approximately \$32.03 million on revenues of approximately \$18.58 million. Losses from operations have resulted principally from sales and marketing costs that have historically exceeded gross profit, costs incurred in research and development programs and from general and administrative expenses, including significant costs associated with establishing and maintaining intellectual property rights.

As a result of the foregoing, in the late summer of 2014, the Debtor concluded that it was not a viable stand-alone business. On September 9, 2014, the Debtor employed Houlihan Lokey Capital, Inc. (“Houlihan”) to assist in, among other things, the Debtor’s search for a buyer or buyers. Unfortunately, by November, 2014, the Debtor still had not identified a buyer or buyers for its business and was running out of cash with which to maintain operations while sale efforts continued. And, while Hercules was willing to continue to support the Debtor with some additional loans, it was unwilling to do so outside of a bankruptcy proceeding. As a result, the Chapter 11 Case was filed on the Commencement Date.

IV. SIGNIFICANT EVENTS DURING THE BANKRUPTCY CASE

A. Appointment of Committee

On November 24, 2014, the United States Trustee filed a notice of appointment of the Committee pursuant to Section 1102(a)(1) of the Bankruptcy Code [D.I. 80]. Current members of the Committee are:

1. Sabby Healthcare Volatility Master Fund, Ltd.
2. DAFNA LifeScience LP.
3. Pacific Instruments Inc.

B. Retention of Professionals

1. Debtor's Professionals.

By orders of the Bankruptcy Court, dated December 15, 2014, the Debtor was authorized to retain Stevens & Lee, P.C ("Stevens & Lee"). ("Stevens & Lee"), as counsel to the Debtor [D.I. 153] and Houlihan as financial advisor and investment banker to the Debtor [D.I. 177]. Also by order of the Court, dated November 21, 2014, the Debtor was authorized to retain Rust Omni as Claims and Noticing Agent for the Debtor [D.I. 62].

2. Committee's Professionals.

By orders of the Bankruptcy Court, dated January 29, 2015, the Committee was authorized to retain Pillsbury Winthrop Shaw Pittman, LLP ("Pillsbury") ("Pillsbury") as counsel to the Committee [D.I. 2670], Morris Nichols Arsht, Tunnell ("Morris Nichols") ("Morris Nichols") as co-counsel to the Committee [D.I. 268], and Urbanowitz Consulting, LLC as consultant to the Committee (D.I. 270).

C. Retention of Tamarack

By order of the Bankruptcy Court dated December 12, 2014 [D.I. 146] (the "Original Tamarack Order"), the Debtor was authorized to enter into an agreement with Tamarack Associates, Inc. ("Tamarack") pursuant to which, among other things, Tamarack provided John L. Palmer ("Palmer") as Chief Restructuring Officer. By order of the Bankruptcy Court dated March 27, 2015 [D.I. 382], the Original Tamarack Order was modified to allow Palmer also to be appointed as the Chief Executive Officer of the Debtor.

D. DIP Financing and Use of Cash Collateral

By order of the Bankruptcy Court dated November 18, 2014 [D.I. 33] (the "First Interim DIP/Cash Collateral Order"), the Debtor was authorized to obtain debtor-in-possession financing and use cash collateral on an interim basis. By order of the Bankruptcy Court dated December 12, 2014 [D.I. 144] (the "Second Interim DIP/Cash Collateral Order"), the Debtor was authorized to continue to obtain debtor-in-possession financing and continue to use cash

collateral on an interim basis. By order of the Bankruptcy Court dated December 22, 2014 [D.I. 176] (the “Final DIP/Cash Collateral Order”), the Debtor was authorized to obtain debtor-in-possession financing and use cash collateral on a final basis through February 1, 2105. The Final DIP/Cash Collateral Order has been modified on three occasions, most recently by an order (the “March Cash Collateral Modification Order”) dated March 30, 2015 [D.I. 384]. Pursuant to the March Cash Collateral Modification Order, (a) the Debtor no longer is authorized to obtain debtor-in-possession financing (because none is needed), and (b) the Debtor is authorized to use cash collateral through May 31, 2015.

E. Sale of Operating Assets

On November 19, 2014, the Debtor filed a motion (the “Sale Procedures Motion”) [D.I. 43] pursuant to which, among other things, the Debtor requested authorization to sell substantially all of its assets pursuant to sale procedures described in the motion. The assets offered for sale by the Debtor consisted of four primary product lines, (a) the iO product line, (b) the AxiaLIF product line, (c) the VEO product line, and (d) the Avance product line. On December 12, 2014, the Bankruptcy Court entered an order (the “Sale Procedures Order”) [D.I. 147] granting the Sale Procedures Motion.

On January 29, 2015, the Bankruptcy Court entered orders pursuant to which the following sales were approved: (a) the iO product line and some ancillary assets to Exworks Capital Fund I, L.P. [D.I. 271], (b) the AxiaLIF product line to Quandary Medical, LLC [D.I. 274], (c) the VEO product line to Choice Spine, LP [D.I. 272] and (d) the Avance product line to City Surgical, LLC, [D.I. 273]. The gross sale proceeds realized by the Debtor from the four sales were \$7,760,000. The sale proceeds were distributed as follows: (x) \$6,991,189 (the “Hercules Sale Proceeds Paydown”) to Hercules on account of Hercules’ Claims under the Prepetition Loan Agreement (the “Hercules Prepetition Claims”), and (y) the balance to pay and establish escrows for certain accrued Administrative Claims, including \$310,400 for a transaction fee and \$50,000 for reimbursable expenses which, subject to allowance by the Bankruptcy Court, it was anticipated would be owed to Houlihan.⁶

F. Establishment of Proof of Claims Bar Dates

On March 24, 2015, the Court entered an order (the “General Bar Date Order”) [D.I. 361] pursuant to which, among other things, May 18, 2015 at 4:00 p.m. (Eastern Time) (the “General Bar Date”) was established as the deadline for filing proofs of claim by all parties in interest, including holders of government claims, asserting General Unsecured Claims, Priority Claims and Administrative Claims arising under Section 503(b)(9) of the Bankruptcy Code (the “503(b)(9) Administrative Claims”). The General Bar Date does not apply to any Administrative Claims other than the 503(b)(9) Administrative Claims.

⁶ Due to a mathematical error, the actual amount of the Houlihan transaction fee, subject to approval of the Bankruptcy Court, will be \$311,400 rather than the \$310,400 that was escrowed. In addition, the total expenses for which Houlihan has sought approval is \$12,465.45. As a result, the escrow includes \$36,534.55 in excess of the funds that will be needed to pay Houlihan in full, assuming allowance of its claims in the amounts requested.

On April 7, 2015, the Debtor filed a motion (the “Administrative Claims Bar Date Motion”) [D.I. 407] pursuant to which, among other things, the Debtor requested entry of an order establishing May 21, 2015 as the bar date for Filing of Administrative Claims which accrued on or before April 6, 2015 (other than 503(b)(9) Claims, as to which the General Bar Date applies). As of the date of this Disclosure Statement, the Administrative Claims Bar Date Motion remains pending and is scheduled for a hearing on April 28, 2015.

Because (a) the General Bar Date has not yet passed, (b) the Administrative Claims Bar Date Motion has not yet been granted, and (c) the Debtor has not yet Filed and prosecuted objections to Claims, it is possible that Claims in excess of those currently anticipated by the Debtor may ultimately be Allowed. If that were to occur, it could impact the ability of the Debtor to make the Distributions described herein.

G. Committee Challenge to Hercules Secured Claim and Global Settlement Stipulation

Pursuant to the Final DIP/Cash Collateral Order, among other things, the Committee was granted the right to challenge the amount of the Hercules Prepetition Claims. On January 23, 2015, the Committee filed a complaint against Hercules (the “Original Committee Complaint”) [D.I. 237]. On February 12, 2015, the Committee filed a second complaint (the “Amended Committee Complaint”) [D.I.43, Adv. Pro. No. 15-50089]. In the Amended Committee Complaint, among other things, the Committee asserted that approximately \$750,000 of the Hercules Prepetition Claims should be disallowed. Hercules disputed all of the allegations in the Original Committee Complaint and the Amended Committee Complaint.

On March 26, 2015, the Committee, Hercules and the Debtor entered into a stipulation (the “Global Settlement Stipulation”) pursuant to which, subject to approval by the Bankruptcy Court, the parties agreed, among other things, to (a) allow the remaining amount of the Hercules Prepetition Claims in the amount of \$575,000 (the “Hercules Allowed Secured Claim”), which represents a reduction in the amount Hercules Prepetition Claims remaining after application of the Hercules Sale Proceeds Paydown, of about \$200,000, (b) bifurcate the Hercules Allowed Secured Claim into the \$500,000 Non-Deferred Hercules Claim and the \$75,000 Deferred Hercules Claim, (c) a formula for payment of the Non-Deferred Hercules Claim on a weekly basis from cash on hand, with the entire balance of the Non-Deferred Hercules Claim due on or before the Effective Date of this Plan, (d) the deferral of the Deferred Hercules Claim and the treatment of the Deferred Hercules Claim on a *pari passu* and pro-rata basis with the Deferred Professional Administrative Claims, and (e) a termsheet outlining the primary terms of a plan of liquidation for the Debtor which Hercules agreed to support (the “Agreed Plan”).

On March 26, 2015, the Debtor, the Committee and Hercules Filed a joint motion (the “Global Settlement Approval Motion”) [D.I. 374] pursuant to which they sought approval of the Global Settlement Stipulation. On April 14, 2015, the Bankruptcy Court entered an order (the “Global Settlement Approval Order”) [D.I. 419] granting the Global Settlement Approval Motion. As a result, this Plan will be supported by Hercules.

V. SUMMARY OF MAJOR TERMS OF PLAN

This Section summarizes the major terms of the Plan. The Plan is attached to this Disclosure Statement. Parties are encouraged to review the Plan in its entirety for a full understanding of its provision and impact on Claims and Interests.

A. Effective Date

The Plan will become effective on the first Business Day which is after the following conditions have been satisfied or waived by the Debtor:

- a. The Confirmation Order has been entered and become a Final Order;
- b. No request for revocation of the Confirmation Order under Section 1144 of the Bankruptcy Court shall be pending; and
- c. The Liquidation Trust Agreement shall have been executed.

B. Treatment of Unclassified Allowed Administrative Claims and Priority Tax Claims

1. Professional Administrative Claims.

The Debtor estimates that, as of the Effective Date, Professional Administrative Claims will total approximately \$837,000. However, as described in the Global Settlement Stipulation, in order to facilitate the ability to confirm this Plan, Stevens & Lee, counsel to the Debtor, has agreed to defer all of its Professional Administrative Claims in excess of \$694,767.09 and Pillsbury and Morris, Nichols co-counsel the Committee, have agreed to defer all of their Professional Administrative Claims in excess of \$414,161.70, in the aggregate, (collectively with the Professional Administrative Claims deferred by Stevens & Lee, the “Deferred Professional Administrative Claims”).

Each Allowed Professional Administrative Claim, other than the Deferred Professional Administrative Claims (the “Non-Deferred Administrative Claims”), shall be paid by the Liquidation Trustee from the Liquidation Trust Assets within ten (10) days after the entry of a Final Order approving such Professional Administrative Claims, or at such later time as may be agreed by the holder of each such Claim.

The Debtor estimates that, as of the Effective Date, the Allowed Non-Deferred Professional Administrative Claims will total approximately \$617,000.

The Deferred Professional Administrative Claims shall be paid by the Liquidation Trustee as follows:

- In the event the Liquidation Trustee elects not to pursue any Causes of Action (other than Causes of Action relating to collection of accounts receivable, return of unearned insurance premiums and/or return of deposits), as soon as practicable following such determination, the Deferred Professional Administrative Expenses shall be paid, *pari passu* and pro-rata, with each other and with the Deferred

Hercules Claim from Liquidation Trust Assets remaining after payment of all Trust Expenses and any remaining Allowed Priority Tax Claims and Allowed Other Priority Claims until an amount equal to the Deferred Professional Administrative Claims shall have been distributed to the holders thereof.

- In the event the Liquidation Trustee elects to pursue any Causes of Action (in addition to any Causes of Action relating to collection of accounts receivable, return of unearned insurance premiums and/or return of deposits), as soon as practicable after resolution of all such Causes of Action:
 - all Liquidation Trust Assets other than Recovery Funds, defined below, (the “Non-Recovery Funds”) remaining after payment of all Trust Expenses and any remaining Allowed Priority Tax Claims and Allowed Other Priority Claims (with such Trust Expenses and any remaining Allowed Priority Tax Claims and Allowed Other Priority Claims to be paid first from Recovery Funds) shall be distributed to holders of Deferred Professional Administrative Claims *pari passu* and pro-rata with Distributions to Hercules on account of the Deferred Hercules Claim until an amount equal to the Deferred Professional Administrative Claims and the Deferred Hercules Claim shall have been distributed to the holders thereof, and;
 - to the extent the Non-Recovery Funds are insufficient to pay the Deferred Professional Administrative Claims in full, fifty percent (50%) of all Liquidation Trust Assets generated by Causes of Action (other than Causes of Action relating to collection of accounts receivable, return of unearned insurance premiums and/or the return of deposits) (the “Recovery Funds”) and remaining after payment of all Trust Expenses and any remaining Allowed Priority Tax Claims and Allowed Other Priority Claims and after payment or reservation of a total of \$1,000,000 (including any amounts distributed to holders of Allowed General Unsecured Claims from the Non-Recovery Funds) on account of Distributions to holders of Allowed General Unsecured Claims shall be distributed to holders of Deferred Professional Administrative Claims *pari passu* and pro-rata with Distributions to Hercules on account of the Deferred Allowed Hercules Claim.
 - The foregoing notwithstanding, the Liquidation Trustee shall have the power to reserve up to \$50,000 in proceeds of Causes of Action unrelated to D&O Causes of Action to fund pursuit of D&O Causes of Action.

The Debtor estimates that the Deferred Professional Administrative Claims will total approximately \$120,000.

2. U.S. Trustee Fees.

The United States Trustee’s quarterly fees owed by the Debtor as of the Effective Date shall be paid in full on the Effective Date or as soon as practicable thereafter. All fees payable pursuant to 28 U.S.C. § 1930 arising after the Effective Date will be paid by the Liquidation

Trustee until entry of the Final Decree. Following the Effective Date, the Liquidation Trustee will File quarterly reports in form acceptable to the Office of the United State Trustee, in the exercise of its reasonable discretion.

The Debtor estimates that the United State Trustee fees accrued through the Effective Date will total approximately \$15,000.

3. Other Administrative Claims.

Each holder of an Allowed Administrative Claim (other than for Professional Administrative Claims and United States Trustee Fees) (the “Other Administrative Claims”) will be paid in full, in Cash, on the latest of (i) the due date, (ii) if such Administrative Claim is disputed by the Liquidation Trustee and is not an Allowed Claim, thirty (30) days after entry of a Final Order of the Bankruptcy Court Allowing such Administrative Claim or, if such Administrative Claim is not disputed by the Liquidation Trustee and is an Allowed Claim, thirty (30) days after the Effective Date, and (iii) the date agreed to by the holder of such Administrative Claim.

The Debtor estimates that Allowed Other Administrative Claims as of the Effective Date will total approximately \$105,000.

4. Priority Tax Claims.

Each holder of an Allowed Priority Tax Claim who does not make the Priority Tax Compromise Election shall receive from the Liquidating Trust Assets deferred payments of Cash, in the full amount of such Allowed Priority Tax Claim, payable in equal, annual principal installments beginning on the first anniversary of the Effective Date and ending on the earlier of the fifth anniversary of the Effective Date and the fifth Anniversary of the date of the assessment of such Allowed Priority Tax Claim, together with interest (payable quarterly in arrears) on the unpaid balance of such Allowed Priority Tax Claim, at an annual rate equal to 3.25%, which is the prime rate as reported in the Wall Street Journal as of April 15, 2015. At the option of the Liquidation Trustee, any Allowed Priority Tax Claim may be paid earlier than the dates stated above, but not, absent the consent of the holder, earlier than payment in full of each Non-Deferred Professional Administrative Claim and the Non-Deferred Hercules Claim.

Each holder of an Allowed Priority Tax Claim who makes the Priority Tax Compromise Election shall receive as soon as reasonably practicable after the later of the Effective Date and the date of such election (but not, absent the consent of the holder, earlier than payment in full of each Non-Deferred Professional Administrative Claims and the Non-Deferred Hercules Claim) Cash in an amount equal to 50% of such Allowed Priority Tax Claim in full settlement of such Allowed Priority Tax Claim.

The Debtor estimates that Allowed Priority Tax Claims will total approximately \$47,000.

C. Treatment of Classified Claims

Under the Plan, Claims against and Interests in the Debtor are divided into different Classes as described below. If the Plan is confirmed by the Court, on the Effective Date and on certain times thereafter as Claims are resolved, liquidated or otherwise Allowed, the Liquidation Trustee will make distributions in respect of the Classes of Claims as provided for in the Plan and as set forth below.

1. Class 1: Other Priority Claims.

(i) *Classification:* Class 1 consists of Allowed Other Priority Claims.

(ii) *Description:* Other Priority Claims are Claims entitled to priority under Section 507(a) of the Bankruptcy Code, other than Administrative Claims and Priority Tax Claims. They include priority employee wage and benefit Claims.

The Debtor estimates that Allowed Other Priority Claims will total approximately \$105,000.

(iii) *Treatment:* Each holder of an Allowed Other Priority Claim who does not make the Other Priority Claim Compromise Election shall receive from the Liquidating Trust Assets deferred payments of Cash, in the full amount of such Allowed Other Priority Claim, payable in equal, annual principal installments beginning on the first anniversary of the Effective Date and ending on the earlier of the sixth anniversary of the Effective Date and the sixth Anniversary of the date of the assessment of such Allowed Priority Tax Claim, together with interest (payable annually in arrears with each principal payment) on the unpaid balance of such Allowed Other Priority Claim, at an annual rate equal to 3.25%, which is the prime rate as reported in the Wall Street Journal as of April 15, 2015. At the option of the Liquidation Trustee, any Allowed Other Priority Claim may be paid earlier than the dates stated above but not, absent the consent of the holder, earlier than payment in full of each Non-Deferred Professional Administrative Claim and the Non-Deferred Hercules Claim.

Each holder of an Allowed Other Priority Claim who makes the Other Priority Claim Compromise Election shall receive as soon as reasonably practicable after the later of the Effective Date and the date such Claim becomes an Allowed Claim (but not, absent the consent of the holder, earlier than payment in full of each Non-Deferred Professional Administrative Claim and the Non-Deferred Hercules Claim) Cash in an amount equal to 50% of such Allowed Other Priority Claim in full settlement of such Allowed Other Priority Claim.

(iv) *Voting:* **The Claims in this Class are Impaired and thus the holders of Claims in this Class will be entitled to vote to accept or reject the Plan.**

2. Class 2: Hercules Allowed Secured Claim.

(i) *Classification:* Class 2 consists of the Hercules Allowed Secured Claim.

(ii) *Description*: Pursuant to the Global Settlement Approval Order, the Hercules Allowed Secured Claim is \$575,000, of which \$500,000 is the Non-Deferred Hercules Claim and \$75,000 is the Deferred Hercules Claim.

As of the Effective Date, the Deferred Hercules Claim will be \$75,000. Further, the Debtor believes that, before the Effective Date the Non-Deferred Hercules Claim will have been paid in full and, as a result, on the Effective Date the Non-Deferred Hercules Claim will total \$0.

(iii) *Treatment*: The Non-Deferred Hercules Claim shall be paid in full, in Cash from the Liquidating Trust Assets on the Effective Date. The Deferred Hercules Claim shall be paid by the Liquidation Trustee *pari passu* and pro-rata with payment of the Deferred Professional Administrative Claims. On the Effective Date, Hercules shall be deemed to have waived any and all Liens securing the Deferred Hercules Claim and, in return, the Deferred Hercules Claim shall be deemed to be an Allowed Administrative Claim.

(iv) *Voting*: **The Class 2 Hercules Allowed Secured Claim is Impaired and thus Hercules will be entitled to vote the Hercules Allowed Secured Claim to accept or reject the Plan.**

3. Class 3: General Unsecured Claims.

(i) *Classification*: Class 3 consists of General Unsecured Claims.

(ii) *Description*: Class 3 General Unsecured Claims are Claims against the Debtor that are not Administrative Claims, Priority Tax Claims or Other Priority Claims.

The Debtor estimates that Allowed General Unsecured Claims will total approximately \$19,000,000.

(iii) *Treatment*: In the event the Liquidation Trustee elects not to pursue any Causes of Action (other than Causes of Action relating to collection of accounts receivable, return of unearned insurance premiums and/or return of deposits), no Distributions shall be made on account of General Unsecured Claims.

In the event the Liquidation Trustee elects to pursue any Causes of Action (in addition to any Causes of Action relating to collection of accounts receivable, return of unearned insurance premiums and/or return of deposits), as soon as practicable after resolution of all such Causes of Action each holder of an Allowed General Unsecured Claim shall receive its pro-rata portion (taking into account any Disputed Claims Reserves) of (a) the first \$1,000,000 of Recovery Funds remaining after payment of all Trust Expenses and any remaining Allowed Priority Tax Claims and Allowed Other Priority Claims, (b) fifty percent (50%) of any such Recovery Funds in excess of the said \$1,000,000 until the Deferred Hercules Claim and all Deferred Professional Administrative Claims are paid in full, (c) one hundred percent (100%) of all such Recovery Funds in excess of the said \$1,000,000 after all Deferred Professional Administrative Claims and the Deferred Hercules Claim are paid in full, and (d) one hundred percent (100%) of all other Liquidation Trust Assets.

Notwithstanding anything else in the Plan or the Liquidation Trust Agreement, (a) if the Liquidation Trustee elects not to pursue any Causes of Action (other than Causes of Action related to collection of accounts receivable, return of unearned insurance premiums and/or return of deposits), or (b) if the Liquidation Trustee determines that it is likely that the Liquidation Trust Assets that will be available for Distribution will be insufficient to generate a recovery of at least one percent (1%) to holders of Allowed General Unsecured (taking into account, among other things, the anticipated cost of resolving objections to General Unsecured Claims and effecting such Distributions), the Liquidation Trustee may elect to Distribute all available Liquidation Trust Assets, after payment of all Trust Expenses and any remaining Allowed Priority Tax Claims and Allowed Other Priority Claims and reservation of reasonable amounts for anticipated future Trust Expenses; (x) first, *pari passu* and pro-rata, to Hercules, Stevens & Lee, Pillsbury and Morris Nichols on account of the Deferred Hercules Claim and the Deferred Professional Administrative Claims, respectively, until an amount equal to the Deferred Hercules Claim shall have been distributed to Hercules and the Deferred Professional Administrative Claims shall have been distributed to Stevens & Lee, Pillsbury and Morris Nichols, and (y) second, any remainder to a non-profit 503(c) organization providing bankruptcy related services to consumer debtors selected by the Liquidation Trustee.

(iv) *Voting*: The Claims in this Class are Impaired and thus holders of Claims in this Class will be entitled to vote to accept or reject the Plan.

4. Class 4: Interests.

(i) *Classification*: Class 4 consists of the Interests in the Debtor.

(ii) *Treatment*: The holders of Interests will not receive any Distributions or other consideration on account of such Interests. On the Effective Date, all Interests shall be cancelled, extinguished, and of no further force and effect.

(iii) *Voting*: **The holders of Allowed Interests are deemed to have rejected the Plan and, therefore, the holders of Interests are not entitled to vote to accept or reject the Plan.**

VI. SELECTED DETAILS REGARDING IMPLEMENTATION OF PLAN

A. Liquidation Trust

1. Appointment of Liquidation Trustee. The Liquidation Trustee shall be selected by the Committee and identified by the Debtor in the Plan Supplement. Subject to reaching agreement on compensation, the Committee has selected John L. Palmer, the Debtor's current CRO and CEO, to serve as Liquidation Trustee. The Liquidation Trustee shall have the powers, duties, and obligations set forth in this Plan and in the Liquidation Trust Agreement. After the Effective Date, all actions required of and/or otherwise specified herein to be performed by the Debtor shall be performed by the Liquidation Trustee, or its designee, in the name of, and on behalf of, the Debtor. As the Liquidation Trustee has not yet been identified, the Debtor does not yet know how the Liquidation Trustee will be compensated. The compensation to be provided to the Liquidation Trustee will be disclosed in the Plan Supplement.

2. Vesting of Debtor's Assets in the Liquidation Trust. On the Effective Date, subject only to the terms of the Plan, all Assets of the Debtor, wherever situated, shall vest in the Liquidation Trust, free and clear of all Liens, Claims, encumbrances and Interests except as otherwise provided in the Plan.

3. Duties and Responsibilities of Liquidation Trustee. On the Effective Date, the Liquidation Trustee shall assume all of the duties and obligations previously undertaken by the Debtor's board of directors and officers that arise after the Effective Date and is empowered and authorized to satisfy such responsibilities, duties and obligations without any further corporate authority as may have been required prior to the Effective Date. These duties, responsibilities and obligations include, but are not limited to, the following:

a. Receipt, management, investment, supervision, and protection of the Liquidation Trust Assets, subject to the limitations provided in the Liquidation Trust Agreement.

b. Holding of legal title to any and all Liquidation Trust Assets.

c. Subject to the applicable provisions of the Plan and this Agreement, collection and liquidation of all Liquidation Trust Assets.

d. Review, and where appropriate, objection to claims, and supervision and administration of the commencement, prosecution, settlement, compromise, withdrawal, or resolution of all Disputed Claims and the Distributions to the Beneficiaries and creditors of the Liquidation Trust, in any manner permitted by the Liquidation Trust Agreement, the Plan, and the Confirmation Order or as approved by the Bankruptcy Court.

e. Commencement, prosecution, compromise, settlement, withdrawal, abandonment or resolution of all Causes of Action in any manner permitted by the Liquidation Trust Agreement, the Plan, and the Confirmation Order or as approved by the Bankruptcy Court.

f. Payment of all lawful expenses, debts, charges, taxes, and liabilities of the Liquidation Trust.

g. Making of Distributions to the Beneficiaries, and to creditors of the Liquidation Trust as provided for, or contemplated by, the Plan, the Confirmation Order or the Liquidation Trust Agreement.

h. Employment and compensation of attorneys, accountants, appraisers, or other parties necessary to assist in the proper administration of the Liquidation Trust, including attorneys, accountants, appraisers, or other parties previously employed by the Debtor, without the necessity of approval of the Bankruptcy Court.

i. Performance of all administrative functions in the Chapter 11 Case, including the ultimate closing of the Chapter 11 Case.

4. Consultation Rights of Holders of Deferred Professional Administrative Claims and Deferred Hercules Claim. Until the Deferred Hercules Claim and the Deferred Professional Administrative Claims are paid in full, the Liquidation Trustee, upon reasonable request by any holder of such Claims, shall consult with such holder and respond to its reasonable inquiries and requests for information concerning all non-privileged matters relating to the Liquidation Trust and the implementation of the Plan, including but not limited to the status of litigation, the reasonableness of the fees and expenses incurred by the Trust and the Liquidation Trustee and information relating to income expenses and balances on hand in the Liquidation Trust.

B. Nonconsensual Confirmation

If any impaired Class of Claims entitled to vote does not accept the Plan by the requisite statutory majority provided in Section 1126(c) of the Bankruptcy Code, the Debtor reserves the right to amend the Plan or undertake to have the Court confirm the Plan under Section 1129(b) of the Bankruptcy Code or both. With respect to any Impaired Classes of Claims that are deemed to reject the Plan, the Debtor shall request confirmation of the Plan under Section 1129(b) of the Bankruptcy Code.

C. Injunctions

To the fullest extent provided in Section 1141 of the Bankruptcy Code, as of the Effective Date, all Entities that have held, currently hold or may hold a Claim or other debt or liability or Interest that is addressed in the Plan are permanently enjoined from taking any action on account of such Claims, debts, liabilities or Interest, other than actions brought to enforce any rights or obligations under the Plan.

D. Releases

Claim Holders' Release of Claims Against Officers, Directors and Professionals of the Debtor. As of the Effective Date, each holder of a Claim who votes in favor of the Plan and does not elect to opt out of the releases contained in Section 11.2 of the Plan by making such election on its Ballot, shall be deemed to have released all direct and derivative claims in connection with or related to any action or omission taking place after the Commencement Date and prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case or the Plan against the Debtor's present and former directors, officers, employees, agents, financial advisors, attorneys and Professionals (including Tamarack and Palmer); provided, however, the foregoing shall not

waive or release any causes of action arising out of (i) any contractual obligations owing by any such party or (ii) the willful misconduct, gross negligence, intentional fraud or criminal conduct of any such party.

Claim Holders' Release of Claims Against Committee. As of the Effective Date, each holder of a Claim who votes in favor of the Plan and does not elect to opt out of the releases contained in Section 11.2 of the Plan by making such election on its timely-submitted Ballot, shall be deemed to have released all direct and derivative claims in connection with or related to any action or omission taking place after the Commencement Date and prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case or the Plan against the Committee and its members and any of their respective employees, agents, financial advisors, attorneys and Professionals; provided, however, the foregoing shall not waive or release any causes of action arising out of (i) any contractual obligations owing by any such party or (ii) the willful misconduct, gross negligence, intentional fraud or criminal conduct of any such party.

Claim Holders' Release of Claims Against Hercules. As of the Effective Date, each holder of a Claim who votes in favor of the Plan and does not elect to opt out of the releases contained in Section 11.2 of the Plan by making such election on its timely-submitted Ballot, shall be deemed to have released all direct and derivative claims in connection with or related to any action or omission taking place after the Commencement Date and prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case or the Plan against Hercules and its members and any of their respective employees, agents, financial advisors, attorneys and Professionals; provided, however, the foregoing shall not waive or release any causes of action arising out of (i) any contractual obligations owing by any such party or (ii) the willful misconduct, gross negligence, intentional fraud or criminal conduct of any such party.

E. Exculpation

To the fullest extent provided by applicable law, neither the Debtor, Committee, nor any of their respective members, officers, directors, employees, advisors, agents or Professionals (including Tamarack and Palmer) shall have or incur any liability to any holder of a Claim for any action or omission in connection with, related to, or arising out of, the Chapter 11 Case, the preparation or formulation of the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan, except for willful misconduct or gross negligence; provided, however, that nothing in the Plan shall, or shall be deemed to, release or exculpate such parties with respect to their obligations or covenants arising pursuant to the Plan.

F. Reserved

G. No Discharge

Because the Plan is a liquidating plan, under 11 U.S.C. Section 1141(d)(3), the Plan does not provide for a discharge of indebtedness.

H. Potential Causes of Action

The Debtor has identified the following potential Causes of Action under the Code and applicable non-bankruptcy law:

- (i) Causes of Action against entities that received preferential transfers or fraudulent transfers under Section 547 or 548 of the Code;
- (ii) Causes of Action to recover accounts receivable owed to the Debtor;
- (iii) Causes of Action to recover deposits maintained by the Debtor;
- (iv) Causes of Action to recover unearned insurance premiums;
- (v) Causes of Action against current and/or former directors and officers of the Debtor; and
- (vi) Causes of Action under the D&O Policy, including any Causes of Action against the insurer under the D&O Policy related to coverage under the D&O Policy (the “D&O Causes of Action”).

The Debtor may supplement this list of potential Causes of Action up through the Effective Date of the Plan.

VII. LIQUIDATION ANALYSIS

Exhibit B contains a liquidation analysis (the “Liquidation Analysis”) reflecting the Debtor’s estimate of the realizable value of its assets and the amount of its obligations in the event this Chapter 11 Case were converted to chapter 7. As reflected in the Liquidation Analysis, in a chapter 7, absent recoveries on account of D&O Causes of Action, no amounts would be available for distribution to holders of Claims other than the Hercules Allowed Secured Claim and Administrative Claims.

VIII. VOTING ON THE PLAN

A. Voting Procedures

Only Classes of Claims or Interests that are Impaired under the Plan and are not deemed to have rejected the Plan are entitled to vote to accept or reject the Plan. The only Classes of Claims or Interests that are Impaired under the Plan and are not deemed to have rejected the Plan are Class 1 (the Other Priority Claims), Class 2 (the Hercules Allowed Secured Claim) and Class 3 (the General Unsecured Claims). Accordingly, only holders of Allowed Claims in Classes 1, 2 and 3 are entitled to vote to accept or reject the Plan.

Because the Hercules Allowed Secured Claim has been Allowed by the Global Settlement Approval Order, Hercules is entitled to vote its Class 2 Claim in the amount of \$75,000 plus any balance remaining on the Non-Deferred Hercules Claim as of the Record Date.

Except for Claims expressly Allowed by order of the Bankruptcy Court, Class 1 and Class 3 votes on the Plan will be counted only with respect to Claims: (a) that are listed on the Debtor's Schedules of Assets and Liabilities, as amended, other than as disputed, contingent or unliquidated; or (b) for which a Proof of Claim was filed on or before the General Claims Bar Date. However, any vote by a holder of a Claim will not be counted if such Claim has been disallowed or is the subject of an unresolved objection, absent an order of the Bankruptcy Court allowing such Claim for voting purposes pursuant to 11 U.S.C. § 502 and Bankruptcy Rule 3018.

Voting on the Plan by each holder of a Claim in an Impaired Class is important. After carefully reviewing the Plan and Disclosure Statement, each holder of such a Claim should vote on the enclosed Ballot either to accept or to reject the Plan, and then return the Ballot by mail to the Debtor's Balloting Agent by the Balloting Deadline.

Any Ballot that does not appropriately indicate acceptance or rejection of the Plan will not be counted.

A Ballot that is not received by the Balloting Deadline will not be counted.

If a Ballot is damaged, lost, or missing, a replacement Ballot may be obtained by sending a written request to the Debtor's attorney.

B. Acceptance

The Bankruptcy Code defines acceptance of a plan by an impaired class of claims as acceptance by the holders of at least two-thirds in dollar amount, and more than one-half in number, of the claims of that class which actually cast ballots.

IX. CRAM-DOWN

If any Class of Impaired Claims or Impaired Interests does not accept the Plan but: (a) at least one Impaired Class of Claims accepts the Plan, and (b) the Plan complies with all of the plan confirmation requirements of Section 1129(a) of the Bankruptcy Code other than the requirement that all Impaired Classes of Claims and Interests have accepted the Plan, the Plan may nevertheless be confirmed and be binding upon the non-accepting Impaired Classes through the "cram-down" provisions of the Bankruptcy Code, but only if the Plan does not "discriminate unfairly" and is otherwise "fair and equitable" to the non-accepting Impaired Classes.

Because Hercules has agreed to vote its Class 2 Claims to accept the Plan, it is not necessary to discuss whether the Plan would satisfy the cram-down requirements as they relate to Class 2.

The Plan cannot be crammed-down on Class 1, the Other Priority Claims. Such is the case because Section 1129(a)(9)(B)(ii) provides, in relevant part, that if a class of claims entitled to priority under Sections 507(a)(1), (a)(4), (a)(5), (a)(6) or (a)(7) does not accept a plan, then holders of such claims must receive cash on the effective date of the plan equal to the allowed amounts of such claims. Class 1 of the Plan includes Allowed Claims entitled to priority under the foregoing Sections of the Bankruptcy Code (defined herein as the Other Priority Claims). Unfortunately, the Debtor does not project that it will have enough Cash on hand as of the

Effective Date of the Plan to pay all Other Priority Claims in Cash in full on the Effective Date. As a result, in the event Class 1 rejects the Plan, absent changes in projections and/or concessions from holders of Allowed Administrative Claims and an amendment to the Plan, the Debtor will not be able to confirm the Plan if Class 1 rejects. And, in that case, conversion to Chapter 7 is likely.

It is important to note that the Debtor believes that holders of Other Priority Claims will receive a greater Distribution under the Plan than would be realized if this Chapter 11 Case were converted to Chapter 7. Such is the case because, among other reasons discussed in the Best Interests Test Section of this Disclosure Statement, below, (a) in a Chapter 7 the Other Priority Claims would be junior in priority to the Deferred Professional Administrative Claims and the Deferred Hercules Claim (estimated to total approximately \$195,000), while, (b) under the Plan, the Deferred Professional Administrative Claims and the Deferred Hercules Claim are effectively subordinated to the Other Priority Claims.

Based on the foregoing, the ability to satisfy the cram-down requirements will be analyzed only as they apply to Class 3 (the General Unsecured Claims), since that Class may vote to reject the Plan, and Class 4 (the Interests), since that Class is deemed to have rejected the Plan.

A. Unfair Discrimination

The Bankruptcy Code requirement that a plan not “discriminate unfairly” means that a dissenting class must be treated equally with respect to other classes of equal rank. The Plan does not “discriminate unfairly” with respect to Class 3 or Class 4 because neither Class is afforded treatment which is disproportionate to the treatment afforded other Classes of equal rank, and the treatment under the Plan follows the distribution scheme dictated by the Bankruptcy Code.

B. Fair and Equitable Standard

As to all impaired classes of claims or interests, the Bankruptcy Code provides that the fair and equitable test is satisfied if no holder of a claim or interest that is junior to the claims or interests of such class will receive or retain any property under the plan on account of such junior claim or interest.

The fair and equitable test is satisfied as to Classes 3 and 4 because no holder of a Claim or Interest that is junior to the Claims and Interests in such Classes will receive or retain any property under the Plan on account of such junior Claim or Interest.

X. BEST INTERESTS TEST

The Bankruptcy Code requires that, with respect to each impaired class of claims or interests, each holder of a claim or interest in such class have accepted the plan or will receive property of a value, as of the effective date of the plan, that is not less than the amount such holder of a claim or interest would receive if the debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date. This is referred to as the “Best Interests Test.”

Because Hercules has agreed to vote the Hercules Allowed Secured Claim to accept the Plan, it is not necessary to discuss whether the Plan would satisfy the Best Interests Test as it relates to the Hercules Allowed Secured Claim. Rather, the Best Interests Test need only be analyzed as it relates to Claims in Class 1 (the Other Priority Claims) and Class 3 (the General Unsecured Claims) and Interests in Class 4.

As to the holders of Other Priority Claims, the Best Interests Test is satisfied, by definition because, (a) absent the voluntary election by such holders to exercise the Other Priority Claim Compromise Election, all such Allowed Other Priority Claims will be paid in full under the Plan, and (b) if this Chapter 11 Case were converted to Chapter 7, the holders of Other Priority Claims could not realize a recovery in excess of the amounts of their Allowed Claims. In fact, as discussed above, it is possible that, if this Chapter 11 Case were converted to Chapter 7, the holders of Allowed Other Priority Claims would receive less than what they will receive if the Plan is confirmed because, (x) if the Plan is confirmed, the Deferred Professional Administrative Claims and the Deferred Hercules Claim (estimated to aggregate approximately \$195,000) will be effectively subordinated to the Other Priority Claims, while (y) in Chapter 7, the Deferred Professional Administrative Claims and the Deferred Hercules Claim will be senior in priority to the Other Priority Claims.

As to the holders of General Unsecured Claims, the only objective Best Interests Test variables are (a) the Administrative Claims to the Effective Date plus anticipated Trust Expenses, assuming the Plan is confirmed, versus the combined Administrative Claims in the Chapter 11 Case and in the Chapter 7 case, and (b) the timing of pursuit of the Causes of Action assuming the Plan is confirmed versus the timing of pursuit of such Causes of Action in a Chapter 7.

If the Chapter 11 Case is converted to Chapter 7, the combined Administrative Claims in the Chapter 7 and the Chapter 11 Case will undoubtedly exceed the Administrative Claims that would exist if the Plan were confirmed. Such is the case because: (a) most of the work required of the Professionals to prepare and file the Plan has already have been completed, and (b) upon his or her appointment, the Chapter 7 trustee will become entitled to compensation and the Chapter 7 trustee will engage counsel who will also be entitled to compensation, most or all of which will be incremental to the Administrative Claims that would exist if the Plan were confirmed. And, if any substantial recoveries are effected on account of the Causes of Action, the Chapter 7 trustee will likely assert a claim for a percentage commission on amounts disbursed to holders of Claims. In addition, since the Chapter 7 trustee and counsel to the Chapter 7 trustee will be unfamiliar with the Debtor, there will be some time spent by each to “get up to speed,” which time will delay the evaluation and possible pursuit of the Causes of Action and, assuming the Causes of Action yield recoveries which allow for Distributions to holders of Allowed Class 3 Claims, those Distributions will also be delayed.

Based on the foregoing, the Best Interests Test is satisfied as to holders of General Unsecured Claims.

As to holders of Interests, the Debtor estimates that there will be \$19,000,000 in Allowed General Unsecured Claims. As reflected in the Liquidation Analysis (**Exhibit B** hereto), absent the pursuit of Causes of Action and the generation of fairly significant recoveries on account of such Causes of Action, there will be no Distributions to holders of Allowed General Unsecured

Claims. Since, in a Chapter 7, nothing would be available for distribution to holders of Allowed Interests until all Allowed General Unsecured Claims have been paid in full, in order for holders of Allowed Interests to receive any distribution in a Chapter 7, something in excess of \$19,000,000 in recoveries on account of Causes of Action would have to be achieved. While the Debtor cannot disprove the proposition that the Causes of Action have a value in excess of \$19,000,000, the limited review of the Causes of Action performed by the Debtor and the Committee to date do not support such valuation.

Based on the foregoing, the Best Interests Test is satisfied as to holders of Interests.

The Debtor has worked closely with the Committee as relates to the decision whether to convert this Chapter 11 Case to Chapter 7 or to pursue confirmation of the Plan. While not determinative for purposes of satisfaction of the Best Interests Test, it is relevant that the Committee (whose constituency is the most directly impacted by the decision) supports confirmation of the Plan and does not want the Chapter 11 Case converted to Chapter 7.

XI. FEASIBILITY

The Bankruptcy Code requires that the Court determine that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization of the debtor. The Plan meets the feasibility standard as this is a Plan of liquidation and there will not be a subsequent liquidation or reorganization after the Effective Date.

XII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

If the Plan is not confirmed, the potential alternatives include (a) alternative plans of liquidation under Chapter 11, (b) dismissal of the Chapter 11 Case, or (c) conversion of the Chapter 11 Case to a case under Chapter 7.

A. Alternative Plan

The Debtor does not believe that there are any alternative plans. The Debtor believes that the Plan enables holders of Claims to realize the greatest possible value under the circumstances and that, compared to any hypothetical alternative plan, the Plan has the greatest chance to be confirmed and consummated.

B. Liquidation under Chapter 7

If the Plan is not confirmed, the Chapter 11 Case may be converted to a Chapter 7 liquidation case. For the reasons discussed above, the Debtor does not believe that liquidation under Chapter 7 is a better alternative than confirmation of the Plan.

XIII. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AGAINST THE DEBTORS ARE HEREBY NOTIFIED

THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED TO OR WRITTEN TO BE USED, AND CANNOT BE USED, BY SUCH HOLDERS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE PLAN; AND (C) SUCH HOLDERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. ALL HOLDERS OF CLAIMS AGAINST IN THE DEBTOR SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE PLAN INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN (NON-US) TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

The following discussion addresses certain United States Federal income tax consequences of the consummation of the Plan to the Debtor.

A. Federal Income Tax Consequences to Debtor

The Debtor may realize cancellation of debt income to the extent of any debt forgiveness. Such cancellation of debt income is generally excludible from the Debtor's gross income under the bankruptcy exception of Section 108(a)(1)(A) of the Tax Code. To the extent there is cancellation of debt income, the same would reduce the federal tax attributes of the Debtor, including its net operating loss carry-forwards and the tax bases of its assets on the first day of the Debtor's next tax year. If cancellation of debt income exceeds these attributes, it would be exempt from tax.

Pursuant to the Plan, all of the Debtor's remaining Assets other than those sold or abandoned prior to the Effective Date will be transferred directly or indirectly (through the Liquidation Trust) to holders of Allowed Claims in liquidation of the Debtor. For federal income tax purposes, any such Assets transferred to the Liquidation Trust will be treated as described above.

The Debtor's transfer of its Assets pursuant to the Plan will be treated as a taxable disposition of such Assets by the Debtor. It is not known at the present time whether the transfer of the Debtor's Assets will result in any gain to the Debtor. If such a transfer results in gain, it is not known at the present time whether the Debtor will have sufficient losses or loss carryforwards to offset that gain. If the transfer results in gain and the Debtor does not have losses or loss carryforwards to offset that gain, the transfer of such Assets will result in federal income tax liability.

If a corporation undergoes an ownership change, as defined in IRC Section 382(g), the application of pre-change net operating losses ("net operating losses") to reduce income for any post-change year is limited by IRC Section 382. The Debtor does not believe that it has undergone an ownership change.

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

XIV. SUMMARY, RECOMMENDATION, AND CONCLUSION

The Plan provides for an orderly and prompt distribution to holders of Allowed Claims against the Debtor. The Debtor believes that the Plan is in the best interests of all holders of Claims. For these reasons, the Debtor and the Committee urge that the Plan be accepted.

Dated: April 27, 2015

BAXANO SURGICAL, Inc.

By: /s/ John L. Palmer
John L. Palmer, President and CEO

EXHIBIT A

PLAN

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

In re:)
) Chapter 11
BAXANO SURGICAL, Inc.,)
) Chapter 11 Case No. 14-12545-CSS
Debtor.)

CHAPTER 11 PLAN OF BAXANO SURGICAL, INC

Robert Lapowsky
John Kilgannon
STEVENS & LEE
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Dated: April 27, 2015

Baxano Surgical, Inc., debtor and debtor-in-possession in the above Chapter 11 Chapter 11 Case (the “Debtor”) hereby proposes this Plan for completion of the business of the Debtor and the resolution of the outstanding claims against and interests in the Debtor.

ARTICLE 1

DEFINITIONS, RULES OF INTERPRETATION AND COMPUTATION OF TIME

A. Scope of Definitions

For purposes of this Plan, unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I.B. of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules.

B. Definitions

1.1 “Administrative Claim Bar Date” means (a) May 28, 2015 at 4:00 p.m. (EDT) with respect to Administrative Claims incurred from the Petition Date through April 6, 2015, other than Administrative Claims which are Excluded Claims, as defined in the Primary Administrative Claims Bar Date Motion; and (b) _____, 2015 at 4:00 p.m. (EDT) with respect to all other Administrative Claims other than Excluded Claims.

1.2 “Administrative Claim” means (a) any right to payment constituting a cost or expense of administration of the Chapter 11 Chapter 11 Case under Section 503(b) of the Bankruptcy Code and (b) any fees or charges assessed against and payable by the Debtor under Section 1930 of Title 28 of the United States Code.

1.3 “Allowed” means (a) any Claim, other than a Professional Administrative Expense Claim, (1) as to which a Proof of Claim was Filed by the General Claims Bar Date or

Administrative Claim Bar Date, as applicable, and as to which no objection has been filed on or before any applicable Claims Objection Deadline; (2) which was listed on the Schedules, as amended, as other than disputed, contingent or unliquidated; (3) that has been allowed by a Final Order of the Bankruptcy Court (provided, however, that Claims Allowed solely for the purpose of voting to accept or reject the Plan shall not be considered Allowed Claims hereunder); or (4) which is expressly allowed under or pursuant to the terms of this Plan, and (b) as to any Professional Administrative Expense Claim, a Claim that has been allowed by Final Order of the Bankruptcy Court.

1.4 “Assets” means all assets and property of the Debtor, regardless of whether reflected in the financial records of the Debtor, including but not limited to: cash, deposits, refunds, rebates, abatements, fixtures, equipment, inventory, contractual interests, intangibles, Claims, Causes of Action, suits, setoffs, recoupments, equitable or legal rights, interests and remedies.

1.5 “Balloting Agent” means Rust Consulting Omni Bankruptcy.

1.6 “Ballots” means the ballots accompanying the Disclosure Statement upon which holders of Impaired Claims entitled to vote shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the Plan and the procedures governing the solicitation process, and which must be actually received on or before the Voting Deadline.

1.7 “Bankruptcy Code” means Title 11 of the United States Code.

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

1.9 “Bankruptcy Rules” means (a) the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Bankruptcy Court under Section 2075 of Title 28 of the United States Code and (b) the local rules of the Bankruptcy Court.

1.10 “Beneficiaries” mean holders of: Allowed Claims that are entitled to receive Distributions under the Plan and/or the Liquidation Trust.

1.11 “Business Day” means any day other than: (a) a Saturday; (b) a Sunday and (c) a “legal holiday” as defined in Bankruptcy Rule 9006(a).

1.12 “Cash” means legal tender of the United States of America.

1.13 “Cash Equivalents” means equivalents of Cash in the form of readily marketable securities or instruments issued by an Entity, including readily marketable direct obligations of, or obligations guaranteed by, the United States of America, commercial paper of domestic corporations carrying a Moody’s rating of “P2” or better, or equivalent rating of any other nationally recognized rating service, or interest bearing certificates of deposit or other similar obligations of domestic banks or other financial institutions having a shareholders’ equity or capital of not less than five hundred million dollars (\$500,000,000) having maturities of not more than one year, at the then generally prevailing rates of interest for like amounts and like periods.

1.14 “Causes of Action” means any and all actions, causes of action, rights, suits, debts, sums of money, damages, judgments, claims, and demands whatsoever, whether known or unknown, existing or hereafter arising, in law, equity, or otherwise, including but not limited to Chapter 5 Claims and D&O Causes of Action, based in whole or in part upon any act or omission or other event occurring prior to the Commencement Date or during the course of the Chapter 11 Case, including through the Effective Date, that belong to the Debtor.

1.15 “Chapter 11 Case” means the bankruptcy case of the Debtor, being Case No. 14 12545 (CSS) in the United States Bankruptcy Court for the District of Delaware.

1.16 “Chapter 5 Claims” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought on behalf of the Debtor under the Bankruptcy Code or

applicable non-bankruptcy law, including actions or remedies under Sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552, 553(b) and 724(a) of the Bankruptcy Code.

1.17 “Claim” means any claim against the Debtor, regardless of whether asserted and regardless of whether known, as the term “claim” is defined in Section 101(5) of the Bankruptcy Code, and shall include, but is not limited to: Administrative Claims; Disputed Claims; any claims arising from or related to any Interests and Claims; General Unsecured Claims; Priority Claims; and Secured Claims.

1.18 “Claims Objection Deadline” means: (a) as to Administrative Claims (other than Professional Administrative Claims), Priority Claims and Secured Claims, ninety (90) days after the Effective Date, which may be extended for an additional ninety (90) days by the Liquidation Trustee provided the Liquidation Trustee Files a notice of such extension prior to expiration of the initial ninety (90) day period; and (b) for all other Claims (i) as to the Liquidation Trustee, the date of the first Distribution from the Liquidation Trust to holders of Allowed General Unsecured Claims or such later date as is authorized by the Bankruptcy Court, and (ii) as to all other Entities, ninety (90) days after the Effective Date.

1.19 “Class” means each of the groups of holders of Claims or Interests described in Article 4 of this Plan of Liquidation.

1.20 “Commencement Date” means November 12, 2014, the date on which a Petition under Chapter 11 of the Bankruptcy Code was filed by the Debtor.

1.21 “Committee” means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Case on November 25, 2014, as may have been reconstituted from time to time.

1.22 “Confirmation Date” means the date on which the Confirmation Order becomes a Final Order.

1.23 “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider the confirmation of the Plan, as it may be adjourned or continued from time to time.

1.24 “Confirmation Order” means an order of the Bankruptcy Court confirming the Plan under Section 1129 of the Bankruptcy Code that has become a Final Order.

1.25 Reserved

1.26 “D&O Policies” mean, policy #01-468-27-07 issued by National Union Fire Insurance Co. of Pittsburgh, PA, policy #11228604 issued by Berkley Insurance Co, and policy ELU131739-13 issued by XL Specially Insurance Co.

1.27 “D&O Causes of Action” means Causes of Action commenced prior or subsequent to the Effective Date against any current or past officer or director of the Debtor and any Causes of Action against an insurer under any D&O Policy concerning coverage under such D&O Policy.

1.28 “Debtor” means Baxano Surgical, Inc., including in its capacity as debtor-in-possession in the Chapter 11 Case

1.29 “Deferred Hercules Claim” means \$75,000.

1.30 “Deferred Professional Administrative Claims” means all Allowed Administrative Claims of (a) Stevens & Lee, P.C. in excess of \$694,767.09, and (b) Pillsbury Winthrop Shaw Pittman, LLP and Morris, Nichols, Arsht and Tunnell in excess of \$414,161.70 in the aggregate with such excess amount to be allocated between Pillsbury Winthrop Shaw Pittman, LLP and Morris, Nichols, Arsht and Tunnell consistently with the allocation of the Non-Deferred Professional Administrative Claims.

1.31 “Disclosure Statement” means the Disclosure Statement filed pursuant to Section 1125 of the Bankruptcy Code with respect to this Plan, including all exhibits,

appendices, and schedules thereof, if any, as same may be amended, modified, or supplemented from time to time, all as approved by the Bankruptcy Court pursuant to Sections 1125 and 1127 of the Bankruptcy Code and Bankruptcy Rule 3017.

1.32 “Disputed Claim” means a Claim or any portion thereof that is not an Allowed Claim.

1.33 “Disputed Claims Reserves” shall have the meaning ascribed to it in Section 7.5 hereof.

1.34 “Distribution” means a Distribution of Cash or other property made in accordance with the Plan of Liquidation and the Liquidation Trust.

1.35 “Distribution Date” means the date on which the Liquidation Trustee shall make a Distribution.

1.36 “Effective Date” means the first Business Day which is after the conditions to the occurrence of the Effective Date described in Section 6.1 hereof, have been satisfied or waived by the Debtor.

1.37 “Entity” means an entity as defined in Section 101(15) of the Bankruptcy Code.

1.38 “Executory Contract” means a contract to which the Debtor is a party that is subject to assumption or rejection under Section 365 of the Bankruptcy Code.

1.39 “File” or “Filed” means, with respect to any pleading, entered on the docket of the Chapter 11 Case.

1.40 “Final Order” means a Filed order or judgment of a court that (a) has not been reversed, stayed, modified or amended, and (b) as to which (i) no appeal, motion for re-argument or rehearing or petition for certiorari, is pending, and either (A) all rights to appeal, petition for

certiorari or seek rehearing or re-argument have been waived in writing in a manner satisfactory to the Debtor, or (B) the time to appeal or petition for certiorari has expired.

1.41 “General Claims Bar Date” means May 18, 2015 at 4:00 pm (Eastern Time).

1.42 “General Claims Bar Date Order” means the order entered by the Bankruptcy Court on March 24, 2015, which established the General Claims Bar Date.

1.43 “General Unsecured Claim” means an unsecured Claim that is not a Priority Claim, including rejection damage Claims.

1.44 “Hercules” means Hercules Technology Growth Capital, Inc.

1.45 “Hercules Allowed Secured Claim” means the Secured Claim of Hercules, which is an Allowed Secured Claim in the amount of \$575,000 minus all payments by the Debtor to Hercules from March 26, 2015 to and including the Effective Date.

1.46 “Impaired” shall have the meaning ascribed to it in Section 1124 of the Bankruptcy Code.

1.47 “Insiders” shall have the meaning ascribed to it in Section 101(31) of the Bankruptcy Code.

1.48 “Insured Claim” means any Claim against the Debtor payable, in whole or in part, by an insurance policy or policies issued by an insurance company on behalf of the Debtor.

1.49 “Interest” means the legal, equitable, contractual, and other rights of any Person with respect to existing common stock or other Interest, or any other equity securities of, or ownership interests in, the Debtor.

1.50 “Liabilities” means the liabilities of the Debtor, whether or not reflected in the financial records of the Debtor.

1.51 “Lien” shall have the meaning ascribed to it in Section 101(37) of the Bankruptcy Code, except that a lien that has been or may be avoided shall not constitute a Lien for the purposes of the Plan.

1.52 “Liquidation Trust” means that Liquidation Trust established pursuant to this Plan in which the Liquidation Trust Assets shall vest on the Effective Date.

1.53 “Liquidation Trust Agreement” means that Liquidation Trust Agreement that governs the operation and management of the Liquidation Trust, in a form substantially similar to Exhibit A hereof.

1.54 “Liquidation Trustee” means the person vested with the authority under the Liquidation Trust to administer the Liquidation Trust, as further described in Section 6.3(b) of this Plan.

1.55 “Liquidation Trust Assets” means all of the assets transferred or granted to the Liquidation Trust, consisting of: (i) the Causes of Action; (ii) the Liquidation Trust Proceeds; and (iii) all other Assets of the Debtor.

1.56 “Liquidation Trust Proceeds” means the proceeds from the collection, liquidation, sale or other disposition of the Debtor’s Assets as of the Effective Date, including the proceeds received from any Causes of Action.

1.57 “Non-Deferred Hercules Claim” means \$500,000 of the Hercules Allowed Secured Claim minus all payments by the Debtor to Hercules from March 26, 2015 to and including the Effective Date.

1.58 “Non-Deferred Professional Administrative Claims” all Allowed Administrative Claims of (a) Stevens & Lee, P.C. in amounts less than or equal to \$694,767.09, and (b) Pillsbury Winthrop Shaw Pittman, LLP and Morris, Nichols, Arsht and Tunnell in amounts

less than or equal to \$414,161.70, in the aggregate, with such amount to be allocated between Pillsbury Winthrop Shaw Pittman, LLP and Morris, Nichols, Arsht and Tunnell as they shall agree.

1.59 “Non-Recovery Funds” shall have the meaning ascribed in Section 2.2(b)(i) hereof.

1.60 “Other Priority Claim” means any Claim accorded priority in right of payment under Section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

1.61 “Other Priority Claim Compromise Election” means an election made by the holder of an Allowed Other Priority Claim on its Ballot to receive payment of 50% of its Allowed Other Priority Claim in the manner described in Section 4.1 hereof, in full satisfaction of such Allowed Other Priority Claim.

1.62 “Person” means a person as defined in Section 101(41) of the Bankruptcy Code.

1.63 “Plan” means this plan of liquidation under Chapter 11 of the Bankruptcy Code as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

1.64 “Plan Supplement” means any supplement to the Plan Filed prior to the Effective Date.

1.65 “Primary Administrative Claims Bar Date Motion” means that certain motion filed by the Debtor seeking the entry of an order establishing a bar date for certain Administrative Claims [D.I. 407].

1.66 “Priority Tax Claim” means any Claim of a governmental unit of the kind specified in Section 507(a)(8) of the Bankruptcy Code.

1.67 “Priority Tax Compromise Election” means an election made by the holder of an Allowed Priority Tax Claim by written notice to the Debtor, if before the Effective Date, or to the Liquidation Trustee, if after the Effective Date, to receive payment of 50% of its Allowed Priority Tax Claim in the manner described in Section 2.5 hereof, in full satisfaction of such Allowed Priority Tax Claim.

1.68 “Professional” means any person or Entity employed by the Debtor or the Committee in accordance with Sections 327, 328, or 1103 of the Bankruptcy Code, and who shall be compensated for services rendered prior to the Effective Date pursuant to Sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

1.69 “Professional Administrative Claims” means Administrative Claims of Professionals subject to final allowance pursuant to Section 330 of the Bankruptcy Code.

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

1.71 “Pro Rata” means, with reference to any Distribution, the ratio (expressed as a percentage) that the amount of the Allowed Claim bears to the aggregate amount of all Allowed Claims sharing in such Distribution. Until all Disputed Claims are Resolved, Disputed Claims shall be treated as Allowed Claims in the amount used for calculation of the Disputed Claims Reserves, for purposes of calculating Pro Rata Distributions.

1.72 “Recovery Funds” shall have the meaning ascribed in Section 2.2(b)(ii) hereof.

1.73 “Record Date” means the date the order of the Bankruptcy Court approving the Disclosure Statement is entered, which shall be the date used for determining the entitlement to receive Distributions under the Plan on account of Allowed Claims.

1.74 Reserved

1.75 “Representatives” means, without limitation, any existing or former affiliate, subsidiary, member, officer, director, partner, stockholder, trustee, member, representative, employee, agent, attorney, business advisor, financial advisor, accountant, other Professional, their successors or assigns, or any person who is or was in control of any of the foregoing.

1.76 “Schedules” means the schedules of assets and liabilities and the statements of financial affairs Filed by the Debtor pursuant to Section 521 of the Bankruptcy Code, and as such schedules and statements have been or may be supplemented or amended from time to time.

1.77 “Secured Claim” means an Allowed Claim that is secured by a Lien (which is valid, perfected and enforceable under applicable law or by reason of a Final Order) on the property in which the Debtor has an interest or that is subject to a setoff under Section 553 of the Bankruptcy Code, to the extent of the value of the collateral, as determined in accordance with Section 506(a) of the Bankruptcy Code, or to the extent of the amount subject to the setoff.

1.78 “Trust Expenses” means the reasonable expenses of the Liquidation Trust, including professional fees and expenses.

1.79 “Unclaimed Property” means any Distributions that are returned as:
(i) undeliverable to a Beneficiary, or (ii) unclaimed by a Beneficiary, as further described in Section 7.2 hereof.

1.80 “Unimpaired” means an Allowed Claim or Interest that is not “Impaired” within the meaning of Section 1124 of the Bankruptcy Code.

1.81 “United States Trustee” means the United States Trustee appointed under Section 591 of Title 28 of the United States Code to serve in the District of Delaware.

1.82 “Voting Deadline” means the date and time by which all Ballots must be received.

C. Rules of Construction

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter. For purposes of the Plan: (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the document shall be substantially in that form or substantially on those terms and conditions; (b) any reference in the Plan to an existing document or Exhibit Filed or to be Filed means the document or Exhibit as it may have been or may be amended, modified, or supplemented; and (c) unless otherwise specified, all references in the Plan to Articles, Schedules, and Exhibits are references to articles, schedules, and exhibits of or to the Plan. Unless otherwise specified, the words “herein,” “hereof,” “hereof,” “hereunder,” and other words of similar meaning refer to the Plan as a whole and not to any particular article, section, subsection, or clause contained in the Plan. A capitalized term used but not defined herein shall have the meaning given to that term in the Bankruptcy Code. The rules of construction contained in Section 102 of the Bankruptcy Code shall apply to the construction of the Plan.

The headings in the Plan are for convenience of reference only and shall not expand, limit, or otherwise affect the provisions of the Plan. Unless otherwise indicated herein, all references to dollars are to United States dollars.

D. Computation of Time

Unless otherwise expressly provided herein, in computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day,

then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

ARTICLE 2

ADMINISTRATIVE CLAIMS, STATUTORY FEES, INSURED CLAIMS AND PRIORITY TAX CLAIMS

2.1 Administrative Claims other than Professional Administrative Claims

All Allowed Administrative Claims, other than Professional Administrative Claims and the Deferred Hercules Claim, shall be paid in Cash, in full, on the latest of (i) the due date, (ii) if such Administrative Claim is disputed by the Liquidation Trustee and is not an Allowed Claim, thirty (30) days after entry of a Final Order of the Bankruptcy Court Allowing such Administrative Claim or, if such Administrative Claim is not disputed by the Liquidation Trustee and is an Allowed Claim, thirty (30) days after the Effective Date, and (iii) the date agreed to by the holder of such Administrative Claim.

2.2 Professional Administrative Claims

Each Professional shall have an Allowed Administrative Claim for all fees and expenses incurred through and including the Effective Date to the extent such Claim is ultimately approved by the Bankruptcy Court. Each Allowed Professional Administrative Claim, other than Deferred Professional Administrative Claims, shall be paid by the Liquidation Trustee from the Liquidation Trust Assets within ten (10) days after the entry of a Final Order approving such Professional Administrative Claims or such later date as the holder of such Professional Administrative Claim may agree.

All Deferred Professional Administrative Claims shall be paid by the Liquidation Trustee as follows:

a. If the Liquidation Trustee elects not to pursue any Causes of Action (other than Causes of Action relating to collection of accounts receivable, return of unearned insurance premiums and/or return of deposits), as soon as practicable following such determination, the Deferred Professional Administrative Expenses shall be paid, *pari passu* and pro-rata, with each other and with the Deferred Hercules Claim from Liquidation Trust Assets remaining after payment of all reasonable Trust Expenses and any remaining Allowed Priority Tax Claims and Allowed Other Priority Claims until an amount equal to the Deferred Professional Administrative Claims shall have been distributed to the holders thereof.

b. In the event the Liquidation Trustee elects to pursue any Causes of Action (in addition to any Causes of Action relating to collection of accounts receivable, return of unearned insurance premiums and/or return of deposits), as soon as practicable after resolution of any such Causes of Action:

i. all Liquidation Trust Assets other than Recovery Funds (the “Non-Recovery Funds”) remaining after payment of all reasonable Trust Expenses and any remaining Allowed Priority Tax Claims and Allowed Other Priority Claims (with such Trust Expenses and any remaining Allowed Priority Tax Claims and Allowed Other Priority Claims to be paid first from Recovery Funds) shall be distributed to holders of Deferred Professional Administrative Claims *pari passu* and pro-rata with Distributions to Hercules on account of the Deferred Hercules Claim until an amount equal to the Deferred Professional Administrative Claims shall have been distributed to the holders thereof; and

ii. to the extent the Non Recovery Funds are insufficient to pay the Deferred Professional Administrative Claims and the Deferred Hercules Claim in full, fifty percent (50%) of all Liquidation Trust Assets generated by Causes of Action (other than Causes of Action relating to collection of accounts receivable, return of unearned insurance premiums and/or the return of deposits) (the “Recovery Funds”) remaining after payment of all reasonable Trust Expenses and any remaining Allowed Priority Tax Claims and Allowed Other Priority Claims and after payment or reservation of a total of \$1,000,000 (including any amounts distributed to holders of Allowed General Unsecured Claims from the Non Recovery Funds) on account of Distributions to holders of Allowed General Unsecured Claims shall be distributed to holders of Deferred Professional Administrative Claims pari passu and pro rata with Distributions to Hercules on account of the Deferred Allowed Hercules Claim.

c. The foregoing notwithstanding, the Liquidation Trustee shall have the power to reserve up to \$50,000 in proceeds of Causes of Action unrelated to D&O Causes of Action to fund pursuit of D&O Causes of Action.

2.3 Insured Claims

To the extent not previously provided for by order of the Bankruptcy Court, and to the extent permitted pursuant to applicable non-bankruptcy law, holders of Insured Claims are entitled to maintain actions after the Effective Date against the Debtor and/or any insurance company pursuant to an insurance policy issued to or for the benefit of the Debtor, subject to the terms and provisions of the said insurance policies, provided, however, that payment on account of any such action shall be recoverable only from such insurance company. The Allowed Claim of any holder of an Insured Claim shall be reduced, dollar for dollar, by any payment on account of the Insured Claim from any insurance company.

2.4 Statutory Fees

All fees of the Debtor payable pursuant to Section 1930 of Title 28 of the United States Code shall be paid (i) if due and owing, on or prior to the Effective Date by the Debtor, and (ii) if due and owing after the Effective Date, as and when due from the Liquidation Trust Assets. Following the Effective Date, the Liquidation Trustee will file quarterly reports in form acceptable to the Office of the United State Trustee, in the exercise of its reasonable discretion.

2.5 Priority Tax Claims

Each holder of an Allowed Priority Tax Claim who does not make the Priority Tax Compromise Election shall receive from the Liquidating Trust Assets deferred payments of Cash, in the full amount of such Allowed Priority Tax Claim, payable in equal, annual principal installments beginning on the first anniversary of the Effective Date and ending on the earlier of the fifth anniversary of the Effective Date and the fifth Anniversary of the date of the assessment of such Allowed Priority Tax Claim, together with interest (payable quarterly in arrears) on the unpaid balance of such Allowed Priority Tax Claim, at an annual rate equal to 3.25%. At the option of the Liquidation Trustee, any Allowed Priority Tax Claim may be paid earlier than the dates stated above[, but not earlier than payment in full of all Non-Deferred Professional Administrative Claims absent the consent of each holder of such Non-Deferred Professional Administrative Claims.

Each holder of an Allowed Priority Tax Claim who makes the Priority Tax Compromise Election shall receive as soon as reasonably practicable after the later of the Effective Date and the date of such election (but not earlier than payment in full of each Non-Deferred Professional Administrative Claims and the Non-Deferred Hercules Claim, absent the consent of the holder of

any such non-deferred Claim) Cash in an amount equal to 50% of such Allowed Priority Tax Claim in full settlement of such Allowed Priority Tax Claim.

ARTICLE 3

CLASSIFICATION OF CLAIMS AND INTERESTS

3.1 Pursuant to Section 1122 of the Bankruptcy Code, set forth below is a designation of classes of Claims against and Interests in the Debtor. A Claim or Interest is placed in a particular Class for the purposes of voting on this Plan and or receiving Distributions pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim or an Allowed Interest in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims of the kinds specified in Sections 507(a)(1) and 507(a)(8) of the Bankruptcy Code, respectively, have not been classified and their treatment is set forth in Article 2 above.

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

Class	Claim	Status	Voting Rights
1	Other Priority Claims	Impaired	Entitled to Vote
2	Hercules Allowed Secured Claim	Impaired	Entitled to Vote
3	General Unsecured Claims	Impaired	Entitled to Vote
4	Interests	Impaired	Deemed to Reject, No Right to Vote

ARTICLE 4

TREATMENT OF CLASSES OF CLAIMS AND INTERESTS UNDER THE PLAN

The following treatment set forth in this Article 4 shall be accorded to Allowed Claims against the Debtor and Interests in the Debtor:

4.1 Class 1: Other Priority Claims

Class 1 consists of all Allowed Other Priority Claims against the Debtor. Each holder of an Allowed Other Priority Claim who does not make the Other Priority Claim Compromise Election shall receive from the Liquidating Trust Assets deferred payments of Cash, in the full amount of such Allowed Other Priority Claim, payable in equal, annual principal installments beginning on the first anniversary of the Effective Date and ending on the fifth anniversary of the Effective Date, together with interest (payable annually in arrears with each principal payment) on the unpaid balance of such Allowed Other Priority Claim, at an annual rate equal to 3.25%. At the option of the Liquidation Trustee, any Allowed Other Priority Claim may be paid earlier than the dates stated above but not earlier than payment in full of each Non-Deferred Professional Administrative Claims and the Non-Deferred Hercules Claim, absent the consent of the holder of any such non-deferred Claim.

Each holder of an Allowed Other Priority Claim who makes the Other Priority Claim Compromise Election shall receive as soon as reasonably practicable after the later of the Effective Date and the date such Claim becomes an Allowed Claim (but, absent the consent of the holder, not earlier than payment in full of each Non-Deferred Professional Administrative Claim and the Non-Deferred Hercules Claim) Cash in an amount equal to 50% of such Allowed Other Priority Claim in full settlement of such Allowed Other Priority Claim.

4.2 Class 2: Hercules Allowed Secured Claim

Class 2 consists of the Hercules Allowed Secured Claim. The Non-Deferred Hercules Claim shall be paid in full, in Cash from the Liquidating Trust Assets on the Effective Date. The Deferred Hercules Claim shall be paid by the Liquidation Trustee *pari passu* and pro-rata with payment of the Deferred Professional Administrative Claims. On the Effective Date, Hercules shall be deemed to have waived any and all Liens securing the Deferred Hercules Claim and, in return, the Deferred Hercules Claim shall be deemed to be an Allowed Administrative Claim.

4.3 Class 3: General Unsecured Claims

Class 3 consists of all Allowed General Unsecured Claims.

If the Liquidation Trustee elects not to pursue any Causes of Action (other than Causes of Action relating to collection of accounts receivable, return of unearned insurance premiums and/or return of deposits), no Distributions shall be made on account of General Unsecured Claims.

If the Liquidation Trustee elects to pursue any Causes of Action (in addition to any Causes of Action relating to collection of accounts receivable, return of unearned insurance premiums and/or return of deposits), as soon as practicable after resolution of one or more such Causes of Action but subject to Section 7.9 and 7.14 hereof, each holder of an Allowed General Unsecured Claim shall receive its pro-rata portion (taking into account any Disputed Claims Reserves) of (a) the first \$1,000,000 of Recovery Funds remaining after payment of all Trust Expenses and any remaining Allowed Priority Tax Claims and Allowed Other Priority Claims, (b) fifty percent (50%) of any such Recovery Funds in excess of the said \$1,000,000 until the Deferred Hercules Claim and all Deferred Professional Administrative Claims are paid in full, (c) one hundred percent (100%) of all such Recovery Funds in excess of the said \$1,000,000

after all Deferred Professional Administrative Claims and the Deferred Hercules Claim are paid in full, and (d) one hundred percent (100%) of all other Liquidation Trust Assets and payment in full of (or reservation for) all other Allowed Claims, including the Deferred Hercules Claim and the Deferred Professional Administrative Claims, and all Trust Expenses.

4.4 Class 4: Interests

Class 4 consists of the Interests in the Debtor. The holders of Interests will not receive any Distributions or other consideration on account of such Interests. On the Effective Date, all Interests shall be cancelled, extinguished, and of no further force and effect.

ARTICLE 5

ACCEPTANCE OR REJECTION OF THE PLAN

5.1 Voting Classes

Classes 1, 2 and 3 are Impaired under the Plan, and the holders of Classes 1, 2 and 3 Claims as of the Record Date shall be entitled to vote to accept or reject the Plan.

5.2 Deemed Rejection of Plan

The holders of Interests are not entitled to receive any Distribution or other consideration under the Plan on account of their Interests and are therefore deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code. As a consequence, the holders of Class 4 Interests shall not be entitled to vote.

ARTICLE 6

CONDITIONS TO EFFECTIVENESS AND MEANS OF IMPLEMENTATION OF THE PLAN

6.1 Conditions Precedent to the Effective Date

The following are conditions precedent to the Effective Date that must be satisfied or waived by the Debtor:

- a. Entry of the Confirmation Order and the Confirmation Order having become a Final Order.
- b. No request for revocation of the Confirmation Order under Section 1144 of the Bankruptcy Court shall be pending.
- c. The Liquidation Trust Agreement shall have been executed.

6.2 Vesting of Assets of the Debtor

On the Effective Date, subject only to the terms of this Plan, all Assets of the Debtor, wherever situated, shall vest in the Liquidation Trust, free and clear of all Liens, Claims, encumbrances and Interests except as otherwise provided in the Plan.

6.3 Liquidation Trust

- a. Execution of the Liquidation Trust Agreement. On or before the Effective Date, the Liquidation Trustee and the Debtor will execute the Liquidation Trust Agreement.
- b. Appointment of Liquidation Trustee. The Liquidation Trustee shall be selected by the Committee and identified by the Debtor in the Plan Supplement. The Liquidation Trustee shall have the powers, duties, and obligations set forth in this Plan and in the Liquidation Trust Agreement. After the Effective Date, all actions required of and/or otherwise specified herein to be performed by the Debtor shall be performed by the Liquidation Trustee, or its designee, in the name of, and on behalf of, the Debtor.

c. Preservation and Vesting of Causes of Action. Except as expressly provided herein, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Plan, the Confirmation Order, any Final Order, or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, the Liquidation Trust shall exclusively retain and may enforce, and the Debtor expressly reserves and preserves for these purposes, in accordance with Sections 1123(a)(5)(B) and 1123(b)(3) of the Bankruptcy Code, all Causes of Action, all of which shall vest in the Liquidation Trustee. Accordingly, no preclusion doctrine, 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 by virtue of, or in connection with, the confirmation or effectiveness of this Plan. The Liquidation Trustee and its successors and assigns, shall have the exclusive right, power, and interest to pursue, settle, or abandon all Causes of Action as the sole representative of the Debtor, in each Chapter 11 Case without approval of the Bankruptcy Court or any other court.

d. Preservation of Confidences and Attorney Client Privilege. In order for the Liquidation Trustee to effectively investigate, defend, and pursue the Causes of Action and administer the Liquidation Trust Assets, the Debtor and the Liquidation Trustee, and all counsel thereof must be able to exchange information with each other on a confidential basis and cooperate in common interest efforts without waiving any applicable privilege. Given the common interests of the parties and the Liquidation Trust's position as successor to the Liquidation Trust Assets, including the Causes of Action, sharing such information in the manner described in the previous sentence shall not waive or limit any applicable privilege or exemption from disclosure or discovery related to such information. In connection with the

Liquidation Trust Assets, including the Causes of Action, any attorney client privilege, work product privilege, or other privilege or immunity (including any privilege arising prior to the Effective Date under the common interest doctrine) attaching to any documents or communications (whether written or oral) in favor of the Debtor shall also exist for the benefit of the Liquidation Trust and shall vest in the Liquidation Trustee and its Representatives. The Liquidation Trustee is authorized to take all necessary actions to benefit from or waive such privileges.

e. Reservation of Rights. With respect to any Chapter 5 Claim that the Liquidation Trustee abandons in accordance with Section 6.3(c) of the Plan, the Liquidation Trustee reserves all rights, including the right under Section 502(d) of the Bankruptcy Code to use defensively the abandoned Chapter 5 Claim as a basis to object to all or any part of a Claim asserted by a creditor which remains in possession of, or otherwise obtains the benefit of, the avoidable transfer.

f. Sale Free and Clear. Any asset of the Liquidation Trust may be sold by the Liquidation Trustee, by auction, private sale or otherwise without further order of the Bankruptcy Court and the Confirmation Order shall constitute authorization for the Liquidation Trustee to consummate such sales and shall be binding on all parties-in-interest. Any sale of assets shall be free and clear of all Claims, Liens, encumbrances or Interests with any such Claims, Liens encumbrances or Interests attaching to proceeds of such sale.

g. Consultation Rights of Holders of Deferred Professional Administrative Claims and Deferred Hercules Claim. Until the Deferred Hercules Claim and the Deferred Professional Administrative Claims are paid in full, the Liquidation Trustee, upon reasonable request by any holder of such Claims, shall consult with such holder and respond to its reasonable inquiries and

requests for information concerning all non-privileged matters relating to the Liquidation Trust and the implementation of the Plan, including but not limited to the status of litigation, the reasonableness of the fees and expenses incurred by the Trust and the Liquidation Trustee and information relating to income expenses and balances on hand in the Liquidation Trust.

6.4 Nonconsensual Confirmation

If any impaired Class of Claims entitled to vote does not accept the Plan by the requisite statutory majorities provided in Section 1126(c) of the Bankruptcy Code, the Debtor reserves the right to amend the Plan or request confirmation of the Plan under Section 1129(b) of the Bankruptcy Code or both. With respect to any impaired classes of Claims or Interests that is deemed to reject the Plan, the Debtor shall request confirmation of the Plan under Section 1129(b) of the Bankruptcy Code.

6.5 Closing of Chapter 11 Case

When appropriate, the Liquidation Trustee shall seek entry of the final decree closing the Chapter 11 Case.

6.6 Dissolution of Committee

The Committee shall continue in existence until the Effective Date, and until the Effective Date shall continue 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 prior to the Effective Date.

On the Effective Date, the Committee shall be dissolved and its members shall be deemed released of all of their duties, responsibilities and obligations in connection with the Chapter 11 Case or the Plan and its implementation, and the retention or employment of the Committee's attorneys, financial advisors, and other agents shall terminate.

Notwithstanding anything in this Article 6, the Committee shall continue to have standing and a right to be heard following dissolution of the Committee solely with respect to:

(a) Professional Administrative Claims; and (b) any appeals of the Confirmation Order. All reasonable fees and expenses incurred therein shall be paid from the Liquidation Trust Assets without further order of the Bankruptcy Court.

6.7 Dissolution of the Debtor and Resignation of Officers and Directors

From and after the Effective Date, the Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith; provided, however, that the Liquidation Trustee on behalf of the Debtor may file with the appropriate governmental authority or authorities a certificate or statement of dissolution referencing the Plan and any and all required tax returns or other documents required by this Plan or applicable law. From and after the Effective Date, the Debtor shall not be required to file any document, or take any other action, to withdraw its business operations from any states in which the Debtor was previously conducting business. Upon the Effective Date, all of the Debtor's officers and directors shall be deemed to have been terminated by the Debtor without the necessity of any further action or writing, and they shall be released from any responsibilities, duties and obligations that arise after the Effective Date to the Debtor, its creditors or any holder of an Interest under the Plan, the Liquidation Trust Agreement, or applicable law. Under no circumstances shall such parties be entitled to any compensation from the Debtor or the Liquidation Trustee for services provided after the Effective Date, unless such individuals are subsequently employed by the Liquidation Trustee to assist it in the consummation of the Plan or in its administration of the Liquidation Trust.

ARTICLE 7

DISTRIBUTIONS

7.1 Reserved

7.2 Distributions/Unclaimed Distributions

Distributions to holders of Allowed Claims shall be made by the Liquidation Trustee:

(a) at the address set forth on the Proof of Claim filed by the applicable holder (or at the last known addresses of such holder if no Proof of Claim is filed or if the Debtor has been notified of a change of address), (b) at the addresses set forth in any written notices of address changes delivered to the Debtor or the Liquidation Trustee after the date of any related Proof of Claim, or (c) at the address reflected on the Schedules if no Proof of Claim has been filed and the Debtor or the Liquidation Trustee has not received a written notice of a change of address. If any Allowed Claim holder's Distribution is returned as undeliverable, no further Distributions to such holder shall be made unless and until the Liquidation Trustee is notified in writing of such holder's then current address, at which time all missed Distributions shall be made to such holder without interest. Any undeliverable Distribution made shall be held for redistribution under this Plan. All claims for undeliverable Distributions must be made no later than six (6) months after the Distribution is made, after which date all unclaimed property shall revert to the Liquidation Trust free of any restrictions thereon, and the Claim of any holder or successor to such holder with respect to such property shall be discharged and forever barred notwithstanding any federal or state escheat laws to the contrary. Nothing contained in the Plan shall require the Debtor or the Liquidation Trustee or any professional retained by the foregoing to attempt to locate any holder of an Allowed Claim.

7.3 Withholding Taxes. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions hereunder. All holders of Allowed Claims shall be required to provide the Liquidation Trustee with any information necessary to effect the withholding of such taxes.

7.4 Time of Payment

Except as may be provided herein, all Distributions provided for by the Plan will be made as soon as it is feasible in the reasonable discretion of the Liquidation Trustee. One or more Distributions may be made pursuant to the provisions of the Plan. Payments on any Disputed Claim that becomes an Allowed Claim shall be distributed by the Liquidation Trustee from the Disputed Claims Reserves on the first Business Day that is twenty (20) calendar days after the end of the calendar quarter in which such Disputed Claim becomes an Allowed Claim (each such date, a "Quarterly Distribution Date"). Distributions shall be made only to the extent of the aggregate Distributions that the holder of any such Allowed Claim would have received had such Claim been Allowed as of the Effective Date (less any taxes paid with respect to amounts held in the Disputed Claims Reserves). Any Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

7.5 Disputed Claims Reserves

On any date that any Distributions are to be made on account of Allowed Claims, the Liquidation Trustee shall make reasonable reserves (the "Disputed Claims Reserves") on account of Disputed Claims which, had they been Allowed Claims as of the date of such Distribution, would have shared in such Distribution. For such Disputed Claims that are liquidated (either in a Proof of Claim or in the Schedules) as of the applicable Distribution Date, the amount to be reserved shall be the amount the holder of such Disputed Claim would have received had its

Disputed Claim been Allowed on the applicable Distribution Date in the liquidated amount. For all other Disputed Claims, the amount to be reserved shall be based on the maximum amount of such Disputed Claim, as estimated by the Liquidation Trustee in the exercise of reasonable discretion. Each Disputed Claim Reserve shall be adjusted periodically as Disputed Claims are resolved and any amounts in such Disputed Claims Reserve in excess of amounts needed to make Distributions to the applicable holder of a Disputed Claim upon allowance of such Claim shall be redistributed in accordance with the provisions of this Plan.

7.6 Estimation of Claims

The Liquidation Trustee may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claims, including any Claim for taxes, to the extent permitted by Section 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Liquidation Trustee, as the Chapter 11 Case may be, has 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 Claim at any time, 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, that estimated amount shall 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 Liquidation Trustee may elect to pursue 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 necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The foregoing notwithstanding, the Liquidation Trustee shall not be required to obtain

approval of the Bankruptcy Court (or any other court) in connection with an estimation of any Claim for purposes of setting the amount of any Disputed Claim Reserve pursuant to Section 7.6 hereof.

7.7 Objections

All objections to Claims shall be Filed on or before the applicable Claims Objection Deadline. All objections shall be litigated to Final Order; provided, however, the Liquidation Trustee has the authority to compromise, settle, otherwise resolve or withdraw any objection without further order of the Bankruptcy Court. Notwithstanding any requirement that may be imposed pursuant to Bankruptcy Rule 9019, from and after the Effective Date, the Liquidation Trustee may settle Disputed Claims and Causes of Action without supervision or approval of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Bankruptcy Court and the guidelines of the United States Trustee.

7.8 Untimely Claims

Except as otherwise expressly provided in this Plan, any Claim not deemed filed pursuant to Section 1111(a) of the Bankruptcy Code as to which a Proof of Claim is not Filed on or before the applicable Claims Objection Deadline shall (a) not be treated as an Allowed Claim for voting purposes and Distribution and (b) shall be expunged from the Claims register in the Chapter 11 Caser.

7.9 Fractional Cents/Deminimus Distributions

Notwithstanding any other provision of the Plan to the contrary, no payment of fractional cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up

and fractions less than half of a cent being rounded down. No Distributions of less than \$50.00 will be made on account of Allowed Claims.

7.10 Reserved.

7.11 Setoffs

Except as otherwise provided in the Plan, the Liquidation Trustee may set off against any Claim and the Distributions to be made pursuant to the Plan in respect of such Claim, any claims of any nature whatsoever that the Debtor 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 Liquidation Trustee of any right of setoff against the holder of such Claim.

7.12 Waiver of Transfer Taxes

Pursuant to Section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of security or the making or delivery of an instrument of transfer under the Plan after the Effective Date shall not be taxed under any law imposing a stamp tax or similar tax.

7.13 Time Bar to Cash Payments by Check

Checks issued by the Liquidation Trustee on account of Allowed Claims shall be null and void if not negotiated within one hundred twenty (120) days after the date of issuance thereof, except those returned as undeliverable which shall be dealt with in accordance with Section 7.2 of the Plan. After such date, all Claims in respect of void checks shall be forever barred, and the proceeds of such checks shall revert in the Liquidation Trust and be subject to redistribution, as appropriate, in accordance with the provisions of the Plan.

7.14 Distribution of Liquidation Trust Assets to Charity

Notwithstanding anything else in this Plan or the Liquidation Trust Agreement, (a) if the Liquidation Trustee elects not to pursue any Causes of Action (other than Causes of Action

related to collection of accounts receivable, return of unearned insurance premiums and/or return of deposits), or (b) if the Liquidation Trustee determines that it is likely that the Liquidation Trust Assets that will be available for Distribution will be insufficient to generate a recovery of at least one percent (1%) to holders of Allowed General Unsecured Claims (taking into account, among other things, the anticipated cost of resolving objections to General Unsecured Claims and effecting such Distributions), the Liquidation Trustee may elect to Distribute all available Liquidation Trust Assets, after payment of all Trust Expenses and any remaining Allowed Priority Tax Claims and Allowed Other Priority Claims and after reservation of reasonable amounts for anticipated future Trust Expenses; (x) first, *pari passu* and pro-rata, to Hercules, Stevens & Lee, P.C., Pillsbury Winthrop Shaw Pittman, LLP and Morris, Nichols, Arsht and Tunnell on account of the Deferred Hercules Claim and the Deferred Professional Administrative Claims, respectively, until an amount equal to the Deferred Hercules Claim shall have been distributed to Hercules and the Deferred Professional Administrative Claims shall have been distributed to Stevens & Lee, P.C., Pillsbury Winthrop Shaw Pittman, LLP and Morris, Nichols, Arsht and Tunnell, and (y) second, any remainder to a non-profit 503(c) organization providing bankruptcy related services to consumer debtors selected by the Liquidation Trustee.

ARTICLE 8

EXECUTORY CONTRACTS AND UNEXPIRED LEASES UNDER THE PLAN

8.1 Executory Contracts and Unexpired Leases

Except as may otherwise be provided in the Plan, unless already assumed or rejected by Final Order of the Bankruptcy Court prior to the Effective Date, all executory contracts and unexpired leases of the Debtor which are not the subject of a pending application to assume as of the Effective Date shall be deemed rejected.

8.2 Reserved

8.3 Rejection Claims

Any creditor who has a Claim as a result of a rejection of an executory contract or unexpired lease shall file a proof of claim for rejection damages on or before the earlier of (a) the date required under any applicable order of the Bankruptcy Court, and (b) thirty days after the Effective Date. Any claim for rejection damages not filed by the applicable deadline shall be forever barred from assertion against the Debtor, its Assets, the Liquidation Trust and the Liquidation Trust Assets.

ARTICLE 9

RETENTION OF SUBJECT MATTER JURISDICTION

9.1 Retention of Subject Matter Jurisdiction

The Bankruptcy Court shall continue to have subject matter jurisdiction, of all matters, and over all Entities arising out of, and relating to, the Chapter 11 Case and the Plan to the maximum extent permitted by the Bankruptcy Code.

ARTICLE 10

MODIFICATION OF PLAN

10.1 Prior to the Confirmation Order

The Debtor may alter, amend or modify the Plan or any exhibits thereof under Section 1127(a) of the Bankruptcy Code at any time prior to entry of the Confirmation Order. The Debtor shall provide parties-in-interest with notice of such amendments or modifications as may be required by the Bankruptcy Code or Bankruptcy Rules or order of the Bankruptcy Court. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such holder.

10.2 After the Confirmation Order

After the entry of the Confirmation Order and prior to substantial consummation (as defined in Section 1101(2) of the Bankruptcy Code) of the Plan, the Debtor may, under Section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not materially and adversely affect the treatment of holders of Claims under the Plan; provided, however, that, to the extent required, prior notice of such proceedings shall be served in accordance with the Bankruptcy Code or Bankruptcy Rules or an order of the Bankruptcy Court. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such holder.

ARTICLE 11

PROVISIONS REGARDING INJUNCTIONS, EXCULPATION AND THIRD PARTY RELEASES

11.1 Injunction Relating to the Plan

Except as otherwise provided in the Plan, the Liquidation Trust Agreement or the Confirmation Order, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Entities that have held, hold or may hold a Claim or other debt or liability against the Debtor or Interest in the Debtor are permanently enjoined from taking any of the following actions against any of the Debtor, the Committee, the Liquidating Trustee and/or the Liquidating Trust, along with each of their respective present or former affiliates, members, employees, agents, officers, directors and principals and professionals on account of any such Claims or Interests: (a) commencing or continuing, in any manner or in any place, any action or other proceeding on account of any such Claim or Interest; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order on account of any such Claim or Interest; (c) creating, perfecting or enforcing any lien or encumbrance on account of any such Claim or Interest; (d) asserting a setoff of any kind against any debt, liability or obligation due to the Debtor to the extent such right of setoff was or could have been asserted on or before the applicable bar date on account of any such Claim or Interest; (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan on account of any such Claim or Interest; (f) taking any action derivatively on behalf of the Debtor or (f) taking any actions to interfere with the implementation of the Plan; provided, however, that nothing contained herein shall preclude such persons from exercising their rights pursuant to and consistent with the terms of the Plan.

11.2 Releases

a. Claim Holders' Release of Claims Against Officers, Directors and Professionals of the Debtor. As of the Effective Date, each holder of a Claim who votes in favor of the Plan and does not elect to opt out of the releases contained in this Section 11.2 by making such election on its Ballot, shall be deemed to have released all direct and derivative claims in connection with or related to any action or omission taking place after the Commencement Date and prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case or the Plan against the Debtor's present and former directors, officers, employees, agents, financial advisors, attorneys and professionals (including Tamarack Associates, Inc. and John L. Palmer); provided, however, the foregoing shall not waive or release any causes of action arising out of (i) any contractual obligations owing by any such party or (ii) the willful misconduct, gross negligence, intentional fraud or criminal conduct of any such party.

b. Claim Holders' Release of Claims Against Committee. As of the Effective Date, each holder of a Claim who votes in favor of the Plan and does not elect to opt out of the releases contained in Section 11.2 of the Plan by making such election on its timely-submitted Ballot, shall be deemed to have released all direct and derivative claims in connection with or related to any action or omission taking place after the Commencement Date and prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case or the Plan against the Committee and its members and any of their respective employees, agents, financial advisors, attorneys and professionals; provided, however, the foregoing shall not waive or release any causes of action arising out of (i) any contractual obligations owing by any such party or (ii) the willful misconduct, gross negligence, intentional fraud or criminal conduct of any such party.

c. Claim Holders' Release of Claims Against Hercules. As of the Effective Date, each holder of a Claim who votes in favor of the Plan and does not elect to opt out of the releases contained in Section 11.2 of the Plan by making such election on its timely-submitted Ballot, shall be deemed to have released all direct and derivative claims in connection with or related to any action or omission taking place after the Commencement Date and prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case or the Plan against Hercules and its members and any of their respective employees, agents, financial advisors, attorneys and professionals; provided, however, the foregoing shall not waive or release any causes of action arising out of (i) any contractual obligations owing by any such party or (ii) the willful misconduct, gross negligence, intentional fraud or criminal conduct of any such party.

11.3 Reserved

11.4 Reserved

11.5 Exculpation

To the fullest extent provided by applicable law, neither the Debtor, Committee, nor any of their respective members, officers, directors, employees, advisors, agents or Professionals shall have or incur any liability to any holder of a Claim or any other Entity for any action or omission in connection with, related to, or arising out of, the Chapter 11 Case, the preparation or formulation of the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan, except for willful misconduct or gross negligence; provided, however, that nothing in this Plan shall, or shall be deemed to, release or exculpate the Debtor with respect to its obligations and covenants arising pursuant to this Plan.

ARTICLE 12

BAR DATES FOR CERTAIN CLAIMS

12.1 Bar Date for Professionals

Subject to the provisions of Sections 328, 330 and 331 of the Bankruptcy Code, all Professionals seeking an award by the Bankruptcy Court of Professional Administrative Claims, shall file their respective final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date within thirty (30) days after the Effective Date.

12.2 Bar Date for Administrative Expenses

No Administrative Claim (other than a Professional Administrative Claim) will be an Allowed Administrative Claim and such a Claim shall be forever barred and enjoined if it is not filed by the Administrative Claim Bar Date.

12.3 Bar Date for Rejection Claims

The bar date for rejection Claims is set forth in Section 8.3 of the Plan.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 Governing Law

EXCEPT TO THE EXTENT THAT THE BANKRUPTCY CODE OR OTHER FEDERAL LAW IS APPLICABLE, OR TO THE EXTENT A SCHEDULE OR EXHIBIT HEREOF 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 IN ALL RESPECTS BE GOVERNED BY AND INTERPRETED, CONSTRUED AND DETERMINED IN ACCORDANCE WITH, THE INTERNAL LAWS OF DELAWARE WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISION THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

13.2 Notices

All notices, requests and demands to be effective shall be in writing (including by facsimile transmission and email) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the Chapter 11 Case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

To the Debtor:

Stevens & Lee, P.C.
1818 Market St., 29th Floor
Philadelphia, PA 19103
Attn: Robert Lapowsky
(215) 751-2866
rl@stevenslee.com

Stevens & Lee, P.C.
1105 North Market St., Suite 700
Wilmington, DE, 19801
Attn: John Demmy.
(302) 425-3308
mail: jdd@stevenslee.com

13.3 Conflicts

In the event of any conflict or inconsistency between the terms of (a) the Plan (including all exhibits to the Plan), and (b) the Disclosure Statement, the terms of the Plan shall control.

13.4 Reservation of Rights

If the Plan is not confirmed by a Final Order, or if the Plan is confirmed and does not become effective, the rights of all parties in interest in the Chapter 11 Case 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 Chapter 11 Case shall be bound or deemed prejudiced by any such concession or settlement.

13.5 Binding Effect

The rights, benefits and obligations of any Entity named or referred to in the Plan, or whose actions may be required to effectuate the terms of the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity (including, but not limited to, any trustee appointed for Debtor under Chapters 7 or 11 of the Bankruptcy Code). The Confirmation Order shall provide that the terms and provisions of the Plan and the Confirmation Order shall survive and remain effective after entry of any order which may be entered converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code, and the terms and provisions of the Plan shall continue to be effective in this or any superseding Chapter 11 Case under the Bankruptcy Code.

Dated: April 27, 2015

BAXANO SURGICAL, INC.

By: /s/ John L. Palmer
John L. Palmer, Chief Executive Officer

EXHIBIT "A"

LIQUIDATION TRUST AGREEMENT

1 **LIQUIDATION TRUST AGREEMENT**

2 Liquidation Trust Agreement (the “Agreement”) is made and entered into, as of the ____
3 day of ____, 2015, by and among Baxano Surgical, Inc. (the “Debtor”), a debtor-in-possession in
4 proceedings under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for
5 the District of Delaware (the “Bankruptcy Court”), Case No. 14-12545-CSS and _____, as
6 Liquidation Trustee (the “Liquidation Trustee” and together with the Debtor, the “Parties”), and
7 executed in connection with and pursuant to the terms of the Debtor’s Plan of Liquidation
8 (“Plan”), dated April __, 2015, and contemplated to be confirmed by an order of the Bankruptcy
9 Court (the “Confirmation Order”). Capitalized terms used herein and not otherwise defined shall
10 have the meanings ascribed to them in the Plan.

11 **RECITALS**

12 WHEREAS, on November 12, 2014 (the “Commencement Date”), a petition under
13 chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) was filed by the Debtor
14 in the Bankruptcy Court (the “Case”); and

15 WHEREAS, on _____, 2015, the Bankruptcy Court entered an order (the “Confirmation
16 Order”) confirming the Plan; and

17 WHEREAS, it is contemplated that the Plan will become effective on or about ____,
18 2015 (the “Effective Date”); and

19 WHEREAS, the Plan contemplates (a) the creation of a Liquidation Trust (the
20 “Liquidation Trust”) and the creation of beneficial interests in the Liquidation Trust solely for
21 the benefit of the Beneficiaries, and (b) the Liquidation Trust will be vested with all of the
22 Debtor’s assets including, without limitation, the right to prosecute, settle, withdraw or resolve in
23 any manner any and all Causes of Action (collectively, the “Liquidation Trust Assets”); and

24 WHEREAS, the Plan contemplates that, pursuant to Treasury Regulation
25 Section 301.7701-4(d), the Liquidation Trust shall be created for the purpose of:

26 (a) administering the Liquidation Trust Assets; (b) resolving all Disputed Claims; (c) pursuing
27 the Causes of Action, and (d) making all distributions to the Beneficiaries provided for under the

28 Plan (“Distributions”), with no objective to continue or engage in the conduct of a trade or
29 business, except to the extent reasonably necessary to and consistent with the liquidating purpose
30 of the Liquidation Trust and the Plan; and

31 WHEREAS, the Liquidation Trust is intended to qualify as a “grantor trust” for U.S.
32 federal income tax purposes, pursuant to Sections 671-677 of the Internal Revenue Code of
33 1986, as amended (the “IRC”), with the Beneficiaries to be treated as the grantors of the
34 Liquidation Trust and deemed to be the owners of the Liquidation Trust Assets (subject to the
35 rights of creditors of the Liquidation Trust), and consequently, the transfer of the Liquidation
36 Trust Assets to the Liquidation Trust shall be treated as a deemed transfer of those assets from
37 the Debtor and the Estate to the Beneficiaries followed by a deemed transfer by such
38 Beneficiaries to the Liquidation Trust for federal income tax purposes; and

39 WHEREAS, the Plan provides that the Official Committee of Unsecured Creditors
40 appointed in the Case (the “Committee”) shall select the Liquidation Trustee; and

41 WHEREAS, the Committee has selected _____ as Liquidation Trustee, and
42 _____ has agreed to serve as the Liquidation Trustee.

43 NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration
44 of the promises, the mutual agreements of the parties contained herein, and other good and
45 valuable consideration, the receipt and sufficiency of which are hereby acknowledged and
46 affirmed, the Parties hereby agree as follows:

47 **I. ESTABLISHMENT, PURPOSE AND FUNDING OF TRUST**

48 **1.1. Creation and Purpose of the Liquidation Trust.** The Debtor and the Liquidation
49 Trustee hereby create the Liquidation Trust for the primary purpose of liquidating and
50 distributing the Liquidation Trust Assets to the Beneficiaries in accordance with the Plan, the
51 Confirmation Order, and applicable tax statutes, rules, and regulations, and in an expeditious but
52 orderly manner, with no objective to continue or engage in the conduct of a trade or business. In
53 particular, the Liquidation Trustee shall (a) make continuing efforts to collect and reduce the
54 Liquidation Trust Assets to Cash, (b) make timely Distributions and (c) not unduly prolong the
55 duration of the Liquidation Trust.

56 1.2. **Declaration of Trust.** To declare the terms and conditions hereof, and in
57 consideration of the confirmation of the Plan, the Debtor and the Liquidation Trustee have
58 executed this Agreement and, effective on the Effective Date, the Debtor hereby irrevocably
59 transfers to the Liquidation Trust, all of the right, title, and interests of the Debtor in and to the
60 Liquidation Trust Assets, to have and to hold unto the Liquidation Trust and its successors and
61 assigns forever, under and subject to the terms of the Plan and the Confirmation Order for the
62 benefit of the Beneficiaries and their successors and assigns as provided for in this Agreement
63 and in the Plan and the Confirmation Order.

64 1.3. **Vesting of Estate Assets.** On the Effective Date, pursuant to the terms of the Plan, the
65 Liquidation Trust Assets (not otherwise abandoned pursuant to the terms of the Plan) shall be
66 vested in the Liquidation Trust, which also shall be authorized to obtain, liquidate, and collect all
67 of the Liquidation Trust Assets in the possession of third parties and pursue all of the Causes of
68 Action. Subject to the provisions of the Plan, all such Liquidation Trust Assets shall be delivered
69 to the Liquidation Trust free and clear of interests, Claims, Liens, or other encumbrances of any
70 kind except as otherwise provided in the Plan. The Liquidation Trustee shall have no duty to
71 arrange for any of the transfers contemplated hereunder and shall be conclusively entitled to rely
72 on the legality and validity of such transfers. Moreover, on the Effective Date, all privileges
73 with respect to any Liquidation Trust Assets, including the attorney/client privilege, to which the
74 Debtor is entitled, shall be automatically vested in, and available for assertion by or waiver by
75 the Liquidation Trustee on behalf of the Liquidation Trust. To the extent any of the foregoing
76 does not automatically occur on the Effective Date or is not effectuated through the Confirmation
77 Order or this Agreement, the Debtor shall, on the Effective Date, execute such other and further
78 documents as are reasonably necessary to effectuate all of the foregoing.

79 1.4. **Funding of the Trust.** The Liquidation Trust shall be funded, on the Effective Date,
80 with the Liquidation Trust Assets, as provided for in the Plan and in the Confirmation Order.

81 1.5. **Acceptance by Liquidation Trustee.** The Liquidation Trustee hereby accepts the
82 trust imposed upon it by this Agreement and agrees to observe and perform the trust on and
83 subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation

84 Order. In connection with and in furtherance of the purposes of the Liquidation Trust, the
85 Liquidation Trustee hereby accepts the transfer of the Liquidation Trust Assets.

86 1.6. **Name of the Liquidation Trust.** The Liquidation Trust established hereby shall be
87 known as the “Baxano Liquidation Trust”.

88 1.7. **Statement of Intent, No Partnership.** The Parties intend (i) the Liquidation Trust to
89 qualify as a “grantor trust” for U.S. federal income tax purposes, (ii) that the Liquidation Trust
90 shall not be a partnership or joint venture, and (iii) that no Party shall be a partner or joint
91 venturer of any other Party, for any purpose, and the provisions of this Agreement shall not be
92 construed otherwise.

93 1.8. **Separate Books and Records.**

94 (a) Upon receipt of the Liquidation Trust Assets, the Liquidation Trustee shall keep
95 and maintain in segregated books and records, or as otherwise provided in this Agreement, an
96 accounting of the Liquidation Trust Assets being held in trust for the Beneficiaries of the Debtor.
97 The separate books and records are referred to in this Agreement the “Ledger.”

98 (b) The Liquidation Trustee shall allocate to the Ledger (i) the income and gains from
99 any investment of Liquidation Trust Assets, as well as the proceeds from the sale, transfer or
100 other disposition of Liquidation Trust Assets (collectively, “Gains”), and (ii) the losses incurred
101 from any investment of Liquidation Trust Assets, as well as losses from the sale, transfer or other
102 disposition of Liquidation Trust Assets, as well as the fees and expenses payable pursuant to this
103 Agreement (collectively, “Expenses”), to the Ledger pro rata in proportion to the interest the
104 Beneficiaries have in the Liquidation Trust Assets as a whole.

105 **II. THE LIQUIDATION TRUSTEE**

106 2.1. **Appointment.** The Liquidation Trustee has been appointed pursuant to the provisions
107 of the Plan. The Liquidation Trustee’s appointment shall continue until the earlier of (a) the
108 termination of the Liquidation Trust or (b) the Liquidation Trustee’s resignation, death, or
109 removal.

110 2.2. **General Powers.** Except as otherwise provided in this Agreement, the Plan, or the
111 Confirmation Order, the Liquidation Trustee shall control and exercise authority over the
112 Liquidation Trust Assets, over the acquisition, management, and disposition thereof, and over the
113 management and conduct of the business of the Liquidation Trust. No Person dealing with the
114 Liquidation Trust shall be obligated to inquire into the Liquidation Trustee's authority in
115 connection with the acquisition, management, or disposition of Liquidation Trust Assets.
116 Without limiting the foregoing, but subject to the Plan, the Confirmation Order, and other
117 provisions of this Agreement, the Liquidation Trustee shall be expressly authorized to, with
118 respect to the Liquidation Trust and the Liquidation Trust Assets:

119 (a) Exercise all power and authority that may be or could have been exercised,
120 commence all proceedings that may be or could have been commenced, and take all actions that
121 may be or could have been taken with respect to the Liquidation Trust Assets by any officer,
122 director, shareholder, or other party acting in the name of the Debtor or the Estate with like effect
123 as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or
124 other party.

125 (b) Open and maintain bank accounts on behalf of or in the name of the Liquidation
126 Trust, calculate and make Distributions, and take other actions consistent with the Plan and the
127 implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance
128 of appropriate reserves, in the name of the Liquidation Trust.

129 (c) Receive, manage, invest, supervise, and protect the Liquidation Trust Assets,
130 subject to the limitations provided herein.

131 (d) Hold legal title to any and all Liquidation Trust Assets.

132 (e) Subject to the applicable provisions of the Plan and this Agreement, collect and
133 liquidate all Liquidation Trust Assets pursuant to the Plan.

134 (f) Review, and where appropriate, object to claims, and supervise and administer the
135 commencement, prosecution, settlement, compromise, withdrawal, or resolution of all Disputed
136 Claims and the Distributions to the Beneficiaries and creditors of the Liquidation Trust, in any

137 manner permitted by this Agreement, the Plan, and the Confirmation Order or as approved by the
138 Bankruptcy Court.

139 (g) Seek to extend any Claims Objection Bar Date, whether through motion or
140 otherwise.

141 (h) Commence, prosecute, compromise, settle, withdraw, abandon, or resolve all
142 Causes of Action in any manner permitted by this Agreement, the Plan, and the Confirmation
143 Order or as approved by the Bankruptcy Court.

144 (i) Seek a determination of tax liability under Section 505 of the Bankruptcy Code;
145 (2) file, if necessary, any and all tax and information returns required with respect to the
146 Liquidation Trust; (3) make tax elections for and on behalf of the Liquidation Trust; and (4) pay
147 taxes, if any, payable for and on behalf of the Liquidation Trust.

148 (j) Pay all lawful expenses, debts, charges, taxes, and liabilities of the Liquidation
149 Trust.

150 (k) Take all other actions consistent with the provisions of the Plan which the
151 Liquidation Trustee deems reasonably necessary or desirable to administer the Plan.

152 (l) Make Distributions to the Beneficiaries, and to creditors of the Liquidation Trust
153 as provided for, or contemplated by, the Plan, the Confirmation Order or this Agreement.

154 (m) Request and require as a condition to receiving a distribution under the Plan
155 a W-9 or similar federal tax form for any party who is entitled to receive distributions on account
156 of a Claim;

157 (n) Withhold from the amount distributable to any Person or Entity such amount as
158 may be sufficient to pay any tax or other charge which the Liquidation Trustee has determined,
159 based upon the advice of its agents or professionals, may be required to be withheld therefrom
160 under the income tax laws of the United States or of any state or political subdivision thereof.

161 (o) Enter into any agreement or execute any document or instrument required by or
162 consistent with the Plan, the Confirmation Order, or this Agreement and perform all obligations
163 thereunder.

164 (p) Subject to Section 4.5 of this Agreement, purchase and carry all insurance policies
165 and pay all insurance premiums and costs it deems reasonably necessary or advisable.

166 (q) Implement, enforce, or discharge all of the terms, conditions, and all other
167 provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this
168 Agreement.

169 (r) Employ and compensate attorneys, accountants, appraisers, or other parties
170 necessary to assist in the proper administration of the Liquidation Trust, including attorneys,
171 accountants, appraisers, or other parties previously employed by the Debtor, without the
172 necessity of approval of the Bankruptcy Court.

173 (s) Undertake all administrative functions in the Chapter 11 Case, including the
174 ultimate closing of the Chapter 11 Case.

175 (t) Invest in demand and time deposits in banks or savings institutions, or temporary
176 investments such as short term certificates of deposit or Treasury bills or other investments that a
177 “Liquidation Trust” within the meaning of Treasury Regulation Section 301.7701-4(d) may be
178 permitted to hold, pursuant to the Treasury Regulations or any modification in the Internal
179 Revenue Services (“IRS”) guidelines, whether set forth in IRS rulings, revenue procedures, other
180 IRS pronouncements or otherwise.

181 (u) Hire former employees of the Debtor to the extent their services are needed to
182 assist in the wind down of the Estate.

183 **2.3. Limitations on the Liquidation Trustee.** Notwithstanding anything under applicable
184 law, this Agreement or the Plan to the contrary, the Liquidation Trustee shall not do or undertake
185 any of the following, provided, however, that nothing in this Agreement shall be deemed to
186 prevent the Liquidation Trustee from taking, or failing to take, any action that, based upon the

187 advice of counsel, it is obligated to take (or fail to take) in the performance of any fiduciary or
188 similar duty which the Liquidation Trustee owes to the Beneficiaries or any other Person.

189 (a) Take, or fail to take, any action that would jeopardize treatment of the Liquidation
190 Trust as a “Liquidation Trust” for federal income tax purposes.

191 (b) Receive transfers of any listed stocks or securities, any readily-marketable assets
192 or any operating assets of a going business, except as is absolutely necessary or required under
193 the Plan and the Confirmation Order; provided, however, that in no event shall the Liquidation
194 Trustee receive any such investment that would jeopardize treatment of the Liquidation Trust as
195 a “Liquidation Trust” for federal income tax purposes.

196 (c) Exercise any investment power other than the power to invest in demand and time
197 deposits in banks or savings institutions, or temporary investments such as short term certificates
198 of deposit or Treasury bills or other investments that a “Liquidation Trust” within the meaning of
199 Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury
200 Regulations or any modification in the IRS guidelines, whether set forth in IRS rulings, revenue
201 procedures, other IRS pronouncements or otherwise.

202 (d) Receive or retain any operating assets of a going business, a partnership interest in
203 a partnership that holds operating assets, or fifty percent (50%) or more of the stock of a
204 corporation with operating assets; provided, however that in no event shall the Liquidation
205 Trustee receive or retain any such asset or interest that would jeopardize treatment of the
206 Liquidation Trust as a “Liquidation Trust” for federal income tax purposes.

207 (e) Notwithstanding any of the foregoing, the Liquidation Trustee shall not be
208 prohibited from engaging in any trade or business on its own account, provided that such activity
209 does not interfere with the Liquidation Trustee’s administration of the Liquidation Trust or the
210 tax status of the Liquidation Trust.

211 **2.4. Court Approval of Liquidation Trustee Actions.** Except as provided in the Plan or
212 otherwise specified in this Agreement, the Liquidation Trustee need not obtain the order or
213 approval of the Bankruptcy Court (or any other court) in the exercise of any power, rights, or
214 discretion conferred hereunder, or account to the Bankruptcy Court (or any other court). The

215 Liquidation Trustee shall exercise its business judgment for the benefit of the Beneficiaries in
216 order to maximize the value of the Liquidation Trust Assets and Distributions, giving due regard
217 to the cost, risk, and delay of any course of action. Notwithstanding the foregoing, the
218 Liquidation Trustee shall have the right to submit to the Bankruptcy Court any question or
219 questions regarding which the Liquidation Trustee may desire to have explicit approval of the
220 Bankruptcy Court for the taking of any specific action proposed to be taken by the Liquidation
221 Trustee with respect to the Liquidation Trust Assets, this Liquidation Trust, the Agreement, the
222 Plan, including the administration and distribution of the Liquidation Trust Assets and the sale of
223 any Liquidation Trust Asset free and clear of any and all liens, claims and encumbrances. The
224 Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove any
225 such proposed action upon motion by the Liquidation Trustee, provided, however, if the
226 Bankruptcy Court declines to exercise such jurisdiction or determines that it does not have such
227 jurisdiction, the Liquidation Trustee may seek approval of any such proposed action from any
228 court of competent jurisdiction.

229 **2.5. Compensation of Liquidation Trustee and its Agents and Professionals and**
230 **Expenses of the Liquidation Trust.**

231 (a) The Liquidation Trustee shall be entitled to (i) an annual fee of \$____, plus (ii) a
232 percentage fee equal to all recoveries on account of Causes of Action multiplied by the
233 maximum percentage of distributions payable to a trustee pursuant to Section 326(a) of the
234 Bankruptcy Code, plus (iii) the reimbursement of all reasonable out-of-pocket expenses incurred
235 in connection with this Agreement. Any successor to the Liquidation Trustee shall be entitled to
236 the compensation provided herein, plus the reimbursement of reasonable out-of-pocket expenses
237 from the date of such successor's appointment.

238 (b) The Liquidation Trustee's fees shall be paid monthly, in arrears, from the
239 Liquidation Trust Assets by check or wire transfer on the fifth business day of each month
240 commencing on ___5, 2015; provided, however, that the first monthly payment shall include a
241 pro rata payment for services rendered for any partial month following the Effective Date.

242 (c) The Liquidation Trustee may pay the reasonable expenses of the Liquidation
243 Trust, including salaries of employees and reasonable fees and expenses of retained

244 professionals, including contingency fees, in each case from the Liquidating Trust Assets in the
245 ordinary course.

246 **2.6. Consultation Rights of Holders of Deferred Professional Administrative Claims**
247 **and Deferred Hercules Claim.** Until the Deferred Hercules Claim and the Deferred
248 Professional Administrative Claims are paid in full, the Liquidation Trustee, upon reasonable
249 request by any holder of such Claims, shall consult with such holder and respond to its
250 reasonable inquiries and requests for information concerning all non-privileged matters relating
251 to the Liquidation Trust and the implementation of the Plan, including but not limited to the
252 status of litigation, the reasonableness of the fees and expenses incurred by the Trust and the
253 Liquidation Trustee and information relating to income expenses and balances on hand in the
254 Liquidation Trust.

255 **2.7. Replacement of the Liquidation Trustee.** The Liquidation Trustee may resign at any
256 time upon thirty (30) days' written notice Filed with the Bankruptcy Court (or, if the Case has
257 been closed, with any other court of competent jurisdiction), provided that such resignation shall
258 only become effective upon the appointment of a permanent or interim successor Liquidation
259 Trustee. The Liquidation Trustee may be removed by the Bankruptcy Court (or, if the Case has
260 been closed, by any other court of competent jurisdiction) upon application and after notice and a
261 hearing, which application may be brought by any Beneficiary. In the event of the resignation or
262 removal of the Liquidation Trustee, a successor Liquidation Trustee shall be appointed by the
263 Bankruptcy Court (or, if the Case has been closed, by any other court of competent jurisdiction).
264 Upon its appointment, the successor Liquidation Trustee, without any further act, shall become
265 fully vested with all of the rights, powers, duties, and obligations of its predecessor and all
266 responsibilities of the predecessor Liquidation Trustee relating to the Liquidation Trust shall be
267 terminated. In the event the Liquidation Trustee's appointment terminates by reason of death,
268 dissolution, liquidation, resignation, or removal, such Liquidation Trustee or its heirs or
269 representative, as the case shall be, shall be immediately compensated for all reasonable fees and
270 expenses accrued through the effective date of termination, whether or not previously invoiced.

271 **2.8. Liquidation Trust Continuance.** The death, dissolution, liquidation, resignation, or
272 removal of the Liquidation Trustee shall not terminate the Liquidation Trust or revoke any

273 existing agency created by the Liquidation Trustee pursuant to this Agreement or invalidate any
274 action theretofore taken by the Liquidation Trustee, and the provisions of this Agreement shall be
275 binding upon and inure to the benefit of the successor Liquidation Trustee and all its successors
276 or assigns.

277 **III. RESERVED**

278 **IV. RESERVED**

279 **V. LIABILITY OF LIQUIDATION TRUSTEE**

280 **5.1. Standard of Care; Exculpation.** Neither the Liquidation Trustee, nor any director,
281 officer, affiliate, employee, employer, professional, successors, assigns, agent, or representative
282 of the Liquidation Trustee (each, an “Exculpated Party” and collectively, the “Exculpated
283 Parties”) shall be liable for any losses, claims, damages, liabilities, obligations, settlements,
284 proceedings, suits, judgments, causes of action, litigation, actions, or investigations, (whether
285 civil or administrative and whether sounding in tort, contract, or otherwise), penalties, costs, and
286 expenses, including reasonable fees and disbursements (collectively referred to herein as
287 “Losses”), whether or not in connection with litigation in which any Exculpated Party is a party,
288 or enforcing this Agreement (including these exculpation provisions), as and when imposed on
289 the Liquidation Trustee, incurred, caused by, relating to, based upon or arising out of (directly or
290 indirectly) the Liquidation Trustee’s execution, delivery, and acceptance of or the performance
291 or nonperformance of its powers, duties and obligations under this Agreement, the Plan, or the
292 Confirmation Order or as may arise by reason of any action, omission, or error of an Exculpated
293 Party; provided, however, that the foregoing limitation shall not apply to any Losses suffered or
294 incurred by any holder of a Claim or Interest or Beneficiary that are found in a final judgment by
295 a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and
296 directly from acts of bad faith, gross negligence or willful misconduct of such Exculpated Party.
297 Every act taken or omitted, power exercised, or obligation assumed by the Liquidation Trust or
298 any Exculpated Party pursuant to the provisions of this Agreement shall be held to be taken or
299 omitted, exercised, or assumed, as the case may be, by the Liquidation Trust or any Exculpated
300 Party acting for and on behalf of the Liquidation Trust and not otherwise; provided, however,
301 that none of the foregoing Entities or Persons are deemed to be responsible for any other such

302 Entities' or Persons' actions or intentions. Except as provided in the first proviso of the first
303 sentence of this Section 5.1, every Person, firm, corporation, or other Entity contracting or
304 otherwise dealing with or having any relationship with the Liquidation Trust or any Exculpated
305 Party shall have recourse only to the Liquidation Trust Assets for payment of any liabilities or
306 other obligations arising in connection with such contracts, dealings or relationships and the
307 Liquidation Trust and the Exculpated Parties shall not be individually liable therefore. In no
308 event shall the Liquidation Trust or any Exculpated Party be liable for indirect, punitive, special,
309 incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever,
310 even if the Liquidation Trust or such Exculpated Party has been informed of the likelihood of
311 such loss or damages and regardless of the form of action. Any liability of the Liquidation
312 Trustee under this Agreement will be limited to the amount of annual fees actually paid to the
313 Liquidation Trustee.

314 **5.2. Indemnification.**

315 (a) The Liquidation Trustee and any director, officer, affiliate, employee, employer,
316 professional, successor, assign, agent, or representative of the Liquidation Trustee (each, an
317 "Indemnified Party" and collectively, the "Indemnified Parties") shall be defended, held
318 harmless, and indemnified from time to time by the Liquidation Trust against any and all Losses,
319 including, without limitation, the costs for counsel or others in investigating, preparing,
320 defending, or settling any action or claim, whether or not in connection with litigation in which
321 any Indemnified Party is a party, or enforcing this Agreement (including these indemnity
322 provisions), as and when imposed on the Liquidation Trustee, incurred, caused by, relating to,
323 based upon or arising out of (directly or indirectly) the Liquidation Trustee's execution, delivery,
324 and acceptance of or the performance or nonperformance of its powers, duties, and obligations
325 under this Agreement, the Plan, or the Confirmation Order or as may arise by reason of any
326 action, omission, or error of an indemnified Party; provided, however, such indemnity shall not
327 apply to any such Losses to the extent it is found in a final judgment by a court of competent
328 jurisdiction (not subject to further appeal) to have resulted primarily and directly from acts of
329 bad faith, gross negligence, or willful misconduct of such Indemnified Party. Satisfaction of any
330 obligation of the Liquidation Trust arising pursuant to the terms of this Section shall be payable
331 only from the Liquidation Trust Assets, shall be advanced prior to the conclusion of such matter

332 and such right to payment shall be prior and superior to any other rights to receive a distribution
333 of the Liquidation Trust Assets.

334 (b) The Liquidation Trust shall promptly pay to the indemnified Party the expenses
335 set forth in subparagraph (a) above upon submission of invoices therefore on a current basis.
336 Each indemnified Party hereby undertakes, and the Liquidation Trust hereby accepts its
337 undertaking, to repay any and all such amounts so paid by the Liquidation Trust if it shall
338 ultimately be determined that such Indemnified Party is not entitled to be indemnified therefore
339 under this Agreement.

340 **5.3. No Liability for Acts of Successor/Predecessor Liquidation Trustees.** Upon the
341 appointment of a successor Liquidation Trustee and the delivery of the Liquidation Trust Assets
342 to the successor Liquidation Trustee, the predecessor Liquidation Trustee and any director,
343 officer, affiliate, employee, employer, professional, agent, or representative of the predecessor
344 Liquidation Trustee shall have no further liability or responsibility with respect thereto. A
345 successor Liquidation Trustee shall have no duty to examine or inquire into the acts or omissions
346 of its immediate or remote predecessor and no successor Liquidation Trustee shall be in any way
347 liable for the acts or omissions of any predecessor Liquidation Trustee unless a successor
348 Liquidation Trustee expressly assumes such responsibility. A predecessor Liquidation Trustee
349 shall have no liability for the acts or omissions of any immediate or subsequent successor
350 Liquidation Trustee for any events or occurrences subsequent to the cessation of its role as
351 Liquidation Trustee.

352 **5.4. Insurance.** The Liquidation Trustee may purchase, using the Liquidation Trust
353 Assets, and carry all insurance policies and pay all insurance premiums and costs the Liquidation
354 Trustee deems reasonably necessary or advisable, including, without limitation, purchasing any
355 errors and omissions insurance with regard to any Losses it may incur, arising out of or due to its
356 actions or omissions, or consequences of such actions or omissions, other than as a result of its
357 fraud or willful misconduct, with respect to the implementation and administration of the Plan or
358 this Agreement.

359 **5.5. Survival.** The provisions of this Article V shall survive the termination of this
360 Agreement and the death, resignation, removal, liquidation, dissolution, or replacement of the
361 Liquidation Trustee.

362 **VI. GENERAL PROVISIONS CONCERNING ADMINISTRATION OF THE**
363 **LIQUIDATION TRUST**

364 **6.1. Register of Beneficiaries.** The Liquidation Trustee shall maintain at all times a
365 register of the names, distribution addresses, amounts of Allowed Claims, and the ratable
366 interests in the Liquidation Trust of the Beneficiaries (the “Register”). The initial Register shall
367 be delivered to the Liquidation Trustee by the Debtor and shall be based on the list of holders of
368 Claims maintained by the Debtor as of the Effective Date and prepared in accordance with the
369 provisions of the Plan and the Confirmation Order. All references in this Agreement to holders
370 of beneficial interests in the Liquidation Trust shall be read to mean holders of record as set forth
371 in the Register maintained by the Liquidation Trustee and shall exclude any beneficial owner not
372 recorded on such Register. The Liquidation Trustee shall cause the Register to be kept at its
373 office or at such other place or places as may be designated by the Liquidation Trustee from time
374 to time.

375 **6.2. Books and Records.**

376 (a) On the Effective Date, the Debtor shall transfer and assign to the Liquidation
377 Trust full title to, and the Liquidation Trust shall be authorized to take possession of, all of the
378 books and records of the Debtor. The Liquidation Trust shall have the responsibility of storing
379 and maintaining books and records transferred hereunder until the Case is closed, after which
380 time such books and records may, to the extent not prohibited by applicable law, be abandoned
381 or destroyed without further Bankruptcy Court order. For the purpose of this Section 6.2, books
382 and records include computer generated or computer maintained books and records and
383 computer data, as well as electronically generated or maintained books and records or data, along
384 with books and records of the Debtor maintained by or in possession of third parties and all of
385 the claims and rights of the Debtor in and to its books and records, wherever located.

386 (b) The Liquidation Trustee also shall maintain in respect of the Liquidation Trust
387 and the Beneficiaries books and records relating to the Liquidation Trust Assets and any income
388 or proceeds realized therefrom and the payment of expenses of and claims against or assumed by
389 the Liquidation Trust in such detail and for such period of time as may be necessary to enable it
390 to make full and proper reports in respect thereof. Except as expressly provided in this
391 Agreement, the Plan, or the Confirmation Order, or as may be required by applicable law,
392 nothing in this Agreement is intended to require the Liquidation Trust to file any accounting or
393 seek approval of any court with respect to the administration of the Liquidation Trust, or as a
394 condition for making any payment or distribution out of the Liquidation Trust Assets.

395 **6.3. Confidentiality of Human Resources and Medical Information.** The Liquidation
396 Trustee and the Debtor will not disclose to any Person, either directly or indirectly, any
397 information related to the Debtor's employees, including medical information, unless otherwise
398 permitted or required by applicable law; provided, that the Liquidation Trustee and the Debtor
399 may disclose such information to their respective directors, officers, stockholders, employees,
400 agents, or advisors (including attorneys, accountants, and financial advisors) who need to know
401 such information to consummate the Plan who are bound by confidentiality obligations in favor
402 of the Liquidation Trustee and the Debtor.

403 **6.4. Reserved.**

404 **6.5. Final Accounting of Liquidation Trustee.** The Liquidation Trustee (or any such
405 successor Liquidation Trustee) shall within ninety (90) days after the termination of the
406 Liquidation Trust or the death, dissolution, liquidation, resignation, or removal of the Liquidation
407 Trustee, render an accounting containing the following information:

408 (a) A description of the Liquidation Trust Assets.

409 (b) A summarized accounting in sufficient detail of all gains, losses, receipts,
410 disbursements and other transactions in connection with the Liquidation Trust and the
411 Liquidation Trust Assets during the Liquidation Trustees term of service, including their source
412 and nature.

413 (c) Separate entries for all receipts of principal and income.

414 (d) The ending balance of all Liquidation Trust Assets as of the date of the
415 accounting, including the Cash balance on hand and the name(s) and locations) of the depository
416 or depositories where the Cash is kept.

417 (e) All known liabilities of the Liquidation Trust.

418 (f) All pending actions.

419 **6.6. Filing of Accounting.** The final accounting described in Section 6.6 shall be filed
420 with the Bankruptcy Court (or, if the Case has been closed, with another court of competent
421 jurisdiction) and all Beneficiaries shall have notice that the final accounting has been filed and an
422 opportunity to have a hearing on the approval of the accounting and the discharge and release of
423 the Liquidation Trustee.

424 **VII. BENEFICIAL INTERESTS AND BENEFICIARIES**

425 **7.1. Trust Beneficial Interests.** Each holder of an Allowed Claim, shall be entitled to
426 receive beneficial interests in accordance with the treatment of such Claim under the Plan, and
427 shall be entitled to Distributions as set forth in the Plan.

428 **7.2. Interest Beneficial Only.** Ownership of a beneficial interest in the Liquidation Trust
429 shall not entitle any Beneficiary to any title in or to the Liquidation Trust Assets or to any right
430 to call for a partition or division of the Liquidation Trust Assets or to require an accounting.

431 **7.3. Evidence of Beneficial Interest.** Ownership of a beneficial interest in the Liquidation
432 Trust shall not be evidenced by any certificated security, or receipt or in any other form or
433 manner whatsoever, except as maintained on the books and records of the Liquidation Trust by
434 the Liquidation Trustee, which may be the Register.

435 **7.4. Exemption from Registration.** The parties hereto intend that the rights of the holders
436 of the beneficial interests arising under this Agreement shall not be “scantiest” under applicable
437 laws, but none of the parties hereto represents or warrants that such rights shall not be securities
438 or shall be entitled to exemption from registration under applicable securities laws. If such rights
439 constitute securities, the parties hereto intend for the exemption from registration provided by

440 Section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance
441 under the Plan.

442 **7.5. Transfers of Beneficial Interests.** Beneficial interests in the Liquidation Trust shall
443 be nontransferable except upon death of the holder or by operation of law. The Liquidation
444 Trust shall not have any obligation to recognize any transfer of Claims occurring after the
445 Record Date. Only those holders of Claims of record stated on the transfer Ledger as of the
446 close of business on the Record Date, to the extent applicable, shall be entitled to be recognized
447 for all purposes hereunder.

448 **7.6. Absolute Owners.** The Liquidation Trustee may deem and treat the Beneficiary
449 reflected as the owner of a beneficial interest on the Register as the absolute owner thereof for
450 the purposes of receiving Distributions and payments on account thereof for federal and state
451 income tax purposes and for all other purposes whatsoever.

452 **7.7. Change of Address.** A Beneficiary may, after the Effective Date, select an alternative
453 Distribution address by written notice to the Liquidation Trustee identifying such alternative
454 distribution address. Absent such notice, the Liquidation Trustee shall not recognize any such
455 change of distribution address. Such notification shall be effective only upon receipt by the
456 Liquidation Trustee.

457 **7.8. Effect of Death, Dissolution, Incapacity, or Bankruptcy of Beneficiary.** The death,
458 dissolution, incapacity, or bankruptcy of a Beneficiary during the term of the Liquidation Trust
459 shall not operate to terminate the Liquidation Trust during the term of the Liquidation Trust nor
460 shall it entitle the representative or creditors of the deceased, incapacitated or bankrupt
461 Beneficiary to an accounting or to take any action in any court or elsewhere for the Distribution
462 of the Liquidation Trust Assets or for a partition thereof nor shall it otherwise affect the rights
463 and obligations of the Beneficiary under this Agreement or in the Liquidation Trust.

464 **7.9. Standing.** Except as expressly provided in this Agreement, the Plan or the
465 Confirmation Order, a Beneficiary does not have standing to direct the Liquidation Trustee to do
466 or not to do any act or to institute any action or proceeding at law or in equity against any party
467 upon or with respect to the Liquidation Trust Assets.

468 **VIII. DISTRIBUTIONS**

469 **8.1. Distributions to Beneficiaries from Liquidation Trust Assets.** All Distributions
470 shall be made in accordance with the Plan, the Confirmation Order, and this Agreement and from
471 the Liquidation Trust Assets (or from the income and proceeds realized from the Liquidation
472 Trust Assets). Distributions of net income and proceeds of sales of assets, minus amounts
473 reasonably necessary to meet claims and contingent liabilities (including disputed claims), shall
474 be made at least annually.

475 **IX. TAXES**

476 **9.1. Income Tax Status.** Consistent with Revenue Procedure 94-45, 1994-2 CB 684, the
477 Liquidation Trust shall be treated as a Liquidation Trust pursuant to Treasury Regulation
478 Section 301.7701-4(d) and as a grantor trust pursuant to IRC Sections 671-677. As such, the
479 Beneficiaries will be treated as both the grantors and the deemed owners of the Liquidation
480 Trust. Any items of income, deduction, credit, and loss of the Liquidation Trust shall be
481 allocated for federal income tax purposes to the Beneficiaries in accordance with Section 1.8
482 hereof.

483 **9.2. Tax Returns.** In accordance with IRC Section 6012 and Treasury Regulation
484 Section 1.671-4(a), the Liquidation Trust shall file with the IRS annual tax returns on
485 Form 1041. In addition, the Liquidation Trust shall file in a timely manner such other tax
486 returns, including any state and local tax returns, as are required by applicable law and pay any
487 taxes shown as due thereon out of the Liquidation Trust Assets (or the income or proceeds
488 thereof). Within a reasonable time following the end of the taxable year, the Liquidation Trust
489 shall send to each Beneficiary a separate statement setting forth the Beneficiary's share of items
490 of income, gain, loss, deduction or credit and will instruct each such Beneficiary to report such
491 items on their federal income tax returns.

492 **9.3. Withholding of Taxes and Reporting Related to Liquidation Trust Operations.**
493 The Liquidation Trust shall comply with all withholding and reporting requirements imposed by
494 any federal, state, local, or foreign taxing authority, and all distributions made by the Liquidation
495 Trust shall be subject to any such withholding and reporting requirements. To the extent that the

496 operation of the Liquidation Trust or the liquidation of the Liquidation Trust Assets creates a tax
497 liability, the Liquidation Trust shall promptly pay such tax liability out of the Liquidation Trust
498 Assets (or the income or proceeds thereof) and any such payment shall be considered a cost and
499 expense of the operation of the Liquidation Trust payable without Bankruptcy Court order. The
500 Liquidation Trust may reserve a sum, the amount of which shall be determined by the
501 Liquidation Trust in its sole discretion, sufficient to pay the accrued or potential tax liability
502 arising out of the operations of the Liquidation Trust or the operation of the Liquidation Trust
503 Assets. The Liquidation Trustee, on behalf of the Liquidation Trust, may enter into agreements
504 with taxing authorities or other governmental units for the payment of such amounts as may be
505 withheld. Any federal, state, or local withholding taxes or other amounts required to be withheld
506 under applicable law shall be deducted from Distributions hereunder. All Beneficiaries shall be
507 required to provide any information necessary to effect the withholding of such taxes.

508 **9.4. Valuations.** As soon as possible after the Effective Date, the Liquidation Trustee shall
509 make a good faith determination of the value of all of the Liquidation Trust Assets. The
510 Liquidation Trustee shall establish appropriate means to apprise the Beneficiaries of such
511 valuation and such valuation shall be used consistently by all parties (including, without
512 limitation, the Liquidation Trust, and the Beneficiaries) for all federal income tax purposes. The
513 Liquidation Trustee also shall file (or cause to be filed) any other statements, returns, or
514 disclosures relating to the Liquidation Trust that are required by any governmental unit.

515 **9.5. Treatment of Disputed Reserves.** Notwithstanding any other provision of this
516 Agreement to the contrary, subject to definitive guidance from the IRS or a court of competent
517 jurisdiction to the contrary, the Liquidation Trust shall (a) treat any Liquidation Trust Assets
518 allocable to, or retained on account of, a Disputed Claim Reserve as held by one or more discrete
519 trusts for federal income tax purposes, consisting of separate and independent shares to be
520 established in respect of each Disputed Claim, in accordance with the trust provisions of the IRC
521 (sections 641 et seq.), (b) treat as taxable income or loss of each Disputed Claim Reserve, with
522 respect to any given taxable year, the portion of the taxable income or loss of the Liquidation
523 Trust that would have been allocated to the holders of Disputed Claims had such Claims been
524 Allowed on the Effective Date (but only for the portion of the taxable year with respect to which
525 such Claims are unresolved), (c) treat as a distribution from the Disputed Claim Reserve any

526 increased amounts distributed by the Liquidation Trust as a result of any Disputed Claims
527 resolved earlier in the taxable year, to the extent such Distributions relate to taxable income or
528 loss of the Disputed Claim Reserve determined in accordance with the provisions hereof, and
529 (iv) to the extent permitted by applicable law, report consistent with the foregoing for state and
530 local income tax purposes. All Beneficiaries shall report, for income tax purposes, consistent
531 with the foregoing. In the event, and to the extent, any Cash retained on account of Disputed
532 Claims in the Disputed Claim Reserve is insufficient to pay the portion of any such taxes
533 attributable to the taxable income arising from the assets allocable to, or retained on account of,
534 Disputed Claims, such taxes shall be (a) reimbursed from any subsequent Cash amounts retained
535 on account of Disputed Claims, or (b) to the extent such Disputed Claims have subsequently
536 been resolved, deducted from any amounts distributable by the Liquidation Trustee as a result of
537 the resolutions of such Disputed Claims.

538 **9.6. Expedited Determination of Taxes.** The Liquidation Trust may request an expedited
539 determination of taxes of the Debtor and of the Liquidation Trust, including the Disputed
540 Reserves, under section 505 of the Bankruptcy Code for all returns filed for, or on behalf of, the
541 Debtor and the Liquidation Trust for all taxable periods through the termination of the
542 Liquidation Trust.

543 **X. TERMINATION OF LIQUIDATION TRUST**

544 **10.1. Termination of Liquidation Trust.** The Liquidation Trustee shall be discharged and
545 the Liquidation Trust shall be terminated, at such time as (a) all Disputed Claims have been
546 resolved, (b) all of the Liquidation Trust Assets have been liquidated, (c) all duties and
547 obligations of the Liquidation Trustee hereunder have been fulfilled, (d) all Distributions
548 required to be made by the Liquidation Trustee under the Plan and this Agreement have been
549 made, and (e) the Case has been closed. If the Liquidation Trust has not terminated pursuant to
550 the foregoing at the end of five (5) years from the date of its creation, the Liquidation Trust will
551 terminate unless within six (6) months after the end of such five (5) year term such court as shall
552 have jurisdiction over the Liquidation Trust in accordance with Section 2.4 approves an
553 extension of the term of the Liquidation Trust for a specified additional period of time.

554 10.2. **Events upon Termination.** At the conclusion of the term of the Liquidating Trust,
555 the Liquidation Trustee shall distribute the Liquidation Trust Liquidation Trust Assets, if any, to
556 the Beneficiaries, in accordance with the Plan, the Confirmation Order, and this Liquidating
557 Trust Agreement.

558 10.3. **Winding Up, Discharge, and Release of the Liquidation Trustee.** For the purposes
559 of winding up the affairs of the Liquidation Trust at the conclusion of its term, the Liquidation
560 Trustee shall continue to act as Liquidation Trustee until its duties under this Agreement have
561 been fully discharged or its role as Liquidation Trustee is otherwise terminated under this
562 Agreement and the Plan. Upon a motion by the Liquidation Trustee, the Bankruptcy Court (or, if
563 the Case has been closed or the Bankruptcy Court declines to exercise jurisdiction, any other
564 court of competent jurisdiction) may enter an order relieving the Liquidation Trustee, its agents
565 and employees of any further duties, discharging, and releasing the Liquidation Trustee and
566 releasing its bond, if any.

567 **XI. MISCELLANEOUS PROVISIONS**

568 11.1. **Amendments.** The Liquidation Trustee may, with the approval of the Bankruptcy
569 Court, modify, supplement, or amend this Agreement in any way that is not inconsistent with the
570 Plan or the Confirmation Order.

571 11.2. **Waiver.** No failure by the Liquidation Trust or the Liquidation Trustee to exercise or
572 delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall
573 any single or partial exercise of any right, power, or privilege hereunder preclude any further
574 exercise thereof, or of any other right, power, or privilege.

575 11.3. **Cumulative Rights and Remedies.** The rights and remedies provided in this
576 Agreement are cumulative and are not exclusive of any rights under law or in equity.

577 11.4. **No Bond Required.** Notwithstanding any state law to the contrary, the Liquidation
578 Trustee (including any successor Liquidation Trustee) shall be exempt from giving any bond or
579 other security in any jurisdiction other than as provided under this Agreement.

580 11.5. **Irrevocability.** This Agreement and the Liquidation Trust created hereunder shall be
581 irrevocable, except as otherwise expressly provided in this Agreement.

582 11.6. **Tax Identification Numbers.** The Liquidation Trustee may require any Beneficiary
583 to furnish to the Liquidation Trustee its social security number or employer or taxpayer
584 identification number as assigned by the IRS and the Liquidation Trustee may condition any
585 Distribution to any Beneficiary upon the receipt of such identification number.

586 11.7. **Relationship to the Plan.** The principal purpose of this Agreement is to aid in the
587 implementation of the Plan and, therefore, this Agreement incorporates and is subject to the
588 provisions of the Plan and the Confirmation Order. In the event that any provision of this
589 Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order,
590 the provisions of the Plan or the Confirmation Order, as applicable, shall control, In the event
591 that any provision of the Plan is found to be inconsistent with a provision of the Confirmation
592 Order, the Confirmation Order shall control.

593 11.8. **Division of Liquidation Trust.** Under no circumstances shall the Liquidation Trustee
594 have the right or power to divide the Liquidation Trust unless authorized to do so by the
595 Bankruptcy Court (or, if the Case has been closed or the Bankruptcy Court declines to exercise
596 jurisdiction, any other court of competent jurisdiction).

597 11.9. **Applicable Law.** This Liquidation Trust shall be governed by and construed in
598 accordance with the laws of the State of Delaware, without giving effect to rules governing the
599 conflict of laws.

600 11.10. **Retention of Jurisdiction.** To the fullest extent permitted by law, the Bankruptcy
601 Court shall retain exclusive jurisdiction over the Liquidation Trust after the Effective Date,
602 including, without limitation, jurisdiction to resolve any and all controversies, suits and issues
603 that may arise in connection therewith, including, without limitation, this Agreement, or any
604 entity's obligations incurred in connection herewith, including without limitation, any action
605 against the Liquidation Trustee or any professional retained by the Liquidation Trustee, in each
606 case in its capacity as such, Each party to this Agreement hereby irrevocably consents to the
607 exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any

608 provision of this Agreement or of any other agreement or document delivered in connection with
609 this Agreement, and also hereby irrevocably waives any defense of improper venue, *forum non*
610 *conveniens* or lack of personal jurisdiction to any such action brought in the Bankruptcy Court.
611 Each party further irrevocably agrees that any action to enforce, interpret, or construe any
612 provision of this Agreement will be brought only in the Bankruptcy Court. Each party hereby
613 irrevocably consents to the service by certified or registered mail, return receipt requested, of any
614 process in any action to enforce, interpret or construe any provision of this Agreement. The
615 foregoing notwithstanding, after the Case is closed or if the Bankruptcy Court declines to
616 exercise jurisdiction over any controversy, suit or issue that may arise in connection herewith or
617 any entity's obligations incurred in connection herewith, including without limitation, any action
618 against the Liquidation Trustee or any professional retained by the Liquidation Trustee, such
619 jurisdiction may be exercised by any other court of competent jurisdiction.

620 11.11. **Severability.** In the event that any provision of this Agreement or the application
621 thereof to any person or circumstance shall be determined by the Bankruptcy Court to be invalid
622 or unenforceable to any extent, the remainder of this Agreement, or the application of such
623 provision to persons or circumstances, other than those as to which it is held invalid or
624 unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid
625 and enforced to the fullest extent permitted by law.

626 11.12. **Limitation of Benefits.** Except as otherwise specifically provided in this Agreement,
627 the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer
628 upon or to give any person other than the parties hereto and the Beneficiaries any rights or
629 remedies under or by reason of this Agreement.

630 11.13. **Notices.** Except as provided in Section 12.10 of this Agreement, all notices, requests,
631 demands, consents, and other communications hereunder shall be in writing and shall be deemed
632 to have been duly given to a person, if delivered in person or by facsimile with an
633 electromagnetic report of delivery or if sent by overnight mail, registered mail, certified mail, or
634 regular mail, with postage prepaid, to the following addresses:

To the Debtor: Stevens & Lee, P.C.
1818 Market Street, 29th Floor

Philadelphia, PA. 19103
Attn: Robert Lapowsky
(215) 751-2866

To the Liquidation
Trustee:

If to a Beneficiary: To the name and distribution address
set forth in the Register with respect to
such Beneficiary.

635

636 The parties may designate in writing from time to time other and additional places
637 to which notices may be sent.

638 11.14. **Further Assurances.** From and after the Effective Date, the parties hereto covenant
639 and agree to execute and deliver all such documents and notices and to take all such further
640 actions as may reasonably be required from time to time to carry out the intent and purposes of
641 this Agreement, and to consummate the transactions contemplated hereby.

642 11.15. **Integration.** This Agreement, the Plan, and the Confirmation Order constitute the
643 entire agreement with, by and among the parties thereto, and there are no representations,
644 warranties, covenants, or obligations except as set forth herein, in the Plan and in the
645 Confirmation Order. This Agreement, together with the Plan and the Confirmation Order,
646 supersede all prior and contemporaneous agreements, understandings, negotiations, and
647 discussions, written or oral, of the parties hereto, relating to any transaction contemplated
648 hereunder. Except as otherwise provided in this Agreement, the Plan or Confirmation Order,
649 nothing herein is intended or shall be construed to confer upon or give any person other than the
650 parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement.

651 11.16. **Interpretation.** The enumeration and Section headings contained in this Agreement
652 are solely for convenience of reference and shall not affect the meaning or interpretation of this
653 Agreement or of any term or provision hereof. Unless context otherwise requires, whenever
654 used in this Agreement the singular shall include the plural and the plural shall include the
655 singular, and words importing the masculine gender shall include the feminine and the neuter, if
656 appropriate, and vice versa, and words importing persons shall include partnerships, associations,
657 and corporations. The words herein, hereby, and hereunder and words with similar import, refer

658 to this Agreement as a whole and not to any particular Section or subsection hereof unless the
659 context requires otherwise. Any reference to the “Liquidation Trustee” shall be deemed to
660 include a reference to the “Liquidation Trust” and any reference to the “Liquidation Trust” shall
661 be deemed to include a reference to the “Liquidation Trustee” except for the references in
662 Sections 4.1 and 4.2, and such other provisions in which the context otherwise requires.

663 11.17. **Counterparts.** This Agreement may be signed by the parties hereto in counterparts,
664 which, when taken together, shall constitute one and the same document, Delivery of an
665 executed counterpart of this Agreement by facsimile or email in “pdf” format shall be equally
666 effective as delivery of a manually executed counterpart.

667 IN WITNESS WHEREOF, the Parties hereto have either executed and
668 acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by
669 their duly authorized officers or representatives, all as of the date first above written.

670 BAXANO SURGICAL, INC.

671
672 By: _____
673 John L. Palmer, Chief Executive Officer
674

675
676
677 LIQUIDATION TRUSTEE

678
679 By: _____
680

EXHIBIT B

LIQUIDATION ANALYSIS

SOURCES OF CASH¹

1. CASH IN OPERATING ACCOUNT	\$39,650
2. BALANCE OF SALE PROCEEDS IN ESCROW FOR PROFESSIONAL FEES	\$414,667
3. REFUND OF EXCESS CASH COLLATERAL FROM SILICON VALLEY BANK	\$170,024
4. BALANCE OF STEVENS & LEE RETAINER	\$106,687
5. NET COLLECTABLE ACCOUNTS RECEIVABLE	\$726,574
6. NET AVOIDANCE ACTION RECOVERIES ²	\$30,000
7. REFUND OF UNEARNED INSURANCE PREMIUMS	\$45,000
TOTAL SOURCES	\$1,532,602

¹ Amounts shown are as of April 25, 2015. Between April 25, 2015 and the Confirmation Date, the components of cash sources will change due to, among other things, the liquidation of non-cash items and will reduce due to the payment of expenses. However, such changes should not be materially affect the anticipated recoveries in a chapter 7. Further, the Debtor has not included an estimate the value, if any, of D&O Causes of Action because such claims are not capable of being reliably estimated. However, the value, if any, of D&O Causes of Action should not affect this liquidation analysis since such value would be no more in a chapter 7 than it would be if the Plan is confirmed.

² The Debtor has not done an analysis of potential recoveries on avoidance actions. The estimate used in this analysis is intended to be conservative and not as an admission by the Debtor as to the validity or non-validity of any avoidance actions which may be pursued.

USES OF CASH IN CHAPTER 7 LIQUIDATION³

1. NON-DEFERRED HERCULES CLAIM	\$113,901
2. CHAPTER 11 PROFESSIONAL LEGAL FEES ⁴	\$837,000
3. HOULIHAN FEES & EXPENSES	\$323,865
3. TAMARACK FEES	\$20,000
4. RUST OMNI FEES	\$80,000
5. US TRUSTEE FEES	\$15,000
6. CHAPTER 11 OPERATING EXPENSES ⁵	\$82,000
7. CHAPTER 7 TRUSTEE FEE ⁶	\$53,250
8. CHAPTER 7 PROFESSIONAL FEES	\$150,000
TOTAL USES	\$1,670,016

³ Amounts shown are Claims which, in chapter 7, would have to be paid in full before any amounts would be available for distribution to holders of priority Claims or General Unsecured Claims. Amounts shown include unpaid obligations accrued as of April 25, 2015 and obligations anticipated to accrue between April 25, 2015 and the conclusion of a chapter 7 case. Between April 25, 2015 and the Confirmation Date, the components of cash uses (other than chapter 7 trustee fees and chapter 7 professional fees) will reduce due to the payment of such expenses. However, such changes should not be materially affect the anticipated recoveries in a chapter 7..

⁴ Amounts shown are (a) Non-Deferred Professional Administrative Claims net of amounts paid to date, plus (b) Deferred Professional Administrative Claims (estimated at \$120,000), which would be paid together with Non-Deferred Professional Administrative Claims in chapter 7, plus (c) \$100,000. The Debtor believes the Non-Deferred Professional Administrative Claims plus the Deferred Professional Administrative Claims are approximately the Professional Administrative Claims accrued to April 25, 2015 and that \$100,000 is a fair estimate of additional Professional Administrative Claims that will accrue from April 25, 2015 to an assumed conversion to chapter 7 on the Confirmation Date.

⁵ Includes \$25,000 of estimated unpaid post-petition operating expenses accrued as of April 25, 2015 plus \$57,000 in estimated expenses to get from April 25, 2015 to assumed conversion of case to chapter 7 on Confirmation Date.

⁶ Calculated based on limitations stated in Section 326(a) of the Bankruptcy Code and assumed distributions by the chapter 7 trustee of \$1,000,000 to parties in interest.